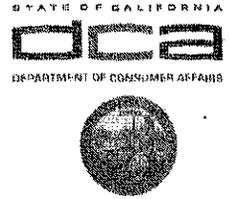




**Professional Fiduciaries Bureau**  
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## **Professional Fiduciaries Bureau Advisory Committee Meeting**

**Wednesday, July 31, 2013  
10:00 a.m. – 2:00 p.m.**

**Meeting Location:  
Department of Consumer Affairs-HQ2  
1747 North Market Boulevard, Emerald Room, Suite 184  
Sacramento, California 95834**

### **Committee Members:**

Marguerite Lorenz – Chair  
Barbara de Vries - Vice-Chair  
Donna Estacio  
Aileen Federizo

\*Webcast

## **AGENDA**

1. Call to Order – Marguerite Lorenz, Chair
2. Roll Call – Gil DeLuna, Former Acting Bureau Chief
3. Introductions
4. Swear-in Ceremony – Denise D. Brown, Director
  - Julia Ansel, Bureau Chief
  - Prescott Cole, Advisory Member
  - Kathleen Thomson, Advisory Member
5. Approval of the Meeting Minutes from April 3, 2013
6. Updates from the Director's Office – Executive Office

7. Education, Sub-Committee Report – Barbara de Vries, Sub-Committee Chair
  - Professional Fiduciaries Association of California (PFAC) Education Committee Presentation.
8. Bureau Update – Sonja Merold, Chief, Division of Programs and Policy Review
  - Status of the Bureau
  - FY To Date Statistics
  - E-Newsletter
  - Regulations
9. Bureau Budget Report – DCA Budget Analyst
10. Legislative Update – DCA Legislative Analyst
11. Future Agenda items
12. Future Meeting Dates
13. Public Comment on Items Not on the Agenda (See “**Note**” below)
14. Adjournment

\*The Advisory Committee meeting will be available via webcast.

**Note:** The Professional Fiduciaries Bureau Advisory Committee may not discuss or take action on any matter raised that is not included in this agenda. The Committee may however decide to place the matter on the agenda of a future meeting.

**Notice:** The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five working days before the meeting to the Bureau by contacting Angela Bigelow at (916) 574-7341, [angela.bigelow@dca.ca.gov](mailto:angela.bigelow@dca.ca.gov) or by sending a written request to the Professional Fiduciaries Bureau, 1625 North Market Blvd., Ste. S-209, Sacramento, California 95834. Requests for further information should be directed to Ms. Bigelow at the same address and telephone number.



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## MEMORANDUM

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #1 - Call to Order- Marguerite Lorenz, Chair Agenda Item #2 - Roll Call - Gil DeLuna, Former Acting Bureau Chief

Attachment #1 - Professional Fiduciaries Bureau Advisory Committee Members website page

### **Advisory Committee Members:**

Marguerite Lorenz - Chair

Barbara de Vries - Vice Chair

Donna Estacio - Public Member

Aileen Federizo - California Licensed Professional Fiduciary

Prescott Cole - Governor Appointee - Nonprofit organization advocating on behalf of the elderly

Kathleen Thomson - Governor Appointee - Probate Court Investigator

# **Attachment**

**#1**

## Department of Consumer Affairs Professional Fiduciaries Bureau

### Advisory Committee Members

Member	Appointment Type	Appointed By	Appointment Date	Appointment Expires
Kathleen Thomson	Probate Court Investigator	Governor	07/2013	1/1/2015
Barbara de Vries	CLPF	Governor	05/2012	1/1/2016
Aileen Federizo	CLPF	Governor	05/2012	1/1/2016
Donna Estacio	Public Member	Senate Rules Committee	03/2011	1/1/2015
Vacant	Public Member	Speaker of the Assembly		
Marguerite Lorenz	CLPF	Governor	05/2012	1/1/2016
Prescott Cole	Nonprofit organization advocating on behalf of the elderly	Governor	07/2013	1/1/2015

As of July 12, 2013

This web site contains PDF documents that require the most current version of Adobe Reader to view. To download click on the icon below.



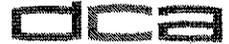
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Website: [www.fiduciary.ca.gov](http://www.fiduciary.ca.gov)**MEMORANDUM**

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #3 - Introductions

Attachment #2 – New Appointee Biographies

**Advisory Committee Members:**

Marguerite Lorenz – Chair, CLPF

Barbara de Vries – Vice Chair, CLPF

Aileen Federizo – CLPF

Donna Estacio – Public Member

Prescott Cole – Nonprofit organization advocating on behalf of the elderly

Kathleen Thomson – Probate Court Investigator

**PFB Staff Present:**

Julia Ansel, Bureau Chief

Sonja Merold, Chief, Division of Programs &amp; Policy Review

Gil DeLuna, Former Acting Bureau Chief

Angela Bigelow, Program Analyst

Angelique Scott, DCA Legal Counsel

# **Attachment**

**#2**

Julia Ansel, 44, of Fair Oaks, has been appointed chief of the Professional Fiduciaries Bureau at the California Department of Consumer Affairs. Ansel has been a private professional fiduciary at Ansel Fiduciary Services since 2012. She was an intern at Lisa J. Berg and Associates Inc. in 2012 and consultant at Creative Computer Services from 2010 to 2011. Ansel was a project manager and financial analyst at Agilent Technologies from 1999 to 2002 and a trust investment officer and trust investment associate at Northern Trust Bank from 1994 to 1999. Ansel earned a Master of Business Administration degree from the University of Miami, School of Business Administration. This position requires Senate confirmation and the compensation is \$57,218. Ansel is a Democrat.

Prescott Cole, 63, of Berkeley, has been appointed to the California Professional Fiduciaries Advisory Committee. Cole has been senior staff attorney at the California Advocates for Nursing Home Reform since 1995. He was law clerk at Cheasty Davis and Pollack Conservation Partners from 1990 to 1991, advertising sales agent for SF Weekly from 1989 to 1990 and advertising sales coordinator for the California Democratic Party from 1988 to 1989. Cole was a sales manager at Pacific Coast Chemicals Co. from 1987 to 1988 and at Abbot Cole and DeGraf Inc. from 1975 to 1987. He was staff reporter at the Sterling Colorado Journal-Advocate in 1974. Cole earned a Juris Doctorate degree from John F. Kennedy University. This position does not require Senate confirmation and the compensation is \$100 per diem. Cole is a Democrat.

Kathleen Thomson, 54, of Vacaville, has been appointed to the California Professional Fiduciaries Bureau Advisory Committee. Thomson has served as supervising court investigator at the Solano County Superior Court since 2006. She was a deputy public guardian at the Office of the Yolo County Public Guardian from 2002 to 2006 and was business owner at Global Asset Protection from 1997 to 2002. Thomson served as senior investigator at the San Francisco County District Attorney's Office from 1982 to 1997 and a complaint mediator at the California Department of Consumer Affairs from 1981 to 1982. This position does not require Senate confirmation and the compensation is \$100 per diem. Thomson is a Republican.



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## MEMORANDUM

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #4 - Swear-in Ceremony – DCA Director, Denise D. Brown

- Julia Ansel, Bureau Chief – Appointed by the Governor
- Prescott Cole, Advisory Committee Member – Appointed by the Governor to fill the position of Nonprofit Organization Advocating on Behalf of the Elderly
- Kathleen Thomson, Advisory Committee Member – Appointed by the Governor to fill the position of Probate Court Investigator



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## MEMORANDUM

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #5 - Approval of Meeting Minutes from April 3, 2013

Attachment #3 - Draft meeting minutes for April 3, 2013

Action:

Public Comment:

# **Attachment**

**#3**



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**Professional Fiduciaries Bureau  
 Advisory Committee Meeting  
 April 3, 2013**

**Van Nuys State Office Bldg.  
 6150 Van Nuys Blvd.  
 Van Nuys, CA 91401  
 Auditorium**

**Committee Members Present**

Marguerite Lorenz, Chair  
 Barbara de Vries, Vice Chair  
 Donna Estacio, Public Member  
 Aileen Federizo, CLPF

**Staff Present**

Gil DeLuna, Acting Bureau Chief  
 Angelique Scott, DCA Legal Counsel  
 Jenny Turner, Analyst

**I. Call to Order – Chair**

The meeting was called to order by Ms. Lorenz at 11:00a.m.

**II. Roll Call – Gil DeLuna, Acting Chief**

There were four members present and a quorum established at time of Roll Call.

**III. Introductions**

Ms. Lorenz introduced the Bureau employees.

**IV. Approval of Minutes from the January 23, 2013 Meeting**

Ms Lorenz and Ms. de Vries asked for amendments. Ms. de Vries motioned to approve the minutes with amendments. Second by Ms. Federizo. Motion carried.

**V. Update from the Director's Office – Gil DeLuna, Acting Chief**

Mr. DeLuna stated at the March 4, 2013 Executive Officer/Bureau Chief quarterly meeting information was received about new legislation to waive renewal requirements for active duty military personnel and to expedite application processing for spouses of active duty military personnel. The Department of Consumer Affairs (DCA) is also encouraging all Boards and Bureaus to update their Strategic Plan. DCA is creating a spring newsletter which will be distributed to Board and Bureau Chiefs and the Presidents of the Boards and Committees. The Professional Fiduciaries Bureau (Bureau) will distribute the spring newsletter to the interested parties which are signed up on the Bureau's list serve. Effective July 1, 2013 the Department of Real Estate (DRE), Appraisers, Chiropractic Board, and Pest Control Board will merge with DCA. DRE will become a Bureau and be under the control of the DCA Director.

The implementation of the DCA new legacy system, BreEZe, has been delayed by approximately 9 months. DCA is taking this time to make sure there will be no harm to the licensees and consumers when the system is implemented. Also, the vendor who is working with DCA will not receive any

payment for their work until the system is implemented so it is in the best interest of DCA to make sure the system will work properly.

