

**Representative Kraig Powell** proposes the following substitute bill:

**GUARDIANSHIP AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kraig Powell**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill makes changes to the Utah Probate Code defining developmental disabilities and regarding guardian appointments.

**Highlighted Provisions:**

This bill:

- defines terms;
- requires a specialized care professional to be certified by the Center for Guardianship Certification;
- requires guardians to file a management plan within 90 days of appointment; 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:

**7-5-1**, as last amended by Laws of Utah 2011, Chapter 289

**48-2c-708 (Repealed 07/01/12)**, as repealed by Laws of Utah 2011, Chapter 353



- 26 75-1-201, as last amended by Laws of Utah 2010, Chapter 93
- 27 75-3-303, as last amended by Laws of Utah 1998, Chapter 39
- 28 75-3-308, as last amended by Laws of Utah 1998, Chapter 39
- 29 75-5-303, as last amended by Laws of Utah 2011, Chapter 366
- 30 75-5-311, as last amended by Laws of Utah 1998, Chapter 288
- 31 75-5-312, as last amended by Laws of Utah 1992, Chapter 290

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

34 Section 1. Section 7-5-1 is amended to read:

35 **7-5-1. Definitions -- Allowable trust companies -- Exceptions.**

36 (1) As used in this chapter:

37 (a) "Business trust" means an entity engaged in a trade or business that is created by a  
38 declaration of trust that transfers property to trustees, to be held and managed by them for the  
39 benefit of persons holding certificates representing the beneficial interest in the trust estate and  
40 assets.

41 (b) "Trust business" means, except as provided in Subsection (1)(c), a business in  
42 which one acts in any agency or fiduciary capacity, including that of personal representative,  
43 executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under  
44 appointment as trustee for any purpose permitted by law, including the definition of "trust" set  
45 forth in [~~Subsection~~] Section 75-1-201[~~(55)~~].

46 (c) "Trust business" does not include the following means of holding money, assets, or  
47 other property:

48 (i) money held in a client trust account by an attorney authorized to practice law in this  
49 state;

50 (ii) money held in connection with the purchase or sale of real estate by a person  
51 licensed as a principal broker in accordance with Title 61, Chapter 2f, Real Estate Licensing  
52 and Practices Act;

53 (iii) money or other assets held in escrow by a person authorized by the department in  
54 accordance with Chapter 22, Regulation of Independent Escrow Agents, or by the Utah  
55 Insurance Department to act as an escrow agent in this state;

56 (iv) money held by a homeowners' association or similar organization to pay

57 maintenance and other related costs for commonly owned property;

58 (v) money held in connection with the collection of debts or payments on loans by a  
59 person acting solely as the agent or representative or otherwise at the sole direction of the  
60 person to which the debt or payment is owed, including money held by an escrow agent for  
61 payment of taxes or insurance;

62 (vi) money and other assets held in trust on an occasional or isolated basis by a person  
63 who does not represent that the person is engaged in the trust business in Utah;

64 (vii) money or other assets found by a court to be held in an implied, resulting, or  
65 constructive trust;

66 (viii) money or other assets held by a court appointed conservator, guardian, receiver,  
67 trustee, or other fiduciary if:

68 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the  
69 court in the same manner as a personal representative under Title 75, Chapter 3, Part 5,  
70 Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure;

71 (B) the conservator, trustee, or other fiduciary is a certified public accountant or has  
72 qualified for and received a designation as a certified financial planner, chartered financial  
73 consultant, certified financial analyst, or similar designation suitable to the court, that  
74 evidences the conservator's, trustee's, or other fiduciary's professional competence to manage  
75 financial matters;

76 (C) no trust company is willing or eligible to serve as conservator, guardian, trustee, or  
77 receiver after notice has been given pursuant to Section 75-1-401 to all trust companies doing  
78 business in this state, including a statement of the value of the assets to be managed, that notice  
79 need not be provided, however, if a trust company has been employed by the fiduciary to  
80 manage the assets; and

81 (D) in the event guardianship services are needed, the person seeking appointment as a  
82 guardian under this Subsection (1) is a specialized care professional, as that term is defined in  
83 Section 75-5-311, or a business or state agency that employs the services of one of those  
84 professionals for the purpose of caring for the incapacitated person, so long as the specialized  
85 care professional, business, or state agency does not:

86 (I) profit financially or otherwise from, or receive compensation for acting in that  
87 capacity, except for the direct costs of providing guardianship or conservatorship services; or

88 (II) otherwise have a conflict of interest in providing those services;

89 (ix) money or other assets held by a credit services organization operating in  
90 compliance with Title 13, Chapter 21, Credit Services Organizations Act;

91 (x) money, securities, or other assets held in a customer account in connection with the  
92 purchase or sale of securities by a regulated securities broker, dealer, or transfer agent; or

93 (xi) money, assets, and other property held in a business trust for the benefit of holders  
94 of certificates of beneficial interest if the fiduciary activities of the business trust are merely  
95 incidental to conducting business in the business trust form.

