
OLR Bill Analysis**sSB 984*****AN ACT CONCERNING PROBATE COURT OPERATIONS.*****SUMMARY:**

This bill makes various revisions to probate statutes. It makes several changes affecting conservatorships. For example, it (1) extends to people under voluntary conservatorship the law's protections for involuntary conservatorship regarding placement in long-term care institutions and (2) provides that the rules of evidence apply in all conservatorship proceedings, rather than only hearings on applications for involuntary conservatorship.

The bill substitutes a financial report as provided by the probate court rules of procedure for current law's statement in lieu of an accounting. The bill expands the types of probate appeals that are on the record rather than a trial de novo, and makes other changes concerning probate appeals. It increases the maximum value of a non-charitable trust that the probate court can terminate.

The bill repeals several statutes, such as provisions allowing a prospective adoptive or foster parent's sexual orientation to be considered before placing the child with the person. It makes changes affecting other matters, such as the probate court rules of procedure; probate orders passed under a revoked will; spousal elections; estate examiners; and disputed claims against estates.

The bill also makes various minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2013, except (1) the repealer section (§ 21) is effective July 1, 2013 and (2) certain technical changes are effective upon passage (§ 15) or July 1, 2013 (§§ 16-20).

§ 1 — PROBATE COURT RULES OF PROCEDURE

Existing law requires the Probate Court Administrator to recommend to the Supreme Court, for adoption and promulgation, mandatory rules of procedure for probate courts. The bill conforms to the most recent edition of the compiled rules by referring to it as the probate court rules of procedure, rather than the practice book. The bill also allows, rather than requires, the administrator to pay for the publication of this book from the Probate Court Administration Fund.

On November 7, 2012, the justices of the Supreme Court adopted the most recent revision to the probate rules, to take effect July 1, 2013.

§ 2 — FINANCIAL REPORT IN LIEU OF ACCOUNTING

Current law generally allows a fiduciary of an estate who is also a beneficiary of the estate to file a statement in lieu of an accounting. The statement, filed under penalties of false statement, must provide that all debts, funeral expenses, taxes, and expenses of administration have been paid, and all bequests and devises have been or will be distributed. The court can refuse to accept the statement, and instead require a full accounting, upon the petition of an interested party and a showing of cause after a hearing.

The bill repeals these provisions and instead refers to a financial report in lieu of an account pursuant to the probate court rules of procedure. As is the case if the court approves the statement in lieu of accounting under current law, the bill provides that if the probate court approves such a financial report, the court can enter a decree releasing the fiduciary, and sureties on any bond, from any further liability. The bill specifies that this release of liability would be with respect to all items shown in the report.

The new probate court rules of procedure define a financial report as a simplified form of accounting, meeting specified requirements, by which a fiduciary provides summary information about the management of an estate. Rule 37 lists the specific requirements.

§ 3 — APPEALS IN CIVIL COMMITMENT PROCEEDINGS

The bill repeals obsolete provisions concerning appeals of probate

court orders, denials, or decrees under the involuntary commitment law and related provisions. The provisions (1) require the probate court to make all necessary orders of notice to the parties and to such other persons as it deems advisable and (2) allow the probate court to require the appellant to post a bond and to pay all legal costs and expenses if unsuccessful.

Other provisions of existing law, unchanged by the bill, (1) provide for notifying interested parties about probate appeals; (2) allow costs of a probate appeal to be taxed in favor of the prevailing party as such costs are allowed in Superior Court judgments; and (3) allow appellants to apply for a waiver of costs in probate appeals, including any required bond.

§ 4 — PROBATE APPEALS

Under current law, an appeal from involuntary conservator appointments is on the record (examining the prior decision), while other appeals related to conservatorship proceedings are upon a trial de novo (new trial). The bill makes all conservatorship-related appeals where there is a record, as well as appeals from the following matters with a record, on the record rather than upon a trial de novo:

1. involuntary medication or surgery for psychiatric disabilities (including psychosurgery or shock therapy) and
2. involuntary administration of psychiatric medication to criminal defendants committed to the Department of Mental Health and Addiction Services for treatment to restore their competency to stand trial.

The bill specifies that in probate appeals, the probate court and the judge that rendered the decision being appealed must not be made parties to the appeal or named as parties in the complaint. The bill also clarifies that the appealing party is required only to mail a copy of the complaint to the probate court, not to serve the complaint on the court.

§ 5 — ORDERS PASSED UNDER A REVOKED WILL

Existing law permits probate courts to revoke, annul, and set aside (1) orders or decrees proving or approving a will which has been revoked and (2) other orders or decrees made in settlement of the estate under the will. The bill specifies that for this purpose, the applicable law regarding whether the will has been properly revoked is the law in effect when the will was executed. (The will revocation statute, CGS § 45a-257, was last amended in 1996, effective January 1, 1997.)

These provisions apply to wills executed on or after October 1, 1967. The bill does not specify what version of the statute applies to wills executed before then.

§ 6 — SPOUSAL ELECTION

The bill changes the timeframe for a surviving spouse to elect to take a statutory share of property rather than accept the bequests to the surviving spouse under the deceased spouse's will. The bill requires the filing of intention to take the spousal election within 150 days of the mailing of the decree admitting the will to probate. Current law requires the filing within 150 days of the appointment of the first fiduciary.

