

AMENDED IN ASSEMBLY JUNE 21, 2007

AMENDED IN SENATE MARCH 29, 2007

**SENATE BILL**

**No. 800**

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**Introduced by Senator Corbett**

February 23, 2007

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~~An act to add Section 2351.2 to the Probate Code, relating to~~ *An act to amend Sections 1821, 1822, 2352, and 3140 of, to add Sections 1831, 1832, and 2352.1 to, and to add Chapter 7 (commencing with Section 1970) to Part 3 of Division 4 of, the Probate Code, relating to conservators and guardians.*

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Corbett. ~~Conservators: care plans.~~ *Conservatorship and guardianship.*

~~Existing~~

*(1) Existing law requires that a guardian or conservator of a person be responsible for the care, custody, control, and education of a ward or conservatee, subject to a court's determination of the extent of those powers, as specified. Existing law requires that a petition to establish conservatorship include specified information.*

*Existing law provides that, on or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of a temporary guardian or conservator.*

*This bill would require that, if the petitioner to establish conservatorship is a private professional conservator under certain provisions of law, or licensed under certain other provisions, the petition and all other pleadings related to the petition contain the petitioner's registration information and other specified information. The bill would*

*require that, if the petition is filed by a person other than the proposed conservatee, the petition include a declaration of due diligence showing efforts to find relatives and to ascertain preferences of the proposed conservatee, or why it was not feasible to contact the relatives or ascertain those preferences.*

*(2) Existing law requires that notice be given to specified persons before a hearing on a petition for appointment of a conservator or a temporary conservator.*

*This bill would require, in addition, that if the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and are not nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice be mailed to the public guardian of the county in which the petition is filed.*

*This bill, on and after July 1, 2008, would require a conservator to submit to the court, within 90 days of appointment, a general plan, as specified, for the care, custody, and control of the conservatee. ~~The bill would require the Judicial Council to develop and adopt a form to be used in preparing the care plan, as specified, and to mail that report to the conservatee, the attorney of record for the conservatee, and certain persons related to the conservatee. The bill would require that, at the expiration of one year from the time of appointment, and thereafter as required by the court, the conservator submit a followup report on the care plan. It would require the Judicial Council to develop and adopt a mandatory form to be used in preparing the care plan and the followup report, as specified.~~*

*(3) Existing law allows a court to take specified actions with respect to a vexatious litigant, as defined.*

*This bill would provide that, if a person other than the conservatee files a petition for termination of the conservatorship, or instruction to the conservator, that is unmeritorious or intended to harass or annoy the conservator, and the person has previously filed pleadings in the conservatorship proceedings that were unmeritorious or intended to harass or annoy the conservator, the petition shall be grounds for the court to determine that the person is a vexatious litigant for the purposes of the above provisions.*

*(4) Existing law provides that a conservator may establish the residence of the conservatee at any place within this state without the permission of the court.*

*This bill would provide, instead, that if permission of the court is first obtained, as specified, or if notice of the action is given and no objection is made, the conservator may remove the conservatee from his or her personal residence at the commencement of the proceeding to establish conservatorship and establish another residence at any place within this state. The bill would provide that neither permission from the court nor prior notice of the action is not required in specified circumstances. The bill would create requirements for giving notice of this action and for objecting to it. The bill would provide that the failure of a conservator to comply with these notice requirements for proposed actions and would not affect the rights of 3rd parties dealing in good faith with the conservator, as specified.*

*(5) Existing law requires a guardian to file a notice of change of residence with the court within 30 days of the date of change, and to mail a copy of the notice to specified persons.*

*This bill would delete that requirement.*

*(6) Existing law provides that, if a guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, the guardian or conservator shall mail a notice of his or her intention to specified persons.*

*This bill would, with respect to a guardian, apply the above provisions if the guardian proposes to remove the ward from his or her personal residence at the commencement of the proceeding to establish guardianship and establish another residence in the state.*

*The bill would make the above provisions inapplicable with respect to a conservator, and would instead allow the conservator to petition the court for an order authorizing the conservator to remove the conservatee from his or her personal residence at the time of the commencement of the proceeding and establish another residence in the state. It would require a petition for authority to remove the conservatee from his or her personal residence to contain certain information, and would set forth procedures applicable to a hearing on the petition.*

*(7) Existing law requires a conservator served pursuant to specified provisions of law to appear at a hearing and represent a spouse alleged to lack legal capacity for a proposed transaction involving community property. Existing law allows the court, if the spouse is not otherwise represented, to appoint the public guardian, the public administrator, or a guardian ad litem to represent the interests of the spouse. Existing law requires that, if the spouse is unable to retain legal counsel, upon*

*request of the spouse, the court appoint specified counsel to represent the spouse.*

*This bill would permit a court to appoint an investigator to review the proposed transaction and report to the court regarding its advisability. The bill would require, in addition, that if the petition proposes a substantial transfer to the petitioner from the other spouse, counsel be appointed for the other spouse, unless the court finds that the spouse has competently retained independent counsel for the proceeding or the spouse’s interests are being protected under the above provisions of law allowing the appointment of the public guardian, the public administrator, or a guardian ad litem to represent the interests of the spouse.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

