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Administration of Estates

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Administration of Estates

Administration of Estates; probate administration—procedure and exemptions

Probate Code §§1142.3, 1200.5 (new); §§201.5, 202, 203, 204, 205, 268, 328, 333, 405.1, 405.2, 405.3, 405.4, 405.5, 405.6, 420, 423, 441, 553.3, 578, 578a, 584, 587, 588, 591.2, 591.3, 591.6, 630, 632, 643, 644, 650, 653, 655, 656, 662, 681, 718.5, 718.7, 755, 771, 772, 773, 775, 810, 831, 841, 860, 904, 911, 922, 926, 1000, 1020, 1027, 1041, 1080, 1120, 1172, 1191, 1200 (amended).

AB 2985 (Fenton); STATS 1980, Ch 955

Support: Office of the Governor, Legal Affairs Unit

Prior to the enactment of Chapter 955, no exemption from probate administration was provided for real property classified as quasi-community property that had passed from a decedent to the decedent's surviving spouse. An exemption, however, did exist for community property.¹ Chapter 955 expands this exemption from probate administration to include real property classified as quasi-community property² and also effectuates the following procedural changes in the administration of estates: (1) deletes the California residency requirements for estate administrators;³ (2) amends the duties of both petitioners and court clerks regarding notice of petitions;⁴ and (3) eliminates specific actions from court supervision.⁵ Additionally, Chapter 955 enacts new procedures regarding allowance⁶ and additional compensation for administrators and executors.⁷ Moreover, Chapter 955 extends the time period for final accountings⁸ by the administrator or executor and makes changes in the inventory and appraisal procedures for ad-

1. Compare CAL. PROB. CODE §201.5 with CAL. STATS. 1970, c. 312, §4, at 708 (amending CAL. PROB. CODE §201.5). See also 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Community Property* §111 (8th ed. 1974).

2. See CAL. PROB. CODE §§201.5, 202(a), 203, 204, 632, 650(a).

3. Compare *id.* §§405.1, 405.2 with CAL. STATS. 1965, c. 1633, §1, at 3728 (amending CAL. PROB. CODE §405.1) and CAL. STATS. 1963, c. 815, §2, at 1845 (enacting CAL. PROB. CODE §405.2).

4. See CAL. PROB. CODE §§301(3), 333(a), 553.3, 578, 578a, 584, 587, 588, 643, 662, 681, 718.5, 718.7, 755, 771, 772, 773, 775, 810, 831, 841, 860, 904, 911, 926, 1000, 1020, 1027, 1041, 1142.3, 1172, 1191, 1200, 1200.5 (responsibilities of executors, administrators, and petitioners regarding notices).

5. See *id.* §§591.2, 591.3.

6. See *id.* §§904, 911, 1200.5(a)(3).

7. See *id.* §1142.3.

8. Compare *id.* §922 with CAL. STATS. 1931, c. 281, §922, at 648 (enacting CAL. PROB. CODE §922).

ministration of an estate.⁹

Procedural Changes in Estate Administration

Chapter 955 makes several clarifying and procedural changes in the rules governing the administration of an estate.¹⁰ Under prior law, only community property and property held in joint tenancy were excluded from a decedent's estate for purposes of determining whether the estate could be disposed of without probate administration.¹¹ Chapter 955 expands this exemption to include real property classified as quasi-community property.¹²

Furthermore, existing law provides that when publication of notice of administration of an estate is authorized by law, the notice must be published in a newspaper of general circulation in the city where the decedent resided or where the decedent's property is located.¹³ Chapter 955 requires the court to have jurisdiction over the decedent's estate before notice by publication will be permitted.¹⁴ In addition, Chapter 955 provides that if (1) no such newspaper exists, (2) the decedent did not reside in a city, *or* (3) the property is not located in a city, then notice must be published in a newspaper that is generally circulated in the county containing the community in which the decedent resided or the county in which the property is located.¹⁵

Existing law also provides that, with respect to the filing of specified petitions relating to actions concerning the administration of estates¹⁶ for which notice is required but no time or method is prescribed, notice must be *posted* by the clerk at the courthouse at least ten days prior to the hearing.¹⁷ Chapter 955, however, limits notice by posting to hearings for the following: (1) the sale of stocks or bonds;¹⁸ (2) confirmation of a sale or grant of an option to purchase real property;¹⁹ (3) leave

9. See CAL. PROB. CODE §644.

10. See generally *id.* §§201.5, 202(a), 203, 204, 632, 650(a) (quasi-community property exemption from probate administration); *id.* §§301(3), 333(a), 553.3, 578, 578a, 584, 587, 588, 643, 662, 681, 718.5, 718.7, 755, 771, 772, 773, 775, 810, 831, 841, 860, 904, 911, 926, 1000, 1020, 1027, 1041, 1172, 1191, 1200.5 (notice provisions for administrators, executors, court clerks and petitioners).

11. See CAL. STATS. 1979, c. 730, §102, at — (amending CAL. PROB. CODE §650); CAL. STATS. 1979, c. 731, §1.1, at — (amending CAL. PROB. CODE §202); CAL. STATS. 1977, c. 334, §1, at 1290 (amending CAL. PROB. CODE §204); CAL. STATS. 1970, c. 312, §4, at 708 (amending CAL. PROB. CODE §201.5); CAL. STATS. 1970, c. 513, §1, at 1000 (enacting CAL. PROB. CODE §632).

12. See CAL. PROB. CODE §§201.5, 202(a), 203, 204, 632, 650(a).

13. See *id.* §333(a).

14. See *id.* See generally *id.* §301(3) (jurisdiction of the court).

15. See *id.* §333(a).

16. Compare *id.* §1200(a) with CAL. STATS. 1979, c. 730, §106, at — (amending CAL. PROB. CODE §1200) (significant reduction in number of specified petitions requiring notice).