96 (d) "Trust company" means an institution authorized to engage in the trust business  
97 under this chapter. Only the following may be a trust company:

98 (i) a Utah depository institution or its wholly owned subsidiary;

99 (ii) an out-of-state depository institution authorized to engage in business as a  
100 depository institution in Utah or its wholly owned subsidiary;

101 (iii) a corporation, including a credit union service organization, owned entirely by one  
102 or more federally insured depository institutions as defined in Subsection 7-1-103(8);

103 (iv) a direct or indirect subsidiary of a depository institution holding company that also  
104 has a direct or indirect subsidiary authorized to engage in business as a depository institution in  
105 Utah; and

106 (v) any other corporation continuously and lawfully engaged in the trust business in  
107 this state since before July 1, 1981.

108 (2) Only a trust company may engage in the trust business in this state.

109 (3) The requirements of this chapter do not apply to:

110 (a) an institution authorized to engage in a trust business in another state that is  
111 engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created  
112 and administered in another state;

113 (b) a national bank, federal savings bank, federal savings and loan association, or  
114 federal credit union authorized to engage in business as a depository institution in Utah, or any  
115 wholly owned subsidiary of any of these, to the extent the institution is authorized by its  
116 primary federal regulator to engage in the trust business in this state; or

117 (c) a state agency that is otherwise authorized by statute to act as a conservator,  
118 receiver, guardian, trustee, or in any other fiduciary capacity.

119 Section 2. Section **48-2c-708 (Repealed 07/01/12)** is amended to read:

120 **48-2c-708 (Repealed 07/01/12). Cessation of membership.**

121 (1) A person who is a member of a company ceases to be a member of the company  
122 and the person or the person's successor in interest attains the status of an assignee as set forth  
123 in Section 48-2c-1102, upon the occurrence of one or more of the following events:

124 (a) the death of the member, except that the member's personal representative,  
125 executor, or administrator may exercise all of the member's rights for the purpose of settling  
126 the member's estate, including any power of an assignee and any power the member had under  
127 the articles of organization or operating agreement;

128 (b) the incapacity of the member, as defined in [~~Subsection~~] Section 75-1-201[~~(22)~~],  
129 except that the member's guardian or conservator or other legal representative may exercise all  
130 of the member's rights for the purpose of administering the member's property, including any  
131 power of an assignee and any power the member had under the articles of organization or  
132 operating agreement;

133 (c) the member withdraws by voluntary act from the company as provided in Section  
134 48-2c-709;

135 (d) upon the assignment of the member's entire interest in the company;

136 (e) the member is expelled as a member pursuant to Section 48-2c-710; or

137 (f) unless otherwise provided in the operating agreement, or with the written consent of  
138 all other members:

139 (i) at the time the member:

140 (A) makes a general assignment for the benefit of creditors;

141 (B) files a voluntary petition in bankruptcy;

142 (C) becomes the subject of an order for relief in bankruptcy proceedings;

143 (D) files a petition or answer seeking for the member any reorganization, arrangement,  
144 composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or  
145 regulation;

146 (E) files an answer or other pleading admitting or failing to contest the material  
147 allegations of a petition filed against the member in any proceeding of the nature described in  
148 Subsections (1)(f)(i)(A) through (D); or

149 (F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or

150 liquidator of the member or of all or any substantial part of the member's properties;

151 (ii) 120 days after the commencement of any proceeding against the member seeking  
152 reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar  
153 relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within  
154 90 days after the appointment without his or her consent or acquiescence of a trustee, receiver,  
155 or liquidator of the member or of all or any substantial part of the member's properties, the  
156 appointment is not vacated or stayed, or within 90 days after the expiration of any stay, the  
157 appointment is not vacated;

158 (iii) in the case of a member that is another limited liability company, the filing of  
159 articles of dissolution or the equivalent for that company or the judicial dissolution of that  
160 company or the administrative dissolution of that company and the lapse of any period allowed  
161 for reinstatement;

162 (iv) in the case of a member that is a corporation, the filing of articles of dissolution or  
163 the equivalent for the corporation or the administrative dissolution of the corporation and the  
164 lapse of any period allowed for reinstatement; or

165 (v) in the case of a member that is a limited partnership, the dissolution and  
166 commencement of winding up of the limited partnership.

