

GUARDIANSHIP AMENDMENTS

2012 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, 2013.

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 2011, Chapter 366
- 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 2011, Chapter 366

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 2011, Chapter 366
- 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 last amended by Laws of Utah 2011, Chapter 366
- 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 2011, Chapter 366
- 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 Transfer on Death (TOD) Security Registration Act, means that an individual has neither
458 predeceased an event, including the death of another individual, nor is considered to have
459 predeceased an event under Section 75-2-104 or 75-2-702. The term includes its derivatives,
460 such as "survives," "survived," "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 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.

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

530 **75-5b-102. Definitions.**

531 In this chapter:

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

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

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

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

543 [~~(5)~~] (3) "Guardianship order" means an order appointing a guardian.

544 [~~(6)~~] (4) "Guardianship proceeding" means a proceeding in which an order for the
545 appointment of a guardian is sought or has been issued.

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

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

551 [~~(9)~~] (6) "Party" means the respondent, petitioner, guardian, conservator, or any other
552 person allowed by the court to participate in a guardianship or protective proceeding.

553 [~~(10)~~] (7) "Person," except in the terms "incapacitated person" or "protected person,"
554 means an individual, corporation, business trust, estate, trust, partnership, limited liability

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

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

558 ~~[(12) (8) "Protective order" means an order appointing a conservator or another court~~
559 ~~order related to management of an adult's property.~~

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

562 ~~[(14) (9) "Record" means information that is inscribed on a tangible medium or that is~~
563 ~~stored in an electronic or other medium and is retrievable in perceivable form.~~

564 ~~[(15) (10) "Respondent" means an adult for whom a protective order or the~~
565 ~~appointment of a guardian or conservator is sought.~~

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

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

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

573 **75-5b-302. Accepting guardianship or conservatorship transferred from another**
574 **state.**

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

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

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

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

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

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

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

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

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

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

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

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

609 **Part 1. General Provisions**

610 **75-5c-101. Title.**

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

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

613 **75-5c-102. Definitions.**

614 As used in this chapter:

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

617 (a) following the protected person's wishes would cause the person harm;
618 (b) the guardian or conservator cannot determine the protected person's wishes; or
619 (c) the protected person has never had capacity, then the guardian or conservator, after
620 considering the protected person's expressed wishes, makes the decision that is the least
621 intrusive, least restrictive, and most normalizing course of action to accommodate the protected
622 person's particular functional limitations.

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

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

626 (a) is attributable to a mental or physical impairment or combination of mental and
627 physical impairments;

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

629 (c) is likely to continue indefinitely;

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

632 (i) self-care;

633 (ii) receptive and expressive language;

634 (iii) learning;

635 (iv) mobility;

636 (v) self-direction;

637 (vi) capacity for independent living; and

638 (vii) economic self-sufficiency; and

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

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

646 (5) "Legal representative" includes a guardian or conservator acting for a protected
647 person in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the

648 protected person is a beneficiary, an attorney, a guardian ad litem, a representative payee, and
649 an agent designated under a power of attorney in which the protected person is the principal.

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

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

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

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

658 **75-5c-103. Incapacity -- Findings -- Factors.**

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

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

664 (a) their property being dissipated;

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

667 (c) being financially exploited;

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

669 (e) having their rights violated;

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

672 (3) whether the respondent is able to evaluate the consequences of alternative
673 decisions;

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

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

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

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

681 (8) other relevant factors.

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

683 **75-5c-104. Transfer of property to or on behalf of a minor.**

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

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

689 (b) the minor's guardian;

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

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

692 or

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

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

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

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

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

707 **75-5c-105. Delegation of authority by parent or guardian.**

708 A parent or guardian of a minor or protected person may delegate to another person any
709 authority regarding care, custody, or property of the minor or protected person except the

710 authority to consent to marriage or adoption. The delegation shall be by a properly executed
711 power of attorney and may not exceed six months.

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

713 **75-5c-106. Venue -- Transfer of venue.**

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

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

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

719 (c) in the county of the court that committed the respondent under Title 62A, Chapter
720 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability,
721 or under Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities;
722 or

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

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

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

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

734 **75-5c-107. Appointment and status of guardian or conservator.**

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

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

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

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

742 **75-5c-108. Acceptance of appointment.**

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

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

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

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

750 (3) If a person nominated by will or signed writing timely complies with Section
751 75-5c-201, 75-5c-301, or 75-5c-401, the nominee's acts before acceptance of the appointment
752 that are beneficial to the respondent have the same effect as those that occur after acceptance.

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

754 **75-5c-109. Letters of office.**

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

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

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

762 **75-5c-110. Nominating a guardian or conservator.**

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

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

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

771 (4) The person may revoke or amend the nomination before it is confirmed by the

772 court.

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

774 **75-5c-111. Petition to confirm nomination -- Notice -- Authority to act.**

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

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

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

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

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

788 **75-5c-112. Who may be guardian or conservator -- Priority.**

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

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

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

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

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

801 (d) the respondent's spouse;

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

- 803 (f) the respondent's parent or a person nominated by a deceased parent;
804 (g) an adult with whom the respondent has resided for more than six months;
805 (h) an adult who has shown special care and concern for the respondent; and
806 (i) a professional guardian or conservator.

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

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

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

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

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

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

821 **75-5c-113. Successor, additional or contingent guardian or conservator.**

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

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

829 **75-5c-114. Termination, resignation, or removal.**

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

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

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

836 (a) the protected person has died;

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

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

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

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

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

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

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

856 **75-5c-115. Special appointment.**

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

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

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

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

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

863 (2) The court may appoint a special guardian or conservator ex parte if it finds that the
864 respondent or the respondent's estate will be substantially harmed before a hearing can be held.

865 Unless the respondent is represented by an attorney, the court shall appoint an attorney at the
866 earliest possible time to represent the respondent.

867 (3) The petition and notice of the hearing shall be served using the method most likely
868 to give prompt actual notice. If a special guardian or conservator is appointed without notice
869 and hearing, notice of the appointment shall be served within two days after the appointment
870 and a hearing on the appropriateness of the appointment shall be held within five days after the
871 appointment.

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

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

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

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

882 **75-5c-116. Substitute appointment.**

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

884 (a) the guardian or conservator is not effectively exercising authority or performing
885 duties;

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

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

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

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

896 appointment.

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

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

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

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

908 **75-5c-117. Proceedings after appointment.**

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

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

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

913 (c) direct distribution;

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

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

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

919 (g) terminate the guardianship or conservatorship;

920 (h) remove a guardian or conservator;

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

922 (j) appoint a substitute guardian or conservator;

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

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

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

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

927 substantially contrary to the management plan;

928 (m) approve a management plan; or

929 (n) grant other appropriate relief.

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

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

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

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

941 **75-5c-118. End of representation -- Guardian ad litem.**

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

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

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

950 **75-5c-119. Bonds.**

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

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

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

- 958 (b) one year's estimated income; minus
959 (c) the value of assets deposited under arrangements requiring a court order for
960 removal and the value of any real property that the guardian or conservator, by express
961 limitation, lacks authority to sell or convey without court authorization.
- 962 (3) Unless otherwise directed by the court, the cost of the bond may be assessed against
963 the respondent's estate. The court may dispense with the bond for good cause. Instead of
964 sureties, the court may accept collateral for the performance of the bond, including a pledge of
965 securities or a mortgage of real property.
- 966 (4) Unless otherwise provided by the terms of the bond, the sureties and the guardian
967 or conservator are jointly and severally liable.
- 968 (5) By executing the bond, the surety consents to the jurisdiction of the court in any
969 proceeding about the guardian's or conservator's fiduciary responsibilities in which the surety is
970 named as a party. Notice of the proceeding and a copy of any petition, motion, or other paper
971 shall be served on the surety under Utah Rules of Civil Procedure, Rule 5, at the address shown
972 in the court records and at any other address known to the petitioner.
- 973 (6) If a proceeding against the primary obligor is not barred, a proceeding may be
974 brought by a conservator, successor conservator, or any interested person against a surety for
975 breach of the obligation of the bond. The bond may be proceeded against until liability under
976 the bond is exhausted.
- 977 Section 26. Section **75-5c-120** is enacted to read:
- 978 **75-5c-120. Compensation for services and reimbursement of expenses.**
- 979 (1) If not otherwise paid and if payment does not deprive the protected person or
980 individuals entitled to the protected person's support of food, shelter, clothing, and other
981 necessities, the following are entitled to reasonable payment from the estate for services and
982 expenses:
- 983 (a) the respondent's or protected person's attorney, guardian ad litem, guardian, and
984 conservator;
- 985 (b) the petitioner's attorney, if the petition results in the appointment of a guardian or
986 conservator, the entry of a protective order, or the entry of any other order that benefits the
987 protected person; and
- 988 (c) any person appointed by the court.