17. See CAL. PROB. CODE §1200.

18. See *id.* §1200(a)(1).

19. See *id.* §1200(a)(2).

to enter into an agreement to sell or give an option to purchase a mining claim or real property worked as a mine;²⁰ (4) the lease or exchange of property, or the institution of an action for the partition of property;²¹ or (5) any other proceeding for which notice is required and no other time or method is prescribed by law, court, or judge.²² Chapter 955 also enumerates the duties of the court clerk, petitioner, executor, or administrator regarding service of notice of a hearing on a petition for administration of an estate and specifies the persons to whom actual notice must be sent.²³ Furthermore, Chapter 955 shifts the requirement for mailing or personally serving notice of specified proceedings from the clerk to the petitioner, executor, or administrator.²⁴ Chapter 955, however, specifies that the petitioner's duty to provide service of notice is in addition to the requirement of notice by posting when applicable.²⁵

Duties and Responsibilities of Executors and Administrators

Chapter 955 deletes the California residency requirement for an administrator;²⁶ however, existing law still requires that the person be a resident of the United States.²⁷ Additionally, under prior law, there were ten specified actions which the executor or administrator had to perform under court supervision.²⁸ Chapter 955 deletes the requirement of court supervision for the following actions: (1) extended payments of a family allowance; (2) borrowing money or giving security; (3) leasing real property; (4) completing contracts of the decedent to convey real or personal property; and (5) determining specified third party claims.²⁹ Chapter 955, however, requires that those persons who would be affected by the second, fourth, or fifth actions above must be notified of the executor's or administrator's intention to take such action.³⁰

Existing law also requires the executor or administrator to make and file an inventory and appraisal of the decedent's estate whenever a

20. See *id.* §1200(a)(3).

21. See *id.* §1200(a)(4).

22. See *id.*

23. See generally *id.* §§904, 911, 926, 1000, 1020, 1027, 1041, 1080, 1172, 1191, 1200.5(b).

24. See generally *id.* §§553.3, 578, 578a, 584, 587, 588, 643, 662, 681, 718.5, 718.7, 755, 771, 772, 773, 775, 810, 831, 841, 860, 1041, 1172, 1191, 1200.5.

25. See *id.* §1200.5(e).

26. Compare *id.* §§405.1, 405.2, 420 with CAL. STATS. 1965, c. 1633, §1, at 3728 (amending CAL. PROB. CODE §405.1) and CAL. STATS. 1963, c. 815, §2, at 1845 (enacting CAL. PROB. CODE §405.2).

27. See CAL. PROB. CODE §420.

28. See CAL. STATS. 1977, c. 243, §2, at 1116 (amending CAL. PROB. CODE §591.2).

29. Compare CAL. PROB. CODE §591.2 with CAL. STATS. 1977, c. 243, §2, at 1116.

30. See CAL. PROB. CODE §591.3(g), (h), (i).

petition is made to have the decedent's estate set aside to the surviving spouse or minor children.³¹ Prior to the enactment of Chapter 955, however, the petitioner was not provided a means by which the estate could be inventoried and appraised if the executor or administrator had *not* been appointed.³² Chapter 955 specifies that the *petitioner* may cause an inventory and appraisal to be prepared in that situation.³³

Furthermore, under prior law the executor or administrator was required to render a final accounting of his or her administration of the decedent's estate within 30 days after the time to file a claim against the estate had expired.³⁴ Chapter 955 changes the time period for rendering an account to any time after one year from the date of issuance of letters of administration, and upon petition of any interested person.³⁵ In addition, Chapter 955 provides that whenever a petition for allowance³⁶ or for a final distribution,³⁷ or a petition by a person having an interest in the decedent's estate for a specific distribution,³⁸ is filed, the petitioner, executor, or administrator must serve notice upon the following persons at least ten days before the hearing of the petition: (1) the executor or administrator when he or she is not the petitioner;³⁹ (2) the devisees and legatees whose interest in the estate is affected by the payment of fees;⁴⁰ (3) heirs of the decedent in intestate estates;⁴¹ (4) the State of California if any portion of the estate is to escheat to the state;⁴² and (5) persons who have filed a request for special notice as an interested party.⁴³ The notice must be delivered personally or be sent by first-class mail to the last known mailing address of any of these persons.⁴⁴

Existing provisions of the Probate Code provide for the appointment by the court of a public administrator to take charge of property for which no executor or administrator has been appointed.⁴⁵ Chapter 955

31. *See id.* §644. *See generally id.* §§605 (court-appointed inheritance tax referee), 640, 641, 642, 643, 645 (existing provisions providing for petition to set aside part of decedent's estate for spouse or children).

32. *See* CAL. STATS. 1970, c. 1282, §15, at 2328 (amending CAL. PROB. CODE §644).

33. *Compare* CAL. PROB. CODE §644 with CAL. STATS. 1970, c. 1282, §15, at 2328.

34. *See* CAL. STATS. 1931, c. 281, §922, at 648 (enacting CAL. PROB. CODE §922).

35. *See* CAL. PROB. CODE §922.

36. *See generally id.* §§904, 911, 1200.5(a)(3).

37. *See generally id.* §§926, 1020, 1027, 1200.5(a)(11).

38. *See generally id.* §§1000, 1200.5(a)(12).

39. *See id.* §§911, 1000, 1020, 1200.5(b).

40. *See id.* §§904, 911, 926, 1000, 1020, 1027, 1200.5(b).

41. *See id.*

42. *See id.* §§904, 911, 926, 1000, 1020, 1027.

43. *See id.* §§904, 911, 926, 1000, 1020, 1027, 1200.5(b), 1202.

44. *See id.* §§904, 911, 926, 1000, 1020, 1027 (if the person resides outside the United States, notice may be sent by airmail).

45. *See id.* §1140 (duties of public administrator).

allows the public administrator to receive additional compensation beyond that provided by existing law.⁴⁶ Before additional compensation is awarded, however, any person entitled to appointment as the personal representative in preference to the public administrator must be properly notified of the public administrator's petition for appointment.⁴⁷ If no other person petitions for appointment in preference to the public administrator, the additional compensation may be awarded.⁴⁸ The amount is to be the difference between the reasonable cost of the administration of the estate and the commissions based either on a statutory percentage⁴⁹ of the estate or on extraordinary services.⁵⁰ In addition, compensation may also be awarded for estates in which the public administrator has been appointed after the resignation or removal of the personal representative.⁵¹ Finally, Chapter 955 provides that an action for administration of the decedent's estate now may be brought against an administrator or administrator with will annexed, as well as against the executor.⁵²

Conclusion

Though the legislative intent underlying Chapter 955 is not expressly stated, there appears to be a twofold purpose behind the changes implemented by the Chapter: (1) to continue the effort to treat quasi-community property in the same manner as community property,⁵³ and (2) to streamline the procedures for administration of estates.⁵⁴

46. See *id.* §1142.3.

47. See *id.*

48. See *id.*

49. See *id.* §§901, 1142.3.

50. See *id.* §§902, 1142.3.

51. See *id.* §1142.3.

52. Compare *id.* §405.3 with CAL. STATS. 1967, c. 466, §1, at 1675 (amending CAL. PROB. CODE §405.3).

53. See CAL. PROB. CODE §§201.5, 202(a), 203, 204, 632, 650(a), 653(5). See generally 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Community Property* §§125-126 (8th ed. 1974) (nature and purpose of legislation regarding inter vivos rights in quasi-community property).

