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## INVITATION TO COMMENT

**W11-08**

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Title	Action Requested
Probate Conservatorships: Determination of Conservatee's Appropriate Level of Care	Review and submit comments by Monday, January 24, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt form GC-355	July 1, 2011
Proposed by	Contact
Probate and Mental Health Advisory Committee	Douglas C. Miller, <a href="mailto:douglas.miller@jud.ca.gov">douglas.miller@jud.ca.gov</a> , (818) 558-4178
Hon. Mitchell L. Beckloff, Chair	

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### **Probate Code section 2352.5**

The Omnibus Conservatorship and Guardianship and Reform Act (Omnibus Act) was enacted in 2006. One of its provisions added Probate Code section 2352.5.<sup>1</sup>

Section 2352.5(a) creates a new term, the “personal residence of the conservatee at the time of commencement of the proceeding” and establishes a presumption that this residence is the conservatee’s least restrictive appropriate residence. Under section 2352(b) (as amended by section 1 of Sen. Bill 1116), the conservator must select for the conservatee the “least restrictive appropriate residence, *as described in Section 2352.5*, that is available and necessary to meet the conservatee’s needs and that is in the best interests of the conservatee.” (Italics added.)

Section 2352.5(b) requires the conservator, upon appointment, to determine the appropriate level of care for the conservatee. This determination must include:

1. An evaluation of the level of care existing at the time of commencement of the conservatorship and the measures that would be necessary to keep the conservatee in his or her personal residence; and
2. If the conservatee is not living in his or her personal residence at the commencement of the conservatorship, the determination must include either a plan to return him or her to

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<sup>1</sup> Unless otherwise stated, all code references are to the Probate Code. The Omnibus Act is Stats. 2006, chs. 490–493 (respectively, Sen. Bill 1116, Sen. Bill 1550, Sen. Bill 1716, and Assem. Bill 1363). Section 2352.5 was added by Sen. Bill 1116, § 2.

that residence or an explanation of the limitations or restrictions on a return to that residence in the foreseeable future.

The level of care determination must be in writing, under penalty of perjury, and must be submitted to the court within 60 days of the date of the conservator's appointment (section 2352.5(c)). The conservator must thereafter reevaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care (section 2352.5(d)).

### **Cal. Rules of Court, rule 7.1063**

Neither section 2352 nor section 2352.5 defines the term "personal residence of the conservatee at commencement of the proceeding." The term clearly carries a special meaning beyond the general term "residence," as both code sections also use the latter term to refer to the place where the conservatee lives. The Judicial Council has provided a definition of the term in rule 7.1063 of the California Rule of Court, adopted, effective January 1, 2008, to implement the provisions of section 2352 and section 2352.5. Rule 7.1063(b)(1) and (2) provide<sup>2</sup>:

- (1) The "conservatee's personal residence" . . . is the residence the conservatee understands or believes, or reasonably appears to understand or believe, to be his or her permanent residence on the date the first petition for appointment of a conservator was filed in the proceeding, whether or not the conservatee is living in that residence on that date.
- (2) If the conservatee cannot form or communicate an understanding or belief concerning his or her permanent residence on the date the first petition for appointment of a conservator was filed in the proceeding, his or her personal residence under this rule is the residence he or she last previously understood or believed, or appeared to understand or believe, to be his or her permanent residence.

The filing date of the first petition for the appointment of a conservator is the date a conservatorship proceeding is commenced.

### **Form GC-355**

The Probate and Mental Health Advisory Committee proposes the adoption of a new mandatory Judicial Council form for the initial written care determination, including the evaluation of the level of care at commencement of the conservatorship; and the reevaluation upon a change of

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<sup>2</sup> The rule also provides guidance on whether certain changes of residence are moves from the conservatee's personal residence. See rule 7.1063(b)(3). This part of the rule concerns the notice that must be given if the conservatee moves from his or her personal residence under section 2352, but a review of the provision will help to explain the concept of the conservatee's personal residence. (A move from the conservatee's personal residence requires notice to the court and to certain parties before the move, the pre-move notice under rule 7.1063(a). Moves from other residences require only notice to the court and these parties after the move, the post-move notice under rule 7.1063(c). See section 2352(e)(1) and (3), rule 7.1063(a) and (c), and Judicial Council forms GC-079 (the "pre-move notice") and GC-080 (the "post-move notice")).

circumstances required by section 2352.5, designated as form GC-355. The form contains the following features:

1. A Notice to Conservator of the Person is provided in a text box at the top of the first page, immediately below the caption boxes for the filing party and counsel, court, case name, and case number.

