

Part 4

Protection of Property of Persons Under Disability and Minors

75-5-401 Protective proceedings.

- (1) Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:
 - (a) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by minority, or that funds are needed for the minor's support and education and protection is necessary or desirable to obtain or provide funds.
 - (b) The provisions of Subsection (1)(a) may be applied to a person beyond minority up to age 21 under special circumstances as determined by the court.
- (2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that the person:
 - (a) is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and
 - (b) has property which will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and protection is necessary or desirable to obtain or provide funds.
- (3) Appointment of a conservator or other protective order may not be denied solely on the basis that the person for whom the conservatorship or other protective order is sought has a valid power of attorney in effect.

Amended by Chapter 375, 2001 General Session

75-5-402 Protective proceedings -- Jurisdiction of affairs of protected persons.

After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

- (1) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;
- (2) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents;
- (3) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

Amended by Chapter 30, 1992 General Session

75-5-403 Venue.

Venue for proceedings under this part is:

- (1) In the county in this state where the person to be protected resides, whether or not a guardian has been appointed in another place; or
- (2) If the person to be protected does not reside in this state, in any county where he has property.

Amended by Chapter 30, 1992 General Session

75-5-404 Original petition for appointment or protective order.

- (1) The person to be protected, any person who is interested in his estate, affairs, or welfare, including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.
- (2) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

Enacted by Chapter 150, 1975 General Session

75-5-405 Notice.

- (1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least 10 days before the date of the hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with Section 75-1-401. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.
- (2) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under Section 75-5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in Subsection (1) above, notice shall be given in accordance with Section 75-1-401.

Enacted by Chapter 150, 1975 General Session

75-5-406 Protective proceedings -- Request for notice -- Interested person.

Any interested person who desires to be notified before any order is made in a protective proceeding may file with the registrar a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

Enacted by Chapter 150, 1975 General Session

75-5-407 Procedure concerning hearing and order on original petition.

- (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for the hearing on the matters alleged in the petition.

If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

- (2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has already retained counsel, the court may appoint an attorney to represent the person to be protected who then has the powers and duties of a guardian ad litem.
- (3) The legal representation of the protected person by an attorney shall terminate upon the appointment of a conservator, unless:
 - (a) there are separate guardianship proceedings still pending before the court subsequent to the appointment of a conservator;
 - (b) there is a timely filed appeal of the appointment of the conservator; or
 - (c) upon an express finding of good cause, the court orders otherwise.
- (4) If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.
- (5) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

Amended by Chapter 364, 2013 General Session

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

75-5-409 Protective arrangements and single transactions authorized.

- (1) If it is established in a proper proceeding that a basis exists as described in Section 75-5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.
- (2) When it has been established in a proper proceeding that a basis exists as described in Section 75-5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.
- (3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

Amended by Chapter 194, 1977 General Session

75-5-410 Who may be appointed conservator -- Priorities.

(1) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

- (a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;
- (b) an individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;
- (c) the court shall appoint a conservator in accordance with the protected person's most recent nomination, unless the potential conservator is disqualified or the court finds other good cause why that person should not serve as conservator. The nomination shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Conservator

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as the conservator of my property in the event that after the date of this instrument I become incapacitated or have other need for protection.

Executed at _____ (city, state)

on this _____ day of _____

_____ (Signature)

- (d) a person who has been nominated by the protected person, by any means other than that described in Subsection (1)(c), if the protected person was 14 years of age or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;
 - (e) the spouse of the protected person;
 - (f) an adult child of the protected person;
 - (g) a parent of the protected person, or a person nominated by the will of a deceased parent;
 - (h) any relative of the protected person with whom he has resided for more than six months prior to the filing of the petition;
 - (i) a person nominated by the person who is caring for him or paying benefits to him.
- (2) A person in the priorities described in Subsection (1)(a), (e), (f), (g), or (h) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

Amended by Chapter 324, 2010 General Session

75-5-411 Bond.

Subject to the provisions of Title 7, Financial Institutions Act, relating to the bonding requirements for corporate fiduciaries, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify, unless the court dispenses with such bond for good cause shown. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one year's estimated income minus the value of securities and cash deposited under arrangements requiring an order of the court for their removal and the value of

any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

Amended by Chapter 194, 1977 General Session

75-5-412 Terms and requirements of bonds.

- (1) The following requirements and provisions apply to any bond required under Section 75-5-411:
 - (a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;
 - (b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of the proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;
 - (c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;
 - (d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
- (2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation under this code.

Enacted by Chapter 150, 1975 General Session

75-5-413 Acceptance of appointment -- Consent to jurisdiction.

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator or mailed to him by registered or certified mail at his address as listed in the petition for appointment, or as thereafter reported to the court, and to his address as then known to the petitioner.

Enacted by Chapter 150, 1975 General Session

75-5-414 Compensation and expenses.