54. See CAL. PROB. CODE §§405.1, 405.2 (residency requirements), 591.2, 591.3 (court supervision), 922 (accounting), 644 (inventory and appraisal), 1142.3 (compensation), 333(a), 553.3, 578, 578a, 584, 587, 588, 643, 662, 681, 718.5, 718.7, 755, 771, 772, 773, 775, 810, 831, 841, 860, 904, 911, 926, 1000, 1020, 1027, 1200, 1200.5 (responsibilities of executors, administrators, and petitioners regarding notices).

Administration of Estates; decedent's estates—intestate succession

Probate Code §228 (repealed); §229 (amended).

SB 1525 (Petris); STATS 1980, Ch 136

Support: Office of the Governor, Legal Affairs Unit

Chapter 136 has apparently been enacted to correct an inadvertent drafting error¹ in legislation that sought to make intestate distribution under the Probate Code more equitable and in conformity with the principles of the community property system.² Due to this oversight, in situations when a person died leaving neither spouse nor issue, prior law provided that "the portion of the decedent's estate attributable to the decedent's predeceased spouse" passed in equal shares to the children of the predeceased spouse, if any existed.³ If the predeceased spouse left no issue, one-half of the portion of the decedent's estate attributable to the decedent's predeceased spouse passed to the *decedent's* parents and relatives and one-half passed to the parents and relatives of the *predeceased spouse*.⁴ Because the portion of the decedent's estate attributable to the decedent's predeceased spouse was approximately *one-half of the community property*,⁵ if the predeceased spouse left no issue, the decedent's parents or relatives received three-quarters of the estate, and the parents or relatives of the predeceased spouse received only one-quarter.⁶ Chapter 136 provides that the *entire* portion of the decedent's estate attributable to the predeceased spouse will either pass to the children of the predeceased spouse, or, if none, to the parents or relatives of the predeceased spouse.⁷ The apparent result of this change is that approximately one-half of the decedent's estate will now pass in equal shares to the children, parents, or relatives of the predeceased spouse.⁸

COMMENT

Although Chapter 136 seeks to clarify provisions concerning intestate distribution, the Chapter leaves several questions unanswered. For purposes of Chapter 136, the portion of the decedent's estate attributable to the decedent's predeceased spouse is defined as follows: (1) one-half of the community property in existence at the time of the death of

1. Telephone interview with David Flynn, private attorney who conceived SB 1525 (September 17, 1980) (notes on file at *Pacific Law Journal*). See also 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 299, 300 (1980) (intestate succession).

2. See CAL. STATS. 1979, c. 298, §1, at — (amending CAL. PROB. CODE §228). See generally 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 299 (1980) (intestate succession).

3. See CAL. STATS. 1979, c. 298, §1, at —.

4. See *id.*

5. See *id.*

6. Telephone interview with David Flynn, private attorney who conceived SB 1525 (September 17, 1980) (notes on file at *Pacific Law Journal*). See also CAL. STATS. 1979, c. 298, §1, at —.

7. See CAL. PROB. CODE §229(a), (b).

8. See *id.*

the predeceased spouse;⁹ (2) one-half of the community property, in existence at the time of the death of the predeceased spouse, that was given to the decedent by way of gift, descent, devise, or bequest;¹⁰ (3) that portion of any community property in which the predeceased spouse's share vested in the decedent by right of survivorship;¹¹ (4) any portion of the property that vested in the decedent as a probate homestead upon the death of the predeceased spouse;¹² (5) any separate property of the predeceased spouse that passed to the decedent by gift, descent, devise, or bequest of the predeceased spouse or which vested in the decedent upon the death of the predeceased spouse by right of survivorship.¹³ No conjunctive or disjunctive connector was used to coordinate the elements of this list.¹⁴ Arguably, in order to include the entire portion of the decedent's estate properly attributable to the predeceased spouse, all five elements should be considered together.¹⁵ As a result, an "and" should be implied between the fourth and fifth elements.¹⁶

Another area of confusion in Chapter 136 is the distinction drawn between the first and second elements of the definition of the portion of the decedent's estate attributable to the predeceased spouse.¹⁷ This problem is best illustrated by a hypothetical example. Assume that a husband (H) predeceases his wife (W), and that both die intestate. For simplification, further assume that at the time of H's death all property is community property which has a total value of \$10,000. Based on this hypothetical, at least three possible interpretations may result. All three of these possible interpretations begin the same way—the portion of the decedent's estate attributable to the predeceased spouse under the *first element* is one-half of the community property in existence at the death of H, or \$5,000.¹⁸ The portion of the decedent's estate attributable to the predeceased spouse added by the *second element*,¹⁹ however, is questionable. Under the first interpretation, one-half of any community property, in existence at the time of H's death, that was

9. *Id.* §229(b)(1).

10. *See id.* §229(b)(2).

11. *See id.* §229(b)(3).

12. *See id.* §229(b)(4).

13. *See id.* §229(b)(5).

14. *See id.* §229(b). *See also* CAL. STATS. 1979, c. 298, §1, at —.

15. *See Pennisi v. Fish & Game Dept.*, 97 Cal. App. 3d 268, 272, 158 Cal. Rptr. 683, 686 (1979); *Steilberg v. Lackner*, 69 Cal. App. 3d 780, 785, 138 Cal. Rptr. 378, 381 (1977) (statute is to be construed to ascertain the intent of the legislature so as to effectuate the purpose of the law).

16. Telephone interview with David Flynn, private attorney who conceived SB 1525 (September 17, 1980) (notes on file at *Pacific Law Journal*).

17. *See* CAL. PROB. CODE §229(b)(1), (2). *See also* CAL. STATS. 1979, c. 298, §1, at —.

18. *See* CAL. PROB. CODE §229(b)(1).