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

1     SECTION 1. Section 1821 of the Probate Code is amended to  
 2 read:

3     1821. (a) The petition shall request that a conservator be  
 4 appointed for the person or estate, or both, shall specify the name,  
 5 address, and telephone number of the proposed conservator and  
 6 the name, address, and telephone number of the proposed  
 7 conservatee, and state the reasons why a conservatorship is  
 8 necessary. Unless the petitioner is a bank or other entity authorized  
 9 to conduct the business of a trust company, the petitioner shall  
 10 also file supplemental information as to why the appointment of  
 11 a conservator is required. The supplemental information to be  
 12 submitted shall include a brief statement of facts addressed to each  
 13 of the following categories:

14     (1) The inability of the proposed conservatee to properly provide  
 15 for his or her needs for physical health, food, clothing, and shelter.

16     (2) The location of the proposed conservatee’s residence and  
 17 the ability of the proposed conservatee to live in the residence  
 18 while under conservatorship.

19     (3) Alternatives to conservatorship considered by the petitioner  
 20 and reasons why those alternatives are not available.

21     (4) Health or social services provided to the proposed  
 22 conservatee during the year preceding the filing of the petition,  
 23 when the petitioner has information as to those services.

1 (5) The inability of the proposed conservatee to substantially  
2 manage his or her own financial resources, or to resist fraud or  
3 undue influence.

4 The facts required to address the categories set forth in  
5 paragraphs (1) to (5), inclusive, shall be set forth by the petitioner  
6 when he or she has knowledge of the facts or by the declarations  
7 or affidavits of other persons having knowledge of those facts.

8 Where any of the categories set forth in paragraphs (1) to (5),  
9 inclusive, are not applicable to the proposed conservatorship, the  
10 petitioner shall so indicate and state on the supplemental  
11 information form the reasons therefor.

12 The Judicial Council shall develop a supplemental information  
13 form for the information required pursuant to paragraphs (1) to  
14 (5), inclusive, after consultation with individuals or organizations  
15 approved by the Judicial Council, who represent public  
16 conservators, court investigators, the State Bar, specialists with  
17 experience in performing assessments and coordinating  
18 community-based services, and legal services for the elderly and  
19 disabled.

20 The supplemental information form shall be separate and distinct  
21 from the form for the petition. The supplemental information shall  
22 be confidential and shall be made available only to parties, persons  
23 given notice of the petition who have requested this supplemental  
24 information or who have appeared in the proceedings, their  
25 attorneys, and the court. The court shall have discretion at any  
26 other time to release the supplemental information to other persons  
27 if it would serve the interests of the conservatee. The clerk of the  
28 court shall make provision for limiting disclosure of the  
29 supplemental information exclusively to persons entitled thereto  
30 under this section.

31 (b) The petition shall set forth, so far as they are known to the  
32 petitioner, the names and addresses of the spouse or domestic  
33 partner, and of the relatives of the proposed conservatee within  
34 the second degree. If no spouse or domestic partner of the proposed  
35 conservatee or relatives of the proposed conservatee within the  
36 second degree are known to the petitioner, the petition shall set  
37 forth, so far as they are known to the petitioner, the names and  
38 addresses of the following persons who, for the purposes of Section  
39 1822, shall all be deemed to be relatives:

1 (1) A spouse or domestic partner of a predeceased parent of a  
2 proposed conservatee.

3 (2) The children of a predeceased spouse or domestic partner  
4 of a proposed conservatee.

5 (3) The siblings of the proposed conservatee's parents, if any,  
6 but if none, then the natural and adoptive children of the proposed  
7 conservatee's parents' siblings.

8 (4) The natural and adoptive children of the proposed  
9 conservatee's siblings.

10 (c) *If the petitioner is a private professional conservator under*  
11 *Section 2341 or licensed under the Professional Fiduciaries Act*  
12 *(Chapter 6 (commencing with Section 6500) of Division 3 of the*  
13 *Business and Professions Code), the petition and all other*  
14 *pleadings related to the petition shall contain the petitioner's*  
15 *registration information. The petition shall contain a declaration*  
16 *explaining by whom or how the petitioner was engaged to file the*  
17 *petition and what prior relationship the petitioner had with the*  
18 *proposed conservatee or the proposed conservatee's family or*  
19 *friends.*

20 (d) *If the petition is filed by a person other than the proposed*  
21 *conservatee, the petition shall include a declaration of due*  
22 *diligence showing efforts to find relatives and to ascertain*  
23 *preferences of the proposed conservatee, or why it was not feasible*  
24 *to contact the relatives or ascertain those preferences.*

25 ~~(e)~~

26 (e) If the petition is filed by a person other than the proposed  
27 conservatee, the petition shall state whether or not the petitioner  
28 is a creditor or debtor, or the agent of a creditor or debtor, of the  
29 proposed conservatee.

