

Chapter 5
Protection of Persons Under Disability and Their Property

Part 1
General Provisions

75-5-101 Jurisdiction of subject matter -- Consolidation of proceedings.

- (1) The court has jurisdiction over protective proceedings and guardianship proceedings.
- (2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

Enacted by Chapter 150, 1975 General Session

75-5-102 Facility of payment or delivery.

- (1) Any person under a duty to pay or deliver money or personal property to a minor may perform the duty to pay or deliver money or personal property, in amounts not exceeding \$15,000 per annum, by paying or delivering the money or personal property to:
 - (a) the minor if:
 - (i) the minor is married; or
 - (ii) payment to the minor is expressly authorized by statute;
 - (b) any person having the care and custody of the minor with whom the minor resides; or
 - (c) a guardian of the minor.
- (2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.
- (3)
 - (a) Any person, other than the minor, receiving money or property for a minor:
 - (i) is obligated to apply the money to the support and education of the minor; and
 - (ii) may not pay oneself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support.
 - (b) Any excess sums of money under Subsection (3)(a) shall be preserved for future support of the minor.
 - (c) Any balance of money that is not used and any property received for the minor must be turned over to the minor when the minor attains the age of 18.
- (4)
 - (a) If any money under Subsection (1) is the result of a personal injury claim or wrongful death claim, the threshold amount of \$15,000 per annum described in Subsection (1) shall be the amount payable to the minor after the payment of medical bills, attorney fees, and costs of litigation that were incurred by the claim.
 - (b) Any person, other than the minor, receiving money under Subsection (4)(a) for a minor shall hold the money in a trust for the sole benefit of the minor.
 - (c) Any money that is held in a trust for a minor under Subsection (4)(b) shall be turned over to the minor when the minor attains the age of 18.
 - (d) Notwithstanding Subsection (4)(c), a parent or guardian of the minor may petition the court to request the disbursement of the money held in the trust for the minor under Subsection (4)(b) at any time before the minor is 18 years old.

- (5) Any person receiving money under this section on behalf of a minor shall have the power to settle and release in whole or in part the claims belonging to the minor giving rise to the duty to pay money to the minor.
- (6) Any person who pays or delivers in accordance with provisions of this section is not responsible for the proper application thereof.

Amended by Chapter 61, 2021 General Session

75-5-103 Delegation of powers by parent or guardian.

A parent or a guardian of a minor or incapacitated person, by a properly-executed power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward:

- (1) except the power to consent to:
 - (a) marriage; or
 - (b) adoption of a minor ward; and
- (2) subject to Section 53G-6-302, including making decisions related to schooling.

Amended by Chapter 64, 2018 General Session

75-5-104 Power of court to appoint guardian ad litem not affected.

Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to represent the interests of any minor interested in any suit or matter pending before it.

Enacted by Chapter 150, 1975 General Session

75-5-105 Bond of guardian.

A guardian coming into the possession or control of funds or other property of a minor or incapacitated person may be required by the court to furnish a bond in an amount and under the conditions as set forth for conservators in Sections 75-5-411 and 75-5-412.

Enacted by Chapter 150, 1975 General Session

**Part 2
Guardians of Minors**

75-5-201 Status of guardian of minor -- General.

- (1)
 - (a) A person becomes a guardian of a minor by acceptance of a testamentary appointment, through appointment by a local school board under Section 53G-6-303, or upon appointment by the court.
 - (b) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.
- (2)
 - (a) A document issued by other than a court of law which purports to award guardianship to a person who is not a legal resident of the jurisdiction in which the guardianship is awarded is not valid in the state of Utah until reviewed and approved by a Utah court.

- (b) The procedure for obtaining approval of a guardianship under Subsection (2)(a) shall be identical to the procedure required under this part for obtaining a court appointment of a guardian.

Amended by Chapter 415, 2018 General Session

75-5-202 Appointment of guardian of minor.

- (1) The parent of a minor may appoint a guardian of an unemancipated minor by will, as provided in this section, or by other written instrument as provided in Section 75-5-202.5.
- (2) Subject to the rights of the minor and others under Section 75-5-203, an appointment by will or written instrument becomes effective upon filing the guardian's acceptance in the court in which the will is probated or the document is filed, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated.
- (3) If both parents are dead, an effective appointment by the parent who died later has priority.
- (4) This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.
- (5) Upon acceptance of appointment, written notice of acceptance shall be given by the guardian to the minor and to the person having his care, or to his nearest adult relative.

Amended by Chapter 41, 1985 General Session

75-5-202.5 Appointment of guardian by written instrument.

- (1) The parent of an unemancipated minor may appoint a guardian by written instrument designating the guardian. An appointment by written instrument becomes effective where:
 - (a) the written instrument is filed with the petition for appointment of guardian in the court having probate jurisdiction in the county of residence of the last parent to die, if death occurred in the state, and otherwise in the court having probate jurisdiction in the county in which the minor resides in the state; and
 - (b) the person appointed as guardian filed in the court having jurisdiction an affidavit of acceptance which states:
 - (i) the name, address, and age, or birthday if known, of the minor;
 - (ii) the name, address, and telephone number of the appointee-guardian;
 - (iii) the names of the parents of the minor and that both are dead or that any surviving parent has been adjudged incapacitated;
 - (iv) the name of the parent who was last to die and the county where that parent resided at the date of his death;
 - (v) that the appointee-guardian knows of no other appointment of a guardian which supersedes the appointment by written instrument;
 - (vi) that the appointee-guardian accepts the appointment.
- (2) The latest document appointing a guardian, whether will or written instrument, which is executed by the last parent to die has priority.
- (3) Upon acceptance of an appointment, written notice of acceptance shall be given by the guardian to the minor, if he is 14 years of age or older, and to the person having his care or to his nearest adult relative.
- (4) For purposes of this chapter, "instrumental" refers to a written instrument as described in this section.

Enacted by Chapter 41, 1985 General Session

75-5-203 Objection to appointment.

Any person interested in the welfare of a minor, or a minor of 14 years or older, may file with the court in which the will is probated or the written instrument is filed a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude, after a hearing on the objection, appointment by the court in a proper proceeding of the testamentary or instrumental nominee, or any other suitable person.

Amended by Chapter 41, 1985 General Session

75-5-204 Court appointment of guardian of minor -- Conditions for appointment.

