

GUARDIANSHIP AMENDMENTS

2011 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 its district;
- ▶ eliminates expedited guardianship proceedings for residents of the Utah State Developmental Center; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect January 1, 2012.

Utah Code Sections Affected:

AMENDS:

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

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



- 28 **75-1-201**, as last amended by Laws of Utah 2010, Chapter 93
- 29 **75-5-501**, as last amended by Laws of Utah 2003, Chapter 241
- 30 **75-5b-102**, as enacted by Laws of Utah 2008, Chapter 253
- 31 **75-5b-302**, as enacted by Laws of Utah 2008, Chapter 253
- 32 **78B-5-804**, as renumbered and amended by Laws of Utah 2008, Chapter 3

33 ENACTS:

- 34 **75-5c-101**, Utah Code Annotated 1953
- 35 **75-5c-102**, Utah Code Annotated 1953
- 36 **75-5c-103**, Utah Code Annotated 1953
- 37 **75-5c-104**, Utah Code Annotated 1953
- 38 **75-5c-105**, Utah Code Annotated 1953
- 39 **75-5c-106**, Utah Code Annotated 1953
- 40 **75-5c-107**, Utah Code Annotated 1953
- 41 **75-5c-108**, Utah Code Annotated 1953
- 42 **75-5c-109**, Utah Code Annotated 1953
- 43 **75-5c-110**, Utah Code Annotated 1953
- 44 **75-5c-111**, Utah Code Annotated 1953
- 45 **75-5c-112**, Utah Code Annotated 1953
- 46 **75-5c-113**, Utah Code Annotated 1953
- 47 **75-5c-114**, Utah Code Annotated 1953
- 48 **75-5c-115**, Utah Code Annotated 1953
- 49 **75-5c-116**, Utah Code Annotated 1953
- 50 **75-5c-117**, Utah Code Annotated 1953
- 51 **75-5c-118**, Utah Code Annotated 1953
- 52 **75-5c-119**, Utah Code Annotated 1953
- 53 **75-5c-120**, Utah Code Annotated 1953
- 54 **75-5c-121**, Utah Code Annotated 1953
- 55 **75-5c-122**, Utah Code Annotated 1953
- 56 **75-5c-123**, Utah Code Annotated 1953
- 57 **75-5c-124**, 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 **75-5-101**, as enacted by Laws of Utah 1975, Chapter 150

98 **75-5-102**, as last amended by Laws of Utah 2004, Chapter 198

99 **75-5-103**, as enacted by Laws of Utah 1975, Chapter 150

100 **75-5-104**, as enacted by Laws of Utah 1975, Chapter 150

101 **75-5-105**, as enacted by Laws of Utah 1975, Chapter 150

102 **75-5-201**, as last amended by Laws of Utah 1998, Chapter 124

103 **75-5-202**, as last amended by Laws of Utah 1985, Chapter 41

104 **75-5-202.5**, as enacted by Laws of Utah 1985, Chapter 41

105 **75-5-203**, as last amended by Laws of Utah 1985, Chapter 41

106 **75-5-204**, as last amended by Laws of Utah 1985, Chapter 41

107 **75-5-205**, as enacted by Laws of Utah 1975, Chapter 150

108 **75-5-206**, as last amended by Laws of Utah 2010, Chapter 392

109 **75-5-207**, as last amended by Laws of Utah 1995, Chapter 156

110 **75-5-208**, as last amended by Laws of Utah 1985, Chapter 41

111 **75-5-209**, as last amended by Laws of Utah 2008, Chapter 3

112 **75-5-210**, as enacted by Laws of Utah 1975, Chapter 150

113 **75-5-211**, as last amended by Laws of Utah 1985, Chapter 41

114 **75-5-212**, as enacted by Laws of Utah 1975, Chapter 150

115 **75-5-301**, as last amended by Laws of Utah 1985, Chapter 41

116 **75-5-302**, as enacted by Laws of Utah 1975, Chapter 150

117 **75-5-303**, as last amended by Laws of Utah 1988, Chapter 104

118 **75-5-304**, as last amended by Laws of Utah 1988, Chapter 104

119 **75-5-305**, as last amended by Laws of Utah 1977, Chapter 194

120 **75-5-306**, as last amended by Laws of Utah 1977, Chapter 194

- 121 **75-5-307**, as last amended by Laws of Utah 1988, Chapter 104
- 122 **75-5-308**, as enacted by Laws of Utah 1975, Chapter 150
- 123 **75-5-309**, as last amended by Laws of Utah 1988, Chapter 104
- 124 **75-5-310**, as last amended by Laws of Utah 1979, Chapter 244
- 125 **75-5-311**, as last amended by Laws of Utah 1998, Chapter 288
- 126 **75-5-312**, as last amended by Laws of Utah 1992, Chapter 290
- 127 **75-5-313**, as last amended by Laws of Utah 1985, Chapter 41
- 128 **75-5-316**, as last amended by Laws of Utah 2001, Chapter 73
- 129 **75-5-401**, as last amended by Laws of Utah 2001, Chapter 375
- 130 **75-5-402**, as last amended by Laws of Utah 1992, Chapter 30
- 131 **75-5-403**, as last amended by Laws of Utah 1992, Chapter 30
- 132 **75-5-404**, as enacted by Laws of Utah 1975, Chapter 150
- 133 **75-5-405**, as enacted by Laws of Utah 1975, Chapter 150
- 134 **75-5-406**, as enacted by Laws of Utah 1975, Chapter 150
- 135 **75-5-407**, as enacted by Laws of Utah 1975, Chapter 150
- 136 **75-5-408**, as enacted by Laws of Utah 1975, Chapter 150
- 137 **75-5-409**, as last amended by Laws of Utah 1977, Chapter 194
- 138 **75-5-410**, as last amended by Laws of Utah 2010, Chapter 324
- 139 **75-5-411**, as last amended by Laws of Utah 1977, Chapter 194
- 140 **75-5-412**, as enacted by Laws of Utah 1975, Chapter 150
- 141 **75-5-413**, as enacted by Laws of Utah 1975, Chapter 150
- 142 **75-5-414**, as enacted by Laws of Utah 1975, Chapter 150
- 143 **75-5-415**, as enacted by Laws of Utah 1975, Chapter 150
- 144 **75-5-416**, as enacted by Laws of Utah 1975, Chapter 150
- 145 **75-5-417**, as last amended by Laws of Utah 2004, Chapter 89
- 146 **75-5-418**, as enacted by Laws of Utah 1975, Chapter 150
- 147 **75-5-419**, as enacted by Laws of Utah 1975, Chapter 150
- 148 **75-5-420**, as last amended by Laws of Utah 1977, Chapter 194
- 149 **75-5-421**, as enacted by Laws of Utah 1975, Chapter 150
- 150 **75-5-422**, as enacted by Laws of Utah 1975, Chapter 150
- 151 **75-5-423**, as enacted by Laws of Utah 1975, Chapter 150

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

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

164 Section 1. Section 53A-2-202 is amended to read:

165 **53A-2-202. Guardianship for residency purposes by responsible adult --**

166 **Procedure to obtain -- Termination.**

167 (1) For purposes of this part, "responsible adult" means a person 21 years of age or
 168 older who is a resident of this state and is willing and able to provide reasonably adequate food,
 169 clothing, shelter, and supervision for a minor child.

170 (2) A local board of education may adopt a policy permitting it to designate a
 171 responsible adult residing in the school district as legal guardian of a child whose custodial
 172 parent or legal guardian does not reside within the state upon compliance with the following
 173 requirements:

174 (a) submission to the school district of a signed and notarized affidavit by the child's
 175 custodial parent or legal guardian stating that:

176 (i) the child's presence in the district is not for the primary purpose of attending the
 177 public schools;

178 (ii) the child's physical, mental, moral, or emotional health would best be served by a
 179 transfer of guardianship to the Utah resident;

180 (iii) the affiant is aware that designation of a guardian under this section is equivalent
 181 to a court-ordered guardianship under ~~[Section 75-5-206]~~ Title 75, Chapter 5c, Utah Protective
 182 Proceedings Act, and will suspend or terminate any existing parental or guardianship rights in

183 the same manner as would occur under a court-ordered guardianship;

184 (iv) the affiant consents and submits to any such suspension or termination of parental
185 or guardianship rights;

186 (v) the affiant consents and submits to the jurisdiction of the state district court in
187 which the school district is located in any action relating to the guardianship or custody of the
188 child in question;

189 (vi) the affiant designates a named responsible adult as agent, authorized to accept
190 service on behalf of the affiant of any process, notice, or demand required or permitted to be
191 served in connection with any action under Subsection (2)(a)(v); and

192 (vii) it is the affiant's intent that the child become a permanent resident of the state and
193 reside with and be under the supervision of the named responsible adult;

194 (b) submission to the school district of a signed and notarized affidavit by the
195 responsible adult stating that:

196 (i) the affiant is a resident of the school district and desires to become the guardian of
197 the child;

198 (ii) the affiant consents and submits to the jurisdiction of the state district court in
199 which the school district is located in any action relating to the guardianship or custody of the
200 child in question;

201 (iii) the affiant will accept the responsibilities of guardianship for the duration,
202 including the responsibility to provide adequate supervision, discipline, food, shelter,
203 educational and emotional support, and medical care for the child if designated as the child's
204 guardian; and

205 (iv) the affiant accepts the designation as agent under Subsection (2)(a)(vi);

206 (c) submission to the school district of a signed and notarized affidavit by the child
207 stating that:

208 (i) the child desires to become a permanent resident of Utah and reside with and be
209 responsible to the named responsible adult; and

210 (ii) the child will abide by all applicable rules of any public school which the child may
211 attend after guardianship is awarded; and

212 (d) if the child's custodial parent or legal guardian cannot be found in order to execute
213 the statement required under Subsection (2)(a), the responsible adult must submit an affidavit

214 to that effect to the district. The district shall also submit a copy of the statement to the
215 Criminal Investigations and Technical Services Division of the Department of Public Safety,
216 established in Section 53-10-103.

217 (3) The district may require the responsible adult, in addition to the documents set forth
218 in Subsection (2), to also submit any other documents which are relevant to the appointment of
219 a guardian of a minor or which the district reasonably believes to be necessary in connection
220 with a given application to substantiate any claim or assertion made in connection with the
221 application for guardianship.

222 (4) Upon receipt of the information and documentation required under Subsections (2)
223 and (3), and a determination by the board that the information is accurate, that the requirements
224 of this section have been met, and that the interests of the child would best be served by
225 granting the requested guardianship, the school board or its authorized representative may
226 designate the applicant as guardian of the child by issuing a designation of guardianship letter
227 to the applicant.

228 (5) (a) If a local school board has adopted a policy permitting the board to designate a
229 guardian under this section, a denial of an application for appointment of a guardian may be
230 appealed to the district court in which the school district is located.

231 (b) The court shall uphold the decision of the board unless it finds, by clear and
232 convincing evidence, that the board's decision was arbitrary and capricious.

233 (c) An applicant may, rather than appealing the board's decision under Subsection
234 (5)(b), file an original Petition for Appointment of Guardian with the district court, which
235 action shall proceed as if no decision had been made by the school board.

236 (6) A responsible adult obtaining guardianship under this section has the same rights,
237 authority, and responsibilities as a guardian appointed under [~~Section 75-5-201~~] Title 75,
238 Chapter 5c, Utah Protective Proceedings Act.

239 (7) (a) The school district shall deliver the original documents filed with the school
240 district, together with a copy of the designation of guardianship issued by the district, in person
241 or by any form of mail requiring a signed receipt, to the clerk of the state district court in which
242 the school district is located.

243 (b) The court may not charge the school district a fee for filing guardianship papers
244 under this section.

245 (8) (a) The authority and responsibility of a custodial parent or legal guardian
246 submitting an affidavit under this section may be restored by the district, and the guardianship
247 obtained under this section terminated by the district:

248 (i) upon submission to the school district in which the guardianship was obtained of a
249 signed and notarized statement by the person who consented to guardianship under Subsection
250 (2)(a) requesting termination of the guardianship; or

251 (ii) by the person accepting guardianship under Subsection (2)(b) requesting the
252 termination of the guardianship.

