STATE OF CALIFORNIA--HEALTH AND WELFARE AGENCY PETE WILSON, GOVERNOR

DEPARTMENT OF MENTAL HEALTH
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January 28, 1997

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MENTAL HEALTH
Program Support Branch

DMH INFORMATION NOTICE NO.: 97- 02

TO : LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH ADMINISTRATORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT : FAMILY, HEALTH AND SAFETY AND PROBATE CODE REVISIONS AFFECTING CONSERVATORSHIPS AND CONSENT FOR MEDICAL CARE FOR MINORS, CHAPTERS 563, STATUTES OF 1996 (SENATE BILL 392) AND CHAPTER 862, STATUTES OF 1996 (ASSEMBLY BILL 2751)

REFERENCE: DMH INFORMATION NOTICES: 96-04 AND 96-11

This notice provides information regarding certain statutory changes to the California Probate Code enacted in the 1996 legislative session which affect both wards and conservatees with a mental disability.

Chapter 862, Statutes of 1996 (AB 2751, Kaloogian) specifies 1) "A guardianship of the person terminates upon the adoption of the ward or upon the emancipation of the ward under Section 7002 of the Family Code," and 2) "The appointment, the taking of the oath, and the filing of the bond, if required, shall thereafter be evidenced by the issuance of letters by the clerk of the court," and "The order appointing a guardian or conservator shall state in capital letters on the first page of the order, in a least 12-point type, the following: 'WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED'." The amendments made by this bill become operative on July 1, 1997.

Chapter 563, Statutes of 1996 (SB 392, Committee on Judiciary) specifies 1) the medical care authorized by a relative caretaker "may include mental health treatment subject to limitations of Section 2356 of the Probate Code;" 2) a relative caretaker is defined as "a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, or any person denoted by the prefix "grand" or "great," or the spouse of any of these persons, even after the marriage has been terminated by death or dissolution;" and 3) assessments for county expenses incurred by court investigators, probation officers, or domestic relations investigators of potential guardians may be waived on the basis of hardship. There are additional changes to sections

concerning estates and to potential financial liability when a person or entity objects to a conservatorship procedure or decision.

Enclosed are copies of the new laws with the new language underlined or enclosed/bracketed. If you have any questions, please consult with your county counsel or contact Mozell Zarit at (916) 327-9310.

Sincerely,

GARY M. PETTIGREW
Deputy Director
Systems of Care

Enclosures

cc: California Mental Health Planning Council
Chief, Technical Assistance and Training

hardship will be rebuttably presumed for any person receiving Medi-Cal benefits.

(5) Existing law generally regulates the appointment and powers of a conservator or guardian.

This bill would authorize certain persons to file any petition for instructions or to grant a guardian or conservator specified power or authority, revise notice requirements for a hearing on a petition for the appointment of a guardian, and provide that specified additional powers and duties of a temporary guardian or temporary conservator may include specified relief.

(6) Existing law specifies the duties of a personal representative.

This bill would authorize a personal representative to seek to enjoin any action of a lienholder to enforce a lien against property in the decedent's estate.

(7) Existing law requires a guardian or conservator to present his or her account to the court for settlement or allowance after one year from the time of appointment. The ward or conservatee or specified other persons may object to this account.

This bill would authorize the court to order the objector or opposer of the objections to pay costs and expenses, including attorney's fees, if the court determines that the objections or the opposition to the objections were made without reasonable cause and in bad faith.

(8) Existing law requires an investigation regarding a proposed guardianship to be made by a court investigator where the proposed guardian is a relative. Existing law requires this investigation to be made by the county agency designated to investigate a potential dependency where the proposed guardian is a nonrelative.

This bill would define "relative" for purposes of these provisions.

(9) Existing law requires a guardian or conservator to endorse an allowance or rejection on a presented claim for expenses. It also requires a court to make such an endorsement upon approval by the guardian or conservator and, if the claim is allowed, file the claim within 30 days.

This bill would repeal these requirements.

(10) Existing law authorizes the appeal of prescribed judgments and orders regarding conservatorships, guardianships, and personal representatives. Existing law provides that these appeals stay the operation and effect of the judgment or order unless a trial court directs the exercise of the powers of the guardian, conservator, or personal representative or makes a prescribed appointment to exercise the powers for the purpose of preventing injury or loss to person or property.

This bill would provide that an appeal from a trial court order made for this purpose does not stay the order.

(11) Existing law requires a petition regarding the capacity of a person to give informed consent to a specified medical treatment to state specified information. Existing law requires notice of the time

and place of the hearing on the petition to be given for the period and in the manner prescribed by order of the court.

This bill would require the petition to also list the names and addresses of specified persons, so far as they are known to the petitioner. This bill would revise and recast the notice requirements, as specified.

(12) Existing law provides for the disposition of money or other property paid or delivered for the benefit of a minor or incompetent person pursuant to a compromise, covenant, or judgment, as specified.

This bill would revise these provisions, as specified.

(13) Existing law prescribes certain requirements for the making of a will.

This bill would authorize a will to be signed by a conservator pursuant to a court order.

(14) Existing law authorizes a court, on petition or on its own motion, to cite a personal representative to appear before the court and provide specified information if the personal representative does not file a prescribed petition or make a report within prescribed time limits.

This bill would instead authorize such a citation for good cause shown on the record.

(15) Existing law prescribes the manner for a notice of hearing on a specified petition requesting an order that administration of all or part of a decedent's estate is not necessary if the petition is filed with a petition for probate of a deceased spouse's will or for administration of the estate of the deceased spouse.

This bill would delete this provision.

(16) Existing law provides that a trustee has a duty to keep the beneficiaries of a trust reasonably informed of the trust and its administration.

This bill would provide that a court may make an award of costs and other expenses and costs of litigation in a proceeding to contest a trustee's account, as specified.

(17) The existing Uniform Statutory Rule Against Perpetuities generally prescribes the validity or nonvalidity of nonvested interests and unexercised powers of appointment. It also specifies procedures to determine the time of creation for these interests and powers of appointment and how to reform a disposition that meets certain conditions. Existing law provides that none of these provisions apply in specified instances.

This bill would provide that only the provisions prescribing the validity or nonvalidity of nonvested interests and unexercised powers of appointment are inapplicable in those specified instances.

The people of the State of California do enact as follows:

SECTION 1. Section 377.60 of the Code of Civil Procedure is amended to read:

377.60. A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent's personal representative on their behalf:

(a) The decedent's surviving spouse, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse, who would be entitled to the property of the decedent by intestate succession.

(b) Whether or not qualified under subdivision (a), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, or parents. As used in this subdivision, "putative spouse" means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid.

(c) A minor, whether or not qualified under subdivision (a) or (b), if, at the time of the decedent's death, the minor resided for the previous 180 days in the decedent's household and was dependent on the decedent for one-half or more of the minor's support.

SEC. 1.5. Section 6550 of the Family Code is amended to read:

6550. (a) A caregiver's authorization affidavit that meets the requirements of this part authorizes a caregiver 18 years of age or older who completes items 1-4 of the affidavit provided in Section 6552 and signs the affidavit to enroll a minor in school and consent to school-related medical care on behalf of the minor. A caregiver who is a relative and who completes items 1-8 of the affidavit provided in Section 6552 and signs the affidavit shall have the same rights to authorize medical care and dental care for the minor that are given to guardians under Section 2353 of the Probate Code. The medical care authorized by this caregiver who is a relative may include mental health treatment subject to the limitations of Section 2356 of the Probate Code.

(b) The affidavit shall not be valid for more than one year after the date on which it is executed.

(c) The decision of a caregiver to consent to or to refuse medical or dental care for a minor shall be superseded by any contravening decision of the parent or other person having legal custody of the minor, provided the decision of the parent or other person having legal custody of the minor does not jeopardize the life, health, or safety of the minor.

(d) No person who acts in good faith reliance on a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is

subject to professional disciplinary action, for such reliance if the applicable portions of the affidavit are completed.

This subdivision shall apply even if medical or dental care is provided to a minor in contravention of the wishes of the parent or other person having legal custody of the minor as long as the person providing the medical or dental care has no actual knowledge of the wishes of the parent or other person having legal custody of the minor.

(e) A person who relies on the affidavit has no obligation to make any further inquiry or investigation.

(f) Nothing in this section shall relieve any individual from liability for violations of other provisions of law.

(g) If the minor stops living with the caregiver, the caregiver shall notify any school, health care provider, or health care service plan that has been given the affidavit.

(h) A caregiver's authorization affidavit shall be invalid unless it substantially contains, in not less than 10-point boldface type or a reasonable equivalent thereof, the warning statement beginning with the word "warning" specified in Section 6552. The warning statement shall be enclosed in a box with 3-point rule lines.

(i) For purposes of this part:

(1) "Person" includes an individual, corporation, partnership, association, the state, or any city, county, city and county, or other public entity or governmental subdivision or agency, or any other legal entity.

(2) "Relative" means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.

