

Senator Todd Weiler proposes the following substitute bill:

**PROBATE CODE AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: Todd Weiler

---

**LONG TITLE**

**General Description:**

This bill makes amendments regarding guardians, conservators, trustees, and advance directions regarding funeral and burial arrangements.

**Highlighted Provisions:**

This bill:

- ▶ provides that advance directions regarding funeral and burial directions executed in the same manner as a will are acceptable;
- ▶ adds a personal representative to the list of persons who may provide directions regarding disposition of a deceased person;
- ▶ clarifies attorney fees in a will contest for the personal representative if the will was filed in good faith;
- ▶ allows for attorney fees in an action for a guardianship or conservatorship under specific circumstances;
- ▶ clarifies that a conservatorship estate does not include the assets of a trust, but the conservator is considered a qualified beneficiary of a trust in which the protected person is a qualified beneficiary; and
- ▶ makes technical corrections.

**Money Appropriated in this Bill:**



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **58-9-601**, as enacted by Laws of Utah 2003, Chapter 49

32 **58-9-602**, as last amended by Laws of Utah 2010, Chapter 251

33 **75-3-719**, as enacted by Laws of Utah 1975, Chapter 150

34 **75-5-303**, as last amended by Laws of Utah 2011, Chapter 366

35 **75-5-307**, as last amended by Laws of Utah 1988, Chapter 104

36 **75-5-407**, as enacted by Laws of Utah 1975, Chapter 150

37 **75-5-408**, as last amended by Laws of Utah 2011, Chapter 366

38 **75-5-414**, as enacted by Laws of Utah 1975, Chapter 150

39 **75-5-415**, as enacted by Laws of Utah 1975, Chapter 150

40 **75-5-418**, as enacted by Laws of Utah 1975, Chapter 150

41 **75-5-419**, as enacted by Laws of Utah 1975, Chapter 150

42 **75-5-420**, as last amended by Laws of Utah 1977, Chapter 194

43 **75-5-424**, as last amended by Laws of Utah 1977, Chapter 194

44 **75-5-425**, as last amended by Laws of Utah 2011, Chapter 366

45 **75-5-501**, as last amended by Laws of Utah 2011, Chapter 366



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

48 Section 1. Section **58-9-601** is amended to read:

49 **58-9-601. Advance directions.**

50 (1) A person may provide written directions [~~meeting the requirements of Subsection~~  
51 ~~(2)~~], ~~executed with the same formalities required of a will under Section 75-2-502,~~ to direct the  
52 preparation, type, and place of the person's disposition, including:

- 53 (a) designating a funeral service establishment;
- 54 (b) providing directions for burial arrangements; or
- 55 (c) providing directions for cremation arrangements.

56 [~~(2) The written directions described in Subsection (1) shall contain:~~]

- 57 ~~[(a) the name and address of the decedent;]~~
- 58 ~~[(b) written directions regarding the decedent's disposition;]~~
- 59 ~~[(c) the signature of the decedent;]~~
- 60 ~~[(d) the signatures of at least two unrelated individuals, each of whom signed within a~~
- 61 ~~reasonable time after witnessing the signing of the form by the decedent; and]~~
- 62 ~~[(e) the date or dates the written directions were prepared and signed.]~~

63 ~~[(3)]~~ (2) A funeral service director shall carry out the written directions of the decedent  
 64 prepared under this section to the extent that:

- 65 (a) the directions are lawful; and
- 66 (b) the decedent has provided resources to carry out the directions.

67 ~~[(4)]~~ (3) Directions for disposition contained in a will shall be carried out pursuant to  
 68 Subsection ~~[(3)]~~ (2) regardless of:

- 69 (a) the validity of other aspects of the will; or
- 70 (b) the fact that the will may not be offered or admitted to probate until a later date.

71 ~~[(5)]~~ (4) A person may change or cancel written directions prepared under this section  
 72 at any time prior to the person's death by providing written notice to all applicable persons,  
 73 including:

- 74 (a) if the written directions designate a funeral service establishment or funeral service  
 75 director, the funeral service establishment or funeral service director designated in the written  
 76 directions; and
- 77 (b) if the written directions are contained in a will, the personal representative as  
 78 defined in Section 75-1-201.

