

GUARDIANSHIP AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates the Utah Protective Proceedings Act within the Probate Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a method within the courts for the appointment of a guardian or conservator for a minor or an incapacitated adult;
- ▶ eliminates a local school board's ability to designate guardians for students within their district;
- ▶ eliminates expedited guardianship proceedings for residents of the Utah State Developmental Center; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

53A-2-201, as last amended by Laws of Utah 1995, Chapter 282

53A-2-203.5, as enacted by Laws of Utah 1998, Chapter 124



- 28 **75-1-201**, as last amended by Laws of Utah 2009, Chapter 278
- 29 **75-1-401**, as last amended by Laws of Utah 2009, Chapter 388
- 30 **75-5-501**, as last amended by Laws of Utah 2003, Chapter 241
- 31 **75-5b-102**, as enacted by Laws of Utah 2008, Chapter 253
- 32 **75-5b-302**, as enacted by Laws of Utah 2008, Chapter 253
- 33 **78B-5-804**, as renumbered and amended by Laws of Utah 2008, Chapter 3

34 ENACTS:

- 35 **75-5c-101**, Utah Code Annotated 1953
- 36 **75-5c-102**, Utah Code Annotated 1953
- 37 **75-5c-103**, Utah Code Annotated 1953
- 38 **75-5c-104**, Utah Code Annotated 1953
- 39 **75-5c-105**, Utah Code Annotated 1953
- 40 **75-5c-106**, Utah Code Annotated 1953
- 41 **75-5c-107**, Utah Code Annotated 1953
- 42 **75-5c-110**, Utah Code Annotated 1953
- 43 **75-5c-111**, Utah Code Annotated 1953
- 44 **75-5c-112**, Utah Code Annotated 1953
- 45 **75-5c-113**, Utah Code Annotated 1953
- 46 **75-5c-114**, Utah Code Annotated 1953
- 47 **75-5c-115**, Utah Code Annotated 1953
- 48 **75-5c-116**, Utah Code Annotated 1953
- 49 **75-5c-117**, Utah Code Annotated 1953
- 50 **75-5c-118**, Utah Code Annotated 1953
- 51 **75-5c-119**, Utah Code Annotated 1953
- 52 **75-5c-120**, Utah Code Annotated 1953
- 53 **75-5c-121**, Utah Code Annotated 1953
- 54 **75-5c-122**, Utah Code Annotated 1953
- 55 **75-5c-123**, Utah Code Annotated 1953
- 56 **75-5c-124**, Utah Code Annotated 1953
- 57 **75-5c-125**, Utah Code Annotated 1953
- 58 **75-5c-201**, Utah Code Annotated 1953

- 59 **75-5c-202**, Utah Code Annotated 1953
- 60 **75-5c-203**, Utah Code Annotated 1953
- 61 **75-5c-204**, Utah Code Annotated 1953
- 62 **75-5c-301**, Utah Code Annotated 1953
- 63 **75-5c-302**, Utah Code Annotated 1953
- 64 **75-5c-303**, Utah Code Annotated 1953
- 65 **75-5c-304**, Utah Code Annotated 1953
- 66 **75-5c-305**, Utah Code Annotated 1953
- 67 **75-5c-306**, Utah Code Annotated 1953
- 68 **75-5c-307**, Utah Code Annotated 1953
- 69 **75-5c-308**, Utah Code Annotated 1953
- 70 **75-5c-401**, Utah Code Annotated 1953
- 71 **75-5c-402**, Utah Code Annotated 1953
- 72 **75-5c-403**, Utah Code Annotated 1953
- 73 **75-5c-404**, Utah Code Annotated 1953
- 74 **75-5c-405**, Utah Code Annotated 1953
- 75 **75-5c-406**, Utah Code Annotated 1953
- 76 **75-5c-407**, Utah Code Annotated 1953
- 77 **75-5c-408**, Utah Code Annotated 1953
- 78 **75-5c-409**, Utah Code Annotated 1953
- 79 **75-5c-410**, Utah Code Annotated 1953
- 80 **75-5c-411**, Utah Code Annotated 1953
- 81 **75-5c-412**, Utah Code Annotated 1953
- 82 **75-5c-413**, Utah Code Annotated 1953
- 83 **75-5c-414**, Utah Code Annotated 1953
- 84 **75-5c-415**, Utah Code Annotated 1953
- 85 **75-5c-416**, Utah Code Annotated 1953
- 86 **75-5c-417**, Utah Code Annotated 1953
- 87 **75-5c-418**, Utah Code Annotated 1953
- 88 **75-5c-419**, Utah Code Annotated 1953
- 89 **75-5c-420**, Utah Code Annotated 1953

90 **75-5c-421**, Utah Code Annotated 1953

91 RENUMBERS AND AMENDS:

92 **75-5c-309**, (Renumbered from 75-5-314, as enacted by Laws of Utah 1975, Chapter
93 150)

94 **75-5c-310**, (Renumbered from 75-5-315, as enacted by Laws of Utah 1975, Chapter
95 150)

96 REPEALS:

97 **53A-2-202**, as last amended by Laws of Utah 1998, Chapter 263

98 **75-5-101**, as enacted by Laws of Utah 1975, Chapter 150

99 **75-5-102**, as last amended by Laws of Utah 2004, Chapter 198

100 **75-5-103**, as enacted by Laws of Utah 1975, Chapter 150

101 **75-5-104**, as enacted by Laws of Utah 1975, Chapter 150

102 **75-5-105**, as enacted by Laws of Utah 1975, Chapter 150

103 **75-5-201**, as last amended by Laws of Utah 1998, Chapter 124

104 **75-5-202**, as last amended by Laws of Utah 1985, Chapter 41

105 **75-5-202.5**, as enacted by Laws of Utah 1985, Chapter 41

106 **75-5-203**, as last amended by Laws of Utah 1985, Chapter 41

107 **75-5-204**, as last amended by Laws of Utah 1985, Chapter 41

108 **75-5-205**, as enacted by Laws of Utah 1975, Chapter 150

109 **75-5-206**, as last amended by Laws of Utah 1995, Chapter 156

110 **75-5-207**, as last amended by Laws of Utah 1995, Chapter 156

111 **75-5-208**, as last amended by Laws of Utah 1985, Chapter 41

112 **75-5-209**, as last amended by Laws of Utah 2008, Chapter 3

113 **75-5-210**, as enacted by Laws of Utah 1975, Chapter 150

114 **75-5-211**, as last amended by Laws of Utah 1985, Chapter 41

115 **75-5-212**, as enacted by Laws of Utah 1975, Chapter 150

116 **75-5-301**, as last amended by Laws of Utah 1985, Chapter 41

117 **75-5-302**, as enacted by Laws of Utah 1975, Chapter 150

118 **75-5-303**, as last amended by Laws of Utah 1988, Chapter 104

119 **75-5-304**, as last amended by Laws of Utah 1988, Chapter 104

120 **75-5-305**, as last amended by Laws of Utah 1977, Chapter 194

- 121 **75-5-306**, as last amended by Laws of Utah 1977, Chapter 194
- 122 **75-5-307**, as last amended by Laws of Utah 1988, Chapter 104
- 123 **75-5-308**, as enacted by Laws of Utah 1975, Chapter 150
- 124 **75-5-309**, as last amended by Laws of Utah 1988, Chapter 104
- 125 **75-5-310**, as last amended by Laws of Utah 1979, Chapter 244
- 126 **75-5-311**, as last amended by Laws of Utah 1998, Chapter 288
- 127 **75-5-312**, as last amended by Laws of Utah 1992, Chapter 290
- 128 **75-5-313**, as last amended by Laws of Utah 1985, Chapter 41
- 129 **75-5-316**, as last amended by Laws of Utah 2001, Chapter 73
- 130 **75-5-401**, as last amended by Laws of Utah 2001, Chapter 375
- 131 **75-5-402**, as last amended by Laws of Utah 1992, Chapter 30
- 132 **75-5-403**, as last amended by Laws of Utah 1992, Chapter 30
- 133 **75-5-404**, as enacted by Laws of Utah 1975, Chapter 150
- 134 **75-5-405**, as enacted by Laws of Utah 1975, Chapter 150
- 135 **75-5-406**, as enacted by Laws of Utah 1975, Chapter 150
- 136 **75-5-407**, as enacted by Laws of Utah 1975, Chapter 150
- 137 **75-5-408**, as enacted by Laws of Utah 1975, Chapter 150
- 138 **75-5-409**, as last amended by Laws of Utah 1977, Chapter 194
- 139 **75-5-410**, as last amended by Laws of Utah 1997, Chapter 161
- 140 **75-5-411**, as last amended by Laws of Utah 1977, Chapter 194
- 141 **75-5-412**, as enacted by Laws of Utah 1975, Chapter 150
- 142 **75-5-413**, as enacted by Laws of Utah 1975, Chapter 150
- 143 **75-5-414**, as enacted by Laws of Utah 1975, Chapter 150
- 144 **75-5-415**, as enacted by Laws of Utah 1975, Chapter 150
- 145 **75-5-416**, as enacted by Laws of Utah 1975, Chapter 150
- 146 **75-5-417**, as last amended by Laws of Utah 2004, Chapter 89
- 147 **75-5-418**, as enacted by Laws of Utah 1975, Chapter 150
- 148 **75-5-419**, as enacted by Laws of Utah 1975, Chapter 150
- 149 **75-5-420**, as last amended by Laws of Utah 1977, Chapter 194
- 150 **75-5-421**, as enacted by Laws of Utah 1975, Chapter 150
- 151 **75-5-422**, as enacted by Laws of Utah 1975, Chapter 150

- 152 75-5-423, as enacted by Laws of Utah 1975, Chapter 150
- 153 75-5-424, as last amended by Laws of Utah 1977, Chapter 194
- 154 75-5-425, as last amended by Laws of Utah 1977, Chapter 194
- 155 75-5-426, as enacted by Laws of Utah 1975, Chapter 150
- 156 75-5-427, as last amended by Laws of Utah 1977, Chapter 194
- 157 75-5-428, as last amended by Laws of Utah 2007, Chapter 306
- 158 75-5-429, as enacted by Laws of Utah 1975, Chapter 150
- 159 75-5-430, as enacted by Laws of Utah 1975, Chapter 150
- 160 75-5-431, as enacted by Laws of Utah 1975, Chapter 150
- 161 75-5-432, as last amended by Laws of Utah 1977, Chapter 194
- 162 75-5-433, as last amended by Laws of Utah 1977, Chapter 194

164 *Be it enacted by the Legislature of the state of Utah:*

165 Section 1. Section **53A-2-201** is amended to read:

166 **53A-2-201. Child's school district of residence -- Determination -- Responsibility**
 167 **for providing educational services.**

168 (1) The school district of residence of a minor child whose custodial parent or legal
 169 guardian resides within Utah is:

170 (a) the school district in which the custodial parent or legal guardian resides; or

171 (b) the school district in which the child resides:

172 (i) while in the custody or under the supervision of a Utah state agency;

173 (ii) while under the supervision of a private or public agency which is in compliance
 174 with Section 62A-4a-606 and is authorized to provide child placement services by the state;

175 (iii) while living with a responsible adult resident of the district, if a determination has
 176 been made in accordance with rules of the district board of education that:

177 (A) the child's physical, mental, moral, or emotional health would best be served by
 178 considering the child to be a resident for school purposes;

179 (B) exigent circumstances exist which would not permit the case to be appropriately
 180 addressed under Section 53A-2-207; and

181 (C) considering the child to be a resident of the district under this subsection would not
 182 violate any other law or rule of the State Board of Education; or

183 (iv) if the child is married or has been determined to be an emancipated minor by a
184 court of law or by a state administrative agency authorized to make that determination.

185 (2) A minor child whose custodial parent or legal guardian does not reside in the state
186 is considered to be a resident of the district in which the child lives, unless that designation
187 violates any other law or rule of the State Board of Education, if:

188 (a) the child is married or an emancipated minor under Subsection (1)(b)(iv); or
189 ~~[(b) the child lives with a resident of the district who is a responsible adult and whom~~
190 ~~the district agrees to designate as the child's legal guardian under Section 53A-2-202; or]~~

191 ~~[(c)]~~ (b) if permissible under policies adopted by the local school board, it is
192 established to the satisfaction of the local school board that:

193 (i) the child lives with a responsible adult who is a resident of the district and is the
194 child's noncustodial parent, grandparent, brother, sister, uncle, ~~[(or)]~~ aunt, or any other
195 responsible adult;

196 (ii) the child's presence in the district is not for the primary purpose of attending the
197 public schools;

198 (iii) the child's physical, mental, moral, or emotional health would best be served by
199 considering the child to be a resident for school purposes; and

200 (iv) the child is prepared to abide by the rules and policies of the school and school
201 district in which attendance is sought.

202 (3) (a) If admission is sought under Subsection (1)(b)(iii), or (2)~~[(c)]~~(b), then the
203 district may require the person with whom the child lives to be designated as the child's
204 custodian in a durable power of attorney, issued by the party who has legal custody of the child,
205 granting the custodian full authority to take any appropriate action, including authorization for
206 educational or medical services, in the interests of the child.

207 (b) Both the party granting and the party empowered by the power of attorney shall
208 agree to:

209 (i) assume responsibility for any fees or other charges relating to the child's education
210 in the district; and

211 (ii) if eligibility for fee waivers is claimed under Section 53A-12-103, provide the
212 school district with all financial information requested by the district for purposes of
213 determining eligibility for fee waivers.

214 (c) Notwithstanding Section 75-5-103, a power of attorney meeting the requirements of
215 this section and accepted by the school district shall remain in force until the earliest of the
216 following occurs:

217 (i) the child reaches the age of 18, marries, or becomes emancipated;
218 (ii) the expiration date stated in the document; or
219 (iii) the power of attorney is revoked or rendered inoperative by the grantor or grantee,
220 or by order of a court of competent jurisdiction.

221 (4) A power of attorney does not confer legal guardianship.

222 (5) Each school district is responsible for providing educational services for all
223 children of school age who are residents of the district.