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

990 (a) benefit the respondent or protected person;

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

992 (c) be reasonable and necessary; and

993 (d) be conducted responsibly.

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

1000 (4) If the court finds the petition is without merit, the petitioner shall pay for the
1001 services and expenses in Subsection (1).

1002 (5) If the court determines that the payments are excessive or inappropriate, the
1003 excessive or inappropriate amount shall be repaid to the estate.

1004 Section 27. Section **75-5c-121** is enacted to read:

1005 **75-5c-121. Fiduciary's personal funds.**

1006 A guardian or conservator has no legal obligation to use the guardian's or conservator's
1007 personal funds for the protected person's expenses solely by reason of the guardianship or
1008 conservatorship.

1009 Section 28. Section **75-5c-122** is enacted to read:

1010 **75-5c-122. Monitoring appointments.**

1011 The court may establish a system for monitoring guardians and conservators, including
1012 their reports. The court may appoint a visitor to review records of or any report filed by a
1013 guardian or conservator. The court may appoint a visitor to interview the protected person, the
1014 guardian, or the conservator and to make any other investigation the court directs. The court
1015 may order a guardian or conservator to submit the assets subject to the guardian's or
1016 conservator's possession, ownership, or control to an examination made in a manner the court
1017 directs.

1018 Section 29. Section **75-5c-123** is enacted to read:

1019 **75-5c-123. Liability on reported matters.**

1020 An order, after notice, approving an intermediate report of a guardian or conservator
1021 adjudicates liabilities concerning matters adequately disclosed in the report. An order, after
1022 notice, approving a final report adjudicates all previously unsettled liabilities relating to the
1023 guardianship or conservatorship adequately disclosed in the report.

1024 Section 30. Section **75-5c-124** is enacted to read:

1025 **75-5c-124. Previous orders and letters remain valid.**

1026 Orders entered and letters issued before the effective date of this chapter remain valid
1027 after the effective date of this chapter.

1028 Section 31. Section **75-5c-201** is enacted to read:

1029 **Part 2. Appointment of a Guardian for a Minor**

1030 **75-5c-201. Petition to appoint a guardian for a minor -- Findings -- Procedures.**

1031 (1) A minor or a person interested in the minor's welfare may file a verified petition to
1032 appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall
1033 file a copy of the will or signed writing with the petition.

1034 (2) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing
1035 on the petition.

1036 (3) The court shall appoint a guardian for a specified time not to exceed the
1037 respondent's 18th birthday if it finds that:

1038 (a) the appointment is in the respondent's best interests;

1039 (b) a qualified person seeks appointment;

1040 (c) the court has jurisdiction and venue is proper;

1041 (d) the required notices have been given; and

1042 (e) (i) the parents consent to the appointment;

1043 (ii) all parental rights have been terminated; or

1044 (iii) the parents are unwilling or unable to exercise their parental rights.

1045 (4) In other cases, the court may dismiss the petition or make any other disposition that
1046 will serve the respondent's best interests.

1047 (5) If the minor is 11 years of age or older and not a resident of Utah:

1048 (a) the school district in which the guardian resides is a necessary party;

1049 (b) the petitioner shall serve on the superintendent of the school district in which the
1050 minor would attend school in Utah;

1051 (i) a certificate from the police authority in the jurisdiction where the minor has lived
1052 during the previous two years stating whether there have been any criminal or delinquency
1053 charges filed against the minor and whether the minor is the subject of an investigation in that
1054 jurisdiction; and

1055 (ii) a release allowing the superintendent access to all criminal and juvenile records of
1056 the minor in those jurisdictions where the minor has resided during the previous two years; and

1057 (c) the court may deny the appointment of a guardian if it finds that the school district
1058 has proven by a preponderance of the evidence that:

1059 (i) the primary purpose for the guardianship is to avoid the payment of tuition that a
1060 school district may assess against a nonresident; or

1061 (ii) the minor's behavior indicates an ongoing unwillingness to abide by applicable law
1062 or school rules.

1063 (6) If a school district files an objection for reasons described in Subsection (5)(c)(i),
1064 and the court does not find in favor of the school district, the court may award the petitioner
1065 attorney fees and costs if the court finds that the school district's arguments lack a reasonable
1066 basis in law or fact.

1067 (7) If the court determines that the respondent's best interests are or may be
1068 inadequately represented, it may appoint an attorney to represent the respondent, giving
1069 consideration to the respondent's choice if the respondent is 14 years of age or older.

1070 Section 32. Section **75-5c-202** is enacted to read:

1071 **75-5c-202. Guardian's authority.**

1072 (1) Except as otherwise limited by the court, a guardian has the authority of a parent
1073 regarding the protected person's support, care, education, health, and welfare.

1074 (2) A guardian may:

1075 (a) take custody of the protected person and establish their dwelling place, but may
1076 establish or move the protected person's dwelling place outside of this state only if approved by
1077 court order;

1078 (b) consent to medical or other care, treatment, or service for the protected person;

1079 (c) consent to the protected person's marriage;

1080 (d) if a conservator has not been appointed, apply for, start proceedings for, receive,
1081 and compel delivery of property due the protected person or benefits to which the protected

1082 person may be entitled, up to \$50,000 per year; and

1083 (e) if a conservator has not been appointed, commence a proceeding, including an
1084 administrative proceeding, or take other appropriate action to compel a person to support the
1085 protected person or to pay money for the protected person's benefit.

1086 (3) The court may expressly authorize the guardian to consent to adoption of the
1087 protected person.

1088 Section 33. Section **75-5c-203** is enacted to read:

1089 **75-5c-203. Guardian's duties.**

1090 (1) Except as otherwise limited by the court, the guardian has the duties and
1091 responsibilities of a parent regarding the protected person's support, care, education, health, and
1092 welfare.

1093 (2) The guardian shall:

1094 (a) within 14 days after appointment, serve on the protected person and all other people
1095 entitled to notice of the petition, a copy of the appointment order and notice of the right to
1096 request termination or modification;

1097 (b) within 90 days after appointment, file and serve a management plan, as required by
1098 court rule or court order, describing the strategies that will be used to implement the court
1099 order;

1100 (c) file and serve a report on the protected person's condition to the satisfaction of the
1101 court upon resignation or removal, upon termination, and as required by court rule or court
1102 order;

1103 (d) file a final report and petition to terminate the guardianship within 30 days after the
1104 protected person dies or reaches majority;

1105 (e) immediately notify the court and interested persons if the protected person or
1106 guardian changes their dwelling place;

1107 (f) if reasonable under the circumstances, encourage the protected person to participate
1108 in decisions and act on their own behalf;

1109 (g) become and remain personally acquainted with the protected person and maintain
1110 sufficient contact with the protected person to know of their preferences, values, capabilities,
1111 limitations, needs, opportunities, and physical and mental health;

1112 (h) when acting on behalf of the protected person, exercise the degree of care,

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

1144 (b) present evidence relevant to the protected person's best interests.

1145 (4) A parent of a protected person retains residual parental rights and duties as defined
1146 in Section 78A-6-105.