167 (2) The articles of organization or operating agreement may provide for other events  
168 the occurrence of which result in a person's ceasing to be a member of the company.

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

170 **75-1-201. General definitions.**

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

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

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

180 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any

181 present or future interest, vested or contingent, and also includes the owner of an interest by  
182 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to  
183 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a  
184 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security  
185 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar  
186 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated  
187 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a  
188 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of  
189 appointment, and a person in whose favor a power of attorney or a power held in any  
190 individual, fiduciary, or representative capacity is exercised.

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

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

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

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

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

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

211 (10) "Developmental disability" means a severe, chronic disability of an individual five

212 years of age or older that:

213 (a) is attributable to a mental or physical impairment or combination of mental and  
214 physical impairments;

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

216 (c) is likely to continue indefinitely;

217 (d) results in substantial functional limitations in three or more of the following areas  
218 of major life activity;

219 (i) self-care;

220 (ii) receptive and expressive language;

221 (iii) learning;

222 (iv) mobility;

223 (v) self-direction;

224 (vi) capacity for independent living; and

225 (vii) economic self-sufficiency; and

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

232 [~~(10)~~] (11) "Devise," when used as a noun, means a testamentary disposition of real or  
233 personal property and, when used as a verb, means to dispose of real or personal property by  
234 will.

235 [~~(11)~~] (12) "Devisee" means any person designated in a will to receive a devise. For  
236 the purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a  
237 devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee  
238 is the devisee, and the beneficiaries are not devisees.

239 [~~(12)~~] (13) "Disability" means cause for a protective order as described by Section  
240 75-5-401.

241 [~~(13)~~] (14) "Distributee" means any person who has received property of a decedent  
242 from his personal representative other than as a creditor or purchaser. A testamentary trustee is

243 a distributee only to the extent of distributed assets or increment thereto remaining in his hands.  
244 A beneficiary of a testamentary trust to whom the trustee has distributed property received from  
245 a personal representative is a distributee of the personal representative. For purposes of this  
246 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to  
247 the extent of the devised assets.

248 ~~[(14)]~~ (15) "Estate" includes the property of the decedent, trust, or other person whose  
249 affairs are subject to this title as originally constituted and as it exists from time to time during  
250 administration.

251 ~~[(15)]~~ (16) "Exempt property" means that property of a decedent's estate which is  
252 described in Section 75-2-403.

253 ~~[(16)]~~ (17) "Fiduciary" includes a personal representative, guardian, conservator, and  
254 trustee.

255 ~~[(17)]~~ (18) "Foreign personal representative" means a personal representative of  
256 another jurisdiction.

257 ~~[(18)]~~ (19) "Formal proceedings" means proceedings conducted before a judge with  
258 notice to interested persons.

259 ~~[(19)]~~ (20) "Governing instrument" means a deed, will, trust, insurance or annuity  
260 policy, account with POD designation, security registered in beneficiary form (TOD), pension,  
261 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of  
262 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of  
263 any similar type.

264 ~~[(20)]~~ (21) "Guardian" means a person who has qualified as a guardian of a minor or  
265 incapacitated person pursuant to testamentary or court appointment, or by written instrument as  
266 provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

267 ~~[(21)]~~ (22) "Heirs," except as controlled by Section 75-2-711, means persons, including  
268 the surviving spouse and state, who are entitled under the statutes of intestate succession to the  
269 property of a decedent.

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

274 (23) "Incapacity" is measured by functional limitations and means a judicial  
275 determination after proof by clear and convincing evidence that an adult's ability to do any of  
276 the following is impaired to such an extent that the individual lacks the ability to meet essential  
277 requirements for financial protection or physical health, safety, or self-care:

278 (a) receive and evaluate information;

279 (b) make and communicate decisions;

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

281 (d) manage property.

282 [~~23~~] (24) "Informal proceedings" mean those conducted without notice to interested  
283 persons by an officer of the court acting as a registrar for probate of a will or appointment of a  
284 personal representative.

285 [~~24~~] (25) "Interested person" includes heirs, devisees, children, spouses, creditors,  
286 beneficiaries, and any others having a property right in or claim against a trust estate or the  
287 estate of a decedent, ward, or protected person. It also includes persons having priority for  
288 appointment as personal representative, other fiduciaries representing interested persons, a  
289 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but  
290 incapacitated. The meaning as it relates to particular persons may vary from time to time and  
291 shall be determined according to the particular purposes of, and matter involved in, any  
292 proceeding.