224 (6) Students who were enrolled in a Utah public school by October 1, 1992, and would,
225 but for this part, have been allowed to attend public schools without payment of tuition shall be
226 permitted to continue their attendance until graduation or termination of enrollment on the
227 same basis as Utah resident students.

228 Section 2. Section **53A-2-203.5** is amended to read:

229 **53A-2-203.5. Recognition of guardianship.**

230 (1) A document issued by other than a court of law which purports to award
231 guardianship to a person who is not a legal resident of the jurisdiction in which the
232 guardianship is awarded is not valid in [~~the~~] this state [~~of Utah~~] until reviewed and approved by
233 a [~~Utah~~] court in this state.

234 (2) The procedure for obtaining approval under Subsection (1) is the procedure
235 required under Title 75, Chapter [5] 5c, Part 2, [~~for obtaining a court appointment of a~~
236 ~~guardian~~] Appointment of a Guardian for a Minor.

237 Section 3. Section **75-1-201** is amended to read:

238 **75-1-201. General definitions.**

239 Subject to additional definitions contained in the subsequent chapters that are
240 applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in
241 this code:

242 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of
243 attorney, an individual authorized to make decisions concerning another's health care, and an
244 individual authorized to make decisions for another under a natural death act.

245 (2) "Application" means a written request to the registrar for an order of informal
246 probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment
247 Proceedings.

248 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any
249 present or future interest, vested or contingent, and also includes the owner of an interest by
250 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to
251 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a
252 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security
253 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar
254 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated
255 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a
256 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of
257 appointment, and a person in whose favor a power of attorney or a power held in any
258 individual, fiduciary, or representative capacity is exercised.

259 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of
260 an insurance or annuity policy, of an account with POD designation, of a security registered in
261 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or
262 other nonprobate transfer at death.

263 (5) "Child" includes any individual entitled to take as a child under this code by
264 intestate succession from the parent whose relationship is involved and excludes any person
265 who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

266 (6) "Claims," in respect to estates of decedents and protected persons, includes
267 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,
268 and liabilities of the estate which arise at or after the death of the decedent or after the
269 appointment of a conservator, including funeral expenses and expenses of administration.
270 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of
271 a decedent or protected person to specific assets alleged to be included in the estate.

272 (7) "Conservator" means a person who is appointed by a court to manage the estate of a
273 protected person.

274 (8) "Court" means any of the courts of record in this state having jurisdiction in matters
275 relating to the affairs of decedents.

276 (9) "Descendant" of an individual means all of his descendants of all generations, with
277 the relationship of parent and child at each generation being determined by the definition of
278 child and parent contained in this title.

279 (10) "Devise," when used as a noun, means a testamentary disposition of real or
280 personal property and, when used as a verb, means to dispose of real or personal property by
281 will.

282 (11) "Devisee" means any person designated in a will to receive a devise. For the
283 purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to
284 an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the
285 devisee, and the beneficiaries are not devisees.

286 [~~(12)~~ "Disability" means cause for a protective order as described by Section
287 ~~75-5-401.~~]

288 [~~(13)~~ (12) "Distributee" means any person who has received property of a decedent
289 from his personal representative other than as a creditor or purchaser. A testamentary trustee is
290 a distributee only to the extent of distributed assets or increment thereto remaining in his hands.
291 A beneficiary of a testamentary trust to whom the trustee has distributed property received from
292 a personal representative is a distributee of the personal representative. For purposes of this
293 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to
294 the extent of the devised assets.

295 [~~(14)~~ (13) "Estate" includes the property of the decedent, trust, or other person whose
296 affairs are subject to this title as originally constituted and as it exists from time to time during
297 administration.

298 [~~(15)~~ (14) "Exempt property" means that property of a decedent's estate which is
299 described in Section 75-2-403.

300 [~~(16)~~ (15) "Fiduciary" includes a personal representative, guardian, conservator, and
301 trustee.

302 [~~(17)~~ (16) "Foreign personal representative" means a personal representative of
303 another jurisdiction.

304 [~~(18)~~ (17) "Formal proceedings" means proceedings conducted before a judge with
305 notice to interested persons.

306 [~~(19)~~ (18) "Governing instrument" means a deed, will, trust, insurance or annuity

307 policy, account with POD designation, security registered in beneficiary form (TOD), pension,
308 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
309 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of
310 any similar type.

311 ~~[(20)]~~ (19) "Guardian" means a person who has qualified as a guardian of a minor or
312 incapacitated person pursuant to testamentary or court appointment, or by written instrument as
313 provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

314 ~~[(21)]~~ (20) "Heirs," except as controlled by Section 75-2-711, means persons, including
315 the surviving spouse and state, who are entitled under the statutes of intestate succession to the
316 property of a decedent.

317 ~~[(22)]~~ "Incapacitated person" means any person who is impaired by reason of mental
318 illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic
319 intoxication, or other cause, except minority, to the extent of lacking sufficient understanding
320 or capacity to make or communicate responsible decisions.]

321 (21) "Incapacity," which is measured by functional limitations, means a judicial
322 determination after proof by clear and convincing evidence that an adult's ability to do any of
323 the following is so impaired that, even with assistance that the person is willing to accept,
324 illness or physical or financial harm may occur:

325 (a) receive and evaluate information;

326 (b) make and communicate decisions;

327 (c) provide for necessities such as food, shelter, clothing, health care, or safety; or

328 (d) manage property.

329 ~~[(23)]~~ (22) "Informal proceedings" mean those conducted without notice to interested
330 persons by an officer of the court acting as a registrar for probate of a will or appointment of a
331 personal representative.

332 ~~[(24)]~~ (23) "Interested person" includes heirs, devisees, children, spouses, creditors,
333 beneficiaries, and any others having a property right in or claim against a trust estate or the
334 estate of a decedent, ~~[ward,]~~ or protected person. It also includes persons having priority for
335 appointment as personal representative, other fiduciaries representing interested persons, a
336 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but
337 incapacitated. The meaning as it relates to particular persons may vary from time to time and

338 shall be determined according to the particular purposes of, and matter involved in, any
339 proceeding.

340 ~~[(25)]~~ (24) "Issue" of a person means descendant as defined in Subsection (9).

341 ~~[(26)]~~ (25) "Joint tenants with the right of survivorship" and "community property with
342 the right of survivorship" includes coowners of property held under circumstances that entitle
343 one or more to the whole of the property on the death of the other or others, but excludes forms
344 of coownership registration in which the underlying ownership of each party is in proportion to
345 that party's contribution.

346 ~~[(27)]~~ (26) "Lease" includes an oil, gas, or other mineral lease.

347 ~~[(28)]~~ (27) "Letters" includes letters testamentary, letters of guardianship, letters of
348 administration, and letters of conservatorship.

349 ~~[(29)]~~ (28) "Minor" means a person who is under 18 years of age.

350 ~~[(30)]~~ (29) "Mortgage" means any conveyance, agreement, or arrangement in which
351 property is used as security.

352 ~~[(31)]~~ (30) "Nonresident decedent" means a decedent who was domiciled in another
353 jurisdiction at the time of his death.

354 ~~[(32)]~~ (31) "Organization" includes a corporation, limited liability company, business
355 trust, estate, trust, partnership, joint venture, association, government or governmental
356 subdivision or agency, or any other legal or commercial entity.

357 ~~[(33)]~~ (32) "Parent" includes any person entitled to take, or who would be entitled to
358 take if the child died without a will, as a parent under this code by intestate succession from the
359 child whose relationship is in question and excludes any person who is only a stepparent, foster
360 parent, or grandparent.

361 ~~[(34)]~~ (33) "Payor" means a trustee, insurer, business entity, employer, government,
362 governmental agency or subdivision, or any other person authorized or obligated by law or a
363 governing instrument to make payments.

364 ~~[(35)]~~ (34) "Person" means an individual or an organization.

365 ~~[(36)]~~ (35) (a) "Personal representative" includes executor, administrator, successor
366 personal representative, special administrator, and persons who perform substantially the same
367 function under the law governing their status.

368 (b) "General personal representative" excludes special administrator.

369 [(37)] (36) "Petition" means a written request to the court for an order after notice.

370 [(38)] (37) "Proceeding" includes action at law and suit in equity.

371 [(39)] (38) "Property" includes both real and personal property or any interest therein
372 and means anything that may be the subject of ownership.

373 [(40)] (39) "Protected person" means a person for whom a guardian or a conservator
374 has been appointed~~[- A "minor protected person" means a minor for whom a conservator has~~
375 ~~been appointed because of minority.]~~ or a protective order entered, including a minor.

376 [(41)] (40) "Protective proceeding" means a proceeding [~~described in Section~~
377 ~~75-5-401]~~ under Title 75, Chapter 5c, Utah Protective Proceedings Act.

378 [(42)] (41) "Registrar" refers to the official of the court designated to perform the
379 functions of registrar as provided in Section 75-1-307.

380 [(43)] (42) "Security" includes any note, stock, treasury stock, bond, debenture,
381 evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or
382 lease or in payments out of production under such a title or lease, collateral trust certificate,
383 transferable share, voting trust certificate, and, in general, any interest or instrument commonly
384 known as a security, or any certificate of interest or participation, any temporary or interim
385 certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or
386 purchase, any of the foregoing.

387 [(44)] (43) "Settlement," in reference to a decedent's estate, includes the full process of
388 administration, distribution, and closing.

389 [(45)] (44) "Special administrator" means a personal representative as described in
390 Sections 75-3-614 through 75-3-618.

391 [(46)] (45) "State" means a state of the United States, the District of Columbia, the
392 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of
393 the United States, or a Native American tribe or band recognized by federal law or formally
394 acknowledged by a state.

395 [(47)] (46) "Successor personal representative" means a personal representative, other
396 than a special administrator, who is appointed to succeed a previously appointed personal
397 representative.

398 [(48)] (47) "Successors" means persons, other than creditors, who are entitled to
399 property of a decedent under the decedent's will or this title.

400 [(49)] (48) "Supervised administration" refers to the proceedings described in Title 75,
401 Chapter 3, Part 5, Supervised Administration.

402 [(50)] (49) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD
403 Security Registration Act, means that an individual has neither predeceased an event, including
404 the death of another individual, nor is considered to have predeceased an event under Section
405 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"
406 "survivor," and "surviving."

407 [(51)] (50) "Testacy proceeding" means a proceeding to establish a will or determine
408 intestacy.

409 [(52)] (51) "Testator" includes an individual of either sex.

410 [(53)] (52) "Trust" includes a health savings account, as defined in Section 223,
411 Internal Revenue Code, any express trust, private or charitable, with additions thereto,
412 wherever and however created. The term also includes a trust created or determined by
413 judgment or decree under which the trust is to be administered in the manner of an express
414 trust. The term excludes other constructive trusts, and it excludes resulting trusts,
415 conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6,
416 Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors
417 Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds,
418 voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act,
419 security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts,
420 dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any
421 arrangement under which a person is nominee or escrowee for another.

422 [(54)] (53) "Trustee" includes an original, additional, and successor trustee, and
423 cotrustee, whether or not appointed or confirmed by the court.

424 [(55)] ~~"Ward" means a person for whom a guardian has been appointed. A "minor~~
425 ~~ward" is a minor for whom a guardian has been appointed solely because of minority.]~~

426 [(56)] (54) "Will" includes codicil and any testamentary instrument which merely
427 appoints an executor, revokes or revises another will, nominates a guardian or conservator, or
428 expressly excludes or limits the right of an individual or class to succeed to property of the
429 decedent passing by intestate succession.

430 Section 4. Section **75-1-401** is amended to read:

431 **75-1-401. Notice -- Method and time of giving.**

432 (1) If notice of a hearing on any petition is required and except for specific notice
433 requirements as otherwise provided, the petitioner shall cause notice of the time and place of
434 hearing of any petition to be given to any interested person or his attorney if he has appeared by
435 attorney or requested that notice be sent to his attorney. Notice shall be given by the clerk
436 posting a copy of the notice for the 10 consecutive days immediately preceding the time set for
437 the hearing in at least three public places in the county, one of which ~~[must]~~ shall be at the
438 courthouse of the county and~~[-]~~ one of which may be on the Utah State Courts' website; and

439 (a) ~~[(i)]~~ by the clerk mailing a copy ~~[thereof]~~ of the notice at least 10 days before the
440 time set for the hearing by certified, registered, or ordinary first class mail addressed to the
441 person being notified at the post-office address given in his demand for notice, if any, or at his
442 office or place of residence, if known; or

443 ~~[(i)]~~ (b) by delivering a copy thereof to the person being notified personally at least 10
444 days before the time set for the hearing; and

445 ~~[(b)]~~ (c) if the address, or identity of any person is not known and cannot be ascertained
446 with reasonable diligence, by publishing~~[-(i)]~~ the notice at least once a week for three
447 consecutive weeks ~~[a copy thereof]~~ in a newspaper having general circulation in the county
448 where the hearing is to be held, the last publication of which is to be at least 10 days before the
449 time set for the hearing~~[-and]~~.

450 ~~[(ii) in accordance with Section 45-1-101 for three weeks.]~~

451 (2) The court for good cause shown may provide for a different method or time of
452 giving notice for any hearing.

453 (3) Proof of the giving of notice shall be made on or before the hearing and filed in the
454 proceeding.

455 Section 5. Section **75-5-501** is amended to read:

456 **75-5-501. Power of attorney not affected by disability or lapse of time -- Agent**
457 **responsibilities.**

458 (1) Whenever a principal designates another his attorney-in-fact or agent by a power of
459 attorney in writing and the writing contains the words "This power of attorney shall not be
460 affected by disability of the principal," or "This power of attorney shall become effective upon
461 the disability of the principal," or similar words showing the intent of the principal that the

462 authority conferred shall be exercisable notwithstanding his disability, the authority of the
463 attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the
464 principal notwithstanding:

465 (a) later disability or incapacity of the principal at law or later uncertainty as to whether
466 the principal is dead or alive; or

467 (b) the lapse of time since the execution of the instrument, unless the instrument states
468 a time of termination.

