

# Judicial Council of California

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# INVITATION TO COMMENT

SPR25-24

#### Title

Probate Conservatorships: Rights of Conservatees

# Proposed Rules, Forms, Standards, or Statutes

Approve form GC-342; revise forms GC-341 and GC-341(MA)

#### Proposed by

Probate and Mental Health Advisory Committee Hon. Jayne Chong-Soon Lee, Chair

#### **Action Requested**

Review and submit comments by May 23, 2025

#### **Proposed Effective Date**

January 1, 2026

#### Contact

Corby Sturges, 415-865-4507, Corby.Sturges@jud.ca.gov

# **Executive Summary and Origin**

Probate Code section 1835.5 requires the court, within 30 days of appointing a conservator, to provide the conservatee with specified information, including a personalized list of rights retained by and withheld from the conservatee. Recent legislation has also expanded and clarified the rights of all conservatees. In response, the Probate and Mental Health Advisory Committee proposes approving one form for the courts to use to provide the information required by section 1835.5, revising one form that lists the general rights of conservatees, and revising the attachment to the second form to conform to the revisions to the principal form.

# **Background**

When the probate court appoints a conservator, it grants the conservator powers to make certain decisions and take certain actions on behalf of the person conserved (the *conservatee*). This grant of powers does not necessarily result in a corresponding limit on or removal of the conservatee's rights to make those decisions or take those actions. For example, a conservatee may consent to medical treatment unless adjudicated to lack the capacity to do so. The conservator may also

consent to the conservatee's medical treatment as long as the conservatee does not object to the treatment.<sup>1</sup>

Since 2007, the law has required a conservator, within 30 days of the issuance of the order appointing them, to send a copy of the appointment order with a notice of conservatees' rights attached, to the conservatee and the conservatee's relatives named in the petition for appointment. (Prob. Code, § 1830(c), added by Assem. Bill 1363 (Stats. 2006, ch. 493, § 10).)

## The Proposal

Effective January 1, 2023, the court must also, within 30 days of appointing a conservator, provide specified information to the conservatee. (*Id.*, § 1835.5(a), added by Assem. Bill 1663 (Stats. 2022, ch. 894, § 9).) That information includes the name and contact information of the conservator; a description of the conservatorship; the role, duties, and contact information of the court investigator and the court alternatives program;<sup>2</sup> "the person to petition to end or change the conservatorship and contact information for the person to contact to begin that process";<sup>3</sup> and a personalized list of rights retained by the conservatee and rights withheld. (*Id.*, § 1835.5(b).) The committee proposes form GC-342 to be used for this purpose.

Assembly Bill 1663 also amended Probate Code section 2113 to elaborate more fully a conservator's duty to accommodate the desires of the conservatee unless doing so "would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the estate." (*Id.*, § 2113.) The amendments require a conservator, to the greatest extent possible, to help the conservatee maximize autonomy, make their own decisions, and regularly inform the conservatee of decisions made on their behalf. (*Ibid.*) The committee proposes adding this information to form GC-341.

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<sup>&</sup>lt;sup>1</sup> Prob. Code, § 2354(a). And, in some cases, the removal of a right does not confer a corresponding power on the conservator. For example, disqualifying a conservatee from voting does not give the conservator any power to vote on the conservatee's behalf. (See *id.*, § 1910; Elec. Code, §§ 2208–2209.)

<sup>&</sup>lt;sup>2</sup> Prob. Code, § 1835.5(b)(3). AB 1663 also added section 1836 to the Probate Code. Contingent on an appropriation by the Legislature, that section requires the Judicial Council to establish a conservatorship alternatives program within each self-help center in every superior court. (*Id.*, § 1836.) The Legislature has not yet appropriated the requisite funds. The proposed form addresses this contingency by allowing a court to check a box indicating that it has established a conservatorship alternatives program and provide the program's contact information.

<sup>&</sup>lt;sup>3</sup> *Id.*, § 1835.5(b)(4). The statutory language notwithstanding, a petition to change or end a conservatorship is not directed to a person. Providing the quoted information on the proposed form therefore presents a challenge. The committee proposes directing the conservatee to inform the court investigator of their wish to file a petition to terminate or modify the conservatorship. Once the court learns of the conservatee's wish to petition, the court may set a hearing, notify the conservatee's attorney of record, or, if the conservatee does not have an attorney and does not plan to get one, appoint an attorney to file the petition and represent the conservatee. (*Id.*, §§ 1051, 1852.)

