

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 13-81**—sSB 984  
*Judiciary Committee*

**AN ACT CONCERNING PROBATE COURT OPERATIONS**

**SUMMARY:** This act makes various revisions in probate statutes, including 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 act substitutes a financial report as provided by the probate court rules of procedure for prior law's statement in lieu of an accounting. It 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 act repeals several statutes, such as provisions allowing the Department of Children and Families (DCF) or a child-placing agency to consider the prospective adoptive or foster parent's sexual orientation before placing a 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 act also makes various minor, technical, and conforming changes.

**EFFECTIVE DATE:** October 1, 2013, except (1) the section on a financial report in lieu of accounting (§ 2) and the repealer section (§ 21) are effective July 1, 2013 and (2) certain technical and conforming 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 act 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 act 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 Supreme Court justices adopted the most recent revision to the probate rules, to take effect July 1, 2013.

**§ 2 — FINANCIAL REPORT IN LIEU OF ACCOUNTING**

Prior law generally allowed a fiduciary of an estate who was also a beneficiary of the estate to file a statement instead of an accounting. The

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statement, filed under penalties of false statement, had to provide that all debts, funeral expenses, taxes, and expenses of administration had been paid, and all bequests and devises had been or would be distributed. The court could refuse to accept the statement and instead require a full accounting, upon the petition of an interested party and a showing of cause.

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

The new probate rules (§ 1.1) 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.

### § 3-4 — PROBATE COURT APPEALS

#### *Appeals in Civil Commitment Proceedings*

The act repeals obsolete provisions on appeals of probate court orders, denials, or decrees under the involuntary commitment law and related statutes. These provisions (1) required the probate court to make all necessary orders of notice to the parties and to such other persons as it deemed advisable and (2) allowed the probate court to require the appellant to post a bond and pay all legal costs and expenses if unsuccessful.

Other provisions of existing law, unchanged by the act, (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.

#### *Appeals on the Record*

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

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.

#### *General Provisions*

The act specifies that in probate appeals, the probate court and the judge that

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rendered the decision being appealed must not be made parties to the appeal or named as parties in the complaint. The act 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 act 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 act does not specify what version of the statute applies to wills executed before then.

### § 6 — SPOUSAL ELECTION

The act changes the timeframe for a surviving spouse to elect to take a statutory share of property rather than accept the bequests under the deceased spouse's will. It requires the filing of intention to take the spousal election within 150 days after the mailing of the decree admitting the will to probate. Prior law required 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 act 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. Existing law already authorizes probate courts to terminate charitable trusts valued at up to \$150,000 (CGS § 45a-520).

By law, a probate court can terminate a trust only after notice to all beneficiaries and a hearing. When it orders termination of a trust, it must direct the principal and undistributed income to be distributed to the beneficiaries in an equitable manner. Trusts cannot be terminated under certain circumstances.

### §§ 8-9, 11 — INVOLUNTARY CONSERVATORSHIP

The act allows a minor's parent or guardian who anticipates that the minor will need involuntary conservatorship after turning age 18 to file a conservatorship application up to 180 days before the minor's 18th birthday. A hearing on such an application must be held within 30 days before the minor turns

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18. A probate court order approving such an application can take effect no earlier than the minor's 18th birthday.

The act also specifies that if a person subject to an involuntary conservatorship notifies the probate court that he or she wants to attend a conservatorship hearing but is unable to do so, the probate court must schedule the hearing at a place that would facilitate the person's attendance. Existing law already requires this in regards to people (1) for whom an application for involuntary conservatorship has been filed or (2) who have requested voluntary conservatorship.

### § 10 — RULES OF EVIDENCE IN CONSERVATORSHIP PROCEEDINGS

The act 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. Prior law applied these provisions to hearings on applications for involuntary conservatorship but not to other conservatorship proceedings.

### § 12 — SAFEGUARDS DURING VOLUNTARY CONSERVATORSHIP

The act extends to a person under a voluntary conservatorship the law's procedural safeguards that already apply to an involuntary conservatorship 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 him or her in a long-term care institution);
3. allow a person under conservatorship, who is placed in an institution for long-term care, to request a hearing at any time on that placement; and
4. require the court to order a different placement of such a person 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.

### § 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 act also allows a person to apply if he or she has an interest in an estate and needs financial information about the deceased to determine whether the

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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, 21 — DISPUTED CLAIMS BY CREDITORS OF DECEDENTS' ESTATES

Under prior law, when an estate fiduciary rejected (in whole or in part) a claim against the estate, the rejected claimant could, among other options, apply to the probate court to appoint one or more disinterested persons (called commissioners) to hear and decide it. At least one commissioner had to be an attorney, and commissioners could not be probate court employees or associated in legal practice with the probate judge.

The act eliminates the option of applying to have commissioners appointed in such a matter, and repeals a related statute. Instead, it allows the person to apply to probate court to refer the claim to a probate magistrate or attorney probate referee.

As is the case under prior 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 to grant the application for referral; and (3) if the application is denied, the person has 120 days to file suit.

Under the act, 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.

Under existing law, unchanged by the act, a person whose claim against an estate is rejected can also (1) file suit in Superior Court or (2) apply to the probate court to hear and decide the claim.

### §§ 15-20 — TECHNICAL CHANGES

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

### § 21 — REPEALER

The act 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); and
3. providing that the recruitment of minority families may not be a reason to

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delay placement of a child with an available family of a different race or ethnicity from that of the child (CGS § 45a-727b).

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