(3) "School-related medical care" means medical care that is required by state or local governmental authority as a condition for school enrollment, including immunizations, physical examinations, and medical examinations conducted in schools for pupils.

SEC. 2. Section 6910 of the Family Code is amended to read:

6910. The parent, guardian, or caregiver of a minor who is a relative of the minor and who may authorize medical care and dental care under Section 6550, may authorize in writing an adult into whose care a minor has been entrusted to consent to medical care or dental care, or both, for the minor.

SEC. 3. Section 6102 of the Government Code is repealed.

SEC. 4. Section 1283 of the Health and Safety Code is amended to read:

1283. (a) No health facility shall surrender the physical custody of a minor under 16 years of age to any person unless such surrender is authorized in writing by the child's parent, the person having legal custody of the child, or the caregiver of the child who is a relative of

the child and who may authorize medical care and dental care under Section 6550 of the Family Code.

(b) A health facility shall report to the State Department of Health Services, on forms supplied by the department, the name and address of any person and, in the case of a person acting as an agent for an organization, the name and address of the organization, into whose physical custody a minor under the age of 16 is surrendered, other than a parent, relative by blood or marriage, or person having legal custody. This report shall be transmitted to the department within 48 hours of the surrendering of custody. No report to the department is required if a minor under the age of 16 is transferred to another health facility for further care or if this minor comes within Section 300, 601, or 602 of the Welfare and Institutions Code and is released to an agent of a public welfare, probation, or law enforcement agency.

SEC. 5. Section 1455 is added to the Probate Code, to read:

1455. Any petition for instructions or to grant a guardian or a conservator any power or authority under this division, which may be filed by a guardian or conservator, may also be filed by a person who petitions for the appointment of a guardian or conservator.

SEC. 6. Section 1511 of the Probate Code is amended to read:

1511. (a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on the petition for the appointment of a guardian, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be served in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in any manner authorized by the court, on all of the following persons:

(1) The proposed ward if 12 years of age or older.

(2) Any person having legal custody of the proposed ward, or serving as guardian of the estate of the proposed ward.

(3) The parents of the proposed ward.

(4) Any person nominated as a guardian for the proposed ward under Section 1500 or 1501.

(c) Notice shall be given by mail sent to their addresses stated in the petition, or in any manner authorized by the court, to all of the following:

(1) The spouse named in the petition.

(2) The relatives named in the petition, except that if the petition is for the appointment of a guardian of the estate only the court may dispense with the giving of notice to any one or more or all of the relatives.

(3) The person having the care of the proposed ward if other than the person having legal custody of the proposed ward.

(d) If notice is required by Section 1461 or Section 1542 to be given to the Director of Mental Health or the Director of Developmental Services or the Director of Social Services, notice shall be mailed as so required.

(e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(f) Unless the court orders otherwise, notice shall not be given to any of the following:

(1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency.

(2) The parents of a proposed ward who has been judicially declared free from their custody and control.

(g) Notice need not be given to any person if the court so orders upon a determination of either of the following:

(1) The person cannot with reasonable diligence be given the notice.

(2) The giving of the notice would be contrary to the interest of justice.

(h) Before the appointment of a guardian is made, proof shall be made to the court that each person entitled to notice under this section either:

(1) Has been given notice as required by this section.

(2) Has not been given notice as required by this section because the person cannot with reasonable diligence be given the notice or because the giving of notice to that person would be contrary to the interest of justice.

SEC. 7. Section 1513 of the Probate Code is amended to read:

1513. (a) Unless waived by the court, a court investigator, probation officer, or domestic relations investigator may make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate. Investigations where the proposed guardian is a relative shall be made by a court investigator. Investigations where the proposed guardian is a nonrelative shall be made by the county agency designated to investigate potential dependency. The report for the guardianship of the person shall include, but need not be limited to, an investigation and discussion of all of the following:

(1) A social history of the guardian.

(2) A social history of the proposed ward, including, to the extent feasible, an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward and the capability of the petitioner to meet those needs.

(3) The relationship of the proposed ward to the guardian, including the duration and character of the relationship, where

applicable, the circumstances whereby physical custody of the proposed ward was acquired by the guardian, and a statement of the proposed ward's attitude concerning the proposed guardianship, unless the statement of the attitude is affected by the proposed ward's developmental, physical, or emotional condition.

(4) The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child. The court may waive this requirement for cases involving relative guardians.

(b) The report shall be read and considered by the court prior to ruling on the petition for guardianship, and shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

(c) If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by Section 300 of the Welfare and Institutions Code, the case shall be referred to the county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by Sections 328 and 329 of the Welfare and Institutions Code is completed and a report is provided to the court in which the guardianship proceeding is pending.

(d) The report authorized by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The county clerk shall make provisions for the limitation of the report exclusively to persons entitled to its receipt.

(e) For the purpose of writing the report authorized by this section, the person making the investigation and report shall have access to the proposed ward's school records, probation records, and public and private social services records, and to an oral or written summary of the proposed ward's medical records and psychological records prepared by any physician, psychologist, or psychiatrist who made or who is maintaining those records. The physician, psychologist, or psychiatrist shall be available to clarify information regarding these records pursuant to the investigator's responsibility to gather and provide information for the court.

(f) This section does not apply to guardianships resulting from a permanency plan for a dependent child pursuant to Section 366.25 of the Welfare and Institutions Code.

(g) For purposes of this section, a "relative" means a person who is a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of these persons, even after the marriage has been terminated by death or dissolution.

SEC. 8. Section 1513.1 of the Probate Code is amended to read:

1513.1. (a) Each county shall annually assess (1) the parent, parents, or other person charged with the support and maintenance of the proposed ward, and (2) the guardian, proposed guardian, or the estate of the proposed ward, for county expenses for any investigation or review conducted by the court investigator, probation officer, or domestic relations investigator incurred pursuant to Section 1513. A county may waive any or all of an assessment against the guardianship on the basis of hardship. There shall be a rebuttable presumption that the assessment would impose a hardship if the ward is receiving Medi-Cal benefits.

(b) Any amount chargeable as state-mandated local costs incurred by a county for the cost of the investigation or review pursuant to Section 1513 shall be reduced by any assessments actually collected pursuant to subdivision (a) during that fiscal year.

SEC. 9. Section 1851.5 of the Probate Code is amended to read:

1851.5. (a) Each county shall annually assess each conservatee in the county for any investigation or review conducted by a court investigator at county expense with respect to that person pursuant to Section 1826, 1850, or 1851. The court may order reimbursement to the county for the cost of the investigations required by statute, unless the court finds that the assessment would pose a hardship to the estate. There shall be a rebuttable presumption that the assessment would impose a hardship if the ward is receiving Medi-Cal benefits.

(b) Any amount otherwise owing to a county pursuant to Article XIII B of the California Constitution and Sections 17561 and 17565 of the Government Code for costs incurred by the county for the costs of investigation or review by court investigators pursuant to Sections 1826, 1850, and 1851 shall be reduced by the amount of any assessments actually collected during the fiscal year pursuant to subdivision (a).

SEC. 10. Section 1890 of the Probate Code is amended to read:

1890. (a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

(c) Any request for a court order under Section 1880, whether made as part of the original petition for appointment of a conservator

or subsequent thereto, shall be supported by a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure, and stating that the proposed conservatee or the conservatee, as the case may be, lacks the capacity to give an informed consent for any form of medical treatment and the reasons therefor. Nothing in this section shall be construed to expand the scope of practice of psychologists as set forth in the Business and Professions Code.

SEC. 11. Section 2252 of the Probate Code is amended to read:

2252. (a) Except as otherwise provided in subdivisions (b) and (c), a temporary guardian or temporary conservator has only those powers and duties of a guardian or conservator that are necessary to provide for the temporary care, maintenance, and support of the ward or conservatee and that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

(b) Unless the court otherwise orders:

(1) A temporary guardian of the person has the powers and duties specified in Section 2353 (medical treatment).

(2) A temporary conservator of the person has the powers and duties specified in Section 2354 (medical treatment).

(3) A temporary guardian of the estate or temporary conservator of the estate may marshal assets and establish accounts at financial institutions.

(c) The temporary guardian or temporary conservator has the additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require. Notwithstanding subdivision (e), those additional powers and duties may include relief granted pursuant to Article 10 (commencing with Section 2580) of Chapter 6 if this relief is not requested in a petition for the appointment of a temporary conservator but is requested in a separate petition.

(d) The terms of any order made under subdivision (b) or (c) shall be included in the letters of temporary guardianship or conservatorship.

(e) A temporary conservator is not permitted to sell or relinquish, on the conservatee's behalf, any lease or estate in real or personal property used as or within the conservatee's place of residence without the specific approval of the court. This approval may be granted only if the conservatee has been served with notice of the hearing, the notice to be personally delivered to the temporary conservatee unless the court for good cause otherwise orders, and only if the court finds that the conservatee will be unable to return to the residence and exercise dominion over it and that the action is necessary to avert irreparable harm to the conservatee. The temporary conservator is not permitted to sell or relinquish on the conservatee's behalf any estate or interest in other real or personal property without specific approval of the court, which may be

granted only upon a finding that the action is necessary to avert irreparable harm to the conservatee. A finding of irreparable harm as to real property may be based upon a reasonable showing that the real property is vacant, that it cannot reasonably be rented, and that it is impossible or impractical to obtain fire or liability insurance on the property.