469 (2) If an attorney-in-fact or agent determines that the principal has become
470 incapacitated or disabled and the power of attorney by its terms remains in effect or becomes
471 effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent shall:

472 (a) notify all interested persons of his status as the power of attorney holder within 30
473 days of the principal's incapacitation, and provide them with his name and address;

474 (b) provide to any interested persons upon written request, a copy of the power of
475 attorney;

476 (c) provide to any interested persons upon written request, an annual accounting of the
477 assets to which the power of attorney applies, unless the power of attorney specifically directs
478 that the attorney-in-fact or agent is not required to do so; and

479 (d) notify all interested persons upon the death of the principal.

480 (3) All interested persons shall be notified within 10 days if the attorney-in-fact or
481 agent changes. The notification shall be made by the new attorney-in-fact or agent who shall
482 then be accountable to the interested persons in accordance with Subsection (2).

483 (4) All acts done by the attorney-in-fact or agent pursuant to the power during any
484 period of disability or incompetence or uncertainty as to whether the principal is dead or alive
485 have the same effect and inure to the benefit of and bind the principal or his heirs, devisees,
486 and personal representative as if the principal were alive, competent, and not disabled, except
487 as provided in Section 75-5-503.

488 (5) A conservator may be appointed for a principal even though the principal has a
489 valid power of attorney in place. If a conservator thereafter is appointed for the principal, the
490 attorney-in-fact or agent, during the continuance of the appointment, shall account to the
491 conservator rather than the principal. The conservator, pursuant to court order [~~as provided in~~
492 ~~Subsection 75-5-408(1)(d)~~], has the same power the principal would have had if he were not

493 disabled or incompetent to revoke, suspend, or terminate all or any part of the power of
494 attorney or agency.

495 (6) For the purposes of this section, "interested person" means any person entitled to a
496 part of the principal's estate from the principal's will or through the intestacy laws, whichever is
497 applicable.

498 Section 6. Section **75-5b-102** is amended to read:

499 **75-5b-102. Definitions.**

500 In this chapter:

501 (1) "Adult" means an individual who has attained 18 years of age.

502 [~~(2)~~] ~~"Conservator" means a person appointed by the court to administer the property of~~
503 ~~an adult, including a person appointed under Title 75, Chapter 5, Part 4, Protection of Property~~
504 ~~of Persons Under Disability and Minors.]~~

505 [~~(3)~~] (2) "Emergency" means circumstances that likely will result in substantial harm to
506 a respondent's health, safety, estate, or welfare, and in which the appointment of a guardian is
507 necessary because no other person has authority to and is willing to act on the respondent's
508 behalf.

509 [~~(4)~~] ~~"Guardian" means a person appointed by the court to make decisions regarding the~~
510 ~~person of an adult, including a person appointed under Title 75, Chapter 5, Part 3, Guardians of~~
511 ~~Incapacitated Persons.]~~

512 [~~(5)~~] (3) "Guardianship order" means an order appointing a guardian.

513 [~~(6)~~] (4) "Guardianship proceeding" means a proceeding in which an order for the
514 appointment of a guardian is sought or has been issued.

515 [~~(7)~~] (5) "Home state" means the state in which the respondent was physically present
516 for at least six consecutive months immediately before the filing of a petition for the
517 appointment of a guardian or protective order. A period of temporary absence counts as part of
518 the six-month period.

519 [~~(8)~~] ~~"Incapacitated person" means an adult for whom a guardian has been appointed.]~~

520 [~~(9)~~] (6) "Party" means the respondent, petitioner, guardian, conservator, or any other
521 person allowed by the court to participate in a guardianship or protective proceeding.

522 [~~(10)~~] (7) "Person," except in the terms "incapacitated person" or "protected person,"
523 means an individual, corporation, business trust, estate, trust, partnership, limited liability

524 company, association, joint venture, government or governmental subdivision, agency or
525 instrumentality, public corporation, or any other legal or commercial entity.

526 ~~[(11) "Protected person" means an adult for whom a protective order has been made.]~~

527 ~~[(12) (8) "Protective order" means an order appointing a conservator or another court~~
528 ~~order related to management of an adult's property.~~

529 ~~[(13) "Protective proceeding" means a judicial proceeding in which a protective order~~
530 ~~is sought or has been issued.]~~

531 ~~[(14) (9) "Record" means information that is inscribed on a tangible medium or that is~~
532 ~~stored in an electronic or other medium and is retrievable in perceivable form.~~

533 ~~[(15) (10) "Respondent" means an adult for whom a protective order or the~~
534 ~~appointment of a guardian or conservator is sought.~~

535 ~~[(16) (11) "Significant-connection state" means a state, other than the home state, with~~
536 ~~which a respondent has a significant connection other than mere physical presence and in~~
537 ~~which substantial evidence concerning the respondent is available.~~

538 ~~[(17) (12) "State" means a state of the United States, the District of Columbia, Puerto~~
539 ~~Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or~~
540 ~~insular possession subject to the jurisdiction of the United States.~~

541 Section 7. Section **75-5b-302** is amended to read:

542 **75-5b-302. Accepting guardianship or conservatorship transferred from another**
543 **state.**

544 (1) To confirm transfer of a guardianship or conservatorship transferred to this state
545 under provisions similar to Section 75-5b-301, the guardian or conservator shall petition the
546 court in this state to accept the guardianship or conservatorship. The petition shall include a
547 certified copy of the other state's provisional order of transfer.

548 (2) Notice of a petition under Subsection (1) shall be given by the petitioner to those
549 persons who would be entitled to notice if the petition were a petition for the appointment of a
550 guardian or issuance of a protective order in both the transferring state and this state. The
551 notice shall be given in the same manner as notice is given in this state.

552 (3) On the court's own motion or on request of the incapacitated or protected person, or
553 other person required to be notified of the proceeding, the court shall hold a hearing on a
554 petition filed pursuant to Subsection (1).

555 (4) The court shall issue an order provisionally granting a petition filed under
556 Subsection (1) unless:

557 (a) an objection is made and the objector establishes that transfer of the proceeding
558 would be contrary to the interests of the incapacitated or protected person; or

559 (b) the guardian or conservator is ineligible for appointment in this state.

560 (5) The court shall issue a final order accepting the proceeding and appointing the
561 guardian or conservator as guardian or conservator in this state upon its receipt from the court
562 from which the proceeding is being transferred of a final order issued under provisions similar
563 to Section 75-5b-301 transferring the proceeding to this state.

564 (6) Not later than 90 days after issuance of a final order accepting transfer of a
565 guardianship or conservatorship, the court shall determine whether the guardianship or
566 conservatorship needs to be modified to conform to the law of this state.

567 (7) In granting a petition under this section, the court shall recognize a guardianship or
568 conservatorship order from the other state, including the determination of the incapacitated or
569 protected person's incapacity and the appointment of the guardian or conservator.

570 (8) The denial by a court of this state of a petition to accept a guardianship or
571 conservatorship transferred from another state does not affect the ability of the guardian or
572 conservator to seek appointment as guardian or conservator in this state under Title 75, Chapter
573 [~~5, Part 3, Guardians of Incapacitated Persons~~] 5c, Utah Protective Proceedings Act, if the
574 court has jurisdiction to make an appointment other than by reason of the provisional order of
575 transfer.

576 Section 8. Section **75-5c-101** is enacted to read:

577 **CHAPTER 5c. UTAH PROTECTIVE PROCEEDINGS ACT**

578 **Part 1. General Provisions**

579 **75-5c-101. Title.**

580 This chapter is known as the "Utah Protective Proceedings Act."

581 Section 9. Section **75-5c-102** is enacted to read:

582 **75-5c-102. Definitions.**

583 As used in this chapter:

584 (1) "Best interest decisionmaking standard" means the guardian or conservator, after
585 considering the protected person's expressed wishes, makes the decision that is the least

586 intrusive, least restrictive, and most normalizing course of action to accommodate the protected
587 person's particular functional limitations. Best interest is the standard used when:

588 (a) following the protected person's wishes would cause the person harm;

589 (b) the guardian or conservator cannot determine the protected person's wishes; or

590 (c) the protected person has never had capacity.

591 (2) "Court" means the district court.

592 (3) "Health care" and "health care decisions" mean the same as in Section 75-2a-103.

593 (4) "Legal representative" includes a guardian or conservator acting for a protected
594 person in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the
595 protected person is a beneficiary, an attorney, guardian ad litem, representative payee, and an
596 agent designated under a power of attorney in which the protected person is the principal.

597 (5) "Professional conservator" means a trust company permitted by the commissioner
598 of financial institutions under Subsection 7-5-2(1) to accept an appointment to act in an agency
599 or fiduciary capacity.

600 (6) "Professional guardian" means a person who has been certified as a registered
601 guardian or master guardian by the National Guardianship Association.

602 (7) "Respondent" means an individual for whom a guardian, conservator, or protective
603 order is sought.

604 (8) "Substituted judgment decisionmaking standard" means the guardian or conservator
605 makes the decision that the protected person would have made when competent. Substituted
606 judgment is the standard used in all circumstances except those that permit the best interest
607 decisionmaking standard to be used.

608 Section 10. Section **75-5c-103** is enacted to read:

609 **75-5c-103. Incapacity -- Findings -- Factors.**

610 (1) "Incapacity" has the same meaning as in Section 75-1-201.

611 (2) The court shall enter findings in which the court identifies the functional limitations
612 that cause the respondent to be incapacitated. In deciding whether the respondent is
613 incapacitated, the court should consider and weigh, as appropriate:

614 (a) whether the respondent's condition, limitations, and level of functioning leave the
615 respondent at risk of:

616 (i) their property being dissipated;

- 617 (ii) being unable to provide for their own support, or for the support of individuals
- 618 entitled to the respondent's support;
- 619 (iii) being financially exploited;
- 620 (iv) being abused or neglected, including self-injurious behavior or self-neglect; or
- 621 (v) having their rights violated;
- 622 (b) whether the respondent has a physical or mental illness, disability, condition, or
- 623 syndrome and the prognosis;
- 624 (c) whether the respondent is able to evaluate the consequences of alternative
- 625 decisions;
- 626 (d) whether the respondent can manage the activities of daily living through training,
- 627 education, support services, mental and physical health care, medication, therapy, assistants,
- 628 assistive devices, or other means that the respondent will accept;
- 629 (e) the nature and extent of the demands placed on the respondent by the need for care;
- 630 (f) the nature and extent of the demands placed on the respondent by their property;
- 631 (g) the consistency of the respondent's behavior with their long-standing values,
- 632 preferences, and patterns of behavior; and
- 633 (h) other relevant factors.

634 Section 11. Section **75-5c-104** is enacted to read:

635 **75-5c-104. Transfer of property to or on behalf of a minor.**

636 (1) Unless the person knows that a conservator has been appointed for a minor or that a

637 proceeding to appoint a conservator is pending, a person required to transfer money or personal

638 property to a minor may transfer up to \$50,000 per year to:

- 639 (a) the minor, if the minor is married or emancipated or if payment to the minor is
- 640 authorized by statute;
- 641 (b) the minor's guardian;
- 642 (c) the minor's custodian under Title 75, Chapter 5a, Uniform Transfers to Minors Act;
- 643 (d) a person responsible for the minor's care and custody with whom the minor resides;
- 644 or
- 645 (e) a financial institution for deposit in an interest-bearing account or certificate in the
- 646 minor's sole name and giving notice of the deposit to the minor.

647 (2) A person who transfers money or property in compliance with this section is not

648 responsible for its proper application.

649 (3) A custodian, guardian, or a person responsible for the minor's care and custody who
650 receives money or property for a minor shall apply it to the minor's support, care, education,
651 health, and welfare and may not derive a personal financial benefit, except for reimbursement
652 for necessary expenses. Any excess shall be preserved for the minor's future support, care,
653 education, health, and welfare. Any balance shall be transferred to the minor upon
654 emancipation or majority.

655 (4) A person receiving money under this section on behalf of a minor has the power to
656 settle and release in whole or in part the claims belonging to the minor giving rise to the duty to
657 pay money to the minor.

658 Section 12. Section **75-5c-105** is enacted to read:

659 **75-5c-105. Delegation of authority by parent or guardian.**

660 A parent or guardian of a minor or protected person may delegate to another person any
661 authority regarding care, custody, or property of the minor or protected person except the
662 authority to consent to marriage or adoption. The delegation shall be by a properly executed
663 power of attorney and may not exceed six months.

664 Section 13. Section **75-5c-106** is enacted to read:

665 **75-5c-106. Venue -- Transfer of venue.**

666 (1) Venue for a proceeding under this chapter is:

667 (a) in the county in which the respondent resides or is present at the time the
668 proceeding is commenced;

669 (b) in the county in which the will is or could be probated, if the guardian or
670 conservator is nominated by will;

671 (c) in the county of the court that committed the respondent under Title 62A, Chapter
672 5, Part 3, Admission to Mental Retardation Facility or under Title 62A, Chapter 15, Part 6,
673 Utah State Hospital and Other Mental Health Facilities; or

674 (d) in the county in which property of the respondent is located, if the petition is to
675 appoint a conservator or for a protective order and the respondent does not reside in this state.

676 (2) If a proceeding is brought in more than one county, the court of the county in which
677 the proceeding is first brought has the exclusive right to proceed unless that court determines
678 that venue is proper in another county and that the interests of justice require that the

679 proceeding be transferred.

680 (3) The court that appoints a guardian or conservator or enters a protective order retains
681 venue for proceedings after the appointment or order unless that court determines that venue is
682 proper in another county and that the interests of justice require that the proceeding be
683 transferred.

684 Section 14. Section **75-5c-107** is enacted to read:

685 **75-5c-107. Appointment and status of guardian or conservator.**

686 (1) A person becomes guardian or a conservator upon acceptance of a court
687 appointment.

688 (2) A guardianship, conservatorship, or entry of a protective order continues until
689 terminated by court order.

690 (3) Acceptance of a testamentary appointment as guardian under a will probated in the
691 state of the testator's domicile is effective in this state.