The notice includes a definition of the conservatee’s personal residence taken from rule 7.1063(b)(1) and (2) and a description of the event that commences (“starts”) a conservatorship proceeding—the filing of a petition for appointment of a conservator or the first petition if there is more than one. The notice advises of the deadline for filing an initial care determination, that it must be in writing and under penalty of perjury, and that the form must be used for the purpose.<sup>3</sup> The notice also advises of the requirement for a reevaluation upon a material change of circumstances affecting the conservatee’s needs for placement and care.

The first paragraph of the notice closes with an admonition in bold text that the level of care determination under section 2352.5 is not a substitute for the written care plan that is required by some courts under local rules. The determination must be prepared and filed in addition to any care plan required by the court.

2. The form is designed to cover both initial level of care determinations and reevaluations upon changed circumstances affecting the conservatee’s needs for placement and care.

The document title caption box contains check boxes to select for an initial determination or a reevaluation after a change of circumstances. Item 1 on page 1 contains space for the entry of a date and the choice for that entry of (1) the date of the order appointing the conservator or (2) the date of a reevaluation upon a change of circumstances.<sup>4</sup> If the latter date is selected, item 1 refers the preparer to item 4 on page 2 of the form, where the conservator is to describe the material change of circumstances affecting the conservatee’s needs for placement and care that require the reevaluation. As a reminder, an instruction precedes item 4 directing its completion if the reevaluation date (“second check box”) is selected in item 1.

Comments are requested concerning the clarity of the form’s layout or instructions concerning its use for reevaluations, including recommendations for improvements.

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<sup>3</sup> The form is proposed as a mandatory form. Under Cal. Rules of Court, rule 1.31(a), an applicable mandatory Judicial Council form must be used.

<sup>4</sup> Under section 2352.5(a), the conservator’s evaluation of the level of care is as of the date of commencement of the proceeding. In other words, this is the conservator’s evaluation of the conservatee’s existing level of care before the conservator’s appointment. But the conservator’s determination of the appropriate level of care going forward is as of the date of the appointment order. See section 2352.5(b): “*Upon appointment*, the conservator shall determine the appropriate level of care for the conservatee.” (Italics added.)

3. The form contains options describing possible care needs for conservatees.

Item 3 on page 2 of the form includes several options for commonly experienced types of assistance needed by conservatees, plus an “other assistance” category for additional options. The preparer is to select all that apply.

Comments are requested, particularly from public guardians and professional fiduciaries and their professional organizations, concerning recommended modifications, deletions, or additions to this list. Specifically, should there be an additional option for “assistance with daily living.” Does that term convey a meaning in the elderly care community that would be generally understood? If not, standing alone, would the option be useful if accompanied by a request for a description of the assistance, similar to the request for a description in the “other assistance” category?

An additional choice below the “other assistance” option in item 3 calls for the identification of a professional assessment of the conservatee’s care needs and requests attachment of a copy of the assessment, including a description of the professional’s qualifications. A professional assessment of care needs is not required by the law but would be very helpful to the court in an appropriate case if the conservatee’s need for care is great or complex and his or her estate can afford its cost.

Item 3 must be completed for initial determinations and also for reevaluations. This requirement is shown in the form by the absence of a check box at the beginning of the item and by the item’s reference to the date given in item 1, which is the date of either an initial determination or a reevaluation.

4. The form calls for identification of the conservatee’s “personal residence.”

Item 5 on pages 2 and 3 of the form contains three options. Item 5a addresses the situation where the conservatee’s place of residence or facility on the date given in item 1 (the date of the conservator’s appointment or the date of a reevaluation) and its type, identified in item 2, is determined by the conservator to be his or her personal residence within the meaning of rule 7.1063. Items 5b and 5c cover the situation where the residence identified in item 2 of the form is not the conservatee’s personal residence within the meaning of the rule.