1147 Section 34. Section **75-5c-204** is enacted to read:

1148 **75-5c-204. Guardian's personal liability.**

1149 (1) A guardian is not liable to third persons for the protected person's acts solely by
1150 reason of the guardianship.

1151 (2) If the guardian performs fiduciary responsibilities with the degree of care,
1152 diligence, and good faith that an ordinarily careful person exercises in their own affairs, the
1153 guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

1154 (3) If the guardian selects a third person to perform a service for the protected person
1155 with the degree of care, diligence, and good faith that an ordinarily careful person exercises in
1156 their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of
1157 the third person.

1158 Section 35. Section **75-5c-301** is enacted to read:

1159 **Part 3. Appointment of a Guardian for an Adult**

1160 **75-5c-301. Petition to appoint a guardian for an adult.**

1161 The person to be protected or any person interested in the respondent's welfare may file
1162 a verified petition to appoint a guardian. If the petitioner is nominated by will or signed
1163 writing, the petitioner shall file a copy of the will or signed writing with the petition.

1164 Section 36. Section **75-5c-302** is enacted to read:

1165 **75-5c-302. Procedures before hearing.**

1166 (1) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing
1167 on the petition.

1168 (2) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to
1169 represent the respondent.

1170 Section 37. Section **75-5c-303** is enacted to read:

1171 **75-5c-303. Appointment of guardian -- Standard of evidence -- Petition for**
1172 **protective order.**

1173 (1) The court may appoint a guardian only if the court finds, based on clear and
1174 convincing evidence, that:

1175 (a) the person to be protected has knowingly and voluntarily petitioned the court to
1176 appoint a guardian; or

1177 (b) the respondent is incapacitated and the respondent's particular functional limitations
1178 cannot be met by less restrictive means.

1179 (2) With appropriate findings, the court may treat the petition as one for a protective
1180 order and enter an appropriate protective order.

1181 (3) If the petitioner does not prove the elements of the petition, the court shall dismiss
1182 the petition.

1183 (4) Appointment of a guardian based on a petition by the person to be protected is not a
1184 determination of that person's incapacity.

1185 Section 38. Section **75-5c-304** is enacted to read:

1186 **75-5c-304. Least restrictive order -- Factors.**

1187 The court shall enter the least restrictive order consistent with its findings to
1188 accommodate the respondent's particular functional limitations and demonstrated needs,
1189 including appointive and other orders that will encourage the respondent to develop maximum
1190 self-reliance and independence. The court should consider and weigh, as appropriate:

1191 (1) whether the protected person can manage the activities of daily living through
1192 training, education, support services, mental and physical health care, medication, therapy,
1193 assistants, and assistive devices;

1194 (2) whether the protected person has planned for health care and financial decision
1195 making, such as an advance health care directive, a power of attorney, a trust or jointly held
1196 account, and whether the less restrictive alternatives to a guardianship are meeting the
1197 respondent's needs;

1198 (3) whether the incapacity is likely to be temporary;

1199 (4) the protected person's long-standing values, preferences, and patterns of behavior;
1200 and

1201 (5) other relevant factors.

1202 Section 39. Section **75-5c-305** is enacted to read:

1203 **75-5c-305. Guardian's authority limited to court order.**

1204 (1) The protected person retains all rights, power, authority, and discretion not
1205 expressly granted to the guardian by statute or court order. The protected person retains the

1206 right to vote in governmental elections unless the court finds by clear and convincing evidence
1207 that the protected person is unable to communicate, with or without accommodation, the
1208 specific desire to participate in the voting process. The court may not grant to the guardian the
1209 authority to vote on the protected person's behalf.

1210 (2) The guardian has the duties specified by statute or court order. The guardian has
1211 only the authority specified by court order. The order shall limit the guardian's authority to
1212 what is necessary to accommodate the protected person's particular functional limitations. If a
1213 parent or sibling of an adult with developmental disabilities is appointed guardian, the guardian
1214 has the authority of a parent of a minor regarding the protected person's support, care,
1215 education, health, and welfare, except as otherwise limited by the court. The court order may
1216 accommodate the natural progression of the respondent's incapacity.

1217 (3) If supported by the findings, and except as provided in Section 75-5c-306, the court
1218 may grant to the guardian the authority to:

1219 (a) make health care decisions;

1220 (b) consent to admission of the protected person to a licensed health care facility for
1221 short-term placement for the purpose of assessment, rehabilitative care, or respite care;

1222 (c) admit the protected person to a licensed health care facility for long-term custodial
1223 placement;

1224 (d) make arrangements for the protected person's support, care, comfort, education, and
1225 welfare;

1226 (e) take custody of the protected person and make arrangements for a dwelling place;

1227 (f) take reasonable care of the protected person's personal effects; and

1228 (g) make other decisions and give other consents on behalf of the protected person as
1229 specified in the order and as necessary to accommodate the protected person's particular
1230 functional limitations.

1231 (4) If the court does not appoint a conservator, and if supported by the findings, the
1232 order may grant to the guardian the authority to:

1233 (a) take control of and manage a savings account or checking account;

1234 (b) apply for, start proceedings for, receive, and compel delivery of property due the
1235 protected person or benefits to which the protected person may be entitled, up to \$50,000 per
1236 year;

1237 (c) commence a proceeding, including an administrative proceeding, or take other
1238 appropriate action to compel a person to support the protected person or to pay money for the
1239 protected person's benefit;

1240 (d) prosecute, defend, and settle legal actions, including administrative proceedings, on
1241 behalf of the protected person;

1242 (e) obtain legal advice and representation on behalf of the protected person;

1243 (f) pay the protected person's debts;

1244 (g) give gifts, donations, or contributions on behalf of the protected person within the
1245 limits of Section 75-5c-409;

1246 (h) file tax returns on behalf of the protected person and pay taxes owed by the
1247 protected person; and

1248 (i) provide for the support, care, comfort, education, and welfare of individuals entitled
1249 to the protected person's support.

1250 Section 40. Section **75-5c-306** is enacted to read:

1251 **75-5c-306. Restrictions on the guardian's authority.**

1252 (1) The guardian may not:

1253 (a) consent to commitment of the protected person to a mental retardation facility, but
1254 shall petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to an
1255 Intermediate Care Facility for People with an Intellectual Disability;

1256 (b) consent to commitment of the protected person to a local mental health authority,
1257 but shall petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital
1258 and Other Mental Health Facilities;

1259 (c) consent to sterilization of the protected person, but shall petition the court for an
1260 order under Title 62A, Chapter 6, Sterilization of a Person with a Disability;

1261 (d) consent to termination of the parental rights in the protected person or of the
1262 protected person's parental rights in another, but shall petition the juvenile court for an order to
1263 terminate parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights
1264 Act; or

1265 (e) except as provided in Subsection 75-5c-305(5), exercise the duties or authority of a
1266 conservator unless appointed as a conservator.

1267 (2) The court order shall address whether the guardian may:

1268 (a) consent to the admission of the protected person to a psychiatric hospital or other
1269 mental health care facility;

1270 (b) consent to participation in medical research, electroconvulsive therapy or other
1271 shock treatment, experimental treatment, forced medication with psychotropic drugs, abortion,
1272 psychosurgery, a procedure that restricts the protected person's rights, or to be a living organ
1273 donor;

1274 (c) consent to termination of life-sustaining treatment if the protected person has never
1275 had health care decision making capacity;

1276 (d) consent to name change, adoption, marriage, annulment, or divorce of the protected
1277 person;

1278 (e) establish or move the protected person's dwelling place outside of this state; or

1279 (f) restrict the protected person's physical liberty, communications, or social activities
1280 more than reasonably necessary to protect the protected person or others from harm.

1281 (3) Any transaction affected by a substantial conflict between the guardian's fiduciary
1282 and personal interests is voidable unless the transaction is expressly authorized by the court
1283 after notice to interested persons. A transaction affected by a substantial conflict between
1284 fiduciary and personal interests includes any sale, encumbrance, or other transaction involving
1285 the estate entered into by the guardian, the spouse, descendant, agent, attorney of a guardian, or
1286 a corporation or other enterprise in which the guardian has a substantial beneficial interest.