293 [~~25~~] (26) "Issue" of a person means descendant as defined in Subsection (9).

294 [~~26~~] (27) "Joint tenants with the right of survivorship" and "community property with  
295 the right of survivorship" includes coowners of property held under circumstances that entitle  
296 one or more to the whole of the property on the death of the other or others, but excludes forms  
297 of coownership registration in which the underlying ownership of each party is in proportion to  
298 that party's contribution.

299 [~~27~~] (28) "Lease" includes an oil, gas, or other mineral lease.

300 [~~28~~] (29) "Letters" includes letters testamentary, letters of guardianship, letters of  
301 administration, and letters of conservatorship.

302 [~~29~~] (30) "Minor" means a person who is under 18 years of age.

303 [~~30~~] (31) "Mortgage" means any conveyance, agreement, or arrangement in which  
304 property is used as security.

305           ~~[(31)]~~ (32) "Nonresident decedent" means a decedent who was domiciled in another  
306 jurisdiction at the time of his death.

307           ~~[(32)]~~ (33) "Organization" includes a corporation, limited liability company, business  
308 trust, estate, trust, partnership, joint venture, association, government or governmental  
309 subdivision or agency, or any other legal or commercial entity.

310           ~~[(33)]~~ (34) "Parent" includes any person entitled to take, or who would be entitled to  
311 take if the child died without a will, as a parent under this code by intestate succession from the  
312 child whose relationship is in question and excludes any person who is only a stepparent, foster  
313 parent, or grandparent.

314           ~~[(34)]~~ (35) "Payor" means a trustee, insurer, business entity, employer, government,  
315 governmental agency or subdivision, or any other person authorized or obligated by law or a  
316 governing instrument to make payments.

317           ~~[(35)]~~ (36) "Person" means an individual or an organization.

318           ~~[(36)]~~ (37) (a) "Personal representative" includes executor, administrator, successor  
319 personal representative, special administrator, and persons who perform substantially the same  
320 function under the law governing their status.

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

322           ~~[(37)]~~ (38) "Petition" means a written request to the court for an order after notice.

323           ~~[(38)]~~ (39) "Proceeding" includes action at law and suit in equity.

324           ~~[(39)]~~ (40) "Property" includes both real and personal property or any interest therein  
325 and means anything that may be the subject of ownership.

326           ~~[(40)]~~ (41) "Protected person" means a person for whom a conservator has been  
327 appointed. A "minor protected person" means a minor for whom a conservator has been  
328 appointed because of minority.

329           ~~[(41)]~~ (42) "Protective proceeding" means a proceeding described in Section 75-5-401.

330           ~~[(42)]~~ (43) "Record" means information that is inscribed on a tangible medium or that  
331 is stored in an electronic or other medium and is retrievable in perceivable form.

332           ~~[(43)]~~ (44) "Registrar" refers to the official of the court designated to perform the  
333 functions of registrar as provided in Section 75-1-307.

334           ~~[(44)]~~ (45) "Security" includes any note, stock, treasury stock, bond, debenture,  
335 evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or

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

341 [~~(45)~~] (46) "Settlement," in reference to a decedent's estate, includes the full process of  
342 administration, distribution, and closing.

343 [~~(46)~~] (47) "Sign" means, with present intent to authenticate or adopt a record other  
344 than a will:

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

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

348 [~~(47)~~] (48) "Special administrator" means a personal representative as described in  
349 Sections 75-3-614 through 75-3-618.

350 [~~(48)~~] (49) "State" means a state of the United States, the District of Columbia, the  
351 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of  
352 the United States, or a Native American tribe or band recognized by federal law or formally  
353 acknowledged by a state.

354 [~~(49)~~] (50) "Successor personal representative" means a personal representative, other  
355 than a special administrator, who is appointed to succeed a previously appointed personal  
356 representative.

357 [~~(50)~~] (51) "Successors" means persons, other than creditors, who are entitled to  
358 property of a decedent under the decedent's will or this title.

359 [~~(51)~~] (52) "Supervised administration" refers to the proceedings described in Title 75,  
360 Chapter 3, Part 5, Supervised Administration.

361 [~~(52)~~] (53) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD  
362 Security Registration Act, means that an individual has neither predeceased an event, including  
363 the death of another individual, nor is considered to have predeceased an event under Section  
364 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"  
365 "survivor," and "surviving."

366 [~~(53)~~] (54) "Testacy proceeding" means a proceeding to establish a will or determine

367 intestacy.

368 [~~(54)~~] (55) "Testator" includes an individual of either sex.