This proposal would promote conformity to the laws described above, effective January 1, 2026, by:

- Approving for optional use *Personalized Information for Conservatee—Probate* (form GC-342) to create a statewide option for courts to use to provide the information required by Probate Code section 1835.5;
- Revising *Notice of Conservatee's Rights* (form GC-341) to:
  - Retitle it *Notice of Conservatees' Rights—Probate* to distinguish this form from GC-342, which includes a personalized list of the specific rights retained by or withheld from each conservatee;
  - Update the discussion of rights to reflect statutory amendments enacted since this form's adoption in 2008;
  - Reorganize the lists of rights to indicate which rights are subject to judicial limitation and which are not; and
  - Make technical and conforming changes; and
- Revising *Attachment to Notice of Conservatee's Rights* (form GC-341(MA)) to use the proposed title of form GC-341 and make technical and conforming changes.

#### **Alternatives Considered**

The committee considered not taking action but determined that an optional statewide form would assist courts in fulfilling their obligation under section 1835.5 and that many of the proposed revisions to form GC-341 were required to conform to the law. The committee also considered proposing form GC-342 for mandatory use, but instead is proposing the form for optional use to allow courts that have developed local forms providing the information required by Probate Code section 1835.5 to continue using their existing forms.

In addition, the committee considered proposing revisions to *Duties of Conservator* (form GC-348) to update it and bring it into conformity with the law, but it determined that current committee resources could not accommodate that proposal at this time.

## Fiscal and Operational Impacts

The proposal will impose one-time costs on courts for adding the new and revised forms to their case management systems and training staff to send the form to conservatees as required by law.

# **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- The committee has proposed form GC-342 for optional use. Would the alternative of adopting it for mandatory use instead of optional use unduly interfere with existing trial court practices or otherwise impose an undue burden on the courts?
- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

#### **Attachments and Links**

- 1. Forms GC-341, GC-341(MA), and GC-342, at pages 5–12
- 2. Link A: Prob. Code, § 1835.5, <a href="https://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=PROB&section.nhtml?lawCode=PROB&sect

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NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:	ZIP CODE:	
TELEPHONE NO.:	FAX NO.:		
EMAIL ADDRESS:			
ATTORNEY FOR (name):			DRAFT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF			Not approved by
STREET ADDRESS:			the Judicial Council
MAILING ADDRESS:			the dualoidi dodnon
CITY AND ZIP CODE:			
BRANCH NAME:			
CONSERVATORSHIP OF THE PERSON	ESTATE		
OF (name):			
		CONSERVATEE	
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NOTICE OF CONSERVATEES	KIGH IS—I	PRODATE	

When a court appoints a conservator, the conservator receives the power to make certain decisions and take certain actions on behalf of the protected person, who is called a *conservatee*. The court may grant the conservator powers over the conservatee's personal care, the conservatee's money and property, or both. The law imposes strict duties on a conservator to take proper care of the conservatee or the conservatee's property and always to act in the conservatee's best interest. But the conservatee does not automatically lose the right to take part in decisions affecting their life or property.

Every conservatee has the right to be treated with compassion and respect, to have the conservator ask about their wishes and follow those wishes unless doing so would violate the conservator's duties, and to have the conservator inform them regularly of decisions made on their behalf. Every conservatee has all basic human rights and the right to be well cared for by their conservator.

A conservatee has the right to ask the conservator questions about actions taken and decisions made by the conservator on the conservatee's behalf. If a conservatee is not satisfied with the conservator's answers, they may contact their lawyer or the court investigator assigned to their case to express their concerns and complaints. The court investigator's name and contact information are printed on the order appointing the conservator.

If a conservatee cannot resolve a disagreement with the conservator after working through the lawyer or the court investigator, the conservatee may ask the court to review the conservator's decision or action. If the conservatee's lawyer from the appointment proceeding has been relieved, the court will appoint a lawyer to represent the conservatee unless the conservatee plans and is able to arrange for one. A conservatee may also ask the court to remove (replace) the conservator with a different one or to terminate (end) the conservatorship.

Even if the conservatee never contacts the court, the court investigator will periodically visit the conservatee, look into their welfare, ask about their wishes, and remind them of their rights.

#### CONSERVATEES' RIGHTS

- 1. After appointment of a conservator, every conservate keeps the right to:
  - Be represented by a lawyer and have the court appoint a lawyer for them;
  - Ask a judge to change the conservator;
  - Ask a judge to end the conservatorship;
  - Make or change a will; and
  - Enter into transactions, to the extent reasonable, to (1) provide for the basic needs of the conservatee and the conservatee's minor children, and (2) provide for the basic needs of the conservatee's spouse or the basic living expenses of the conservatee's registered domestic partner.