1287 Section 41. Section **75-5c-307** is enacted to read:

1288 **75-5c-307. Guardian's duties.**

1289 The guardian shall:

1290 (1) within 14 days after appointment, serve on the protected person, and all other
1291 people entitled to notice of the petition, a copy of the appointment order and notice of the right
1292 to request termination or modification;

1293 (2) within 90 days after appointment, file and serve a management plan, as required by
1294 court rule or court order, describing the strategies that will be used to implement the court
1295 order;

1296 (3) file and serve a report on the protected person's condition to the satisfaction of the
1297 court upon resignation or removal, upon termination, and as required by court rule or court
1298 order;

- 1299 (4) file a final report and petition to terminate the guardianship within 30 days after the
1300 protected person dies;
- 1301 (5) file a petition to terminate or modify the guardianship within 30 days after the
1302 protected person becomes capable of exercising rights previously removed;
- 1303 (6) immediately notify the court and interested persons if the protected person or
1304 guardian changes their dwelling place;
- 1305 (7) exercise duties and authority authorized by statute and court order as necessary to
1306 accommodate the protected person's particular functional limitations;
- 1307 (8) if reasonable under the circumstances, encourage the protected person to:
1308 (a) participate in decisions;
1309 (b) act on their own behalf; and
1310 (c) overcome the functional limitations that resulted in the protected person's
1311 incapacity;
- 1312 (9) make decisions using the best interest decision making standard;
- 1313 (10) become and remain personally acquainted with the protected person and maintain
1314 sufficient contact with the protected person to know of their preferences, values, capabilities,
1315 limitations, needs, opportunities, and physical and mental health;
- 1316 (11) when acting on behalf of the protected person, exercise the degree of care,
1317 diligence, and good faith that an ordinarily careful person exercises in their own affairs;
- 1318 (12) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;
- 1319 (13) if necessary to protect the protected person's property, petition for the appointment
1320 of a conservator or for a protective order under Part 4, Appointment of a Conservator and Other
1321 Protective Orders;
- 1322 (14) expend the protected person's money for their current needs for support, care,
1323 education, health, and welfare;
- 1324 (15) conserve for the protected person's future needs any of the estate that exceeds the
1325 person's current needs or, if a conservator has been appointed, pay the excess to the conservator
1326 at least annually;
- 1327 (16) keep the protected person's estate separate from the guardian's money and
1328 property;
- 1329 (17) keep contemporaneous records and make them available for examination as

1330 directed by the court;

1331 (18) at termination, deliver any of the estate subject to the guardian's possession,
1332 ownership, or control and any records as directed by law or the court;

1333 (19) if a conservator has been appointed, account at least annually to the conservator
1334 for the protected person's income and expenses and for any of the estate subject to the
1335 guardian's possession, ownership, or control; and

1336 (20) if a conservator has not been appointed:

1337 (a) file and serve within 90 days after appointment a management plan as required by
1338 court rule or court order describing the strategies that will be used to implement the court
1339 order;

1340 (b) file and serve within 90 days after appointment an inventory of the estate subject to
1341 the guardian's possession, ownership, or control under an oath or affirmation that the inventory
1342 is believed to be complete and accurate as far as information permits; and

1343 (c) file and serve a report about the administration of the protected person's estate to
1344 the satisfaction of the court upon resignation or removal, upon termination, and as required by
1345 court rule or court order.

1346 Section 42. Section **75-5c-308** is enacted to read:

1347 **75-5c-308. Guardian's personal liability.**

1348 (1) A guardian is not liable to third persons for the protected person's acts solely by
1349 reason of the guardianship.

1350 (2) If the guardian performs fiduciary responsibilities with the degree of care,
1351 diligence, and good faith that an ordinarily careful person exercises in their own affairs, the
1352 guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

1353 (3) If the guardian selects a third person to perform a service for the protected person
1354 with the degree of care, diligence, and good faith that an ordinarily careful person exercises in
1355 their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of
1356 the third person.

1357 Section 43. Section **75-5c-309**, which is renumbered from Section 75-5-314 is
1358 renumbered and amended to read:

1359 **[75-5-314]. 75-5c-309. Mentally incompetent veteran -- Evidence of necessity**
1360 **for appointment of guardian.**

1361 ~~[Where a petition is filed for the appointment of a guardian for a mentally incompetent~~
 1362 ~~ward, a] A certificate of the administrator or [his] a duly authorized representative[;] that [such~~
 1363 ~~person] the respondent has been rated incompetent by the veterans administration on~~
 1364 ~~examination [in accordance with the laws and regulations governing such] under veterans~~
 1365 ~~administration laws and regulations and that the appointment of a guardian is a condition~~
 1366 ~~precedent to the payment of any money due [such ward] the respondent by the veterans~~
 1367 ~~administration[, shall be prima facie] is evidence of the necessity for [such] an appointment.~~

1368 Section 44. Section **75-5c-310**, which is renumbered from Section 75-5-315 is
 1369 renumbered and amended to read:

1370 ~~[75-5-315].~~ **75-5c-310. Copies of public records furnished to veterans**
 1371 **administration.**

1372 ~~[When] If~~ a copy of ~~[any] a~~ public record is required by the veterans administration to
 1373 ~~[be used in determining] determine~~ the eligibility of ~~[any person] an applicant~~ to participate in
 1374 ~~[benefits made available by the] veterans administration benefits, the [official] custodian of~~
 1375 ~~[such] the~~ public record shall, without charge, provide a certified copy of the record to the
 1376 applicant ~~[for such benefits] or any person acting on behalf of the [authorized representative of~~
 1377 ~~the] veterans administration [with a certified copy of such record].~~

1378 Section 45. Section **75-5c-401** is enacted to read:

1379 **Part 4. Appointment of a Conservator and Other Protective Orders**
 1380 **75-5c-401. Petition to appoint a conservator or enter a protective order.**

1381 (1) The following may file a verified petition to appoint a conservator or to enter a
 1382 protective order:

1383 (a) the person to be protected;

1384 (b) an individual interested in the respondent's estate, affairs, or welfare; or

1385 (c) a person who would be adversely affected by lack of effective management of the
 1386 respondent's property and business affairs.

1387 (2) If the petitioner is nominated by will or signed writing, the petitioner shall file a
 1388 copy of the will or signed writing with the petition.

1389 Section 46. Section **75-5c-402** is enacted to read:

1390 **75-5c-402. Jurisdiction over business affairs of respondent.**

1391 Until termination, the court in which the petition is filed has:

1392 (1) exclusive jurisdiction to determine the need for a conservatorship or protective
1393 order;

1394 (2) exclusive jurisdiction to determine how the respondent's estate that is subject to
1395 laws of this state will be managed, expended, or distributed to or for the use of the respondent,
1396 individuals entitled to the respondent's support, or other claimants; and

1397 (3) concurrent jurisdiction to determine the validity of claims against the respondent or
1398 the respondent's estate and questions of title concerning estate assets.

1399 Section 47. Section **75-5c-403** is enacted to read:

1400 **75-5c-403. Petition to appoint a conservator or enter a protective order --**

1401 **Preliminary application of property -- Appointment of counsel.**

1402 (1) Upon receipt of a petition to appoint a conservator or enter a protective order, the
1403 court shall schedule a hearing on the petition.

1404 (2) After preliminary hearing and without notice, the court may issue orders to preserve
1405 and apply the respondent's property as may be required for the support of the respondent or of
1406 individuals entitled to the respondent's support. The court may appoint a special conservator to
1407 assist in the task.

1408 (3) Unless an adult respondent is represented by an attorney, the court shall appoint an
1409 attorney to represent the respondent.

1410 (4) If the court determines that a minor respondent's best interests are inadequately
1411 represented, it may appoint an attorney to represent the respondent, giving consideration to the
1412 respondent's choice if the respondent is 14 years of age or older.