19. *See id.* §229(b)(2).

given to W by H by way of descent²⁰ is *exactly* that portion of the community property represented by the first element.²¹ Since the first and second elements refer to the same property, their sum will be only \$5,000. Under the second interpretation, one-half of any community property, in existence at the time of H's death, that was given to W by H by way of descent²² is *different* from that portion of the community property in existence at the time of H's death.²³ The second element in this case may be interpreted as one-half of the *remaining community property*, or \$2,500. As a result, the sum of the factors will be \$7,500. Under the third interpretation, one-half of any community property, in existence at the time of H's death that was given to W by H by way of descent,²⁴ is again different from that portion of community property at the time of H's death.²⁵ Under this view, the second element refers to one-half of the *undivided whole of the community property*, or \$5,000. As a result, the sum of the two factors is \$10,000.²⁶ Although the first of these interpretations appears to be more in conformity with the principles of the community property system,²⁷ the other two interpretations are at least viable because of the potentially ambiguous language of Chapter 136.

Thus, while Chapter 136 seemingly corrects the inadvertent drafting error made in 1979,²⁸ the apparent ambiguities still surrounding the law of intestate succession may have to be resolved by further legislative action²⁹ or by the courts.³⁰

20. *See id.*

21. *See id.* §229(b)(1).

22. *See id.* §229(b)(2).

23. *See id.* §229(b)(1).

24. *See id.* §229(b)(2).

25. *See id.* §229(b)(1).

26. *Cf.* CAL. STATS. 1979, c. 298, §1, at — (under this interpretation CAL. PROB. CODE §228 as amended in 1979 would appear to be in conformity with the community property system as under CAL. PROB. CODE §229(a); if W left no living issue and there were living issue of H, the entire portion of W's estate attributable to H (\$10,000) would have gone to H's issue. If H had no issue, however, one-half of the portion would have gone to W's parents or relatives and the other one-half to H's parents and relatives).

27. *See generally* 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 299 (1980) (intestate succession).

28. *See* CAL. STATS. 1979, c. 298, §1, at —.

29. *Cf.* Niles, *Probate Reform in California*, 31 HASTINGS L.J. 185, 200-08 (1979) (recommending repeal of CAL. PROB. CODE § 229).

30. *Cf.* Estate of Hoegler, 82 Cal. App. 3d 483, 490, 147 Cal. Rptr. 289, 293 (discussion of CAL. PROB. CODE §229(a) as amended in 1970).

Administration of Estates; investments

Probate Code §585.1 (new).

SB 1939 (Speraw); STATS 1980, Ch 115

Support: Office of the Governor, Legal Affairs Unit

Existing law provides that an executor or administrator of a decedent's estate may invest surplus estate funds in any manner provided by the will.¹ If the will fails to provide for the investment of surplus funds, the executor or administrator is limited to any of the following:² (1) depositing the funds in banks within the state,³ trust companies,⁴ or insured savings and loan associations;⁵ (2) investing in federal or state securities or annuities;⁶ and (3) investing in direct obligations of the United States maturing not later than one year from the time of the making of the investment.⁷ Chapter 115 expands this list of permitted investments by allowing the executor or administrator, on petition to the court and upon a showing of good cause, to invest estate funds into units of a common trust fund.⁸ The common trust fund must consist primarily of short-term fixed income obligations and must be permitted to value the investment at cost pursuant to regulations of the appropriate regulatory authority.⁹ Apparently, this regulatory requirement will limit the investments under Chapter 115 to those common trust funds under the regulation of the federal Comptroller of the Currency.¹⁰

1. See CAL. PROB. CODE §584.5.

2. See generally Estate of Beach, 15 Cal. 3d 623, 634-35 n.10, 542 P.2d 994, 1001 n.10, 125 Cal. Rptr. 570, 577 n.10 (1975) (explaining the effect of an absence from the will of a provision authorizing the investment of surplus estate funds).

3. See CAL. PROB. CODE §585.

4. See *id.* §586.

5. See *id.* §585.

6. See *id.* §584.

7. See *id.* §584.1.

8. See *id.* §585.1. See generally CAL. FIN. CODE §1564 (definition of common trust).

9. See CAL. PROB. CODE §585.1.

10. See generally 12 C.F.R. §9.18 (1980) (regulating collective investments); Interview with Greg Price, United California Bank, in Sacramento, Cal. (Sept. 4, 1980) (notes on file at *Pacific Law Journal*).

Administration of Estates; termination of attachment liens upon death

Code of Civil Procedure §686 (repealed); §§686.010, 686.020 (new); §§488.510, 669 (amended); Probate Code §§730, 731, 732 (repealed); §§730, 731, 732, 732.5 (new); §716 (amended).

SB 2116 (McAlister); STATS 1980, Ch 124

Support: California Bankers Association; Office of the Governor, Legal Affairs Unit

Under prior case law, if a defendant died before judgment was en-

tered, any attachment lien on the defendant's property was terminated.¹ Additionally, no judgment entered against a defendant after his or her death would act as a lien on any of the decedent's real property.² Chapter 124 specifically provides that the death of the defendant does not terminate an attachment lien.³ Moreover, when the judgment debtor dies either before or after the entry of judgment in an action in which real or personal property has been attached, Chapter 124 provides that the attachment lien may be converted into a judgment lien.⁴ Unlike an attachment lien, a judgment lien is *not* terminated by the death of the debtor.⁵

To convert an attachment lien into a judgment lien, Chapter 124 requires the levying officer, prior to the expiration of the attachment lien, to serve an abstract of the judgment and a notice that the attachment lien has become a judgment lien either to the person holding the property pursuant to the attachment or to the office in which the writ and notice of attachment are recorded or filed.⁶ If the attached property is real property, the plaintiff or the plaintiff's attorney also may record the abstract and notice.⁷ Chapter 124 further provides that the judgment lien will carry the same priority as did the attachment lien.⁸ Additionally, a judgment requiring the possession or sale of property may be enforced or executed despite the death of the defendant.⁹ To the extent that the judgment is not satisfied through the possession or sale of the attached property specified in the judgment, any demand for money becomes payable in the due course of administration of the defendant's estate.¹⁰

After the defendant's death, any member of the defendant's family who had been supported or partially supported by the defendant may claim an exemption from attachment as provided for in the Code of Civil Procedure.¹¹ The executor or administrator of the defendant's es-

1. See, e.g., *Myers v. Mott*, 29 Cal. 359, 367 (1866); *Clary v. Rupert*, 93 Cal. App. 2d 844, 844-45, 210 P.2d 44, 44 (1949). But see *Everett v. Hayes*, 94 Cal. App. 31, 33-34, 270 P. 458, 460 (1928) (an attachment lien continues when attached property is conveyed away before the defendant's death).