If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate. If the court appoints the petitioner or the petitioner's nominee as conservator over the protected person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner is entitled to receive from the estate reasonable attorney fees and court costs incurred in bringing and defending the petition.

Amended by Chapter 274, 2012 General Session

75-5-415 Death, resignation, or removal of conservator.

- (1) The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After the death, resignation, or removal of a conservator, the

court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the preceding conservator.

- (2) Before removing a conservator, accepting the resignation of a conservator, or ordering that a protected person's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the protected person as apply to a petition for appointment of a conservator as provided in Section 75-5-407. The court is not required to appoint an attorney to represent the ward if the case is uncontested and the protected person's capacity is not at issue.

Amended by Chapter 142, 2014 General Session

75-5-416 Petitions for orders subsequent to appointment.

- (1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:
 - (a) requiring bond or security or additional bond or security, or reducing bond;
 - (b) requiring an accounting for the administration of the conservatorship estate;
 - (c) directing distribution;
 - (d) removing the conservator and appointing a temporary or successor conservator; or
 - (e) granting other appropriate relief, including any relief available under Title 75, Chapter 7, Utah Uniform Trust Code, if the protected person is a grantor, settlor, trustor, or beneficiary of a trust.
- (2) A conservator may petition the appointing court for instructions concerning the conservator's fiduciary responsibility.
- (3) Upon notice and hearing the court may give appropriate instructions or make any appropriate order.

Amended by Chapter 142, 2014 General Session

75-5-417 General duty of conservator.

- (1) A conservator shall act as a fiduciary and shall observe the standards of care as set forth in Section 75-7-902.
- (2) The conservator shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis. For estates less than \$50,000, excluding the residence owned by the ward, the conservator shall fill out an informal annual report and mail the report to the court. The report shall include the following: a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The court may require additional information. The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the judicial council. This annual report shall be examined and approved by the court.
- (3) Corporate fiduciaries are not required to fully petition the court, but shall submit their internal report annually to the court. The report shall be examined and approved by the court.
- (4)
 - (a) The court may impose a fine in an amount not to exceed \$5,000, if, after receiving written notice of the failure to file and after a grace period of two months have elapsed, a conservator or corporate fiduciary:
 - (i) makes a substantial misstatement on filings of any required annual reports;

- (ii) is guilty of gross impropriety in handling the property of the ward; or
 - (iii) willfully fails to file the report required by this section.
 - (b) The court may also order restitution of funds misappropriated from the estate of a ward.
 - (c) The penalty shall be paid by the conservator or corporate fiduciary and may not be paid by the estate.
- (5) These provisions and penalties governing annual reports do not apply if the conservator is the parent of the ward.

Amended by Chapter 89, 2004 General Session

75-5-418 Inventory and records.

- (1) Within 90 days after appointment of a conservator, the conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with an oath or affirmation that it is complete and accurate so far as the conservator is informed. The estate of the protected person does not include the assets of a trust.
- (2) The conservator shall provide a copy of the inventory to the protected person if the person:
 - (a) can be located;
 - (b) has attained the age of 14 years; and
 - (c) has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.
- (3) The conservator shall keep suitable administrative records and produce them upon the request of any interested person.

Amended by Chapter 274, 2012 General Session

75-5-419 Accounts.

- (1) Every conservator must account to the court for the administration of the estate upon resignation or removal and at any other times the court may direct.
- (2) On termination of the protected person's minority or disability, a conservator may account to the court, the former protected person, or the personal representative of the protected person.
- (3) Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to any liabilities concerning the matters considered in connection with the protected person's account, and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.
- (4) In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.

Amended by Chapter 274, 2012 General Session

75-5-420 Conservators -- Title by appointment.

- (1) The appointment of a conservator vests in the conservator title as fiduciary to all property of the protected person, presently held or thereafter acquired, not including the assets of a trust, including title to any property previously held for the protected person by custodians or attorneys-in-fact, except for property held pursuant to any uniform gifts to minors act or provisions.

- (2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of any rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

Amended by Chapter 274, 2012 General Session

75-5-421 Recording of conservator's letters.

Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person.

Enacted by Chapter 150, 1975 General Session

75-5-422 Sale, encumbrance or transaction involving conflict of interest -- Voidable -- Exceptions.

Any sale or encumbrance to a conservator, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest, is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

Enacted by Chapter 150, 1975 General Session

75-5-423 Persons dealing with conservators -- Protection.

A person who in good faith either assists a conservator or deals with him for value in any transaction, other than those requiring a court order as provided in Section 75-5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in Section 75-5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Enacted by Chapter 150, 1975 General Session

75-5-424 Powers of conservator in administration.

- (1) A conservator has all of the powers conferred in this chapter and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 75-5-209 until the minor attains majority or marries,

but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Part 2, Guardians of Minors.