79 Section 2. Section **58-9-602** is amended to read:

80 **58-9-602. Determination of control of disposition.**

81 The right and duty to control the disposition of a deceased person, including the  
 82 location, manner and conditions of the disposition, and arrangements for funeral goods and  
 83 services to be provided vest in the following degrees of relationship in the order named,  
 84 provided the person is at least 18 and is mentally competent:

85 (1) [a] the person designated:

- 86 (a) in a written instrument, excluding a power of attorney that terminates at death under  
 87 Sections 75-5-501 and 75-5-502, if the written instrument ~~[contains:]~~ is executed with the same

88 formalities required of a will under Section 75-2-502; or

89 ~~[(i) the name and address of the decedent;]~~

90 ~~[(ii) the name and address of the person designated under this Subsection (1)(a);]~~

91 ~~[(iii) directions that the person designated in this Subsection (1) is authorized to carry~~  
92 ~~out the disposition of the decedent's remains;]~~

93 ~~[(iv) the signature of the decedent;]~~

94 ~~[(v) the signatures of at least two unrelated individuals who are not the person~~  
95 ~~designated under this Subsection (1), each of whom signed within a reasonable time after~~  
96 ~~witnessing the signing of the form by the decedent; and]~~

97 ~~[(vi) the date or dates the written instrument was prepared and signed; or]~~

98 (b) by a service member while serving in a branch of the United States Armed Forces  
99 as defined in 10 U.S.C. Sec. 1481 in a federal Record of Emergency Data, DD Form 93 or  
100 subsequent form;

101 (2) the surviving, legally recognized spouse of the decedent[;], unless a personal  
102 representative was nominated by the decedent subsequent to the marriage, in which case the  
103 personal representative shall take priority over the spouse;

104 (3) the person nominated to serve as the personal representative of the decedent's estate  
105 in a will executed with the formalities required in Section 75-2-502;

106 ~~[(3)]~~ (4) (a) the sole surviving child of the decedent, or if there is more than one child  
107 of the decedent, the majority of the surviving children;

108 (b) less than one-half of the surviving children are vested with the rights of this section  
109 if they have used reasonable efforts to notify all other surviving children of their instructions  
110 and are not aware of any opposition to those instructions on the part of more than one-half of  
111 all surviving children;

112 ~~[(4)]~~ (5) the surviving parent or parents of the decedent, and if one of the surviving  
113 parents is absent, the remaining parent is vested with the rights and duties of this section after  
114 reasonable efforts have been unsuccessful in locating the absent surviving parent;

115 ~~[(5)]~~ (6) (a) the surviving brother or sister of the decedent, or if there is more than one  
116 sibling of the decedent, the majority of the surviving siblings;

117 (b) less than the majority of surviving siblings are vested with the rights and duties of  
118 this section if they have used reasonable efforts to notify all other surviving siblings of their

119 instructions and are not aware of any opposition to those instructions on the part of more than  
120 one-half of all surviving siblings;

121 ~~[(6)]~~ (7) the person in the classes of the next degree of kinship, in descending order,  
122 under the laws of descent and distribution to inherit the estate of the decedent, and if there is  
123 more than one person of the same degree, any person of that degree may exercise the right of  
124 disposition;

125 ~~[(7)]~~ (8) any public official charged with arranging the disposition of deceased persons;  
126 and

127 ~~[(8)]~~ (9) in the absence of any person under Subsections (1) through ~~[(7)]~~ (8), any other  
128 person willing to assume the responsibilities to act and arrange the final disposition of the  
129 decedent's remains, including the personal representative of the decedent's estate or the funeral  
130 service director with custody of the body, after attesting in writing that a good faith effort has  
131 been made to no avail to contact the individuals referred to in Subsections (1) through ~~[(7)]~~ (8).

132 Section 3. Section **75-3-719** is amended to read:

133 **75-3-719. Expenses in estate litigation.**

134 If any personal representative or person nominated as personal representative defends or  
135 prosecutes any proceeding in good faith, whether successful or not, ~~[he]~~ the personal  
136 representative is entitled to receive from the estate ~~[his]~~ all necessary expenses and  
137 disbursements, including reasonable ~~[attorneys']~~ attorney fees incurred. This provision  
138 expressly applies in a will contest to any person nominated as a personal representative in a  
139 testamentary instrument submitted in good faith.