692 Section 15. Section **75-5c-110** is enacted to read:

693 **75-5c-110. Acceptance of appointment.**

694 (1) The guardian or conservator has authority to act upon filing an acceptance of
695 appointment. A guardian or conservator shall file an acceptance of appointment within 30 days
696 after the later of:

697 (a) entry of the order of appointment; or

698 (b) the occurrence of a future event designated in the appointment order.

699 (2) By accepting appointment, a guardian or conservator submits personally to the
700 jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

701 (3) If a person nominated by will or signed writing timely complies with Section
702 75-5c-201, 75-5c-301, or 75-5c-401, the nominee's acts before acceptance of the appointment
703 that are beneficial to the respondent have the same effect as those that occur after acceptance.

704 Section 16. Section **75-5c-111** is enacted to read:

705 **75-5c-111. Letters of office.**

706 (1) The court shall issue appropriate letters of office to the guardian or conservator.
707 The letters shall state the authority of the guardian or conservator and the property subject to
708 the guardian's or conservator's possession, ownership, or control.

709 (2) Letters of office are evidence of title to the protected person's property and may be

710 filed or recorded to give notice of title.

711 Section 17. Section **75-5c-112** is enacted to read:

712 **75-5c-112. Nominating a guardian or conservator.**

713 (1) A person 14 years of age or older may nominate a person to be appointed as
714 guardian or conservator for oneself, for one's spouse, or for one's child whom the parent has or
715 may have in the future by will, durable power of attorney, or other signed writing that:

716 (a) identifies the nominee and the office for which the nominee is nominated; and

717 (b) shows that the person is of sound mind and not acting under duress, fraud, or undue
718 influence.

719 (2) The respondent may nominate someone orally at the hearing if the respondent is 14
720 years of age or older and has sufficient capacity to express a preference.

721 (3) The nomination may specify desired limitations on the authority to be given to the
722 guardian or conservator.

723 (4) The person may revoke or amend the nomination before it is confirmed by the
724 court.

725 Section 18. Section **75-5c-113** is enacted to read:

726 **75-5c-113. Petition to confirm nomination -- Notice -- Authority to act.**

727 (1) A person who nominates someone to be appointed as guardian or conservator may
728 petition to confirm the nomination if the nominator will likely become incapacitated or unable
729 to care for the respondent within two years.

730 (2) If no objection is filed within the time permitted or if an objection is filed and
731 withdrawn, the court shall confirm the nomination and cut off the right of others to object if it
732 finds that the nomination is in the respondent's best interest and the nominator will likely
733 become incapacitated or unable to care for the respondent within two years.

734 (3) If an objection is filed, the court shall conduct proceedings to hear and determine
735 the priority of appointment under Section 75-5c-114. An objection does not preclude
736 confirmation of the nominee.

737 (4) An order under this section appoints a contingent guardian or conservator but does
738 not determine the respondent's incapacity.

739 Section 19. Section **75-5c-114** is enacted to read:

740 **75-5c-114. Who may be guardian or conservator -- Priority.**

741 (1) The court may appoint as guardian or conservator any person whose appointment
742 would be in the respondent's best interest.

743 (2) In appointing a guardian or conservator, the court shall consider qualified persons
744 in the following order of priority, unless the court finds the appointment would be contrary to
745 the respondent's best interest:

746 (a) a guardian or conservator, other than a substitute or emergency guardian or
747 conservator, currently acting for the respondent in this state or elsewhere or a person nominated
748 by that person;

749 (b) the respondent's nominee, if the respondent is 14 years of age or older and at the
750 time of the nomination the respondent had sufficient capacity to express a preference;

751 (c) the respondent's agent appointed under Title 75, Chapter 2a, Advance Health Care
752 Directive Act or Title 75, Chapter 5, Part 5, Powers of Attorney;

753 (d) the respondent's spouse or a person nominated by a deceased spouse;

754 (e) the respondent's adult child or a person nominated by a deceased adult child;

755 (f) the respondent's parent or a person nominated by a deceased parent;

756 (g) an adult with whom the respondent has resided for more than six months;

757 (h) an adult who has shown special care and concern for the respondent; and

758 (i) a professional guardian or conservator.

759 (3) If a person nominates more than one guardian or conservator, the most recent
760 nomination controls.

761 (4) If two or more people who have equal priority to nominate a guardian or
762 conservator are dead or incapacitated, the most recent nomination by the last person to die or to
763 be adjudicated incapacitated has priority.

764 (5) If two or more people have equal priority, the court may select the one most
765 qualified. In the best interest of the respondent, the court may decline to appoint a person
766 having a higher priority and appoint a person having a lower priority or no priority.

767 (6) An owner, operator, or employee of a long-term care institution at which the
768 respondent is receiving care may not be appointed guardian or conservator unless related to the
769 respondent by blood, marriage, or adoption.

770 (7) The nomination of a guardian or conservator by a parent does not supersede the
771 parental rights of either parent.

772 Section 20. Section **75-5c-115** is enacted to read:

773 **75-5c-115. Successor -- Additional or contingent guardian or conservator.**

774 The court may appoint more than one guardian or conservator. The court may appoint a
775 guardian or conservator to serve immediately or upon the occurrence of some future designated
776 event. The court may appoint a successor guardian or conservator to serve in the event of a
777 vacancy. Unless otherwise stated, a successor succeeds to the predecessor's duties, authority,
778 and title to property.

779 Section 21. Section **75-5c-116** is enacted to read:

780 **75-5c-116. Termination -- Resignation or removal.**

781 (1) A guardianship or conservatorship terminates upon court order.

782 (2) The court may accept the resignation or order the removal of the guardian or
783 conservator upon finding that resignation or removal would be in the protected person's best
784 interest.

785 (3) The court may terminate the guardianship, conservatorship, or protective order
786 upon sufficient evidence that:

787 (a) the protected person has died;

788 (b) the minor protected person has been adopted, is emancipated, or has attained
789 majority; or

790 (c) the protected person no longer needs the assistance or protection of a guardian,
791 conservator, or protective order.

792 (4) Upon presentation of evidence establishing a prima facie case for termination, the
793 court shall order termination, unless it is proven by clear and convincing evidence that
794 continuation of the guardianship or conservatorship is in the protected person's best interest.

795 (5) Termination of the guardianship or conservatorship or death, incapacity,
796 resignation, or removal of the guardian or conservator does not affect the liability of a guardian
797 or conservator for previous acts or the obligation to account for the protected person's property.

798 (6) Upon termination of the guardianship or conservatorship, title to the protected
799 person's property passes to the person or their successors. An order terminating the
800 guardianship or conservatorship may be filed or recorded to give notice of title to the property.
801 The order terminating the guardianship or conservatorship shall provide for expenses of
802 administration and direct the guardian or conservator to execute appropriate instruments to

803 evidence transfer of title, to confirm a distribution previously made, and to file a final report.

804 (7) The court shall enter a final discharge order upon the approval of the final report
805 and satisfaction of any other conditions ordered by the court.

806 Section 22. Section **75-5c-117** is enacted to read:

807 **75-5c-117. Emergency appointment.**

808 (1) The court may appoint an emergency guardian or conservator if the court finds that:

809 (a) following the procedures of this chapter would likely result in substantial harm to
810 the respondent's health, safety, or welfare;

811 (b) no other person appears to have authority to act;

812 (c) the welfare of the respondent requires immediate action; and

813 (d) the appointment would be in the respondent's best interest.

814 (2) The court may appoint an emergency guardian or conservator ex parte if it finds
815 that the respondent will be substantially harmed before a hearing can be held. If the respondent
816 is not represented by an attorney, the court shall appoint an attorney to represent the
817 respondent.

818 (3) The petition and notice of the hearing shall be served using the method most likely
819 to give prompt actual notice. If an emergency guardian or conservator is appointed without
820 notice and hearing, notice of the appointment shall be served within two days after the
821 appointment and a hearing on the appropriateness of the appointment shall be held within five
822 days after the appointment.

823 (4) Appointment of an emergency guardian or conservator is not a determination of the
824 respondent's incapacity.

825 (5) After a hearing, the court may appoint an emergency guardian or conservator for a
826 specified period not to exceed 60 days, and the court may remove an emergency guardian or
827 conservator at any time. The appointment terminates on the date specified by the court.

828 (6) The court may order only the authority justified by the emergency. The emergency
829 guardian or conservator may exercise only the authority specified in the order. The emergency
830 guardian or conservator shall make any report the court requires. The provisions of this chapter
831 concerning guardians or conservators apply to an emergency guardian or conservator.

832 Section 23. Section **75-5c-118** is enacted to read:

833 **75-5c-118. Substitute appointment.**

834 (1) The court may appoint a substitute guardian or conservator if it finds that:
835 (a) the guardian or conservator is not effectively exercising authority or performing
836 duties;

837 (b) the protected person's welfare requires immediate action; and

838 (c) the appointment would be in the protected person's best interests.

839 (2) The court may appoint a substitute guardian or conservator ex parte if it finds that
840 the respondent will be substantially harmed before a hearing can be held. Unless the
841 respondent is represented by a lawyer, the court shall appoint a lawyer to represent the
842 respondent.

843 (3) The petition and notice of the hearing shall be served using the method most likely
844 to give prompt actual notice. If a substitute guardian or conservator is appointed without notice
845 and hearing, notice of the appointment shall be served within two days after the appointment
846 and a hearing on the appropriateness of the appointment must be held within five days after the
847 appointment.

848 (4) After the hearing, the court may appoint a substitute guardian or conservator for a
849 specified period not to exceed six months, and the court may remove a substitute guardian or
850 conservator at any time.

851 (5) Except as ordered by the court, a substitute guardian or conservator has the
852 authority and duties in the previous order of appointment. The authority of a previously
853 appointed guardian or conservator is suspended as long as a substitute guardian or conservator
854 has authority.

855 (6) A substitute guardian or conservator shall make any report the court requires. The
856 provisions of this chapter concerning guardians and conservators apply to a substitute guardian
857 or conservator.

858 Section 24. Section **75-5c-119** is enacted to read:

859 **75-5c-119. Proceedings after appointment.**

860 (1) After appointing a guardian or conservator or entering a protective order, the court
861 may:

862 (a) require, increase, or decrease a bond or collateral;

863 (b) require a report from the guardian or conservator;

864 (c) direct distribution;

- 865 (d) instruct the guardian or conservator concerning a fiduciary responsibility;
866 (e) modify the authority of the guardian or conservator because authority previously
867 granted is excessive or insufficient or because of a change in the protected person's incapacity;
868 (f) permit or deny the guardian or conservator to exercise authority requiring a court
869 order;
870 (g) terminate the guardianship or conservatorship;
871 (h) remove a guardian or conservator;
872 (i) accept the resignation of a guardian or conservator;
873 (j) appoint a substitute guardian or conservator;
874 (k) appoint a successor or additional guardian or conservator;
875 (l) find the guardian or conservator in contempt for:
876 (i) violating a fiduciary responsibility imposed by statute, rule, or court order; or
877 (ii) decisions or acts by the guardian or conservator that the court finds to be
878 substantially contrary to the management plan;
879 (m) approve a management plan; or
880 (n) grant other appropriate relief.

881 (2) A protected person or person interested in the welfare of the protected person may
882 file a petition or a motion under the Utah Rules of Civil Procedure for an order under this
883 section.

884 (3) A protected person is entitled to the same rights and procedures in proceedings
885 under this section as in an original proceeding, including the appointment of an attorney.

886 (4) Sanctions for contempt of court include removal of the guardian or conservator and
887 imposing on the guardian or conservator personal responsibility for any financial loss caused
888 by the guardian's or conservator's wrongful conduct.

889 Section 25. Section **75-5c-120** is enacted to read:

890 **75-5c-120. Guardian ad litem.**

891 At any stage of a protective proceeding, a court may appoint a guardian ad litem if the
892 court determines that representation of the interests of the respondent or protected person is
893 inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to
894 represent several individuals. The court shall state on the record the duties of the guardian ad
895 litem and its reasons for the appointment.

896 Section 26. Section **75-5c-121** is enacted to read:

897 **75-5c-121. Bonds.**

898 (1) Subject to the provisions of Title 7, Financial Institutions Act, relating to the
899 bonding requirements for corporate fiduciaries, the court may require a guardian or conservator
900 to furnish a bond with sureties as it may specify conditioned upon faithful discharge of all
901 fiduciary responsibilities.

902 (2) Unless otherwise directed, the bond must be in the amount of:

903 (a) the aggregate capital value of the protected person's property subject to the
904 guardian's or conservator's possession, ownership, or control; plus

905 (b) one year's estimated income; minus

906 (c) the value of assets deposited under arrangements requiring a court order for
907 removal and the value of any real property that the guardian or conservator, by express
908 limitation, lacks authority to sell or convey without court authorization.

909 (3) The court may dispense with the bond for good cause. Instead of sureties, the court
910 may accept collateral for the performance of the bond, including a pledge of securities or a
911 mortgage of real property.

912 (4) Unless otherwise provided by the terms of the bond, the sureties and the guardian
913 or conservator are jointly and severally liable.

914 (5) By executing the bond, the surety consents to the jurisdiction of the court in any
915 proceeding about the guardian's or conservator's fiduciary responsibilities in which the surety is
916 named as a party. Notice of the proceeding and a copy of any petition, motion, or other paper
917 shall be served on the surety under Utah Rules of Civil Procedure, Rule 5, at the address shown
918 in the court records and at any other address known to the petitioner.

919 (6) If a proceeding against the primary obligor is not barred, a proceeding may be
920 brought by a conservator, successor conservator, or any interested person against a surety for
921 breach of the obligation of the bond. The bond may be proceeded against until liability under
922 the bond is exhausted.

923 Section 27. Section **75-5c-122** is enacted to read:

924 **75-5c-122. Compensation for services and reimbursement of expenses.**

925 (1) If not otherwise paid and if payment does not deprive the protected person or
926 individuals entitled to the protected person's support of food, shelter, clothing, and other

927 necessities, the following are entitled to reasonable payment from the estate for services and
928 expenses:

929 (a) the respondent's or protected person's attorney, guardian ad litem, guardian, and
930 conservator;

931 (b) the petitioner's attorney, if the petition results in the appointment of a guardian or
932 conservator, the entry of a protective order, or the entry of any other order that benefits the
933 protected person; and

934 (c) any person appointed by the court.

