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SB-1005 Conservatorship: sale of personal residence. (2021-2022)

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Senate Bill No. 1005

CHAPTER 91

An act to amend Sections 2463, 2540, 2541, 2541.5, and 2591 of the Probate Code, relating to conservatorship.

[Approved by Governor July 01, 2022. Filed with Secretary of State July 01, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1005, Wieckowski. Conservatorship: sale of personal residence.

The Guardianship-Conservatorship Law generally establishes the powers and duties of a guardian or conservator of a person, an estate, or both. Under existing law, the court, in its discretion, may make an order granting a guardian or conservator any one or more or of specified powers if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. These powers include the right to commence and maintain an action for partition.

Existing law requires a conservator seeking authorization to sell a conservatee's present or former personal residence to notify the court of specified information, including that the personal residence is proposed to be sold and that the present or former personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee. The court may authorize the sale of the personal residence only if it finds by clear and convincing evidence that the conservator demonstrated a compelling need to sell the residence for the benefit of the conservatee. Existing law also authorizes a guardian or conservatee to sell other real or personal property of the estate.

This bill would revise the provisions authorizing the sale of a conservatee's present or former personal residence, or the sale of other real or personal property of the estate, to specifically include the power to consent and agree to partition the personal residence or other real or personal property of the estate, and the power to bring an action for partition of the personal residence or other real or personal property of the estate. The bill would subject partition of the conservatee's present or former personal residence to the same conditions as would be applicable to the sale of the residence under existing law.

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

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

SECTION 1. Section 2463 of the Probate Code is amended to read:

2463. (a) The guardian or conservator may bring an action against the other cotenants for partition of any property in which the ward or conservatee has an undivided interest if the court has first made an order authorizing the guardian or conservator to do so. The court may make the order ex parte on a petition filed by the guardian or conservator.

(b) The guardian or conservator may consent and agree, without an action, to a partition of the property and to the part to be set off to the estate, and may execute deeds or conveyances to the owners of the remaining interests of the parts to which they may be respectively entitled, if the court has made an order under Article 5 (commencing with Section 2500) authorizing the guardian or conservator to do so.

(c) If the ward or conservatee, or the guardian or conservator in that capacity, is made a defendant in a partition action, the guardian or conservator may defend the action without authorization of the court.

(d) If the subject property is the conservatee's present or former personal residence, the powers granted pursuant to subdivisions (a) and (b) of this section are subject to the requirements of Sections 2352.5, 2540, 2541, and 2541.5, which govern the sale and partition of a conservatee's personal residence.

SEC. 2. Section 2540 of the Probate Code is amended to read:

2540. (a) Except as otherwise provided in Sections 2544 and 2545, and except for the sale of a conservatee's present or former personal residence as set forth in subdivision (b), sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

(b) In seeking authorization to sell a conservatee's present or former personal residence, consent and agree to partition of a conservatee's present or former personal residence, or bring an action for partition of a conservatee's present or former personal residence, the conservator shall notify the court that the present or former personal residence is proposed to be sold or partitioned and that the conservator has discussed the proposed sale or partition with the conservatee. The conservator shall inform the court whether the conservatee supports or is opposed to the proposed sale or partition and shall describe the circumstances that necessitate the proposed sale or partition, including whether the conservatee has the ability to live in the personal residence and why other alternatives, including, but not limited to, in-home care services, are not available. The court, in its discretion, may require the court investigator to discuss the proposed sale or partition with the conservatee.

(c) Notice under subdivision (b) shall be provided to the court before the conservator commits any significant resources to the proposed sale or partition of the residence, unless the conservator can establish that either the conservatee has the capacity to consent and unequivocally consents to the sale or partition, or there are exigent circumstances that require the conservator to commit resources to the sale or partition prior to court approval.

SEC. 3. Section 2541 of the Probate Code is amended to read:

2541. The guardian or conservator may sell real or personal property of the estate, consent and agree to partition of real or personal property of the estate, or bring an action for partition of real or personal property of the estate, in any of the following cases:

(a) If the income of the estate is insufficient for the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of the ward or conservatee if a patient in a state hospital under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services) or of those legally entitled to support, maintenance, or education from the ward or conservatee.

(b) If the sale or partition is necessary to pay the debts referred to in Sections 2430 and 2431.

(c) If the sale or partition is for the advantage, benefit, and best interest of (1) the ward or conservatee, (2) the estate, or (3) the ward or conservatee and those legally entitled to support, maintenance, or education from the ward or conservatee.

SEC. 4. Section 2541.5 of the Probate Code is amended to read:

2541.5. Notwithstanding Section 2541, the court may authorize a conservator to sell a conservatee's present or former personal residence, consent and agree to partition of a conservatee's present or former personal residence, or bring an action for partition of a conservatee's present or former personal residence, only if the court finds by clear and convincing evidence that the conservator demonstrated a compelling need to sell or partition the personal residence for the benefit of the conservatee.

SEC. 5. Section 2591 of the Probate Code is amended to read:

2591. The powers referred to in Section 2590 are:

(a) The power to operate, for a period longer than 45 days, at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.

(b) The power to grant and take options.

(c) (1) The power to sell at public or private sale real or personal property of the estate without confirmation of the court of the sale, other than the personal residence of a conservatee.

(2) The power to sell at public or private sale the personal residence of the conservatee as described in Section 2591.5 without confirmation of the court of the sale. The power granted pursuant to this paragraph is subject to the requirements of Sections 2352.5, 2540, 2541, and 2541.5.

(3) For purposes of this subdivision, authority to sell property includes authority to contract for the sale and fulfill the terms and conditions of the contract, including conveyance of the property.

(d) The power to create by grant or otherwise easements and servitudes.

(e) The power to borrow money.

(f) The power to give security for the repayment of a loan.

(g) The power to purchase real or personal property.

(h) The power to alter, improve, raze, replace, and rebuild property of the estate.

(i) The power to let or lease property of the estate, or extend, renew, or modify a lease of real property, for which the monthly rental or lease term exceeds the maximum specified in Sections 2501 and 2555 for any purpose (including exploration for and removal of gas, oil, and other minerals and natural resources) and for any period, including a term commencing at a future time.

(j) The power to lend money on adequate security.

(k) The power to exchange property of the estate.

(l) The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.

(m) The power to commence and maintain an action for partition. The power granted pursuant to this subdivision is subject to the requirements of Sections 2352.5, 2540, 2541, and 2541.5.

(n) The power to exercise stock rights and stock options.

(o) The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.

(p) The power to pay, collect, compromise, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship described in subdivision (a) of Section 2501, Section 2502 or 2504, or to arbitrate any dispute described in Section 2406.