SEC. 12. Section 2622.5 is added to the Probate Code, to read:

2622.5. (a) If the court determines that the objections were without reasonable cause and in bad faith, the court may order the objector to pay the compensation and costs of the conservator or guardian and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. The objector shall be personally liable to the guardianship or conservatorship estate for the amount ordered.

(b) If the court determines that the opposition to the objections was without reasonable cause and in bad faith, the court may award the objector the costs of the objector and other expenses and costs of litigation, including attorney's fees, incurred to contest the account. The amount awarded is a charge against the compensation of the guardian or conservator, and the guardian or conservator is liable personally and on the bond, if any, for any amount that remains unsatisfied.

SEC. 13. Section 2631 of the Probate Code is amended to read:

2631. (a) Upon the death of the ward or conservatee, the guardian or conservator may contract for and pay a reasonable sum for the expenses of the last illness and the disposition of the remains of the deceased ward or conservatee, and for unpaid court-approved attorney's fees, and may pay the unpaid expenses of the guardianship or conservatorship accruing before or after the death of the ward or conservatee, in full or in part, to the extent reasonable, from any personal property of the deceased ward or conservatee which is under the control of the guardian or conservator.

(b) If after payment of expenses under subdivision (a), the total market value of the remaining estate of the decedent does not exceed the amount determined under Section 13100, the guardian or conservator may petition the court for an order permitting the guardian or conservator to liquidate the decedent's estate. The guardian or conservator may petition even though there is a will of the decedent in existence if the will does not appoint an executor or if the named executor refuses to act. No notice of the petition need be given. If the order is granted, the guardian or conservator may sell personal property of the decedent, withdraw money of the decedent in an account in a financial institution, and collect a debt, claim, or insurance proceeds owed to the decedent or the decedent's estate, and a person having possession or control shall pay or deliver the money or property to the guardian or conservator.

(c) After payment of expenses, the guardian or conservator may transfer any remaining property as provided in Division 8 (commencing with Section 13000). For this purpose, the value of the property of the deceased ward or conservatee shall be determined after the deduction of the expenses so paid.

SEC. 14. Section 2751 of the Probate Code is amended to read:

2751. (a) Except as provided in subdivisions (b) and (c), an appeal pursuant to Section 2750 stays the operation and effect of the judgment or order.

(b) Notwithstanding that an appeal is taken from the judgment or order, for the purpose of preventing injury or loss to person or property, the trial court may direct the exercise of the powers of the guardian or conservator, or may appoint a temporary guardian or conservator of the person or estate, or both, to exercise the powers, from time to time, as though no appeal were pending. All acts of the guardian or conservator, or temporary guardian or temporary conservator, pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal. An appeal of the directions made by the court under this subdivision may not stay these directions.

(c) In proceedings for guardianship of the person, Section 917.7 of the Code of Civil Procedure shall apply.

SEC. 15. Section 3204 of the Probate Code is amended to read:

3204. The petition shall state, or set forth by medical declaration attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(a) The nature of the medical condition of the patient which requires treatment.

(b) The recommended course of medical treatment which is considered to be medically appropriate.

(c) The threat to the health of the patient if authorization for the recommended course of treatment is delayed or denied by the court.

(d) The predictable or probable outcome of the recommended course of treatment.

(e) The medically available alternatives, if any, to the course of treatment recommended.

(f) The efforts made to obtain an informed consent from the patient.

(g) If the petition is filed by a person on behalf of a medical facility, the name of the person to be designated to give consent to the recommended course of treatment on behalf of the patient.

(h) The deficit or deficits in the patient's mental functions listed in subdivision (a) of Section 811 which are impaired, and identifying a link between the deficit or deficits and the patient's inability to respond knowingly and intelligently to queries about the recommended medical treatment or inability to participate in a

treatment decision about the recommended medical treatment by means of a rational thought process.

(i) The names and addresses, so far as they are known to the petitioner, of the persons specified in subdivision (b) of Section 1821.

SEC. 16. Section 3206 of the Probate Code is repealed.

SEC. 17. Section 3206 is added to the Probate Code, to read:

3206. (a) Not less than 15 days before the hearing, notice of the time and place of the hearing and a copy of the petition shall be personally served on the patient and the patient's attorney.

(b) Not less than 15 days before the hearing, notice of the time and place of the hearing and a copy of the petition shall be mailed to the following persons:

(1) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) For good cause, the court may shorten or waive notice of the hearing as provided by this section. In determining the period of notice to be required, the court shall take into account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court

(2) The desirability, where the condition of the patient permits, of giving adequate notice to all interested persons.

SEC. 18. Section 3602 of the Probate Code is amended to read:

3602. (a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in subdivisions (c) and (d), if there is a guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the

judgment referred to in Section 3600 may for good cause shown order one or more of the following:

(1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(2) If there is a guardianship of the estate of the minor, that all or part of the remaining balance of money and other property not become a part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(3) That all or part of the remaining balance of money and other property not become a part of the guardianship estate and, instead, be transferred to the trustee of a trust which is either created by, or approved of, in the order or judgment described in Section 3600. This trust shall be revocable by the minor upon attaining the age of 18 years, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(d) Upon petition of the guardian, conservator, or any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be paid to a special needs trust established under Section 3604 for the benefit of the minor or incompetent person.

(e) If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under subdivision (c) shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(f) Notice of the time and place of hearing on a petition under subdivision (d), and a copy of the petition, shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

SEC. 19. Section 3611 of the Probate Code is amended to read:

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, provided that (1) the county treasurer has been authorized by the county board of supervisors to handle the deposits, (2) the county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code, (3) the county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money, (4) the county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor, and (5) funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4 of this code; or in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on conditions the court determines to be in the best interest of the minor or incompetent person.

(c) After a hearing by the court, that the remaining balance of any money be paid to a special needs trust established under Section 3604 for the benefit of the minor or incompetent person. Notice of the time and place of the hearing and a copy of the petition shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

(d) If the remaining balance of the money and other property to be paid or delivered does not exceed twenty thousand dollars ($20,000) in value, that all or any part of the money and other property be held on any other conditions the court in its discretion determines to be in the best interest of the minor or incompetent person.

(e) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars ($5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(f) If the remaining balance of the money or other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(g) That the remaining balance of the money or other property be paid or delivered to the trustee of a trust which is created by, or approved of, in the order or judgment referred to in Section 3600. This trust shall be revocable by the minor upon attaining the age of 18 years, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

SEC. 20. Section 6110 of the Probate Code is amended to read:

6110. (a) Except as provided in this part, a will shall be in writing and satisfy the requirements of this section.

(b) The will shall be signed by one of the following:

(1) By the testator.

(2) In the testator's name by some other person in the testator's presence and by the testator's direction.

(3) By a conservator pursuant to a court order to make a will under Section 2580.

(c) The will shall be witnessed by being signed by at least two persons each of whom (1) being present at the same time, witnessed either the signing of the will or the testator's acknowledgment of the signature or of the will and (2) understand that the instrument they sign is the testator's will.

SEC. 21. Section 7241 of the Probate Code is amended to read:

7241. (a) Except as provided in subdivisions (b) and (c), an appeal under Section 7240 stays the operation and effect of the order.

(b) Notwithstanding that an appeal is taken from the order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the personal representative, or may appoint a special administrator to exercise the powers, from time to time, as though no appeal were pending. Acts of the personal representative or special administrator pursuant to the directions of the court made under this subdivision are valid, regardless of the result of the appeal. An appeal of the directions made by the court under this subdivision may not stay these directions.

(c) An appeal under Section 7240 does not stay the operation and effect of the order if the court requires an undertaking, as provided in Section 917.9 of the Code of Civil Procedure, and the undertaking is not given.

SEC. 22. Section 8110 of the Probate Code is amended to read:

8110. At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing by mail or personal delivery on all of the following persons:

(a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner.

(b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument.

SEC. 23. Section 8870 of the Probate Code is amended to read:

8870. (a) On petition by the personal representative or an interested person, the court may order that a citation be issued to a person to answer interrogatories, or to appear before the court and be examined under oath, or both, concerning any of the following allegations:

(1) The person has wrongfully taken, concealed, or disposed of property in the estate of the decedent.

(2) The person has knowledge or possession of any of the following:

(A) A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to property.

(B) A claim of the decedent.

(C) A lost will of the decedent.

(b) If the person does not reside in the county in which the estate is being administered, the superior court either of the county in which the person resides or of the county in which the estate is being administered may issue a citation under this section.

(c) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

(d) Notice to the personal representative of a proceeding under subdivision (a) shall be given for the period and in the manner provided in Section 1220. Other persons requesting notice of the hearing pursuant to Section 1250 shall be notified by the person filing the petition as set forth in Section 1252.