(1) In accordance with Subsection (2), the court may appoint a guardian for an unemancipated minor if:

- (a) each parent of the minor acknowledges that the parent understands the legal effect of the guardianship and consents;
- (b) all parental rights have been terminated; or
- (c) each parent is unwilling or unable to exercise the parent's parental rights for any reason, including a court order suspending the parent's parental rights.

(2)

- (a) A guardian appointed by will under Section 75-5-202, or by written instrument under Section 75-5-202.5, whose appointment has not been prevented or nullified under Section 75-5-203 has priority over any court appointed guardian.
- (b) Notwithstanding Subsection (2)(a), the court may proceed with a court appointment upon a finding that the testamentary or instrumental guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

Amended by Chapter 287, 2021 General Session

75-5-205 Court appointment of guardian of minor -- Venue.

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

Enacted by Chapter 150, 1975 General Session

75-5-206 Court appointment of guardian of minor -- Qualifications -- Priority of minor's nominee.

(1)

- (a) The court may appoint as guardian any person whose appointment would be in the best interests of the minor.
- (b) In determining the minor's best interests, the court may consider the minor's physical, mental, moral, and emotional health needs.

(2) Except as provided in Subsection (3), the court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

(3) The court may deny the appointment of a guardian for a minor of school age if it finds that:

- (a) if the minor is older than 11 years of age:

- (i) the minor has not secured a certificate from the local police authority in the jurisdiction where the minor has lived during the past two years stating that there have been no criminal charges filed against the minor and the minor is not the subject of a criminal investigation in that jurisdiction and given a copy of the certificate to the superintendent of the school district in which the minor would attend school in Utah; or
 - (ii) a release has not been given by or on behalf of the minor to the superintendent of the school district in which the minor would attend school in Utah within a reasonable time prior to the guardianship hearing, allowing the superintendent full access to all criminal records of the minor in those jurisdictions outside the state where the minor has resided during the previous two years, which release remains part of the minor's school records together with verification of residence for the previous two years, except that information disclosed in the criminal records may not be made a part of the minor's school record;
 - (b) the school district has proven by a preponderance of the evidence that the primary purpose for the guardianship is to avoid the payment of tuition, which a school district may assess against a nonresident for attendance at a Utah public school; or
 - (c) after consideration of relevant evidence, including any presented by the school district in which the petitioner resides, the minor's behavior indicates an ongoing unwillingness to abide by applicable law or school rules.
- (4) If a school district files an objection for reasons described in Subsection (3)(b), and the court does not find in favor of the school district, the court may award the petitioner attorney fees and costs if the court finds that the school district's arguments lack a reasonable basis in law or fact.

Amended by Chapter 392, 2010 General Session

75-5-207 Court appointment of guardian of minor -- Procedure.

- (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by Section 75-1-401 to:
- (a) the minor, if the minor is 14 years old or older;
 - (b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition;
 - (c) any living parent of the minor;
 - (d) any guardian appointed by the will or written instrument of the parent of the minor who died last; and
 - (e) the school district in which the petitioner resides and a representative of the school district may participate in the hearing.
- (2)
- (a) After a hearing, a court may appoint a guardian if the court finds by preponderance of the evidence that:
 - (i) a qualified person seeks appointment;
 - (ii) venue is proper;
 - (iii) the required notices have been given;
 - (iv) the requirements of Sections 75-5-204 and 75-5-206 have been met; and
 - (v) the welfare and best interests of the minor will be served by the requested appointment.
 - (b) In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.
- (3)
- (a) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor.

- (b) The authority of a temporary guardian may not last longer than six months.
- (4) 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 preference of the minor if the minor is 14 years old or older.

Amended by Chapter 287, 2021 General Session

75-5-208 Consent to service by acceptance of appointment -- Notice.

By accepting a testamentary, instrumental, or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the minor. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship shall indicate whether the guardian was appointed by will, written instrument, or by court order.

Amended by Chapter 41, 1985 General Session

75-5-209 Powers and duties of guardian of minor -- Residual parental rights and duties -- Adoption of a ward.

- (1) For purposes of this section, "residual parental rights and duties" is as defined in Section 80-1-102.
- (2) Except as provided in Subsection (4)(a), a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's unemancipated minor, including the powers and responsibilities described in Subsection (3).
- (3) A guardian of a minor:
 - (a) must take reasonable care of the personal effects of the guardian's ward;
 - (b) must commence protective proceedings if necessary to protect other property of the guardian's ward;
 - (c) subject to Subsection (4)(b), may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of a:
 - (i) statutory benefit or insurance system;
 - (ii) private contract;
 - (iii) devise;
 - (iv) trust;
 - (v) conservatorship; or
 - (vi) custodianship;
 - (d) subject to Subsection (4)(b), may receive money or property of the ward paid or delivered by virtue of Section 75-5-102;
 - (e) except as provided in Subsection (4)(c), must exercise due care to conserve any excess money or property described in Subsection (3)(d) for the ward's future needs;
 - (f) unless otherwise provided by statute, may institute proceedings to compel the performance by any person of a duty to:
 - (i) support the ward; or
 - (ii) pay sums for the welfare of the ward;
 - (g) is empowered to:
 - (i) facilitate the ward's education, social, or other activities; and

- (ii) subject to Subsection (4)(d), authorize medical or other professional care, treatment, or advice;
 - (h) may consent to the:
 - (i) marriage of the guardian's ward, if specifically authorized by a court to give this consent; or
 - (ii) adoption of the guardian's ward if the:
 - (A) guardian of the ward is specifically authorized by a court to give this consent; and
 - (B) parental rights of the ward's parents have been terminated; and
 - (i) must report the condition of the minor and of the minor's estate that has been subject to the guardian's possession or control:
 - (i) as ordered by court on petition of any person interested in the minor's welfare; or
 - (ii) as required by court rule.
- (4)
- (a) Notwithstanding Subsection (2), a guardian of a minor is not:
 - (i) legally obligated to provide from the guardian's own funds for the ward; and
 - (ii) liable to third persons by reason of the guardian's relationship for acts of the ward.
 - (b) Sums received under Subsection (3)(c) or (d):
 - (i) may not be used for compensation for the services of a guardian, except as:
 - (A) approved by court order; or
 - (B) determined by a duly appointed conservator other than the guardian; and
 - (ii) shall be applied to the ward's current needs for support, care, and education.
 - (c) Notwithstanding Subsection (3)(e), if a conservator is appointed for the estate of the ward, the excess shall be paid over at least annually to the conservator.
 - (d) A guardian of a minor is not, by reason of giving the authorization described in Subsection (3)(g)(ii), liable for injury to the minor resulting from the negligence or acts of third persons, unless it would have been illegal for a parent to have given the authorization.
- (5) A parent of a minor for whom a guardian is appointed retains residual parental rights and duties.
- (6) If a parent of a minor for whom a guardian is appointed consents to the adoption of the minor, the guardian is entitled to:
- (a) receive notice of the adoption proceeding pursuant to Section 78B-6-110;
 - (b) intervene in the adoption; and
 - (c) present evidence to the court relevant to the best interest of the child pursuant to Subsection 78B-6-110(11).
- (7) If a minor for whom a guardian is appointed is adopted subsequent to the appointment, the guardianship shall terminate when the adoption is finalized.