Item 5a calls for the conservator’s description of the measures necessary to permit the conservatee to remain in the personal residence identified in the form for the foreseeable future. This item must also be completed on a reevaluation as long as the conservator plans to continue to maintain the conservatee in the residence identified as his or her personal residence in an initial determination, and possibly in one or more prior reevaluations.<sup>5</sup> A reevaluation would be

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<sup>5</sup> Although the conservatee’s personal residence identified in items 2 and 5a of the form must be shown in the initial determination and in subsequent reevaluations in this situation, that residence never changes; it remains the residence that the conservatee believed was his or her permanent residence on the date the conservatorship started, whether or not he or she was then living there, or, if the conservatee could not form or communicate a belief on that date, the residence he or she last previously believed to be his or her permanent residence.

necessary although the residence is not to be changed if there is a material change in the conservatee's need for care that would, for example, require significant additional levels or kinds of assistance or important modifications to the residence.

Items 5b and 5c address the situation where the conservatee's residence shown in item 2 is not his or her personal residence under rule 7.1063. Item 5b is for an initial determination. It provides a place for the conservator to establish for the record the location of the conservatee's personal residence under the rule even though he or she is not currently living there. Items 5b1 and 5b2 present the two options available under section 2352.5 in this situation: the conservator's plan to restore the conservatee to his or her personal residence, or the reasons why that cannot be done for the foreseeable future (expressed in item 5b2, as in the statute, as the limitations or restrictions on the conservatee's return to that residence).

Item 5c is for reevaluations on a change in circumstances. It permits the conservator to refer back to a previously-filed initial determination that identifies the conservatee's personal residence without having to restate it, and then to state that the plans to return the conservatee to that residence or the reasons why that cannot be done shown in the earlier determination have either changed or have not changed, and if the former, to describe the changes in an attachment. (The conservatee's current residence must always be given, in item 2.)

A change of circumstances requiring a reevaluation could occur even though the conservator still plans to move the conservatee back to his or her personal residence because the cost or difficulty in doing so have significantly changed. A reevaluation could also be required even though there is no change in the reasons why the conservatee cannot be returned to his or her personal residence because the conservatee's needs for care away from that residence have changed.

A copy of proposed form GC-355 follows at pages 6–8.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>   TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<b>FOR COURT USE ONLY</b>  <h2 style="margin: 0;">Draft 7</h2> <h3 style="margin: 0;">November 29, 2010</h3> <h3 style="margin: 0;">Not Approved by the Judicial Council</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF <i>(Name):</i> _____ CONSERVATEE	
<b>DETERMINATION OF CONSERVATEE'S APPROPRIATE LEVEL OF CARE</b> <input type="checkbox"/> Initial Determination <input type="checkbox"/> Reevaluation After Change of Circumstances	CASE NUMBER: _____

**Notice to Conservator of the Person**

You must determine the conservatee's appropriate level of care in writing, under penalty of perjury, and must file your determination with the court within 60 days of the court's order appointing you as conservator. You must use this form for that purpose. Your determination must include an evaluation of the conservatee's level of care on the date the conservatorship proceeding was started (the date the petition for the appointment of a conservator was filed with the court or, if more than one petition was filed, the date the first petition was filed), and the measures that would be necessary to keep the conservatee in his or her **personal residence**. If the conservatee was not living in that residence on the date the proceeding was started, your determination must include either a plan to return the conservatee to that residence or an explanation of the reasons why the conservatee cannot return to that residence in the foreseeable future. Thereafter, you must reevaluate the conservatee's placement and level of care if there is a material change in circumstances affecting his or her needs for placement and care. You must also use this form for a reevaluation. **This determination is in addition to, not a replacement for, any written care plan the court may require. Check the court's local rules to see if a care plan must also be filed.**

The conservatee's **personal residence** is the residence he or she understood or believed, or appeared to understand or believe, was his or her permanent residence on the date the conservatorship proceeding was started, whether or not he or she was living there on that date. If the conservatee could not then form or communicate an understanding or belief about his or her permanent residence, the conservatee's personal residence is the residence he or she last previously understood or appeared to understand was his or her permanent residence. (See Cal. Rules of Court, rule 7.1063.)