(Conservatees' rights continued on next page)

Page 1 of 4

CONSERVATORSHIP OF THE PERSON ESTATE	CASE NUMBER:
<mark>OF (n</mark> ame):	
CONSERVAT	ΞE .

## CONSERVATEES' RIGHTS (continued)

- 2. Unless the court has limited or taken away the right, a conservatee also keeps the right to:
  - Make their own medical decisions:
  - Make a decision whether to reside in a secured perimeter residential care facility;
  - Make a decision whether to take medication for treatment of major neurocognitive disorders;
  - Receive visits from family and friends;
  - Receive personal mail, email, and phone calls;
  - Control whom to have social and sexual relationships with;
  - Get married or enter into a registered domestic partnership;
  - Register to vote and cast a vote in local, state, and national elections; and
  - Directly receive and control their own wages or salary.
- 3. A conservatee may also engage in other activities if the court has expressly allowed them in an order made at the time of the conservator's appointment or later on a request for authority or permission to engage in the activity. These activities may include:
  - Making decisions about where to live;
  - Making their own educational decisions;
  - Receiving and controlling an allowance for personal expenses; and
  - Entering into specific transactions or types of transactions as appropriate in the circumstances and subject to limits and conditions in the court order.
- 4. If the court has appointed a *limited conservator*, the limited conservatee keeps the right to take an action or make a decision **unless** the court has expressly, in an order, given the limited conservator the power to take that action or make that decision **and** also taken the right away from the conservatee. In particular, a limited conservatee keeps the following rights that a conservatee loses by default:
  - Making decisions about where to live;
  - Making their own educational decisions; and
  - Entering into contracts or transactions that obligate their estate.

If you are a conservatee, the court will also, within 30 days of appointing a conservator for you, send you personalized information about your conservatorship on *Personalized Information for Conservatee—Probate* (form GC-342) or a similar local form. That form will give you information about your conservatorship, including the name and contact information of your conservator; a description of the conservatorship; the role, duties, name, and contact information of the court investigator assigned to your case; and a personalized list of the rights you keep under the conservatorship and the rights the court has ordered taken away from you. The form will also list any activities the court specifically ordered the conservator to allow you to engage in.

(Proof of mailing on page 3 and instructions for mailing on page 4)

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	(				CONSERVATEE		
				PROOF	OF MAILING		
1.					or of the conservatee <mark>name</mark> employed in the county w		
2.	My reside	ence or business a	address is (specify):				
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3.	appointin	ig a conservator (f	orm GC-340) or a limit	ed conserv	ch person named below <mark>, at ator (form GC-339) filed or</mark> g <mark>it</mark> in an envelope address	n (date):	and showing
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	b	business practice mailing. On the sa	s. I am readily familiar ame day that correspor	with this bundence is p	the date and at the place s usiness's practice for collect placed for collection and ma sealed envelope with pos	cting and processing co ailing, it is deposited in	orrespondence for
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		Conserva	atee				
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Ο.	Relationsh	nip.					
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	Continu	ued on an attachm	nent. (You may use for	m GC-341(	MA) to show additional nai	mes and addresses.)	

CONSERVATORSHIP OF THE PERSON ESTATE	CASE NUMBER:
OF (name):	
	CONSERVATEE

# INSTRUCTIONS FOR MAILING COPIES OF NOTICE OF CONSERVATEES' RIGHTS—PROBATE WITH THE ORDER APPOINTING A CONSERVATOR (FORM GC-340) OR A LIMITED CONSERVATOR (FORM GC-339)