253 (b) If the school district determines that it would not be in the best interests of the child
254 to terminate the guardianship, the district may refer the request for termination to the state
255 district court in which the documents were filed under Subsection (5) for further action
256 consistent with the interests of the child.

257 (9) The school district shall retain copies of all documents required by this section
258 until the child in question has reached the age of 18 unless directed to surrender the documents
259 by a court of competent jurisdiction.

260 (10) (a) Intentional submission to a school district of fraudulent or misleading
261 information under this part is punishable under Section 76-8-504.

262 (b) A school district which has reason to believe that a party has intentionally
263 submitted false or misleading information under this part may, after notice and opportunity for
264 the party to respond to the allegation:

265 (i) void any guardianship, authorization, or action which was based upon the false or
266 misleading information; and

267 (ii) recover, from the party submitting the information, the full cost of any benefits
268 received by the child on the basis of the false or misleading information, including tuition, fees,
269 and other unpaid school charges, together with any related costs of recovery.

270 (c) A student whose guardianship or enrollment has been terminated under this section
271 may, upon payment of all applicable tuition and fees, continue in enrollment until the end of
272 the school year unless excluded from attendance for cause.

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

274 **53A-2-203.5. Recognition of guardianship.**

275 (1) A document issued by other than a court of law which purports to award

276 guardianship to a person who is not a legal resident of the jurisdiction in which the
277 guardianship is awarded is not valid in [~~the~~] this state [~~of Utah~~] until reviewed and approved by
278 a [~~Utah~~] court in this state.

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

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

283 **75-1-201. General definitions.**

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

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

290 (2) "Application" means a written request to the registrar for an order of informal
291 probate or appointment under [~~Title 75,~~] Chapter 3, Part 3, Informal Probate and Appointment
292 Proceedings.

293 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any
294 present or future interest, vested or contingent, and also includes the owner of an interest by
295 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to
296 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a
297 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security
298 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar
299 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated
300 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a
301 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of
302 appointment, and a person in whose favor a power of attorney or a power held in any
303 individual, fiduciary, or representative capacity is exercised.

304 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of
305 an insurance or annuity policy, of an account with POD designation, of a security registered in
306 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or

307 other nonprobate transfer at death.

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

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

317 (7) "Conservator" means a person [~~who is~~] appointed by a court to manage the estate of
318 a protected person.

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

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

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

327 (11) "Devisee" means any person designated in a will to receive a devise. For the
328 purposes of [~~Title 75;~~] Chapter 3, Probate of Wills and Administration, in the case of a devise
329 to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the
330 devisee, and the beneficiaries are not devisees.

331 [~~(12) "Disability" means cause for a protective order as described by Section~~
332 ~~75-5-401.~~]

333 [~~(13)~~] (12) "Distributee" means any person who has received property of a decedent
334 from his personal representative other than as a creditor or purchaser. A testamentary trustee is
335 a distributee only to the extent of distributed assets or increment thereto remaining in his hands.
336 A beneficiary of a testamentary trust to whom the trustee has distributed property received from
337 a personal representative is a distributee of the personal representative. For purposes of this

338 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to
339 the extent of the devised assets.

340 ~~[(14)]~~ (13) "Estate" includes the property of the decedent, trust, or other person whose
341 affairs are subject to this title as originally constituted and as it exists from time to time during
342 administration.

343 ~~[(15)]~~ (14) "Exempt property" means that property of a decedent's estate which is
344 described in Section 75-2-403.

345 ~~[(16)]~~ (15) "Fiduciary" includes a personal representative, guardian, conservator, and
346 trustee.

347 ~~[(17)]~~ (16) "Foreign personal representative" means a personal representative of
348 another jurisdiction.

349 ~~[(18)]~~ (17) "Formal proceedings" means proceedings conducted before a judge with
350 notice to interested persons.

351 ~~[(19)]~~ (18) "Governing instrument" means a deed, will, trust, insurance or annuity
352 policy, account with POD designation, security registered in beneficiary form (TOD), pension,
353 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
354 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of
355 any similar type.

356 ~~[(20)]~~ (19) "Guardian" means a person who has ~~[qualified as a guardian of a minor or~~
357 ~~incapacitated person pursuant to testamentary or court appointment, or by written instrument as~~
358 ~~provided in Section 75-5-202.5]~~ accepted an appointment as guardian, but excludes one who is
359 ~~[merely]~~ a guardian ad litem.

360 ~~[(21)]~~ (20) "Heirs," except as controlled by Section 75-2-711, means persons, including
361 the surviving spouse and state, who are entitled under the statutes of intestate succession to the
362 property of a decedent.

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

367 (21) "Incapacity" is measured by functional limitations and means a judicial
368 determination after proof by clear and convincing evidence that an adult's ability to do any of

369 the following is impaired to such an extent that the individual lacks the ability to meet essential
370 requirements for financial protection or physical health, safety, or self-care:

371 (a) receive and evaluate information;

372 (b) make and communicate decisions;

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

374 (d) manage property.

375 [~~23~~] (22) "Informal proceedings" mean those conducted without notice to interested
376 persons by an officer of the court acting as a registrar for probate of a will or appointment of a
377 personal representative.

378 [~~24~~] (23) "Interested person" includes heirs, devisees, children, spouses, creditors,
379 beneficiaries, and any others having a property right in or claim against a trust estate or the
380 estate of a decedent[~~-ward;~~] or protected person. It also includes persons having priority for
381 appointment as personal representative, other fiduciaries representing interested persons, a
382 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but
383 incapacitated. The meaning as it relates to particular persons may vary from time to time and
384 shall be determined according to the particular purposes of, and matter involved in, any
385 proceeding.

386 [~~25~~] (24) "Issue" of a person means descendant as defined in Subsection (9).

387 [~~26~~] (25) "Joint tenants with the right of survivorship" and "community property with
388 the right of survivorship" includes coowners of property held under circumstances that entitle
389 one or more to the whole of the property on the death of the other or others, but excludes forms
390 of coownership registration in which the underlying ownership of each party is in proportion to
391 that party's contribution.

392 [~~27~~] (26) "Lease" includes an oil, gas, or other mineral lease.

393 [~~28~~] (27) "Letters" includes letters testamentary, letters of guardianship, letters of
394 administration, and letters of conservatorship.

395 [~~29~~] (28) "Minor" means a person who is under 18 years of age.

396 [~~30~~] (29) "Mortgage" means any conveyance, agreement, or arrangement in which
397 property is used as security.

398 [~~31~~] (30) "Nonresident decedent" means a decedent who was domiciled in another
399 jurisdiction at the time of his death.

400 ~~[(32)]~~ (31) "Organization" includes a corporation, limited liability company, business
401 trust, estate, trust, partnership, joint venture, association, government or governmental
402 subdivision or agency, or any other legal or commercial entity.

403 ~~[(33)]~~ (32) "Parent" includes any person entitled to take, or who would be entitled to
404 take if the child died without a will, as a parent under this code by intestate succession from the
405 child whose relationship is in question and excludes any person who is only a stepparent, foster
406 parent, or grandparent.

407 ~~[(34)]~~ (33) "Payor" means a trustee, insurer, business entity, employer, government,
408 governmental agency or subdivision, or any other person authorized or obligated by law or a
409 governing instrument to make payments.

410 ~~[(35)]~~ (34) "Person" means an individual or an organization.

411 ~~[(36)]~~ (35) (a) "Personal representative" includes executor, administrator, successor
412 personal representative, special administrator, and persons who perform substantially the same
413 function under the law governing their status.

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

415 ~~[(37)]~~ (36) "Petition" means a written request to the court for an order after notice.

416 ~~[(38)]~~ (37) "Proceeding" includes action at law and suit in equity.

417 ~~[(39)]~~ (38) "Property" includes both real and personal property or any interest therein
418 and means anything that may be the subject of ownership.

419 ~~[(40)]~~ (39) "Protected person" means a person, including a minor, for whom a
420 ~~[conservator has been appointed. A "minor protected person" means a minor for whom]~~
421 guardian or a conservator has been appointed [because of minority] or a protective order
422 entered.

423 ~~[(41)]~~ (40) "Protective proceeding" means a proceeding ~~[described in Section~~
424 ~~75-5-401]~~ under Chapter 5c, Utah Protective Proceedings Act.

425 ~~[(42)]~~ (41) "Record" means information that is inscribed on a tangible medium or that
426 is stored in an electronic or other medium and is retrievable in perceivable form.

427 ~~[(43)]~~ (42) "Registrar" refers to the official of the court designated to perform the
428 functions of registrar as provided in Section 75-1-307.

429 ~~[(44)]~~ (43) "Security" includes any note, stock, treasury stock, bond, debenture,
430 evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or

431 lease or in payments out of production under such a title or lease, collateral trust certificate,
432 transferable share, voting trust certificate, and, in general, any interest or instrument commonly
433 known as a security, or any certificate of interest or participation, any temporary or interim
434 certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or
435 purchase, any of the foregoing.

436 ~~[(45)]~~ (44) "Settlement," in reference to a decedent's estate, includes the full process of
437 administration, distribution, and closing.

438 ~~[(46)]~~ (45) "Sign" means, with present intent to authenticate or adopt a record other
439 than a will:

440 (a) to execute or adopt a tangible symbol; or

441 (b) to attach to or logically associate with the record an electronic symbol, sound, or
442 process.

443 ~~[(47)]~~ (46) "Special administrator" means a personal representative as described in
444 Sections 75-3-614 through 75-3-618.

445 ~~[(48)]~~ (47) "State" means a state of the United States, the District of Columbia, the
446 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of
447 the United States, or a Native American tribe or band recognized by federal law or formally
448 acknowledged by a state.

449 ~~[(49)]~~ (48) "Successor personal representative" means a personal representative, other
450 than a special administrator, who is appointed to succeed a previously appointed personal
451 representative.

452 ~~[(50)]~~ (49) "Successors" means persons, other than creditors, who are entitled to
453 property of a decedent under the decedent's will or this title.

454 ~~[(51)]~~ (50) "Supervised administration" refers to the proceedings described in [Title
455 75,] Chapter 3, Part 5, Supervised Administration.

456 ~~[(52)]~~ (51) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD
457 Security Registration Act, means that an individual has neither predeceased an event, including
458 the death of another individual, nor is considered to have predeceased an event under Section
459 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"
460 "survivor," and "surviving."

461 ~~[(53)]~~ (52) "Testacy proceeding" means a proceeding to establish a will or determine

462 intestacy.

463 ~~[(54)]~~ (53) "Testator" includes an individual of either sex.

464 ~~[(55)]~~ (54) "Trust" includes a health savings account, as defined in Section 223,
465 Internal Revenue Code, any express trust, private or charitable, with additions thereto,
466 wherever and however created. The term also includes a trust created or determined by
467 judgment or decree under which the trust is to be administered in the manner of an express
468 trust. The term excludes other constructive trusts, and it excludes resulting trusts,
469 conservatorships, personal representatives, trust accounts as defined in ~~[Title 75,]~~ Chapter 6,
470 Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors
471 Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds,
472 voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act,
473 security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts,
474 dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any
475 arrangement under which a person is nominee or escrowee for another.

476 ~~[(56)]~~ (55) "Trustee" includes an original, additional, and successor trustee, and
477 cotrustee, whether or not appointed or confirmed by the court.

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

480 (58) (56) "Will" includes codicil and any testamentary instrument which merely
481 appoints an executor, revokes or revises another will, nominates a guardian or conservator, or
482 expressly excludes or limits the right of an individual or class to succeed to property of the
483 decedent passing by intestate succession.

484 Section 4. Section **75-5-501** is amended to read:

485 **75-5-501. Power of attorney not affected by disability or lapse of time -- Agent**
486 **responsibilities.**

487 (1) Whenever a principal designates another his attorney-in-fact or agent by a power of
488 attorney in writing and the writing contains the words "This power of attorney shall not be
489 affected by disability of the principal," or "This power of attorney shall become effective upon
490 the disability of the principal," or similar words showing the intent of the principal that the
491 authority conferred shall be exercisable notwithstanding his disability, the authority of the
492 attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the

493 principal notwithstanding:

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

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

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

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

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

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

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

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

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

517 (5) A conservator may be appointed for a principal even though the principal has a
518 valid power of attorney in place. If a conservator thereafter is appointed for the principal, the
519 attorney-in-fact or agent, during the continuance of the appointment, shall account to the
520 conservator rather than the principal. The conservator, pursuant to court order [~~as provided in~~
521 ~~Subsection 75-5-408(1)(d)~~], has the same power the principal would have had if he were not
522 disabled or incompetent to revoke, suspend, or terminate all or any part of the power of
523 attorney or agency.