Amended by Chapter 262, 2021 General Session

75-5-210 Termination of appointment of guardian -- General.

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

Enacted by Chapter 150, 1975 General Session

75-5-211 Proceedings subsequent to appointment -- Venue.

- (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of an appointment by will or written instrument was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.
- (2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Amended by Chapter 41, 1985 General Session

75-5-212 Resignation or removal proceedings.

- (1) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.
- (2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.
- (3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

Enacted by Chapter 150, 1975 General Session

Part 3
Guardians of Incapacitated Persons

75-5-301 Appointment of guardian for incapacitated person.

- (1) The parent of an incapacitated person may by will, or by written instrument as provided in Section 75-5-202.5, appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, or where the written instrument is filed, if prior thereto both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings. A provision contained in a person's will or written instrument appointing a guardian of his minor children is not to be considered to be an appointment of a guardian of an incapacitated adult child unless it appears from the will that this was the testator's intention.
- (2) The spouse of a married incapacitated person may by will or written instrument appoint a guardian of the incapacitated person. The appointment becomes effective when, after having

given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or the written instrument is filed. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

- (3) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.
- (4) On the filing with the court in which the will was probated or the written instrument was filed, of written objection to the appointment by the person for whom a testamentary or instrumental appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the nominee named by will or written instrument or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this part.

Amended by Chapter 41, 1985 General Session

75-5-301.5 Rights of a person alleged to be incapacitated -- Rights of an incapacitated person.

- (1) Except as otherwise provided by this chapter or any other law, a person alleged to be incapacitated has the right to:
 - (a) be represented by counsel before a guardianship is imposed and have counsel represent the person during the guardianship proceeding;
 - (b) receive a copy of all documents filed in a guardianship proceeding;
 - (c) have a relative, physician, physician assistant, or any interested person speak about or raise any issue of concern on behalf of the person during the guardianship proceeding;
 - (d) receive information about guardianships from the court; and
 - (e) be treated with respect and dignity.
- (2) Except as otherwise provided by this chapter or any other law, an incapacitated person for whom a guardian is appointed has right to:
 - (a) have counsel represent the incapacitated person at any time after the guardian is appointed;
 - (b) have a relative, physician, physician assistant, or any interested person speak about or raise any issue of concern on behalf of the person in any court hearing about the guardianship;
 - (c) receive a copy of all documents filed in court regarding the guardianship;
 - (d) receive information about guardianships from the court;
 - (e) ask questions and express concerns or complaints about a guardian and the actions of a guardian to the court;
 - (f) participate in developing an individualized plan for the incapacitated person's care, including:
 - (i) managing the incapacitated person's assets and property;
 - (ii) determining the incapacitated person's residence; and
 - (iii) determining the services to be received by the incapacitated person;
 - (g) be given consideration in regards to the incapacitated person's current and previously stated desires, preferences for health care and medical treatment, and religious and moral beliefs;
 - (h) remain as independent as possible, including giving deference to the incapacitated person's preference for the incapacitated person's residence and standard of living:
 - (i) as expressed or demonstrated before a determination of capacity was made; or
 - (ii) as currently expressed or demonstrated by the incapacitated person if the preference is reasonable under the circumstances;

- (i) be granted the greatest degree of freedom possible that is consistent with the reasons for the guardianship;
 - (j) be able to exercise control over all aspects of the incapacitated person's life that are not granted to the guardian in the order of appointment;
 - (k) engage in any activity that the court has not expressly reserved for the guardian, including marriage or domestic partnership, traveling, working, or having a driver license;
 - (l) be treated with respect and dignity;
 - (m) be treated fairly by the incapacitated person's guardian;
 - (n) maintain privacy and confidentiality in personal matters;
 - (o) receive telephone calls and personal mail and associate with relatives and acquaintances unless the guardian and the court determine that the association should be restricted or prohibited in accordance with Section 75-5-312.5;
 - (p) receive timely, effective, and appropriate health care and medical treatment that does not violate the incapacitated person's rights;
 - (q) have all services provided by a guardian at a reasonable rate of compensation;
 - (r) have a court review any request for payment by a guardian to avoid excessive or unnecessary fees or duplicative billing;
 - (s) receive prudent financial management of the incapacitated person's property;
 - (t) subject to Subsections 75-5-312(4)(h) and 75-5-417(4), receive a copy of an accounting report regarding the incapacitated person's estate that is submitted to the court by the guardian under Section 75-5-312 or the conservator under Section 75-5-417 if a conservator is appointed for the incapacitated person;
 - (u) receive and control the incapacitated person's salary;
 - (v) maintain a bank account and manage the incapacitated person's personal money; and
 - (w) ask the court to:
 - (i) review the management activity of a guardian if a dispute cannot be resolved regarding the guardian's management;
 - (ii) continue to review the need for a guardianship or to modify or terminate a guardianship; and
 - (iii) enter an order restoring the incapacitated person's capacity at the earliest possible time.
- (3) The rights of an incapacitated person under this section do not abrogate any remedy provided by law.
- (4) Any right described in this section may be:
- (a) addressed in a guardianship proceeding; or
 - (b) enforced through a private cause of action.

Amended by Chapter 113, 2024 General Session

75-5-302 Venue.

The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Enacted by Chapter 150, 1975 General Session

75-5-303 Procedure for court appointment of a guardian of an incapacitated person.

- (1) An incapacitated person or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.

