

**SENATE JUDICIARY COMMITTEE**  
**Senator Hannah-Beth Jackson, Chair**  
**2019-2020 Regular Session**

AB 2844 (Oberholte)  
Version: May 4, 2020  
Hearing Date: July 30, 2020  
Fiscal: Yes  
Urgency: No  
JT

**SUBJECT**

Guardians and conservators: duties: accountings

**DIGEST**

This bill enables guardians and conservators to satisfy their existing duties to provide accountings to courts by submitting verified electronic account statements.

**EXECUTIVE SUMMARY**

Existing law requires guardians and conservators to periodically file accountings with the court, including an account statement that is an original statement from an institution or financial institution. This bill would expand the definition of "account statement" for these purposes to include a verified electronic statement that is certified under penalty of perjury.

This bill is sponsored by the Conference of California Bar Associations and supported by the California Commission on Aging, the Executive Committee on Trusts and Estates of the California Lawyers Association, and the Professional Fiduciary Association of California. It has no known opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Requires, at the expiration of one year from the time of appointment and not less than biennially, a guardian or conservator to present an accounting of the assets of the estate of the ward or conservatee to the court for settlement and allowance, as specified. Provides that all such accountings must be submitted on a specified form developed by Judicial Council. (Prob. Code § 2620(a).)<sup>1</sup>

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<sup>1</sup> All further section references are to the Probate Code, unless otherwise specified.

- 2) Following the death of a ward or conservatee, requires a final accounting by the guardian or conservator that includes a court accounting for the period that ended on the date of death and a separate accounting for the period subsequent to the death. (*Id.* at (b).)
- 3) Along with required court accountings, requires the guardian and conservator to file supporting documents, including all account statements showing the account balance as of the closing date of the accounting period of the court accounting. If the guardian or conservator is a private professional or licensed guardian or conservator, further requires the guardian or conservator to file all original account statements showing the balance as of all periods covered by the accounting. (*Id.* at (c)(2), (3).)
- 4) Provides that each accounting is subject to random or discretionary, full or partial review by the court. Provides that the review may include consideration of any information necessary to determine the accuracy of the accounting. Requires the court to make an express finding as to the severity of any error and further appropriate action in response to the error. Provides that among the action available to the court is the immediate suspension or removal of the guardian or conservator and appointment of a temporary guardian or conservator. (*Id.* at (d).)
- 5) Requires the guardian or conservator to make available for inspection and copying, upon reasonable notice, to any person designated by the court to verify the accuracy of the accounting, all books and records, including receipts for any expenditures, of the guardianship or conservatorship. (*Id.* at (e).)
- 6) Defines, for these purposes, the term “account statement” to include any original account statement from any institution or financial institution in which money or other assets of the estate are held or deposited. (*Id.* at (c)(1).)

This bill would expand the definition of “account statement” to include a verified electronic statement that is certified under penalty of perjury.

### COMMENTS

#### 1. Verified electronic account statements for guardian or conservator court accountings

There is a fiduciary relationship between a conservator or guardian and conservatee or ward. (§ 2101.) The duties of conservators and guardians include the obligation to exercise ordinary care and diligence in managing and controlling the conservatee’s or ward’s estate. (§ 2401.) Probate Code section 2102 provides that “[a] guardian or conservator is subject to the regulation and control of the court in the performance of the duties of the office.” As court-appointed officers, conservators and guardians

remain under the control and continuing jurisdiction of the court in the discharge of their duties. (See *Guardianship of Davis* (1967) 253 Cal.App.2d 754, 760.) “The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate.” (§ 1850(b); *Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427 [court may “intervene to protect abuses” by a fiduciary].)

Furthermore, a court’s failure to diligently scrutinize the actions of the conservator or guardian likely constitutes an abuse of discretion. In *Conservatorship of Presha* (2018) 26 Cal.App.5th 487, for instance, the Court of Appeal upheld the probate court’s decisions to reduce the conservator’s compensation and ordered the conservator to reimburse the conservatee’s estate. (*Id.* at 499-500.) The court in *Presha* stated that the probate court would have been remiss in its duties to regulate and control the performance of the conservator had it suspected a breach of fiduciary duty and not examined the conservator’s actions more closely. (*Id.* at 498.)

Section 2620 requires a guardian or conservator to present the accounting of the assets of the estate of the ward or conservatee to the court at specified intervals and defines an “account statement” for these purposes to include an original account statement from any institution or financial institution. This bill would expand the definition of “account statement” in that section to include a verified electronic statement that is certified under penalty of perjury.

The author writes:

AB 2844 will add verified electronic bank statements to the acceptable bank statements that can be filed in support of accountings for guardianships and conservatorships, which will streamline and modernize the process as well as reduce delays and additional expenses. The digital age has completely changed the way people do business and day-to-day life. Over the past many years, technology has changed rapidly and as a result so has the way banking is done. Many banking activities that were previously done via paper are now done electronically. This includes bank statements. The requirement for an original bank statement is outdated and onerous and does not reflect current common banking practices, which include statements being delivered electronically. In fact, requiring original hard copy statements can cause unnecessary expense and delay in guardianship and conservatorship administrations.

The sponsor, Conference of California Bar Associations, adds: “Allowing the use of electronic statements and requiring the party submitting the electronic statement to verify authenticity of the same will reduce cost and increase efficiency in the administration of guardianship and conservatorship administrations. For example, if a client sends their attorney bank statement electronically, the attorney can download and

save the statements and then electronically file the statements.” The Professional Fiduciary Association of California, in support, similarly asserts that this bill will “streamline and modernize the process as well as reduce delays and additional expenses.”

## 2. Clarifying amendments

The author has agreed to amend the bill to make a clarifying change requested by the Executive Committee on Trusts and Estates of the California Lawyers Association, which supports the bill as a result. Those amendments clarify who is responsible for verifying an electronic account statement. The amendments additionally clarify that a court may accept a verified printed version of the electronic statement, which is consistent with an existing rule of court. (Cal. Rule of Court, 7.575(b).) The amendments are as follows:

### Amendment

Amend section 2620(c)(1) as follows:

(1) For purposes of this subdivision, the term “account statement” shall include any original account statement or verified electronic statement from any institution, as defined in Section 2890, or any financial institution, as defined in Section 2892, in which money or other assets of the estate are held or deposited. ***A court may accept a computer-generated printout of an original verified electronic statement if the guardian or conservator verifies that the statement was received in electronic form and printed without alteration.*** A verification shall be executed ***by the guardian or conservator*** pursuant to Section 2015.5 of the Code of Civil Procedure.<sup>2</sup>

### SUPPORT

Conference of California Bar Associations (sponsor)  
California Commission on Aging  
Executive Committee on Trusts and Estates of the California Lawyers Association  
Professional Fiduciary Association of California

### OPPOSITION

None known

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<sup>2</sup> These amendments may additionally include technical nonsubstantive changes recommended by the Office of the Legislative Counsel.

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: *See* Comment 1.

**PRIOR VOTES:**

Assembly Floor (Ayes 76, Noes 0)

Assembly Appropriations Committee (Ayes 18, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

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