By law, a surviving spouse may elect to take a life-estate of one-third of the value of property passing under the deceased spouse's will, after the estate's debts and charges are paid.

§ 7 — TERMINATION OF SMALL TRUSTS

The bill authorizes a probate court to completely or partially terminate a non-charitable trust valued at up to \$150,000, instead of up to \$100,000, if it determines that (1) continuation is uneconomic when operating costs, probable income, and other relevant factors are considered or continuation is not in the beneficiaries' best interest and (2) termination is equitable and practical.

By law, the court may do so only after notice to all beneficiaries and a hearing. When a probate court orders the termination of a trust, it must direct the principal and undistributed income to be distributed to

the beneficiaries in an equitable manner.

Existing law already authorizes probate courts to terminate charitable trusts valued at up to \$150,000 (CGS § 45a-520).

§§ 8-9 — INVOLUNTARY CONSERVATORSHIP

The bill appears to allow a minor's parent or guardian who anticipates that the minor will need involuntary conservatorship after turning age 18 to file a conservatorship application during the 180 days preceding the minor's 18th birthday. A hearing on such an application must be held within 30 days before the minor turns 18. A probate court order approving such an application can take effect no earlier than the minor's 18th birthday.

§§ 10, 15-20 — TECHNICAL CHANGES

These sections make minor, technical, and conforming changes to probate statutes.

§ 11 — RULES OF EVIDENCE IN CONSERVATORSHIP PROCEEDINGS

The bill provides that the rules of evidence apply in all conservatorship proceedings, and all testimony at a conservatorship hearing must be given under oath or affirmation. Current law applies these provisions to hearings on applications for involuntary conservatorship but not to other conservatorship proceedings.

§ 12 — SAFEGUARDS DURING VOLUNTARY CONSERVATORSHIP

The bill extends to people under a voluntary conservatorship the law's procedural safeguards that already apply to involuntary conservatorships regarding the conservator's authority to change the person's residence or dispose of the person's property.

Among other things, these safeguards:

1. generally prohibit a conservator from ending the person's tenancy or lease, selling or disposing of the person's real property or household furnishings, or changing the person's

- residence unless a probate court holds a hearing and finds that (a) the termination, sale, disposal, or change is necessary or (b) the person agrees to it;
2. require the conservator to file a report, and the court to hold a hearing, before changing the person's residence (including placing the person in a long-term care institution);
 3. require the court to order a different placement of a person under conservatorship in an institution for long-term care if the court determines that the person's needs can be met in a less restrictive and more integrated setting within the person's resources; and
 4. allow a person under conservatorship, who is placed in an institution for long-term care, to request a hearing at any time regarding that placement.

§ 13 — ESTATE EXAMINER

Existing law allows anyone with an interest in a deceased person's estate, and who needs financial or medical information about the deceased person for purposes of a potential lawsuit or claim for benefits, to apply to the probate court to appoint an estate examiner.

The bill expands who may apply for an estate examiner by including someone with an interest in an estate who needs financial information about the deceased to determine whether the estate may be settled under the small estate statute. (CGS § 45a-273 provides a simplified procedure for settling estates if the total value of the estate is \$40,000 or less.)

§ 14 — DISPUTED CLAIMS BY CREDITORS IN DECEDENTS' ESTATES

Under current law, when an estate fiduciary rejects (in whole or in part) a claim against the estate, the rejected claimant can (1) file suit in Superior Court, (2) apply to the probate court to hear and decide the claim, or (3) apply to the probate court to appoint one or more disinterested persons (called commissioners) to hear and decide it. At

least one commissioner must be an attorney, and commissioners must not be probate court employees or associated in legal practice with the probate judge.

The bill eliminates the option of applying to have commissioners appointed in such a matter. Instead, it allows the person to apply to probate court to refer the claim to a probate magistrate or attorney probate referee. It appears that probate magistrates or referees assigned in such matters can be associated in legal practice with the probate judge.

As is the case under current law regarding appointment of a commissioner, (1) a person with a rejected claim has 30 days to apply to probate court for referral to a probate magistrate or probate attorney referee; (2) the probate judge has discretion whether to grant the application for referral; and (3) if the application is denied, the person has 120 days to file suit.

Under the bill, if the court refers a claim to a probate magistrate or referee, the proceedings are governed by existing law's provisions regarding such referrals in probate matters. By law, a probate magistrate or attorney probate referee to whom a probate matter is referred must hear the matter and file with the court a report containing factual findings and conclusions drawn from those findings. The probate court must hold a hearing on the report and any amendments or objections to it. The court can accept, modify, or reject the report or any amendment to it.

§ 21 — REPEALERS

The bill repeals statutes:

1. governing claims against estates of people who died before October 1, 1987 (CGS §§ 45a-390 to -419);
2. allowing the DCF commissioner or a child-placing agency to consider the sexual orientation of the prospective adoptive or foster parent or parents when placing a child for adoption or in foster care (CGS § 45a-726a);

3. providing that the recruitment of minority families may not be a reason to delay placement of a child with an available family of a different race or ethnicity from that of the child (CGS § 45a-727b); and
4. concerning appeals from actions of probate commissioners (as explained above, § 14 eliminates the use of probate commissioners) (CGS § 45a-190).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0 (03/13/2013)