935 (2) To qualify for payment, the petition shall be filed or the service provided in good
936 faith, be reasonable and necessary, be conducted responsibly, and benefit the respondent or
937 protected person.

938 (3) Claims for compensation and reimbursement shall be presented to the conservator,
939 if one has been appointed. If there is no conservator, or if the conservator is the person to be
940 paid, someone affiliated with the person to be paid, or someone within the third degree of
941 relationship to the person to be paid, the compensation or reimbursement may be approved by
942 the court. In allowing the claim, the conservator or court may consider the complexity of the
943 service, the provider's experience, and any other relevant factor.

944 (4) If the court finds the petition is without merit, the petitioner shall pay for the
945 services and expenses in Subsection (1).

946 (5) If the court determines that the payments are excessive or inappropriate, the
947 excessive or inappropriate amount shall be repaid to the estate.

948 Section 28. Section **75-5c-123** is enacted to read:

949 **75-5c-123. Fiduciary's personal funds.**

950 A guardian or conservator has no legal obligation to use the guardian's or conservator's
951 personal funds for the protected person's expenses solely by reason of the guardianship or
952 conservatorship.

953 Section 29. Section **75-5c-124** is enacted to read:

954 **75-5c-124. Monitoring appointments.**

955 The court shall establish a system for monitoring guardians and conservators, including
956 their reports. The court may appoint a visitor to review records of or any report filed by a
957 guardian or conservator. The court may appoint a visitor to interview the protected person, the

958 guardian, or the conservator and to make any other investigation the court directs. The court
959 may order a guardian, or conservator to submit the assets subject to the guardian's or
960 conservator's possession, ownership, or control to an examination made in a manner the court
961 directs.

962 Section 30. Section **75-5c-125** is enacted to read:

963 **75-5c-125. Liability on reported matters.**

964 An order, after notice, approving an intermediate report of a guardian or conservator
965 adjudicates liabilities concerning matters adequately disclosed in the report. An order, after
966 notice, approving a final report adjudicates all previously unsettled liabilities relating to the
967 guardianship or conservatorship adequately disclosed in the report.

968 Section 31. Section **75-5c-201** is enacted to read:

969 **Part 2. Appointment of a Guardian for a Minor**

970 **75-5c-201. Petition to appoint a guardian for a minor -- Findings -- Procedures.**

971 (1) A minor or a person interested in the minor's welfare may file a verified petition to
972 appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall
973 file the petition and a copy of the will or signed writing within 30 days after:

974 (a) the nominator's death;

975 (b) the nominator's adjudicated incapacity; or

976 (c) a written determination by a physician who has examined the nominator that the
977 nominator is no longer able to care for the minor.

978 (2) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing
979 on the petition.

980 (3) The court shall appoint a guardian if it finds that:

981 (a) the appointment is in the respondent's best interests;

982 (b) a qualified person seeks appointment;

983 (c) the court has jurisdiction and venue is proper;

984 (d) the required notices have been given; and

985 (e) (i) the parents consent to the appointment;

986 (ii) all parental rights have been terminated; or

987 (iii) the parents are unwilling or unable to exercise their parental rights.

988 (4) The court may appoint a guardian for a specified period of time. The guardian may

989 not serve past the respondent's 18th birthday.

990 (5) In other cases, the court may dismiss the petition or make any other disposition that
991 will serve the respondent's best interests.

992 (6) If the court determines that the respondent's best interests are or may be
993 inadequately represented, it may appoint an attorney to represent the respondent, giving
994 consideration to the respondent's choice if the respondent is 14 years of age or older.

995 Section 32. Section **75-5c-202** is enacted to read:

996 **75-5c-202. Guardian's authority.**

997 (1) Except as otherwise limited by the court, a guardian has the authority of a parent
998 regarding the protected person's support, care, education, health, and welfare.

999 (2) A guardian may:

1000 (a) take custody of the protected person and establish the person's dwelling place, but
1001 may establish or move the protected person's dwelling place outside of this state only if
1002 approved by court order;

1003 (b) consent to medical or other care, treatment, or service for the protected person;

1004 (c) consent to the protected person's marriage;

1005 (d) if a conservator has not been appointed, apply for, start proceedings for, receive,
1006 and compel delivery of property due the protected person or benefits to which the protected
1007 person may be entitled, up to \$50,000 per year; and

1008 (e) if a conservator has not been appointed, commence a proceeding, including an
1009 administrative proceeding, or take other appropriate action to compel a person to support the
1010 protected person or to pay money for the protected person's benefit.

1011 (3) The court may expressly authorize the guardian to consent to adoption of the
1012 protected person.

1013 Section 33. Section **75-5c-203** is enacted to read:

1014 **75-5c-203. Guardian's duties.**

1015 (1) Except as otherwise limited by the court, the guardian has the duties and
1016 responsibilities of a parent regarding the protected person's support, care, education, health, and
1017 welfare.

1018 (2) The guardian shall:

1019 (a) within 14 days after appointment, serve on the protected person and all other people

1020 entitled to notice of the petition, a copy of the appointment order and notice of the right to
1021 request termination or modification;

1022 (b) within 90 days after appointment, file and serve a management plan as required by
1023 court rule or court order, describing the strategies that will be used to implement the court
1024 order;

1025 (c) file and serve a report on the protected person's condition to the satisfaction of the
1026 court annually, upon resignation or removal, upon termination, and as required by court rule or
1027 court order;

1028 (d) file a final report and petition to terminate the guardianship within 30 days after the
1029 protected person dies or reaches majority;

1030 (e) immediately notify the court if the protected person or guardian changes dwelling
1031 place;

1032 (f) if reasonable under the circumstances, encourage the protected person to participate
1033 in decisions and act on their own behalf;

1034 (g) if reasonable under the circumstances, delegate to the protected person
1035 responsibility for decisions affecting their welfare;

1036 (h) become and remain personally acquainted with the protected person and maintain
1037 sufficient contact with the protected person to know of their preferences, values, capabilities,
1038 limitations, needs, opportunities, and physical and mental health;

1039 (i) when acting on behalf of the protected person, exercise the degree of care, diligence,
1040 and good faith that an ordinarily careful person exercises in their own affairs;

1041 (j) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;

1042 (k) take reasonable care of the protected person's personal effects, and if necessary to
1043 protect the protected person's property, petition for the appointment of a conservator or for a
1044 protective order under Title 75, Chapter 5c, Part 4, Appointment of a Conservator and Other
1045 Protective Orders;

1046 (l) expend the protected person's money for their current needs for support, care,
1047 education, health, and welfare;

1048 (m) conserve for the protected person's future needs any of the estate that exceeds the
1049 protected person's current needs or, if a conservator has been appointed, pay the excess to the
1050 conservator at least annually;

1051 (n) keep the protected person's estate separate from the guardian's money and property;

1052 (o) keep contemporaneous records and make them available for inspection as directed

1053 by the court;

1054 (p) at termination, deliver any of the estate subject to the guardian's possession,

1055 ownership, or control and any records as directed by the court;

1056 (q) if a conservator has been appointed, account at least annually to the conservator for

1057 the protected person's income and expenses and for any of the estate subject to the guardian's

1058 possession, ownership, or control; and

1059 (r) if a conservator has not been appointed:

1060 (i) file and serve within 90 days after appointment, a management plan as required by

1061 court rule or court order describing the strategies that will be used to implement the court

1062 order;

1063 (ii) file and serve within 90 days after appointment, a detailed inventory of the estate

1064 subject to the guardian's possession, ownership, or control under an oath or affirmation that the

1065 inventory is believed to be complete and accurate as far as information permits; and

1066 (iii) file and serve a report about the administration of the protected person's estate to

1067 the satisfaction of the court annually, upon resignation or removal, upon termination, and as

1068 required by court rule or court order.

1069 (3) If a protected person's parent consents to the protected person's adoption, the

1070 guardian is entitled to:

1071 (a) receive notice of and intervene in the adoption proceeding; and

1072 (b) present evidence relevant to the protected person's best interests.

1073 (4) A parent of a protected person retains residual parental rights and duties as defined

1074 in Section 78A-6-105.

1075 Section 34. Section **75-5c-204** is enacted to read:

1076 **75-5c-204. Guardian's personal liability.**

1077 (1) A guardian is not liable to third persons for the protected person's acts solely by

1078 reason of the guardianship.

1079 (2) If the guardian performs fiduciary responsibilities with the degree of care,

1080 diligence, and good faith that an ordinarily careful person exercises in their own affairs, the

1081 guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

1082 (3) If the guardian selects a third person to perform a service for the protected person
1083 with the degree of care, diligence, and good faith that an ordinarily careful person exercises in
1084 their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of
1085 the third person.

1086 Section 35. Section **75-5c-301** is enacted to read:

1087 **Part 3. Appointment of a Guardian for an Adult**

1088 **75-5c-301. Petition to appoint a guardian for an adult.**

1089 The person to be protected or any person interested in the respondent's welfare may file
1090 a verified petition to appoint a guardian. If the petitioner is nominated by will or signed
1091 writing, the petitioner shall file the petition and a copy of the will or signed writing within 30
1092 days after:

1093 (1) the nominator's death;

1094 (2) the nominator's adjudicated incapacity; or

1095 (3) a written determination by a physician who has examined the nominator that the
1096 nominator is no longer able to care for the respondent.

1097 Section 36. Section **75-5c-302** is enacted to read:

1098 **75-5c-302. Procedures before hearing.**

1099 (1) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing
1100 on the petition.

1101 (2) If the respondent is not represented by an attorney, the court shall appoint an
1102 attorney to represent the respondent.

1103 Section 37. Section **75-5c-303** is enacted to read:

1104 **75-5c-303. Appointment of guardian -- Standard of evidence -- Petition for**
1105 **protective order.**

1106 (1) The court may appoint a guardian only if the court finds, based on clear and
1107 convincing evidence, that:

1108 (a) the person to be protected has knowingly and voluntarily petitioned the court to
1109 appoint a guardian; or

1110 (b) the respondent is incapacitated and the respondent's particular functional limitations
1111 cannot be met by less restrictive means.

1112 (2) With appropriate findings, the court may treat the petition as one for a protective

1113 order and enter an appropriate protective order.

1114 (3) If petitioner does not prove the elements of the petition, the court shall dismiss the
1115 petition.

1116 (4) Appointment of a guardian based on a request by the person to be protected is not a
1117 determination of that person's incapacity.

1118 Section 38. Section **75-5c-304** is enacted to read:

1119 **75-5c-304. Least restrictive order -- Factors.**

1120 The court shall enter the least restrictive order consistent with its findings to
1121 accommodate the respondent's particular functional limitations and demonstrated needs,
1122 including appointive and other orders that will encourage the respondent to develop maximum
1123 self-reliance and independence. The court should consider and weigh, as appropriate:

1124 (1) whether the protected person can manage the activities of daily living through
1125 training, education, support services, mental and physical health care, medication, therapy,
1126 assistants, assistive devices, or other means that the person will accept;

1127 (2) whether the protected person has planned for health care and financial
1128 decisionmaking, such as an advance health care directive, a power of attorney, or a trust or
1129 jointly held account, and whether the less restrictive alternatives to a guardianship meet the
1130 respondent's needs;

1131 (3) whether the incapacity is likely to be temporary;

1132 (4) the protected person's long-standing values, preferences, and patterns of behavior;

1133 and

1134 (5) other relevant factors.

1135 Section 39. Section **75-5c-305** is enacted to read:

1136 **75-5c-305. Guardian's authority limited to court order.**

1137 (1) The protected person retains all rights, power, authority, and discretion not
1138 expressly granted to the guardian by statute or court order. The protected person retains the
1139 right to vote in governmental elections unless the court finds by clear and convincing evidence
1140 that the protected person is unable to communicate, with or without accommodation, the
1141 specific desire to participate in the voting process. The court may not grant to the guardian the
1142 authority to vote on the protected person's behalf.

1143 (2) The guardian has the duties specified by statute or court order. The guardian has

1144 only the authority specified by court order. The order shall limit the guardian's authority to
1145 what is necessary to accommodate the protected person's particular functional limitations.

1146 (3) If supported by the findings, and except as provided in Section 75-5c-306, the court
1147 may grant to the guardian the authority to:

1148 (a) make health care decisions;

1149 (b) consent to admission of the protected person to a licensed health care facility for
1150 short-term placement for the purpose of assessment, rehabilitative care, or respite care;

1151 (c) admit the protected person to a licensed health care facility for long-term custodial
1152 placement;

1153 (d) make arrangements for the protected person's support, care, comfort, education, and
1154 welfare;

1155 (e) take custody of the protected person and make arrangements for a dwelling place;

1156 (f) take reasonable care of the protected person's personal effects; and

1157 (g) make other decisions and give other consents on behalf of the protected person as
1158 specified in the order and as necessary to accommodate the protected person's particular
1159 functional limitations.

1160 (4) If the court does not appoint a conservator, and if supported by the findings, the
1161 order may grant to the guardian the authority to:

1162 (a) take control of and manage a savings account or checking account;

1163 (b) apply for, start proceedings for, receive, and compel delivery of property due the
1164 protected person or benefits to which the protected person may be entitled, up to \$50,000 per
1165 year;

1166 (c) commence a proceeding, including an administrative proceeding, or take other
1167 appropriate action to compel a person to support the protected person or to pay money for the
1168 protected person's benefit;

1169 (d) prosecute, defend, and settle legal actions, including administrative proceedings, on
1170 behalf of the protected person;

1171 (e) obtain legal advice and representation on behalf of the protected person;

1172 (f) pay the protected person's debts;

1173 (g) give gifts, donations, or contributions on behalf of the protected person within the
1174 limits of Section 75-5c-409;

1175 (h) file tax returns on behalf of the protected person and pay taxes owed by the
1176 protected person; and

1177 (i) provide for the support, care, comfort, education, and welfare of individuals entitled
1178 to the protected person's support.

