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AB-1085 Personal representatives: conservators and attorneys-in-fact. (2015-2016)

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Assembly Bill No. 1085

CHAPTER 92

An act to amend Section 2351 of, and to add Sections 2361 and 4691 to, the Probate Code, relating to personal representatives.

[Approved by Governor July 14, 2015. Filed with Secretary of State July 14, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1085, Gatto. Personal representatives: conservators and attorneys-in-fact.

(1) Existing law requires a conservator of a person to be responsible for the care, custody, control, and education of a conservatee, except where the court, in its discretion, limits the powers and duties of the conservator. Existing law also provides that the conservator's control of the conservatee shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by a court order.

This bill would provide that a court order may be issued that specifically grants the conservator the power to limit or enforce the conservatee's right to receive visitors, telephone calls, and personal mail. The bill would state findings and declarations of the Legislature in this regard.

(2) Existing law additionally authorizes an adult with capacity to execute a power of attorney for health care.

This bill would require a conservator to provide notice of a conservatee's death by mailing a copy of the notice to specified persons, as provided. The bill would require an attorney-in-fact, if directed by the principal in a power of attorney for health care, upon the death of the principal, to inform those individuals whose names are provided by the principal for that purpose.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that every adult in this state has the right to visit with, and receive mail and telephone or electronic communication from, whomever he or she so chooses, unless a court has specifically ordered otherwise.

SEC. 2. Section 2351 of the Probate Code is amended to read:

2351. (a) Subject to subdivision (b), the guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee. This control shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by court order. The court may issue an order that specifically grants the conservator the power to enforce the

conservatee's rights to receive visitors, telephone calls, and personal mail, or that directs the conservator to allow those visitors, telephone calls, and personal mail.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating either of the following:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee.

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked upon a petition subsequently filed, notice of the hearing on the petition having been given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) The guardian or conservator, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly traded corporation, or (3) being an officer or a director of a corporation. This subdivision shall apply only to conservators and guardians required to register with the Statewide Registry under Chapter 13 (commencing with Section 2850).

SEC. 3. Section 2361 is added to the Probate Code, to read:

2361. A conservator shall provide notice of a conservatee's death by mailing a copy of the notice to all persons entitled to notice under Section 1460 and by filing a proof of service with the court, unless otherwise ordered by the court.

SEC. 4. Section 4691 is added to the Probate Code, to read:

4691. If directed by the principal in a power of attorney for health care, an attorney-in-fact shall, upon the death of the principal, inform those individuals whose names are provided by the principal to the attorney-in-fact for that purpose.