- (2) A conservator has the power to compel the production of the protected person's estate documents, including the protected person's will, trust, power of attorney, and any advance health care directives.
- (3) A conservator has power without court authorization or confirmation to invest and reinvest funds of the estate as would a trustee.
- (4) A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, may act without court authorization or confirmation, to:
 - (a) collect, hold, and retain assets of the estate, including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;
 - (b) receive additions to the estate;
 - (c) continue or participate in the operation of any business or other enterprise;
 - (d) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;
 - (e) invest and reinvest estate assets in accordance with Subsection (2);
 - (f) deposit estate funds in a bank including a bank operated by the conservator;
 - (g) acquire or dispose of an estate asset, including land in another state, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
 - (h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;
 - (i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;
 - (j) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;
 - (k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
 - (l) grant an option involving disposition of an estate asset or take an option for the acquisition of any asset;
 - (m) vote a security, in person or by general or limited proxy;
 - (n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
 - (o) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
 - (p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
 - (q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;
 - (r) borrow money to be repaid from estate assets or otherwise; and advance money for the protection of the estate or the protected person, and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;

- (s) pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
- (t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (v) pay any sum distributable to a protected person or dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the distributee's guardian, or if none, to a relative or other person with custody of the person;
- (w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties; act upon their recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
- (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of the conservator's duties;
- (y) act as a qualified beneficiary of any trust in which the protected person is a qualified beneficiary; and
- (z) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

Amended by Chapter 142, 2014 General Session

75-5-425 Distributive duties and powers of conservator.

- (1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:
 - (a) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.
 - (b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to:
 - (i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage the protected person's affairs and the estate which has been conserved for the protected person;
 - (ii) the accustomed standard of living of the protected person and members of the protected person's household; and
 - (iii) other funds or sources used for the support of the protected person.

- (c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.
 - (d) Funds expended under this Subsection (1) may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.
- (2) If the estate is ample to provide for the purposes implicit in the distributions authorized by Subsection (1), a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year 20% of the income from the estate.
- (3) When a person who is a minor and who has not been adjudged to have a disability under Subsection 75-5-401(2)(a) attains the age of majority, the person's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.
- (4) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.
- (5) If a protected person dies, the conservator:
- (a) shall:
 - (i) deliver to the court for safekeeping any will of the deceased protected person that may have come into the conservator's possession;
 - (ii) inform the executor or a beneficiary named in the will that the conservator has done so; and
 - (iii) retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to it;
 - (b) may continue to pay the obligations lawfully due against the estate and to protect the estate from waste, injury, or damages that might reasonably be foreseeable; and
 - (c) may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment, provided that at least 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court.
- (6) Upon application for an order granting the powers of a personal representative to a conservator as provided in Subsection (5)(c) and after notice as provided in Section 75-3-310, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Section 75-3-308 and Chapter 3, Part 6, Personal Representative - Appointment, Control, and Termination of Authority, Part 7, Duties and Powers of Personal Representatives, Part 8, Creditors' Claims, Part 9, Special Provisions Relating to Distribution, and Part 10, Closing Estates, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

Amended by Chapter 274, 2012 General Session

75-5-426 Enlargement or limitation of powers of conservator.

Subject to the restrictions of Subsection 75-5-408(1)(d), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by Sections 75-5-424 and 75-5-425, any power which the court itself could exercise under Subsections 75-5-408(1)(b) and 75-5-408(1)(c). The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by Sections 75-5-424 and 75-5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by Section 75-5-424 or 75-5-425, the limitation shall be endorsed upon his letters of appointment.

Enacted by Chapter 150, 1975 General Session

75-5-427 Preservation of estate plan.

In investing the estate, and in selecting assets of the estate for distribution under Subsections 75-5-425(1) and (2), in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

Amended by Chapter 194, 1977 General Session

75-5-428 Claims against protected person -- Enforcement.

- (1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:
 - (a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.
 - (b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court.
- (2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.
- (3) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.
- (4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

Amended by Chapter 306, 2007 General Session

75-5-429 Individual liability of conservator.

- (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.
- (2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.
- (3) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.
- (4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

Enacted by Chapter 150, 1975 General Session

75-5-430 Termination of proceeding.

The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors to evidence the transfer.

Enacted by Chapter 150, 1975 General Session

75-5-431 Payment of debt and delivery of property to foreign conservator without local proceedings.

- (1) Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person, may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:
 - (a) That no protective proceeding relating to the protected person is pending in this state; and
 - (b) That the foreign conservator is entitled to payment or to receive delivery.
- (2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

Enacted by Chapter 150, 1975 General Session

75-5-432 Foreign conservator -- Proof of authority -- Bond -- Powers.

If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a court in this state in a county in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

Amended by Chapter 194, 1977 General Session

75-5-433 Embezzlement of protected person's estate -- Citation to person suspected.

Upon petition made by any interested person against anyone suspected of having concealed, embezzled, or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the protected person, ward, or to his estate, the court may cite the suspected person to appear before it and may examine and proceed with him on the charge; and if on such examination it appears that he has wrongful possession of any such property, the court may order the delivery of the same to the conservator or guardian.

Amended by Chapter 194, 1977 General Session