

ACTION REQUIRED

ASSEMBLY BILL 937 (Wieckowski), Chapter 127, Statutes of 2013

Affects: Adult and elderly residential care facilities; (Adult Residential Facilities, Adult Residential Facility for Persons with Special Health Care Needs, Residential Care Facilities for the Chronically Ill, Social Rehabilitation Facilities, and Residential Care Facilities for the Elderly)

Subject: Conservators and Guardians: Personal Rights of Conservatees

Summary: Amends Section 2351 of Chapter 1 of Division 4 of the Probate Code.

Assembly Bill 937 amends the Probate Code relative to the powers and duties of a conservator. Effective January 1, 2014, the Probate Code shall be amended to state that a conservator's authority shall not infringe on a conservatee's personal rights, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by a court order. This law only applies to full conservatorships and not to limited conservatorships.

Implementation: This law becomes effective January 1, 2014.

Licensees

If an applicant for residency is a conservatee or if a current resident becomes a conservatee while a resident of the facility, the licensee must obtain all pertinent and official documents relative to the conservatorship. These documents are necessary for the licensee to gain knowledge of the powers and duties of the conservator and to determine if the licensee is able to meet the needs of the conservatee.

In reviewing the documents relative to conservatorship, a licensee should pay special attention to the inclusion or exclusion of any orders that may impact an applicant or resident's personal rights. In general, a licensee may not violate a conservatee resident's personal rights, including, but not limited to, the right to receive visitors, telephone calls, and personal mail at the request of a conservator, unless specifically limited by a court order. The legal authority to restrict visitors, phone calls, and mail would have to be stated clearly in an attachment to the Letters of Conservatorship or in a subsequent order issued by the court.

As this law takes a broad approach to protecting a conservatee's personal rights, "including, but not limited to," licensees shall ensure compliance with regulations relative to a resident's personal rights, unless otherwise restricted in the initial Letters of Conservatorship or in a subsequent order issued by the court.

Licensees are encouraged to proactively work with residents who are conserved and conservators to better ensure compliance with this law.

Effective January 1, 2014, licensees who are currently restricting a conserved resident's access to visitors, phone calls and mail at the direction of a conservator must cease to do so unless the conservator can produce court documents authorizing the restriction of visitors, phone calls or mail from specified individuals or groups. Without such a court order, the licensee shall not take any action to restrict a resident's visitors, phone calls or mail.

Licensing Program Analysts

Licensing Program Analysts who receive an allegation of a violation of this law, must, as part of the overall investigative process, review the resident's file, specifically any documents relative to the resident's conservatorship, to ascertain the authority of the conservator.

Licensing Program Analysts, who substantiate a violation of this law, shall use the facility appropriate regulations related to personal rights to cite the facility.

Assembly Bill 937 will not be retroactive to any complaints filed before January 1, 2014.

For legislative information related to this new law:
http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0901-0950/ab_937_bill_20130819_chaptered.pdf