SEC. 24. Section 9391 of the Probate Code is amended to read:

9391. Except as provided in Section 10361, the holder of a mortgage or other lien on property in the decedent's estate, including, but not limited to, a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part, if in the complaint the holder of the lien expressly waives all recourse against other property in the estate. Section 366.2 of the Code of Civil Procedure does not apply to an action under this section. The personal representative shall have the authority to seek to enjoin any action of the lienholder to enforce a lien against property that is subject to the lien.

SEC. 25. The heading of Part 7 (commencing with Section 10800) of Division 7 of the Probate Code is amended to read:

PART 7. COMPENSATION OF PERSONAL REPRESENTATIVE AND ATTORNEY FOR THE PERSONAL REPRESENTATIVE

SEC. 26. Section 10804 of the Probate Code is amended to read:

10804. Notwithstanding any provision in the decedent's will, a personal representative who is an attorney may receive the personal representative's compensation, but shall not receive compensation for services as the attorney for the personal representative unless the court specifically approves the right to the compensation in advance and finds that the arrangement is to the advantage, benefit, and best interests of the decedent's estate.

SEC. 27. The heading of Article 2 (commencing with Section 10810) of Chapter 1 of Part 7 of Division 7 of the Probate Code is amended to read:

Article 2. Compensation of Attorney For the Personal Representative

SEC. 28. Section 12202 of the Probate Code is amended to read:

12202. (a) The court may, on petition of any interested person or on its own motion, for good cause shown on the record, cite the personal representative to appear before the court and show the condition of the estate and the reasons why the estate cannot be distributed and closed.

(b) On the hearing of the citation, the court may either order the administration of the estate to continue or order the personal representative to petition for final distribution, as provided in Section 12201.

SEC. 29. Section 13050 of the Probate Code is amended to read:

13050. (a) For the purposes of this part:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, or which was held by the decedent and passed to the decedent's surviving spouse pursuant to Section 13500, shall be excluded in determining the property or estate of the decedent or its value. This excluded property shall include, but not be limited to, property in a trust revocable by the decedent during his or her lifetime.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the property or estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. For the purposes of this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" are defined in Article 2 (commencing with Section 5120) of Chapter 1 of Part 2 of Division 5.

(b) For the purposes of this part, all of the following property shall be excluded in determining the property or estate of the decedent or its value:

(1) Any vehicle registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) Any vessel numbered under Division 3.5 (commencing with Section 9840) of the Vehicle Code.

(3) Any manufactured home, mobilehome, commercial coach, truck camper, or floating home registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(c) For the purposes of this part, the value of the following property shall be excluded in determining the value of the decedent's property in this state:

(1) Any amounts due to the decedent for services in the armed forces of the United States.

(2) The amount, not exceeding five thousand dollars ($5,000), of salary or other compensation, including compensation for unused vacation, owing to the decedent for personal services from any employment.

SEC. 30. Section 13655 of the Probate Code is amended to read:

13655. (a) If proceedings for the administration of the estate of the deceased spouse are pending at the time a petition is filed under this chapter, or if the proceedings are not pending and if the petition filed under this chapter is not filed with a petition for probate of the deceased spouse's will or for administration of the estate of the deceased spouse, notice of the hearing on the petition filed under this chapter shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220 and each person named as executor in any will of the deceased spouse.

(2) All devisees and known heirs of the deceased spouse and, if the petitioner is the trustee of a trust that is a devisee under the will of the decedent, all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804.

(b) The notice specified in subdivision (a) shall also be mailed as provided in subdivision (a) to the Attorney General, addressed to the office of the Attorney General at Sacramento, if the petitioner bases the allegation that all or part of the estate of the deceased spouse is

property passing to the surviving spouse upon the will of the deceased spouse and the will involves or may involve either of the following:

(1) A testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, resident in this state.

(2) A devise for a charitable purpose without an identified devisee or beneficiary.

SEC. 31. Section 17211 is added to the Probate Code, to read:

17211. (a) If a beneficiary contests the trustee's account and the court determines that the contest was without reasonable cause and in bad faith, the court may award against the contestant the compensation and costs of the trustee and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. The amount awarded shall be a charge against any interest of the beneficiary in the trust. The contestant shall be personally liable for any amount that remains unsatisfied.

(b) If a beneficiary contests the trustee's account and the court determines that the trustee's opposition to the contest was without reasonable cause and in bad faith, the court may award the contestant the costs of the contestant and other expenses and costs of litigation, including attorney's fees, incurred to contest the account. The amount awarded shall be a charge against the compensation or other interest of the trustee in the trust. The trustee shall be personally liable and on the bond, if any, for any amount that remains unsatisfied.

SEC. 32. Section 21111 of the Probate Code is amended to read:

21111. Except as provided in Section 21110:

(a) If a transfer, other than a residuary gift or a transfer of a future interest, fails for any reason, the property transferred becomes a part of the residue transferred under the instrument.

(b) If a residuary gift or a future interest is transferred to two or more persons and the share of a transferee fails for any reason, the share passes to the other transferees in proportion to their other interest in the residuary gift or the future interest.

SEC. 33. Section 21225 of the Probate Code is amended to read:

21225. Article 2 (commencing with Section 21205) does not apply to any of the following:

(a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (1) a premarital or postmarital agreement, (2) a separation or divorce settlement, (3) a spouse's election, (4) or a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (5) a contract to make or not to revoke a will or trust, (6) a contract to exercise or not to exercise a power of appointment, (7) a transfer in satisfaction of a duty of support, or (8) a reciprocal transfer.

(b) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.

(c) A power to appoint a fiduciary.

(d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.

(e) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision.

(f) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse.

(g) A property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another statute of this state.

(h) A trust created for the purpose of providing for its beneficiaries under hospital service contracts, group life insurance, group disability insurance, group annuities, or any combination of such insurance, as defined in the Insurance Code.

SEC. 34. Section 21350 of the Probate Code is amended to read:

21350. (a) Except as provided in Section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following:

(1) The person who drafted the instrument.

(2) A person who is related by blood or marriage to, is a cohabitant with, or is an employee of, the person who drafted the instrument.

(3) Any partner or shareholder of any law partnership or law corporation in which the person described in paragraph (1) has an ownership interest, and any employee of any such law partnership or law corporation.

(4) Any person who has a fiduciary relationship with the transferor, including, but not limited to, a conservator or trustee, who transcribes the instrument or causes it to be transcribed.

(5) A person who is related by blood or marriage to, is a cohabitant with, or is an employee of a person who is described in paragraph (4).

(b) For purposes of this section, "a person who is related by blood or marriage" to a person means all of the following:

(1) The person's spouse or predeceased spouse.

(2) Relatives within the third degree of the person and of the person's spouse.

(3) The spouse of any person described in paragraph (2).

In determining any relationship under this subdivision, Sections 6406, 6407, and Chapter 2 (commencing with Section 6450) of Part 2 of Division 6 shall be applicable.

O

Assembly Bill No. 2751

CHAPTER 862

An act to amend Section 366.2 of the Code of Civil Procedure, to amend Sections 1021, 1460, 1600, 2310, 2581, 3906, 3920.5, 6452, 400, 9000, 9050, 9051, 9052, 9053, 9100, 9103, 9150, 9391, 10361, 10552, 10900, 11420, 13100, 13101, 13151, 13152, 16063, 16245, 16460, 17200, 17201, 17203, 19000, and 21350 of, to add Sections 801, 10361.5, 10361.6, 17200.1, and 17200.2 to, to add Chapter 4 (commencing with Section 1060) to Part 1 of Division 3 of, to repeal Sections 2620.1 and 2624 of, and to repeal and add Sections 2620 and 10902 of, and the Probate Code, and to add Section 11930 to the Revenue and Taxation Code, relating to estates and trusts.

[Approved by Governor September 23, 1996. Filed with Secretary of State September 24, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2751, Kaloogian. Estates and trusts.

Existing law governs civil actions regarding the administration of a decedents' estate, the determination that a person is of unsound mind or lacks capacity, as specified, guardianships and conservatorships, transfers of custodial property, the administration of trusts, and fiduciary relationships.

This bill would revise and recast these provisions to, among other things, specify procedures that become operative July 1, 1997, to administer accounts rendered under the Probate Code; specify that a guardianship of a ward terminates upon the emancipation of the ward, as specified; and require the order appointing a guardian or conservator to have a specified notice on the first page of the order. This bill would provide that certain of the changes that would be made by this bill shall become operative on July 1, 1997.

The people of the State of California do enact as follows:

SECTION 1. Section 366.2 of the Code of Civil Procedure is amended to read:

366.2. (a) Except as provided in subdivisions (b) and (c):

(1) If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

(2) The limitations period provided in this section for commencement of an action is not tolled or extended for any reason.

(b) This section is subject to:

(1) Part 4 (commencing with Section 9000) of Division 7 of the Probate Code (creditor claims in administration of estates of decedents).