1179 Section 40. Section **75-5c-306** is enacted to read:

1180 **75-5c-306. Restrictions on the guardian's authority.**

1181 (1) The guardian may not:

1182 (a) consent to commitment of the protected person to a mental retardation facility, but
1183 shall petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to Mental
1184 Retardation Facility;

1185 (b) consent to commitment of the protected person to a local mental health authority,
1186 but shall petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital
1187 and Other Mental Health Facilities;

1188 (c) consent to sterilization of the protected person, but shall petition the court for an
1189 order under Title 62A, Chapter 6, Sterilization of Handicapped Person;

1190 (d) consent to termination of the parental rights in the protected person or of the
1191 protected person's parental rights in another, but shall petition the juvenile court for an order to
1192 terminate parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights
1193 Act; or

1194 (e) except as provided in Subsection 75-5c-305(5), exercise the duties or authority of a
1195 conservator unless appointed as a conservator.

1196 (2) Unless permitted by the court, the guardian may not:

1197 (a) consent to the admission of the protected person to a psychiatric hospital or other
1198 mental health care facility;

1199 (b) consent to participation in medical research, electroconvulsive therapy or other
1200 shock treatment, experimental treatment, forced medication with psychotropic drugs, abortion,
1201 psychosurgery, a procedure that restricts the protected person's rights, or to be a living organ
1202 donor;

1203 (c) consent to termination of life-sustaining treatment if the protected person has never
1204 had health care decisionmaking capacity;

1205 (d) consent to name change, adoption, marriage, annulment, or divorce of the protected

1206 person;

1207 (e) establish or move the protected person's dwelling place outside of this state; or

1208 (f) restrict the protected person's physical liberty, communications, or social activities
1209 more than reasonably necessary to protect the protected person or others from harm.

1210 (3) (a) The guardian, someone affiliated with the guardian, or someone within the third
1211 degree of relationship to the guardian may not purchase the protected person's property unless
1212 permitted by the conservator.

1213 (b) If there is no conservator or if the conservator is the guardian, someone affiliated
1214 with the guardian, or someone within the third degree of relationship to the guardian, may not
1215 purchase the protected person's property unless permitted by the court.

1216 Section 41. Section **75-5c-307** is enacted to read:

1217 **75-5c-307. Guardian's duties.**

1218 The guardian shall:

1219 (1) within 14 days after appointment, serve on the protected person and all other people
1220 entitled to notice of the petition, a copy of the appointment order and notice of the right to
1221 request termination or modification;

1222 (2) within 90 days after appointment, file and serve a management plan as required by
1223 court rule or court order describing the strategies that will be used to implement the court
1224 order;

1225 (3) file and serve a report on the protected person's condition to the satisfaction of the
1226 court annually, upon resignation or removal, upon termination, and as required by court rule or
1227 court order;

1228 (4) file a final report and petition to terminate the guardianship within 30 days after the
1229 protected person dies;

1230 (5) file a petition to terminate or modify the guardianship within 30 days after the
1231 protected person becomes capable of exercising rights previously removed;

1232 (6) immediately notify the court if the protected person or guardian changes a dwelling
1233 place;

1234 (7) exercise duties and authority authorized by statute and court order as necessary to
1235 accommodate the protected person's particular functional limitations;

1236 (8) if reasonable under the circumstances, encourage the protected person to:

- 1237 (a) participate in decisions;
1238 (b) act on their own behalf; and
1239 (c) overcome the functional limitations that resulted in the protected person's
1240 incapacity;
1241 (9) if reasonable under the circumstances, delegate to the protected person
1242 responsibility for decisions affecting their own welfare;
1243 (10) make decisions using the substituted judgment decisionmaking standard or the
1244 best interest decisionmaking standard, whichever applies in the circumstances;
1245 (11) become and remain personally acquainted with the protected person and maintain
1246 sufficient contact with the protected person to know their preferences, values, capabilities,
1247 limitations, needs, opportunities, and physical and mental health;
1248 (12) when acting on behalf of the protected person, exercise the degree of care,
1249 diligence, and good faith that an ordinarily careful person exercises in their own affairs;
1250 (13) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;
1251 (14) if necessary to protect the protected person's property, petition for the appointment
1252 of a conservator or for a protective order under Title 75, Chapter 5c, Part 4, Appointment of a
1253 Conservator and Other Protective Orders;
1254 (15) expend the protected person's money for their current needs for support, care,
1255 education, health, and welfare;
1256 (16) conserve for the protected person's future needs any of the estate that exceeds the
1257 person's current needs or, if a conservator has been appointed, pay the excess to the conservator
1258 at least annually;
1259 (17) keep the protected person's estate separate from the guardian's money and
1260 property;
1261 (18) keep contemporaneous records and make them available for examination as
1262 directed by the court;
1263 (19) at termination, deliver any of the estate subject to the guardian's possession,
1264 ownership, or control and any records as directed by law or the court;
1265 (20) if a conservator has been appointed, account at least annually to the conservator
1266 for the protected person's income and expenses and for any of the estate subject to the
1267 guardian's possession, ownership, or control; and

1268 (21) if a conservator has not been appointed:

1269 (a) file and serve within 90 days after appointment a management plan as required by
1270 court rule or court order describing the strategies that will be used to implement the court
1271 order;

1272 (b) file and serve within 90 days after appointment a detailed inventory of the estate
1273 subject to the guardian's possession, ownership, or control under an oath or affirmation that the
1274 inventory is believed to be complete and accurate as far as information permits; and

1275 (c) file and serve a report about the administration of the protected person's estate to
1276 the satisfaction of the court annually, upon resignation or removal, upon termination, and as
1277 required by court rule or court order.

1278 Section 42. Section **75-5c-308** is enacted to read:

1279 **75-5c-308. Guardian's personal liability.**

1280 (1) A guardian is not liable to third persons for the protected person's acts solely by
1281 reason of the guardianship.

1282 (2) If the guardian performs fiduciary responsibilities with the degree of care,
1283 diligence, and good faith that an ordinarily careful person exercises in their own affairs, the
1284 guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

1285 (3) If the guardian selects a third person to perform a service for the protected person
1286 with the degree of care, diligence, and good faith that an ordinarily careful person exercises in
1287 their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of
1288 the third person.

1289 Section 43. Section **75-5c-309**, which is renumbered from Section 75-5-314 is
1290 renumbered and amended to read:

1291 **[75-5-314]. 75-5c-309. Mentally incompetent veteran -- Evidence of necessity**
1292 **for appointment of guardian.**

1293 ~~[Where a petition is filed for the appointment of a guardian for a mentally incompetent~~
1294 ~~ward, a] A certificate of the administrator or ~~[his]~~ a duly authorized representative, that ~~[such~~
1295 ~~person]~~ the respondent has been rated incompetent by the veterans administration on
1296 examination ~~[in accordance with the]~~ under veterans administration laws and regulations
1297 ~~[governing such veterans administration]~~ and that the appointment of a guardian is a condition
1298 precedent to the payment of any ~~[moneys due such ward]~~ money due the respondent by the~~

1299 veterans administration[, shall be prima facie] is evidence of the necessity for [such] the
1300 appointment.

1301 Section 44. Section **75-5c-310**, which is renumbered from Section 75-5-315 is
1302 renumbered and amended to read:

1303 ~~[75-5-315].~~ **75-5c-310. Copies of public records furnished to veterans**
1304 **administration.**

1305 ~~[When]~~ If a copy of ~~[any]~~ a public record is required by the veterans administration to
1306 ~~[be used in determining]~~ determine the eligibility of ~~[any person]~~ an applicant to participate in
1307 ~~[benefits made available by the veterans administration, the official custodian of such]~~ veterans
1308 administration benefits, the custodian of the public record shall without charge provide a
1309 certified copy of the record to the applicant [for such benefits] or any person acting on behalf of
1310 the [authorized representative of the] veterans administration [with a certified copy of such
1311 record].

1312 Section 45. Section **75-5c-401** is enacted to read:

1313 **Part 4. Appointment of a Conservator and Other Protective Orders**

1314 **75-5c-401. Petition to appoint a conservator or enter a protective order.**

1315 (1) The following may file a verified petition to appoint a conservator or to enter a
1316 protective order:

1317 (a) the person to be protected;

1318 (b) an individual interested in the respondent's estate, affairs, or welfare; or

1319 (c) a person who would be adversely affected by lack of effective management of the
1320 respondent's property and business affairs.

1321 (2) If the petitioner is nominated by will or signed writing, the petitioner shall file the
1322 petition and a copy of the will or signed writing within 30 days after:

1323 (a) the nominator's death;

1324 (b) the nominator's adjudicated incapacity; or

1325 (c) a written determination by a physician who has examined the nominator that the
1326 nominator is no longer able to care for the respondent.

1327 Section 46. Section **75-5c-402** is enacted to read:

1328 **75-5c-402. Jurisdiction over business affairs of respondent.**

1329 Until termination, the court in which the petition is filed has:

1330 (1) exclusive jurisdiction to determine the need for a conservatorship or protective
1331 order;

1332 (2) exclusive jurisdiction to determine how the respondent's estate that is subject to the
1333 laws of this state will be managed, expended, or distributed to or for the use of the respondent,
1334 individuals entitled to the respondent's support, or other claimants; and

1335 (3) concurrent jurisdiction to determine the validity of claims against the respondent or
1336 the respondent's estate and questions of title concerning estate assets.

1337 Section 47. Section **75-5c-403** is enacted to read:

1338 **75-5c-403. Petition to appoint a conservator or enter a protective order --**
1339 **Preliminary application of property -- Appointment of counsel.**

1340 (1) Upon receipt of a petition to appoint a conservator or enter a protective order, the
1341 court shall schedule a hearing on the petition.

1342 (2) After a preliminary hearing and without notice, the court may issue orders to
1343 preserve and apply the respondent's property as may be required for the support of the
1344 respondent or of individuals entitled to the respondent's support. The court may appoint a
1345 master to assist in the task.

1346 (3) Unless an adult respondent is represented by an attorney, the court shall appoint an
1347 attorney to represent the respondent.

1348 (4) If the court determines that a minor respondent's best interests are inadequately
1349 represented, it may appoint an attorney to represent the respondent, giving consideration to the
1350 respondent's choice if the respondent is 14 years of age or older.

1351 Section 48. Section **75-5c-404** is enacted to read:

1352 **75-5c-404. Petition to appoint a conservator or enter a protective order for a**
1353 **minor -- Findings.**

1354 (1) The court shall appoint a conservator or enter a protective order for a minor if it
1355 finds that:

1356 (a) the order is in the respondent's best interests;

1357 (b) a qualified person seeks appointment;

1358 (c) the court has jurisdiction and venue is proper;

1359 (d) the required notices have been given; and

1360 (e) the respondent;

1361 (i) owns money or property requiring management or protection that cannot otherwise
1362 be provided;

1363 (ii) has or may have business affairs that may be put at risk or prevented because of the
1364 respondent's age;

1365 (iii) has property that will be wasted or dissipated unless management is provided; or

1366 (iv) needs money for the support, care, education, health, and welfare of the respondent
1367 or of individuals who are entitled to the respondent's support and that protection is necessary or
1368 desirable to obtain or provide the money.

1369 (2) The court may appoint a conservator for a specified time period. The conservator
1370 may not serve past the respondent's 18th birthday.

1371 (3) In other cases, the court may dismiss the proceeding or make any other disposition
1372 that will serve the respondent's best interests.

1373 Section 49. Section **75-5c-405** is enacted to read:

1374 **75-5c-405. Petition to appoint a conservator or enter a protective order for an**
1375 **adult -- Findings.**

1376 (1) The court shall appoint a conservator or enter a protective order for an adult if it
1377 finds:

1378 (a) by clear and convincing evidence, that the person to be protected has knowingly
1379 and voluntarily petitioned the court to appoint a conservator or enter a protective order; or

1380 (b) (i) by clear and convincing evidence, that the respondent is unable to manage
1381 property and business affairs because the respondent is incapacitated, missing, detained, or
1382 unable to return to the United States; and

1383 (ii) by a preponderance of evidence, that the respondent:

1384 (A) has property that will be wasted or dissipated unless management is provided; or

1385 (B) needs money for the support, care, education, health, and welfare of the respondent
1386 or of individuals who are entitled to the respondent's support and that protection is necessary or
1387 desirable to obtain or provide the money.

1388 (2) Appointment of a conservator or entry of a protective order based on a request by
1389 the person to be protected or because the respondent is missing, detained, or unable to return to
1390 the United States is not a determination of that person's incapacity.

1391 (3) Appointment of a conservator or entry of a protective order may not be denied

1392 solely because the respondent has a valid power of attorney.

1393 Section 50. Section **75-5c-406** is enacted to read:

1394 **75-5c-406. Least restrictive order -- Factors.**

1395 The court shall enter the least restrictive order consistent with its findings to
1396 accommodate the respondent's particular functional limitations and demonstrated needs,
1397 including appointive and other orders that will encourage the respondent to develop maximum
1398 self-reliance and independence. The court may consider and weigh, as appropriate:

1399 (1) whether the protected person can manage the activities of daily living through
1400 training, education, support services, mental and physical health care, medication, therapy,
1401 assistants, assistive devices, or other means that the person will accept;

1402 (2) whether the protected person has planned for financial decisionmaking, such as a
1403 power of attorney, a trust, or jointly held account, and whether the less restrictive alternatives
1404 to a conservatorship meet the respondent's needs;

1405 (3) whether the incapacity is likely to be temporary;

1406 (4) the protected person's long-standing values, preferences, and patterns of behavior;
1407 and

1408 (5) other relevant factors.

1409 Section 51. Section **75-5c-407** is enacted to read:

1410 **75-5c-407. Authority of court.**

1411 (1) Upon determining that a basis exists for a conservatorship or protective order, the
1412 court has the following authority, which may be exercised directly or through a conservator:

1413 (a) The court has all the authority over the estate and business affairs of a minor
1414 protected person which may be necessary for the best interest of the protected person and
1415 members of the protected person's immediate family.

1416 (b) The court has all the authority over the estate and business affairs of an adult
1417 protected person for the benefit of the protected person and individuals entitled to the protected
1418 person's support that the protected person could exercise if present and not under
1419 conservatorship or protective order.

