

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON JUDICIARY
Bob Wieckowski, Chair
AB 1520 (Gatto) – As Amended: April 10, 2014

As Proposed to be Amended

SUBJECT: GUARDIAN AD LITEM: PET TRUSTS

KEY ISSUE: SHOULD A COURT BE PERMITTED TO APPOINT A GUARDIAN AD LITEM TO PROTECT THE INTERESTS OF A PET WHO IS THE SUBJECT OF A PET TRUST?

SYNOPSIS

This non-controversial bill seeks to better protect the interests of pets who are the subjects of pet trusts. Existing law allows for the creation and enforcement of trusts for the benefit of pets. It also allows for the appointment of a guardian ad litem in any action under the Probate Code to protect the interests of those who cannot adequately protect themselves. This includes children, as well as incapacitated individuals and unborn children. This bill allows a court to appoint a guardian ad litem to represent the interest of a pet who is the subject of a pet trust when the court determines that the interest of the pet cannot otherwise be adequately protected. The author proposes to amend the bill to narrow who may petition the court for appointment of a guardian for the pet. This bill has no known opposition.

SUMMARY: Permits a court to appoint a guardian ad litem to represent the interests of a pet who is the subject of a pet trust. Specifically, this bill:

- 1) Permits the court, on its own motion or on request of the trustee, a beneficiary of the trust, a person interested in the welfare of the animal, or a nonprofit charitable organization that has as its principal activity the care of animals, to appoint a guardian ad litem to represent the interest of an animal that is subject to a trust for the care of that animal.
- 2) Provides that the reasonable expenses of the guardian ad litem shall be determined by the court and paid as the court orders, either out of the property of the trust or from such other source as the court orders.

EXISTING LAW:

- 1) Provides that a trust may be created for the care of an animal, as provided. Permits any beneficiary, any person designated by the trust instrument or the court to enforce the trust. Allows any nonprofit organization that cares for animals, upon reasonable request, to inspect the animal and the premises where the animal is maintained. Defines “animal” as one or more domestic or pet animals for whose benefit the trust was established. (Probate Code Section 15212. Unless stated otherwise, all further statutory references are to that code.)
- 2) Permits the court, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, to appoint a guardian ad litem at any stage of

a proceeding under the Probate Code to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate: (a) a minor; (b) an incapacitated person; (c) an unborn person; (d) an unascertained person; (e) a person whose identity or address is unknown; or (f) a designated class of persons who are not ascertained or are not in being. Provides that the reasonable expenses of the guardian ad litem shall be determined by the court and paid as the court orders, either out of the property of the estate involved or by the petitioner or from such other source as the court orders. (Section 1003.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This bill represents the author's experiment in crowdsourcing legislation. According to the author, the bill is the result of "months of deliberation among the participants of the WikiPage that was established to create and refine legislation limited to the Probate Code." The result is legislation that seeks to better protect pets when their owners can no longer care for them. In particular, this bill allows the court to appoint a guardian ad litem to represent the interest of an animal who is the subject of a pet trust. In support of the bill, the author writes:

As was noted by contributors to the WikiPage: "The status of animals is inherently more than property as evidenced by animals being able to be beneficiaries of trusts pursuant to legislation. It makes sense, therefore, that when needed, a guardian ad litem could be appointed for them."

Pet Trusts: Current law allows for the establishment of a trust for the benefit of an animal. The trust has specific rules to protect both the settlor's interests and the interests of the pet. In particular, the trust provides that the principal or income of the trust may not be converted to the use of the trustee or to any use other than for the benefit of the animal. The law also provides that trust provisions may be enforced by a person designated for that purpose in the trust instrument or, if no one is designated, by a person appointed by a court. In addition, any person interested in the welfare of the animal or any nonprofit charitable organization that has as its principal activity the care of animals may petition the court regarding the trust. However, these provisions do not explicitly allow for a guardian ad litem to be appointed to represent the pet's interests.

Guardian Ad Litem: A guardian ad litem is appointed by the court to represent the best interest of someone who cannot properly represent himself or herself. Minors are often appointed guardians ad litem in legal proceedings. The Probate Code specifically allows for a court to appoint a guardian ad litem to represent, in addition to a child, an incapacitated person, an unborn person, an unascertained person or a person whose identity or address is unknown or not yet in being. The court can appoint a guardian ad litem for any of these individuals, on its own motion, or on request of a personal representative, guardian, conservator, trustee, or other interested person, at any stage of a probate proceeding if the court determines that representation of that person's interest otherwise would be inadequate. The guardian ad litem's reasonable expenses are to be determined by the court and paid as the court orders, either out of the property of the estate involved or by the petitioner or from such other source as the court orders.

This Bill Seeks to Protect Pets Subject to a Pet Trust by Allowing a Court to Appoint a Guardian ad Litem When Necessary to Represent Their Interests: This bill seeks to protect the interest of pets who are the subject of a pet trust by allowing the court to appoint a guardian ad litem to

represent their interests if the court finds that their interests are not otherwise adequately protected. This gives a court the discretion to protect a pet whose interests are not, for whatever reason, adequately protected by the trustee.

Author's Amendment: In order to narrow the bill and better track the existing language that allows any person interested in the welfare of the animal or any nonprofit charitable organization that cares for animals to petition the court regarding the trust, the author rightly proposes to amend the bill to clarify that not just any interested person can seek a guardian ad litem for the pet. As proposed to be amended, only a beneficiary of the trust, a person interested in the welfare of the animal, or a nonprofit charitable organization that has as its principal activity the care of animals may petition the court for appointment of a guardian ad litem to protect the pet's interests. The following amendment achieves this:

(j) The court may, on its own motion or on request of the trustee or **any person or organization permitted to petition the court regarding the trust pursuant to subdivision (c)** ~~other interested person~~, appoint a guardian ad litem to represent the interest of the animal if the court determines that representation of the interest otherwise would be inadequate. The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of the trust or from another source as the court orders.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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