(2) Part 8 (commencing with Section 19000) of Division 9 of the Probate Code (payment of claims, debts, and expenses from revocable trust of deceased settlor).

(3) Part 3 (commencing with Section 21300) of Division 11 of the Probate Code (no contest clauses).

(c) This section applies to actions brought on liabilities of persons dying on or after January 1, 1993.

SEC. 2. Section 801 is added to the Probate Code, to read:

801. The court, on its own motion or on the motion of any interested party, may order that an action or proceeding not specifically provided in this code be determined in a separate civil action. Upon the payment of the appropriate filing fees, the court may order transfer of the severed action or proceeding to the separate civil action.

SEC. 3. Section 1021 of the Probate Code is amended to read:

1021. (a) All of the following shall be verified:

(1) A petition, report, or account filed pursuant to this code.

(2) An objection or response filed pursuant to this code to a petition, report, or account.

(b) Except as provided in Section 1023, the verification shall be made as follows:

(1) A petition shall be verified by the petitioner or, if there are two or more parties joining in the petition, by any of them.

(2) A report or account shall be verified by the person who has the duty to make the report or account or, if there are two or more persons having a duty to make the report or account, by any of them.

(3) An objection or response shall be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any of them.

SEC. 4. Chapter 4 (commencing with Section 1060) is added to Part 1 of Division 3 of the Probate Code, to read:

CHAPTER 4. ACCOUNTS

1060. This chapter governs all accounts to be filed with the court under this code. Except as specifically provided elsewhere in this code, or unless good cause is shown therefore, no information in addition to that required in this chapter need be in an account.

1060.5. This chapter shall be operative on and after July 1, 1997.

1061. (a) All accounts shall state the period covered by the account and contain a summary showing all of the following, to the extent applicable:

(1) The property on hand at the beginning of the period covered by the account, which shall be the value of the property initially received by the fiduciary if this is the first account, and shall be the property on hand at the end of the prior account if this is a subsequent account.

(2) The value of any assets received during the period of the accounting which are not assets on hand as of the commencement of the administration of an estate.

(3) The amount of any receipts of income or principal, excluding items listed under paragraphs (1) and (2) or receipts from a trade or business.

(4) Net income from a trade or business.

(5) Gains on sales.

(6) The amount of disbursements, excluding disbursements for a trade or business or distributions.

(7) Loss on sales.

(8) Net loss from trade or business.

(9) Distributions to beneficiaries, the ward or conservatee.

(10) Property on hand at the end of the accounting period, stated at its carry value.

(b) The summary shall be in a format substantially the same as the following, except that inapplicable categories need not be shown:

SUMMARY OF ACCOUNT

CHARGES:

Property on hand at beginning of account (or Inventories)	$ _____
Additional property received (or supplemental inventories)	_____
Receipts (Schedule _____)	_____
Gains on Sale or Other Disposition (Schedule _____)	_____
Net income from trade or business (Schedule_____)	_____
Total Charges:	$ _____

CREDITS:

Disbursements (Schedule _____)	$ _____

Losses on Sale or Other Disposition
(Schedule _____) _____
Net loss from trade or business
(Schedule _____) _____
Distributions (Schedule _____) _____
Property on hand at close of account
(Schedule _____) _____

Total Credits: $ _____

(c) Total charges shall equal total credits.

1062. The summary shall be supported by detailed schedules showing the following:

(a) Receipts, showing the nature or purpose of each item, the source of the receipt, and the date thereof.

(b) Disbursement, including the nature or purpose of each item, the name of the payee, and the date thereof.

(c) Net income or loss from a trade or business, which shall be sufficient if it provides the information disclosed on Schedule C or F of the federal income tax return.

(d) Calculation of gains or losses on sale or other disposition.

(e) Distributions of cash or property to beneficiaries, ward or conservatee, showing the date and amount of each, with the distribution of property shown at its carry value.

(f) Itemized list of property on hand, describing each item at its carry value.

1063. (a) In all accounts, there shall be an additional schedule showing the estimated market value of the assets on hand as of the end of the accounting period, and a schedule of the estimated market value of the assets on hand as of the beginning of the accounting period for all accounts subsequent to the initial account. The requirement of an estimated value of real estate, a closely held business, or other assets without a ready market, may be satisfied by a good faith estimate by the fiduciary.

(b) A schedule of purchases or other changes in the form of assets occurring during the period of the account. However, no reporting is required for transfers between cash or accounts in a financial institution or money market mutual funds as defined in subdivision (d) of Section 8901.

(c) An allocation of receipt and disbursements between principal and income in any case where an estate of a decedent or a trust will be distributed to an income beneficiary.

(d) If there is specifically devised property, there shall be a separate schedule accounting for income, disbursements, and proceeds of sale pursuant to Sections 12002 and 16314.

(e) If any interest is to be paid under Section 12003, 12004, 12005, or 16314, there shall be a schedule showing the calculation of the interest.

(f) If the accounting contemplates a proposed distribution, there shall be a schedule to set forth the proposed distribution, including the allocation of income required under Section 12006. If the distribution requires an allocation between trusts, the allocation shall be set forth on the schedule, unless the allocation is to be made by a trustee after receipt of the assets. If the distribution requires valuation of assets as of the date of distribution, the schedule shall set forth the fair market value of those assets.

(g) A schedule of the liabilities of the estate or trust shall include all of the following:

(1) All liabilities which are a lien on estate or trust assets.

(2) Taxes due but unpaid as shown on filed returns or assessments received subsequent to filing of returns.

(3) All notes payable.

(4) Any judgments for which the estate or trust is liable.

(5) Any other material liability.

Monthly payments, including rent, utilities, salaries, or other recurring expenses, need not be separately scheduled.

1064. (a) The petition for approval of the account or a report accompanying the petition shall contain all of the following:

(1) A description of all sales, purchases, changes in the form of assets, or other transactions occurring during the period of the account that are not otherwise readily understandable from the schedule.

(2) An explanation of any unusual items appearing in the account.

(3) A statement of all compensation paid to the fiduciary or to the attorneys for the fiduciary other than pursuant to a prior court order.

(4) A statement disclosing any relationship between the fiduciary or the attorneys for the fiduciary and any agent hired by the fiduciary during the accounting period.

(5) An allegation disclosing whether all of the cash has been invested and maintained in interest bearing accounts or in investments authorized by law or the governing instrument, except for an amount of cash that is reasonably necessary for the orderly administration of the estate.

(b) The filing of an account shall be deemed to include a petition requesting its approval, and may include additional petitions for authorization, instruction or confirmation authorized by the code, including, but not limited to, a request for an order for compensation of the fiduciary and the attorney for the fiduciary.

SEC. 5. Section 1460 of the Probate Code is amended to read:

1460. (a) Subject to Sections 1202 and 1203, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and

Losses on Sale or Other Disposition
(Schedule _____) _____
Net loss from trade or business
(Schedule _____) _____
Distributions (Schedule _____) _____
Property on hand at close of account
(Schedule _____) _____

Total Credits: $ _____

(c) Total charges shall equal total credits.

1062. The summary shall be supported by detailed schedules showing the following:

(a) Receipts, showing the nature or purpose of each item, the source of the receipt, and the date thereof.

(b) Disbursement, including the nature or purpose of each item, the name of the payee, and the date thereof.

(c) Net income or loss from a trade or business, which shall be sufficient if it provides the information disclosed on Schedule C or F of the federal income tax return.

(d) Calculation of gains or losses on sale or other disposition.

(e) Distributions of cash or property to beneficiaries, ward or conservatee, showing the date and amount of each, with the distribution of property shown at its carry value.

(f) Itemized list of property on hand, describing each item at its carry value.

1063. (a) In all accounts, there shall be an additional schedule showing the estimated market value of the assets on hand as of the end of the accounting period, and a schedule of the estimated market value of the assets on hand as of the beginning of the accounting period for all accounts subsequent to the initial account. The requirement of an estimated value of real estate, a closely held business, or other assets without a ready market, may be satisfied by a good faith estimate by the fiduciary.

(b) A schedule of purchases or other changes in the form of assets occurring during the period of the account. However, no reporting is required for transfers between cash or accounts in a financial institution or money market mutual funds as defined in subdivision (d) of Section 8901.

(c) An allocation of receipt and disbursements between principal and income in any case where an estate of a decedent or a trust will be distributed to an income beneficiary.

(d) If there is specifically devised property, there shall be a separate schedule accounting for income, disbursements, and proceeds of sale pursuant to Sections 12002 and 16314.

(e) If any interest is to be paid under Section 12003, 12004, 12005, or 16314, there shall be a schedule showing the calculation of the interest.

(f) If the accounting contemplates a proposed distribution, there shall be a schedule to set forth the proposed distribution, including the allocation of income required under Section 12006. If the distribution requires an allocation between trusts, the allocation shall be set forth on the schedule, unless the allocation is to be made by a trustee after receipt of the assets. If the distribution requires valuation of assets as of the date of distribution, the schedule shall set forth the fair market value of those assets.

