

New Laws: Probate, Mental Health, and Elder/Dependent Adult Abuse



December 7, 2018 Presentation for the California Court Association

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AB 1290

Lawyer-client privilege: holder of the privilege

- **Affected Statute: Evidence Code § 953**
- If a guardian or conservator appears to have a conflict of interest with the ward or conservatee, then the guardian/conservator does not hold the attorney-client privilege on the ward or conservatee's behalf.



AB 1739

Nonprobate transfers: revocable transfer on death deeds

- **Affected Statute: Probate Code § 5626**
- A Revocable Transfer on Death Deed is valid and effective even if the “Common Questions” section attached to the form has not been recorded.
- Urgency legislation operative as of 7/9/18.



AB 1960

Estates and trusts: kindred: definition

- **Affected Statute: Probate Code § 21110**
- The spouse of a transferor is not considered kindred and is therefore excluded from the definition of “transferee” for purposes of the anti-lapse statute.



AB 2090

Guardianships: special immigrant juvenile status

- **Affected Statute: Probate Code § 1510.1**
- The parent of a proposed adult ward is authorized to file a guardianship petition in connection with special immigrant juvenile status (“SIJS”) proceedings.



AB 2113

Estates and trusts: guardianships

- **Affected Statute: Probate Code § 1600**
- A guardianship of the estate terminates on the death of the ward, subject to certain applicable statutes and other laws mandating that the guardian continue to have specified powers and responsibilities, such as conserving the estate and paying unpaid expenses.
- Companion bill to AB 2236 (conservatorship).



AB 2236

Conservatorships

- **Affected Statute: Probate Code § 1860**
- Adds a clause clarifying that the termination of a conservatorship of the estate by death or court order is subject to certain applicable statutes and other laws mandating that the conservator continue to have specified powers and responsibilities, such as conserving the estate and paying unpaid expenses.
- Companion bill to AB 2113 (guardianship).



AB 2426

Trustee: power to terminate trust

- **Affected Statute: Probate Code § 15408**
- Increases the size of a trust that can be terminated by the trustee without court approval (from \$40,000 to \$50,000).



AB 2642

Guardianship: special immigrant juveniles



- **Affected Statute: Probate Code § 2104.1**
- Authorizes foreign charitable corporations to be appointed as guardians of minors in connection with a SIJS petition if the corporation meets the same specifics required for domestic corporations, is properly licensed by the state, and is contracted by a federal office to provide care and custody for the minor.
- Provides legislative findings and declarations relative to special immigrant juveniles.
- Sunsets on January 1, 2022 unless a later-enacted statute repeals the sunset.

SB 909

Uniform Trust Decanting Act



- Affected Statutes: Probate Code §§ 19501-19505, 19507-19527, and 19529-19530 (new Part 9 of Division 9 — 28 new statutes)
- Authorizes fiduciaries of irrevocable trusts to distribute the property of a first trust to one or more second trusts or to modify the terms of the first trust without the consent of beneficiaries or court approval, subject to certain exceptions.
- Contains notice requirements specifying the length of notice, the persons entitled to notice, and the contents of the notice. Contains procedures for notice to incompetent persons (e.g., minors and other beneficiaries lacking capacity).

SB 909

Uniform Trust Decanting Act (cont'd)

- “On application” of any interested party, it authorizes the court to approve an exercise of the decanting power or to take other actions (as set forth in Section 19509).
- Requires a fiduciary exercising the decanting power to act in accordance with his or her fiduciary duties and in accordance with the purposes of the first trust. Restricts beneficiary changes and increases in fiduciary compensation.
- Does not apply to a trust held solely for charitable purposes.

SB 931

Conservatorships: custody status



- **Affected Statutes: W&I Code §§ 5352 & 5352.5**
- The professional person in charge of providing mental health treatment at a county jail can recommend LPS conservatorship for an inmate without the inmate being an inpatient of a mental health facility if the appropriate person has determined that the inmate is gravely disabled and that future examination on an inpatient basis is not necessary for a determination that the inmate is gravely disabled.
- Specifies that a person's custody status shall not be the sole reason for not scheduling an investigation by the conservatorship investigator.

SB 1045

Conservatorship: serious mental illness and substance use disorders



- Affected Statutes: W&I Code Ch. 6.2, Art. 7 (§§ 5555 et seq.) and Div. 5, Pt. 1, Ch. 5 (§§ 5450 et seq.)
- Pilot project establishing a new type of conservatorship for mental illness or substance use.
- Specific to the County of Los Angeles, the County of San Diego, and the City and County of San Francisco.
- If the board of supervisors for each of the aforementioned areas authorizes the application of the provisions subject to certain requirements, the bill permits the appointment of a conservator for a person who is incapable of caring for the person's own health and well-being due to a serious mental illness or substance use disorder in order to provide the least restrictive and most clinically appropriate alternative needed for the protection of the person.

SB 1045

Conservatorship: serious mental illness and substance use disorders (cont'd)

- Requires the following court findings:
 - that the behavioral health director of the county (or, in San Francisco's case, the city and county) has previously attempted by petition to obtain a court order authorizing assisted outpatient treatment pursuant to Laura's Law for the person for whom conservatorship is sought,
 - that the petition was denied or that the assisted outpatient treatment was insufficient to treat the person's mental illness, and
 - that assisted outpatient treatment would be insufficient to treat the person in the instant matter in lieu of a conservatorship.

SB 1045

Conservatorship: serious mental illness and substance use disorders (cont'd)

- Prohibits this type of conservatorship from being established if an LPS or probate conservatorship or guardianship already exists.
- Conservatorship automatically terminates one year after the appointment of the conservator but is subject to one-year renewals.
- The bill allows the Judicial Council to adopt rules, forms, and standards necessary to implement these new conservatorships.
- Requires each participating county to establish a working group of specified stakeholders to evaluate the effectiveness of the program
- Requires a preliminary report and a final report to the Legislature no later than January 1, 2021, and January 1, 2023, respectively.
- Sunsets January 1, 2024, unless a later-enacted statute repeals the sunset.

SB 1089

California Law Enforcement Telecommunications System



- **Affected Statute: Family Code § 6380**
- Clarifies that any protective orders that are required to be entered into the California Law Enforcement and Telecommunications System (“CLETS”) under Family Code § 6380 are, in fact, required to be entered into CLETS.
- Impacts elder abuse and dependent adult abuse restraining orders because Family Code § 6380(b) is incorporated into W & I Code § 15657.03(p)(3).

SB 1436

Natural parent and child relationship: establishment

- **Affected Statute: Probate Code § 6453**
- For intestate rights: clarifies that clear and convincing evidence of natural parentage may include genetic DNA evidence acquired during the parent's lifetime.
- Revises statutory language from paternity-oriented terms to gender-neutral terms.





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