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

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

528 **75-5b-102. Definitions.**

529 In this chapter:

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

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

534 [~~(3)~~ (2) "Emergency" means circumstances that likely will result in substantial harm to
535 a respondent's health, safety, estate, or welfare, and in which the appointment of a guardian or
536 conservator is necessary because no other person has authority to and is willing to act on the
537 respondent's behalf.

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

541 [~~(5)~~ (3) "Guardianship order" means an order appointing a guardian.

542 [~~(6)~~ (4) "Guardianship proceeding" means a proceeding in which an order for the
543 appointment of a guardian is sought or has been issued.

544 [~~(7)~~ (5) "Home state" means the state in which the respondent was physically present
545 for at least six consecutive months immediately before the filing of a petition for the
546 appointment of a guardian or protective order. A period of temporary absence counts as part of
547 the six-month period.

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

549 [~~(9)~~ (6) "Party" means the respondent, petitioner, guardian, conservator, or any other
550 person allowed by the court to participate in a guardianship or protective proceeding.

551 [~~(10)~~ (7) "Person," except in the terms "incapacitated person" or "protected person,"
552 means an individual, corporation, business trust, estate, trust, partnership, limited liability
553 company, association, joint venture, government or governmental subdivision, agency or
554 instrumentality, public corporation, or any other legal or commercial entity.

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

556 ~~[(12)]~~ (8) "Protective order" means an order appointing a conservator or another court
557 order related to management of an adult's property.

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

560 ~~[(14)]~~ (9) "Record" means information that is inscribed on a tangible medium or that is
561 stored in an electronic or other medium and is retrievable in perceivable form.

562 ~~[(15)]~~ (10) "Respondent" means an adult for whom a protective order or the
563 appointment of a guardian or conservator is sought.

564 ~~[(16)]~~ (11) "Significant-connection state" means a state, other than the home state, with
565 which a respondent has a significant connection other than mere physical presence and in
566 which substantial evidence concerning the respondent is available.

567 ~~[(17)]~~ (12) "State" means a state of the United States, the District of Columbia, Puerto
568 Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or
569 insular possession subject to the jurisdiction of the United States.

570 Section 6. Section **75-5b-302** is amended to read:

571 **75-5b-302. Accepting guardianship or conservatorship transferred from another**
572 **state.**

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

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

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

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

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

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

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

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

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

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

605 Section 7. Section **75-5c-101** is enacted to read:

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

607 **Part 1. General Provisions**

608 **75-5c-101. Title.**

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

610 Section 8. Section **75-5c-102** is enacted to read:

611 **75-5c-102. Definitions.**

612 As used in this chapter:

613 (1) "Best interest decision making standard" means the guardian or conservator makes
614 the decision that the protected person would have made when competent. If:

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

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

617 (c) the protected person has never had capacity, then the guardian or conservator, after
618 considering the protected person's expressed wishes, makes the decision that is the least
619 intrusive, least restrictive, and most normalizing course of action to accommodate the protected
620 person's particular functional limitations.

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

622 (3) "Developmental disability" means a severe, chronic disability of an individual five
623 years of age or older that:

624 (a) is attributable to a mental or physical impairment or combination of mental and
625 physical impairments;

626 (b) is manifested before the individual attains age 22;

627 (c) is likely to continue indefinitely;

628 (d) results in substantial functional limitations in three or more of the following areas
629 of major life activity:

630 (i) self-care;

631 (ii) receptive and expressive language;

632 (iii) learning;

633 (iv) mobility;

634 (v) self-direction;

635 (vi) capacity for independent living; and

636 (vii) economic self-sufficiency; and

637 (e) reflects the individual's need for a combination and sequence of special,
638 interdisciplinary, or generic services, supports, or other assistance that is of lifelong or
639 extended duration and is individually planned and coordinated, except that the term, when
640 applied to infants and young children means individuals from birth to age five, inclusive, who
641 have substantial developmental delay or specific congenital or acquired conditions with a high
642 probability of resulting in developmental disabilities if services are not provided.

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

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

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

651 (7) "Professional guardian" means a person who has been certified as a National
652 Certified Guardian or National Master Guardian by the Center for Guardianship Certification.

653 (8) "Respondent" means an individual for whom a guardian, conservator, or protective
654 order is sought.

655 Section 9. Section **75-5c-103** is enacted to read:

656 **75-5c-103. Incapacity -- Findings -- Factors.**

657 In deciding whether the respondent is incapacitated, the court shall enter findings in
658 which the court identifies the functional limitations that cause the respondent to be
659 incapacitated. The court should consider and weigh, as appropriate:

660 (1) whether the respondent's condition, limitations, and level of functioning leave the
661 respondent at risk of:

662 (a) their property being dissipated;

663 (b) being unable to provide for their support, or for the support of individuals entitled
664 to the respondent's support;

665 (c) being financially exploited;

666 (d) being abused or neglected, including self-injurious behavior or self-neglect; or

667 (e) having their rights violated;

668 (2) whether the respondent has a physical or mental illness, disability, condition, or
669 syndrome and the prognosis;

670 (3) whether the respondent is able to evaluate the consequences of alternative
671 decisions;

672 (4) whether the respondent can manage the activities of daily living through training,
673 education, support services, mental and physical health care, medication, therapy, assistants,
674 assistive devices, or other means;

675 (5) the nature and extent of the demands placed on the respondent by the need for care;

676 (6) the nature and extent of the demands placed on the respondent by their property;

677 (7) the consistency of the respondent's behavior with their long-standing values,
678 preferences, and patterns of behavior; and

679 (8) other relevant factors.

680 Section 10. Section **75-5c-104** is enacted to read:

681 **75-5c-104. Transfer of property to or on behalf of a minor.**

682 (1) Unless the person knows that a conservator has been appointed for a minor or that a
683 proceeding to appoint a conservator is pending, a person required to transfer money or personal
684 property to a minor may transfer up to \$50,000 per year to:

685 (a) the minor, if the minor is married or emancipated or if payment to the minor is
686 authorized by statute;

687 (b) the minor's guardian;

688 (c) the minor's custodian under Chapter 5a, Uniform Transfers to Minors Act;

689 (d) a person responsible for the minor's care and custody with whom the minor resides;

690 or

691 (e) a financial institution for deposit in an interest-bearing account or certificate in the
692 minor's sole name and giving notice of the deposit to the minor.

693 (2) A person who transfers money or property in compliance with this section is not
694 responsible for its proper application.

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

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

704 Section 11. Section **75-5c-105** is enacted to read:

705 **75-5c-105. Delegation of authority by parent or guardian.**

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

710 Section 12. Section **75-5c-106** is enacted to read:

711 **75-5c-106. Venue -- Transfer of venue.**

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

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

715 (b) in the county in which the respondent's will is or could be probated, if the guardian
716 or conservator is nominated by such will;

717 (c) in the county of the court that committed the respondent under Title 62A, Chapter
718 5, Part 3, Admission to Mental Retardation Facility or under Title 62A, Chapter 15, Part 6,
719 Utah State Hospital and Other Mental Health Facilities; or

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

722 (2) If a proceeding is brought in more than one county, the court of the county in which
723 the proceeding is first brought has the exclusive right to proceed unless that court determines
724 that venue is proper in another county and that the interests of justice require that the
725 proceeding be transferred.

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

730 Section 13. Section **75-5c-107** is enacted to read:

731 **75-5c-107. Appointment and status of guardian or conservator.**

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

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

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

738 Section 14. Section **75-5c-108** is enacted to read:

739 **75-5c-108. Acceptance of appointment.**

740 (1) The guardian or conservator has authority to act upon filing an acceptance of

741 appointment. A guardian or conservator shall file an acceptance of appointment within 30 days
742 after the later of:

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

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

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

747 (3) If a person nominated by will or signed writing timely complies with Section
748 75-5c-201, 75-5c-301, or 75-5c-401, the nominee's acts before acceptance of the appointment
749 that are beneficial to the respondent have the same effect as those that occur after acceptance.

750 Section 15. Section **75-5c-109** is enacted to read:

751 **75-5c-109. Letters of office.**

752 (1) After acceptance, the court shall issue appropriate letters of office to the guardian or
753 conservator. The letters shall state the authority of the guardian or conservator and, if the
754 guardian's or conservator's authority is for less than the entire estate, the property subject to the
755 guardian's or conservator's possession, ownership, or control.

756 (2) Letters of office are evidence of title to the protected person's property and may be
757 filed or recorded to give notice of title.

758 Section 16. Section **75-5c-110** is enacted to read:

759 **75-5c-110. Nominating a guardian or conservator.**

760 (1) A person 14 years of age or older may nominate a person to be appointed as
761 guardian or conservator for oneself or for one's child whom the parent has or may have in the
762 future by will, durable power of attorney, or other signed writing that identifies the nominee
763 and the office for which the nominee is nominated.

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

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

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

770 Section 17. Section **75-5c-111** is enacted to read:

771 **75-5c-111. Petition to confirm nomination -- Notice -- Authority to act.**

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

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

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

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

784 Section 18. Section **75-5c-112** is enacted to read:

785 **75-5c-112. Who may be guardian or conservator -- Priority.**

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

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

791 (a) a guardian or conservator, other than a substitute or special guardian or conservator,
792 currently acting for the respondent in this state or elsewhere or a person nominated by that
793 person;

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

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

798 (d) the respondent's spouse;

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

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

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

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

803 (i) a professional guardian or conservator.

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

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

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

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

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

817 Section 19. Section **75-5c-113** is enacted to read:

818 **75-5c-113. Successor, additional or contingent guardian or conservator.**

819 The court may appoint more than one guardian or conservator. The court may appoint a
820 guardian or conservator to serve immediately or upon the occurrence of some future designated
821 event. The court may appoint a successor guardian or conservator to serve in the event of a
822 vacancy. Unless otherwise stated, a successor succeeds to the predecessor's duties, authority,
823 and title to property. After acceptance under Section 75-5c-108, the court shall issue
824 appropriate letters of office.

825 Section 20. Section **75-5c-114** is enacted to read:

826 **75-5c-114. Termination, resignation, or removal.**

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

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

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

833 (a) the protected person has died;

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

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

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

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

844 (6) Upon termination of the guardianship or conservatorship, title to the protected
845 person's property passes to the person or to the person's successors. An order terminating the
846 guardianship or conservatorship may be filed or recorded to give notice of title to the property.
847 The order terminating the guardianship or conservatorship shall provide for expenses of
848 administration and direct the guardian or conservator to execute appropriate instruments to
849 evidence transfer of title, to confirm a distribution previously made, and to file a final report.

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

852 Section 21. Section **75-5c-115** is enacted to read:

853 **75-5c-115. Special appointment.**

854 (1) The court may appoint a special guardian or conservator if the court finds that:

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

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

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

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

860 (2) The court may appoint a special guardian or conservator ex parte if it finds that the
861 respondent or the respondent's estate will be substantially harmed before a hearing can be held.
862 Unless the respondent is represented by an attorney, the court shall appoint an attorney at the
863 earliest possible time to represent the respondent.

864 (3) The petition and notice of the hearing shall be served using the method most likely

865 to give prompt actual notice. If a special guardian or conservator is appointed without notice
866 and hearing, notice of the appointment shall be served within two days after the appointment
867 and a hearing on the appropriateness of the appointment shall be held within five days after the
868 appointment.

869 (4) Appointment of a special guardian or conservator is not a determination of the
870 respondent's incapacity.

871 (5) After hearing, the court may appoint a special guardian or conservator for a
872 specified period not to exceed 60 days, and the court may remove a special guardian or
873 conservator at any time. The appointment terminates on the date specified by the court.

874 (6) The court may order only the authority justified by the emergency. The special
875 guardian or conservator may exercise only the authority specified in the order. The special
876 guardian or conservator shall make any report the court requires. The provisions of this chapter
877 concerning guardians or conservators apply to a special guardian or conservator.