Ms. Lorenz asked if the Bureau E-Newsletter will be completed prior to the Professional Fiduciary Association of California (PFAC) conference so that it can be put in the handouts as planned. Mr. DeLuna answered it is in the review and approval process and will be ready for the conference. Mr. Counts asked if the Bureau E-Newsletter will be available to anyone who is interested. Mr. DeLuna answered it will be posted on the Bureau website and sent electronically to the Bureau's list serve.

#### VI. Presentation – Professional Fiduciary Certificate Program, CSU Fullerton

Presenter: Kim Tang, Program Developer, California State University, Fullerton (CSUF)

Ms. Lorenz introduced Ms. Tang. Ms. Tang presented a power point presentation with an overview of the CSUF degree and certificate programs and a snapshot of the CSUF website.

CSUF saw a need for the fiduciary management program and established an on-campus certificate program. In 2006 CSUF saw a need to reach more professionals in California and developed an on-line certificate program. Updates to this program and instructors have been made throughout the years as needed.

The Certificate in Fiduciary Management for Trustees and Conservators program consists of 2 tracks: the first track is on Trusts and the other is on Conservatorships. Both tracks share 3 required courses: Standards and Practices, Trust Administration, and Accounting and Record Keeping.

The Trust certificate requires an additional course for Management of the Investment Portfolio. The Conservatorship certificate requires an additional course for Conservatorship of the Protected Person. Each course is 15 hours and lasts 5 weeks for a total of 60 hours of course time for each certificate. The courses are available to all qualified applicants. Not all applicants are trying to become a licensed Professional Fiduciary. Some of the applicants seek the education so they are able to take care of needs for their family members. The applicant must have one of the following to qualify: a Bachelor Degree, 60 units of semester work, or 3 years experience as a Fiduciary or in Geriatrics.

The Standards and Practices module gives an overview of the roles and responsibilities of a fiduciary, basic accounting knowledge, trust administration, prudent investing, and conservatorship.

Ms. Tang presented a list of instructors and their biographies.

Each module includes reading material, assignments, chat time, and quizzes. The topics are generated by the instructor then the students are able to ask questions and discuss the topics during chat time.

Chat time is done once a week for 1 hour.

The student is required to evaluate the course at the end of each module. The student gives the course a rating of 1-5 with 5 being the highest rating. The evaluations are forwarded to the sponsoring campus department review which is the Department of Finance and Division of Politics Administration and Justice. The courses are required to receive a rating of at least 3.5 to be in compliance.

Ms. Lorenz asked to receive a copy of the presentation as the committee was not able to read the screen. Ms. Tang will email a copy of the presentation.

Enrollment history for the CSUF Fiduciary Management Program over the last 3 years was 1,732 seats filled. Individual enrollment is approximately 200 each year or 66 each term: fall, spring, and summer. 137 students completed the Trustee Certificate Program and 133 students completed the Conservatorship Certificate Program. This number includes duplicates as some students completed both certificate programs. Mr. Counts asked how many of the students become licensed Professional Fiduciaries and Ms. Tang answered; CSUF does not keep statistics on that. Ms. Lorenz commented the Bureau requires 30 hours of prelicensing education and not the complete certificate so some applicants may be only getting the required number of hours and not completing the program.

Mr. Counts commented he took this program and feels there is a lack of detailed information but the information was good. He stated if the information was all a candidate learned about being a fiduciary, they would not necessarily be prepared to work as a fiduciary upon completion of the course.

Ms. Hatch stated she was one of the original developers and instructors for the CSUF program and feels the interaction between the students and instructor when it was an in-class program was crucial to see the fiduciary in person and their professionalism and demeanor. She would like to see the program go back to an in-class program.

Ms. de Vries agreed with Ms. Hatch and stated there should be training on family issues as well.

Ms. Tang clarified 1.5 units is equivalent to 15 hours.

A public comment was made by a recent graduate of the CSUF Fiduciary Management Program, that the on-line course was more demanding of the student than she anticipated, but in a good way. The course prepares the fiduciary to take the exam but does not prepare the fiduciary on how to start and run a fiduciary business.

Mr. Hlavaty stated originally the instructors had signed a confidentiality agreement with CSUF and wanted to know if that was still in effect. Ms. Tang answered any final product that is being used by CSUF, is property of CSUF. If new content or programs are created, they are not covered under the agreement.

Ms. Peters commented the presentation stated the certificate program can be completed in one semester and she does not think this is possible. Ms. Tang stated it is possible if the student signs up for both classes simultaneously.

Mr. Hlavaty stated University California Riverside (UCR) also started with an in-class program and now is part in-class and part on-line. He feels there is better performance with an in-class program; however, to make a program successful in California you need the flexibility of both.

Ms. Federizo stated the CSUF program is good but is lacking in practical experience. She asked if the Bureau has authority to add required education for the applicant and Ms. Scott stated the Bureau can only specify what is required within the 30 hours of required pre-licensing education. The Bureau cannot add additional hours.

Mr. Hlavaty stated he had signed up to be available as a mentor with CSUF some time ago and wanted to know if that list was still offered to the students. Ms. Tang answered; CSUF does not have a formal list at this time. She does put students in contact with former students if they ask for a mentor.

Ms. de Vries, Ms. Michaels, and Mr. Stubbs stated they each offer mentoring programs. Mr. Stubbs stated when he was an instructor he would offer his contact information to students and also suggest they find a mentor in the area of California they would be working.

Mr. Counts stated he does not think CSUF should run the mentoring program as it should be done face-to-face and not on-line. He suggested PFAC run a program. Ms. Hatch stated PFAC already has a program in place.

Ms. Kreamer asked for clarification of the hands-on learning portion of the CSUF program. Ms. Tang explained students are given Inventory & Appraisals, Court Accountings, and sample Investment Portfolios to analyze. Ms. Lorenz stated she found the Investment Portfolio training to be inadequate for real life cases and proposes the course include more than information on just Mutual Funds.

Mr. Hlavaty stated practical experience is hard to teach much like case studies in law school. UCR has a business practices class which teaches how to set-up and operate a business and also has a class on marshalling and management of assets.

Ms. McNamara asked that the CSUF advisory board members be looked at and possibly re-evaluated for the make-up of the board for more diversity.

Ms. Hatch stated there should be an internship prior to being licensed and suggested partnering with the public guardian office. She asked if the Bureau could require public guardians to be licensed as is done in other states.

Ms. Scott stated Business and Profession Code 6533 lists the requirements to apply for licensure and Title 16, Section 4444 lists the pre-licensing and continuing education requirements. The Bureau has the authority to approve as stated in the law and regulation. She stated the Advisory Committee can vote to form a sub-committee to discuss the education requirements in regulation. In order for public guardians

to be required to obtain a license from the Bureau there would have to be a change in the law. This may be something PFAC could address.

A public comment was made that licensed fiduciaries are concerned about the liability for themselves when taking on an intern due to confidentiality issues.

Mr. DeLuna stated he has been invited to serve on an advisory board for Cal Berkeley to develop a fiduciary management course for their extension program. He will take the ideas from this meeting to that board. He stated there should be consistency in the content of the materials for any program that is offered.

Ms. Lorenz stated a sub-committee should explore new educational opportunities, review existing opportunities and suggest improvements, and look at improving the existing regulations. Ms. Estacio moved to develop an Education Sub-Committee. A second was made by Ms. Federizo. A vote was taken and the motion carried. Ms. de Vries and Ms. Lorenz nominated themselves to the serve on this sub-committee. Mr. Counts asked to volunteer to be part of the sub-committee and Ms. Lorenz stated once the sub-committee meets they would decide how to proceed. Ms. Tang stated CSUF would also like to be involved if possible.

Ms. McNamara asked for clarification of the relationship between CSUF and the Bureau. Mr. DeLuna answered providers are approved in the existing regulations. CSUF qualifies because they are approved by a Nationally Accrediting Agency. At this time, if a provider needs to be added and does not qualify under the existing regulations, the Bureau would have to make a change to the regulations. The Bureau would like to see the regulations reflect criteria on how to approve a course or a provider in the future.

12:23 – 1:00 Break

#### VII. Continuing Education Credits – Committee Chair

Ms. Lorenz requested fiduciaries who teach a course to fiduciaries is given 2 continuing education hours credit for each hour taught. This would encourage licensed fiduciaries to share their knowledge with newer fiduciaries.

Mr. DeLuna stated currently, Section 4442 of the California Code of Regulations allows 1.5 hours earned for each hour taught for a maximum of 6 of the 15 required continuing education hours. The fiduciary certifies under penalty of perjury the hours have been completed and the Bureau has the authority to audit the continuing education records of the licensed fiduciary. If the fiduciary has reported hours they have not completed, their license is subject to a citation.

#### VIII. Bureau Update – Gil DeLuna, Acting Chief

- Status of the Bureau – Mr. DeLuna is still Acting Bureau Chief. This is a Governor appointed position. The Advisory Committee is at quorum level, but is still awaiting appointment of 3 positions. The DCA Executive office has contacted the Governor's Appointment Secretary and is awaiting a response. At this time the Governor's office is focusing on appointing members to Boards and Advisory Committees that are not at quorum level and unable to hold required meetings. Ms. Federizo stated she was contacted by the Governor's office and asked for referrals for the vacant positions.
- FY to Date Statistics – To date 683 licenses have been issued, 90 have chosen not to renew, leaving 593 active licensees, 7 citations have been issued, 6 licensees are currently on probation, 67 complaints have been received this fiscal year, 85 complaints have been closed, and the Bureau is taking an average of 198 days to close a complaint.

Mr. Counts suggested the Bureau do a survey of the licensees who have not renewed to determine why they are not renewing.

Ms. Hatch requested a procedure be created so that licensees may be listed as retired on the Bureau's website. Mr. DeLuna answered this would have to be a change in regulation. There

was a public comment that the Bureau staff is impressive on following up on the annual statements and clarifying information.

Ms. Lorenz clarified the designations needed are delinquent, deceased, retired, and inactive. Ms. Scott stated the upcoming BreZE system will not allow the Bureau to create their own titles and definitions; these will be standard for all of DCA. Ms. Lorenz asked to add an agenda item for the next Advisory Committee Meeting to receive an update from the Bureau of the formal designations DCA will allow and fiduciaries will have to adapt to or the possibility of a regulation change to provide appropriate designations for licensees.