30 ~~(f)~~

31 (f) If the proposed conservatee is a patient in or on leave of  
32 absence from a state institution under the jurisdiction of the State  
33 Department of Mental Health or the State Department of  
34 Developmental Services and that fact is known to the petitioner,  
35 the petition shall state that fact and name the institution.

36 ~~(g)~~

37 (g) The petition shall state, so far as is known to the petitioner,  
38 whether or not the proposed conservatee is receiving or is entitled  
39 to receive benefits from the Veterans Administration and the

1 estimated amount of the monthly benefit payable by the Veterans  
2 Administration for the proposed conservatee.

3 ~~(f)~~

4 (h) The petition may include an application for any order or  
5 orders authorized under this division, including, but not limited  
6 to, orders under Chapter 4 (commencing with Section 1870).

7 ~~(g)~~

8 (i) The petition may include a further statement that the proposed  
9 conservatee is not willing to attend the hearing on the petition,  
10 does not wish to contest the establishment of the conservatorship,  
11 and does not object to the proposed conservator or prefer that  
12 another person act as conservator.

13 ~~(h)~~

14 (j) In the case of an allegedly developmentally disabled adult,  
15 the petition shall set forth the following:

16 (1) The nature and degree of the alleged disability, the specific  
17 duties and powers requested by or for the limited conservator, and  
18 the limitations of civil and legal rights requested to be included in  
19 the court's order of appointment.

20 (2) Whether or not the proposed limited conservatee is or is  
21 alleged to be developmentally disabled.

22 Reports submitted pursuant to Section 416.8 of the Health and  
23 Safety Code meet the requirements of this section, and  
24 conservatorships filed pursuant to Article 7.5 (commencing with  
25 Section 416) of Part 1 of Division 1 of the Health and Safety Code  
26 are exempt from providing the supplemental information required  
27 by this section, so long as the guidelines adopted by the State  
28 Department of Developmental Services for regional centers require  
29 the same information that is required pursuant to this section.

30 *SEC. 2. Section 1822 of the Probate Code is amended to read:*

31 1822. (a) At least 15 days before the hearing on the petition  
32 for appointment of a conservator, notice of the time and place of  
33 the hearing shall be given as provided in this section. The notice  
34 shall be accompanied by a copy of the petition. The court may not  
35 shorten the time for giving the notice of hearing under this section.

36 (b) Notice shall be mailed to the following persons:

37 (1) The spouse, if any, or registered domestic partner, if any,  
38 of the proposed conservatee at the address stated in the petition.

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

1 (c) If notice is required by Section 1461 to be given to the  
 2 Director of Mental Health or the Director of Developmental  
 3 Services, notice shall be mailed as so required.

4 (d) If the petition states that the proposed conservatee is  
 5 receiving or is entitled to receive benefits from the Veterans  
 6 Administration, notice shall be mailed to the Office of the Veterans  
 7 Administration referred to in Section 1461.5.

8 (e) If the proposed conservatee is a person with developmental  
 9 disabilities, at least 30 days before the day of the hearing on the  
 10 petition, the petitioner shall mail a notice of the hearing and a copy  
 11 of the petition to the regional center identified in Section 1827.5.

12 (f) *If the petition states that the petitioner and the proposed*  
 13 *conservator have no prior relationship with the proposed*  
 14 *conservatee and are not nominated by a family member, friend,*  
 15 *or other person with a relationship to the proposed conservatee,*  
 16 *notice shall be mailed to the public guardian of the county in which*  
 17 *the petition is filed.*

18 (f)

19 (g) The Judicial Council shall, on or before January 1, 2008,  
 20 develop a form to effectuate the notice required in subdivision (a).

21 *SEC. 3. Section 1831 is added to the Probate Code, to read:*

22 *1831. (a) Within 90 days of appointment by the court, the*  
 23 *conservator shall submit to the court and mail to the conservatee*  
 24 *and to the attorney of record for the conservatee a general plan*  
 25 *for the care, custody, and control of the conservatee, including a*  
 26 *plan for meeting the conservatee’s financial needs. A copy of the*  
 27 *general plan shall also be mailed to the conservatee’s spouse or*  
 28 *registered domestic partner, the conservatee’s relatives in the first*  
 29 *degree, and, if there are no such relatives, to the next closest*  
 30 *relative, unless the court determines that the mailing will result*  
 31 *in harm to the conservatee.*

32 (b) *The Judicial Council shall develop and adopt a mandatory*  
 33 *form to be used in preparing the general plan required by*  
 34 *subdivision (a).*

35 (c) *A conservator of the person shall complete, at a minimum,*  
 36 *the following parts of the Judicial Council form for the general*  
 37 *plan:*

38 (1) *A description of the current living arrangement for the*  
 39 *conservatee and any plan to modify this living arrangement.*

1     (2) A description of the conservatee’s current level of care and  
2 any plan to modify the level of care to address the conservatee’s  
3 personal needs.