- (2)
 - (a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.
 - (b) Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated, unless the allegedly incapacitated person and the allegedly incapacitated person's parents are indigent.
 - (c) If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition.
 - (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.
- (3) The legal representation of the incapacitated person by an attorney shall terminate upon the appointment of a guardian, unless:
 - (a) there are separate conservatorship proceedings still pending before the court subsequent to the appointment of a guardian;
 - (b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or
 - (c) upon an express finding of good cause, the court orders otherwise.
- (4) The person alleged to be incapacitated may be examined by a physician or physician assistant appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made, conduct other investigations or observations as directed by the court, and submit a report in writing to the court.
- (5)
 - (a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person's condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person seeking the guardianship.
 - (b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician that the person alleged to be incapacitated has:
 - (i) fourth stage Alzheimer's Disease;
 - (ii) extended comatosis; or
 - (iii)
 - (A) an intellectual disability; and
 - (B) an intelligence quotient score under 25.
 - (c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests.
 - (d) Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:
 - (i) the person is the biological or adopted child of the petitioner;

- (ii) the value of the person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;
- (iii) the person appears in court with the petitioner;
- (iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;
- (v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the appointment described in Subsection (2);
- (vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; and
- (vii) the court appoints a visitor under Subsection (4).

Amended by Chapter 113, 2024 General Session

75-5-304 Findings -- Limited guardianship preferred -- Order of appointment.

- (1) The court may appoint a guardian as requested if the court is satisfied that:
 - (a) the person for whom a guardian is sought is incapacitated; and
 - (b) the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.
- (2)
 - (a)
 - (i) The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists.
 - (ii) If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.
 - (b)
 - (i) An order of appointment of a limited guardianship shall state the limitations of the guardianship.
 - (ii) Letters of guardianship for a limited guardianship shall state the limitations of the guardianship unless the court determines for good cause shown that a limitation should not be listed in the letters.
- (3)
 - (a) Except as provided in Subsection (3)(b), a guardian appointed by will or written instrument, under Section 75-5-301, whose appointment has not been prevented or nullified under Subsection 75-5-301(4), has priority over any guardian who may be appointed by the court.
 - (b) Upon a finding that the testamentary or instrumental guardian has failed to accept the appointment within 30 days after notice of the guardianship proceeding, the court may:
 - (i) dismiss the proceeding; or
 - (ii) enter any other appropriate order.
- (4) If the court grants a guardian with the power to make or assist with health care decisions for an incapacitated person, the court shall include in the order of appointment the name of any interested person for whom the guardian must notify of any significant health care or treatment received by the incapacitated person.

Amended by Chapter 441, 2022 General Session

75-5-305 Acceptance of appointment -- Consent to jurisdiction.

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the ward. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

Amended by Chapter 194, 1977 General Session

75-5-306 Termination of guardianship for incapacitated person -- Termination of authority and responsibility of guardian.

- (1)
 - (a) Except for the time period described in Subsection (1)(b), the ward or any person interested in the ward's welfare may petition for an order:
 - (i) that the ward is no longer incapacitated; and
 - (ii) for removal or resignation of the guardian in accordance with Section 75-5-307.
 - (b) In an order adjudicating capacity, a court may specify a minimum period of time, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated can be filed without leave from the court.
 - (c) A request for the order described in Subsection (1) may be made by informal letter to the court.
 - (d) Any person who knowingly interferes with a request described in Subsection (1)(a) may be sanctioned by the court.
- (2) The authority and responsibility of a guardian for an incapacitated person terminates upon:
 - (a) the death of the guardian or the ward;
 - (b) the determination that the guardian is incapacitated; or
 - (c) the removal or resignation of the guardian in accordance with Section 75-5-307.
- (3) Resignation of a guardian does not terminate the guardianship until the resignation has been approved by the court.
- (4) Testamentary appointment of a guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding.
- (5) Termination of a guardian does not affect the guardian's liability for the guardian's prior acts or the guardian's obligation to account for funds and assets of the guardian's ward.
- (6) On a petition to order that a ward's incapacity is terminated, the court shall follow the same procedures to safeguard the rights of the ward for a petition for appointment of a guardian under Section 75-5-303.

Repealed and Re-enacted by Chapter 441, 2022 General Session

75-5-307 Removal or resignation of guardian.

- (1) On a petition of resignation from a guardian, the court may:
 - (a) accept the guardian's resignation; or
 - (b) make any other order that is appropriate.
- (2) On a petition of removal of a guardian from the ward or any person interested in the ward's welfare, the court may remove a guardian if:
 - (a) the guardian obtained the appointment by fraud, deceit, or gross misrepresentation;
 - (b) the guardian fails to perform the guardian's duties described in Section 75-5-312;
 - (c) the guardian is unable to perform the guardian's duties, described in Section 75-5-312, due to incapacity or illness;

- (d) the guardian fails to use reasonable care and diligence in the management of the ward's estate;
 - (e) the guardian is found by the court to have filed a petition frivolously or in bad faith under Section 75-5-312.5;
 - (f) the guardian's interests have become adverse to the faithful performance of the guardian's duties and there is a risk that the guardian will fail to faithfully perform the guardian's duties; or
 - (g) removal of the guardian would be in the best interest of the ward.
- (3) If the court removes a guardian under Subsection (2), the court may:
- (a) appoint a successor guardian; or
 - (b) make any other order that is appropriate.
- (4) On a petition of resignation or removal of a guardian, the court shall follow the same procedures to safeguard the rights of the ward for a petition for appointment of a guardian under Section 75-5-303.
- (5) The court is not required to appoint an attorney to represent the ward if the case is uncontested and the ward's incapacity is not at issue.

Repealed and Re-enacted by Chapter 441, 2022 General Session

75-5-308 Visitor in guardianship proceeding.

A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

Enacted by Chapter 150, 1975 General Session

75-5-309 Notices in guardianship proceedings.

- (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of an emergency guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:
- (a) the ward or the person alleged to be incapacitated and spouse, parents, and adult children of the ward or person;
 - (b) any person who is serving as guardian or conservator or who has care and custody of the ward or person;
 - (c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult relatives, if any can be found;
 - (d) any guardian appointed by the will of the parent who died later or spouse of the incapacitated person; and
 - (e) Adult Protective Services if Adult Protective Services has received a referral under Title 26B, Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable Adult, concerning the welfare of the ward or person alleged to be incapacitated or concerning the guardian or conservator or proposed guardian or conservator.
- (2) The notice shall be in plain language and large type and the form shall have the final approval of the Judicial Council. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the person receiving notice of rights, a list of rights, including the person's own or a court appointed counsel, and a copy of the petition.
- (3) Notice shall be served personally on the alleged incapacitated person and the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated

person shall be given as provided in Section 75-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the visitor appointed pursuant to Section 75-5-303.

Amended by Chapter 330, 2023 General Session

75-5-310 Emergency guardians.