Ms. Lorenz stated the courts are the first to know if a fiduciary is holding themselves out to be licensed with the Bureau and this may be a good way for the Bureau to catch unlicensed activity.

Ms. Federizo asked for additional information on the types of citations issued. Mr. DeLuna answered citations are similar to a fix-it ticket and may be for charges the Bureau considers to be self serving activities such as charging a client for talking to the Bureau in response to a complaint filed with the Bureau, not being truthful when answering the questions on the annual statement, or for unlicensed activity. Mr. Counts suggested the Advisory Committee offer the Bureau guidance for guidelines of what is acceptable behavior to be published for the licensees. Ms. Scott stated that the committee can establish a sub-committee to review the Code of Ethics, Article 4 of the California Code of Regulations. This would allow a sub-committee of 2 to discuss and come up with ideas and suggestions for changes to this Article, if necessary, to be presented to the Committee and public at a future meeting. Mr. DeLuna stated focus should remain that consumer protection is paramount.

Ms. Lorenz motioned to create a Code of Ethics sub-committee. Second, by Ms. Federizo. None were opposed and the motion carried. Ms. Federizo and Ms. Lorenz were nominated to the sub-committee.

- E-Newsletter – The newsletter has 2 more reviews to go through before it is ready. Ms. Lorenz asked if the Bureau will be providing 700 copies to PFAC for their conference and Mr. DeLuna answered the Bureau does not have a budget to provide copies and the newsletter will be sent electronically. PFAC can make copies for their conference if they would like to.
- Form 700's – Mr. DeLuna state all public officials are required to report annually on the Form 700 any gifts they have received and any potential conflicts of interest they might have. This was due by April 1, 2013. An attachment was included in the materials with the changes in the gift policy for this year.
- Budget Report – Mr. DeLuna presented the Bureau's budget to date. At this time there is a 1 ½ month reserve which is on target for what the Bureau expected.

Ms. McNamara asked how many licensed fiduciaries are needed in order for the Bureau to have more employees and be able to keep up with the work. Mr. DeLuna answered that it is hard to say at this time. Originally there was an expectation of 1300 licensees and this has not happened yet. As the licensee base increases so will the workload.

Ms. McNamara also asked how the number of non-renewals will impact the budget. Mr. DeLuna answered the Bureau should be fine for the next 1-2 years, but will need to be proactive in determining why the profession is not growing. Ms. Lorenz commented it is the duty of licensed fiduciaries to educate people that the profession exists and why the consumer may need a fiduciary.

#### IX. Strategic Plan Timelines - Bureau

Mr. DeLuna stated the Bureau met with the DCA SOLID employees to discuss a timeline for the PFB Strategic Plan. At the last Advisory Committee Meeting the Committee Members had decided on a date in May 2013 to meet for planning purposes, however, SOLID is not available until August 2013. A chart is included in the materials for a timeline. Preliminary set up prior to the meeting will be done by phone

with the Committee Members. The goal is to have this process completed by January 2014. The Committee Members decided on a date for the next Advisory Committee Meeting on July 31, 2013 and the Strategic Planning Meeting on August 1, 2013. The meetings will be held in Sacramento.

#### X. Legislative Update - Bureau

Mr. DeLuna stated there are many bills that will affect all of DCA. A complete list can be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov). There are five that will directly affect PFB licensees.

AB381 – This bill would extend existing double damage provisions in the probate court to a person who misappropriates property through undue influence in bad faith or through the commission of elder or dependent adult financial abuse. This bill would also provide for liability for attorney's fees and costs.

AB1029 – This bill would revise and recast the requirements by which a trustee is to determine whether money received from a distributing entity is to be treated as a partial liquidation.

SB60 – This bill would include victims of human trafficking and victims of specified forms of elder or dependent adult abuse within the definition of crimes that are eligible for compensation under these provisions.

SB156 – This bill would declare the intent of the Legislature to enact legislation that would limit the ability of an attorney who represents a conservator to charge a fee for managing a conservatorship when the conservator challenges this management.

AB1339 – This bill would require that when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner is a professional fiduciary, as defined, the petition also include the petitioner's proposed hourly fee schedule or another statement of the petitioner's proposed compensation from the estate of the proposed conservatee for services performed.

A public member requested a copy of this information since there were not enough packets available for the public at this meeting. Mr. DeLuna stated the materials are on the Bureau's website, but if anyone would like him to email or mail the materials to please let him know after the meeting today.

Ms. Lorenz explained meeting minutes are approved by Committee vote at the following meeting and will be posted on the Bureau's website within 3 weeks after the meeting.

Mr. DeLuna explained the Bureau is required to hold 4 meetings a year, however, meetings cannot be held if a quorum cannot be established.

#### XI. Future Meeting Dates and Agenda items

Next quarterly meeting will be in Sacramento on July 31, 2013

Strategic Planning meeting will be in Sacramento on August 1, 2013

Agenda Items:

-Ms. Lorenz asked to add an agenda item for the next Advisory Committee Meeting to receive an update from the Bureau of the formal designations DCA will allow and fiduciaries will have to adapt to or the possibility of a regulation change to provide appropriate designations for licensees.

-Education Sub-Committee updates.

-Code of Ethics Sub-Committee update.

-Licensed Professional Fiduciary to be required to list license number on all advertisement.

#### XII. Public Comment on Items Not on the Agenda

Mr. Stubbs would like a requirement that licensed fiduciaries list their license number on all correspondence, business cards, invoices, and all other official documents and advertisements.

#### XIII. Adjournment

Time of adjournment was approximately 2 p.m..



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## MEMORANDUM

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #6 - Updates from the DCA Director's Office, DCA Executive Office

Public Comment:



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## MEMORANDUM

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #7 – Education, Sub-Committee Report – Barbara de Vries, Sub-Committee Chair

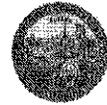
Report on UC Berkeley Extension Program – Committee Chair, Barbara de Vries

Professional Fiduciaries Association of California (PFAC) Education Committee Presentation – Marilyn Bessey

Public Comment:



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## MEMORANDUM

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #8 – Bureau Update, Sonja Merold, Chief, Division of Programs and Policy Review

### Status of the Bureau – Sonja Merold, Chief, Division of Programs and Policy Review

- Status of the Bureau
- FY to Date Statistics
- Bureau - E-Newsletter
- Regulations
- Public Comment:



**Professional Fiduciaries Bureau**  
Post Office Box 989005  
West Sacramento, CA 95798-9005  
Telephone: (916) 574-7340 FAX (916) 574-8645  
Website: [www.fiduciary.ca.gov](http://www.fiduciary.ca.gov)



## MEMORANDUM

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #9 – Budget Report – DCA Budget Analyst

Attachment #4 – Budget Report  
Attachment #5 – PowerPoint Presentation Slides

Public Comment:

# **Attachment**

**#4**

# 3108 - Professional Fiduciaries Bureau Analysis of Fund Condition

Prepared 7/24/2013

(Dollars In Thousands)

## Pre-Lim Fiscal Month 13

	Actuals 2012-13	Budget Act CY 2013-14	BY 2014-15	BY +1 2015-16	BY +2 2016-17
<b>BEGINNING BALANCE</b>	\$ 237	\$ 347	\$ 480	\$ 607	\$ 725
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 237	\$ 347	\$ 480	\$ 607	\$ 725
<b>REVENUES AND TRANSFERS</b>					
Revenues:					
125600 Other regulatory fees	\$ 7	\$ 7	\$ 7	\$ 7	\$ 7
125700 Other regulatory licenses and permits	\$ 116	\$ 145	\$ 145	\$ 145	\$ 145
125800 Renewal fees	\$ 353	\$ 420	\$ 420	\$ 420	\$ 420
125900 Delinquent fees	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 1	\$ 1	\$ 2	\$ 2	\$ 8
150500 Interest from Interfund loan	\$ -	\$ -	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -	\$ -	\$ -
Totals, Revenues	\$ 479	\$ 575	\$ 576	\$ 576	\$ 582
Transfers from Other Funds					
Transfers to Other Funds					
Totals, Revenues and Transfers	\$ 479	\$ 575	\$ 576	\$ 576	\$ 582
Totals, Resources	\$ 716	\$ 922	\$ 1,056	\$ 1,183	\$ 1,307
<b>EXPENDITURES</b>					
Disbursements:					
0840 State controller (State Operations)	\$ 1	\$ -	\$ -	\$ -	\$ -
8860 FSCU (State Operations)	\$ 2	\$ 2	\$ -	\$ -	\$ -
1111 Program Expenditures (State Operations) -	\$ 366	\$ 440	\$ 449	\$ 458	\$ 467
9670 Equity Claims / Board of Control (State Operations)	\$ -	\$ -	\$ -	\$ -	\$ -
Total Disbursements	\$ 369	\$ 442	\$ 449	\$ 458	\$ 467
<b>FUND BALANCE</b>					
Reserve for economic uncertainties	\$ 347	\$ 480	\$ 607	\$ 725	\$ 840
<b>Months in Reserve</b>	9.4	12.8	15.9	18.6	21.2

### NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ONGOING
- B. EXPENDITURE GROWTH PROJECTED AT 2%
- C. ASSUMES 0.3% GROWTH IN INCOME FROM SURPLUS MONEY

# **Attachment**

**#5**

**Professional Fiduciary Bureau  
Budget Overview – July 31, 2013**

# Budget Update as of July 31, 2013

- Prior Year – Preliminary Fiscal Month 13
- Current Year – FY 2013-14
- Current Fund Condition
- Questions

# FY 2012-13 – Pre-Lim Fiscal Month 13

## Expenditures

- Budget \$403,156
- FM13 Expenditures \$366,497 (90.9%)
- Estimated Reversion \$36,659 (9.1%)

## Revenue

- Estimated Revenue \$491,000
- FM 13 Revenue \$478,692 (97.5%)