4     (3) A description of the status of the conservatee’s health.

5     (4) A description of the conservator’s current or proposed  
6 schedule of visitation with the conservatee.

7     (5) A description of the current or proposed schedule of  
8 visitation between the conservatee’s family and friends and the  
9 conservatee, including a description of the positive or negative  
10 impact of those visits on the conservatee.

11     (6) A description of the normal activities of the conservatee,  
12 such as outings and social and recreational activities.

13     (7) A description of any special problem raised by the court  
14 investigator, the court, or any other interested person and how the  
15 conservator has addressed or intends to address that problem.

16     (d) A conservator of the estate shall complete, at a minimum,  
17 the following parts of the Judicial Council form for the general  
18 plan:

19     (1) A description of the conservatee’s usual monthly income  
20 and expenses, including prorated estimates of income from all  
21 sources and a list of current and anticipated expenses, including  
22 taxes, insurance, and living expenses.

23     (2) A description of any significant change in the overall  
24 investment plan for the conservatee’s estate to be made in the  
25 upcoming year, including a description of the nature of the change  
26 and the anticipated cost or benefit to the conservatee.

27     (3) A list of any asset that may be liquidated for cash in the  
28 coming year and the reasons for any sale.

29     (4) A list of any separately appraised tangible personal property  
30 of the conservatee, and a description of the steps the conservator  
31 has taken or intends to take to protect that asset from damage,  
32 loss, or theft.

33     (e) A conservator of the person and the estate shall complete,  
34 at a minimum, the parts of the Judicial Council form for the general  
35 plan described in subdivisions (c) and (d).

36     (f) If the conservator is a private professional conservator under  
37 Section 2341 or licensed under the Professional Fiduciaries Act  
38 (Chapter 6 (commencing with Section 6500) of Division 3 of the  
39 Business and Professions Code), a statement of the conservator’s  
40 estimated fees for services to be rendered through the first

1 anniversary of the date of appointment. The statement shall  
2 describe the manner in which the fees are estimated and any  
3 applicable hourly rates.

4 (g) The provisions of this section shall become operative on  
5 July 1, 2008.

6 SEC. 4. Section 1832 is added to the Probate Code, to read:

7 1832. (a) At the expiration of one year from the time of  
8 appointment, and thereafter as required by the court, the  
9 conservator shall submit a followup report on the care plan  
10 required by Section 1831.

11 (b) The Judicial Council shall develop and adopt a mandatory  
12 form to be used in preparing the followup report required by  
13 subdivision (a).

14 (c) In conservatorships of the person, the report described in  
15 subdivision (a) shall include, but not be limited to, all the  
16 following:

17 (1) A description of the current living arrangement for the  
18 conservatee, any plan to modify this living arrangement, and the  
19 reasons for any modification of the living arrangement that was  
20 not disclosed in the general plan, in the immediately preceding  
21 followup report, or in a petition for authority to remove the  
22 conservatee from his or her personal residence under Section 2352  
23 filed after submission of the general plan or the immediately  
24 preceding followup report.

25 (2) A description of the conservatee's current level of care, any  
26 plan to modify the level of care, and the reasons for any  
27 modification of the level of care that were not disclosed in the  
28 general plan or in the immediately preceding followup report.

29 (3) A description of the conservatee's current health.

30 (4) A description of the conservator's current schedule of  
31 visitation with the conservatee and visitation schedules with the  
32 conservatee's family and friends, including an assessment of the  
33 value of those visits or their effects on the conservatee's well-being  
34 and the reasons for any significant change in the schedule of  
35 visitation since submission of the general plan or the immediately  
36 preceding followup report.

37 (5) A description of the current normal activities of the  
38 conservatee, such as outings and social and recreational activities,  
39 and the reasons for any significant change in those activities since

1 *submission of the general plan or the immediately preceding*  
2 *followup report.*

3 (6) *A description of any special problem raised by the court*  
4 *investigator, the court, or any other interested person since*  
5 *submission of the general plan or the immediately preceding*  
6 *followup report, and how the conservator has addressed or intends*  
7 *to address that problem.*

8 (7) *A description of any other material changes in the*  
9 *conservatee's situation since submission of the care plan or the*  
10 *last submitted followup report.*

11 (d) *In conservatorships of the estate, the report described in*  
12 *subdivision (a) shall include, but not be limited to, all the*  
13 *following:*

14 (1) *A description of the conservatee's current and expected*  
15 *future financial needs, stating current and estimated future monthly*  
16 *income from all sources and current and estimated future monthly*  
17 *expenses, including taxes, insurance, and living expenses.*

18 (2) *A description of any planned change in investments to be*  
19 *made in the coming year or any longer period before the next*  
20 *followup report is due, and the reason for the planned change.*

21 (3) *A list of any asset that may be sold in the coming year or*  
22 *any longer period before the next followup report is due, and the*  
23 *reason for that sale.*

24 (4) *A description of any valuable asset in the conservatee's*  
25 *residence that needs to be protected and what steps the conservator*  
26 *has taken or intends to take to protect that item from loss or theft.*