1413 Section 48. Section **75-5c-404** is enacted to read:

1414 **75-5c-404. Petition to appoint a conservator or enter a protective order for a**
1415 **minor -- Findings.**

1416 (1) The court shall appoint a conservator or enter a protective order for a minor if it
1417 finds that:

1418 (a) the order is in the respondent's best interests;

1419 (b) a qualified person seeks appointment;

1420 (c) the court has jurisdiction and venue is proper;

1421 (d) the required notices have been given; and

1422 (e) the respondent;

1423 (i) owns money or property requiring management or protection that cannot otherwise
1424 be provided;

1425 (ii) has or may have business affairs that may be put at risk or prevented because of the
1426 respondent's age;

1427 (iii) has property that will be wasted or dissipated unless management is provided; or

1428 (iv) needs money for the support, care, education, health, and welfare of the respondent
1429 or of individuals who are entitled to the respondent's support and that protection is necessary or
1430 desirable to obtain or provide the money.

1431 (2) The court may appoint a conservator for a specified time not to exceed the
1432 respondent's 18th birthday. In other cases, the court may dismiss the proceeding or make any
1433 other disposition that will serve the respondent's best interests.

1434 Section 49. Section **75-5c-405** is enacted to read:

1435 **75-5c-405. Petition to appoint a conservator or enter a protective order for an**
1436 **adult -- Findings.**

1437 (1) The court shall appoint a conservator or enter a protective order for an adult if it
1438 finds:

1439 (a) based on clear and convincing evidence, that the person to be protected has
1440 knowingly and voluntarily petitioned the court to appoint a conservator or enter a protective
1441 order; or

1442 (b) (i) based on clear and convincing evidence, that the respondent is unable to manage
1443 property and business affairs because the respondent is incapacitated, missing, detained, or
1444 unable to return to the United States; and

1445 (ii) by a preponderance of evidence, that the respondent:

1446 (A) has property that will be wasted or dissipated unless management is provided; or

1447 (B) needs money for the support, care, education, health, and welfare of the respondent
1448 or of individuals who are entitled to the respondent's support and that protection is necessary or
1449 desirable to obtain or provide the money.

1450 (2) Appointment of a conservator or entry of a protective order based on a petition by
1451 the person to be protected or because the respondent is missing, detained, or unable to return to
1452 the United States is not a determination of that person's incapacity.

1453 (3) Appointment of a conservator or entry of a protective order may not be denied

1454 solely because the respondent has a valid power of attorney.

1455 Section 50. Section **75-5c-406** is enacted to read:

1456 **75-5c-406. Least restrictive order -- Factors.**

1457 The court shall enter the least restrictive order consistent with its findings to
1458 accommodate the respondent's particular functional limitations and demonstrated needs,
1459 including appointive and other orders that will encourage the respondent to develop maximum
1460 self-reliance and independence. The court should consider and weigh, as appropriate:

1461 (1) whether the protected person can manage the activities of daily living through
1462 training, education, support services, mental and physical health care, medication, therapy,
1463 assistants, assistive devices, or other means that the person will accept;

1464 (2) whether the protected person has planned for financial decision making, such as a
1465 power of attorney, a trust or jointly held account, and whether the less restrictive alternatives to
1466 a conservatorship are meeting the respondent's needs;

1467 (3) whether the incapacity is likely to be temporary;

1468 (4) the protected person's long-standing values, preferences, and patterns of behavior;

1469 and

1470 (5) other relevant factors.

1471 Section 51. Section **75-5c-407** is enacted to read:

1472 **75-5c-407. Authority of court.**

1473 (1) Upon determining that a basis exists for a conservatorship or protective order, the
1474 court has the following authority, which may be exercised directly or through a conservator.

1475 (a) The court has all the authority over the estate and business affairs of a minor
1476 protected person that may be necessary for the best interest of the protected person and
1477 members of the protected person's immediate family.

1478 (b) The court has all the authority over the estate and business affairs of an adult
1479 protected person for the benefit of the protected person and individuals entitled to the protected
1480 person's support that the protected person could exercise if present and not under
1481 conservatorship or protective order.

1482 (2) The court may limit authority otherwise conferred on a conservator and may
1483 remove or modify any limitation at any time.

1484 Section 52. Section **75-5c-408** is enacted to read:

1485 **75-5c-408. Protective arrangements and single transactions.**

1486 (1) Upon determining that a basis exists for a protective order, the court, without
1487 appointing a conservator, may:

1488 (a) authorize, direct, or ratify any transaction necessary or desirable to achieve any
1489 arrangement for security, service, or care meeting the foreseeable needs of the protected person,
1490 including:

1491 (i) payment, delivery, deposit, or retention of funds or property;

1492 (ii) sale, mortgage, lease, or other transfer of property;

1493 (iii) purchase of an annuity;

1494 (iv) making a contract for life care, deposit contract, or contract for training and
1495 education; or

1496 (v) addition to or establishment of a suitable trust; and

1497 (b) authorize, direct, or ratify any other contract, trust, will, or transaction relating to
1498 the protected person's property and business affairs, including settlement of a claim, upon
1499 determining that it is in the protected person's best interest.

1500 (2) In deciding whether to approve a protective arrangement or other transaction under
1501 this section, the court shall consider the factors described in Subsection 75-5c-409(3).

1502 (3) The court may appoint a master to assist in any transaction or protective
1503 arrangement authorized under this section. The master has the authority conferred by the order
1504 and shall serve until discharged after reporting to the court.

1505 Section 53. Section **75-5c-409** is enacted to read:

1506 **75-5c-409. Action requiring court approval.**

1507 (1) After notice to interested persons and upon express authorization of the court, a
1508 conservator may:

1509 (a) if an estate is ample to provide for the distributions authorized by Section
1510 75-5c-417, for a protected person other than a minor, give gifts, donations, and contributions
1511 that the protected person might have been expected to give;

1512 (b) convey, release, or disclaim contingent and expectant interests in property,
1513 including marital property rights and any right of survivorship incident to joint tenancy or
1514 tenancy by the entireties;

1515 (c) exercise or release a power of appointment;

1516 (d) create a revocable or irrevocable trust of estate property, whether or not the trust
1517 extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the
1518 protected person;

1519 (e) exercise rights to elect options and change beneficiaries under insurance policies
1520 and annuities or surrender the policies and annuities for their cash value;

1521 (f) exercise any right to an elective share in the estate of the protected person's
1522 deceased spouse and to renounce or disclaim any interest by testate or intestate succession or
1523 by transfer inter vivos; and

1524 (g) make, amend, or revoke the protected person's will.

1525 (2) A conservator, in making, amending, or revoking the protected person's will, shall
1526 comply with Chapter 2, Part 5, Wills.

1527 (3) In exercising or in approving a conservator's exercise of the authority listed in
1528 Subsection (1), the court shall use the best interest decision-making standard. The court shall
1529 also consider:

1530 (a) the financial needs of the protected person, the needs of individuals entitled to the
1531 protected person's support, and the interest of creditors;

1532 (b) possible reduction of tax liabilities;

1533 (c) eligibility for governmental assistance;

1534 (d) the protected person's previous pattern of giving or level of support;

1535 (e) the existing estate plan;

1536 (f) the protected person's life expectancy and the probability that the conservatorship
1537 will terminate before the protected person's death; and

1538 (g) any other relevant factors.

1539 (4) A conservator may revoke or amend a durable power of attorney of which the
1540 protected person is the principal. If a durable power of attorney is in effect, a decision of the
1541 conservator takes precedence over that of the agent unless the court orders otherwise.

