

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 840

H.P. 617

House of Representatives, February 20, 2003

### An Act To Clarify the Duties of Conservators

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative FLETCHER of Winslow.  
Cosponsored by Representatives: BERRY of Belmont, CANAVAN of Waterville, SHERMAN  
of Hodgdon.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 18-A MRSA §5-418, sub-§(d)** is enacted to read:

6 (d) If a conservator fails to file an inventory or fails to  
8 include in the inventory property that the court determines  
10 should have been in the inventory, the court, in determining the  
12 value of the uninventoried or missing property, may rely on the  
14 opinion of qualified appraisers or owners of similar property who  
16 have not seen the uninventoried property. Any doubt about the  
18 value of the uninventoried or missing property created by the  
20 absence of the property must be resolved in favor of the highest  
22 reasonable estimated offer. When an inventory has not been filed  
24 and interested persons allege under oath or affirmation that  
26 property should have been inventoried but is now missing, the  
28 conservator has the burden of proving that property was not  
30 required to be inventoried.

32 **Sec. 2. 18-A MRSA §5-429, sub-§§(e) and (f)** are enacted to read:

34 (e) Grounds for imposition of surcharge include, but are  
36 not limited to:

38 (1) Failure to timely file an inventory as required by  
40 section 5-418;

42 (2) Failure to timely file an account as required by  
44 section 5-419;

46 (3) Unexplained loss of property from the estate;

48 (4) Bad faith management of the estate;

(5) Failure to maintain adequate insurance on estate assets;

(6) Filing of false documents relating to the estate;

(7) Taking an unreasonable fee for managing the estate; and

(8) Inducing or attempting to induce the protected person  
to give the conservator special benefits.

(f) A surcharge may include, without limitation, the  
following:

(1) An amount determined adequate to make the estate whole  
for any losses of property or value or other losses  
including costs and reasonable attorney's fees incurred by  
the estate in any proceeding for surcharge;