27 (5) *A description of any other material changes in the*  
28 *conservatee's situation since submission of the care plan or the*  
29 *last submitted followup report.*

30 (e) *In conservatorships of the person and estate, the report*  
31 *described in subdivision (a) shall satisfy the requirements of*  
32 *subdivisions (c) and (d).*

33 (f) *If the conservator is a private professional conservator under*  
34 *Section 2341 or licensed under the Professional Fiduciaries Act*  
35 *(Chapter 6 (commencing with Section 6500) of Division 3 of the*  
36 *Business and Professions Code), a statement of the conservator's*  
37 *estimated fees for services to be rendered during the coming year*  
38 *and an explanation of any significant difference between the fees*  
39 *requested or that will be requested for services rendered and those*  
40 *estimated in the care plan or the immediately preceding followup*

1 report. The statement shall describe the manner in which the fees  
2 for the coming year are estimated and any applicable hourly rates.

3 (g) The followup report required in this section shall be reviewed  
4 by the court investigator, who shall recommend to the court  
5 whether a hearing should be set for a review of the general plan  
6 and the followup report. This recommendation may be included  
7 in the investigator's review report under subdivision (b) of Section  
8 1851 or the status report under paragraph (2) of subdivision (a)  
9 of Section 1850.

10 (h) The provisions of this section shall become operative on  
11 July 1, 2008.

12 SEC. 5. Chapter 7 (commencing with Section 1970) is added  
13 to Part 3 of Division 4 of the Probate Code, to read:

14  
15 *CHAPTER 7. UNWARRANTED PETITIONS*

16  
17 1970. (a) The Legislature finds that unwarranted petitions,  
18 applications, or motions other than discovery motions after a  
19 conservatorship has been established create an environment that  
20 can be harmful to the conservatee and are inconsistent with the  
21 goal of protecting the conservatee.

22 (b) Notwithstanding Section 391 of the Code of Civil Procedure,  
23 if a person other than the conservatee files a petition for  
24 termination of the conservatorship, or instruction to the  
25 conservator, that is unmeritorious or intended to harass or annoy  
26 the conservator, and the person has previously filed pleadings in  
27 the conservatorship proceedings that were unmeritorious or  
28 intended to harass or annoy the conservator, the petition shall be  
29 grounds for the court to determine that the person is a vexatious  
30 litigant for the purposes of Title 3A (commencing with Section  
31 391) of Part 2 of the Code of Civil Procedure. For these purposes,  
32 the term "new litigation" shall include petitions for visitation,  
33 termination of the conservatorship, or instruction to the  
34 conservator.

35 SEC. 6. Section 2352 of the Probate Code is amended to read:

36 2352. (a) The guardian may establish the residence of the ward  
37 at any place within this state without the permission of the court.  
38 The guardian shall select the least restrictive appropriate residence  
39 that is available and necessary to meet the needs of the ward, and  
40 that is in the best interests of the ward.

1 (b) ~~The conservator may establish the residence of the~~  
2 ~~conservatee at any place within this state without the permission~~  
3 ~~of the court. If permission of the court is first obtained under~~  
4 ~~subdivision (f), or if notice of the proposed action is given and no~~  
5 ~~objection is made, as provided by Section 2352.1, the conservator~~  
6 ~~may remove the conservatee from his or her personal residence~~  
7 ~~and establish another residence at any place within this state. The~~  
8 conservator shall select the least restrictive appropriate residence,  
9 as described in Section 2352.5, that is available and necessary to  
10 meet the needs of the conservatee, and that is in the best interests  
11 of the conservatee. *Neither notice of the proposed action nor prior*  
12 *permission of the court is required for removal of the conservatee*  
13 *from his or her personal residence on a temporary basis for*  
14 *medical treatment and convalescence or for changes in the*  
15 *conservatee's residence within this state made after a removal*  
16 *from the conservatee's personal residence at the commencement*  
17 *of the proceeding made in compliance with this section.*

18 (c) If permission of the court is first obtained, a guardian or  
19 conservator may establish the residence of a ward or conservatee  
20 at a place not within this state.

21 (d) An order under subdivision (c) shall require the guardian or  
22 conservator either to return the ward or conservatee to this state,  
23 or to cause a guardianship or conservatorship proceeding or its  
24 equivalent to be commenced in the place of the new residence,  
25 when the ward or conservatee has resided in the place of new  
26 residence for a period of four months or a longer or shorter period  
27 specified in the order.

