



Legislative Council Staff

Research Note

Version: Final

Date: 10/19/2016

Bill Number

Senate Bill 16-131

Sponsors

Senator Tate
Representatives Pabon and Willett

Short Title

***Overseeing Fiduciaries'
Management Of Assets***

Research Analyst

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Status

This research note reflects the final version of the bill, which was signed by the Governor on June 10, 2016, and became law on August 10, 2016.

Summary

This bill reorganizes and updates the probate code and laws governing the management of an individual's assets. It clarifies when an unprobated will may be used as part of a proceeding and that judgment and decree will convey legal title as opposed to equitable title. It also enacts portions of Section 5 of the Uniform Powers of Appointment Act.

Suspending the authority of a fiduciary. The bill clarifies that once a petition to remove a fiduciary is filed, the authority of that fiduciary is suspended immediately. Once the fiduciary receives notice of proceedings concerning his or her removal, the fiduciary may not pay compensation or attorney fees or costs out of the estate without a court order.

Right to an attorney. Under the bill, an adult ward or protected person has the right to be represented by a lawyer of his or her choosing, to be paid for at the expense of that person's estate. If the court finds that the person is not capable of providing informed consent to choose an attorney, it is required to appoint a guardian ad litem and, if it determines the person needs representation, it is also required to appoint an attorney. Any appointed attorney is to be provided access to all information related to the proceedings, including immediate access to medical records and information.

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Background

Guardianship and conservatorship laws are typically part of a state's laws on probate, trusts, and estates. Guardians, generally, are charged with the care of incapacitated adults; conservators manage the property of protected persons. Persons for whom guardians and conservators are appointed are referred to as "wards." Probate laws consider who may be appointed as a guardian or conservator, and how those third parties are regulated and monitored by probate courts. In many states, private individuals and professional guardians and conservators may be appointed to serve as guardians or conservators.

Colorado courts have discretion in issuing letters of guardianship to nominees. Nominees must provide the court with certain information, including convictions and certain pleas for felonies and misdemeanors; restraining orders; and other court judgments. The nominee must also submit to a criminal background check and credit report. Following a hearing, the court issues the letters of guardianship if the court finds the nominee is appropriate for office.

Colorado law provides for an order of priority for persons to be appointed as guardians or conservators. Conservators are required to post a bond in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets requiring an order of the court for their removal, and the value of any real property that the fiduciary lacks power to sell or convey without court authorization.

Senate Action

Senate Judiciary Committee (March 14, 2016). At the hearing, the committee received testimony in support of the bill from representatives of the Colorado Bar Association, the Colorado Cross-Disability Coalition, and Arapahoe County. Two private citizens testified in opposition to the bill. The committee adopted amendments L.005 and L.006, and referred the bill, as amended, to the Senate Committee of the Whole.

Amendment L.005 requires a court, when possible, to receive consideration and input from a protected person when appointing a post-adjudication guardian ad-litem for that protected person. Amendment L.006 amends the title of the bill.

Senate second reading (March 17, 2016). The Senate Committee of the Whole adopted the Senate Judiciary Committee report and passed the bill on second reading.

Senate third reading (March 18, 2016). The Senate passed the bill on third reading.

Senate consideration of House amendments (April 20, 2016). The Senate concurred with the House amendments and repassed the bill.

House Action

House Finance Committee (April 14, 2016). At the hearing, the committee received testimony in support of the bill from a representative of the Colorado Bar Association. A private person provided neutral testimony to the committee. The committee adopted amendment L.013, which removes the consideration and input provisions that were adopted under amendment L.005, and referred the bill, as amended, to the House Committee of the Whole.

House second reading (April 18, 2016). The House Committee of the Whole adopted the House Finance Committee report, and passed the bill on second reading.

House third reading (April 19, 2016). The House passed the bill on third reading.

Relevant Research

Legislative Council Staff, *Colorado Probate Law*, Issue Brief, April 2016:
<http://tinyurl.com/zxyk3n2> (pdf).