# Current Year – FY 2013-14

## Expenditures

- Budget - \$440,000

## Revenue

- Estimated Revenue - \$575,000

# 3108 - Professional Fiduciaries Bureau

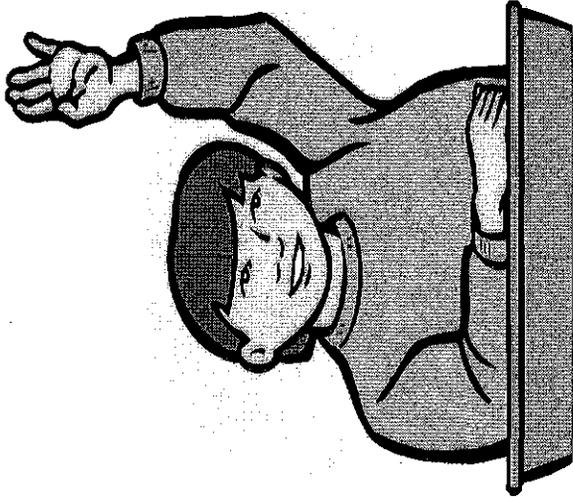
## Analysis of Fund Condition

Prepared 7/24/2013

(Dollars in Thousands)

Pre-Lim Fiscal Month 13	Budget				
	Actuals 2012-13	Act CY 2013-14	BY 2014-15	BY +1 2015-16	BY +2 2016-17
<b>BEGINNING BALANCE</b>	\$ 237	\$ 347	\$ 480	\$ 607	\$ 725
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 237	\$ 347	\$ 480	\$ 607	\$ 725
<b>REVENUES AND TRANSFERS</b>					
Revenues:					
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Total Disbursements	\$ 369	\$ 442	\$ 449	\$ 458	\$ 467
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Months in Reserve	9.4	12.8	15.9	18.6	21.2
<b>NOTES:</b>					
A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ONGOING					
B. EXPENDITURE GROWTH PROJECTED AT 2%					
C. ASSUMES 0.3% GROWTH IN INCOME FROM SURPLUS MONEY					

Questions?





## Professional Fiduciaries Bureau

Post Office Box 989005

West Sacramento, CA 95798-9005

Telephone: (916) 574-7340 FAX (916) 574-8645

Website: [www.fiduciary.ca.gov](http://www.fiduciary.ca.gov)

## MEMORANDUM

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #10 – Legislative Update – DCA Legislative Analyst

Attachment #6 – List of DCA-Wide Legislation for 2013

Attachment #7 – Legislation relevant to Professional Fiduciaries

Below is the list of bills the Bureau is following that are relevant to Professional Fiduciaries, Conservatorships, and Estates/Trusts.

**AB 381 (Chau) Estates and trusts: undue influence and elder abuse.**

**AB 937 (Wieckowski) Conservators and guardians: personal rights of conservatees.**

**AB 1029 (Maienschein) Trusts and estates: allocations of receipts.**

**AB 1339 (Maienschein) Professional fiduciaries: guardians and conservators.**

**SB 156 (Beall) Conservatorships and guardianships: attorney's fees.**

Public Comment:

# **Attachment**

**#6**

DCA-Wide Legislation

June 26, 2013

\* Gray = Two-Year Bill \*

Bill	Author	Title	Analyst	Location
<u>AB 171</u>	<u>Chávez R</u>	Department of Veterans Affairs: consolidation of services to veterans.	Scott Allen	5/3/2013-A. 2 YEAR
<u>AB 186</u>	<u>Malenschein R</u>	Professions and vocations: military spouses: temporary licenses.	Scott Allen	6/24/2013-S. 2 YEAR
<u>AB 258</u>	<u>Chávez R</u>	State agencies: veterans.	Scott Allen	6/11/2013-S. THIRD READING
<u>AB 231</u>	<u>Nestande R</u>	California Sunset Review Commission.	Ryan Arnold	5/3/2013-A. 2 YEAR
<u>AB 376</u>	<u>Donnelly R</u>	Regulations: notice.	Ryan Arnold	5/3/2013-A. 2 YEAR
<u>AB 393</u>	<u>Cooley D</u>	Office of Business and Economic Development: Internet Web site.	John Perry	6/24/2013-A. DESK
<u>AB 772</u>	<u>Jones R</u>	Consumer affairs: intervention in state agency or court proceedings.	Ryan Arnold	5/10/2013-A. 2 YEAR
<u>AB 866</u>	<u>Linder R</u>	Regulations.	Ryan Arnold	5/3/2013-A. 2 YEAR
<u>AB 894</u>	<u>Mansoor R</u>	Consumer affairs.	Ryan Arnold	5/10/2013-A. 2 YEAR
<u>AB 1013</u>	<u>Gomez D</u>	Consumer affairs.	Ryan Arnold	5/3/2013-A. 2 YEAR
<u>AB 1017</u>	<u>Gomez D</u>	Incoming telephone calls: messages.	Greg Pruden	5/3/2013-A. 2 YEAR
<u>AB 1057</u>	<u>Medina D</u>	Professions and vocations: licenses: military service.	Scott Allen	6/25/2013-S. THIRD READING
<u>SB 44</u>	<u>Yee D</u>	State Internet Web sites: online voter registration.	Greg Pruden	6/12/2013-A. APPR.
<u>SB 176</u>	<u>Galgiani D</u>	Administrative procedures.	Ryan Arnold	6/18/2013-A. A. & A.R.
<u>SB 570</u>	<u>DeSaulnier D</u>	Public records: copy charges: retrieval.	Ryan Arnold	5/30/2013-A. DESK
<u>SB 690</u>	<u>Price D</u>	Licenses.	Greg Pruden	5/10/2013-S. 2 YEAR
<u>SB 723</u>	<u>Correa D</u>	Veterans.	Scott Allen	6/19/2013-A. APPR.
<u>SB 822</u>	Senate B&P Committee	Professions and vocations.	Scott Allen	6/18/2013-A. APPR.

# Attachment

**#7**

**Assembly Bill No. 381**

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Passed the Assembly July 3, 2013

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*Chief Clerk of the Assembly*

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Passed the Senate July 1, 2013

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 2013, at \_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 859 and 4231.5 of the Probate Code, relating to estates and trusts.

## LEGISLATIVE COUNSEL'S DIGEST

AB 381, Chau. Estates and trusts: undue influence and elder abuse.

(1) Existing law provides that a person found liable for taking, concealing, or disposing of property belonging to the estate of a decedent, conservatee, minor, or trust through the use of undue influence in bad faith, or through the commission of elder or dependent adult financial abuse, is liable for twice the value of the property. Existing law provides that this remedy is additional to any other remedy available at law.

This bill would provide that a person may, in the court's discretion, be liable for reasonable attorney's fees and costs in these actions, except as specified. The bill would specifically apply these provisions to property belonging to an elder or a dependent adult. The bill would make technical changes with regard to the nonexclusive character of the remedy provided.

(2) Existing law provides that a person who, in bad faith, wrongfully takes, conceals, or disposes of property belonging to a principal under a power of attorney is liable for twice the value of the property recovered by an action to recover the property or for surcharge.

This bill would extend this liability to a person who has taken, concealed, or disposed of property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined. The bill would provide that a person may, in the court's discretion, be liable for reasonable attorney's fees and costs under these provisions and those described above, except as specified.

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

SECTION 1. Section 859 of the Probate Code is amended to read:

859. If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to a conservatee, a minor, an elder, a dependent adult, a trust, or the estate of a decedent, or has taken, concealed, or disposed of the property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code, the person shall be liable for twice the value of the property recovered by an action under this part. In addition, except as otherwise required by law, including Section 15657.5 of the Welfare and Institutions Code, the person may, in the court's discretion, be liable for reasonable attorney's fees and costs. The remedies provided in this section shall be in addition to any other remedies available in law to a person authorized to bring an action pursuant to this part.

SEC. 2. Section 4231.5 of the Probate Code is amended to read:

4231.5. (a) If the attorney-in-fact breaches a duty pursuant to this division, the attorney-in-fact is chargeable with any of the following, as appropriate under the circumstances:

(1) Any loss or depreciation in value of the principal's property resulting from the breach of duty, with interest.

(2) Any profit made by the attorney-in-fact through the breach of duty, with interest.

(3) Any profit that would have accrued to the principal if the loss of profit is the result of the breach of duty.

(b) If the attorney-in-fact has acted reasonably and in good faith under the circumstances as known to the attorney-in-fact, the court, in its discretion, may excuse the attorney-in-fact in whole or in part from liability under subdivision (a) if it would be equitable to do so.

(c) If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property that belongs to a principal under a power of attorney, or has taken, concealed, or disposed of property that belongs to a principal under a power of attorney by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code, the person shall be liable for twice the value of the property recovered by an action to recover the property or for surcharge. In addition, except as

otherwise required by law, including Section 15657.5 of the Welfare and Institutions Code, the person may, in the court's discretion, be liable for reasonable attorney's fees and costs to the prevailing party. The remedies provided in this section shall be in addition to any other remedies available in law to the principal or any successor in interest of the principal.

AMENDED IN ASSEMBLY MAY 8, 2013  
AMENDED IN ASSEMBLY APRIL 18, 2013  
AMENDED IN ASSEMBLY MARCH 21, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 937**

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**Introduced by Assembly Member Wieckowski**

February 22, 2013

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An act to amend Section 2351 of the Probate Code, relating to conservators and guardians.

LEGISLATIVE COUNSEL'S DIGEST

AB 937, as amended, Wieckowski. Conservators and guardians: personal rights of conservatees.

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.

This bill would provide 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 or necessary to protect the conservatee from abuse.