878 Section 22. Section **75-5c-116** is enacted to read:

879 **75-5c-116. Substitute appointment.**

880 (1) The court may appoint a substitute guardian or conservator if it finds that:

881 (a) the guardian or conservator is not effectively exercising authority or performing
882 duties;

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

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

885 (2) The court may appoint a substitute guardian or conservator ex parte if it finds that
886 the respondent or the respondent's estate will be substantially harmed before a hearing can be
887 held. Unless the respondent is represented by an attorney, the court shall appoint an attorney to
888 represent the respondent.

889 (3) The petition and notice of the hearing shall be served using the method most likely
890 to give prompt actual notice. If a substitute guardian or conservator is appointed without notice
891 and hearing, notice of the appointment shall be served within two days after the appointment
892 and a hearing on the appropriateness of the appointment shall be held within five days after the
893 appointment.

894 (4) After hearing, the court may appoint a substitute guardian or conservator for a
895 specified period not to exceed six months, and the court may remove a substitute guardian or

896 conservator at any time.

897 (5) Except as ordered by the court, a substitute guardian or conservator has the
898 authority and duties in the previous order of appointment. The authority of a previously
899 appointed guardian or conservator is suspended as long as a substitute guardian or conservator
900 has authority.

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

904 Section 23. Section **75-5c-117** is enacted to read:

905 **75-5c-117. Proceedings after appointment.**

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

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

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

910 (c) direct distribution;

911 (d) instruct the guardian or conservator concerning a fiduciary responsibility;

912 (e) modify the authority of the guardian or conservator because authority previously
913 granted is excessive or insufficient or because of a change in the protected person's incapacity;

914 (f) permit or deny the guardian or conservator to exercise authority requiring a court
915 order;

916 (g) terminate the guardianship or conservatorship;

917 (h) remove a guardian or conservator;

918 (i) accept the resignation of a guardian or conservator;

919 (j) appoint a substitute guardian or conservator;

920 (k) appoint a successor or additional guardian or conservator;

921 (l) find the guardian or conservator in contempt for:

922 (i) violating a fiduciary responsibility imposed by statute, rule, or court order; or

923 (ii) decisions or acts by the guardian or conservator that the court finds to be

924 substantially contrary to the management plan;

925 (m) approve a management plan; or

926 (n) grant other appropriate relief.

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

930 (3) A protected person is entitled to the same rights and procedures in proceedings
931 under this section as in an original proceeding, except that the right to an attorney applies only
932 to a petition to limit or to terminate the appointment.

933 (4) Sanctions for contempt of court include removal of the guardian or conservator and
934 imposing on the guardian or conservator personal responsibility for any financial loss caused
935 by the guardian's or conservator's conduct that does not meet the standards of conduct in this
936 chapter.

937 Section 24. Section **75-5c-118** is enacted to read:

938 **75-5c-118. End of representation -- Guardian ad litem.**

939 (1) Unless the court otherwise directs, an attorney's representation of the respondent
940 ends when the time to appeal the final order expires.

941 (2) At any stage of a protective proceeding, a court may appoint a guardian ad litem if
942 the court determines that representation of the interests of the respondent or protected person is
943 inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to
944 represent several individuals. The court shall state on the record the duties of the guardian ad
945 litem and its reasons for the appointment.

946 Section 25. Section **75-5c-119** is enacted to read:

947 **75-5c-119. Bonds.**

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

952 (2) Unless otherwise directed, the bond shall be in the amount of:

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

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

956 (c) the value of assets deposited under arrangements requiring a court order for
957 removal and the value of any real property that the guardian or conservator, by express

958 limitation, lacks authority to sell or convey without court authorization.

959 (3) Unless otherwise directed by the court, the cost of the bond may be assessed against
960 the respondent's estate. The court may dispense with the bond for good cause. Instead of
961 sureties, the court may accept collateral for the performance of the bond, including a pledge of
962 securities or a mortgage of real property.

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

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

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

974 Section 26. Section **75-5c-120** is enacted to read:

975 **75-5c-120. Compensation for services and reimbursement of expenses.**

976 (1) If not otherwise paid and if payment does not deprive the protected person or
977 individuals entitled to the protected person's support of food, shelter, clothing, and other
978 necessities, the following are entitled to reasonable payment from the estate for services and
979 expenses:

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

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

985 (c) any person appointed by the court.

986 (2) To qualify for payment the petition or service shall:

987 (a) benefit the respondent or protected person;

988 (b) be filed or the service provided in good faith;

989 (c) be reasonable and necessary; and

990 (d) be conducted responsibly.

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

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

999 (5) If the court determines that the payments are excessive or inappropriate, the
1000 excessive or inappropriate amount shall be repaid to the estate.

1001 Section 27. Section **75-5c-121** is enacted to read:

1002 **75-5c-121. Fiduciary's personal funds.**

1003 A guardian or conservator has no legal obligation to use the guardian's or conservator's
1004 personal funds for the protected person's expenses solely by reason of the guardianship or
1005 conservatorship.

1006 Section 28. Section **75-5c-122** is enacted to read:

1007 **75-5c-122. Monitoring appointments.**

1008 The court may establish a system for monitoring guardians and conservators, including
1009 their reports. The court may appoint a visitor to review records of or any report filed by a
1010 guardian or conservator. The court may appoint a visitor to interview the protected person, the
1011 guardian, or the conservator and to make any other investigation the court directs. The court
1012 may order a guardian or conservator to submit the assets subject to the guardian's or
1013 conservator's possession, ownership, or control to an examination made in a manner the court
1014 directs.

1015 Section 29. Section **75-5c-123** is enacted to read:

1016 **75-5c-123. Liability on reported matters.**

1017 An order, after notice, approving an intermediate report of a guardian or conservator
1018 adjudicates liabilities concerning matters adequately disclosed in the report. An order, after
1019 notice, approving a final report adjudicates all previously unsettled liabilities relating to the

1020 guardianship or conservatorship adequately disclosed in the report.

1021 Section 30. Section **75-5c-124** is enacted to read:

1022 **75-5c-124. Previous orders and letters remain valid.**

1023 Orders entered and letters issued before the effective date of this chapter remain valid

1024 after the effective date of this chapter.

1025 Section 31. Section **75-5c-201** is enacted to read:

1026 **Part 2. Appointment of a Guardian for a Minor**

1027 **75-5c-201. Petition to appoint a guardian for a minor -- Findings -- Procedures.**

1028 (1) A minor or a person interested in the minor's welfare may file a verified petition to
1029 appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall
1030 file a copy of the will or signed writing with the petition.

1031 (2) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing
1032 on the petition.

1033 (3) The court shall appoint a guardian for a specified time not to exceed the
1034 respondent's 18th birthday if it finds that:

1035 (a) the appointment is in the respondent's best interests;

1036 (b) a qualified person seeks appointment;

1037 (c) the court has jurisdiction and venue is proper;

1038 (d) the required notices have been given; and

1039 (e) (i) the parents consent to the appointment;

1040 (ii) all parental rights have been terminated; or

1041 (iii) the parents are unwilling or unable to exercise their parental rights.

1042 (4) In other cases, the court may dismiss the petition or make any other disposition that
1043 will serve the respondent's best interests.

1044 (5) If the minor is 11 years of age or older and not a resident of Utah:

1045 (a) the school district in which the guardian resides is a necessary party;

1046 (b) the petitioner shall serve on the superintendent of the school district in which the
1047 minor would attend school in Utah:

1048 (i) a certificate from the police authority in the jurisdiction where the minor has lived
1049 during the previous two years stating whether there have been any criminal or delinquency

1050 charges filed against the minor and whether the minor is the subject of an investigation in that

1051 jurisdiction; and

1052 (ii) a release allowing the superintendent access to all criminal and juvenile records of
1053 the minor in those jurisdictions where the minor has resided during the previous two years; and

1054 (c) the court may deny the appointment of a guardian if it finds that the school district
1055 has proven by a preponderance of the evidence that:

1056 (i) the primary purpose for the guardianship is to avoid the payment of tuition that a
1057 school district may assess against a nonresident; or

1058 (ii) the minor's behavior indicates an ongoing unwillingness to abide by applicable law
1059 or school rules.

1060 (6) If a school district files an objection for reasons described in Subsection (5)(c)(i),
1061 and the court does not find in favor of the school district, the court may award the petitioner
1062 attorney fees and costs if the court finds that the school district's arguments lack a reasonable
1063 basis in law or fact.

1064 (7) If the court determines that the respondent's best interests are or may be
1065 inadequately represented, it may appoint a lawyer to represent the respondent, giving
1066 consideration to the respondent's choice if the respondent is 14 years of age or older.

1067 Section 32. Section **75-5c-202** is enacted to read:

1068 **75-5c-202. Guardian's authority.**

1069 (1) Except as otherwise limited by the court, a guardian has the authority of a parent
1070 regarding the protected person's support, care, education, health, and welfare.

1071 (2) A guardian may:

1072 (a) take custody of the protected person and establish their dwelling place, but may
1073 establish or move the protected person's dwelling place outside of this state only if approved by
1074 court order;

1075 (b) consent to medical or other care, treatment, or service for the protected person;

1076 (c) consent to the protected person's marriage;

1077 (d) if a conservator has not been appointed, apply for, start proceedings for, receive,
1078 and compel delivery of property due the protected person or benefits to which the protected
1079 person may be entitled, up to \$50,000 per year; and

1080 (e) if a conservator has not been appointed, commence a proceeding, including an
1081 administrative proceeding, or take other appropriate action to compel a person to support the

1082 protected person or to pay money for the protected person's benefit.

1083 (3) The court may expressly authorize the guardian to consent to adoption of the
1084 protected person.

1085 Section 33. Section **75-5c-203** is enacted to read:

1086 **75-5c-203. Guardian's duties.**

1087 (1) Except as otherwise limited by the court, the guardian has the duties and
1088 responsibilities of a parent regarding the protected person's support, care, education, health, and
1089 welfare.

1090 (2) The guardian shall:

1091 (a) within 14 days after appointment, serve on the protected person and all other people
1092 entitled to notice of the petition a copy of the appointment order and notice of the right to
1093 request termination or modification;

1094 (b) within 90 days after appointment, file and serve a management plan as required by
1095 court rule or court order, describing the strategies that will be used to implement the court
1096 order;

1097 (c) file and serve a report on the protected person's condition to the satisfaction of the
1098 court upon resignation or removal, upon termination, and as required by court rule or court
1099 order;

1100 (d) file a final report and petition to terminate the guardianship within 30 days after the
1101 protected person dies or reaches majority;

1102 (e) immediately notify the court and interested persons if the protected person or
1103 guardian changes their dwelling place;

1104 (f) if reasonable under the circumstances, encourage the protected person to participate
1105 in decisions and act on their own behalf;

1106 (g) become and remain personally acquainted with the protected person and maintain
1107 sufficient contact with the protected person to know of their preferences, values, capabilities,
1108 limitations, needs, opportunities, and physical and mental health;

1109 (h) when acting on behalf of the protected person, exercise the degree of care,
1110 diligence, and good faith that an ordinarily careful person exercises in their own affairs;

1111 (i) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;

1112 (j) take reasonable care of the protected person's personal effects, and if necessary to

1113 protect the protected person's property, petition for the appointment of a conservator or for a
1114 protective order under Part 4, Appointment of a Conservator and Other Protective Orders;
1115 (k) expend the protected person's money for their current needs for support, care,
1116 education, health, and welfare;
1117 (l) conserve for the protected person's future needs any of the estate that exceeds the
1118 protected person's current needs or, if a conservator has been appointed, pay the excess to the
1119 conservator at least annually;
1120 (m) keep the protected person's estate separate from the guardian's money and property;
1121 (n) keep contemporaneous records and make them available for inspection as directed
1122 by the court;
1123 (o) at termination, deliver any of the estate subject to the guardian's possession,
1124 ownership, or control and any records as directed by the court;
1125 (p) if a conservator has been appointed, account at least annually to the conservator for
1126 the protected person's income and expenses and for any of the estate subject to the guardian's
1127 possession, ownership, or control; and
1128 (q) if a conservator has not been appointed:
1129 (i) file and serve within 90 days after appointment a management plan as required by
1130 court rule or court order describing the strategies that will be used to implement the court
1131 order;
1132 (ii) file and serve within 90 days after appointment an inventory of the estate subject to
1133 the guardian's possession, ownership, or control under an oath or affirmation that the inventory
1134 is believed to be complete and accurate as far as information permits; and
1135 (iii) file and serve a report about the administration of the protected person's estate to
1136 the satisfaction of the court upon resignation or removal, upon termination, and as required by
1137 court rule or court order.
1138 (3) If a protected person's parent consents to the protected person's adoption, the
1139 guardian is entitled to:
1140 (a) receive notice of and intervene in the adoption proceeding; and
1141 (b) present evidence relevant to the protected person's best interests.
1142 (4) A parent of a protected person retains residual parental rights and duties as defined
1143 in Section 78A-6-105.