- (1) If an incapacitated person has no guardian and an emergency exists or if an appointed guardian is not effectively performing the guardian's duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, without notice, appoint an emergency guardian for the person for a specified period not to exceed 30 days pending notice and hearing.
- (2) Upon request by an interested person after the appointment of an emergency guardian, the court shall hold a hearing within 14 days pursuant to Section 75-5-303.

Amended by Chapter 403, 2017 General Session

75-5-310.5 Temporary guardians.

- (1) If, after notice and hearing as required by Section 75-5-303, the court finds good cause, the court may:
 - (a) appoint a temporary guardian;
 - (b) convert an emergency guardian to a temporary guardian if an emergency guardian has been appointed under Section 75-5-310; or
 - (c) appoint a different person as temporary guardian to replace an emergency guardian appointed under Section 75-5-310.
- (2) Unless the allegedly incapacitated person has already obtained counsel in this proceeding or an attorney has been already appointed for the person, the court shall appoint an attorney to represent the person in the proceeding.
- (3) Until a full hearing and further order of the court, the temporary guardian shall be charged with the care and custody of the ward and may not permit the ward to be removed from the state. The authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.
- (4) A temporary guardian may be removed at any time, and shall obey all orders and make any reports required by the court.
- (5) A temporary guardian has all of the powers and duties of a permanent guardian as set forth in Section 75-5-312.

Enacted by Chapter 142, 2014 General Session

75-5-311 Who may be guardian -- Priorities.

- (1) As used in this section:
 - (a) "Specialized care professional" means a person who is certified as a National Certified Guardian or National Master Guardian by the Center for Guardianship Certification or similar organization.
 - (b) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole proprietorship, or other type of business organization that is owned, operated by, or employs a specialized care professional.

- (2) The court shall appoint a guardian in accordance with the incapacitated person's most recent nomination, unless that person is disqualified or the court finds other good cause why the person should not serve as guardian. That nomination shall have been made prior to the person's incapacity, 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 Guardian by an Adult

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 my guardian in the event that after the date of this instrument I become incapacitated.

Executed at _____ (city, state)
on this _____ day of _____

(Signature)

- (3) Except as provided in Subsection (2), persons who are not disqualified have priority for appointment as guardian in the following order:
- (a) a person who has been nominated by the incapacitated person, by any means other than that described in Subsection (2), if the incapacitated person was 14 years old 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;
 - (b) the spouse of the incapacitated person;
 - (c) an adult child of the incapacitated person;
 - (d) a parent of the incapacitated person, including a person nominated by will, written instrument, or other writing signed by a deceased parent;
 - (e) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;
 - (f) a person nominated by the person who is caring for him or paying benefits to him;
 - (g) a specialized care professional, so long as the specialized care professional does not:
 - (i) profit financially or otherwise from or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or
 - (ii) otherwise have a conflict of interest in providing those services;
 - (h) any competent person or suitable institution; or
 - (i) the Office of Public Guardian under Title 26B, Chapter 6, Part 3, Office of Public Guardian.

Amended by Chapter 330, 2023 General Session

75-5-312 General powers and duties of guardian -- Penalties.

- (1)
- (a) A guardian of an incapacitated person shall diligently and in good faith carry out the specific duties, powers, and rights that the guardian is granted:
 - (i) in an order of appointment by a court under Section 75-5-304; and
 - (ii) under this section.
 - (b) A court may, in the order of appointment, place specific limitations on the guardian's power, duties, and rights.
 - (c)
 - (i) Except as provided in this Subsection (1), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor.

- (ii) A guardian is not liable to a third person for acts of the guardian's ward solely by reason of the relationship described in Subsection (1)(c)(i).
- (d) In carrying out duties, powers, and rights that a guardian is granted, the guardian shall encourage the ward, to the extent practicable, to participate in decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs.
- (e) To the extent known, a guardian, in making decisions about the ward, shall consider the expressed desires, preferences, and personal values of the ward.
- (2) Except as modified by an order of appointment under Section 75-5-304, a guardian has the following duties and powers:
 - (a) to the extent that it is consistent with the terms of any order by a court relating to detention or commitment of the ward, a guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within, or outside of, this state, except that the guardian must give consideration to the ward's preference for the ward's place of residence in accordance with Section 75-5-301.5;
 - (b) if a guardian is entitled to custody of the ward, the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education;
 - (c) without regard to custodial rights of the ward's person, a guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection;
 - (d) a guardian may give the consent or approval that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service, except that the guardian must:
 - (i) give consideration to the ward's current and previously stated desires for health care and medical treatment in accordance with Section 75-5-301.5; and
 - (ii) respect the ward's right to receive timely, effective, and appropriate health care in accordance with Section 75-5-301.5;
 - (e) a guardian is required to notify any interested person named in the order of appointment under Subsection 75-5-304(4) of any significant health care or treatment received by the ward;
 - (f) a guardian is required to immediately notify persons who request notification and are not restricted in associating with the ward in accordance with Section 75-5-312.5 of:
 - (i) the ward's admission to a hospital for three or more days or to a hospice program;
 - (ii) the ward's death; or
 - (iii) the arrangements for the disposition of the ward's remains;
 - (g) a guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 10 days, based on:
 - (i) the guardian's own observations; or
 - (ii) information from the ward's physician or other medical care providers;
 - (h) a guardian is required to:
 - (i) unless emergency conditions exist:
 - (A) file with the court a notice of the guardian's intent to move the ward; and
 - (B) serve the notice on all interested persons at least 10 days before the day on which the guardian moves the ward; or
 - (ii) take reasonable steps to:
 - (A) notify all interested persons of the guardian's intent to move the ward; and