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

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

1 SECTION 1. Section 2351 of the Probate Code is amended to  
2 read:

3 2351. (a) Subject to subdivision (b), the guardian or  
4 conservator, but not a limited conservator, has the care, custody,  
5 and control of, and has charge of the education of, the ward or  
6 conservatee. This control shall not extend to personal rights  
7 retained by the conservatee, including, but not limited to, the right  
8 to receive visitors, telephone calls, and *personal* mail, unless  
9 specifically limited by court order ~~or necessary to protect the~~  
10 ~~conservatee from abuse.~~

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

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

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

23 (c) An order under this section (1) may be included in the order  
24 appointing a conservator of the person or (2) may be made,  
25 modified, or revoked upon a petition subsequently filed, notice of  
26 the hearing on the petition having been given for the period and  
27 in the manner provided in Chapter 3 (commencing with Section  
28 1460) of Part 1.

29 (d) The guardian or conservator, in exercising his or her powers,  
30 may not hire or refer any business to an entity in which he or she  
31 has a financial interest except upon authorization of the court. Prior  
32 to authorization from the court, the guardian or conservator shall  
33 disclose to the court in writing his or her financial interest in the  
34 entity. For the purposes of this subdivision, "financial interest"  
35 shall mean (1) an ownership interest in a sole proprietorship, a  
36 partnership, or a closely held corporation, or (2) an ownership  
37 interest of greater than 1 percent of the outstanding shares in a  
38 publicly traded corporation, or (3) being an officer or a director

1 of a corporation. This subdivision shall apply only to conservators  
2 and guardians required to register with the Statewide Registry  
3 under Chapter 13 (commencing with Section 2850).

O

**Assembly Bill No. 1029**

\_\_\_\_\_  
Passed the Assembly July 3, 2013

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_  
Passed the Senate July 1, 2013

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_  
This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 2013, at \_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 16350 of the Probate Code, relating to trusts and estates.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1029, Maienschein. Trusts and estates: allocations of receipts.

Existing law regulates the administration of trusts and the estates of decedents and establishes the Uniform Principal and Income Act. Existing law defines "income" in this regard and prescribes rules for determining the character of money received from an entity. Existing law generally requires that money received from an entity be allocated to income, but provides that money received in total or partial liquidation of the entity is allocated to principal. Existing law establishes rules for determining whether money is received in partial liquidation, including if the total amount of money and property received by all owners, collectively, in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as specified.

This bill would revise and recast the requirements by which a trustee is to determine whether money received from a distributing entity is to be treated as a partial liquidation. The bill would provide that a trustee is not liable for any claim of improper allocation of the receipt that is based on information that was not received or actually known by the trustee as of the date of allocation, provided that the trustee satisfies specified requirements. The bill would also make various technical changes.

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

SECTION 1. Section 16350 of the Probate Code is amended to read:

16350. (a) For the purposes of this section:

(1) "Entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or decedent's estate to

which Section 16351 applies, a business or activity to which Section 16352 applies, or an asset-backed security to which Section 16367 applies.

(2) "Capital asset" means a capital asset as defined in Section 1221 of the Internal Revenue Code.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate to principal the following receipts from an entity:

(1) Property other than money.

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.

(3) Money received in total liquidation of the entity or in partial liquidation of the entity, as defined in subdivision (d).

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) For purposes of paragraph (3) of subdivision (c), money shall be treated as received in partial liquidation to the extent the amount received from the distributing entity is attributable to the proceeds from a sale by the distributing entity, or by the distributing entity's subsidiary or affiliate, of a capital asset. The following shall apply to determine whether money is received in partial liquidation:

(1) A trustee may rely without investigation on a written statement made by the distributing entity regarding the receipt.

(2) A trustee may rely without investigation on other information actually known by the trustee regarding whether the receipt is attributable to the proceeds from a sale by the distributing entity, or by the distributing entity's subsidiary or affiliate, of a capital asset.

(3) With regard to each receipt from a distributing entity, if within 30 days from the date of the receipt the distributing entity provides no written statement to the trustee that the receipt is a distribution attributable to the proceeds from a sale of a capital asset by the distributing entity or by the distributing entity's subsidiary or affiliate and the trustee has no actual knowledge that the receipt is a distribution attributable to the proceeds from a sale

of a capital asset by the distributing entity or by the distributing entity's subsidiary or affiliate, then the following shall apply:

(A) The trustee shall have no duty to investigate whether the receipt from the distributing entity is in partial liquidation of the entity.

(B) If, on the date of receipt, the receipt from the distributing entity is in excess of 10 percent of the value of the trust's interest in the distributing entity, then the receipt shall be deemed to be received in partial liquidation of the distributing entity, and the trustee shall allocate all of the receipt to principal. For purposes of this subparagraph, the value of the trust's interest in the distributing entity shall be determined as follows:

(i) In the case of an interest that is a security regularly traded on a public exchange or market, the closing price of the security on the public exchange or market occurring on the last business day before the date of the receipt.

(ii) In the case of an interest that is not a security regularly traded on a public exchange or market, the trust's proportionate share of the value of the distributing entity as set forth in the most recent appraisal, if any, actually received by the trustee and prepared by a professional appraiser with a valuation date within three years of the date of the receipt. The trustee shall have no duty to investigate the existence of the appraisal or to obtain an appraisal nor shall the trustee have any liability for relying upon an appraisal prepared by a professional appraiser. The term "professional appraiser" shall refer to an appraiser who has earned an appraisal designation for valuing the type of property subject to the appraisal from a recognized professional appraiser organization.

(iii) If the trust's interest in the distributing entity cannot be valued under clause (i) or clause (ii), the trust's proportionate share of the distributing entity's net assets, to be calculated as gross assets minus liabilities, as shown in the distributing entity's yearend financial statements immediately preceding the receipt.

(iv) If the trust's interest in the distributing entity cannot be valued under clause (i), (ii), or (iii), the federal cost basis of the trust's interest in the distributing entity on the date immediately before the date of the receipt.

(e) If a trustee allocates a receipt to principal in accordance with subdivision (d), or allocates a receipt to income because the receipt is not determined to be in partial liquidation under subdivision (d),

the trustee shall not be liable for any claim of improper allocation of the receipt that is based on information that was not received or actually known by the trustee as of the date of allocation.

(f) (1) Notwithstanding anything to the contrary in subdivision (d), if the receipt was allocated between December 2, 2004, and July 18, 2005, a trustee shall not be liable for allocating the receipt to income if the amount received by the trustee, when considered together with the amount received by all owners, collectively, exceeded 20 percent of the entity's gross assets, but the amount received by the trustee did not exceed 20 percent of the entity's gross assets.

(2) Money is not received in partial liquidation, nor may it be taken into account under subdivision (d), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary is required to pay on taxable income of the entity that distributes the money.

AMENDED IN SENATE JUNE 24, 2013  
AMENDED IN SENATE JUNE 10, 2013  
AMENDED IN ASSEMBLY APRIL 22, 2013  
AMENDED IN ASSEMBLY MARCH 21, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1339**

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**Introduced by Assembly Member Maienschein**

February 22, 2013

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An act to amend Sections 1510, 1821, 2250, and 2643 of, and to add Sections ~~2614.7~~ 2614.7, 2614.8, and 2643.1 to, the Probate Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

AB 1339, as amended, Maienschein. Professional fiduciaries: guardians and conservators.

Existing law provides that a relative or other person on behalf of a minor, or a minor if he or she is 12 years of age or older, may file a petition for the appointment of a guardian of the person or estate of the minor. Existing law also provides that certain persons may file a petition for the appointment of a conservator. Existing law provides that on or after the filing of a petition for appointment of a guardian or conservator, a person entitled to petition for the appointment of a guardian or conservator may file a petition for the appointment of a temporary guardian or temporary conservator, as specified. Under existing law, when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner is a professional fiduciary, as defined, the petition must include specified additional information, including the

petitioner's license information and a statement explaining who engaged the petitioner or how the petitioner was engaged to file the petition for appointment of a conservator and what prior relationship the petitioner had with the proposed conservatee or the proposed conservatee's family or friends.

This bill would require that when a petition to appoint a conservator or a temporary conservator is filed, and the petitioner or proposed conservator is a professional fiduciary, as defined, the petition also include the petitioner's or proposed conservator's proposed hourly fee schedule or another statement of the petitioner's or proposed conservator's proposed compensation from the estate of the proposed conservatee for services performed.

This bill would also require, when a petition to appoint a guardian or temporary guardian is filed, and the petitioner or proposed guardian is a professional fiduciary, as defined, the petition to include the same additional information as when a professional fiduciary files a petition to appoint a conservator or a temporary conservator.

Existing law requires, within 90 days of a guardian's or conservator's appointment, the guardian or conservator to file an inventory and appraisal.

This bill would require the guardian or conservator, if he or she is a professional fiduciary, as defined, to file concurrently with the inventory and appraisal a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed. *The bill would also authorize the guardian or conservator to submit a new proposed hourly fee schedule or another statement of his or her proposed compensation at any time on or after one year from the original submission, as specified.*

Existing law permits the court, on petition by the guardian or conservator, to authorize periodic payments on account to the guardian or conservator for the services rendered by those persons during the period covered by each payment.

This bill would permit the court, on petition by a guardian or conservator who is a professional fiduciary, as defined, to authorize periodic payments on account only if the guardian or conservator filed a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed with the inventory and appraisal and only after addressing all objections to the petition. This bill would also provide that the authorization for periodic payments to a guardian or conservator

who is a professional fiduciary, as defined, shall terminate ~~as of~~ *on a date determined by the court, but not later than* the due date of the next succeeding accounting.

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

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

1 SECTION 1. Section 1510 of the Probate Code is amended to  
2 read:

3 1510. (a) A relative or other person on behalf of the minor, or  
4 the minor if 12 years of age or older, may file a petition for the  
5 appointment of a guardian of the minor. A relative may file a  
6 petition for the appointment of a guardian under this section  
7 regardless of the relative's immigration status.

8 (b) The petition shall request that a guardian of the person or  
9 estate of the minor, or both, be appointed, shall specify the name  
10 and address of the proposed guardian and the name and date of  
11 birth of the proposed ward, and shall state that the appointment is  
12 necessary or convenient.