140 Section 4. Section **75-5-303** is amended to read:

141 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**  
142 **person.**

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

145 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of  
146 incapacity~~[-and unless].~~ Unless the allegedly incapacitated person has already obtained  
147 counsel [of the person's own choice, it], the court shall appoint an attorney to represent the  
148 person in the proceeding the cost of which shall be paid by the person alleged to be  
149 incapacitated~~[-unless].~~ If the court determines that the petition is without merit, [in which

150 ease] the attorney fees and court costs shall be paid by the person filing the petition. If the  
151 court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person,  
152 regardless of whether the nominee is specified in the moving petition or nominated during the  
153 proceedings, the petitioner may receive from the incapacitated person reasonable attorney fees  
154 and court costs incurred in bringing and defending the petition.

155 (3) The legal representation of the incapacitated person by an attorney may terminate  
156 upon the appointment of a guardian based on the court finding whether:

157 (a) there are separate conservatorship proceedings pending before the court;

158 (b) the appointed guardian elects at the time to maintain the attorney's representation of  
159 the incapacitated person; or

160 (c) there is a timely filed appeal of the appointment of the guardian or the  
161 determination of incapacity.

162 [~~3~~] (4) The person alleged to be incapacitated may be examined by a physician  
163 appointed by the court who shall submit a report in writing to the court and may be interviewed  
164 by a visitor sent by the court. The visitor also may interview the person seeking appointment  
165 as guardian, visit the present place of abode of the person alleged to be incapacitated and the  
166 place it is proposed that the person will be detained or reside if the requested appointment is  
167 made, and submit a report in writing to the court.

168 [~~4~~] (5) (a) The person alleged to be incapacitated shall be present at the hearing in  
169 person and see or hear all evidence bearing upon the person's condition. If the person seeking  
170 the guardianship requests a waiver of presence of the person alleged to be incapacitated, the  
171 court shall order an investigation by a court visitor, the costs of which shall be paid by the  
172 person seeking the guardianship.

173 (b) The investigation by a court visitor is not required if there is clear and convincing  
174 evidence from a physician that the person alleged to be incapacitated has:

175 (i) fourth stage Alzheimer's Disease;

176 (ii) extended comatosis; or

177 (iii) (A) an intellectual disability; and

178 (B) an intelligence quotient score under 20 to 25.

179 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to  
180 present evidence, to cross-examine witnesses, including the court-appointed physician and the

181 visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if  
182 the person alleged to be incapacitated or the person's counsel so requests.

183 Section 5. Section **75-5-307** is amended to read:

184 **75-5-307. Removal or resignation of guardian -- Termination of incapacity.**

185 (1) On petition of the ward or any person interested in the ward's welfare, the court  
186 may remove a guardian and appoint a successor if in the best interests of the ward. On petition  
187 of the guardian, the court may accept the guardian's resignation and make any other order  
188 which may be appropriate.

189 (2) An order adjudicating incapacity may specify a minimum period, not exceeding one  
190 year, during which no petition for an adjudication that the ward is no longer incapacitated may  
191 be filed without special leave. Subject to this restriction, the ward or any person interested in  
192 the ward's welfare may petition for an order that the ward is no longer incapacitated and for  
193 removal or resignation of the guardian. A request for this order may be made by informal letter  
194 to the court or judge and any person who knowingly interferes with transmission of this kind of  
195 request to the court or judge may be adjudged guilty of contempt of court.

196 (3) Before removing a guardian, accepting the resignation of a guardian, or ordering  
197 that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard  
198 the rights of the ward as apply to a petition for appointment of a guardian as provided ~~[under]~~  
199 in Section 75-5-303. The court is not required to appoint an attorney to represent the ward if  
200 the case is uncontested and the ward's incapacity is not at issue.

201 Section 6. Section **75-5-407** is amended to read:

202 **75-5-407. Procedure concerning hearing and order on original petition.**

203 (1) Upon receipt of a petition for appointment of a conservator or other protective order  
204 because of minority, the court shall set a date for the hearing on the matters alleged in the  
205 petition. If, at any time in the proceeding, the court determines that the interests of the minor  
206 are or may be inadequately represented, it may appoint an attorney to represent the minor,  
207 giving consideration to the choice of the minor if 14 years of age or older. ~~[A lawyer]~~ An  
208 attorney appointed by the court to represent a minor has the powers and duties of a guardian ad  
209 litem.