- What to mail: The conservator, the conservator's attorney of record, or the attorney's employee must mail a copy of this Notice of Conservatees' Rights—Probate, attached to a copy of the order appointing a conservator (form GC-340) or a limited conservator (form GC-339) showing the judicial officer's signature and the filing date, to each person in item 2 below.
- Who must receive the mailing: The following persons must receive copies of this Notice of Conservatees' Rights—Probate with the appointment order.
  - a. The conservatee:
  - b. The conservatee's attorney;
  - c. The conservatee's spouse or registered domestic partner and the following relatives within the second degree:
    - (1) Parents;
    - (2) Children 12 years of age or older (see item e below if there are children under the age of 12);
    - (3) Grandparents;
    - (4) Grandchildren 12 years of age or older (see item e below if there are grandchildren under the age of 12); and
    - (5) Siblings, including half-siblings.
  - d. If the conservator does not know of any spouse or registered domestic partner or second-degree relative of the conservatee, copies of this *Notice* and the appointment order must be mailed to any of the following persons known to the conservator:
    - (1) The spouse or registered domestic partner of a predeceased parent of the conservatee;
    - (2) Children of a predeceased spouse or predeceased registered domestic partner of the conservatee 12 years of age or older (see item e below if there are children under the age of 12);
    - (3) Siblings of the conservatee's parents (that is, the conservatee's aunts and uncles), if any, or, if none, to their natural and adoptive children 12 years of age or older (see item e below if there are children under the age of 12); and
    - (4) The natural and adoptive children of the conservatee's siblings 12 years of age or older (see item e below if there are children under the age of 12).
  - e. If a person named above is under the age of 12, copies of this *Notice* and the appointment order must be mailed to a parent, quardian, or other person having legal custody of the person entitled to notice with whom the person entitled to notice resides.
- 3. **When the mailing must be completed:** The mailing described in item 1 must be completed on or before the 30th day following the filing date of the order appointing a conservator or a limited conservator.
- 4. Fill out Proof of Mailing: The conservator or the attorney of record must fill out the Proof of Mailing on page 3 of this form, including the correct addresses of the persons to receive the mailing, identified in item 2 above, before making the copies to be mailed. If the Proof of Mailing does not have enough space for the names and addresses of all persons who will receive the mailing, the names and addresses not shown on the Proof of Mailing must be shown on one or more additional pages attached to this form. (Attachment to Notice of Conservatees' Rights—Probate (form GC-341(MA)) may be used for this purpose.) After the mailing described in item 5 below, the conservator or the attorney must date and sign the Proof of Mailing on page 3 of this form.
- 5. How to mail: The conservator, the conservator's attorney of record, or an employee of the attorney, must do the following:
  - a. Place copies of this *Notice of Conservatees' Rights—Probate* and conformed copies of the order appointing a conservator (form GC-340) or a limited conservator (form GC-339) in sealed envelopes, addressed to each person at the address shown for that person on the Proof of Mailing on page 3 of this form or on attached additional pages with postage fully prepaid.
  - b. Deposit (mail) the sealed envelopes with the United States Postal Service on the date and from the place (city and state) shown in item 4 of the Proof of Mailing on page 3 of this form.
- 6. Filing this form: The conservator or the attorney of record must file with the court the original *Notice of Conservatees' Rights—*Probate with a signed and dated Proof of Mailing and all attached additional address pages. Do not attach a copy of the order appointing a conservator or a limited conservator when filing the original *Notice of Conservatees' Rights—Probate*.

## **DRAFT—Not Approved by the Judicial Council**

	GC-341(N	IA)
CONSERVATORSHIP OF THE PERSON ESTA	CASE NUMBER:	
OF (name):		
	CONSERVATEE	

## ATTACHMENT TO NOTICE OF CONSERVATEES' RIGHTS—PROBATE

(This attachment is for use with form GC-341.)

#### NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and relationship to conservatee	Address (number, street, city, state, and zip code)
Relationship:	

courts.ca.gov

ATTOR	NEY OR PARTY WITHOUT ATTORNEY	STATE BAR N	UMBER:		FOR COURT USE ONLY
NAME:					
FIRM N	AME:				
STREE	T ADDRESS:				
CITY:		STATE:	ZIP CODE:		
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con des	servator or conservators; describes	your conservatorship ities; and provides a p	; gives the name and	d contac	s the name and contact information of your it information of the court investigator and that you keep under the conservatorship
<ol> <li>a.</li> <li>b.</li> <li>c.</li> </ol>	(address): (telephone number):  The court has appointed a second (name): (address): (telephone number):  The court appointed more the	second conservator fo	(email address):		ur person estate is ion, and type of each additional conservator
2. Y	are stated on Attachment 1. our conservatorship is <i>(check all tha</i>				
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	property for your benefit.			-	
C.		ırt may have given the			vers and duties specified in the court's and duties to provide for your personal care,
3. a.	The name and contact information (name): (address):	_		/ appoint	ed in your conservatorship are:
	(telephone number):	•	nddress):		
	If you have questions or concerns contact the investigator above to			rvator's a	actions before an investigator visits, you can
b.	investigator will visit you within the	e next 12 months to e	xplain your conserva	atorship t	ip. If your conservatorship goes well, the to you; find out whether you want to change rvatorship or need a conservatorship with

- different powers and rights; check on whether the conservator is managing your living arrangements, personal care, and finances in your best interests; and determine whether you can communicate a desire to vote. After the visit, the investigator will file a report making recommendations to the court.
- c. You may also contact the court investigator if you want to ask the court to end or change your conservatorship. The investigator will inform the judge in your case. The court may then set a hearing or notify your lawyer or, if you don't have a lawyer and do not plan to get one, appoint a lawyer to help you ask the court for the orders you want.