2. See CAL. STATS. 1965, c. 1636, §1, at 3730 (amending CAL. CIV. PROC. CODE §669).

3. See CAL. CIV. PROC. CODE §488.510(e).

4. See CAL. PROB. CODE §732(a).

5. See *Corporation of America v. Marks*, 10 Cal. 2d 218, 220, 73 P.2d 1215, 1217 (1937).

6. See CAL. PROB. CODE §732(b).

7. See *id.*

8. See *id.*

9. See *id.* §730(d).

10. See *id.*

11. See CAL. CIV. PROC. CODE §§482.100, 487.020 (apparently the legislature inadvertently failed to refer to these sections as being from the Code of Civil Procedure); CAL. PROB. CODE §732(c).

tate may also claim the exemption on behalf of a family member.¹² Furthermore, any claim for exemption must be made before the abstract or notice of any judgment lien has been served, recorded, or filed.¹³

With the enactment of Chapter 124, the legislature apparently recognized the unfairness of destroying an attaching creditor's priority merely because of the defendant's death.¹⁴ By providing that a defendant's death no longer terminates an attachment lien,¹⁵ Chapter 124 apparently attempts to remedy this unfairness.¹⁶ The provisions of this Chapter, however, will not apply to any case where the death of a judgment creditor, judgment debtor, or defendant occurs prior to January 1, 1981.¹⁷

12. See CAL. PROB. CODE §732(c).

13. See *id.*

14. See *Enforcement Of Obligations After Death*, 15 CAL. LAW REVISION COMM'N REPORTS, RECOMMENDATIONS AND STUDIES 1327, 1333 (1980).

15. Compare CAL. CIV. PROC. CODE §488.510(e) with CAL. STATS. 1974, c. 1516, §9, at 3364.

16. See *Enforcement of Obligations After Death*, 15 CAL. LAW REVISION COMM'N REPORTS, RECOMMENDATIONS AND STUDIES 1327, 1333 (1980).

17. See CAL. STATS. 1980, c. 124, §14, at —.

Administration of Estates; effect of divorce on prior wills or codicils

Civil Code §4352 (new); Probate Code §80 (new).

AB 2088 (Naylor); STATS 1980, Ch 1188

Support: Office of the Governor, Legal Affairs Unit

Under existing law, a dissolution or declaration of nullity of a marriage will not revoke a prior testamentary disposition of property to the former spouse.¹ The former spouse is able to claim as beneficiary under the will, even though there has been a property settlement agreement, unless the right to take by the will was expressly renounced in the settlement or the intention to accomplish that result appears by necessary implication.² Chapter 1188 requires that every final judgment declaring a marriage a nullity or dissolving a marriage must contain a notice informing the parties that, unless a provision is made in the property settlement agreement to the contrary, the judgment will not affect the party's will or the ability of a former spouse to take under the

1. See *In re Estate of Brannon*, 111 Cal. App. 38, 40-41, 295 P. 83, 84 (1931); *Estate of Patterson*, 64 Cal. App. 643, 646, 222 P. 374, 375 (1923). See generally CAL. PROB. CODE §§70-79.

2. See *Estate of Murphy*, 92 Cal. App. 3d 413, 421-22, 154 Cal. Rptr. 859, 864-65 (1979); *Estate of Buchman*, 132 Cal. App. 2d 81, 92, 281 P.2d 608, 616 (1955). See generally CAL. PROB. CODE §73; Comment, *The Effect of Divorce on Wills*, 40 S. CAL. L. REV. 708 (1967).

will.³

Although a divorce or annulment will not revoke a will made prior to the dissolution, Chapter 1188 provides that the former spouse of the testator and the lineal descendants⁴ of the former spouse will be deemed to have predeceased the testator for purposes of the will or codicil when the following conditions are satisfied: (1) the will or codicil is executed on or after January 1, 1981;⁵ (2) the testator's marriage is subsequently dissolved or declared a nullity by a final judgment of a court of competent jurisdiction;⁶ and (3) a property settlement agreement is executed waiving and renouncing all rights under the prior will to inherit the estate or to receive any property of the former spouse.⁷ This legal fiction will not be maintained, however, when the will or codicil expressly provides otherwise⁸ or if the testator's death occurs during remarriage to the former spouse.⁹

3. See CAL. CIV. CODE §4352.

4. See CAL. PROB. CODE §80(a) (definition of lineal descendants).

5. See *id.* §80(c).

6. See *id.* §80(a).

7. See *id.*

8. See *id.*

9. See *id.* §80(b).

Administration of Estates; guardianship, conservatorship, and other protective proceedings

Civil Code §§2355, 2356 (amended); Probate Code §§1440, 2452, 2628 (repealed); §§2452, 2628 (new); §§1469, 1540, 1541, 1543, 2203, 2580, 2586, 3053 (amended); Welfare and Institutions Code §§4825, 7284, 7288 (amended).

AB 2118 (McAlister); STATS 1980, Ch 246

Support: Office of the Governor, Legal Affairs Unit

Under existing law, to become operative on January 1, 1981,¹ if proceedings for guardianship or conservatorship of a person or an estate are instituted in more than one county, the guardianship or conservatorship first granted will govern and any other proceeding must be dismissed.² Prior to the enactment of Chapter 246, however, no provision had been expressly established for instances in which a proceeding for a guardianship or conservatorship of a person was instituted in one county while a proceeding for a guardianship or conservatorship of

1. See generally CAL. PROB. CODE §§2203, 2580, 2586 (to become operative on January 1, 1981).

2. See *id.* §2203(a), (b). See generally 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 271 (1980) (guardianship, conservatorship, and other proceedings).

that person's estate was instituted in another county.³ Under Chapter 246, the court of the county in which the guardianship or conservatorship is first granted, whether for the person or the estate, has the authority to decide whether or not to consolidate the proceedings.⁴ Proceedings will be consolidated only if the court deems consolidation to be in the best interests of the conservatee or ward.⁵ The court also will determine in which county the proceedings will be most appropriately consolidated.⁶ The decision of the court in the county where the proceedings have been consolidated will then govern and any other proceedings will be dismissed.⁷

Under prior law, a conservator or other interested party could petition the court for an order authorizing or requiring the conservator to exercise the right of the conservatee to revoke a revocable trust, although no guidelines were provided for when the petition should be granted.⁸ Under Chapter 246, the court may not authorize or require the conservator to exercise the right to revoke the trust when the instrument governing the trust evidences an intent to the contrary.⁹

Finally, existing law allows the court to order any person having possession of any document constituting all or part of an estate plan¹⁰ of a conservatee to deliver the document to the court for examination.¹¹ Under prior law, however, an attorney of a person in the proceeding concerning the estate plan could examine the document without restriction.¹² Chapter 246 provides the court with the discretion to determine whether or not the attorney may examine the document.¹³

3. Compare CAL. PROB. CODE §2203 with CAL. STATS. 1979, c. 726, §3, at — (to have become operative January 1, 1981).

4. See CAL. PROB. CODE §2203(c).

5. See *id.*

6. See *id.*

7. See *id.*

8. See CAL. STATS. 1979, c. 726, §3, at — (amending CAL. PROB. CODE §2580(a)(10)) (to have become operative January 1, 1981).