1144 Section 34. Section **75-5c-204** is enacted to read:

1145 **75-5c-204. Guardian's personal liability.**

1146 (1) A guardian is not liable to third persons for the protected person's acts solely by
1147 reason of the guardianship.

1148 (2) If the guardian performs fiduciary responsibilities with the degree of care,
1149 diligence, and good faith that an ordinarily careful person exercises in their own affairs, the
1150 guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

1151 (3) If the guardian selects a third person to perform a service for the protected person
1152 with the degree of care, diligence, and good faith that an ordinarily careful person exercises in
1153 their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of
1154 the third person.

1155 Section 35. Section **75-5c-301** is enacted to read:

1156 **Part 3. Appointment of a Guardian for an Adult**

1157 **75-5c-301. Petition to appoint a guardian for an adult.**

1158 The person to be protected or any person interested in the respondent's welfare may file
1159 a verified petition to appoint a guardian. If the petitioner is nominated by will or signed
1160 writing, the petitioner shall file a copy of the will or signed writing with the petition.

1161 Section 36. Section **75-5c-302** is enacted to read:

1162 **75-5c-302. Procedures before hearing.**

1163 (1) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing
1164 on the petition.

1165 (2) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to
1166 represent the respondent.

1167 Section 37. Section **75-5c-303** is enacted to read:

1168 **75-5c-303. Appointment of guardian -- Standard of evidence -- Petition for**
1169 **protective order.**

1170 (1) The court may appoint a guardian only if the court finds, based on clear and
1171 convincing evidence, that:

1172 (a) the person to be protected has knowingly and voluntarily petitioned the court to
1173 appoint a guardian; or

1174 (b) the respondent is incapacitated and the respondent's particular functional limitations

1175 cannot be met by less restrictive means.

1176 (2) With appropriate findings, the court may treat the petition as one for a protective
1177 order and enter an appropriate protective order.

1178 (3) If the petitioner does not prove the elements of the petition, the court shall dismiss
1179 the petition.

1180 (4) Appointment of a guardian based on a petition by the person to be protected is not a
1181 determination of that person's incapacity.

1182 Section 38. Section **75-5c-304** is enacted to read:

1183 **75-5c-304. Least restrictive order -- Factors.**

1184 The court shall enter the least restrictive order consistent with its findings to
1185 accommodate the respondent's particular functional limitations and demonstrated needs,
1186 including appointive and other orders that will encourage the respondent to develop maximum
1187 self-reliance and independence. The court should consider and weigh, as appropriate:

1188 (1) whether the protected person can manage the activities of daily living through
1189 training, education, support services, mental and physical health care, medication, therapy,
1190 assistants, and assistive devices;

1191 (2) whether the protected person has planned for health care and financial decision
1192 making, such as an advance health care directive, a power of attorney, a trust or jointly held
1193 account, and whether the less restrictive alternatives to a guardianship are meeting the
1194 respondent's needs;

1195 (3) whether the incapacity is likely to be temporary;

1196 (4) the protected person's long-standing values, preferences, and patterns of behavior;
1197 and

1198 (5) other relevant factors.

1199 Section 39. Section **75-5c-305** is enacted to read:

1200 **75-5c-305. Guardian's authority limited to court order.**

1201 (1) The protected person retains all rights, power, authority, and discretion not
1202 expressly granted to the guardian by statute or court order. The protected person retains the
1203 right to vote in governmental elections unless the court finds by clear and convincing evidence
1204 that the protected person is unable to communicate, with or without accommodation, the
1205 specific desire to participate in the voting process. The court may not grant to the guardian the

1206 authority to vote on the protected person's behalf.

1207 (2) The guardian has the duties specified by statute or court order. The guardian has
1208 only the authority specified by court order. The order shall limit the guardian's authority to
1209 what is necessary to accommodate the protected person's particular functional limitations. If a
1210 parent or sibling of an adult with developmental disabilities is appointed guardian, the guardian
1211 has the authority of a parent of a minor regarding the protected person's support, care,
1212 education, health, and welfare, except as otherwise limited by the court. The court order may
1213 accommodate the natural progression of the respondent's incapacity.

1214 (3) If supported by the findings, and except as provided in Section 75-5c-306, the court
1215 may grant to the guardian the authority to:

1216 (a) make health care decisions;

1217 (b) consent to admission of the protected person to a licensed health care facility for
1218 short-term placement for the purpose of assessment, rehabilitative care, or respite care;

1219 (c) admit the protected person to a licensed health care facility for long-term custodial
1220 placement;

1221 (d) make arrangements for the protected person's support, care, comfort, education, and
1222 welfare;

1223 (e) take custody of the protected person and make arrangements for a dwelling place;

1224 (f) take reasonable care of the protected person's personal effects; and

1225 (g) make other decisions and give other consents on behalf of the protected person as
1226 specified in the order and as necessary to accommodate the protected person's particular
1227 functional limitations.

1228 (4) If the court does not appoint a conservator, and if supported by the findings, the
1229 order may grant to the guardian the authority to:

1230 (a) take control of and manage a savings account or checking account;

1231 (b) apply for, start proceedings for, receive, and compel delivery of property due the
1232 protected person or benefits to which the protected person may be entitled, up to \$50,000 per
1233 year;

1234 (c) commence a proceeding, including an administrative proceeding, or take other
1235 appropriate action to compel a person to support the protected person or to pay money for the
1236 protected person's benefit;

1237 (d) prosecute, defend, and settle legal actions, including administrative proceedings, on
1238 behalf of the protected person;

1239 (e) obtain legal advice and representation on behalf of the protected person;

1240 (f) pay the protected person's debts;

1241 (g) give gifts, donations, or contributions on behalf of the protected person within the
1242 limits of Section 75-5c-409;

1243 (h) file tax returns on behalf of the protected person and pay taxes owed by the
1244 protected person; and

1245 (i) provide for the support, care, comfort, education, and welfare of individuals entitled
1246 to the protected person's support.

1247 Section 40. Section **75-5c-306** is enacted to read:

1248 **75-5c-306. Restrictions on the guardian's authority.**

1249 (1) The guardian may not:

1250 (a) consent to commitment of the protected person to a mental retardation facility, but
1251 shall petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to Mental
1252 Retardation Facility;

1253 (b) consent to commitment of the protected person to a local mental health authority,
1254 but shall petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital
1255 and Other Mental Health Facilities;

1256 (c) consent to sterilization of the protected person, but shall petition the court for an
1257 order under Title 62A, Chapter 6, Sterilization of Handicapped Person;

1258 (d) consent to termination of the parental rights in the protected person or of the
1259 protected person's parental rights in another, but shall petition the juvenile court for an order to
1260 terminate parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights
1261 Act; or

1262 (e) except as provided in Subsection 75-5c-305(5), exercise the duties or authority of a
1263 conservator unless appointed as a conservator.

1264 (2) The court order shall address whether the guardian may:

1265 (a) consent to the admission of the protected person to a psychiatric hospital or other
1266 mental health care facility;

1267 (b) consent to participation in medical research, electroconvulsive therapy or other

1268 shock treatment, experimental treatment, forced medication with psychotropic drugs, abortion,
1269 psychosurgery, a procedure that restricts the protected person's rights, or to be a living organ
1270 donor;

1271 (c) consent to termination of life-sustaining treatment if the protected person has never
1272 had health care decision making capacity;

1273 (d) consent to name change, adoption, marriage, annulment, or divorce of the protected
1274 person;

1275 (e) establish or move the protected person's dwelling place outside of this state; or

1276 (f) restrict the protected person's physical liberty, communications, or social activities
1277 more than reasonably necessary to protect the protected person or others from harm.

1278 (3) Any transaction affected by a substantial conflict between the guardian's fiduciary
1279 and personal interests is voidable unless the transaction is expressly authorized by the court
1280 after notice to interested persons. A transaction affected by a substantial conflict between
1281 fiduciary and personal interests includes any sale, encumbrance, or other transaction involving
1282 the estate entered into by the guardian, the spouse, descendant, agent, attorney of a guardian, or
1283 a corporation or other enterprise in which the guardian has a substantial beneficial interest.

1284 Section 41. Section **75-5c-307** is enacted to read:

1285 **75-5c-307. Guardian's duties.**

1286 The guardian shall:

1287 (1) within 14 days after appointment, serve on the protected person and all other people
1288 entitled to notice of the petition a copy of the appointment order and notice of the right to
1289 request termination or modification;

1290 (2) within 90 days after appointment, file and serve a management plan as required by
1291 court rule or court order, describing the strategies that will be used to implement the court
1292 order;

1293 (3) file and serve a report on the protected person's condition to the satisfaction of the
1294 court upon resignation or removal, upon termination, and as required by court rule or court
1295 order;

1296 (4) file a final report and petition to terminate the guardianship within 30 days after the
1297 protected person dies;

1298 (5) file a petition to terminate or modify the guardianship within 30 days after the

- 1299 protected person becomes capable of exercising rights previously removed;
- 1300 (6) immediately notify the court and interested persons if the protected person or
- 1301 guardian changes their dwelling place;
- 1302 (7) exercise duties and authority authorized by statute and court order as necessary to
- 1303 accommodate the protected person's particular functional limitations;
- 1304 (8) if reasonable under the circumstances, encourage the protected person to:
- 1305 (a) participate in decisions;
- 1306 (b) act on their own behalf; and
- 1307 (c) overcome the functional limitations that resulted in the protected person's
- 1308 incapacity;
- 1309 (9) make decisions using the best interest decision making standard;
- 1310 (10) become and remain personally acquainted with the protected person and maintain
- 1311 sufficient contact with the protected person to know of their preferences, values, capabilities,
- 1312 limitations, needs, opportunities, and physical and mental health;
- 1313 (11) when acting on behalf of the protected person, exercise the degree of care,
- 1314 diligence, and good faith that an ordinarily careful person exercises in their own affairs;
- 1315 (12) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;
- 1316 (13) if necessary to protect the protected person's property, petition for the appointment
- 1317 of a conservator or for a protective order under Part 4, Appointment of a Conservator and Other
- 1318 Protective Orders;
- 1319 (14) expend the protected person's money for their current needs for support, care,
- 1320 education, health, and welfare;
- 1321 (15) conserve for the protected person's future needs any of the estate that exceeds the
- 1322 person's current needs or, if a conservator has been appointed, pay the excess to the conservator
- 1323 at least annually;
- 1324 (16) keep the protected person's estate separate from the guardian's money and
- 1325 property;
- 1326 (17) keep contemporaneous records and make them available for examination as
- 1327 directed by the court;
- 1328 (18) at termination, deliver any of the estate subject to the guardian's possession,
- 1329 ownership, or control and any records as directed by law or the court;

1330 (19) if a conservator has been appointed, account at least annually to the conservator
1331 for the protected person's income and expenses and for any of the estate subject to the
1332 guardian's possession, ownership, or control; and

1333 (20) if a conservator has not been appointed:

1334 (a) file and serve within 90 days after appointment a management plan as required by
1335 court rule or court order describing the strategies that will be used to implement the court
1336 order;

1337 (b) file and serve within 90 days after appointment an inventory of the estate subject to
1338 the guardian's possession, ownership, or control under an oath or affirmation that the inventory
1339 is believed to be complete and accurate as far as information permits; and

1340 (c) file and serve a report about the administration of the protected person's estate to
1341 the satisfaction of the court upon resignation or removal, upon termination, and as required by
1342 court rule or court order.