*(Name):* \_\_\_\_\_, declares as follows:

1. I am conservator of the person of the above-named conservatee. I am determining the conservatee's appropriate level of care as of *(date)*: \_\_\_\_\_,  the date of the order appointing me as conservator.  following a material change of circumstances affecting the conservatee's needs for placement and care described in item 4 on page 2.
2. a. On the date stated in item 1, the conservatee was living at the following residence or facility *(address, telephone number, and name of facility, if any)*:

Telephone: \_\_\_\_\_

- b. The residence or facility is described as follows:  Conservatee's single family home, condominium, or apartment  
 Relative's or friend's single family home, condominium, or apartment     Acute care hospital  
 Skilled nursing facility     Licensed residential care facility     Board and care home  
 Intermediate-care facility     Continuing-care retirement community     Secured-perimeter facility  
 Hospice     Other *(describe)*: \_\_\_\_\_

- c. The conservatee has been living in the above residence or facility since *(date)*: \_\_\_\_\_

CONSERVATORSHIP OF _____ (Name):   CONSERVATEE	CASE NUMBER:
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3. The conservatee's care requirements as of the date given in item 1 above are as follows (*select all that apply*):

- No assistance is needed at this time.
  Light housekeeping help required, \_\_\_\_\_ hours per week.
- Personal care givers required, \_\_\_\_\_ hours per week.
  Nursing care required, \_\_\_\_\_ hours per week.
- Meal preparation assistance required, \_\_\_\_\_ hours per week.
  Assistance with medication required, \_\_\_\_\_ hours per week.
- Other assistance required, \_\_\_\_\_ hours per week (*describe*): \_\_\_\_\_ per week.

- A professional assessment of the conservatee's care needs has been performed. A copy of the assessment, including a statement of the professional's qualifications, is provided on Attachment 3.

(*Complete item 4 if you selected the second check box in item 1 on page 1.*)

4.  The material change of circumstances affecting the conservatee's needs for placement and care is as follows (*describe*):

Continued on Attachment 4.

5. a.  The residence or facility described in item 2 above **is** the conservatee's **personal residence** within the meaning of Cal. Rules of Court, rule 7.1063. The following measures are necessary to keep the conservatee in that residence:

Continued on Attachment 5a.

CONSERVATORSHIP OF _____ (Name):  <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER:  
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5. b.  The residence or facility described in item 2 above **is not** the conservatee's **personal residence** within the meaning of Cal. Rules of Court, rule 7.1063. The conservatee's **personal residence** is (address and name of facility, if any):

(Complete either item 1 or 2 below. Complete item 1 if you believe the conservatee can be returned to his or her personal residence in the foreseeable future. Complete item 2 if you believe the conservatee cannot be returned to that residence in the foreseeable future.)

1.  The conservator's plan to restore the conservatee to his or her personal residence is as follows:

Continued on Attachment 5b1.

2.  The limitations or restrictions on the conservatee's return to his or her personal residence in the foreseeable future are as follows:

Continued on Attachment 5b2.

- c.  The residence or facility described in item 2 above **is not** the conservatee's **personal residence** within the meaning of Cal. Rules of Court, rule 7.1063. The conservatee's **personal residence** was identified in the *Determination of Conservatee's Appropriate Level of Care* (form GC-355) filed in this matter on (date):  
 The conservator's plan to restore the conservatee to that residence or the limitations or restrictions on the conservatee's return to that residence shown in that care determination  remain as described in that determination.  
 have changed in the manner described in Attachment 5c.

6. Number of pages attached: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF CONSERVATOR OF THE PERSON)

\_\_\_\_\_  
 (SIGNATURE OF CONSERVATOR OF THE PERSON)



## Item W11-08 Response Form

**Title:** Probate Conservatorships: Determination of Conservatee's Appropriate Level of Care (adopt form GC-355)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

Mail: Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

**DEADLINE FOR COMMENT: 5:00 p.m., Monday, January 24, 2011**

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

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**Title: Probate Conservatorships: Determination of Conservatee's Appropriate Level of Care** (adopt form GC-355)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

- Commenting on behalf of an organization

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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