1542 Section 54. Section **75-5c-410** is enacted to read:

1543 **75-5c-410. Conservator's duties.**

1544 The conservator shall:

1545 (1) within 14 days after appointment, serve on the protected person, and all other
1546 people entitled to notice of the petition, a copy of the appointment order and notice of the right

1547 to request termination or modification:

1548 (2) within 90 days after appointment, file and serve a management plan as required by
1549 court rule or court order describing the strategies that will be used to implement the court
1550 order;

1551 (3) within 90 days after appointment, file and serve an inventory of the estate subject to
1552 the conservator's possession, ownership, or control under an oath or affirmation that the
1553 inventory is believed to be complete and accurate as far as information permits;

1554 (4) file and serve a report about the administration of the protected person's estate to
1555 the satisfaction of the court upon resignation or removal, upon termination, and as required by
1556 court rule or court order;

1557 (5) comply with Section 75-5c-418 if the protected person dies;

1558 (6) file a petition to terminate or modify the conservatorship within 30 days after the
1559 protected person becomes capable of exercising rights previously removed;

1560 (7) if the appointment is for a minor protected person, file a final report and petition to
1561 terminate the conservatorship within 30 days after the protected person reaches majority;

1562 (8) immediately notify the court and interested persons if the protected person or
1563 conservator changes their dwelling place;

1564 (9) exercise duties and authority authorized by statute and court order as necessary to
1565 accommodate the protected person's particular functional limitations;

1566 (10) if reasonable under the circumstances, encourage the protected person to:

1567 (a) participate in decisions;

1568 (b) act on their own behalf; and

1569 (c) overcome the functional limitations that resulted in the protected person's
1570 incapacity;

1571 (11) act as a fiduciary and observe the standard of care of a trustee under Chapter 7,
1572 Part 9, Utah Uniform Prudent Investor Act;

1573 (12) keep contemporaneous records of the administration of the estate and make them
1574 available for examination as directed by the court;

1575 (13) take into account any estate plan of the protected person known to the conservator
1576 and may examine the will and any other donative, nominative, or other appointive instrument
1577 of the protected person in investing the estate, selecting assets of the estate for distribution, and

1578 invoking power of revocation or withdrawal available for the use and benefit of the protected
1579 person and exercisable by the conservator; and

1580 (14) at termination, deliver any of the estate subject to the conservator's possession,
1581 ownership, or control and any records as directed by law or the court.

1582 Section 55. Section **75-5c-411** is enacted to read:

1583 **75-5c-411. Title by appointment.**

1584 The appointment of a conservator vests title in the conservator as trustee to all property
1585 of the protected person, or to the part specified in the order, held at the time of appointment or
1586 later acquired. An order vesting title in the conservator to only part of the property of the
1587 protected person creates a conservatorship limited to assets specified in the order.

1588 Section 56. Section **75-5c-412** is enacted to read:

1589 **75-5c-412. Protected person's interest inalienable.**

1590 (1) Except as otherwise provided in Subsections (3) and (4), the interest of a protected
1591 person in property vested in a conservator is not transferable or assignable by the protected
1592 person. An attempted transfer or assignment by the protected person, although ineffective to
1593 affect property rights, may give rise to a claim against the protected person for restitution or
1594 damages, which may be presented to the conservator.

1595 (2) Property vested in a conservator by appointment and the interest of the protected
1596 person in that property are not subject to levy, garnishment, or similar process for claims
1597 against the protected person unless allowed after presentation.

1598 (3) A person without knowledge of the conservatorship who in good faith and for
1599 security or substantially equivalent value receives delivery of tangible personal property
1600 normally transferred by delivery is protected as if the protected person or transferee had valid
1601 title.

1602 (4) A third party who deals with the protected person with respect to property vested in
1603 a conservator is entitled to any protection provided in other law.

1604 Section 57. Section **75-5c-413** is enacted to read:

1605 **75-5c-413. Sale, encumbrance, or other transaction involving conflict of interest.**

1606 Any transaction affected by a substantial conflict between the conservator's fiduciary
1607 and personal interests is voidable unless the transaction is expressly authorized by the court
1608 after notice to interested persons. A transaction affected by a substantial conflict between

1609 fiduciary and personal interests includes any sale, encumbrance, or other transaction involving
1610 the estate entered into by the conservator, the spouse, descendant, agent, attorney of a
1611 conservator, or a corporation or other enterprise in which the conservator has a substantial
1612 beneficial interest.

1613 Section 58. Section **75-5c-414** is enacted to read:

1614 **75-5c-414. Protection of person dealing with conservator.**

1615 (1) A person who assists or deals with a conservator in good faith and for value in any
1616 transaction other than one requiring a court order is protected as though the conservator
1617 properly exercised the authority. That a person knowingly assists or deals with a conservator
1618 does not alone require the person to inquire into the conservator's authority or the propriety of
1619 its exercise, but restrictions on the conservator's authority endorsed on letters of office are
1620 effective as to third persons. A person who pays or delivers assets to a conservator is not
1621 responsible for their proper application.

1622 (2) Protection provided by this section extends to any procedural irregularity or
1623 jurisdictional defect that occurred in the proceedings leading to the issuance of letters and is not
1624 a substitute for protection provided to persons assisting or dealing with a conservator by
1625 comparable provisions in other law relating to commercial transactions or to simplifying
1626 transfers of securities by fiduciaries.

1627 Section 59. Section **75-5c-415** is enacted to read:

1628 **75-5c-415. Authority of conservator in administration.**

1629 (1) Except as otherwise restricted in the appointment order and endorsed on the letters
1630 of office, a conservator has all of the authority granted in this section and any additional
1631 authority granted by law to a trustee.

1632 (2) A conservator, acting reasonably and in an effort to accomplish the purpose of the
1633 appointment, and without court authorization, may:

1634 (a) collect, hold, and retain estate assets, including assets in which the conservator has
1635 a personal interest and real property in another state, until the conservator considers that
1636 disposition of an asset should be made;

1637 (b) receive additions to the estate;

1638 (c) continue or participate in the operation of a business or other enterprise;

1639 (d) acquire an undivided interest in an estate asset in which the conservator, in a

- 1640 fiduciary capacity, holds an undivided interest;
- 1641 (e) invest estate assets as though the conservator were a trustee;
- 1642 (f) deposit estate money in a financial institution, including one operated by the
- 1643 conservator;
- 1644 (g) acquire or dispose of an estate asset, including real property in another state, for
- 1645 cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition,
- 1646 change the character of, or abandon an estate asset;
- 1647 (h) make ordinary or extraordinary repairs or alterations in buildings or other
- 1648 structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- 1649 (i) subdivide, develop, or dedicate land to public use, make or obtain the vacation of
- 1650 plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving
- 1651 or receiving considerations, and dedicate easements to public use without consideration;
- 1652 (j) enter for any purpose into a lease as lessor or lessee, with or without option to
- 1653 purchase or renew, for a term within or extending beyond the term of the conservatorship;
- 1654 (k) enter into a lease or arrangement for exploration and removal of minerals or other
- 1655 natural resources or enter into a pooling or unitization agreement;
- 1656 (l) grant an option involving disposition of an estate asset and take an option for the
- 1657 acquisition of any asset;
- 1658 (m) vote a security, in person or by general or limited proxy;
- 1659 (n) pay calls, assessments, and any other sums chargeable or accruing against or on
- 1660 account of securities;
- 1661 (o) sell or exercise stock subscription or conversion rights;
- 1662 (p) consent, directly or through a committee or other agent, to the reorganization,
- 1663 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- 1664 (q) hold a security in the name of a nominee or in other form without disclosure of the
- 1665 conservatorship so that title to the security may pass by delivery;
- 1666 (r) insure estate assets against damage or loss and the conservator against liability with
- 1667 respect to a third person;
- 1668 (s) borrow money on behalf of the protected person, with or without security, to be
- 1669 repaid from the estate or otherwise and advance money for the protection of the estate or the
- 1670 protected person and for all expenses, losses, and liability sustained in the administration of the

1671 estate or because of the holding or ownership of any assets, for which the conservator has a lien
1672 on the estate as against the protected person for advances so made;

1673 (t) pay or contest any claim, settle a claim by or against the estate or the protected
1674 person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim
1675 belonging to the estate to the extent the claim is uncollectible;

1676 (u) pay taxes, assessments, compensation of the conservator and any guardian, and
1677 other expenses incurred in the collection, care, administration, and protection of the estate;

1678 (v) allocate items of income or expense to income or principal of the estate, as
1679 provided by other law, including creation of reserves out of income for depreciation,
1680 obsolescence, or amortization or for depletion of minerals or other natural resources;

1681 (w) pay any sum distributable to a protected person or to individuals entitled to the
1682 protected person's support by paying the sum to the distributee or by paying the sum for the use
1683 of the distributee:

1684 (i) to the distributee's guardian or custodian under Chapter 5a, Uniform Transfers to
1685 Minors Act; or

1686 (ii) if there is no guardian or custodian, to a relative or other person having physical
1687 custody of the distributee;

1688 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the
1689 protection of estate assets and of the conservator in the performance of fiduciary duties; and

1690 (y) execute and deliver all instruments that will accomplish or facilitate the exercise of
1691 the conservator's authority.