210 (2) Upon receipt of a petition for appointment of a conservator or other protective order  
211 for reasons other than minority, the court shall set a date for hearing. Unless the person to be

212 protected has already retained counsel [~~of his own choice~~], the court may appoint [~~a lawyer~~] an  
213 attorney to represent [~~him~~] the person to be protected who then has the powers and duties of a  
214 guardian ad litem.

215 (3) The legal representation of the protected person by an attorney may terminate upon  
216 the appointment of a conservator based on the court finding whether:

217 (a) there are separate guardianship proceedings pending before the court;

218 (b) the appointed conservator elects at the time to maintain the attorney's representation  
219 of the protected person; or

220 (c) there is a timely filed appeal of the appointment of the conservator or the  
221 determination of the incapacity.

222 (4) If the alleged disability is mental illness, mental deficiency, physical illness or  
223 disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that  
224 the person to be protected be examined by a physician designated by the court, preferably a  
225 physician who is not connected with any institution in which the person is a patient or is  
226 detained. The court may send a visitor to interview the person to be protected. The visitor may  
227 be a guardian ad litem or an officer or employee of the court.

228 [~~(3)~~] (5) After hearing, upon finding that a basis for the appointment of a conservator  
229 or other protective order has been established, the court shall make an appointment or other  
230 appropriate protective order.

231 Section 7. Section **75-5-408** is amended to read:

232 **75-5-408. Permissible court orders.**

233 (1) The court has the following powers which may be exercised directly or through a  
234 conservator in respect to the estate and affairs of protected persons:

235 (a) While a petition for appointment of a conservator or other protective order is  
236 pending and after preliminary hearing and without notice to others, the court has power to  
237 preserve and apply the property of the person to be protected as may be required for the  
238 person's benefit or the benefit of the person's dependents.

239 (b) After hearing and upon determining that a basis for an appointment or other  
240 protective order exists with respect to a minor without other disability, the court has all those  
241 powers over the estate and affairs of the minor which are or might be necessary for the best  
242 interests of the minor, the minor's family, and the members of the minor's household.



243 (c) After hearing and upon determining that a basis for an appointment or other  
244 protective order exists with respect to a person for reasons other than minority, the court has,  
245 for the benefit of the person and members of the person's household, all the powers over the  
246 person's estate and affairs that the person could exercise if present and not under disability,  
247 except the power to make a will. These powers include the power to:

248 (i) make gifts~~[-to]~~;

249 (ii) convey or release the person's contingent and expectant interests in property  
250 including marital property rights and any right of survivorship incident to joint tenancy or  
251 tenancy by the entirety~~[-to]~~;

252 (iii) exercise or release the person's powers as ~~[trustee,]~~ personal representative,  
253 custodian for minors, conservator, or donee of a power of appointment~~[-to]~~;

254 (iv) enter into contracts~~[-to]~~;

255 (v) create revocable or irrevocable trusts of property of the estate that may extend  
256 beyond the person's disability or life~~[-to]~~;

257 (vi) exercise options of the person with a disability to purchase securities or other  
258 property~~[-to]~~;

259 (vii) exercise the person's rights to elect options and change beneficiaries under  
260 insurance and annuity policies and to surrender the policies for their cash value~~[-to]~~;

261 (viii) exercise the person's right to an elective share in the estate of the person's  
262 deceased spouse~~[-]~~; and ~~[to]~~

263 (ix) renounce any interest by testate or intestate succession or by inter vivos transfer.

264 (d) The court may exercise, or direct the exercise of, its authority to exercise or release  
265 powers of appointment of which the protected person is donee, to renounce interests, to make  
266 gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change  
267 beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing,  
268 that it is in the best interests of the protected person, and that the person either is incapable of  
269 consenting or has consented to the proposed exercise of power.

270 (2) An order made pursuant to this section determining that a basis for appointment of  
271 a conservator or other protective order exists has no effect on the capacity of the protected  
272 person.

273 Section 8. Section **75-5-414** is amended to read:

274 **75-5-414. Compensation and expenses.**

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

282 Section 9. Section **75-5-415** is amended to read:

283 **75-5-415. Death, resignation, or removal of conservator.**

284 (1) The court may remove a conservator for good cause, upon notice and hearing, or  
285 accept the resignation of a conservator. After [his] the death, resignation, or removal of a  
286 conservator, the court may appoint another conservator. A conservator so appointed succeeds  
287 to the title and powers of [his predecessor] the preceding conservator.