1420 (2) The court may limit authority otherwise conferred on a conservator and may
1421 remove or modify any limitation at any time.

1422 Section 52. Section **75-5c-408** is enacted to read:

1423 **75-5c-408. Protective arrangements and single transactions.**

1424 (1) Upon determining that a basis exists for a protective order, the court, without
1425 appointing a conservator, may:

1426 (a) authorize, direct, or ratify any transaction necessary or desirable to achieve any
1427 arrangement for security, service, or care meeting the foreseeable needs of the protected person,
1428 including:

1429 (i) payment, delivery, deposit, or retention of funds or property;

1430 (ii) sale, mortgage, lease, or other transfer of property;

1431 (iii) purchase of an annuity;

1432 (iv) making a contract for life care, deposit contract, or contract for training and
1433 education; or

1434 (v) addition to or establishment of a suitable trust; and

1435 (b) authorize, direct, or ratify any other contract, trust, will, or transaction relating to
1436 the protected person's property and business affairs, including settlement of a claim, upon
1437 determining that it is in the protected person's best interest.

1438 (2) In deciding whether to approve a protective arrangement or other transaction under
1439 this section, the court shall consider the factors described in Subsection 75-5c-409(3).

1440 (3) The court may appoint a master to assist in any transaction or protective
1441 arrangement authorized under this section. The master has the authority conferred by the order
1442 and shall serve until discharged after reporting to the court.

1443 Section 53. Section **75-5c-409** is enacted to read:

1444 **75-5c-409. Action requiring court approval.**

1445 (1) After notice to interested persons and upon express authorization of the court, a
1446 conservator for a protected person other than a minor may:

1447 (a) if an estate is ample to provide for the distributions authorized by Section
1448 75-5c-417, give gifts, donations, and contributions that the protected person might have been
1449 expected to give, in amounts that do not exceed in the aggregate for any calendar year 20% of
1450 the estate income in that year;

1451 (b) convey, release, or disclaim contingent and expectant interests in property,
1452 including marital property rights and any right of survivorship incident to joint tenancy or
1453 tenancy by the entireties;

- 1454 (c) exercise or release a power of appointment;
1455 (d) create a revocable or irrevocable trust of estate property, whether or not the trust
1456 extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the
1457 protected person;
1458 (e) exercise rights to elect options and change beneficiaries under insurance policies
1459 and annuities or surrender the policies and annuities for their cash value;
1460 (f) exercise any right to an elective share in the estate of the protected person's
1461 deceased spouse and to renounce or disclaim any interest by testate or intestate succession or
1462 by transfer inter vivos; and
1463 (g) make, amend, or revoke the protected person's will.
1464 (2) A conservator, in making, amending, or revoking the protected person's will, shall
1465 comply with Title 75, Chapter 2, Part 5, Wills.
1466 (3) In exercising or in approving a conservator's exercise of the authority listed in
1467 Subsection (1), the court shall use the substituted judgment decisionmaking standard, unless
1468 the best interest decisionmaking standard is permitted by law. The court shall also consider:
1469 (a) the financial needs of the protected person, the needs of individuals entitled to the
1470 protected person's support, and the interest of creditors;
1471 (b) possible reduction of tax liabilities;
1472 (c) eligibility for governmental assistance;
1473 (d) the protected person's previous pattern of giving or level of support;
1474 (e) the existing estate plan;
1475 (f) the protected person's life expectancy and the probability that the conservatorship
1476 will terminate before the protected person's death; and
1477 (g) any other relevant factors.
1478 (4) A conservator may revoke or amend a durable power of attorney of which the
1479 protected person is the principal. If a durable power of attorney is in effect, a decision of the
1480 conservator takes precedence over that of the agent unless the court orders otherwise.
1481 Section 54. Section **75-5c-410** is enacted to read:
1482 **75-5c-410. Conservator's duties.**
1483 **The conservator shall:**
1484 **(1) within 14 days after appointment, serve on the protected person, and all other**

1485 people entitled to notice of the petition, a copy of the appointment order and notice of the right
1486 to request termination or modification;

1487 (2) within 90 days after appointment, file and serve a management plan as required by
1488 court rule or court order describing the strategies that will be used to implement the court
1489 order;

1490 (3) within 90 days after appointment, file and serve a detailed inventory of the estate
1491 subject to the conservator's possession, ownership, or control under an oath or affirmation that
1492 the inventory is believed to be complete and accurate as far as information permits;

1493 (4) file and serve a report about the administration of the protected person's estate to
1494 the satisfaction of the court annually, upon resignation or removal, upon termination, and as
1495 required by court rule or court order;

1496 (5) comply with Section 75-5c-418 if the protected person dies;

1497 (6) file a petition to terminate or modify the conservatorship within 30 days after the
1498 protected person becomes capable of exercising rights previously removed;

1499 (7) if the appointment is for a minor protected person, file a final report and petition to
1500 terminate the conservatorship within 30 days after the protected person reaches majority;

1501 (8) immediately notify the court if the protected person or conservator changes a
1502 dwelling place;

1503 (9) exercise duties and authority authorized by statute and court order as necessary to
1504 accommodate the protected person's particular functional limitations;

1505 (10) if reasonable under the circumstances, encourage the protected person to:

1506 (a) participate in decisions;

1507 (b) act on their own behalf; and

1508 (c) overcome the functional limitations that resulted in the protected person's
1509 incapacity;

1510 (11) if reasonable under the circumstances, delegate to the protected person
1511 responsibility for decisions affecting their own welfare;

1512 (12) act as a fiduciary and observe the standard of care of a trustee under Title 75,
1513 Chapter 7, Part 9, Utah Uniform Prudent Investor Act;

1514 (13) keep contemporaneous records of the administration of the estate and make them
1515 available for examination as directed by the court;

1516 (14) take into account any estate plan of the protected person known to the conservator
1517 and may examine the will and any other donative, nominative, or other appointive instrument
1518 of the protected person in investing the estate, selecting assets of the estate for distribution, and
1519 invoking power of revocation or withdrawal available for the use and benefit of the protected
1520 person and exercisable by the conservator; and

1521 (15) at termination, deliver any of the estate subject to the conservator's possession,
1522 ownership, or control and any records as directed by law or the court.

1523 Section 55. Section **75-5c-411** is enacted to read:

1524 **75-5c-411. Title by appointment.**

1525 The appointment of a conservator vests title in the conservator as trustee to all property
1526 of the protected person, or to the part specified in the order, held at the time of appointment or
1527 later acquired. An order vesting title in the conservator to only part of the property of the
1528 protected person creates a conservatorship limited to assets specified in the order.

1529 Section 56. Section **75-5c-412** is enacted to read:

1530 **75-5c-412. Protected person's interest inalienable.**

1531 (1) Except as otherwise provided in Subsections (3) and (4), the interest of a protected
1532 person in property vested in a conservator is not transferable or assignable by the protected
1533 person. An attempted transfer or assignment by the protected person, although ineffective to
1534 affect property rights, may give rise to a claim against the protected person for restitution or
1535 damages which may be presented to the conservator.

1536 (2) Property vested in a conservator by appointment and the interest of the protected
1537 person in that property are not subject to levy, garnishment, or similar process for claims
1538 against the protected person unless allowed after presentation.

1539 (3) A person without knowledge of the conservatorship who in good faith and for
1540 security or substantially equivalent value receives delivery of tangible personal property
1541 normally transferred by delivery is protected as if the protected person or transferee had valid
1542 title.

1543 (4) A third party who deals with the protected person with respect to property vested in
1544 a conservator is entitled to any protection provided in other law.

1545 Section 57. Section **75-5c-413** is enacted to read:

1546 **75-5c-413. Sale, encumbrance, or other transaction involving conflict of interest.**

1547 Any transaction affected by a substantial conflict between the conservator's fiduciary
1548 and personal interests is voidable unless the transaction is expressly authorized by the court
1549 after notice to interested persons. A transaction affected by a substantial conflict between
1550 fiduciary and personal interests includes any sale, encumbrance, or other transaction involving
1551 the estate entered into by the conservator, the spouse, descendant, agent, or attorney of a
1552 conservator, or a corporation or other enterprise in which the conservator has a substantial
1553 beneficial interest.

1554 Section 58. Section **75-5c-414** is enacted to read:

1555 **75-5c-414. Protection of person dealing with conservator.**

1556 (1) A person who assists or deals with a conservator in good faith and for value in any
1557 transaction other than one requiring a court order is protected as though the conservator
1558 properly exercised the authority. A person who knowingly assists or deals with a conservator
1559 is not required to inquire into the conservator's authority or the propriety of its exercise, but
1560 restrictions on the conservator's authority endorsed on letters of office are effective as to third
1561 persons. A person who pays or delivers assets to a conservator is not responsible for their
1562 proper application.

1563 (2) Protection provided by this section extends to any procedural irregularity or
1564 jurisdictional defect that occurred in the proceedings leading to the issuance of letters and is not
1565 a substitute for protection provided to persons assisting or dealing with a conservator by
1566 comparable provisions in other law relating to commercial transactions or to simplifying
1567 transfers of securities by fiduciaries.

1568 Section 59. Section **75-5c-415** is enacted to read:

1569 **75-5c-415. Authority of conservator in administration.**

1570 (1) Except as otherwise restricted in the appointment order and endorsed on the letters
1571 of office, a conservator has all of the authority granted in this section and any additional
1572 authority granted by law to a trustee.

1573 (2) A conservator, acting reasonably and in an effort to accomplish the purpose of the
1574 appointment, and without court authorization, may:

1575 (a) collect, hold, and retain estate assets, including assets in which the conservator has
1576 a personal interest and real property in another state, until the conservator considers that
1577 disposition of an asset should be made;

- 1578 (b) receive additions to the estate;
- 1579 (c) continue or participate in the operation of a business or other enterprise;
- 1580 (d) acquire an undivided interest in an estate asset in which the conservator, in a
1581 fiduciary capacity, holds an undivided interest;
- 1582 (e) invest estate assets as though the conservator were a trustee;
- 1583 (f) deposit estate money in a financial institution, including one operated by the
1584 conservator;
- 1585 (g) acquire or dispose of an estate asset, including real property in another state, for
1586 cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition,
1587 change the character of, or abandon an estate asset;
- 1588 (h) make ordinary or extraordinary repairs or alterations in buildings or other
1589 structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- 1590 (i) subdivide, develop, or dedicate land to public use, make or obtain the vacation of
1591 plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving
1592 or receiving considerations, and dedicate easements to public use without consideration;
- 1593 (j) enter for any purpose into a lease as lessor or lessee, with or without option to
1594 purchase or renew, for a term within or extending beyond the term of the conservatorship;
- 1595 (k) enter into a lease or arrangement for exploration and removal of minerals or other
1596 natural resources or enter into a pooling or unitization agreement;
- 1597 (l) grant an option involving disposition of an estate asset and take an option for the
1598 acquisition of any asset;
- 1599 (m) vote a security, in person or by general or limited proxy;
- 1600 (n) pay calls, assessments, and any other sums chargeable or accruing against or on
1601 account of securities;
- 1602 (o) sell or exercise stock subscription or conversion rights;
- 1603 (p) consent, directly or through a committee or other agent, to the reorganization,
1604 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- 1605 (q) hold a security in the name of a nominee or in other form without disclosure of the
1606 conservatorship so that title to the security may pass by delivery;
- 1607 (r) insure estate assets against damage or loss and the conservator against liability with
1608 respect to a third person;

1609 (s) borrow money on behalf of the protected person, with or without security, to be
1610 repaid from the estate or otherwise and advance money for the protection of the estate or the
1611 protected person and for all expenses, losses, and liability sustained in the administration of the
1612 estate or because of the holding or ownership of any assets, for which the conservator has a lien
1613 on the estate as against the protected person for advances so made;

1614 (t) pay or contest any claim, settle a claim by or against the estate or the protected
1615 person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim
1616 belonging to the estate to the extent the claim is uncollectible;

1617 (u) pay taxes, assessments, compensation of the conservator and any guardian, and
1618 other expenses incurred in the collection, care, administration, and protection of the estate;

1619 (v) allocate items of income or expense to income or principal of the estate, as
1620 provided by other law, including creation of reserves out of income for depreciation,
1621 obsolescence, or amortization or for depletion of minerals or other natural resources;

1622 (w) pay any sum distributable to a protected person or to individuals entitled to the
1623 protected person's support by paying the sum to the distributee or by paying the sum for the use
1624 of the distributee:

1625 (i) to the distributee's guardian or custodian under Title 75, Chapter 5a, Uniform
1626 Transfers to Minors Act; or

1627 (ii) if there is no guardian or custodian, to a relative or other person having physical
1628 custody of the distributee;

1629 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the
1630 protection of estate assets and of the conservator in the performance of fiduciary duties; and

1631 (y) execute and deliver all instruments that will accomplish or facilitate the exercise of
1632 the conservator's authority.

1633 Section 60. Section **75-5c-416** is enacted to read:

1634 **75-5c-416. Delegation.**

1635 (1) A conservator may not delegate to an agent or another conservator the entire
1636 administration of the estate, but a conservator may delegate the performance of functions that a
1637 prudent trustee of comparable skills may delegate under similar circumstances.

1638 (2) The conservator shall exercise reasonable care, skill, and caution in:

1639 (a) selecting an agent;

1640 (b) establishing the scope and terms of a delegation, consistent with the purposes and
1641 terms of the conservatorship;

1642 (c) periodically reviewing an agent's overall performance and compliance with the
1643 terms of the delegation; and

1644 (d) redressing an action or decision of an agent which would constitute a breach of
1645 trust if performed by the conservator.

1646 (3) A conservator who complies with Subsections (1) and (2) is not liable to the
1647 protected person or to the estate for the decisions or actions of the agent to whom a function
1648 was delegated.

1649 (4) In performing a delegated function, an agent shall exercise reasonable care to
1650 comply with the terms of the delegation.

1651 (5) By accepting a delegation from a conservator subject to Utah law, an agent submits
1652 to the jurisdiction of Utah courts.