28 (e) ~~(1) The guardian or conservator shall file a notice of change~~  
29 ~~of residence with the court within 30 days of the date of the change.~~  
30 ~~The conservator shall include in the notice of change of residence~~  
31 ~~a declaration stating that the conservatee's change of residence is~~  
32 ~~consistent with the standard described in subdivision (b). The~~  
33 ~~Judicial Council shall, on or before January 1, 2008, develop one~~  
34 ~~or more forms of notice and declaration to be used for this purpose.~~

35 ~~(2) The guardian or conservator shall mail a copy of the notice~~  
36 ~~to all persons entitled to notice under subdivision (b) of Section~~  
37 ~~1511 or subdivision (b) of Section 1822 and shall file proof of~~  
38 ~~service of the notice with the court. The court may, for good cause,~~  
39 ~~waive the mailing requirement pursuant to this paragraph in order~~  
40 ~~to prevent harm to the conservatee or ward.~~

1     ~~(3)~~

2     ~~(e)~~ If the guardian ~~or conservator~~ proposes to remove the ward  
3 ~~or conservatee~~ from his or her personal residence, the guardian ~~or~~  
4 ~~conservator~~ shall mail a notice of his or her intention to change  
5 the residence of the ward ~~or conservatee~~ to all persons entitled to  
6 notice under subdivision (b) of Section 1511 ~~and subdivision (b)~~  
7 ~~of Section 1822~~. In the absence of an emergency, that notice shall  
8 be mailed at least 15 days before the proposed removal of the ward  
9 ~~or conservatee~~ from his or her personal residence. If the notice is  
10 served less than 15 days prior to the proposed removal of the ward  
11 ~~or conservatee~~, the guardian ~~or conservatee~~ shall set forth the basis  
12 for the emergency in the notice. The guardian ~~or conservator~~ shall  
13 file proof of service of that notice with the court.

14     ~~(f) (1)~~ *On or after the filing of a petition for appointment of a*  
15 *conservator, the petitioner for appointment of a conservator, or,*  
16 *if the petition under this subdivision is filed after appointment of*  
17 *a conservator, the conservator, may petition the court for an order*  
18 *authorizing the conservator to remove the conservatee from his*  
19 *or her personal residence at the time of commencement of the*  
20 *proceeding and establish another residence in the State of*  
21 *California.*

22     ~~(2)~~ *The petition for authority to remove the conservatee from*  
23 *his or her personal residence shall set forth all of the following:*

24     ~~(A)~~ *Facts showing that the conservatee's personal residence is*  
25 *not, or is no longer, the least restrictive appropriate residence for*  
26 *the conservatee.*

27     ~~(B)~~ *Facts showing that the conservatee's proposed new*  
28 *residence is the least restrictive appropriate residence for the*  
29 *conservatee and is in the best interests of the conservatee.*

30     ~~(C)~~ *If a previously submitted general plan for the conservatee*  
31 *pursuant to Section 1831 does not show the proposed change of*  
32 *the conservatee's residence as a planned modification of the*  
33 *conservatee's living arrangement, the changed circumstances*  
34 *since submission of the general plan that make the change of*  
35 *residence necessary or appropriate.*

36     ~~(D)~~ *The names and addresses, so far as they are known to the*  
37 *petitioner, of the conservatee, his or her spouse or domestic*  
38 *partner, and his or her relatives within the first degree.*

39     ~~(E)~~ *If the conservator is not a petitioner, the written consent of*  
40 *the conservator to the proposed change of residence.*

1 (3) Notice of the hearing on the petition under this subdivision  
2 shall be given for the period and in the manner provided in Chapter  
3 3 (commencing with Section 1460) of Part 1. In addition, the  
4 petitioner shall mail a notice of the time and place of the hearing  
5 and a copy of the petition to all persons required to be listed in  
6 the petition at least 15 days before the date set for hearing. In the  
7 case of an emergency or other good cause, the court may shorten  
8 the time for giving notice of the hearing. In that event, the  
9 conservator shall set forth the basis for the emergency or other  
10 good cause in the notice of hearing and shall mail a conformed  
11 copy of the court's order shortening time with the notice of hearing.

12 (4) (A) Any of the following persons may appear at the hearing  
13 to support or oppose the petition and may file written objections  
14 to the petition:

15 (i) Any person required to be listed in the petition.

16 (ii) Any other interested person.

17 (B) If the court so directs, the court investigator shall do all of  
18 the following:

19 (i) Interview the conservatee personally.

20 (ii) Inform the conservatee of the nature, purpose, and effect of  
21 the petition under this subdivision, and of the right of the  
22 conservatee to oppose the petition, attend the hearing, be  
23 represented by legal counsel if the conservatee so chooses, and to  
24 have legal counsel appointed by the court if unable to obtain legal  
25 counsel.

26 (iii) Determine whether the conservatee is willing to attend the  
27 hearing.

28 (iv) Determine whether the conservatee wishes to oppose the  
29 petition.

30 (v) Determine whether the conservatee wishes to be represented  
31 by legal counsel at the hearing. If the conservatee wishes to be so  
32 represented, the court investigator shall determine whether the  
33 conservatee has retained legal counsel and, if not, shall determine  
34 the name of an attorney the proposed conservatee wishes to retain  
35 or whether the conservatee desires the court to appoint legal  
36 counsel.