288 (2) An order adjudicating incapacity may specify a minimum period, not exceeding one  
289 year, during which no petition for an adjudication that the protected person is no longer  
290 incapacitated may be filed without special leave. Subject to this restriction, the protected  
291 person or any person interested in the protected person's welfare may petition for an order that  
292 the protected person is no longer incapacitated and for removal or resignation of the  
293 conservator. A request for this order may be made by informal letter to the court or judge.

294 (3) Before removing a conservator, accepting the resignation of a conservator, or  
295 ordering that a protected person's incapacity has terminated, the court shall follow the same  
296 procedures to safeguard the rights of the protected person as apply to a petition for appointment  
297 of a conservator as provided in Section 75-5-407.

298 Section 10. Section **75-5-418** is amended to read:

299 **75-5-418. Inventory and records.**

300 (1) Within 90 days after [his] appointment~~[, every]~~ of a conservator, the conservator  
301 shall prepare and file with the appointing court a complete inventory of the estate of the  
302 protected person together with [his] an oath or affirmation that it is complete and accurate so  
303 far as [he] the conservator is informed. The estate of the protected person does not include the  
304 assets of a trust.

305 (2) The conservator shall provide a copy [~~thereof~~] of the inventory to the protected  
306 person if [~~he~~] the person:

307 (a) can be located[;];

308 (b) has attained the age of 14 years[;]; and

309 (c) has sufficient mental capacity to understand these matters, and to any parent or  
310 guardian with whom the protected person resides.

311 (3) The conservator shall keep suitable administrative records [~~of his administration~~]  
312 and [~~exhibit the same on~~] produce them upon the request of any interested person.

313 Section 11. Section **75-5-419** is amended to read:

314 **75-5-419. Accounts.**

315 (1) Every conservator must account to the court for [~~his~~] the administration of the  
316 [~~trust~~] estate upon [~~his~~] resignation or removal and at any other times [~~as~~] the court may direct.

317 (2) On termination of the protected person's minority or disability, a conservator may  
318 account to the court, [~~or he may account to~~] the former protected person, or [~~his~~] the personal  
319 representative of the protected person.

320 (3) Subject to appeal or vacation within the time permitted, an order, made upon notice  
321 and hearing, allowing an intermediate account of a conservator, adjudicates as to [~~his~~] any  
322 liabilities concerning the matters considered in connection with [~~this~~] the protected person's  
323 account, and an order, made upon notice and hearing, allowing a final account adjudicates as to  
324 all previously unsettled liabilities of the conservator to the protected person or [~~his~~] the  
325 protected person's successors relating to the conservatorship.

326 (4) In connection with any account, the court may require a conservator to submit to a  
327 physical check of the estate in [~~his~~] the conservator's control, to be made in any manner the  
328 court may specify.

329 Section 12. Section **75-5-420** is amended to read:

330 **75-5-420. Conservators -- Title by appointment.**

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

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

342 Section 13. Section **75-5-424** is amended to read:

343 **75-5-424. Powers of conservator in administration.**

344 (1) A conservator has all of the powers conferred in this chapter and any additional  
345 powers conferred by law on trustees in this state. In addition, a conservator of the estate of an  
346 unmarried minor as to whom no one has parental rights, has the duties and powers of a  
347 guardian of a minor described in Section 75-5-209 until the minor attains majority or marries,  
348 but the parental rights so conferred on a conservator do not preclude appointment of a guardian  
349 as provided by Part 2 of this chapter.

350 (2) A conservator has power without court authorization or confirmation to invest and  
351 reinvest funds of the estate as would a trustee.

352 (3) A conservator, acting reasonably in efforts to accomplish the purpose for which  
353 ~~he~~ the conservator was appointed, may act without court authorization or confirmation, to:

354 (a) collect, hold, and retain assets of the estate, including land in another state, until, in  
355 his judgment, disposition of the assets should be made, and the assets may be retained even  
356 though they include an asset in which he is personally interested;

357 (b) receive additions to the estate;

358 (c) continue or participate in the operation of any business or other enterprise;

359 (d) acquire an undivided interest in an estate asset in which the conservator, in any  
360 fiduciary capacity, holds an undivided interest;

361 (e) invest and reinvest estate assets in accordance with Subsection (2) [~~above~~];

362 (f) deposit estate funds in a bank including a bank operated by the conservator;