- (B) file the notice of the move with the court as soon as practicable following the earlier of the move or the date when the guardian's intention to move the ward is made known to the ward, the ward's care giver, or any other third party;
 - (i) except as otherwise provided by Section 75-5-312.5, a guardian may not restrict or prohibit a ward's association, as defined in Section 75-5-312.5, with family, relatives, or friends;
 - (j) if no conservator for the estate of the ward has been appointed, a guardian may:
 - (i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty;
 - (ii) compel the production of the ward's estate documents, including the ward's will, trust, power of attorney, and any advance health care directive; and
 - (iii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward, except that:
 - (A) the guardian may not use funds from the ward's estate for room and board that the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one adult relative in the nearest degree of kinship to the ward in which there is an adult; and
 - (B) the guardian shall exercise care to conserve any excess for the ward's needs;
 - (k) if no conservator for the estate of the ward has been appointed:
 - (i) for all estates in excess of \$50,000 excluding the residence owned by the ward, a guardian shall send a report with a full accounting to the court on an annual basis; or
 - (ii) for estates less than \$50,000 excluding the residence owned by the ward, a guardian shall fill out an informal annual report and mail the report to the court;
 - (l) a guardian shall provide an annual accounting of the status of the ward, including a report of the physical and mental condition of the ward, the ward's estate that has been subject to the guardian's possession, the ward's place of residence and others living in the same household, to the court in the petition or the annual report as required under Subsection (2)(k); and
 - (m) a guardian shall comply with standards set by the National Guardianship Association for guardians to the extent that the standards are applicable to the guardian.
- (3) For the purposes of Subsections (2)(f), (g), and (h), an interested person is a person required to receive notice in guardianship proceedings as described in Section 75-5-309.
- (4)
- (a) An accounting report under Subsection (2)(k) shall include a statement regarding:
 - (i) all assets at the beginning and end of the reporting year;
 - (ii) any income received during the year;
 - (iii) any disbursements for the support of the ward;
 - (iv) any investments or trusts that are held for the ward's benefit;
 - (v) any expenditures or fees charged to the ward's estate; and
 - (vi) any other expenses incurred by the ward's estate.
 - (b) The court may require additional information in an accounting report under Subsection (2)(k).
 - (c) The Judicial Council shall approve forms for the accounting reports described in Subsection (2)(k).
 - (d) An annual accounting report under Subsection (2)(k) shall be examined and approved by the court.
 - (e) If the ward's income is limited to a federal or state program requiring an annual accounting report, a copy of that report may be submitted to the court in lieu of the required annual accounting report under Subsection (2)(k).
 - (f)

- (i) A corporate fiduciary is not required to petition the court, but shall submit the corporate fiduciary's internal report annually to the court.
 - (ii) The report under Subsection (4)(f)(i) shall be examined and approved by the court.
 - (g) If a fee is paid for an accounting of an estate, a fee may not be charged for an accounting of the status of a ward under Subsection (2)(l).
 - (h) Upon a motion and after a hearing, the court may alter the frequency of, or the information included in, an accounting report provided to a ward in accordance with Subsection 75-5-301.5(2)(t).
- (5) If a conservator has been appointed for a ward:
- (a) all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this chapter; and
 - (b) the guardian shall account to the conservator for funds expended.
- (6)
- (a) Any guardian of a person for whom a conservator has been appointed:
 - (i) shall control the custody and care of the ward; and
 - (ii) is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances.
 - (b) The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.
- (7)
- (a) The court may impose a penalty in an amount not to exceed \$5,000 if a guardian:
 - (i) makes a substantial misstatement on filings of 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 after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed.
 - (b) The court may order restitution of funds misappropriated from the estate of a ward.
 - (c) A penalty under this Subsection (7) shall be paid by the guardian and may not be paid by the ward or the ward's estate.
 - (d) The provisions and penalties in Subsection (2)(k) or (l) governing annual reports do not apply if the guardian or a coguardian is the parent of the ward.
- (8) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the ward after receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the guardian.

Amended by Chapter 358, 2022 General Session

Amended by Chapter 358, 2022 General Session, (Coordination Clause)

Repealed and Re-enacted by Chapter 441, 2022 General Session

75-5-312.5 Association between an adult ward and a relative or acquaintance of the adult ward.

- (1) As used in this section:
 - (a) "Associate" or "association" means:
 - (i) visitation of an adult ward by a relative or qualified acquaintance; or

- (ii) communication between an adult ward and a relative or qualified acquaintance in any form, including by telephone, mail, or electronic communication.
 - (b) "Qualified acquaintance" means an individual, other than a relative of the adult ward, who:
 - (i) has established a significant, mutual friendship with the adult ward; or
 - (ii) is clergy in the adult ward's religion or religious congregation.
 - (c) "Relative" means an adult ward's spouse, parent, step-parent, child, step-child, sibling, step-sibling, half-sibling, grandparent, grandchild, uncle, aunt, nephew, niece, or first cousin.
- (2)
- (a) Except as otherwise provided by court order, a guardian may not restrict or prohibit the right of an adult ward to associate with a relative or qualified acquaintance of the adult ward.
 - (b) If an adult ward is unable to express consent to visitation by a relative or a qualified acquaintance of the adult ward, the consent of the adult ward is presumed based on evidence of a prior relationship between the adult ward and the relative or qualified acquaintance of the adult ward.
 - (c) A guardian may not permit a relative or qualified acquaintance of an adult ward to associate with the adult ward:
 - (i) if a court order prohibits the association;
 - (ii) in a manner prohibited by court order; or
 - (iii) if the adult ward expresses a desire to not associate with the relative or qualified acquaintance.
- (3) A guardian may, as part of the initial guardianship proceeding, petition the court to issue an order:
- (a) prohibiting or placing conditions on association between an adult ward and a relative or qualified acquaintance of the adult ward; or
 - (b) granting the guardian the authority to prohibit or place conditions on association between an adult ward and a relative or qualified acquaintance of the adult ward.
- (4) A guardian may, at any time after the initial guardianship proceeding:
- (a) petition the court to issue an order described in Subsection (3) or to rescind or modify an order described in Subsection (3); or
 - (b) petition, subject to notice, the court on an emergency basis to issue a temporary order until further order of the court described in Subsection (3) or to rescind or modify an order described in Subsection (3).
- (5) An adult ward, a relative of an adult ward, or a qualified acquaintance of an adult ward may, at any time after the initial guardianship proceeding, petition the court to rescind or modify an order described in Subsection (3).
- (6) If a guardian violates Subsection (2), the adult ward, a relative of the adult ward, or a qualified acquaintance of the adult ward may, as applicable:
- (a) file an ex parte motion to enforce an order or to obtain sanctions;
 - (b) seek an injunction to enforce compliance by the guardian with the law and any applicable court order; or
 - (c) petition the court to have the guardian removed as guardian of the adult ward.
- (7) For a hearing on a petition filed under this section, a court:
- (a) may appoint a court visitor to meet with the adult ward to determine the wishes of the adult ward regarding association;
 - (b) shall give notice and an opportunity to be heard to the guardian, the adult ward, and the relative or qualified acquaintance;
 - (c) shall preserve the right of the adult ward to be present at the hearing; and
 - (d) may order supervised visitation by the relative or qualified acquaintance before the hearing.