13 (c) The petition shall set forth, so far as is known to the  
14 petitioner, the names and addresses of all of the following:

15 (1) The parents of the proposed ward.

16 (2) The person having legal custody of the proposed ward and,  
17 if that person does not have the care of the proposed ward, the  
18 person having the care of the proposed ward.

19 (3) The relatives of the proposed ward within the second degree.

20 (4) In the case of a guardianship of the estate, the spouse of the  
21 proposed ward.

22 (5) Any person nominated as guardian for the proposed ward  
23 under Section 1500 or 1501.

24 (6) In the case of a guardianship of the person involving an  
25 Indian child, any Indian custodian and the Indian child's tribe.

26 (d) If the petitioner or proposed guardian is a professional  
27 fiduciary, as described in Section 2340, who is required to be  
28 licensed under the Professional Fiduciaries Act (Chapter 6  
29 (commencing with Section 6500) of Division 3 of the Business  
30 and Professions Code), the petition shall include the following:

31 (1) The petitioner's or proposed guardian's proposed hourly fee  
32 schedule or another statement of his or her proposed compensation

1 from the estate of the proposed ward for services performed as a  
2 guardian. The petitioner's or proposed guardian's provision of a  
3 proposed hourly fee schedule or another statement of his or her  
4 proposed compensation, as required by this paragraph, shall not  
5 preclude a court from later reducing the petitioner's or proposed  
6 guardian's fees or other compensation.

7 (2) Unless a petition for appointment of a temporary guardian  
8 that contains the statements required by this paragraph is filed  
9 together with a petition for appointment of a guardian, both of the  
10 following:

11 (A) A statement of the petitioner's or proposed guardian's  
12 license information.

13 (B) A statement explaining who engaged the petitioner or  
14 proposed guardian or how the petitioner or proposed guardian was  
15 engaged to file the petition for appointment of a guardian or to  
16 agree to accept the appointment as guardian and what prior  
17 relationship the petitioner or proposed guardian had with the  
18 proposed ward or the proposed ward's family or friends.

19 (e) If the proposed ward is a patient in or on leave of absence  
20 from a state institution under the jurisdiction of the State  
21 Department of State Hospitals or the State Department of  
22 Developmental Services and that fact is known to the petitioner  
23 or proposed guardian, the petition shall state that fact and name  
24 the institution.

25 (f) The petition shall state, so far as is known to the petitioner  
26 or proposed guardian, whether or not the proposed ward is  
27 receiving or is entitled to receive benefits from the Veterans  
28 Administration and the estimated amount of the monthly benefit  
29 payable by the Veterans Administration for the proposed ward.

30 (g) If the petitioner or proposed guardian has knowledge of any  
31 pending adoption, juvenile court, marriage dissolution, domestic  
32 relations, custody, or other similar proceeding affecting the  
33 proposed ward, the petition shall disclose the pending proceeding.

34 (h) If the petitioners or proposed guardians have accepted or  
35 intend to accept physical care or custody of the child with intent  
36 to adopt, whether formed at the time of placement or formed  
37 subsequent to placement, the petitioners or proposed guardians  
38 shall so state in the guardianship petition, whether or not an  
39 adoption petition has been filed.

1 (i) If the proposed ward is or becomes the subject of an adoption  
2 petition, the court shall order the guardianship petition consolidated  
3 with the adoption petition, and the consolidated case shall be heard  
4 and decided in the court in which the adoption is pending.

5 (j) If the proposed ward is or may be an Indian child, the petition  
6 shall state that fact.

7 SEC. 2. Section 1821 of the Probate Code is amended to read:

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

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

22 (2) The location of the proposed conservatee's residence and  
23 the ability of the proposed conservatee to live in the residence  
24 while under conservatorship.

25 (3) Alternatives to conservatorship considered by the petitioner  
26 or proposed conservator and reasons why those alternatives are  
27 not available.

28 (4) Health or social services provided to the proposed  
29 conservatee during the year preceding the filing of the petition,  
30 when the petitioner or proposed conservator has information as to  
31 those services.

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

35 The facts required to address the categories set forth in  
36 paragraphs (1) to (5), inclusive, shall be set forth by the petitioner  
37 or proposed conservator if he or she has knowledge of the facts or  
38 by the declarations or affidavits of other persons having knowledge  
39 of those facts.

1 If any of the categories set forth in paragraphs (1) to (5),  
2 inclusive, are not applicable to the proposed conservatorship, the  
3 petitioner or proposed conservator shall so indicate and state on  
4 the supplemental information form the reasons therefor.

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

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

24 (b) The petition shall set forth, so far as they are known to the  
25 petitioner or proposed conservator, the names and addresses of the  
26 spouse or domestic partner, and of the relatives of the proposed  
27 conservatee within the second degree. If no spouse or domestic  
28 partner of the proposed conservatee or relatives of the proposed  
29 conservatee within the second degree are known to the petitioner  
30 or proposed conservator, the petition shall set forth, so far as they  
31 are known to the petitioner or proposed conservator, the names  
32 and addresses of the following persons who, for the purposes of  
33 Section 1822, shall all be deemed to be relatives:

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

36 (2) The children of a predeceased spouse or domestic partner  
37 of a proposed conservatee.

38 (3) The siblings of the proposed conservatee's parents, if any,  
39 but if none, then the natural and adoptive children of the proposed  
40 conservatee's parents' siblings.

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

3 (c) If the petitioner or proposed conservator is a professional  
4 fiduciary, as described in Section 2340, who is required to be  
5 licensed under the Professional Fiduciaries Act (Chapter 6  
6 (commencing with Section 6500) of Division 3 of the Business  
7 and Professions Code), the petition shall include the following:

8 (1) The petitioner's or proposed conservator's proposed hourly  
9 fee schedule or another statement of his or her proposed  
10 compensation from the estate of the proposed conservatee for  
11 services performed as a conservator. The petitioner's or proposed  
12 conservator's provision of a proposed hourly fee schedule or  
13 another statement of his or her proposed compensation, as required  
14 by this paragraph, shall not preclude a court from later reducing  
15 the petitioner's or proposed conservator's fees or other  
16 compensation.

17 (2) Unless a petition for appointment of a temporary conservator  
18 that contains the statements required by this paragraph is filed  
19 together with a petition for appointment of a conservator, both of  
20 the following:

21 (A) A statement of the petitioner's or proposed conservator's  
22 license information.

23 (B) A statement explaining who engaged the petitioner or  
24 proposed conservator or how the petitioner or proposed conservator  
25 was engaged to file the petition for appointment of a conservator  
26 or to agree to accept the appointment as conservator and what prior  
27 relationship the petitioner or proposed conservator had with the  
28 proposed conservatee or the proposed conservatee's family or  
29 friends.

30 (d) If the petition is filed by a person other than the proposed  
31 conservatee, the petition shall include a declaration of due diligence  
32 showing both of the following:

33 (1) Either the efforts to find the proposed conservatee's relatives  
34 or why it was not feasible to contact any of them.

35 (2) Either the preferences of the proposed conservatee  
36 concerning the appointment of a conservator and the appointment  
37 of the proposed conservator or why it was not feasible to ascertain  
38 those preferences.

39 (e) If the petition is filed by a person other than the proposed  
40 conservatee, the petition shall state whether or not the petitioner

1 is a creditor or debtor, or the agent of a creditor or debtor, of the  
2 proposed conservatee.

3 (f) If the proposed conservatee is a patient in or on leave of  
4 absence from a state institution under the jurisdiction of the State  
5 Department of State Hospitals or the State Department of  
6 Developmental Services and that fact is known to the petitioner  
7 or proposed conservator, the petition shall state that fact and name  
8 the institution.

9 (g) The petition shall state, so far as is known to the petitioner  
10 or proposed conservator, whether or not the proposed conservatee  
11 is receiving or is entitled to receive benefits from the Veterans  
12 Administration and the estimated amount of the monthly benefit  
13 payable by the Veterans Administration for the proposed  
14 conservatee.

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

18 (i) The petition may include a further statement that the proposed  
19 conservatee is not willing to attend the hearing on the petition,  
20 does not wish to contest the establishment of the conservatorship,  
21 and does not object to the proposed conservator or prefer that  
22 another person act as conservator.

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

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

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

31 Reports submitted pursuant to Section 416.8 of the Health and  
32 Safety Code meet the requirements of this section, and  
33 conservatorships filed pursuant to Article 7.5 (commencing with  
34 Section 416) of Part 1 of Division 1 of the Health and Safety Code  
35 are exempt from providing the supplemental information required  
36 by this section, so long as the guidelines adopted by the State  
37 Department of Developmental Services for regional centers require  
38 the same information that is required pursuant to this section.

39 SEC. 3. Section 2250 of the Probate Code is amended to read:

1 2250. (a) On or after the filing of a petition for appointment  
2 of a guardian or conservator, any person entitled to petition for  
3 appointment of the guardian or conservator may file a petition for  
4 appointment of:

5 (1) A temporary guardian of the person or estate, or both.

6 (2) A temporary conservator of the person or estate, or both.

7 (b) The petition shall state facts which establish good cause for  
8 appointment of the temporary guardian or temporary conservator.  
9 The court, upon that petition or other showing as it may require,  
10 may appoint a temporary guardian of the person or estate, or both,  
11 or a temporary conservator of the person or estate, or both, to serve  
12 pending the final determination of the court upon the petition for  
13 the appointment of the guardian or conservator.

14 (c) If the petitioner, proposed guardian, or proposed conservator  
15 is a professional fiduciary, as described in Section 2340, who is  
16 required to be licensed under the Professional Fiduciaries Act  
17 (Chapter 6 (commencing with Section 6500) of Division 3 of the  
18 Business and Professions Code), the petition for appointment of  
19 a temporary guardian or temporary conservator shall include the  
20 following:

21 (1) The petitioner's, proposed guardian's, or proposed  
22 conservator's proposed hourly fee schedule or another statement  
23 of his or her proposed compensation from the estate of the proposed  
24 ward or proposed conservatee for services performed as a guardian  
25 or conservator. The petitioner's, proposed guardian's, or proposed  
26 conservator's provision of a proposed hourly fee schedule or  
27 another statement of his or her proposed compensation, as required  
28 by this paragraph, shall not preclude a court from later reducing  
29 the petitioner's, proposed guardian's, or proposed conservator's  
30 fees or other compensation.