363 (g) acquire or dispose of an estate asset, including land in another state, for cash or on  
364 credit, at public or private sale; and to manage, develop, improve, exchange, partition, change  
365 the character of, or abandon an estate asset;

366 (h) make ordinary or extraordinary repairs or alterations in buildings or other

367 structures, demolish any improvements, and raze existing or erect new party walls or buildings;

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

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

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

375 (l) grant an option involving disposition of an estate asset or take an option for the  
376 acquisition of any asset;

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

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

380 (o) sell or exercise stock subscription or conversion rights; consent, directly or through  
381 a committee or other agent, to the reorganization, consolidation, merger, dissolution, or  
382 liquidation of a corporation or other business enterprise;

383 (p) hold a security in the name of a nominee or in other form without disclosure of the  
384 conservatorship so that title to the security may pass by delivery, but the conservator is liable  
385 for any act of the nominee in connection with the stock so held;

386 (q) insure the assets of the estate against damage or loss and the conservator against  
387 liability with respect to third persons;

388 (r) borrow money to be repaid from estate assets or otherwise; and advance money for  
389 the protection of the estate or the protected person, and for all expenses, losses, and liabilities  
390 sustained in the administration of the estate or because of the holding or ownership of any  
391 estate assets, and the conservator has a lien on the estate as against the protected person for  
392 advances so made;

393 (s) pay or contest any claim; settle a claim by or against the estate or the protected  
394 person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim  
395 belonging to the estate to the extent that the claim is uncollectible;

396 (t) pay taxes, assessments, compensation of the conservator, and other expenses  
397 incurred in the collection, care, administration, and protection of the estate;

398 (u) allocate items of income or expense to either estate income or principal, as  
399 provided by law, including creation of reserves out of income for depreciation, obsolescence,  
400 or amortization, or for depletion in mineral or timber properties;

401 (v) pay any sum distributable to a protected person or ~~[his]~~ dependent without liability  
402 to the conservator, by paying the sum to the distributee or by paying the sum for the use of the  
403 distributee either to ~~[his]~~ the distributee's guardian, or if none, to a relative or other person with  
404 custody of ~~[his]~~ the person;

405 (w) employ persons, including attorneys, auditors, investment advisors, or agents, even  
406 though they are associated with the conservator, to advise or assist ~~[him]~~ in the performance of  
407 ~~[his]~~ administrative duties; act upon their recommendation without independent investigation;  
408 and instead of acting personally, employ one or more agents to perform any act of  
409 administration, whether or not discretionary;

410 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the  
411 protection of estate assets and of the conservator in the performance of ~~[his]~~ the conservator's  
412 duties; ~~[and]~~

413 (y) act as a qualified beneficiary of any trust in which the protected person is a  
414 qualified beneficiary; and

415 ~~[(y)]~~ (z) execute and deliver all instruments which will accomplish or facilitate the  
416 exercise of the powers vested in the conservator.

417 Section 14. Section **75-5-425** is amended to read:

418 **75-5-425. Distributive duties and powers of conservator.**

419 (1) A conservator may expend or distribute income or principal of the estate without  
420 court authorization or confirmation for the support, education, care, or benefit of the protected  
421 person and his dependents in accordance with the following principles:

422 (a) The conservator is to consider recommendations relating to the appropriate standard  
423 of support, education, and benefit for the protected person made by a parent or guardian, if any.  
424 He may not be surcharged for sums paid to persons or organizations actually furnishing  
425 support, education, or care to the protected person pursuant to the recommendations of a parent  
426 or guardian of the protected person unless he knows that the parent or guardian is deriving  
427 personal financial benefit therefrom, including relief from any personal duty of support, or  
428 unless the recommendations are clearly not in the best interests of the protected person.

429 (b) The conservator is to expend or distribute sums reasonably necessary for the  
430 support, education, care or benefit of the protected person with due regard to:

431 (i) the size of the estate, the probable duration of the conservatorship and the likelihood  
432 that the protected person, at some future time, may be fully able to manage the protected  
433 person's affairs and the estate which has been conserved for the protected person;

434 (ii) the accustomed standard of living of the protected person and members of the  
435 protected person's household; and

436 (iii) other funds or sources used for the support of the protected person.

437 (c) The conservator may expend funds of the estate for the support of persons legally  
438 dependent on the protected person and others who are members of the protected person's  
439 household who are unable to support themselves and who are in need of support.