- (8) A court may not enter an order prohibiting or placing restrictions on association between an adult ward and a relative or qualified acquaintance, unless the court finds by a preponderance of the evidence that:
 - (a) the adult ward desires the prohibition or restriction;
 - (b) if the adult ward had the capacity to make a knowing and intelligent decision regarding the association, the adult ward would prohibit the association or impose the restriction; or
 - (c) the prohibition or restriction is the least restrictive means necessary to protect the health or welfare of the adult ward.
- (9) In making the determination described in Subsection (8), the court may consider any relevant evidence, including:
 - (a) the wishes of the adult ward, expressed during or before the guardianship;
 - (b) the history of the relationship between the adult ward and the relative or qualified acquaintance;
 - (c) any history of criminal activity, abuse, neglect, or violence by the relative or qualified acquaintance; or
 - (d) whether a protective order was ever issued against the relative or qualified acquaintance with respect to the adult ward.
- (10) Except as provided in Subsection (11), the guardian shall have the burden of proof when:
 - (a) seeking an order prohibiting association or placing restrictions on association with a relative or qualified acquaintance of the adult ward;
 - (b) modifying an order to place additional prohibitions or restrictions on association with a relative or qualified acquaintance of the adult ward; or
 - (c) opposing an action described in Subsection (6)(a) or (b).
- (11) The relative or qualified acquaintance shall have the burden of proof if the relative or qualified acquaintance is seeking to modify an order previously entered by a court under this section.
- (12)
 - (a) If, in a proceeding under this section, the court finds that the petition was filed frivolously or in bad faith, the court shall award attorney fees to a party opposing the petition.
 - (b) If, in a proceeding under this section, the court finds that the guardian is in contempt of court or has acted frivolously or in bad faith in prohibiting or restricting association, the court:
 - (i) shall award attorney fees to the prevailing party; and
 - (ii) may impose a sanction, not to exceed \$1,000, against the guardian.
 - (c) A court shall prohibit attorney fees awarded under this Subsection (12) from being paid by the adult ward or the adult ward's estate.

Amended by Chapter 441, 2022 General Session

75-5-313 Proceedings subsequent to appointment -- Venue.

- (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of an appointment by will or written instrument was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.
- (2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Amended by Chapter 41, 1985 General Session

75-5-314 Mentally incompetent veteran -- Evidence of necessity for appointment of guardian.

Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his duly authorized representative, that such person has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing such veterans administration and that the appointment of a guardian is a condition precedent to the payment of any money due such ward by the veterans administration, shall be prima facie evidence of the necessity for such appointment.

Enacted by Chapter 150, 1975 General Session

75-5-315 Copies of public records furnished to veterans administration.

When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on behalf of the authorized representative of the veterans administration with a certified copy of such record.

Enacted by Chapter 150, 1975 General Session

75-5-316 Expedited guardianship proceedings.

- (1)
 - (a) With regard to persons who are residents of the Utah State Developmental Center, the expedited process provided by this section may be applied to obtain a limited guardianship.
 - (b) For purposes of this section:
 - (i) "Limited guardianship" means a guardianship solely for the purpose of granting consent for medical care and for participation in approval of the ward's individualized program plan.
 - (ii) "Ward" means a resident of the Utah State Developmental Center who is the subject of guardianship proceedings under this section.
- (2) Any person interested in the incapacitated person's welfare may file a petition for a finding of incapacity and appointment of a guardian. That person may seek the limited guardianship pro se, using the forms described in this section. Any fee for filing a petition for a limited guardianship shall be waived if the guardian is proceeding under this section.
- (3) Upon filing a petition for limited guardianship under this section, the court shall set a date for hearing.
- (4) The ward has the right to be present at the hearing and to see and hear all evidence relating to his condition.
- (5) At that hearing the court shall review the affidavit of the superintendent of the Utah State Developmental Center, described in Subsection (11), and determine whether notice has been given to the appropriate persons described in Subsection (6).
- (6) If the proposed guardian is not a parent or relative of the ward, personal notice shall be given to the ward's spouse, parents, and any adult children of the ward. Personal notice shall also be given to other persons as the court may direct.
- (7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in the hearing, and may request independent evaluation by a physician appointed by the court. The physician shall submit his findings to the court in writing.

- (8) The court may grant the petition for a limited guardianship and sign the Order of Appointment if the court finds that:
- (a) the appropriate parties have been given notice;
 - (b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah State Developmental Center and any affidavit or testimony of persons entitled to receive notice or requested to present evidence under this section; and
 - (c) it is necessary and desirable to establish the guardianship.
- (9) Venue for these expedited guardianship proceedings shall be the same as that described in Section 75-5-302.
- (10) A petition for a limited guardianship shall include the following information:
- (a) the interest of the petitioner;
 - (b) the name, age, residence, and address of the ward;
 - (c) verification that the ward is a resident of the Utah State Developmental Center;
 - (d) the name and address of the nearest relative of the ward; and
 - (e) the reason for appointment of guardianship.
- (11) The petitioner shall also provide the court with an affidavit of the superintendent of the Utah State Developmental Center that includes the following information:
- (a) that the ward is a resident of the Utah State Developmental Center;
 - (b) the date the ward was originally admitted to the Utah State Developmental Center;
 - (c) the diagnosis of the ward, including a description of the ward's disabling condition, the level of the ward's intellectual disability, and any medical or physical conditions of the ward;
 - (d) that the Utah State Developmental Center is certified as an intermediate care facility for people with an intellectual disability;
 - (e) that because of that certification, the Utah State Developmental Center receives financial participation from the United States Government for its operation and maintenance costs; and
 - (f) that federal regulations under Title XIX require the ward to have a guardian appointed for the sole purpose of giving consent for medical and dental care and of participation in and approval of the ward's individual program plan.
- (12) If the court finds that, under the requirements of this section the proposed limited guardian should be appointed, it shall enter an order establishing that limited guardianship in substantially the following form:
- The court finds that:
- (a) appointment of a limited guardianship for (named ward) is necessary and desirable as a means of providing continuing care and supervision and to ensure his welfare;
 - (b) the ward is incapacitated;
 - (c) (named guardian) is appointed as the limited guardian of (named ward); and
 - (d) the guardianship is a limited guardianship solely for the purpose of:
 - (i) granting permission for medical and dental care on behalf of the ward; and
 - (ii) participation in the development and approval of the ward's individual program plan.
- (13) Appointment of guardianship under this section places no additional responsibility or liability on the guardian with regard to the ward. The limited guardianship is solely for consent for medical care and approval of the ward's individualized program plan, and shall not be construed to increase or create liability or responsibility for the guardian.