37 (vi) If the conservatee does not plan to retain legal counsel and  
38 has not requested the appointment of legal counsel by the court,  
39 determine whether the appointment of legal counsel would be

1 *helpful to the resolution of the matter or is necessary to protect*  
2 *the interests of the conservatee.*

3 *(vii) Determine whether the proposed change of place of*  
4 *residence is required to establish the least restrictive appropriate*  
5 *residence that is available and necessary to meet the needs of the*  
6 *conservatee and is in the best interests of the conservatee.*

7 *(viii) Report to the court in writing at least two days before the*  
8 *hearing, or, if the court has shortened time, as soon as reasonably*  
9 *possible before the hearing, concerning all of the foregoing,*  
10 *including the conservatee's express communications concerning*  
11 *representation by legal counsel and whether the conservatee is*  
12 *not willing to attend the hearing and does not wish to oppose the*  
13 *petition.*

14 *(C) At the hearing, the conservatee shall have the right to be*  
15 *represented by counsel, to confront and cross-examine any witness*  
16 *presented by or on behalf of the petition, and to present evidence*  
17 *on his or her own behalf.*

18 *(g) (1) The guardian or conservator shall file a notice of change*  
19 *of residence with the court within 30 days of the date of the change.*  
20 *The guardian or conservator shall include in the notice of change*  
21 *of residence a declaration stating that the ward's or conservatee's*  
22 *change of residence is consistent with the standard described in*  
23 *subdivision (b).*

24 *(2) The guardian or conservator shall mail a copy of the notice*  
25 *to all persons entitled to notice under subdivision (b) of Section*  
26 *1511 or subdivision (b) of Section 1822 and shall file proof of*  
27 *service of the notice with the court. The court may, for good cause,*  
28 *waive the mailing requirement pursuant to this paragraph in order*  
29 *to prevent harm to the conservatee or ward.*

30 *(h) As used in this section, "guardian" or "conservator"*  
31 *includes a proposed guardian or proposed conservator and "ward"*  
32 *or "conservatee" includes a proposed ward or proposed*  
33 *conservatee.*

34 *(i) The Judicial Council shall, on or before July 1, 2008, develop*  
35 *one or more forms of notice and declaration required by this*  
36 *section.*

37 ~~(f)~~

38 *(j) This section does not apply where the court has made an*  
39 *order under Section 2351 pursuant to which the conservatee retains*  
40 *the right to establish his or her own residence.*

1     *SEC. 7. Section 2352.1 is added to the Probate Code, to read:*  
2     *2352.1. A notice of proposed action, as provided in Section*  
3     *2352, is subject to all of the following:*

4     *(a) (1) The notice of proposed action shall be given to each*  
5     *person listed in the notice, and each person who has filed a request*  
6     *for special notice in the proceeding.*

7     *(2) The notice shall be mailed or personally delivered to each*  
8     *person entitled to notice of the proposed action not less than 15*  
9     *days before the date specified in the notice on or after which the*  
10    *action is to be taken. If mailed, the notice of proposed action shall*  
11    *be addressed to the person at the person's last known address.*

12    *(3) Notice of proposed action is not required to be given to a*  
13    *person who consents in writing to the proposed action. The consent*  
14    *may be executed at any time before or after the proposed action*  
15    *is taken.*

16    *(4) Notice of proposed action is not required to be given to a*  
17    *person who, in writing, waives the right to notice of the proposed*  
18    *action. The waiver may be executed at any time before or after the*  
19    *proposed action is taken. The waiver shall describe the proposed*  
20    *action, and may waive particular aspects of the notice, including*  
21    *the delivery, mailing, or time requirements, or the giving of the*  
22    *notice in its entirety.*

23    *(5) Use of the notice of proposed action procedure under this*  
24    *section is permitted only after the conservatorship has been*  
25    *established.*

26    *(b) The notice of proposed action shall state the addresses of*  
27    *the conservatee's current residence and the proposed new*  
28    *residence, describe the proposed new residence, provide all of the*  
29    *information required to be stated in a petition for authority to*  
30    *change the conservatee's residence under subparagraphs (A) to*  
31    *(D), inclusive, of paragraph (2) of subdivision (f) of Section 2352,*  
32    *and state the name and residence address of the conservator and*  
33    *the telephone number to call for additional information.*

34    *(c) (1) The objection to the proposed action shall be made by*  
35    *delivering or mailing a written objection to the proposed action*  
36    *to the conservator at the address stated in the notice of proposed*  
37    *action. The person objecting to the proposed action either may*  
38    *use the Judicial Council form or may make the objection in any*  
39    *other writing that identifies the proposed action with reasonable*

1 *certainty and indicates that the person objects to the taking of the*  
 2 *proposed action.*

3 *(2) The conservator is deemed to have notice of the objection*  
 4 *if it is delivered or received at the address stated for the*  
 5 *conservator in the notice of proposed action before the later of*  
 6 *the following times:*

7 *(A) The date specified in the notice of proposed action on or*  
 8 *after which the action is to be taken.*