1653 Section 61. Section **75-5c-417** is enacted to read:

1654 **75-5c-417. Principles of distribution by conservator.**

1655 Unless otherwise specified in the appointment order and endorsed on the letters of
1656 office or contrary to the management plan, a conservator may, without further court
1657 authorization or confirmation, expend or distribute income or principal of the estate for the
1658 support, care, education, health, and welfare of the protected person and individuals entitled to
1659 the protected person's support, including the payment of child support or spousal support,
1660 under the following rules:

1661 (1) A conservator shall consider a guardian's recommendations about the appropriate
1662 standard of support, care, education, health, and welfare for the protected person or individuals
1663 entitled to the protected person's support. If the protected person is a minor, the conservator
1664 shall consider a parent's recommendations.

1665 (2) A conservator may not be surcharged for money paid to persons furnishing support,
1666 care, education, or benefits to a protected person or individuals entitled to the protected
1667 person's support under the recommendations of the protected person's parent or guardian,
1668 unless the conservator knows that the parent or guardian derives a personal financial benefit,
1669 including relief from any personal duty of support, or the recommendations are not in the best
1670 interest of the protected person.

1671 (3) In making distributions under this Subsection (3), the conservator shall consider:

1672 (a) the size of the estate, the estimated duration of the conservatorship, and the
1673 likelihood that the protected person, at some future time, may be fully self-sufficient and able
1674 to manage business affairs and the estate;

1675 (b) the accustomed standard of living of the protected person and individuals entitled to
1676 the protected person's support; and

1677 (c) other money or sources used for the support of the protected person and individuals
1678 entitled to the protected person's support.

1679 (4) Money expended under this Subsection (4) may be paid by the conservator to any
1680 person, including the protected person, as reimbursement for expenditures that the conservator
1681 might have made, or in advance for services to be rendered to the protected person if it is
1682 reasonable to expect the services will be performed and advance payments are customary or
1683 reasonably necessary under the circumstances.

1684 Section 62. Section **75-5c-418** is enacted to read:

1685 **75-5c-418. Death of protected person.**

1686 (1) Upon the death of a protected person, the conservator shall deliver to the court for
1687 safekeeping any will of the protected person which may have come into the conservator's
1688 possession, inform the personal representative or beneficiary named in the will of the delivery,
1689 and retain the estate for delivery to the decedent's personal representative or to another person
1690 entitled to it.

1691 (2) Upon the death of a protected person, the conservator shall conclude the
1692 administration of the estate by distribution to the protected person's successors. The
1693 conservator shall file a final report and petition to terminate the conservatorship within 30 days
1694 after distribution.

1695 Section 63. Section **75-5c-419** is enacted to read:

1696 **75-5c-419. Presentation and allowance of claims.**

1697 (1) A conservator may pay, or secure by encumbering estate assets, claims against the
1698 estate or against the protected person arising before or during the conservatorship upon their
1699 presentation and allowance under the priorities stated in Subsection (5). A claimant may
1700 present a claim by:

1701 (a) sending or delivering to the conservator a written statement of the claim, indicating

1702 its basis, the name and address of the claimant, and the amount claimed; or

1703 (b) filing a written statement of the claim, in a form acceptable to the court, with the
1704 court clerk and sending or delivering a copy of the statement to the conservator.

1705 (2) A claim is considered presented on receipt of the written statement of claim by the
1706 conservator or the filing of the claim with the court clerk, whichever occurs first.

1707 (3) A presented claim is allowed if it is not disallowed by written statement sent or
1708 delivered by the conservator to the claimant within 60 days after its presentation. Before
1709 payment, the conservator may change an allowance to a disallowance in whole or in part, but
1710 not after allowance under a court order or judgment or an order directing payment of the claim.
1711 The presentation of a claim tolls the running of any statute of limitations relating to the claim
1712 until 30 days after its disallowance.

1713 (4) A claimant whose claim has not been paid may petition the court for determination
1714 of the claim at any time before it is barred by a statute of limitations and, upon proof, procure
1715 an order for its allowance, payment, or security by encumbering estate assets. If a proceeding
1716 is pending against a protected person at the time of the conservator's appointment or is later
1717 initiated against the protected person, the moving party shall give to the conservator notice of
1718 any proceeding that could result in creating a claim against the estate.

1719 (5) If it appears that the estate is likely to be exhausted before all existing claims are
1720 paid, the conservator shall distribute the estate in money or in kind in payment of claims in the
1721 following order:

1722 (a) costs and expenses of administration;

1723 (b) claims of the federal or state government having priority under other law;

1724 (c) claims incurred by the conservator for support, care, education, health, and welfare
1725 previously provided to the protected person or individuals entitled to the protected person's
1726 support;

1727 (d) claims arising before the conservatorship; and

1728 (e) all other claims.

1729 (6) Preference may not be given in the payment of a claim over any other claim of the
1730 same class, and a claim due and payable may not be preferred over a claim not due.

1731 (7) If assets of the conservatorship are adequate to meet all existing claims, the court,
1732 acting in the best interest of the protected person, may order the conservator to grant a security

1733 interest in the estate for the payment of any or all claims at a future date.

1734 Section 64. Section **75-5c-420** is enacted to read:

1735 **75-5c-420. Personal liability of conservator.**

1736 (1) Except as otherwise agreed, a conservator is not personally liable on a contract
1737 properly entered into in a fiduciary capacity in the course of administration of the estate unless
1738 the conservator fails to reveal in the contract the representative capacity and identify the estate.

1739 (2) A conservator is not personally liable for obligations arising from possession,
1740 ownership, or control of estate property or for other acts or omissions occurring in the course of
1741 administration of the estate unless the conservator is personally at fault.

1742 (3) Regardless whether the conservator is personally liable, claims based on contracts
1743 entered into by a conservator in a fiduciary capacity, obligations arising from possession,
1744 ownership, or control of the estate, and claims based on torts committed in the course of
1745 administration of the estate may be asserted against the estate by proceeding against the
1746 conservator in a fiduciary capacity.

1747 (4) A question of liability between the estate and the conservator personally may be
1748 determined in a proceeding for accounting, surcharge, or indemnification, or in another
1749 appropriate proceeding or action.

1750 (5) A conservator is not personally liable for any environmental condition on or injury
1751 resulting from any environmental condition on land solely by reason of acquisition of title
1752 under Section 75-5c-411.

1753 Section 65. Section **75-5c-421** is enacted to read:

1754 **75-5c-421. Payment of debt and delivery of property to foreign conservator**
1755 **without local proceeding.**

1756 (1) A person who is indebted to or has the possession of tangible or intangible property
1757 of a protected person may pay the debt or deliver the property to a foreign conservator,
1758 guardian of the estate, or other court-appointed fiduciary of the state in which a protected
1759 person resides.

1760 (2) Payment or delivery may be made only upon proof of appointment and presentation
1761 of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding
1762 relating to the protected person is not pending in this state and the foreign fiduciary is entitled
1763 to payment or to receive delivery.

1764 (3) Payment or delivery under Subsection (1) discharges the debtor or possessor, absent
 1765 knowledge of a protective proceeding pending in this state.

1766 Section 66. Section **78B-5-804** is amended to read:

1767 **78B-5-804. Money deposited in court.**

1768 (1) (a) Any person depositing money in court, to be held in trust, shall pay it to the
 1769 court clerk.

1770 (b) The clerk shall deposit the money in a court trust fund or with the county treasurer
 1771 or city recorder to be held subject to the order of the court.

1772 (2) The Judicial Council shall adopt rules governing the maintenance of court trust
 1773 funds and the disposition of interest earnings on those trust funds.

1774 (3) (a) Any interest earned on trust funds in the courts of record that is not required to
 1775 accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted
 1776 account. Any interest earned on trust funds in the courts not of record that is not required to
 1777 accrue to the litigants by Judicial Council rule or court order shall be deposited in the general
 1778 fund of the county or municipality.

1779 (b) The Legislature shall appropriate funds from the restricted account of the courts of
 1780 record to the Judicial Council to:

1781 (i) offset costs to the courts for collection and maintenance of court trust funds; [~~and~~]

1782 (ii) provide accounting and auditing of all court revenue and trust accounts[-]; and

1783 (iii) review or audit annual reports and accounting of guardians and conservators and
 1784 recruit court visitors in guardianship and conservatorship proceedings.

1785 Section 67. **Repealer.**

1786 This bill repeals:

1787 Section **53A-2-202, Guardianship for residency purposes by responsible adult --**

1788 **Procedure to obtain -- Termination.**

1789 Section **75-5-101, Jurisdiction of subject matter -- Consolidation of proceedings.**

1790 Section **75-5-102, Facility of payment or delivery.**

1791 Section **75-5-103, Delegation of powers by parent or guardian.**

1792 Section **75-5-104, Power of court to appoint guardian ad litem not affected.**

1793 Section **75-5-105, Bond of guardian.**

1794 Section **75-5-201, Status of guardian of minor -- General.**

- 1795 Section 75-5-202, Appointment of guardian of minor.
- 1796 Section 75-5-202.5, Appointment of guardian by written instrument.
- 1797 Section 75-5-203, Objection to appointment.
- 1798 Section 75-5-204, Court appointment of guardian of minor -- Conditions for
- 1799 **appointment.**
- 1800 Section 75-5-205, Court appointment of guardian of minor -- Venue.
- 1801 Section 75-5-206, Court appointment of guardian of minor -- Qualifications --
- 1802 **Priority of minor's nominee.**
- 1803 Section 75-5-207, Court appointment of guardian of minor -- Procedure.
- 1804 Section 75-5-208, Consent to service by acceptance of appointment -- Notice.
- 1805 Section 75-5-209, Powers and duties of guardian of minor -- Residual parental
- 1806 **rights and duties -- Adoption of a ward.**
- 1807 Section 75-5-210, Termination of appointment of guardian -- General.
- 1808 Section 75-5-211, Proceedings subsequent to appointment -- Venue.
- 1809 Section 75-5-212, Resignation or removal proceedings.
- 1810 Section 75-5-301, Appointment of guardian for incapacitated person.
- 1811 Section 75-5-302, Venue.
- 1812 Section 75-5-303, Procedure for court appointment of a guardian of an
- 1813 **incapacitated person.**
- 1814 Section 75-5-304, Findings -- Limited guardianship preferred -- Order of
- 1815 **appointment.**
- 1816 Section 75-5-305, Acceptance of appointment -- Consent to jurisdiction.
- 1817 Section 75-5-306, Termination of guardianship for incapacitated person.
- 1818 Section 75-5-307, Removal or resignation of guardian -- Termination of incapacity.
- 1819 Section 75-5-308, Visitor in guardianship proceeding.
- 1820 Section 75-5-309, Notices in guardianship proceedings.
- 1821 Section 75-5-310, Temporary guardians.
- 1822 Section 75-5-311, Who may be guardian -- Priorities.
- 1823 Section 75-5-312, General powers and duties of guardian -- Penalties.
- 1824 Section 75-5-313, Proceedings subsequent to appointment -- Venue.
- 1825 Section 75-5-316, Expedited guardianship proceedings.

- 1826 Section **75-5-401, Protective proceedings.**
- 1827 Section **75-5-402, Protective proceedings -- Jurisdiction of affairs of protected**
- 1828 **persons.**
- 1829 Section **75-5-403, Venue.**
- 1830 Section **75-5-404, Original petition for appointment or protective order.**
- 1831 Section **75-5-405, Notice.**
- 1832 Section **75-5-406, Protective proceedings -- Request for notice -- Interested person.**
- 1833 Section **75-5-407, Procedure concerning hearing and order on original petition.**
- 1834 Section **75-5-408, Permissible court orders.**
- 1835 Section **75-5-409, Protective arrangements and single transactions authorized.**
- 1836 Section **75-5-410, Who may be appointed conservator -- Priorities.**
- 1837 Section **75-5-411, Bond.**
- 1838 Section **75-5-412, Terms and requirements of bonds.**
- 1839 Section **75-5-413, Acceptance of appointment -- Consent to jurisdiction.**
- 1840 Section **75-5-414, Compensation and expenses.**
- 1841 Section **75-5-415, Death, resignation or removal of conservator.**
- 1842 Section **75-5-416, Petitions for orders subsequent to appointment.**
- 1843 Section **75-5-417, General duty of conservator.**
- 1844 Section **75-5-418, Inventory and records.**
- 1845 Section **75-5-419, Accounts.**
- 1846 Section **75-5-420, Conservators -- Title by appointment.**
- 1847 Section **75-5-421, Recording of conservator's letters.**
- 1848 Section **75-5-422, Sale, encumbrance or transaction involving conflict of interest --**
- 1849 **Voidable -- Exceptions.**
- 1850 Section **75-5-423, Persons dealing with conservators -- Protection.**
- 1851 Section **75-5-424, Powers of conservator in administration.**
- 1852 Section **75-5-425, Distributive duties and powers of conservator.**
- 1853 Section **75-5-426, Enlargement or limitation of powers of conservator.**
- 1854 Section **75-5-427, Preservation of estate plan.**
- 1855 Section **75-5-428, Claims against protected person -- Enforcement.**
- 1856 Section **75-5-429, Individual liability of conservator.**

- 1857 Section 75-5-430, Termination of proceeding.
- 1858 Section 75-5-431, Payment of debt and delivery of property to foreign conservator
- 1859 without local proceedings.
- 1860 Section 75-5-432, Foreign conservator -- Proof of authority -- Bond -- Powers.
- 1861 Section 75-5-433, Embezzlement of protected person's estate -- Citation to person
- 1862 suspected.
- 1863 Section 68. Effective date.
- 1864 This bill takes effect on July 1, 2011.

Legislative Review Note
as of 2-18-10 4:23 PM

Office of Legislative Research and General Counsel

H.B. 347 - Guardianship Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Enacting this bill will require an appropriation of \$134,700 in ongoing General Fund to the Courts for increased responsibilities in managing and evaluating guardianships and conservatorships. It will further require a General Fund appropriation to the Department of Human Services in the amount of \$1,100 for new certification requirements.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$135,800	\$135,800	\$0	\$0	\$0
Total	\$0	\$135,800	\$135,800	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.