Page 1 of 3

		RVATORSHIP O	F THE	PERSON	ESTATE		CASE NUMBER:
OF	(nai	me):				CONSERVATEE	
4. ;	a.						he program can provide you with information supported decision-making agreements.
I	b.	You can contac	t the conserv	atorship alternative	es program as sho	wn below:	
		(building addres	ss):				
		(mailing addres	-				
		(telephone num	,	•	(email address):	, ,	
		The program is	open from (t	ime):	to (time):	on (da	ays):
					T OF RIGHTS	JNDER THE CO	ONSERVATORSHIP
5.	In a	a conservatorshi	p, you have t	the right to:			
;	a.	Make and comr	nunicate you	r own informed cho	ices to the greate	st extent possible.	
	b.	Be informed on	a regular ba	sis of the decisions	your conservator	has made for you	
(	C.	Remain as inde	pendent as p	oossible and live in	the least restrictiv	e setting needed t	o protect your health and safety.
(	d.	Make or change	e your will.				
(	e.	Enter into reaso	nable transa	actions to provide fo	r your basic need	s and those of yoບ	ır children and spouse or domestic partner.
1	f.	Have a lawyer t	o represent	you.			
(	g.	Ask a judge to r	eview your c	concerns about the	conservatorship o	your complaints	about the actions of your conservator.
I	h.	Ask a judge to	change your	conservator.			
i	i.	Ask a judge to e	end your con	servatorship.			
The	СО	ourt's appointm	ent order gr	ants your conserv	ator powers and	modifies your ri	ghts as shown below.
							not withhold or take away your right to make
		ne decision. Tha or (2) there's an		ı can make decision	is alone, and your	conservator can i	make decisions alone only if (1) you do not
-		• •		for your personal	care and protect	vour safety (che	ck all that apply):
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		has the power	this right	this right		Р	ower or right to:
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ı	b.				Make your he	alth care decision	S.
(	C.				Decide who to	akes care of you.	
(	d.				Make decision	ns about your edu	cation.
,	e.				Have visits fro	om family and frier	nds.
1	f.				Receive telep	hone calls.	
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j	j.				Decide wheth	er you reside in a	secured perimeter residential care facility.
ı	k.				Decide wheth	er you take medic	ation to treat major neurocognitive disorders.
	I.				Decide who y	ou can have socia	al and sexual relationships with.
ı	m.				Decide wheth	er you get married	d or form a domestic partnership.
ı	n.				Register to vo	te and cast your v	ote in local, state, and national elections.
	0.	Other pov	vers or rights	with respect to you	ır personal care aı	nd safety <i>(describe</i>	e below):

CONSERVATORSHIP OF	THE	PERSON E	STATE	CASE NUMBER:			
OF (name):			CONSERVATEE				
7. Powers and rights t	o manage	your money and pi	roperty (estate) (check all that app	oly):			
	You have this right	You do not have this right	Po	ower or right to:			
a	a. Directly receive and control your own wages or salary.						
b			Take possession of and manage	e your money and property.			
c			Control who has access to your	confidential financial records or pap	ers.		
d	d Make contracts or enter into transactions with your money or property (check one): All contracts and transactions Only the contracts and transactions described in Attachment 7d.						
e			estate <i>(check one):</i> All claims and proceeds.	e, or settle claims by or against you co eeds described in Attachment 7d.	or your		
f. The court h		you the right to rece	eive and control an allowance of (ar for personal expenses.	mount): of your fur	ıds		
• •		with respect to man	aging your money or property (des	cribe below):			
Date: (TYPE OR PRINT NAME	OF PERSON CO	MPLETING THIS FORM)	<u> </u>	SIGNATURE OF PERSON COMPLETING THIS FORM	и)		
(ROLE OR TITLE OF	PERSON COMP	LETING THIS FORM)					
[SEAL]							
		I certify that the	CLERK'S CERTIFION  The foregoing is a true and correct coperate of the coperat	CATE py of the original on file in my office.			
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