9 *(B) The date the proposed action is actually taken.*

10 *(d) If the conservator has notice of a written objection under*  
 11 *subdivision (c) to the proposed action and desires to take the*  
 12 *action, the conservator shall petition for, and obtain, court*  
 13 *authority to remove the conservatee from his or her personal*  
 14 *residence under subdivision (f) of Section 2352 before taking the*  
 15 *action.*

16 *(e) A person who objects to a proposed action under this section*  
 17 *shall be given notice of any hearing on a petition for court*  
 18 *authorization of the proposed action.*

19 *(f) (1) The failure of the conservator to comply with this section*  
 20 *and the taking of the proposed action without such compliance*  
 21 *does not affect the rights of a third party who, dealing in good*  
 22 *faith with the conservator, changed his or her position in reliance*  
 23 *on the action of the conservator without actual notice of the failure*  
 24 *of the conservator to comply with this subdivision.*

25 *(2) No person dealing with the conservator has any duty to*  
 26 *inquire or investigate whether or not the conservator has complied*  
 27 *with the provisions of this section.*

28 *SEC. 8. Section 3140 of the Probate Code is amended to read:*

29 *3140. (a) A conservator served pursuant to this article shall,*  
 30 *and the Director of Mental Health or the Director of Developmental*  
 31 *Services given notice pursuant to Section 1461 may, appear at the*  
 32 *hearing and represent a spouse alleged to lack legal capacity for*  
 33 *the proposed transaction.*

34 *(b) The court may, in its discretion, appoint an investigator to*  
 35 *review the proposed transaction and report to the court regarding*  
 36 *its advisability.*

37 ~~*(b) If*~~

38 *(c) If the court determines that a spouse alleged to lack legal*  
 39 *capacity is not otherwise represented has not competently retained*  
 40 *independent counsel, the court may in its discretion appoint the*

1 public guardian, public administrator, or a guardian ad litem to  
2 represent the interests of the spouse.

3 (e)

4 (d) (1) If a spouse alleged to lack legal capacity is unable to  
5 retain legal counsel, upon request of the spouse, the court shall  
6 appoint the public defender or private counsel under Section 1471  
7 to represent the spouse and, if ~~such~~ that appointment is made,  
8 Section 1472 applies.

9 (2) *If the petition proposes a substantial transfer to the petitioner*  
10 *from the other spouse and the court determines that the spouse*  
11 *has not competently retained independent counsel for the*  
12 *proceeding, the court may, in its discretion, appoint counsel for*  
13 *the other spouse if the court determines that appointment would*  
14 *be helpful to resolve the matter or necessary to protect the interests*  
15 *of the other spouse.*

16 (d)

17 (e) Except as provided in subdivision (c), the court may fix a  
18 reasonable fee, to be paid out of the proceeds of the transaction or  
19 otherwise as the court may direct, for all services rendered by  
20 privately engaged counsel, the public guardian, public  
21 administrator, or guardian ad litem, and by counsel for such  
22 persons.

23 ~~SECTION 1. Section 2351.2 is added to the Probate Code, to~~  
24 ~~read:~~

25 ~~2351.2. (a) Within 90 days of appointment by the court, the~~  
26 ~~conservator shall submit to the court a plan for the care, custody,~~  
27 ~~and control of the conservatee, including a plan for meeting the~~  
28 ~~conservatee's financial needs.~~

29 ~~(b) The Judicial Council shall develop and adopt a form to be~~  
30 ~~used in preparing the care plan required by subdivision (a). The~~  
31 ~~form for a care plan shall include, but not be limited to, all of the~~  
32 ~~following:~~

33 ~~(1) A description of the current living arrangement for the~~  
34 ~~conservatee and any plans to modify this living arrangement.~~

35 ~~(2) A description of the conservatee's current level of care and~~  
36 ~~any plans to modify the level of care.~~

37 ~~(3) A description of the status of the conservatee's health, listing~~  
38 ~~medications currently prescribed for the conservatee.~~

39 ~~(4) A description of the conservator's schedule of visitation~~  
40 ~~with the conservatee and visitation schedules with the conservatee's~~

- 1 family and friends, including an assessment of the value of those
- 2 visits or their effects on the conservatee's well-being.
- 3 (5) A description of the normal activities of the conservatee,
- 4 such as outings and social and recreational activities.
- 5 (6) A description of any special problems raised by the court
- 6 investigator, the court, or any other interested person and how the
- 7 conservator has addressed or intends to address those problems.
- 8 (7) A description of the conservatee's financial needs, stating
- 9 estimated monthly income from all sources and estimated monthly
- 10 expenses, including taxes, insurance, and living expenses.
- 11 (8) A description of any planned changes in investments to be
- 12 made in the current and succeeding year and the reason for the
- 13 planned changes.
- 14 (9) A list of any assets that may be sold in the coming year and
- 15 the reason for that sale.
- 16 (10) A description of any valuable assets in the conservatee's
- 17 residence that need to be protected and what steps the conservator
- 18 has taken or intends to take to protect those items from loss or
- 19 theft.