9. See CAL. PROB. CODE §2580(a)(10)(A), (B), (C).

10. See *id.* §2586(a) (definition of estate plan).

11. See *id.* §2586(b).

12. See CAL. STATS. 1979, c. 726, §3, at — (amending CAL. PROB. CODE §2586) (to have become operative January 1, 1981).

13. See CAL. PROB. CODE §2586(b).

Administration of Estates; conservatorships for gravely disabled persons

Welfare and Institutions Code §§5356, 5358, 5358.6 (amended).
AB 1295 (Agos); STATS 1980, Ch 681

Support: Department of Mental Health; Office of the Governor, Legal Affairs Unit

The Lanterman-Petris-Short Act of 1967¹ (hereinafter cited as the Act) established procedures for the involuntary commitment and prompt evaluation and treatment of persons who, as a result of a mental disorder, are gravely disabled² or are a danger to themselves or others.³ Included in the Act are provisions for the appointment of a conservator, after a conservatorship investigation⁴ and subsequent court hearing,⁵ for any person who is gravely disabled as a result of a mental disorder or chronic alcoholism.⁶ The purpose of the conservatorship is to provide a conservatee with supervision, individualized treatment, and placement in a suitable facility⁷ in an attempt to remedy or prevent the recurrence of the conservatee's disability.⁸

Under the provisions of Chapter 681, the report of the county officer conducting the conservatorship investigation is expanded to include the officer's recommendations regarding the proper placement for the conservatee.⁹ After considering all the evidence, the court is to determine the least restrictive and most appropriate placement.¹⁰ The conservator, once appointed by the court, must then place the conservatee in the least restrictive placement, as designated by the court.¹¹ Under existing law, if the conservatee is not placed in his or her own home or in the home of a relative, priority is given to placement in a suitable facility as close as possible to the conservatee's home or to the home of a relative.¹² Chapter 681 apparently attempts to insure that placement will be in the least restrictive alternative by specifying that a "suitable facility" is the least restrictive residential facility available.¹³ By providing for placement of gravely disabled persons in the least restrictive envi-

1. See CAL. WELF. & INST. CODE §§5000-5466.

2. See *id.* §5008(h)(1) (definition of gravely disabled person as one who, because of a mental disorder, is unable to provide for his or her basic personal needs of food, clothing, and shelter).

3. See *id.* §5150. See generally Morris, *Conservatorship for the "Gravely Disabled": California's Nondeclaration of Nondependence*, 15 SAN DIEGO L. REV. 201 (1978); 8 PAC. L.J., REVIEW OF SELECTED 1976 CALIFORNIA LEGISLATION 390 (1977) (voluntary informed consent of patients before psychosurgery or convulsion treatments); 7 PAC. L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 333 (1976) (institutionalization of an individual by a designated officer upon probable cause to believe the individual is mentally ill).

4. See CAL. WELF. & INST. CODE §5008(g) (definition of conservatorship investigation).

5. See *id.* §5365.

6. See *id.* §5350.

7. See *id.* §5358(c).

8. See *id.* §5358.

9. Compare *id.* §5356 with CAL. STATS. 1967, c. 1667, §36, at 4095.

10. See CAL. WELF. & INST. CODE §5358(c).

11. See *id.* §5358(a).

12. See *id.* §5358(c).

13. See *id.*

ronment possible, the legislature apparently is continuing its attempt to end inappropriate involuntary commitment of mentally disordered persons.¹⁴ Furthermore, confinement in other than the least restrictive alternative may be an unwarranted deprivation of freedom and, therefore, a violation of due process of law.¹⁵

In addition to determining placement of the conservatee, Chapter 681 specifies that the court must determine those persons to be notified in the event of a change in placement.¹⁶ Under the provisions of Chapter 681, the conservator may transfer the conservatee to a *less* restrictive placement than that designated by the court without further hearing or court approval.¹⁷ Conversely, if the conservatee's condition has changed so as to pose an immediate and substantial danger to the conservatee or others, the conservator may place the conservatee in a *more* restrictive facility.¹⁸ Upon transferring the conservatee to a more restrictive placement, however, the conservator must give written notice of the change and the reason therefor to the court, the conservatee's attorney, the county patients' rights advocate, and any other person designated by the court to be notified of a change in placement.¹⁹

14. See *id.* §5001(a).

15. See *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); *Eubanks v. Clarke*, 434 F. Supp. 1022, 1027-28 (E.D. Pa. 1977); *Stamus v. Leonhardt*, 414 F. Supp. 439, 452-53 (S.D. Iowa 1976); *Suzuki v. Quisenberry*, 411 F. Supp. 1113, 1132-33 (D. Haw. 1976); *Welsch v. Likins*, 373 F. Supp. 487, 501-02 (D. Minn. 1974); *Lessard v. Schmidt*, 349 F. Supp. 1078, 1096 (E.D. Wis. 1972), *vacated and remanded on other grounds*, 414 U.S. 473 (1974).

16. See CAL. WELF. & INST. CODE §5358(c).

17. See *id.* §5358(d).

18. See *id.*

19. See *id.* See also *id.* §5358(c).

Administration of Estates; limited conservatorships— developmentally disabled adults

Probate Code §§1410, 1411, 1420, 1431, 1827.5, 1828.5, 1860.5, 2351.5 (new); §§1471, 1801, 1821, 1822, 1823, 1824, 1828, 1829, 1830, 1851, 1860, 1872, 1873, 1890, 2351, 2400, 2401, 2405, 2600, 3004 (amended).