31 (2) Unless a petition for appointment of a guardian or  
32 conservator that contains the statements required by this paragraph  
33 is filed together with a petition for appointment of a temporary  
34 guardian or temporary conservator, both of the following:

35 (A) A statement of the petitioner's, proposed guardian's, or  
36 proposed conservator's registration or license information.

37 (B) A statement explaining who engaged the petitioner, proposed  
38 guardian, or proposed conservator or how the petitioner, proposed  
39 guardian, or proposed conservator was engaged to file the petition  
40 for appointment of a temporary guardian or temporary conservator

1 or to agree to accept the appointment as temporary guardian or  
2 temporary conservator and what prior relationship the petitioner,  
3 proposed guardian, or proposed conservator had with the proposed  
4 ward or proposed conservatee or the proposed ward's or proposed  
5 conservatee's family or friends.

6 (d) If the petition is filed by a party other than the proposed  
7 conservatee, the petition shall include a declaration of due diligence  
8 showing both of the following:

9 (1) Either the efforts to find the proposed conservatee's relatives  
10 named in the petition for appointment of a general conservator or  
11 why it was not feasible to contact any of them.

12 (2) Either the preferences of the proposed conservatee  
13 concerning the appointment of a temporary conservator and the  
14 appointment of the proposed temporary conservator or why it was  
15 not feasible to ascertain those preferences.

16 (e) Unless the court for good cause otherwise orders, at least  
17 five court days before the hearing on the petition, notice of the  
18 hearing shall be given as follows:

19 (1) Notice of the hearing shall be personally delivered to the  
20 proposed ward if he or she is 12 years of age or older, to the parent  
21 or parents of the proposed ward, and to any person having a valid  
22 visitation order with the proposed ward that was effective at the  
23 time of the filing of the petition. Notice of the hearing shall not be  
24 delivered to the proposed ward if he or she is under 12 years of  
25 age. In a proceeding for temporary guardianship of the person,  
26 evidence that a custodial parent has died or become incapacitated,  
27 and that the petitioner or proposed guardian is the nominee of the  
28 custodial parent, may constitute good cause for the court to order  
29 that this notice not be delivered.

30 (2) Notice of the hearing shall be personally delivered to the  
31 proposed conservatee, and notice of the hearing shall be served  
32 on the persons required to be named in the petition for appointment  
33 of conservator. If the petition states that the petitioner and the  
34 proposed conservator have no prior relationship with the proposed  
35 conservatee and has not been nominated by a family member,  
36 friend, or other person with a relationship to the proposed  
37 conservatee, notice of hearing shall be served on the public  
38 guardian of the county in which the petition is filed.

39 (3) A copy of the petition for temporary appointment shall be  
40 served with the notice of hearing.

1 (f) If a temporary guardianship is granted ex parte and the  
2 hearing on the general guardianship petition is not to be held within  
3 30 days of the granting of the temporary guardianship, the court  
4 shall set a hearing within 30 days to reconsider the temporary  
5 guardianship. Notice of the hearing for reconsideration of the  
6 temporary guardianship shall be provided pursuant to Section  
7 1511, except that the court may for good cause shorten the time  
8 for the notice of the hearing.

9 (g) Visitation orders with the proposed ward granted prior to  
10 the filing of a petition for temporary guardianship shall remain in  
11 effect, unless for good cause the court orders otherwise.

12 (h) (1) If a temporary conservatorship is granted ex parte, and  
13 a petition to terminate the temporary conservatorship is filed more  
14 than 15 days before the first hearing on the general petition for  
15 appointment of conservator, the court shall set a hearing within  
16 15 days of the filing of the petition for termination of the temporary  
17 conservatorship to reconsider the temporary conservatorship.  
18 Unless the court otherwise orders, notice of the hearing on the  
19 petition to terminate the temporary conservatorship shall be given  
20 at least 10 days prior to the hearing.

21 (2) If a petition to terminate the temporary conservatorship is  
22 filed within 15 days before the first hearing on the general petition  
23 for appointment of conservator, the court shall set the hearing at  
24 the same time that the hearing on the general petition is set. Unless  
25 the court otherwise orders, notice of the hearing on the petition to  
26 terminate the temporary conservatorship pursuant to this section  
27 shall be given at least five court days prior to the hearing.

28 (i) If the court suspends powers of the guardian or conservator  
29 under Section 2334 or 2654 or under any other provision of this  
30 division, the court may appoint a temporary guardian or conservator  
31 to exercise those powers until the powers are restored to the  
32 guardian or conservator or a new guardian or conservator is  
33 appointed.

34 (j) If for any reason a vacancy occurs in the office of guardian  
35 or conservator, the court, on a petition filed under subdivision (a)  
36 or on its own motion, may appoint a temporary guardian or  
37 conservator to exercise the powers of the guardian or conservator  
38 until a new guardian or conservator is appointed.

39 (k) On or before January 1, 2008, the Judicial Council shall  
40 adopt a rule of court that establishes uniform standards for good

1 cause exceptions to the notice required by subdivision (e), limiting  
2 those exceptions to only cases when waiver of the notice is  
3 essential to protect the proposed conservatee or ward, or the estate  
4 of the proposed conservatee or ward, from substantial harm.

5 (I) A superior court shall not be required to perform any duties  
6 imposed pursuant to the amendments to this section enacted by  
7 Chapter 493 of the Statutes 2006 until the Legislature makes an  
8 appropriation identified for this purpose.

9 SEC. 4. Section 2614.7 is added to the Probate Code, to read:

10 2614.7. If a guardian or conservator of the person or estate, or  
11 both, is a professional fiduciary, as described in Section 2340, who  
12 is required to be licensed under the Professional Fiduciaries Act  
13 (Chapter 6 (commencing with Section 6500) of Division 3 of the  
14 Business and Professions Code), the guardian or conservator shall  
15 file, concurrently with the inventory and appraisal required by  
16 Section 2610, a proposed hourly fee schedule or another statement  
17 of his or her proposed compensation from the estate of the ward  
18 or conservatee for services performed as a guardian or conservator.  
19 The filing of a proposed hourly fee schedule or another statement  
20 of the guardian's or conservator's proposed compensation, as  
21 required by this section, shall not preclude a court from later  
22 reducing the guardian's, conservator's, or his or her attorney's fees  
23 or other compensation.

24 SEC. 5. Section 2614.8 is added to the Probate Code, to read:

25 2614.8. (a) *At any time on or after one year from the*  
26 *submission of an hourly fee schedule or another statement of*  
27 *proposed compensation under this section or under Section 1510,*  
28 *1821, 2250, or 2614.7, a guardian or conservator who is a*  
29 *professional fiduciary may submit a new proposed hourly fee*  
30 *schedule or another statement of his or her proposed compensation*  
31 *from the estate of the proposed ward or proposed conservatee.*

32 (b) (1) *Notice of how to file an objection to the new proposed*  
33 *hourly fee schedule or another statement of proposed compensation*  
34 *shall be given for the period and in the manner provided in Chapter*  
35 *3 (commencing with Section 1460) of Part 1.*

36 (2) *The notices required by paragraph (1) shall be made to the*  
37 *court investigator, if appointed, for the period and in the manner*  
38 *provided in Chapter 3 (commencing with Section 1460) of Part 1.*

39 (c) (1) *Any person entitled to notice under paragraph (1) of*  
40 *subdivision (b) may file with the court a written objection to the*

1 *new proposed hourly fee schedule or another statement of proposed*  
2 *compensation. The court clerk shall set any objections for a*  
3 *hearing no fewer than 15 days after the date the objections are*  
4 *filed.*

5 *(2) If an objection is filed pursuant to paragraph (1), the*  
6 *guardian or conservator shall have the burden of establishing the*  
7 *need for the new proposed hourly fee schedule or another statement*  
8 *of proposed compensation.*

9 ~~SEC. 5.~~

10 SEC. 6. Section 2643 of the Probate Code is amended to read:

11 2643. (a) Except as provided in Section 2643.1, on petition  
12 by the guardian or conservator of the person or estate, or both, the  
13 court may by order authorize periodic payments on account to any  
14 one or more of the following persons for the services rendered by  
15 that person during the period covered by each payment:

16 (1) The guardian of the person.

17 (2) The guardian of the estate.

18 (3) The conservator of the person.

19 (4) The conservator of the estate.

20 (5) The attorney for the guardian or conservator of the person  
21 or estate, or both.

22 (b) Notice of the hearing on the petition shall be given for the  
23 period and in the manner provided in Chapter 3 (commencing with  
24 Section 1460) of Part 1.

25 (c) The petition shall describe the services to be rendered on a  
26 periodic basis and the reason why authority to make periodic  
27 payments is requested. In fixing the amount of the periodic  
28 payment, the court shall take into account the services to be  
29 rendered on a periodic basis and the reasonable value of those  
30 services. The guardian or conservator of the estate may make the  
31 periodic payments authorized by the order only if the services  
32 described in the petition are actually rendered. The payments made  
33 pursuant to the order are subject to review by the court upon the  
34 next succeeding account of the guardian or conservator of the  
35 estate to determine that the services were actually rendered and  
36 that the amount paid on account was not unreasonable, and the  
37 court shall make an appropriate order if the court determines that  
38 the amount paid on account was either excessive or inadequate in  
39 view of the services actually rendered.

1     ~~SEC. 6.~~

2     *SEC. 7.* Section 2643.1 is added to the Probate Code, to read:

3     2643.1. (a) On petition by a guardian or conservator of the  
4 person or estate, or both, who is a professional fiduciary, as  
5 described in Section 2340 and who is required to be licensed under  
6 the Professional Fiduciaries Act (Chapter 6 (commencing with  
7 Section 6500) of Division 3 of the Business and Professions Code),  
8 the court may by order authorize periodic payments on account to  
9 a person described in subdivision (a) of Section 2643 for the  
10 services rendered by that person during the period covered by each  
11 payment only if that person has filed a proposed hourly fee  
12 schedule or another statement of his or her proposed compensation  
13 from the estate of the ward or conservatee for services performed  
14 as a guardian or conservator, as required by Section 2614.7, and  
15 only after the court has addressed any objections filed pursuant to  
16 subdivision (d).