(g) A schedule of the liabilities of the estate or trust shall include all of the following:

(1) All liabilities which are a lien on estate or trust assets.

(2) Taxes due but unpaid as shown on filed returns or assessments received subsequent to filing of returns.

(3) All notes payable.

(4) Any judgments for which the estate or trust is liable.

(5) Any other material liability.

Monthly payments, including rent, utilities, salaries, or other recurring expenses, need not be separately scheduled.

1064. (a) The petition for approval of the account or a report accompanying the petition shall contain all of the following:

(1) A description of all sales, purchases, changes in the form of assets, or other transactions occurring during the period of the account that are not otherwise readily understandable from the schedule.

(2) An explanation of any unusual items appearing in the account.

(3) A statement of all compensation paid to the fiduciary or to the attorneys for the fiduciary other than pursuant to a prior court order.

(4) A statement disclosing any relationship between the fiduciary or the attorneys for the fiduciary and any agent hired by the fiduciary during the accounting period.

(5) An allegation disclosing whether all of the cash has been invested and maintained in interest bearing accounts or in investments authorized by law or the governing instrument, except for an amount of cash that is reasonably necessary for the orderly administration of the estate.

(b) The filing of an account shall be deemed to include a petition requesting its approval, and may include additional petitions for authorization, instruction or confirmation authorized by the code, including, but not limited to, a request for an order for compensation of the fiduciary and the attorney for the fiduciary.

SEC. 5. Section 1460 of the Probate Code is amended to read:

1460. (a) Subject to Sections 1202 and 1203, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and

place of the hearing shall be given at least 15 days before the day of the hearing as provided in this section.

(b) Subject to subdivision (e), the petitioner, who includes for the purposes of this section a person filing a petition, report, or account, shall cause the notice of hearing to be mailed to each of the following persons:

(1) The guardian or conservator.

(2) The ward or the conservatee.

(3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse.

(4) Any person who has requested special notice of the matter, as provided in Section 2700.

(5) For any hearing on a petition to terminate a guardianship, to accept the resignation of, or to remove the guardian, the persons described in subdivision (c) of Section 1510.

(6) For any hearing on a petition to terminate a conservatorship, to accept the resignation of, or to remove the conservator, the persons described in subdivision (b) of Section 1821.

(c) The clerk of the court shall cause the notice of the hearing to be posted as provided in Section 1230 if the posting is required by subdivision (c) of Section 2543 (sales).

(d) Except as provided in subdivision (e), nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 10 (commencing with Section 2700) of Part 4.

(e) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.

SEC. 6. Section 1600 of the Probate Code is amended to read:

1600. (a) A guardianship of the person or estate or both terminates when the ward attains majority or dies.

(b) A guardianship of the person terminates upon the adoption of the ward or upon the emancipation of the ward under Section7002 of the Family Code.

SEC. 7. Section 2310 of the Probate Code is amended to read:

2310. (a) The appointment, the taking of the oath, and the filing of the bond, if required, shall thereafter be evidenced by the issuance of letters by the clerk of the court.

(b) The order appointing a guardian or conservator shall state in capital letters on the first page of the order, in at least 12-point type, the following: "WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED."

SEC. 8. Section 2581 of the Probate Code is amended to read:

2581. Notice of the hearing of the petition shall be given, regardless of age, for the period and in the manner provided in Chapter 3 (commencing with Section 1460) or Part 1 to all of the following:

(a) The persons required to be given notice under Chapter 3 (commencing with Section 1460) of Part 1.

(b) The persons required to be named in a petition for the appointment of a conservator.

(c) So far as is known to the petitioner, beneficiaries under any document executed by the conservatee which may have testamentary effect unless the court for good cause dispenses with such notice.

(d) So far as is known to the petitioner, the persons who, if the conservatee were to die immediately, would be the conservatee's heirs under the laws of intestate succession unless the court for good cause dispenses with such notice.

(e) Such other persons as the court may order.

SEC. 9. Section 2620 of the Probate Code is repealed.

SEC. 10. Section 2620 is added to the Probate Code, to read:

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present the account of the guardian or conservator to the court for settlement an allowance in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3.

(b) The petition to terminate the guardianship or conservatorship following the death of the ward or conservatee shall include an account for the period which ended at the date of death and a separate account for the period subsequent to the date of death.

SEC. 11. Section 2620.1 of the Probate Code is repealed.

SEC. 12. Section 2624 of the Probate Code is repealed.

SEC. 13. Section 3906 of the Probate Code is amended to read:

3906. (a) Subject to subdivision (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to Section 3909, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subdivision (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 3909.

(c) A transfer under subdivision (a) or (b) may be made only if all of the following requirements are satisfied:

(1) The personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor.

(2) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument. For the purposes of this subdivision, a spendthrift provision (such as that described in Section 15300) shall not prohibit or be inconsistent with the transfer.

(3) The transfer is authorized by the court if it exceeds ten thousand dollars ($10,000) in value; provided, however, that such

court authorization shall not be required when the transfer is to a custodian who is either (A) a trust company or (B) an individual designated as a trustee by the terms of a trust instrument which does not require a bond.

SEC. 14. Section 3920.5 of the Probate Code is amended to read:

3920.5. (a) Subject to the requirements and limitations of this section, the time for transfer to the minor of custodial property transferred under or pursuant to Section 3903, 3904, 3905, or 3906, may be delayed until a specified time after the time the minor attains the age of 18 years, which time shall be specified in the transfer pursuant to Section 3909.

(b) To specify a delayed time for transfer to the minor of the custodial property, the words

"as custodian for _____
(Name of Minor)
until age _____
(Age for Delivery of Property to Minor)
under the California Uniform Transfers to Minors Act" shall be substituted in substance for the words
"as custodian for _____
(Name of Minor)
under the California Uniform Transfers to Minors Act" in making the transfer pursuant to Section 3909.

(c) The time for transfer to the minor of custodial property transferred under or pursuant to Section 3903 or 3905 may be delayed under this section only if the governing will or trust or nomination provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age, and in that case the governing will or trust or nomination shall determine the time to be specified in the transfer pursuant to Section 3909.

(d) The time for transfer to the minor of custodial property transferred by the irrevocable exercise of a power of appointment under Section 3904 may be delayed under this section only if the transfer pursuant to Section 3909 provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age.

(e) The time for transfer to the minor of custodial property transferred by irrevocable gift under Section 3904 may be delayed under this section only if the transfer pursuant to Section 3909 provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 21 years of age.

(f) The time for transfer to the minor of custodial property transferred by a trustee under Section 3906 may be delayed under this section only if the transfer pursuant to Section 3909 provides that the custodianship is to continue until a specified time not later than the time the minor attains 25 years of age or the time of termination of all present beneficial interests of the minor in the trust from which the custodial property was transferred, whichever is to occur first.

(g) If the transfer pursuant to Section 3909 does not specify any age, the time for the transfer of the custodial property to the minor under Section 3920 is the time when the minor attains 18 years of age.

(h) If the transfer pursuant to Section 3909 provides in substance that the duration of the custodianship is for a time longer than the maximum time permitted by this section for the duration of a custodianship created by that type of transfer, the custodianship shall be deemed to continue only until the time the minor attains the maximum age permitted by this section for the duration of a custodianship created by that type of transfer.

SEC. 15. Section 6452 of the Probate Code is amended to read:

6452. If a child is born out of wedlock, neither a natural parent nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:

(a) The parent or a relative of the parent acknowledged the child.

(b) The parent or a relative of the parent contributed to the support or the care of the child.

SEC. 16. Section 8400 of the Probate Code is amended to read:

8400. (a) A person has no power to administer the estate until the person is appointed personal representative and the appointment becomes effective. Appointment of a personal representative becomes effective when the person appointed is issued letters.

(b) Subdivision (a) applies whether or not the person is named executor in the decedent's will, except that a person named executor in the decedent's will may, before the appointment is made or becomes effective, pay funeral expenses and take necessary measures for the maintenance and preservation of the estate.

(c) The order appointing a personal representative shall state in capital letters on the first page of the order, in at least 12-point type, the following: "WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED."

SEC. 17. Section 9000 of the Probate Code is amended to read:

9000. As used in this division:

(a) "Claim" means a demand for payment for any of the following, whether due, not due, accrued or not accrued, or contingent, and whether liquidated or unliquidated:

(b) A reference in another statute to the time for filing a claim means the time provided in paragraph (1) of subdivision (a).

SEC. 23. Section 9103 of the Probate Code is amended to read:

9103. (a) Upon petition by a creditor or the personal representative, the court may allow a claim to be filed after expiration of the time for filing a claim provided in Section 9100 if either of the following conditions is satisfied:

(1) The personal representative failed to send proper and timely notice of administration of the estate to the creditor, and that petition is filed within 60 days after the creditor has actual knowledge of the administration of the estate.

(2) The creditor had no knowledge of the facts reasonably giving rise to the existence of the claim more than 30 days prior to the time for filing a claim as provided in Section 9100, and the petition is filed within 60 days after the creditor has actual knowledge of both of the following:

(A) The existence of the facts reasonably giving rise to the existence of the claim.

(B) The administration of the estate.

(b) Notwithstanding subdivision (a), the court shall not allow a claim to be filed under this section after the court makes an order for final distribution of the estate. Nothing in this subdivision authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 366.2 of the Code of Civil Procedure.

(c) The court may condition the claim on terms that are just and equitable, and may require the appointment or reappointment of a personal representative if necessary. The court may deny the creditor's petition if a payment to general creditors has been made and it appears that the filing or establishment of the claim would cause or tend to cause unequal treatment among creditors.

(d) Regardless of whether the claim is later established in whole or in part, payments otherwise properly made before a claim is filed under this section are not subject to the claim. Except to the extent provided in Section 9392 and subject to Section 9053, the personal representative or payee is not liable on account of the prior payment. Nothing in this subdivision limits the liability of a person who receives a preliminary distribution of property to restore to the estate an amount sufficient for payment of the distributee's proper share of the claim, not exceeding the amount distributed.

(e) Notice of hearing on the petition shall be given as provided in Section 1220.

SEC. 24. Section 9150 of the Probate Code is amended to read:

9150. (a) A claim may be filed by the creditor or a person acting on behalf of the creditor.

(b) A claim shall be filed with the court and a copy shall be served on the personal representative, or on a person who is later appointed and qualified as personal representative.

(c) Service of the claim on the personal representative shall be made within the later of 30 days of the filing of the claim or four months after letters issue to a personal representative with general powers. Service shall not be required after the claim has been allowed or rejected.

(d) If the creditor does not file the claim with the court and serve the claim on the personal representative as provided in this section, the claim shall be invalid.

SEC. 25. Section 9391 of the Probate Code is amended to read:

9391. Except as provided in Section 10361, the holder of a mortgage or other lien on property in the decedent's estate, including, but not limited to, a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part, if in the complaint the holder of the lien expressly waives all recourse against other property in the estate. Section 366.2 of the Code of Civil Procedure does not apply to an action under this section. The personal representative shall have the authority to seek to enjoin any action of the lienholder to enforce a lien against property that is subject to the lien.

SEC. 26. Section 10361 of the Probate Code is amended to read:

10361. (a) If encumbered property is sold, the purchase money shall be applied in the following order:

(1) Expenses of administration which are reasonably related to the administration of the property sold as provided in paragraph (1) of subdivision (a) of Section 11420.

(2) The payment of the expenses of the sale.

(3) The payment and satisfaction of the amount secured by the lien on the property sold if payment and satisfaction of the lien is required under the terms of the sale.

(4) Application in the course of administration.

(b) The application of the purchase money, after the payment of those expenses set forth in paragraphs (1) and (2) of subdivision (a), to the payment and satisfaction of the amount secured by the lien on the property sold shall be made without delay; and, subject to Section 10362, the property sold remains subject to the lien until the purchase money has been actually so applied.

SEC. 27. Section 10361.5 is added to the Probate Code, to read:

10361.5. The personal representative or any interested party may, at any time before payment is made to satisfy all liens on the encumbered property sold, petition for an order determining the amount of expenses of administration that are reasonably related to the administration of that encumbered property as provided in paragraph (1) of subdivision (a) of Section 11420. The petition may be heard as part of a petition for confirmation of sale of personal or real property as provided in Section 10260 or 10308, respectively or may be heard separately. If the petition is presented as part of a

petition for confirmation of sale of real or personal property, the notice of hearing otherwise required by this code for a petition for confirmation of sale shall be given in addition to the notice requirements under Section 10361.6.

SEC. 28. Section 10361.6 is added to the Probate Code, to read:

10361.6. (a) At least 30 days prior to the day of the hearing, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 3 of the Code of Civil Procedure on all of the following persons:

(1) The personal representative, if the personal representative is not the petitioner.

(2) The holder of any mortgage or other lien secured by the property that is sold.

(3) All agents or brokers entitled to compensation from the proceeds of the property that is sold.

(b) Except for those persons given notice pursuant to subdivision (a), notice of the hearing, together with a copy of the petition, shall be given as provided in Section 1220 to all of the following persons:

(1) Each person listed in Section 1220.

(2) Each known heir whose interest in the estate would be affected by the petition.

(3) Each known devisee whose interest in the estate would be affected by the petition.

(4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of the estate is to escheat to the state and its interest in the estate would be affected by the petition.

(c) The court may not shorten the time for giving the notice of hearing under this section.

SEC. 29. Section 10552 of the Probate Code is amended to read:

10552. The personal representative has the power to do all of the following:

(a) Allow, pay, reject, or contest any claim by or against the estate.

(b) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

(c) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

(d) Allow a claim to be filed after the expiration of the time for filing the claim.

SEC. 30. Section 10900 of the Probate Code is amended to read:

10900. (a) An account shall include both a financial statement and a report of administration as provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3, and this section.

(b) The statement of liabilities in the report of administration shall include the following information:

(1) Whether notice to creditors was given under Section 9050.

(2) Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.

(3) Creditor claims not paid, satisfied, or adequately provided for. As to each such claim, the statement shall indicate whether the claim is due and the date due, the date any notice of rejection was given, and whether the creditor has brought an action on the claim. The statement shall identify any real or personal property that is security for the claim, whether by mortgage, deed of trust, lien, or other encumbrance.

(c) The amendments to this section made by Assembly Bill 2751 of the 1995–96 Regular Session shall become operative on July 1, 1997.

SEC. 31. Section 10902 of the Probate Code is repealed.

SEC. 32. Section 10902 is added to the Probate Code, to read:

10902. When a personal representative receives assets from the conservator of a deceased conservatee or the guardian of a deceased ward, the personal representative may incorporate by reference any accounting provided by the conservator or guardian for the decedent for the period subsequent to the date of death, and the personal representative is entitled to rely on the accounting by such other fiduciary, and shall not have a duty to independently investigate or verify the transactions reported in such an account.

SEC. 33. Section 11420 of the Probate Code is amended to read:

11420. (a) Debts shall be paid in the following order of priority among classes of debts, except that debts owed to the United States or to this state that have preference under the laws of the United States or of this state shall be given the preference required by such laws:

(1) Expenses of administration. With respect to obligations secured by mortgage, deed of trust, or other lien, including, but not limited to, a judgment lien, only those expenses of administration incurred that are reasonably related to the administration of that property by which obligations are secured shall be given priority over these obligations.

(2) Obligations secured by a mortgage, deed of trust, or other lien, including, but not limited to, a judgment lien, in the order of their priority, so far as they may be paid out of the proceeds of the property subject to the lien. If the proceeds are insufficient, the part of the obligation remaining unsatisfied shall be classed with general debts.

(3) Funeral expenses.

(4) Expenses of last illness.

(5) Family allowance.

(6) Wage claims.

(7) General debts, including judgments not secured by a lien and all other debts not included in a prior class.

(b) Except as otherwise provided by statute, the debts of each class are without preference or priority one over another. No debt of any class may be paid until all those of prior classes are paid in full. If property in the estate is insufficient to pay all debts of any class in full, each debt in that class shall be paid a proportionate share.

SEC. 34. Section 13100 of the Probate Code is amended to read:

13100. Excluding the property described in Section 13050, if the gross value of the decedent's real and personal property in this state does not exceed one hundred thousand dollars ($100,000) and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property:

(a) Collect any particular item of property that is money due the decedent.

(b) Receive any particular item of property that is tangible personal property of the decedent.

(c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

SEC. 35. Section 13101 of the Probate Code is amended to read:

13101. (a) To collect money, receive tangible personal property, or have evidences of a debt, obligation, interest, right, security, or chose in action transferred under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) "At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration."

(4) Either of the following, as appropriate:

(A) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(B) "The decedent's personal representative has consented in writing to the payment, transfer, or delivery to the affiant or declarant of the property described in the affidavit or declaration."

(5) "The current gross fair market value of the decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed one hundred thousand dollars ($100,000)."

(6) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.

(7) The name of the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the described property.

(8) Either of the following, as appropriate:

(A) "The affiant or declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the described property."

(B) "The affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Section 13006 of the California Probate Code) with respect to the decedent's interest in the described property."

(9) "No other person has a superior right to the interest of the decedent in the described property."

(10) "The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant."

(11) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) If the particular item of property to be transferred under this chapter is a debt or other obligation secured by a lien on real property and the instrument creating the lien has been recorded in the office of the county recorder of the county where the real property is located, the affidavit or declaration shall satisfy the requirements both of this section and of Section 13106.5.

(d) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

(e) If the decedent's personal representative has consented to the payment, transfer, or delivery of the described property to the affiant or declarant, a copy of the consent and of the personal representative's letters shall be attached to the affidavit or declaration.

SEC. 36. Section 13151 of the Probate Code is amended to read:

13151. Exclusive of the property described in Section 13050, if a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed one hundred thousand dollars ($100,000) and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the petitioner has

succeeded to that real property. A petition under this chapter may include an additional request that the court make an order determining that the petitioner has succeeded to personal property described in the petition.