1692 Section 60. Section **75-5c-416** is enacted to read:

1693 **75-5c-416. Delegation.**

1694 (1) A conservator may not delegate to an agent or another conservator the entire
1695 administration of the estate, but a conservator may delegate the performance of functions that a
1696 prudent trustee of comparable skills may delegate under similar circumstances.

1697 (2) The conservator shall exercise reasonable care, skill, and caution in:

1698 (a) selecting an agent;

1699 (b) establishing the scope and terms of a delegation, consistent with the purposes and
1700 terms of the conservatorship;

1701 (c) periodically reviewing an agent's overall performance and compliance with the

1702 terms of the delegation; and

1703 (d) redressing an action or decision of an agent which would constitute a breach of
1704 trust if performed by the conservator.

1705 (3) A conservator who complies with Subsections (1) and (2) is not liable to the
1706 protected person or to the estate for the decisions or actions of the agent to whom a function
1707 was delegated.

1708 (4) In performing a delegated function, an agent shall exercise reasonable care to
1709 comply with the terms of the delegation.

1710 (5) By accepting a delegation from a conservator subject to the laws of this state, an
1711 agent submits to the jurisdiction of the Utah courts.

1712 Section 61. Section **75-5c-417** is enacted to read:

1713 **75-5c-417. Principles of distribution by conservator.**

1714 Unless otherwise specified in the appointment order and endorsed on the letters of
1715 office or contrary to the management plan, a conservator may, without further court
1716 authorization or confirmation, expend or distribute income or principal of the estate for the
1717 support, care, education, health, and welfare of the protected person and individuals entitled to
1718 the protected person's support, including the payment of child support or spousal support,
1719 under the following rules:

1720 (1) A conservator shall consider a guardian's recommendations about the appropriate
1721 standard of support, care, education, health, and welfare for the protected person or individuals
1722 entitled to the protected person's support. If the protected person is a protected person, the
1723 conservator shall consider a parent's recommendations.

1724 (2) A conservator may not be surcharged for money paid to persons furnishing support,
1725 care, education, or benefits to a protected person or individuals entitled to the protected
1726 person's support under the recommendations of the protected person's parent or guardian,
1727 unless the conservator knows that the parent or guardian derives a personal financial benefit,
1728 including relief from any personal duty of support, or the recommendations are not in the best
1729 interest of the protected person.

1730 (3) In making distributions under this section, the conservator shall consider:

1731 (a) the size of the estate, the estimated duration of the conservatorship, and the
1732 likelihood that the protected person, at some future time, may be fully self-sufficient and able

1733 to manage business affairs and the estate;

1734 (b) the accustomed standard of living of the protected person and individuals entitled to
1735 the protected person's support; and

1736 (c) other money or sources used for the support of the protected person and individuals
1737 entitled to the protected person's support.

1738 (4) Money expended under this section may be paid by the conservator to any person,
1739 including the protected person, as reimbursement for expenditures that the conservator might
1740 have made, or in advance for services to be rendered to the protected person if it is reasonable
1741 to expect the services will be performed and advance payments are customary or reasonably
1742 necessary under the circumstances.

1743 Section 62. Section **75-5c-418** is enacted to read:

1744 **75-5c-418. Death of protected person.**

1745 (1) Upon the death of a protected person, the conservator shall deliver to the court for
1746 safekeeping any will of the protected person, which may have come into the conservator's
1747 possession, inform the personal representative or beneficiary named in the will of the delivery,
1748 and preserve and protect the estate for delivery to the decedent's personal representative or to
1749 another person entitled to it.

1750 (2) Upon the death of a protected person, the conservator shall conclude the
1751 administration of the estate by distribution to the protected person's successors. The
1752 conservator shall file a final report and petition to terminate the conservatorship within 30 days
1753 after distribution.

1754 Section 63. Section **75-5c-419** is enacted to read:

1755 **75-5c-419. Presentation and allowance of claims.**

1756 (1) A conservator may pay, or secure by encumbering estate assets, claims against the
1757 estate or against the protected person arising before or during the conservatorship upon
1758 presentation and allowance under the priorities stated in Subsection (5). A claimant may
1759 present a claim by:

1760 (a) sending or delivering to the conservator a written statement of the claim, indicating
1761 its basis, the name and address of the claimant, and the amount claimed; or

1762 (b) filing a written statement of the claim, in a form acceptable to the court, with the
1763 court clerk and sending or delivering a copy of the statement to the conservator.

1764 (2) A claim is considered presented on receipt of the written statement of claim by the
1765 conservator or the filing of the claim with the court clerk, whichever occurs first.

1766 (3) A presented claim is allowed if it is not disallowed by written statement sent or
1767 delivered by the conservator to the claimant within 60 days after its presentation. Before
1768 payment, the conservator may change an allowance to a disallowance in whole or in part, but
1769 not after allowance under a court order or judgment or an order directing payment of the claim.
1770 The presentation of a claim tolls the running of any statute of limitations relating to the claim
1771 until 30 days after its disallowance.

1772 (4) A claimant whose claim has not been paid may petition the court for determination
1773 of the claim at any time before it is barred by a statute of limitations and, upon proof, procure
1774 an order for its allowance, payment, or security by encumbering estate assets. If a proceeding
1775 is pending against a protected person at the time of the conservator's appointment or is later
1776 initiated against the protected person, the moving party shall give to the conservator notice of
1777 any proceeding that could result in creating a claim against the estate.

1778 (5) If it appears that the estate is likely to be exhausted before all existing claims are
1779 paid, the conservator shall distribute the estate in money or in kind in payment of claims in the
1780 following order:

1781 (a) costs and expenses of administration;

1782 (b) claims of the federal or state government having priority under other law;

1783 (c) claims incurred by the conservator for support, care, education, health, and welfare
1784 previously provided to the protected person or individuals entitled to the protected person's
1785 support;

1786 (d) claims arising before the conservatorship; and

1787 (e) all other claims.

1788 (6) Preference may not be given in the payment of a claim over any other claim of the
1789 same class, and a claim due and payable may not be preferred over a claim not due.

1790 (7) If assets of the conservatorship are adequate to meet all existing claims, the court,
1791 acting in the best interest of the protected person, may order the conservator to grant a security
1792 interest in the estate for the payment of any or all claims at a future date.

1793 Section 64. Section **75-5c-420** is enacted to read:

1794 **75-5c-420. Personal liability of conservator.**

1795 (1) Except as otherwise agreed, a conservator is not personally liable on a contract
1796 properly entered into in a fiduciary capacity in the course of administration of the estate unless
1797 the conservator fails to reveal in the contract the representative capacity and identify the estate.

1798 (2) A conservator is not personally liable for obligations arising from possession,
1799 ownership, or control of estate property or for other acts or omissions occurring in the course of
1800 administration of the estate unless the conservator is personally at fault.