1343 Section 42. Section **75-5c-308** is enacted to read:

1344 **75-5c-308. Guardian's personal liability.**

1345 (1) A guardian is not liable to third persons for the protected person's acts solely by
1346 reason of the guardianship.

1347 (2) If the guardian performs fiduciary responsibilities with the degree of care,
1348 diligence, and good faith that an ordinarily careful person exercises in their own affairs, the
1349 guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

1350 (3) If the guardian selects a third person to perform a service for the protected person
1351 with the degree of care, diligence, and good faith that an ordinarily careful person exercises in
1352 their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of
1353 the third person.

1354 Section 43. Section **75-5c-309**, which is renumbered from Section 75-5-314 is
1355 renumbered and amended to read:

1356 **[75-5-314]. 75-5c-309. Mentally incompetent veteran -- Evidence of necessity**
1357 **for appointment of guardian.**

1358 [Where a petition is filed for the appointment of a guardian for a mentally incompetent
1359 ward, a] A certificate of the administrator or [his] a duly authorized representative[;] that [such
1360 person] the respondent has been rated incompetent by the veterans administration on

1361 examination [~~in accordance with the laws and regulations governing such~~] under veterans
 1362 administration laws and regulations and that the appointment of a guardian is a condition
 1363 precedent to the payment of any money due [~~such ward~~] the respondent by the veterans
 1364 administration[~~, shall be prima facie~~] is evidence of the necessity for [~~such~~] an appointment.

1365 Section 44. Section **75-5c-310**, which is renumbered from Section 75-5-315 is
 1366 renumbered and amended to read:

1367 **[75-5-315]. 75-5c-310. Copies of public records furnished to veterans**
 1368 **administration.**

1369 [~~When~~] If a copy of [~~any~~] a public record is required by the veterans administration to
 1370 [~~be used in determining~~] determine the eligibility of [~~any person~~] an applicant to participate in
 1371 [~~benefits made available by the~~] veterans administration benefits, the [~~official~~] custodian of
 1372 [~~such~~] the public record shall, without charge, provide a certified copy of the record to the
 1373 applicant [~~for such benefits~~] or any person acting on behalf of the [~~authorized representative of~~
 1374 ~~the~~] veterans administration [~~with a certified copy of such record~~].

1375 Section 45. Section **75-5c-401** is enacted to read:

1376 **Part 4. Appointment of a Conservator and Other Protective Orders**

1377 **75-5c-401. Petition to appoint a conservator or enter a protective order.**

1378 (1) The following may file a verified petition to appoint a conservator or to enter a
 1379 protective order:

1380 (a) the person to be protected;

1381 (b) an individual interested in the respondent's estate, affairs, or welfare; or

1382 (c) a person who would be adversely affected by lack of effective management of the
 1383 respondent's property and business affairs.

1384 (2) If the petitioner is nominated by will or signed writing, the petitioner shall file a
 1385 copy of the will or signed writing with the petition.

1386 Section 46. Section **75-5c-402** is enacted to read:

1387 **75-5c-402. Jurisdiction over business affairs of respondent.**

1388 Until termination, the court in which the petition is filed has:

1389 (1) exclusive jurisdiction to determine the need for a conservatorship or protective
 1390 order;

1391 (2) exclusive jurisdiction to determine how the respondent's estate that is subject to

1392 laws of this state will be managed, expended, or distributed to or for the use of the respondent,
1393 individuals entitled to the respondent's support, or other claimants; and

1394 (3) concurrent jurisdiction to determine the validity of claims against the respondent or
1395 the respondent's estate and questions of title concerning estate assets.

1396 Section 47. Section **75-5c-403** is enacted to read:

1397 **75-5c-403. Petition to appoint a conservator or enter a protective order --**
1398 **Preliminary application of property -- Appointment of counsel.**

1399 (1) Upon receipt of a petition to appoint a conservator or enter a protective order, the
1400 court shall schedule a hearing on the petition.

1401 (2) After preliminary hearing and without notice, the court may issue orders to preserve
1402 and apply the respondent's property as may be required for the support of the respondent or of
1403 individuals entitled to the respondent's support. The court may appoint a special conservator to
1404 assist in the task.

1405 (3) Unless an adult respondent is represented by an attorney, the court shall appoint an
1406 attorney to represent the respondent.

1407 (4) If the court determines that a minor respondent's best interests are inadequately
1408 represented, it may appoint an attorney to represent the respondent, giving consideration to the
1409 respondent's choice if the respondent is 14 years of age or older.

1410 Section 48. Section **75-5c-404** is enacted to read:

1411 **75-5c-404. Petition to appoint a conservator or enter a protective order for a**
1412 **minor -- Findings.**

1413 (1) The court shall appoint a conservator or enter a protective order for a minor if it
1414 finds that:

1415 (a) the order is in the respondent's best interests;

1416 (b) a qualified person seeks appointment;

1417 (c) the court has jurisdiction and venue is proper;

1418 (d) the required notices have been given; and

1419 (e) the respondent:

1420 (i) owns money or property requiring management or protection that cannot otherwise
1421 be provided;

1422 (ii) has or may have business affairs that may be put at risk or prevented because of the

1423 respondent's age;

1424 (iii) has property that will be wasted or dissipated unless management is provided; or

1425 (iv) needs money for the support, care, education, health, and welfare of the respondent

1426 or of individuals who are entitled to the respondent's support and that protection is necessary or

1427 desirable to obtain or provide the money.

1428 (2) The court may appoint a conservator for a specified time not to exceed the

1429 respondent's 18th birthday. In other cases, the court may dismiss the proceeding or make any

1430 other disposition that will serve the respondent's best interests.

1431 Section 49. Section **75-5c-405** is enacted to read:

1432 **75-5c-405. Petition to appoint a conservator or enter a protective order for an**

1433 **adult -- Findings.**

1434 (1) The court shall appoint a conservator or enter a protective order for an adult if it

1435 finds:

1436 (a) based on clear and convincing evidence, that the person to be protected has

1437 knowingly and voluntarily petitioned the court to appoint a conservator or enter a protective

1438 order; or

1439 (b) (i) based on clear and convincing evidence, that the respondent is unable to manage

1440 property and business affairs because the respondent is incapacitated, missing, detained, or

1441 unable to return to the United States; and

1442 (ii) by a preponderance of evidence, that the respondent:

1443 (A) has property that will be wasted or dissipated unless management is provided; or

1444 (B) needs money for the support, care, education, health, and welfare of the respondent

1445 or of individuals who are entitled to the respondent's support and that protection is necessary or

1446 desirable to obtain or provide the money.

1447 (2) Appointment of a conservator or entry of a protective order based on a petition by

1448 the person to be protected or because the respondent is missing, detained, or unable to return to

1449 the United States is not a determination of that person's incapacity.

1450 (3) Appointment of a conservator or entry of a protective order may not be denied

1451 solely because the respondent has a valid power of attorney.

1452 Section 50. Section **75-5c-406** is enacted to read:

1453 **75-5c-406. Least restrictive order -- Factors.**

1454 The court shall enter the least restrictive order consistent with its findings to
1455 accommodate the respondent's particular functional limitations and demonstrated needs,
1456 including appointive and other orders that will encourage the respondent to develop maximum
1457 self-reliance and independence. The court should consider and weigh, as appropriate:

1458 (1) whether the protected person can manage the activities of daily living through
1459 training, education, support services, mental and physical health care, medication, therapy,
1460 assistants, assistive devices, or other means that the person will accept;

1461 (2) whether the protected person has planned for financial decision making, such as a
1462 power of attorney, a trust or jointly held account, and whether the less restrictive alternatives to
1463 a conservatorship are meeting the respondent's needs;

1464 (3) whether the incapacity is likely to be temporary;

1465 (4) the protected person's long-standing values, preferences, and patterns of behavior;

1466 and

1467 (5) other relevant factors.

1468 Section 51. Section **75-5c-407** is enacted to read:

1469 **75-5c-407. Authority of court.**

1470 (1) Upon determining that a basis exists for a conservatorship or protective order, the
1471 court has the following authority, which may be exercised directly or through a conservator.

1472 (a) The court has all the authority over the estate and business affairs of a minor
1473 protected person that may be necessary for the best interest of the protected person and
1474 members of the protected person's immediate family.

1475 (b) The court has all the authority over the estate and business affairs of an adult
1476 protected person for the benefit of the protected person and individuals entitled to the protected
1477 person's support that the protected person could exercise if present and not under
1478 conservatorship or protective order.

1479 (2) The court may limit authority otherwise conferred on a conservator and may
1480 remove or modify any limitation at any time.

1481 Section 52. Section **75-5c-408** is enacted to read:

1482 **75-5c-408. Protective arrangements and single transactions.**

1483 (1) Upon determining that a basis exists for a protective order, the court, without
1484 appointing a conservator, may:

1485 (a) authorize, direct, or ratify any transaction necessary or desirable to achieve any
1486 arrangement for security, service, or care meeting the foreseeable needs of the protected person,
1487 including:

1488 (i) payment, delivery, deposit, or retention of funds or property;

1489 (ii) sale, mortgage, lease, or other transfer of property;

1490 (iii) purchase of an annuity;

1491 (iv) making a contract for life care, deposit contract, or contract for training and
1492 education; or

1493 (v) addition to or establishment of a suitable trust; and

1494 (b) authorize, direct, or ratify any other contract, trust, will, or transaction relating to
1495 the protected person's property and business affairs, including settlement of a claim, upon
1496 determining that it is in the protected person's best interest.

1497 (2) In deciding whether to approve a protective arrangement or other transaction under
1498 this section, the court shall consider the factors described in Subsection 75-5c-409(3).

1499 (3) The court may appoint a master to assist in any transaction or protective
1500 arrangement authorized under this section. The master has the authority conferred by the order
1501 and shall serve until discharged after reporting to the court.

1502 Section 53. Section **75-5c-409** is enacted to read:

1503 **75-5c-409. Action requiring court approval.**

1504 (1) After notice to interested persons and upon express authorization of the court, a
1505 conservator may:

1506 (a) if an estate is ample to provide for the distributions authorized by Section
1507 75-5c-417, for a protected person other than a minor, give gifts, donations, and contributions
1508 that the protected person might have been expected to give;

1509 (b) convey, release, or disclaim contingent and expectant interests in property,
1510 including marital property rights and any right of survivorship incident to joint tenancy or
1511 tenancy by the entireties;

1512 (c) exercise or release a power of appointment;

1513 (d) create a revocable or irrevocable trust of estate property, whether or not the trust
1514 extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the
1515 protected person;

1516 (e) exercise rights to elect options and change beneficiaries under insurance policies
1517 and annuities or surrender the policies and annuities for their cash value;

1518 (f) exercise any right to an elective share in the estate of the protected person's
1519 deceased spouse and to renounce or disclaim any interest by testate or intestate succession or
1520 by transfer inter vivos; and

1521 (g) make, amend, or revoke the protected person's will.

1522 (2) A conservator, in making, amending, or revoking the protected person's will, shall
1523 comply with Chapter 2, Part 5, Wills.

1524 (3) In exercising or in approving a conservator's exercise of the authority listed in
1525 Subsection (1), the court shall use the best interest decision making standard. The court shall
1526 also consider:

1527 (a) the financial needs of the protected person, the needs of individuals entitled to the
1528 protected person's support, and the interest of creditors;

1529 (b) possible reduction of tax liabilities;

1530 (c) eligibility for governmental assistance;

1531 (d) the protected person's previous pattern of giving or level of support;

1532 (e) the existing estate plan;

1533 (f) the protected person's life expectancy and the probability that the conservatorship
1534 will terminate before the protected person's death; and

1535 (g) any other relevant factors.

1536 (4) A conservator may revoke or amend a durable power of attorney of which the
1537 protected person is the principal. If a durable power of attorney is in effect, a decision of the
1538 conservator takes precedence over that of the agent unless the court orders otherwise.