AB 2898 (Levine); STATS 1980, Ch 1304

Support: Department of Developmental Services; Office of the Governor, Legal Affairs Unit

The law governing conservatorships was revised extensively in 1979.¹

1. See CAL. PROB. CODE §§1440-1491, 1800-1910, 2100-2808, 3000-3154, 3200-3211 (operative Jan. 1, 1981). See generally 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 271 (1980).

By definition, however, these provisions were limited to the establishment of conservatorships for the person or estate of individuals who were unable to properly provide for their personal needs or who were substantially unable to manage their own financial resources; no special provisions existed for those persons able to perform some, but not all, of the necessary tasks of life.² Chapter 1304 provides for these special circumstances by establishing limited conservatorships for developmentally disabled adults.³ Specifically, Chapter 1304 sets forth the procedures for appointing a limited conservator,⁴ the limits imposed on the conservator's powers and duties,⁵ and the grounds and procedures for the modification or termination of a limited conservatorship.⁶

Pre-Hearing Procedure

Chapter 1304 authorizes the establishment of limited conservatorships for the person or estate, or both, of an adult having a developmental disability.⁷ This form of disability is defined as one that originates before the age of 18, is expected to continue indefinitely, and constitutes a substantial handicap to the individual.⁸ Specifically included are mental retardation or conditions closely related thereto, cerebral palsy, epilepsy, and autism; it does not include handicapping conditions that are solely physical in nature.⁹ Proceeding on the underlying state policy that developmentally disabled persons should receive services directed toward their achieving more independent, productive, and normal lives,¹⁰ Chapter 1304 restricts the use of a limited conservatorship to cases where it is necessary for the well-being of the individual, and then only to the extent necessary in light of the individual's proven mental and adaptive limitations.¹¹

The proceeding to establish a limited conservatorship for a developmentally disabled adult is initiated by a petition¹² to the superior court¹³ requesting that a conservator be appointed for the person or

2. See CAL. STATS. 1979, c. 726, §3, at — (enacting CAL. PROB. CODE §1801) (operative Jan. 1, 1981).

3. See CAL. PROB. CODE §1801(d).

4. See generally *id.* §§1821-1824, 1827.5, 1828, 1828.5, 1829.

5. See generally *id.* §§1801(d), 1830, 1872, 1873, 2351.5(a), 2401, 2405.

6. See generally *id.* §§1851, 1860.5, 1873, 1890, 2351.5(b), (c).

7. See *id.* §1801(d).

8. See *id.* §1420.

9. See *id.*

10. See *id.* §1801(d)(3).

11. See *id.* §1801(d)(1), (2) (also prohibiting a presumption of incompetence and removal of civil or legal rights of the conservatee absent specific transfer by the court to the conservator).

12. See *id.* §1820.

13. See *id.* §2200. See also *id.* §§2201 (venue), 2202 (venue), 2203 (priority of court).

estate, or both.¹⁴ The petition must include the name and address of the proposed conservatee, whether the proposed conservatee is or is alleged to be developmentally disabled, the nature and degree of the alleged disability, the reasons why the appointment is required, the specific duties and powers requested to be granted to the conservator, and the requested limitations of civil and legal rights.¹⁵ If the petition is filed by a person other than the proposed conservatee, Chapter 1304 grants the conservatee the right to oppose the petition in whole or in part by objecting to any or all of the requested duties or powers of the limited conservator.¹⁶ In any proceeding to establish a limited conservatorship,¹⁷ the court immediately must appoint the public defender or private counsel to represent the proposed conservatee if he or she has not retained, and does not plan to retain, counsel.¹⁸ Within 30 days after the filing of the petition, the proposed conservatee, with his or her consent, must be evaluated at a regional center¹⁹ and a report of the findings and recommendations must be submitted to the court.²⁰ The report must include a description of the specific areas, nature, and degree of the disability, if any; however, these findings are not binding on the court.²¹ If the petition is filed by a person other than the proposed conservatee, a citation setting forth the time and place of the hearing²² and a copy of the petition must be served on the proposed conservatee at least 30 days before the hearing.²³ Finally, at least 15 days before the hearing on the petition, notice of the time and place of the hearing and a copy of the petition²⁴ must be mailed²⁵ to other specified parties²⁶ and to the regional center conducting the evaluation of the proposed conservatee's alleged disability.²⁷

14. *See id.* §1821(a).

15. *See id.* §1821(a), (h). *See generally id.* §1821(b)-(g) (other requirements regarding contents of petition).

16. *See id.* §§1823(a), (b)(5), 1828(a)(6), 1828.5(d).

17. *See id.* §1431 ("proceeding to establish a limited conservatorship" includes proceedings to modify or revoke the powers or duties of a limited conservatorship).

18. *See id.* §§1471(c) (appointment required whether or not proposed conservatee is mentally or psychologically able to attend the proceedings; cost of appointed counsel to be borne by proposed conservatee if he or she is able), 1825.

19. *See generally* CAL. WELF. & INST. CODE §§4620-4628.

20. *See* CAL. PROB. CODE §1827.5.

21. *See id.*

22. *See id.* §1823(a), (b) (contents of citation).

23. *See* CAL. CIV. PROC. CODE §§415.10, 415.30, 415.40 (manner of service); CAL. PROB. CODE §1824. *Compare* CAL. PROB. CODE §1824 with CAL. STATS. 1979, c. 726, §3, at — (operative Jan. 1, 1981) (previously required 15-day limit).

24. *See* CAL. PROB. CODE §1822(a), (e).

25. *See generally id.* §§1465, 1466 (requirements for service by mail).

26. *See id.* §§1461 (Director of Mental Health, Director of Developmental Services), 1822(b)(1), (2) (conservatee's spouse, specified relatives), 1822(d) (Veterans Administration).

27. *See id.* §§1822(f), 1827.5.