SEC. 37. Section 13152 of the Probate Code is amended to read:

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the property described in the petition is property passing to the petitioner, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, as shown by the inventory and appraisal attached to the petition, does not exceed one hundred thousand dollars ($100,000).

(3) A description of the particular item of real property in this state which the petitioner alleges is property of the decedent passing to the petitioner, and a description of the personal property which the petitioner alleges is property of the decedent passing to the petitioner if the requested order also is to include a determination that the described personal property is property passing to the petitioner.

(4) The facts upon which the petitioner bases the allegation that the described property is property passing to the petitioner.

(5) Either of the following, as appropriate:

(A) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(B) A statement that the decedent's personal representative has consented in writing to use of the procedure provided by this chapter.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and, if the petitioner is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(8) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to any petitioner.

(b) There shall be attached to the petition an inventory and appraisal in the form set forth in Section 8802 of the decedent's real and personal property in this state, excluding the property described

in Section 13050. The appraisal shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located. The appraisal shall be made as provided in Part 3 (commencing with Section 8800) of Division 7. The petitioner may appraise the assets which a personal representative could appraise under Section 8901.

(c) If the petitioner bases his or her claim to the described property upon the will of the decedent, a copy of the will shall be attached to the petition.

(d) If the decedent's personal representative has consented to use of the procedure provided by this chapter, a copy of the consent shall be attached to the petition.

SEC. 38. Section 16063 of the Probate Code is amended to read:

16063. (a) An account furnished pursuant to Section 16062 shall be presented in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3. The accompanying report shall contain both of the following:

(1) A statement that the recipient of the account may petition the court pursuant to Section 17200 to obtain court review of the account and of the acts of the trustee.

(2) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives an account or report disclosing facts giving rise to the claim.

(b) The amendments to this section made by Assembly Bill 2751 of the 1995–96 Regular Session shall become operative on July 1, 1997.

SEC. 39. Section 16245 of the Probate Code is amended to read:

16245. The trustee has the power to pay any sum of principal or income distributable to a beneficiary, without regard to whether the beneficiary is under a legal disability, by paying the sum to the beneficiary or by paying the sum to another person for the use or benefit of the beneficiary. Any sum distributable under this section to a custodian under the California Uniform Transfers to Minors Act (Part 9 (commencing with Section 3900)) shall be subject to Section 3906.

SEC. 40. Section 16460 of the Probate Code is amended to read:

16460. (a) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(1) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within three years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of

e claim or reasonably should have inquired into the existence of the im.

(2) If an interim or final account in writing or other written report es not adequately disclose the existence of a claim against the istee for breach of trust or if a beneficiary does not receive any itten account or report, the claim is barred as to that beneficiary less a proceeding to assert the claim is commenced within three irs after the beneficiary discovered, or reasonably should have covered, the subject of the claim.

(b) For the purpose of subdivision (a), a beneficiary is deemed to ve received an account or report, as follows:

(1) In the case of an adult who is reasonably capable of derstanding the account or report, if it is received by the adult rsonally.

(2) In the case of an adult who is not reasonably capable of derstanding the account or report, if it is received by the person's al representative, including a guardian ad litem or other person pointed for this purpose.

(3) In the case of a minor, if it is received by the minor's guardian if the minor does not have a guardian, if it is received by the nor's parent so long as the parent does not have a conflict of erest.

(c) A written account or report under this section may, but need t, satisfy the requirements of Section 16061 or 16063 or any other ovision.

SEC. 41. Section 17200 of the Probate Code is amended to read:

7200. (a) Except as provided in Section 15800, a trustee or neficiary of a trust may petition the court under this chapter icerning the internal affairs of the trust or to determine the stence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, are not limited to, proceedings for any of the following purposes:

(1) Determining questions of construction of a trust instrument.

(2) Determining the existence or nonexistence of any immunity, ver, privilege, duty, or right.

(3) Determining the validity of a trust provision.

(4) Ascertaining beneficiaries and determining to whom property ll pass or be delivered upon final or partial termination of the trust, he extent the determination is not made by the trust instrument.

(5) Settling the accounts and passing upon the acts of the trustee, luding the exercise of discretionary powers.

(6) Instructing the trustee.

(7) Compelling the trustee to report information about the trust iccount to the beneficiary, if (A) the trustee has failed to submit quested report or account within 60 days after written request of beneficiary and (B) no report or account has been made within months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.

(10) Appointing or removing a trustee.

(11) Accepting the resignation of a trustee.

(12) Compelling redress of a breach of the trust by any available remedy.

(13) Approving or directing the modification or termination of the trust.

(14) Approving or directing the combination or division of trusts.

(15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.

(16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

(17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.

(18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

(20) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

SEC. 42. Section 17200.1 is added to the Probate Code, to read:

17200.1. The trustee or any interested person may file a petition requesting that the court make an order under this chapter in any of the following cases:

(a) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another.

(b) Where the trustee has a claim to real or personal property, title to or possession of which is held by another.

(c) Where the property of the trust is claimed to be subject to a creditor of the settlor of the trust.

SEC. 43. Section 17200.2 is added to the Probate Code, to read:

17200.2. The court shall not grant a petition under this chapter if the court determines that the matter should be determined by a civil action.

SEC. 44. Section 17201 of the Probate Code is amended to read:

17201. A proceeding under this chapter is commenced by filing a petition stating facts showing that the petition is authorized under this chapter. The petition shall also state the grounds of the petition and the names and addresses of each person entitled to notice of the petition.

SEC. 45. Section 17203 of the Probate Code is amended to read:

17203. (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause notice of hearing to be mailed to all of the following persons:

(1) All trustees.

(2) All beneficiaries, subject to Chapter 2 (commencing with Section 15800) of Part 3.

(3) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of the Attorney General.

(b) At least 30 days before the time set for hearing on the petition, the petitioner shall cause notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on any person whose right, title, or interest would be affected by the petition and who does not receive notice pursuant to subdivision (a). The court may not shorten the time for giving notice under this subdivision.

(c) If a person to whom notice otherwise would be given has been deceased for at least 40 days, and no personal representative has been appointed for the estate of that person, and the deceased person's right, title, or interest has not passed to any other person pursuant to Division 8 (commencing with Section 13000) or otherwise, notice may instead be given to the following persons:

(1) Each heir and devisee of the decedent, and all persons named as executors of the will of the decedent, so far as known to petitioner.

(2) Each person serving as guardian or conservator of the decedent at the time of the decedent's death, so far as known to the petitioner.

SEC. 46. Section 19000 of the Probate Code is amended to read:

19000. As used in this part:

(a) "Claim" means a demand for payment for any of the following, whether due, not due, accrued or not accrued, or contingent, and whether liquidated or unliquidated:

(1) Liability of the deceased settlor, whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the deceased settlor's death, whether assessed before or after the deceased settlor's death, other than property taxes and assessments secured by real property liens.

(3) Liability for the funeral expenses of the deceased settlor.

(b) "Claim" does not include a dispute regarding title to specific property alleged to be included in the trust estate.

(c) "Claimant" means a person who may have a claim, as defined in subdivision (a), against trust property and who has filed a timely claim pursuant to Section 19100.

(d) "Trust" means a trust described in Section 18200, or, if a portion of a trust, that portion that remained subject to the power of revocation at the deceased settlor's death.

(e) "Deceased settlor" means a deceased person who, at the time of his or her death, held the power to revoke the trust in whole or in part.

(f) "Debts" means all claims, as defined in subdivision (a), all expenses of administration, and all other proper charges against the trust estate, including taxes.

SEC. 47. Section 21350 of the Probate Code is amended to read:

21350. (a) Except as provided in Section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following:

(1) The person who drafted the instrument.

(2) A person who is related by blood or marriage to, is a cohabitant with, or is an employee of, the person who drafted the instrument.

(3) Any partner or shareholder of any law partnership or law corporation in which the person described in paragraph (1) has an ownership interest, and any employee of any such law partnership or law corporation.

(4) Any person who has a fiduciary relationship with the transferor, including, but not limited to, a conservator or trustee, who transcribes the instrument or causes it to be transcribed.

(5) A person who is related by blood or marriage to, is a cohabitant with, or is an employee of a person who is described in paragraph (4).

(b) For purposes of this section, "a person who is related by blood or marriage" to a person means all of the following:

(1) The person's spouse or predeceased spouse.

(2) Relatives within the third degree of the person and of the person's spouse.

(3) The spouse of any person described in paragraph (2).

In determining any relationship under this subdivision, Sections 6406, 6407, and Chapter 2 (commencing with Section 6450) of Part 2 of Division 6 shall be applicable.

SEC. 48. Section 11930 is added to the Revenue and Taxation Code, to read:

11930. Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or vest lands, tenements, or realty, or any interest therein, if by reason of such inter vivos gift or by reason of the death of any person, such lands, tenements, realty, or interests therein are transferred outright to, or in trust for the benefit of, any person or entity.