1539 Section 54. Section **75-5c-410** is enacted to read:

1540 **75-5c-410. Conservator's duties.**

1541 The conservator shall:

1542 (1) within 14 days after appointment, serve on the protected person and all other people
1543 entitled to notice of the petition a copy of the appointment order and notice of the right to
1544 request termination or modification;

1545 (2) within 90 days after appointment, file and serve a management plan as required by
1546 court rule or court order describing the strategies that will be used to implement the court

- 1547 order;
- 1548 (3) within 90 days after appointment, file and serve an inventory of the estate subject to
- 1549 the conservator's possession, ownership, or control under an oath or affirmation that the
- 1550 inventory is believed to be complete and accurate as far as information permits;
- 1551 (4) file and serve a report about the administration of the protected person's estate to
- 1552 the satisfaction of the court upon resignation or removal, upon termination, and as required by
- 1553 court rule or court order;
- 1554 (5) comply with Section 75-5c-418 if the protected person dies;
- 1555 (6) file a petition to terminate or modify the conservatorship within 30 days after the
- 1556 protected person becomes capable of exercising rights previously removed;
- 1557 (7) if the appointment is for a minor protected person, file a final report and petition to
- 1558 terminate the conservatorship within 30 days after the protected person reaches majority;
- 1559 (8) immediately notify the court and interested persons if the protected person or
- 1560 conservator changes their dwelling place;
- 1561 (9) exercise duties and authority authorized by statute and court order as necessary to
- 1562 accommodate the protected person's particular functional limitations;
- 1563 (10) if reasonable under the circumstances, encourage the protected person to:
- 1564 (a) participate in decisions;
- 1565 (b) act on their own behalf; and
- 1566 (c) overcome the functional limitations that resulted in the protected person's
- 1567 incapacity;
- 1568 (11) act as a fiduciary and observe the standard of care of a trustee under Chapter 7,
- 1569 Part 9, Utah Uniform Prudent Investor Act;
- 1570 (12) keep contemporaneous records of the administration of the estate and make them
- 1571 available for examination as directed by the court;
- 1572 (13) take into account any estate plan of the protected person known to the conservator
- 1573 and may examine the will and any other donative, nominative, or other appointive instrument
- 1574 of the protected person in investing the estate, selecting assets of the estate for distribution, and
- 1575 invoking power of revocation or withdrawal available for the use and benefit of the protected
- 1576 person and exercisable by the conservator; and
- 1577 (14) at termination, deliver any of the estate subject to the conservator's possession,

1578 ownership, or control and any records as directed by law or the court.

1579 Section 55. Section **75-5c-411** is enacted to read:

1580 **75-5c-411. Title by appointment.**

1581 The appointment of a conservator vests title in the conservator as trustee to all property
1582 of the protected person, or to the part specified in the order, held at the time of appointment or
1583 later acquired. An order vesting title in the conservator to only part of the property of the
1584 protected person creates a conservatorship limited to assets specified in the order.

1585 Section 56. Section **75-5c-412** is enacted to read:

1586 **75-5c-412. Protected person's interest inalienable.**

1587 (1) Except as otherwise provided in Subsections (3) and (4), the interest of a protected
1588 person in property vested in a conservator is not transferable or assignable by the protected
1589 person. An attempted transfer or assignment by the protected person, although ineffective to
1590 affect property rights, may give rise to a claim against the protected person for restitution or
1591 damages which may be presented to the conservator.

1592 (2) Property vested in a conservator by appointment and the interest of the protected
1593 person in that property are not subject to levy, garnishment, or similar process for claims
1594 against the protected person unless allowed after presentation.

1595 (3) A person without knowledge of the conservatorship who in good faith and for
1596 security or substantially equivalent value receives delivery of tangible personal property
1597 normally transferred by delivery is protected as if the protected person or transferee had valid
1598 title.

1599 (4) A third party who deals with the protected person with respect to property vested in
1600 a conservator is entitled to any protection provided in other law.

1601 Section 57. Section **75-5c-413** is enacted to read:

1602 **75-5c-413. Sale, encumbrance, or other transaction involving conflict of interest.**

1603 Any transaction affected by a substantial conflict between the conservator's fiduciary
1604 and personal interests is voidable unless the transaction is expressly authorized by the court
1605 after notice to interested persons. A transaction affected by a substantial conflict between
1606 fiduciary and personal interests includes any sale, encumbrance, or other transaction involving
1607 the estate entered into by the conservator, the spouse, descendant, agent, attorney of a
1608 conservator, or a corporation or other enterprise in which the conservator has a substantial

1609 beneficial interest.

1610 Section 58. Section **75-5c-414** is enacted to read:

1611 **75-5c-414. Protection of person dealing with conservator.**

1612 (1) A person who assists or deals with a conservator in good faith and for value in any
1613 transaction other than one requiring a court order is protected as though the conservator
1614 properly exercised the authority. That a person knowingly assists or deals with a conservator
1615 does not alone require the person to inquire into the conservator's authority or the propriety of
1616 its exercise, but restrictions on the conservator's authority endorsed on letters of office are
1617 effective as to third persons. A person who pays or delivers assets to a conservator is not
1618 responsible for their proper application.

1619 (2) Protection provided by this section extends to any procedural irregularity or
1620 jurisdictional defect that occurred in the proceedings leading to the issuance of letters and is not
1621 a substitute for protection provided to persons assisting or dealing with a conservator by
1622 comparable provisions in other law relating to commercial transactions or to simplifying
1623 transfers of securities by fiduciaries.

1624 Section 59. Section **75-5c-415** is enacted to read:

1625 **75-5c-415. Authority of conservator in administration.**

1626 (1) Except as otherwise restricted in the appointment order and endorsed on the letters
1627 of office, a conservator has all of the authority granted in this section and any additional
1628 authority granted by law to a trustee.

1629 (2) A conservator, acting reasonably and in an effort to accomplish the purpose of the
1630 appointment, and without court authorization, may:

1631 (a) collect, hold, and retain estate assets, including assets in which the conservator has
1632 a personal interest and real property in another state, until the conservator considers that
1633 disposition of an asset should be made;

1634 (b) receive additions to the estate;

1635 (c) continue or participate in the operation of a business or other enterprise;

1636 (d) acquire an undivided interest in an estate asset in which the conservator, in a
1637 fiduciary capacity, holds an undivided interest;

1638 (e) invest estate assets as though the conservator were a trustee;

1639 (f) deposit estate money in a financial institution, including one operated by the

1640 conservator;

1641 (g) acquire or dispose of an estate asset, including real property in another state, for
1642 cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition,
1643 change the character of, or abandon an estate asset;

1644 (h) make ordinary or extraordinary repairs or alterations in buildings or other
1645 structures, demolish any improvements, and raze existing or erect new party walls or buildings;

1646 (i) subdivide, develop, or dedicate land to public use, make or obtain the vacation of
1647 plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving
1648 or receiving considerations, and dedicate easements to public use without consideration;

1649 (j) enter for any purpose into a lease as lessor or lessee, with or without option to
1650 purchase or renew, for a term within or extending beyond the term of the conservatorship;

1651 (k) enter into a lease or arrangement for exploration and removal of minerals or other
1652 natural resources or enter into a pooling or unitization agreement;

1653 (l) grant an option involving disposition of an estate asset and take an option for the
1654 acquisition of any asset;

1655 (m) vote a security, in person or by general or limited proxy;

1656 (n) pay calls, assessments, and any other sums chargeable or accruing against or on
1657 account of securities;

1658 (o) sell or exercise stock subscription or conversion rights;

1659 (p) consent, directly or through a committee or other agent, to the reorganization,
1660 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

1661 (q) hold a security in the name of a nominee or in other form without disclosure of the
1662 conservatorship so that title to the security may pass by delivery;

1663 (r) insure estate assets against damage or loss and the conservator against liability with
1664 respect to a third person;

1665 (s) borrow money on behalf of the protected person, with or without security, to be
1666 repaid from the estate or otherwise and advance money for the protection of the estate or the
1667 protected person and for all expenses, losses, and liability sustained in the administration of the
1668 estate or because of the holding or ownership of any assets, for which the conservator has a lien
1669 on the estate as against the protected person for advances so made;

1670 (t) pay or contest any claim, settle a claim by or against the estate or the protected

1671 person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim
1672 belonging to the estate to the extent the claim is uncollectible;

1673 (u) pay taxes, assessments, compensation of the conservator and any guardian, and
1674 other expenses incurred in the collection, care, administration, and protection of the estate;

1675 (v) allocate items of income or expense to income or principal of the estate, as
1676 provided by other law, including creation of reserves out of income for depreciation,
1677 obsolescence, or amortization or for depletion of minerals or other natural resources;

1678 (w) pay any sum distributable to a protected person or to individuals entitled to the
1679 protected person's support by paying the sum to the distributee or by paying the sum for the use
1680 of the distributee:

1681 (i) to the distributee's guardian or custodian under Chapter 5a, Uniform Transfers to
1682 Minors Act; or

1683 (ii) if there is no guardian or custodian, to a relative or other person having physical
1684 custody of the distributee;

1685 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the
1686 protection of estate assets and of the conservator in the performance of fiduciary duties; and

1687 (y) execute and deliver all instruments that will accomplish or facilitate the exercise of
1688 the conservator's authority.

1689 Section 60. Section **75-5c-416** is enacted to read:

1690 **75-5c-416. Delegation.**

1691 (1) A conservator may not delegate to an agent or another conservator the entire
1692 administration of the estate, but a conservator may delegate the performance of functions that a
1693 prudent trustee of comparable skills may delegate under similar circumstances.

1694 (2) The conservator shall exercise reasonable care, skill, and caution in:

1695 (a) selecting an agent;

1696 (b) establishing the scope and terms of a delegation, consistent with the purposes and
1697 terms of the conservatorship;

1698 (c) periodically reviewing an agent's overall performance and compliance with the
1699 terms of the delegation; and

1700 (d) redressing an action or decision of an agent which would constitute a breach of
1701 trust if performed by the conservator.

1702 (3) A conservator who complies with Subsections (1) and (2) is not liable to the
1703 protected person or to the estate for the decisions or actions of the agent to whom a function
1704 was delegated.

1705 (4) In performing a delegated function, an agent shall exercise reasonable care to
1706 comply with the terms of the delegation.

1707 (5) By accepting a delegation from a conservator subject to the laws of this state, an
1708 agent submits to the jurisdiction of the Utah courts.

1709 Section 61. Section **75-5c-417** is enacted to read:

1710 **75-5c-417. Principles of distribution by conservator.**

1711 Unless otherwise specified in the appointment order and endorsed on the letters of
1712 office or contrary to the management plan, a conservator may, without further court
1713 authorization or confirmation, expend or distribute income or principal of the estate for the
1714 support, care, education, health, and welfare of the protected person and individuals entitled to
1715 the protected person's support, including the payment of child support or spousal support,
1716 under the following rules:

1717 (1) A conservator shall consider a guardian's recommendations about the appropriate
1718 standard of support, care, education, health, and welfare for the protected person or individuals
1719 entitled to the protected person's support. If the protected person is a protected person, the
1720 conservator shall consider a parent's recommendations.

1721 (2) A conservator may not be surcharged for money paid to persons furnishing support,
1722 care, education, or benefits to a protected person or individuals entitled to the protected
1723 person's support under the recommendations of the protected person's parent or guardian,
1724 unless the conservator knows that the parent or guardian derives a personal financial benefit,
1725 including relief from any personal duty of support, or the recommendations are not in the best
1726 interest of the protected person.

1727 (3) In making distributions under this section, the conservator shall consider:

1728 (a) the size of the estate, the estimated duration of the conservatorship, and the
1729 likelihood that the protected person, at some future time, may be fully self-sufficient and able
1730 to manage business affairs and the estate;

1731 (b) the accustomed standard of living of the protected person and individuals entitled to
1732 the protected person's support; and

1733 (c) other money or sources used for the support of the protected person and individuals
1734 entitled to the protected person's support.

1735 (4) Money expended under this section may be paid by the conservator to any person,
1736 including the protected person, as reimbursement for expenditures that the conservator might
1737 have made, or in advance for services to be rendered to the protected person if it is reasonable
1738 to expect the services will be performed and advance payments are customary or reasonably
1739 necessary under the circumstances.

1740 Section 62. Section **75-5c-418** is enacted to read:

1741 **75-5c-418. Death of protected person.**

1742 (1) Upon the death of a protected person, the conservator shall deliver to the court for
1743 safekeeping any will of the protected person which may have come into the conservator's
1744 possession, inform the personal representative or beneficiary named in the will of the delivery,
1745 and preserve and protect the estate for delivery to the decedent's personal representative or to
1746 another person entitled to it.

1747 (2) Upon the death of a protected person, the conservator shall conclude the
1748 administration of the estate by distribution to the protected person's successors. The
1749 conservator shall file a final report and petition to terminate the conservatorship within 30 days
1750 after distribution.

1751 Section 63. Section **75-5c-419** is enacted to read:

1752 **75-5c-419. Presentation and allowance of claims.**

1753 (1) A conservator may pay, or secure by encumbering estate assets, claims against the
1754 estate or against the protected person arising before or during the conservatorship upon
1755 presentation and allowance under the priorities stated in Subsection (5). A claimant may
1756 present a claim by:

1757 (a) sending or delivering to the conservator a written statement of the claim, indicating
1758 its basis, the name and address of the claimant, and the amount claimed; or

1759 (b) filing a written statement of the claim, in a form acceptable to the court, with the
1760 court clerk and sending or delivering a copy of the statement to the conservator.

1761 (2) A claim is considered presented on receipt of the written statement of claim by the
1762 conservator or the filing of the claim with the court clerk, whichever occurs first.

1763 (3) A presented claim is allowed if it is not disallowed by written statement sent or

1764 delivered by the conservator to the claimant within 60 days after its presentation. Before
1765 payment, the conservator may change an allowance to a disallowance in whole or in part, but
1766 not after allowance under a court order or judgment or an order directing payment of the claim.
1767 The presentation of a claim tolls the running of any statute of limitations relating to the claim
1768 until 30 days after its disallowance.

1769 (4) A claimant whose claim has not been paid may petition the court for determination
1770 of the claim at any time before it is barred by a statute of limitations and, upon proof, procure
1771 an order for its allowance, payment, or security by encumbering estate assets. If a proceeding
1772 is pending against a protected person at the time of the conservator's appointment or is later
1773 initiated against the protected person, the moving party shall give to the conservator notice of
1774 any proceeding that could result in creating a claim against the estate.

1775 (5) If it appears that the estate is likely to be exhausted before all existing claims are
1776 paid, the conservator shall distribute the estate in money or in kind in payment of claims in the
1777 following order:

1778 (a) costs and expenses of administration;

1779 (b) claims of the federal or state government having priority under other law;

1780 (c) claims incurred by the conservator for support, care, education, health, and welfare
1781 previously provided to the protected person or individuals entitled to the protected person's
1782 support;

1783 (d) claims arising before the conservatorship; and

1784 (e) all other claims.

1785 (6) Preference may not be given in the payment of a claim over any other claim of the
1786 same class, and a claim due and payable may not be preferred over a claim not due.

1787 (7) If assets of the conservatorship are adequate to meet all existing claims, the court,
1788 acting in the best interest of the protected person, may order the conservator to grant a security
1789 interest in the estate for the payment of any or all claims at a future date.

1790 Section 64. Section **75-5c-420** is enacted to read:

1791 **75-5c-420. Personal liability of conservator.**

1792 (1) Except as otherwise agreed, a conservator is not personally liable on a contract
1793 properly entered into in a fiduciary capacity in the course of administration of the estate unless
1794 the conservator fails to reveal in the contract the representative capacity and identify the estate.

1795 (2) A conservator is not personally liable for obligations arising from possession,
1796 ownership, or control of estate property or for other acts or omissions occurring in the course of
1797 administration of the estate unless the conservator is personally at fault.

1798 (3) Regardless whether the conservator is personally liable, claims based on contracts
1799 entered into by a conservator in a fiduciary capacity, obligations arising from possession,
1800 ownership or control of the estate, and claims based on torts committed in the course of
1801 administration of the estate may be asserted against the estate by proceeding against the
1802 conservator in a fiduciary capacity.

1803 (4) A question of liability between the estate and the conservator personally may be
1804 determined in a proceeding for accounting, surcharge, or indemnification, or in another
1805 appropriate proceeding or action.

1806 (5) A conservator is not personally liable for any environmental condition on or injury
1807 resulting from any environmental condition on land solely by reason of acquisition of title
1808 under Section 75-5c-411.

1809 Section 65. Section **75-5c-421** is enacted to read:

1810 **75-5c-421. Payment of debt and delivery of property to foreign conservator**
1811 **without local proceeding.**

1812 (1) A person who is indebted to or has the possession of tangible or intangible property
1813 of a protected person may pay the debt or deliver the property to a foreign conservator,
1814 guardian of the estate, or other court-appointed fiduciary of the state in which a protected
1815 person resides.

1816 (2) Payment or delivery may be made only upon proof of appointment and presentation
1817 of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding
1818 relating to the protected person is not pending in this state and the foreign fiduciary is entitled
1819 to payment or to receive delivery.

1820 (3) Payment or delivery under Subsection (1) discharges the debtor or possessor, absent
1821 knowledge of a protective proceeding pending in this state.

1822 Section 66. Section **78B-5-804** is amended to read:

1823 **78B-5-804. Money deposited in court.**

1824 (1) (a) Any person depositing money in court, to be held in trust, shall pay it to the
1825 court clerk.

1826 (b) The clerk shall deposit the money in a court trust fund or with the county treasurer
1827 or city recorder to be held subject to the order of the court.

1828 (2) The Judicial Council shall adopt rules governing the maintenance of court trust
1829 funds and the disposition of interest earnings on those trust funds.

1830 (3) (a) Any interest earned on trust funds in the courts of record that is not required to
1831 accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted
1832 account. Any interest earned on trust funds in the courts not of record that is not required to
1833 accrue to the litigants by Judicial Council rule or court order shall be deposited in the general
1834 fund of the county or municipality.

1835 (b) The Legislature shall appropriate funds from the restricted account of the courts of
1836 record to the Judicial Council to:

1837 (i) offset costs to the courts for collection and maintenance of court trust funds; [~~and~~]

1838 (ii) provide accounting and auditing of all court revenue and trust accounts[-]; and

1839 (iii) review or audit annual reports and accountings of guardians and conservators, and
1840 recruit court visitors in guardianship and conservatorship proceedings.

1841 Section 67. **Repealer.**

1842 This bill repeals:

1843 Section **75-5-101, Jurisdiction of subject matter -- Consolidation of proceedings.**

1844 Section **75-5-102, Facility of payment or delivery.**

1845 Section **75-5-103, Delegation of powers by parent or guardian.**

1846 Section **75-5-104, Power of court to appoint guardian ad litem not affected.**

1847 Section **75-5-105, Bond of guardian.**

1848 Section **75-5-201, Status of guardian of minor -- General.**

1849 Section **75-5-202, Appointment of guardian of minor.**

1850 Section **75-5-202.5, Appointment of guardian by written instrument.**

1851 Section **75-5-203, Objection to appointment.**

1852 Section **75-5-204, Court appointment of guardian of minor -- Conditions for**
1853 **appointment.**

1854 Section **75-5-205, Court appointment of guardian of minor -- Venue.**

1855 Section **75-5-206, Court appointment of guardian of minor -- Qualifications --**
1856 **Priority of minor's nominee.**

- 1857 Section 75-5-207, Court appointment of guardian of minor -- Procedure.
- 1858 Section 75-5-208, Consent to service by acceptance of appointment -- Notice.
- 1859 Section 75-5-209, Powers and duties of guardian of minor -- Residual parental
- 1860 **rights and duties -- Adoption of a ward.**
- 1861 Section 75-5-210, Termination of appointment of guardian -- General.
- 1862 Section 75-5-211, Proceedings subsequent to appointment -- Venue.
- 1863 Section 75-5-212, Resignation or removal proceedings.
- 1864 Section 75-5-301, Appointment of guardian for incapacitated person.
- 1865 Section 75-5-302, Venue.
- 1866 Section 75-5-303, Procedure for court appointment of a guardian of an
- 1867 **incapacitated person.**
- 1868 Section 75-5-304, Findings -- Limited guardianship preferred -- Order of
- 1869 **appointment.**
- 1870 Section 75-5-305, Acceptance of appointment -- Consent to jurisdiction.
- 1871 Section 75-5-306, Termination of guardianship for incapacitated person.
- 1872 Section 75-5-307, Removal or resignation of guardian -- Termination of incapacity.
- 1873 Section 75-5-308, Visitor in guardianship proceeding.
- 1874 Section 75-5-309, Notices in guardianship proceedings.
- 1875 Section 75-5-310, Temporary guardians.
- 1876 Section 75-5-311, Who may be guardian -- Priorities.
- 1877 Section 75-5-312, General powers and duties of guardian -- Penalties.
- 1878 Section 75-5-313, Proceedings subsequent to appointment -- Venue.
- 1879 Section 75-5-316, Expedited guardianship proceedings.
- 1880 Section 75-5-401, Protective proceedings.
- 1881 Section 75-5-402, Protective proceedings -- Jurisdiction of affairs of protected
- 1882 **persons.**
- 1883 Section 75-5-403, Venue.
- 1884 Section 75-5-404, Original petition for appointment or protective order.
- 1885 Section 75-5-405, Notice.
- 1886 Section 75-5-406, Protective proceedings -- Request for notice -- Interested person.
- 1887 Section 75-5-407, Procedure concerning hearing and order on original petition.

- 1888 Section **75-5-408, Permissible court orders.**
- 1889 Section **75-5-409, Protective arrangements and single transactions authorized.**
- 1890 Section **75-5-410, Who may be appointed conservator -- Priorities.**
- 1891 Section **75-5-411, Bond.**
- 1892 Section **75-5-412, Terms and requirements of bonds.**
- 1893 Section **75-5-413, Acceptance of appointment -- Consent to jurisdiction.**
- 1894 Section **75-5-414, Compensation and expenses.**
- 1895 Section **75-5-415, Death, resignation or removal of conservator.**
- 1896 Section **75-5-416, Petitions for orders subsequent to appointment.**
- 1897 Section **75-5-417, General duty of conservator.**
- 1898 Section **75-5-418, Inventory and records.**
- 1899 Section **75-5-419, Accounts.**
- 1900 Section **75-5-420, Conservators -- Title by appointment.**
- 1901 Section **75-5-421, Recording of conservator's letters.**
- 1902 Section **75-5-422, Sale, encumbrance or transaction involving conflict of interest --**
- 1903 **Voidable -- Exceptions.**
- 1904 Section **75-5-423, Persons dealing with conservators -- Protection.**
- 1905 Section **75-5-424, Powers of conservator in administration.**
- 1906 Section **75-5-425, Distributive duties and powers of conservator.**
- 1907 Section **75-5-426, Enlargement or limitation of powers of conservator.**
- 1908 Section **75-5-427, Preservation of estate plan.**
- 1909 Section **75-5-428, Claims against protected person -- Enforcement.**
- 1910 Section **75-5-429, Individual liability of conservator.**
- 1911 Section **75-5-430, Termination of proceeding.**
- 1912 Section **75-5-431, Payment of debt and delivery of property to foreign conservator**
- 1913 **without local proceedings.**
- 1914 Section **75-5-432, Foreign conservator -- Proof of authority -- Bond -- Powers.**
- 1915 Section **75-5-433, Embezzlement of protected person's estate -- Citation to person**
- 1916 **suspected.**
- 1917 Section 68. **Effective date.**
- 1918 This bill takes effect January 1, 2012.

Legislative Review Note
as of 2-9-11 9:14 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 284

SHORT TITLE: **Guardianship Amendments**

SPONSOR: **Powell, K.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost the Courts \$44,800 in ongoing General Fund in FY 2012 for caseload increases. Also, this bill will cost \$1,200 annually in General Fund to the Department of Human Services for certification requirements with an additional one-time General Fund cost in FY 2012.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$46,000	\$46,000
General Fund, One-Time	\$0	\$1,200	\$0
Total Expenditure	\$0	\$47,200	\$46,000
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$47,200)	(\$46,000)
Net Impact, General/Education Funds	\$0	(\$47,200)	(\$46,000)

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

State employees applying to certify will pay \$320 per exam at an estimated 1 certification per year. Enactment of this bill will not otherwise result in direct, measurable expenditures by Utah residents or businesses.