440 (d) Funds expended under this Subsection (1) may be paid by the conservator to any  
441 person, including the protected person to reimburse for expenditures which the conservator  
442 might have made, or in advance for services to be rendered to the protected person when it is  
443 reasonable to expect that they will be performed and where advance payments are customary or  
444 reasonably necessary under the circumstances.

445 (2) If the estate is ample to provide for the purposes implicit in the distributions  
446 authorized by Subsection (1), a conservator for a protected person other than a minor has power  
447 to make gifts to charity and other objects as the protected person might have been expected to  
448 make, in amounts which do not exceed in total for any year 20% of the income from the estate.

449 (3) When a person who is a minor and who has not been adjudged to have a disability  
450 under Subsection 75-5-401(2)(a) attains the age of majority, the person's conservator, after  
451 meeting all prior claims and expenses of administration, shall pay over and distribute all funds  
452 and properties to the former protected person as soon as possible.

453 (4) When the conservator is satisfied that a protected person's disability (other than  
454 minority) has ceased, the conservator, after meeting all prior claims and expenses of  
455 administration, shall pay over and distribute all funds and properties to the former protected  
456 person as soon as possible.

457 (5) If a protected person dies, the conservator:

458 (a) shall:

459 (i) deliver to the court for safekeeping any will of the deceased protected person that

460 may have come into the conservator's possession[;];

461 (ii) inform the executor or a beneficiary named in the will that the conservator has done  
462 so[;]; and

463 (iii) retain the estate for delivery to a duly appointed personal representative of the  
464 decedent or other persons entitled to it[. ~~If after 40 days from the death of the protected person  
465 no other person has been appointed personal representative and no application or petition for  
466 appointment is before the court, the conservator~~];

467 (b) may continue to pay the obligations lawfully due against the estate and to protect  
468 the estate from waste, injury, or damages that might reasonably be foreseeable; and

469 (c) may apply to exercise the powers and duties of a personal representative so that the  
470 conservator may proceed to administer and distribute the decedent's estate without additional or  
471 further appointment, provided that at least 40 days from the death of the protected person no  
472 other person has been appointed personal representative and no application or petition for  
473 appointment is before the court.

474 (6) Upon application for an order granting the powers of a personal representative to a  
475 conservator[;] as provided in Subsection (5)(c) and after notice as provided in Section  
476 75-3-310, the court may order the conferral of the power upon determining that there is no  
477 objection and endorse the letters of the conservator to note that the formerly protected person is  
478 deceased and that the conservator has acquired all of the powers and duties of a personal  
479 representative. The making and entry of an order under this section shall have the effect of an  
480 order of appointment of a personal representative as provided in Section 75-3-308 and Chapter  
481 3, Parts 6 through 10, except that the estate in the name of the conservator, after administration,  
482 may be distributed to the decedent's successors without prior retransfer to the conservator as  
483 personal representative.

484 Section 15. 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 as the principal's attorney-in-fact or agent  
488 by a power of attorney in writing and the writing contains the words "This power of attorney  
489 shall not be affected by disability of the principal," or "This power of attorney shall become  
490 effective upon the disability of the principal," or similar words showing the intent of the



491 principal that the authority conferred shall be exercisable notwithstanding the principal's  
492 disability, the authority of the attorney-in-fact or agent is exercisable by the attorney-in-fact or  
493 agent as provided in the power on behalf of the 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 has acquired a disability and the power of attorney by its terms remains in  
500 effect or becomes effective as a result of a principal's incapacity or disability, the  
501 attorney-in-fact or agent shall:

502 (a) notify all interested persons of the attorney-in-fact's or agent's status as the power of  
503 attorney holder within 30 days of the principal's incapacitation, and provide them with the  
504 attorney-in-fact's or agent's name and address;

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

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

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

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

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

519 (5) A conservator may be appointed for a principal even though the principal has a  
520 valid power of attorney in place. If a conservator thereafter is appointed for the principal, the  
521 attorney-in-fact or agent, during the continuance of the appointment, shall account to the

522 conservator rather than the principal. The conservator, pursuant to court order [as provided in  
523 ~~Subsection 75-5-408(1)(d)~~], has the same power the principal would have had, if the principal  
524 did not have a disability or was not incompetent, to revoke, suspend, or terminate all or any  
525 part of the power of attorney or agency.

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