The Limited Conservatorship Hearing

Prior to the establishment of the proposed conservatorship, the court is required to inform the proposed conservatee of the nature and purpose of the proceedings,²⁸ the possibility of the transfer of certain legal rights of the conservatee to the proposed conservator and the effect of that transfer,²⁹ the identity of the proposed conservator,³⁰ and that the conservatee has the right to oppose the proceeding³¹ and to have the matter tried by a jury.³² Furthermore, the court must consult the proposed conservatee to determine his or her opinion concerning the appointment of a conservator³³ and concerning each of the requested limitations of legal capacity.³⁴ At the hearing, Chapter 1304 requires the court to (1) inquire into the nature and extent of the general intellectual functioning of the proposed conservatee, (2) evaluate the extent of the impairment of his or her adaptive behavior, (3) determine the individual's capacity to care for himself or herself and his or her property, (4) examine the qualifications and capabilities of the proposed conservator, and (5) if applicable, determine the reason for the proposed conservatee's refusal to undergo an evaluation by a regional center.³⁵

If the court determines that the proposed conservatee is capable of caring for himself or herself and of managing his or her property as a reasonably prudent person, the petition for the appointment of a limited conservator must be dismissed.³⁶ If the court finds that the individual lacks the capacity to perform some but not all necessary tasks, it must appoint a limited conservator, restricting the conservator's powers and duties in a way that permits the conservatee to function commensurate with his or her ability.³⁷ Chapter 1304 requires that the order of the court include the underlying findings of the decision and that it define the powers and duties of the limited conservator.³⁸ In general, the limited conservator is responsible for securing habilitation or treat-

28. *See id.* §1828.5(d).

29. *See id.* §§1828(a)(5), 1828.5(d). *See generally id.* §§1870-1876 (capacity to obligate conservatorship estate), 1880-1898 (capacity to give informed consent for medical treatment), 1900-1901 (capacity of conservatee to marry).

30. *See id.* §1828.5(d).

31. *See id.* *See also id.* §1823(b)(5).

32. *See id.* §1828.5(d).

33. *See id.* §§1828(b)(1), (2), 1828.5(d).

34. *See id.* §1828(b)(3). *See generally id.* §§1870-1876 (capacity to obligate conservatorship estate), 1880-1898 (capacity to give informed consent for medical treatment), 1900-1901 (capacity of conservatee to marry).

35. *See id.* §1828.5(a).

36. *See id.* §1828.5(b).

37. *See id.* §§1801(d)(1), 1828.5(c).

38. *See id.* §1830(b).

ment, training, education, medical and psychological services, and social and vocational opportunities that will assist the conservatee in developing maximum independence.³⁹ In addition, the order must include specifically, if necessary (1) an identifying description of the conservatee's properties that the conservator is entitled to possess and manage, (2) the debts, rentals, wages, and other claims due the conservatee that the conservator is entitled to collect, possess, and manage, (3) the obligations that the conservator may incur on behalf of the conservatee, and (4) any claims against the conservatee that the conservator must pay, compromise, or defend.⁴⁰ Chapter 1304 emphasizes that, in contrast to the appointment of a conservator, the appointment of a *limited* conservator does *not* limit the legal capacity of the limited conservatee to enter into transactions⁴¹ except as specified in the order of the court.⁴² Moreover, Chapter 1304 specifies that the limited conservator *cannot*, unless specifically requested in the petition and granted by order of the court, (1) fix the conservatee's residence or specific dwelling, (2) have access to the confidential records and papers of the conservatee, (3) consent or withhold consent to the marriage of the conservatee, (4) limit the conservatee's right to contract, (5) affect the power of the conservatee to give or withhold medical consent, (6) intrude on the conservatee's right to control his or her own social and sexual contacts and relationships, or (7) make decisions concerning the education of the conservatee.⁴³

Judicial Review of Limited Conservatorships

Under existing law, conservatorships, unless otherwise specified, are subject to periodic review by the court.⁴⁴ A court investigator⁴⁵ visits the limited conservatee to determine, among other things, whether the conservatee wishes to petition the court for termination of the conservatorship and whether the conservatorship is still needed.⁴⁶ Chapter 1304 additionally requires that the court investigator make recommendations to the court regarding the continuation or termination of the limited conservatorship.⁴⁷ Alternatively, Chapter 1304 allows a limited conservator or conservatee, or any relative or friend of the con-

39. *See id.* §2351.5(a).

40. *See id.* §1830(b).

41. *See id.* §1870 (definition of transaction).

42. *Compare id.* §1872(b), (c) with CAL. STATS. 1979, c. 726, §3, at — (operative Jan. 1, 1981).

43. *See* CAL. PROB. CODE §2351.5(a).

44. *See id.* §1850.

45. *See generally id.* §1454 (appointment and qualifications of court investigator).

46. *See id.* §1851(a).

47. *See id.* §1851(c).

servatee, to petition the superior court in which the proceeding is pending to terminate the conservatorship⁴⁸ or to have specific powers or duties of the conservator modified⁴⁹ or revoked.⁵⁰ A hearing must be set and notice must be given to the same persons as those specified in the provisions for a petition for appointment of a conservator.⁵¹ If the conservator is not the petitioner or has not been joined in the petition, he or she must be served⁵² with notice of the time and place of the hearing at least five days prior thereto, unless service cannot be accomplished with reasonable diligence.⁵³ If the court finds that certain powers or duties of the conservator should be granted or revoked, new letters of conservatorship must be issued incorporating the changes;⁵⁴ if it is determined that the conservatorship is no longer needed, it shall cease and the conservator will be discharged.⁵⁵ In addition to termination by an order of the court declaring that the limited conservatorship is no longer necessary, Chapter 1304 provides for termination by the death of the limited conservatee, the death of the limited conservator, or by an order appointing a conservator of the former limited conservatee.⁵⁶

Conclusion

Chapter 1304 apparently is designed to provide an alternative to a conservatorship for those persons in need of some assistance in caring for themselves or managing their property, but who are not completely incapable of doing so.⁵⁷ Provision is made for establishing a limited conservatorship in those circumstances,⁵⁸ with the powers and duties of the conservator being strictly limited according to the capacity of the conservatee to function without assistance.⁵⁹

48. *See id.* §1860.5(b).

49. *See id.* §2351.5(b).

50. *See id.* §1860.5(b).

51. *See id.* §§1822, 1860.5(b), 2351.5(c).

52. *See* CAL. CIV. PROC. CODE §§415.10, 415.30 (manner of service); CAL. PROB. CODE §1860.5(b).

53. CAL. PROB. CODE §§1860.5(b), 2351.5(c) (proceeding must be conducted according to the laws and procedures governing a civil action, including a trial by jury if demanded).

54. *See id.* §2351.5(c).

55. *See id.* §1860.5(b).

56. *See id.* §1860.5(a)(1)-(4).

57. *Compare id.* §1801 with CAL. STATS. 1979, c. 726, §3, at — (operative Jan. 1, 1981).

58. *See* CAL. PROB. CODE §§1801(d), 1828.5.

59. *See id.* §§1801(d)(1), 1828.5(c).