17     (b) The petition shall describe the services to be rendered on a  
18 periodic basis, the reason why authority to make periodic payments  
19 is requested, and a good faith estimate of the fees to be charged  
20 by the professional fiduciary from the date the petition is filed up  
21 to, and including, the date of the next succeeding account required  
22 by Section 2620 or, if the next succeeding account required by  
23 Section 2620 is due in less than one year, a good faith estimate of  
24 the fees to be charged by the professional fiduciary from the date  
25 the petition is filed through the next succeeding 12 months,  
26 inclusive. Prior to ordering periodic payments or fixing the amount  
27 of the periodic payment, the court shall determine whether making  
28 periodic payments is in the best interest of the ward or conservatee,  
29 taking into consideration the needs of the ward or conservatee and  
30 the need to preserve and protect the estate. If the court determines  
31 that making periodic payments is not in the best interest of the  
32 ward or conservatee, the court shall deny the petition to authorize  
33 periodic payments. If the court determines that making periodic  
34 payments is in the best interest of the ward or conservatee, the  
35 court shall fix the amount of the periodic payment. In fixing the  
36 amount of the periodic payment, the court shall take into account  
37 the services to be rendered on a periodic basis and the reasonable  
38 value of those services.

39     (c) (1) Notice of the hearing on the petition and notice of how  
40 to file an objection to the petition shall be given for the period and

1 in the manner provided in Chapter 3 (commencing with Section  
2 1460) of Part 1.

3 (2) The notices required by paragraph (1) shall be made to the  
4 court investigator for the period and in the manner provided in  
5 Chapter 3 (commencing with Section 1460) of Part 1.

6 (d) (1) Any person entitled to notice under paragraph (1) of  
7 subdivision (c) may file with the court a written objection to the  
8 authorization of periodic payments on account. The court clerk  
9 shall set any objections for a hearing no fewer than 15 days after  
10 the date the objections are filed.

11 (2) If an objection is filed pursuant to paragraph (1), the guardian  
12 or conservator shall have the burden of establishing the necessity  
13 for and amount, if any, of periodic payments.

14 (e) The guardian or conservator of the estate may make the  
15 periodic payments authorized by the order only if the services  
16 described in the petition are actually rendered. The payments made  
17 pursuant to the order shall be reviewed by the court upon the next  
18 succeeding account of the guardian or conservator of the estate to  
19 determine that the services were actually rendered and that the  
20 amount paid on account was reasonable and in the best interest of  
21 the ward or conservatee, taking into consideration the needs of the  
22 ward or conservatee and the need to preserve and protect the estate.  
23 The court shall make an appropriate order reducing the guardian  
24 or conservator's compensation if the court determines that the  
25 amount paid on account was either unreasonable or not in the best  
26 interest of the ward or conservatee in view of the services actually  
27 rendered.

28 (f) The authorization for periodic payments granted pursuant  
29 to this section shall terminate ~~as of~~ *on a date determined by the*  
30 *court, but not later than* the due date of the next succeeding account  
31 required by Section 2620. Nothing in this section shall preclude a  
32 guardian or conservator from filing a subsequent petition to receive  
33 periodic payments pursuant to this section.

AMENDED IN ASSEMBLY JUNE 19, 2013

AMENDED IN ASSEMBLY JUNE 11, 2013

AMENDED IN SENATE APRIL 8, 2013

**SENATE BILL**

**No. 156**

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**Introduced by Senator Beall**  
(Coauthor: Assembly Member Fong)

January 31, 2013

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An act to amend Section 2640 of the Probate Code, relating to conservatorships and guardianships.

LEGISLATIVE COUNSEL'S DIGEST

SB 156, as amended, Beall. Conservatorships and guardianships: attorney's fees.

Existing law provides for the administration of guardianships and conservatorships. Existing law authorizes a guardian or conservator of an estate to petition the court for an order allowing compensation to the guardian, conservator, or attorney for the guardian or conservator, as specified. Existing law prohibits the guardian or conservator from being compensated from the estate for any costs or fees that he or she incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

This bill would instead authorize the court to award specified litigation costs *incurred by the guardian or conservator in defending the compensation in the petition, including attorney's fees, to the prevailing party if an objection is made to the petition for compensation, except as specified.* *only if the guardian or conservator first proves that he or*

*she made a good faith effort to informally resolve all objections, that he or she acted in good faith in defending the petition, and that it is in the best interest of the ward or conservatee to award the costs.*

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

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

1 SECTION 1. Section 2640 of the Probate Code is amended to  
2 read:

3 2640. (a) At any time after the filing of the inventory and  
4 appraisal, but not before the expiration of 90 days from the issuance  
5 of letters or any other period of time as the court for good cause  
6 orders, the guardian or conservator of the estate may petition the  
7 court for an order fixing and allowing compensation to any one or  
8 more of the following:

9 (1) The guardian or conservator of the estate for services  
10 rendered to that time.

11 (2) The guardian or conservator of the person for services  
12 rendered to that time.

13 (3) The attorney for services rendered to that time by the  
14 attorney to the guardian or conservator of the person or estate or  
15 both.

16 (b) Notice of the hearing shall be given for the period and in  
17 the manner provided for in Chapter 3 (commencing with Section  
18 1460) of Part 1.

19 (c) Upon the hearing, the court shall make an order allowing  
20 (1) any compensation requested in the petition the court determines  
21 is just and reasonable to the guardian or conservator of the estate  
22 for services rendered or to the guardian or conservator of the person  
23 for services rendered, or to both, and (2) any compensation  
24 requested in the petition the court determines is reasonable to the  
25 attorney for services rendered to the guardian or conservator of  
26 the person or estate or both. The compensation allowed to the  
27 guardian or conservator of the person, the guardian or conservator  
28 of the estate, and to the attorney may, in the discretion of the court,  
29 include compensation for services rendered before the date of the  
30 order appointing the guardian or conservator. The compensation  
31 allowed shall be charged to the estate. Legal services for which  
32 the attorney may be compensated include those services rendered

1 by any paralegal performing legal services under the direction and  
2 supervision of an attorney. The petition or application for  
3 compensation shall set forth the hours spent and services performed  
4 by the paralegal.

5 ~~(d) If the court, upon an objection to the petition, reduces the~~  
6 ~~compensation requested in the petition, the objecting party shall~~  
7 ~~be deemed the prevailing party and the court may award the~~  
8 ~~objecting party his or her costs and other expenses and costs of~~  
9 ~~litigation, including attorney's fees, incurred to contest the petition.~~  
10 ~~In determining whether to award the objecting party his or her~~  
11 ~~costs and other expenses and costs of litigation, the court shall~~  
12 ~~consider the best interests of the ward or conservatee.~~

13 ~~(1) The award shall be a charge against the compensation of the~~  
14 ~~guardian or conservator, and the guardian or conservator shall be~~  
15 ~~liable personally and on the bond, if any, for any amount that~~  
16 ~~remains unsatisfied.~~

17 ~~(2) This subdivision does not apply to a public conservator or~~  
18 ~~public guardian.~~

19 (e)

20 *(d) Notwithstanding subdivision (c), if the court reduces or*  
21 *denies the compensation requested in the petition, the guardian or*  
22 *conservator shall not be compensated from the estate for any costs*  
23 *or fees, including attorney's fees, that the guardian or conservator*  
24 *incurred in defending the compensation in the petition, unless the*  
25 *guardian or conservator proves to the satisfaction of the court that*  
26 *the guardian or conservator acted in good faith in defending the*  
27 *petition, taking into consideration the objections of the ward or*  
28 *conservatee, if any. If the guardian or conservator establishes good*  
29 *faith, the court may choose, but is not required, to award those*  
30 *costs or fees if the court determines that it is in the best interest of*  
31 *the ward or conservatee to make that award. petition. However,*  
32 *the court may exercise discretion to grant or deny any portion of*  
33 *the additional fee request if the guardian or conservator proves*  
34 *to the satisfaction of the court all of the following:*

35 *(1) The guardian or conservator made a reasonable and good*  
36 *faith attempt at an informal resolution of each issue presented by*  
37 *the objection to the compensation in the petition.*

38 *(2) The guardian or conservator acted in good faith and with*  
39 *substantial justification in defending the petition, taking into*  
40 *consideration any objections thereto.*

1     (3) *It is in the best interest of the ward or conservatee to make*  
2 *an award of costs or fees.*

3     ~~(f) If the court, upon an objection to the petition, does not reduce~~  
4 ~~the compensation requested in the petition, the guardian or~~  
5 ~~conservator shall be deemed the prevailing party and the court~~  
6 ~~may order the objecting party to pay the expenses and costs of~~  
7 ~~litigation, including attorney's fees, incurred by the guardian or~~  
8 ~~conservator to defend the petition. The objecting party shall be~~  
9 ~~personally liable for the amount ordered. In determining whether~~  
10 ~~to award the objecting party his or her expenses and costs of~~  
11 ~~litigation, the court shall consider the best interests of the ward or~~  
12 ~~conservatee.~~



**Professional Fiduciaries Bureau**

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**MEMORANDUM**

<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #11 Future Agenda Items

Future Agenda Items:

Public Comment:



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<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #12 Future Meeting Dates Agenda Item

Dates:

Public Comment:



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<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #13 - Public Comment on Items not on the Agenda

Public Comment:



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<b>DATE</b>	July 31, 2013
<b>TO</b>	Advisory Committee Members Professional Fiduciaries Bureau
<b>FROM</b>	Professional Fiduciaries Bureau
<b>SUBJECT</b>	Agenda Item #14 Adjournment

Adjournment: