

Effective 5/13/2014

75-5-408 Permissible court orders.

- (1) The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:
 - (a) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the person's benefit or the benefit of the person's dependents.
 - (b) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and the members of the minor's household.
 - (c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs that the person could exercise if present and not under disability, except the power to make a will. These powers include the power to:
 - (i) make gifts;
 - (ii) convey or release the person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;
 - (iii) exercise or release the person's powers as personal representative, custodian for minors, conservator, or donee of a power of appointment;
 - (iv) enter into contracts;
 - (v) create revocable or irrevocable trusts of property of the estate that may extend beyond the person's disability or life;
 - (vi) exercise options of the person with a disability to purchase securities or other property;
 - (vii) exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;
 - (viii) exercise the person's right to an elective share in the estate of the person's deceased spouse; and
 - (ix) renounce any interest by testate or intestate succession or by inter vivos transfer.
 - (d) The court may exercise, or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that the person either is incapable of consenting or has consented to the proposed exercise of power.
- (2) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person.
- (3) If the court elects to appoint a conservator under Subsection (1), the court may appoint a temporary conservator to serve until further order of the court. A temporary conservator, if appointed, has all of the powers and duties of a conservator as set forth in Sections 75-5-417, 75-5-418, 75-5-419, and 75-5-424.

Amended by Chapter 142, 2014 General Session