Amended by Chapter 366, 2011 General Session

75-5-317 Guardianship proceedings for minor becoming an incapacitated adult.

- (1) As used in this section:

- (a) "Incapacitated" means the same as that term is defined in Section 75-1-201.
 - (b) "Joint legal decision-making" means parents or two individuals, regardless of whether they are married, sharing legal decision-making and no individual's rights or responsibilities being superior except with respect to specified decisions set forth by the court or the individuals in a final judgment or order.
 - (c) "Legal decision-making" means the legal right and responsibility to make all nonemergency legal decisions for a minor including those regarding education, health care, religious training, and personal care decisions.
 - (d) "Minor" means the same as that term is defined in Section 75-1-201.
 - (e) "Physician" means an individual:
 - (i) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
 - (ii) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
 - (f) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.
 - (g) "Sole legal decision-making" means one parent or one individual having the legal right and responsibility to make major decisions for the minor child.
- (2)
- (a) Notwithstanding the other provisions of this part, a person who may be a guardian of an incapacitated person under Section 75-5-301 may initiate guardianship proceedings pursuant to this Subsection (2) for a minor who is at least 17 years, six months of age and who is alleged to be incapacitated and request that a guardianship order take effect immediately on the day the minor turns 18 years of age.
 - (b) The petitioner shall provide with the petition a written report of an evaluation of the minor by a physician or psychologist that meets the requirements of Subsection (2)(c). If the evaluation is conducted within six months after the date the petition is filed with the court, the petitioner may ask in the petition that the court accept this report in lieu of ordering any additional evaluation and the court may grant the request.
 - (c) A written report filed pursuant to this section by a physician or psychologist acting within that person's scope of practice shall include the following information:
 - (i) a specific description of the physical, psychiatric, or psychological diagnosis of the person;
 - (ii) a comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions, with or without assistance, regarding that person;
 - (iii) an analysis of the tasks of daily living the alleged incapacitated person is capable of performing independently or with assistance;
 - (iv) a list of the medications the alleged incapacitated person is receiving, the dosage of the medications, and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge;
 - (v) a prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan; and
 - (vi) other information the physician or psychologist considers appropriate.
- (3)
- (a) Notwithstanding the priorities in Section 75-5-311, if the petition for appointment of a guardian for the incapacitated person is filed pursuant to Subsection (2) or within two years after the day the incapacitated person turns 18 years of age, unless the court finds the appointment to be contrary to the incapacitated person's best interest:

- (i) the court shall appoint as the incapacitated person's guardian any person who, by court order, had sole legal decision-making of the incapacitated person when the incapacitated person attained 17 years, six months of age; or
- (ii) if two individuals had joint legal decision-making of the incapacitated person when the incapacitated person attained 17 years, six months of age, the court shall appoint both individuals as the incapacitated person's coguardians.
- (b) If under Subsection (3)(a) the court finds the appointment of an individual described in Subsection (3)(a) is contrary to the incapacitated person's best interest or if the individual is unwilling to be appointed or serve as a guardian, the court may apply the priorities in Section 75-5-311 in appointing a guardian.
- (4) The court may appoint more than one person as the incapacitated person's coguardians if the appointment is required by Subsection (3) or the court finds that the appointment is in the incapacitated person's best interest. If the court appoints coguardians, the coguardians shall share legal decision-making for the incapacitated person and neither coguardian's rights or responsibilities are superior except as otherwise ordered by the court.

Enacted by Chapter 294, 2018 General Session

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)
 - (a) For all estates in excess of \$50,000 excluding the residence owned by the ward, the conservator shall send a report with a full accounting to the court on an annual basis.
 - (b) 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.
 - (c) A report under Subsection (2)(a) or (b) shall include a statement regarding:
 - (i) all assets at the beginning and end of the reporting year;
 - (ii) any income received during the year;
 - (iii) any disbursements for the support of the ward;
 - (iv) any investments or trusts that are held for the ward's benefit;
 - (v) any expenditures or fees charged to the ward's estate; and
 - (vi) any other expenses incurred by the ward's estate.
 - (d) The Judicial Council shall approve the forms for the accounting reports described in Subsections (2)(a) and (b).
 - (e) An annual accounting report under Subsection (2)(a) or (b) shall be examined and approved by the court.
- (3)
 - (a) Corporate fiduciaries are not required to fully petition the court, but shall submit their internal report annually to the court.
 - (b) A report under Subsection (3)(a) shall be examined and approved by the court.
- (4) Upon a motion and after a hearing, the court may alter the frequency of, or the information included in, an accounting report provided to a ward in accordance with Subsection 75-5-301.5(2)(t).
- (5)
 - (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.
- (6) These provisions and penalties governing annual reports do not apply if the conservator is the parent of the ward.

Amended by Chapter 358, 2022 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 financial records and produce them upon the request of any interested person.

Amended by Chapter 403, 2017 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.

- (1)
 - (a) Letters of conservatorship are evidence of transfer of the assets of a protected person to the conservator.
 - (b) An order terminating a conservatorship is evidence of transfer of the assets of the estate from the conservator to the protected person or the protected person's successors.
 - (c) 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.

- (2) A person who refuses to accept the authority of a conservator to transact business with the assets of the protected person after receiving a certified copy of letters of conservatorship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the conservator.

Amended by Chapter 403, 2017 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) 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.
 - (b) If a guardian is also appointed for the ward, the conservator shall share with the guardian the estate documents the conservator receives.
- (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 use the funds of the estate and act without court authorization or confirmation, to:
- (a) collect, hold, and retain assets of the estate, including land in another state, until, in the conservator's judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator 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 (3);
 - (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)
 - (i) subdivide, develop, or dedicate land to public use;
 - (ii) make or obtain the vacation of plats and adjust boundaries;
 - (iii) adjust differences in valuation on exchange or partition by giving or receiving considerations; and
 - (iv) 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)
 - (i) sell or exercise stock subscription or conversion rights; and
 - (ii) 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)
 - (i) borrow money to be repaid from estate assets or otherwise; and
 - (ii) 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)

- (i) pay or contest any claim;
- (ii) settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and
- (iii) 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)
 - (i) 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;
 - (ii) act upon a recommendation made by a person listed in Subsection (4)(w)(i) without independent investigation; and
 - (iii) 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 the instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

Amended by Chapter 244, 2018 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 the protected person's 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. A conservator 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 the conservator 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 personal representative 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 403, 2017 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