1801 (3) Regardless of whether the conservator is personally liable, claims based on
1802 contracts entered into by a conservator in a fiduciary capacity, obligations arising from
1803 possession, ownership or control of the estate, and claims based on torts committed in the
1804 course of administration of the estate may be asserted against the estate by proceeding against
1805 the conservator in a fiduciary capacity.

1806 (4) A question of liability between the estate and the conservator personally may be
1807 determined in a proceeding for accounting, surcharge, or indemnification, or in another
1808 appropriate proceeding or action.

1809 (5) A conservator is not personally liable for any environmental condition on or injury
1810 resulting from any environmental condition on land solely by reason of acquisition of title
1811 under Section 75-5c-411.

1812 Section 65. Section **75-5c-421** is enacted to read:

1813 **75-5c-421. Payment of debt and delivery of property to foreign conservator**
1814 **without local proceeding.**

1815 (1) A person who is indebted to or has the possession of tangible or intangible property
1816 of a protected person may pay the debt or deliver the property to a foreign conservator,
1817 guardian of the estate, or other court-appointed fiduciary of the state in which a protected
1818 person resides.

1819 (2) Payment or delivery may be made only upon proof of appointment and presentation
1820 of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding
1821 relating to the protected person is not pending in this state and the foreign fiduciary is entitled
1822 to payment or to receive delivery.

1823 (3) Payment or delivery under Subsection (1) discharges the debtor or possessor, absent
1824 knowledge of a protective proceeding pending in this state.

1825 Section 66. Section **78B-5-804** is amended to read:

1826 **78B-5-804. Money deposited in court.**

1827 (1) (a) Any person depositing money in court, to be held in trust, shall pay it to the
1828 court clerk.

1829 (b) The clerk shall deposit the money in a court trust fund or with the county treasurer
1830 or city recorder to be held subject to the order of the court.

1831 (2) The Judicial Council shall adopt rules governing the maintenance of court trust
1832 funds and the disposition of interest earnings on those trust funds.

1833 (3) (a) Any interest earned on trust funds in the courts of record that is not required to
1834 accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted
1835 account. Any interest earned on trust funds in the courts not of record that is not required to
1836 accrue to the litigants by Judicial Council rule or court order shall be deposited in the general
1837 fund of the county or municipality.

1838 (b) The Legislature shall appropriate funds from the restricted account of the courts of
1839 record to the Judicial Council to:

1840 (i) offset costs to the courts for collection and maintenance of court trust funds; [~~and~~]

1841 (ii) provide accounting and auditing of all court revenue and trust accounts[-]; and

1842 (iii) review or audit annual reports and accountings of guardians and conservators, and
1843 recruit court visitors in guardianship and conservatorship proceedings.

1844 **Section 67. Repealer.**

1845 This bill repeals:

1846 **Section 75-5-101, Jurisdiction of subject matter -- Consolidation of proceedings.**

1847 **Section 75-5-102, Facility of payment or delivery.**

1848 **Section 75-5-103, Delegation of powers by parent or guardian.**

1849 **Section 75-5-104, Power of court to appoint guardian ad litem not affected.**

1850 **Section 75-5-105, Bond of guardian.**

1851 **Section 75-5-201, Status of guardian of minor -- General.**

1852 **Section 75-5-202, Appointment of guardian of minor.**

1853 **Section 75-5-202.5, Appointment of guardian by written instrument.**

1854 **Section 75-5-203, Objection to appointment.**

1855 **Section 75-5-204, Court appointment of guardian of minor -- Conditions for**
1856 **appointment.**

- 1857 Section 75-5-205, Court appointment of guardian of minor -- Venue.
- 1858 Section 75-5-206, Court appointment of guardian of minor -- Qualifications --
- 1859 **Priority of minor's nominee.**
- 1860 Section 75-5-207, Court appointment of guardian of minor -- Procedure.
- 1861 Section 75-5-208, Consent to service by acceptance of appointment -- Notice.
- 1862 Section 75-5-209, Powers and duties of guardian of minor -- Residual parental
- 1863 **rights and duties -- Adoption of a ward.**
- 1864 Section 75-5-210, Termination of appointment of guardian -- General.
- 1865 Section 75-5-211, Proceedings subsequent to appointment -- Venue.
- 1866 Section 75-5-212, Resignation or removal proceedings.
- 1867 Section 75-5-301, Appointment of guardian for incapacitated person.
- 1868 Section 75-5-302, Venue.
- 1869 Section 75-5-303, Procedure for court appointment of a guardian of an
- 1870 **incapacitated person.**
- 1871 Section 75-5-304, Findings -- Limited guardianship preferred -- Order of
- 1872 **appointment.**
- 1873 Section 75-5-305, Acceptance of appointment -- Consent to jurisdiction.
- 1874 Section 75-5-306, Termination of guardianship for incapacitated person.
- 1875 Section 75-5-307, Removal or resignation of guardian -- Termination of incapacity.
- 1876 Section 75-5-308, Visitor in guardianship proceeding.
- 1877 Section 75-5-309, Notices in guardianship proceedings.
- 1878 Section 75-5-310, Temporary guardians.
- 1879 Section 75-5-311, Who may be guardian -- Priorities.
- 1880 Section 75-5-312, General powers and duties of guardian -- Penalties.
- 1881 Section 75-5-313, Proceedings subsequent to appointment -- Venue.
- 1882 Section 75-5-316, Expedited guardianship proceedings.
- 1883 Section 75-5-401, Protective proceedings.
- 1884 Section 75-5-402, Protective proceedings -- Jurisdiction of affairs of protected
- 1885 **persons.**
- 1886 Section 75-5-403, Venue.
- 1887 Section 75-5-404, Original petition for appointment or protective order.

- 1888 Section **75-5-405, Notice.**
- 1889 Section **75-5-406, Protective proceedings -- Request for notice -- Interested person.**
- 1890 Section **75-5-407, Procedure concerning hearing and order on original petition.**
- 1891 Section **75-5-408, Permissible court orders.**
- 1892 Section **75-5-409, Protective arrangements and single transactions authorized.**
- 1893 Section **75-5-410, Who may be appointed conservator -- Priorities.**
- 1894 Section **75-5-411, Bond.**
- 1895 Section **75-5-412, Terms and requirements of bonds.**
- 1896 Section **75-5-413, Acceptance of appointment -- Consent to jurisdiction.**
- 1897 Section **75-5-414, Compensation and expenses.**
- 1898 Section **75-5-415, Death, resignation or removal of conservator.**
- 1899 Section **75-5-416, Petitions for orders subsequent to appointment.**
- 1900 Section **75-5-417, General duty of conservator.**
- 1901 Section **75-5-418, Inventory and records.**
- 1902 Section **75-5-419, Accounts.**
- 1903 Section **75-5-420, Conservators -- Title by appointment.**
- 1904 Section **75-5-421, Recording of conservator's letters.**
- 1905 Section **75-5-422, Sale, encumbrance or transaction involving conflict of interest --**
- 1906 **Voidable -- Exceptions.**
- 1907 Section **75-5-423, Persons dealing with conservators -- Protection.**
- 1908 Section **75-5-424, Powers of conservator in administration.**
- 1909 Section **75-5-425, Distributive duties and powers of conservator.**
- 1910 Section **75-5-426, Enlargement or limitation of powers of conservator.**
- 1911 Section **75-5-427, Preservation of estate plan.**
- 1912 Section **75-5-428, Claims against protected person -- Enforcement.**
- 1913 Section **75-5-429, Individual liability of conservator.**
- 1914 Section **75-5-430, Termination of proceeding.**
- 1915 Section **75-5-431, Payment of debt and delivery of property to foreign conservator**
- 1916 **without local proceedings.**
- 1917 Section **75-5-432, Foreign conservator -- Proof of authority -- Bond -- Powers.**
- 1918 Section **75-5-433, Embezzlement of protected person's estate -- Citation to person**

1919 **suspected.**

1920 Section 68. **Effective date.**

1921 This bill takes effect January 1, 2013.

Legislative Review Note
as of 10-11-11 10:42 AM

Office of Legislative Research and General Counsel