369 [~~(55)~~] (56) "Trust" includes a health savings account, as defined in Section 223,  
370 Internal Revenue Code, any express trust, private or charitable, with additions thereto,  
371 wherever and however created. The term also includes a trust created or determined by  
372 judgment or decree under which the trust is to be administered in the manner of an express  
373 trust. The term excludes other constructive trusts, and it excludes resulting trusts,  
374 conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6,  
375 Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors  
376 Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds,  
377 voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act,  
378 security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts,  
379 dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any  
380 arrangement under which a person is nominee or escrowee for another.

381 [~~(56)~~] (57) "Trustee" includes an original, additional, and successor trustee, and  
382 cotrustee, whether or not appointed or confirmed by the court.

383 [~~(57)~~] (58) "Ward" means a person for whom a guardian has been appointed. A "minor  
384 ward" is a minor for whom a guardian has been appointed solely because of minority.

385 [~~(58)~~] (59) "Will" includes codicil and any testamentary instrument which merely  
386 appoints an executor, revokes or revises another will, nominates a guardian, or expressly  
387 excludes or limits the right of an individual or class to succeed to property of the decedent  
388 passing by intestate succession.

389 Section 4. Section **75-3-303** is amended to read:

390 **75-3-303. Informal probate -- Proof and findings required.**

391 (1) In an informal proceeding for original probate of a will, the registrar shall  
392 determine whether:

393 (a) the application is complete;

394 (b) the applicant has made oath or affirmation that the statements contained in the  
395 application are true to the best of his knowledge and belief;

396 (c) the applicant appears from the application to be an interested person as defined in  
397 [~~Subsection~~] Section 75-1-201[~~(24)~~];

398 (d) on the basis of the statements in the application, venue is proper;

399 (e) an original, duly executed and apparently unrevoked will is in the registrar's  
400 possession;

401 (f) any notice required by Section 75-3-204 has been given and that the application is  
402 not within Section 75-3-304; and

403 (g) it appears from the application that the time limit for original probate has not  
404 expired.

405 (2) The application shall be denied if it indicates that a personal representative has  
406 been appointed in another county of this state or except as provided in Subsection (4), if it  
407 appears that this or another will of the decedent has been the subject of a previous probate  
408 order.

409 (3) A will which appears to have the required signatures and which contains an  
410 attestation clause showing that requirements of execution under Section 75-2-502, 75-2-503, or  
411 75-2-506 have been met shall be probated without further proof. In other cases, the registrar  
412 may assume execution if the will appears to have been properly executed, or he may accept a  
413 sworn statement or affidavit of any person having knowledge of the circumstances of  
414 execution, whether or not the person was a witness to the will.

415 (4) Informal probate of a will which has been previously probated elsewhere may be  
416 granted at any time upon written application by any interested person, together with deposit of  
417 an authenticated copy of the will and of the statement probating it from the office or court  
418 where it was first probated.

419 (5) A will from a place which does not provide for probate of a will after death and  
420 which is not eligible for probate under Subsection (1) above may be probated in this state upon  
421 receipt by the registrar of a duly authenticated copy of the will and a duly authenticated  
422 certificate of its legal custodian that the copy filed is a true copy and that the will has become  
423 operative under the law of the other place.

424 Section 5. Section **75-3-308** is amended to read:

425 **75-3-308. Informal appointment proceedings -- Proof and findings required.**

426 (1) In informal appointment proceedings, the registrar shall determine whether:

427 (a) the application for informal appointment of a personal representative is complete;

428 (b) the applicant has made oath or affirmation that the statements contained in the

429 application are true to the best of his knowledge and belief;

430 (c) the applicant appears from the application to be an interested person as defined in

431 [~~Subsection~~] Section 75-1-201[(24)];

432 (d) on the basis of the statements in the application, venue is proper;

433 (e) any will to which the requested appointment relates has been formally or informally  
434 probated; but this requirement does not apply to the appointment of a special administrator;

435 (f) any notice required by Section 75-3-204 has been given; and

436 (g) from the statements in the application, the person whose appointment is sought has  
437 priority entitling him to the appointment.

438 (2) Unless Section 75-3-612 controls, the application shall be denied if it indicates that  
439 a personal representative who has not filed a written statement of resignation as provided in  
440 Subsection 75-3-610(3) has been appointed in this or another county of this state, that (unless  
441 the applicant is the domiciliary personal representative or his nominee) the decedent was not  
442 domiciled in this state, and that a personal representative whose appointment has not been  
443 terminated has been appointed by a court in the state of domicile, or that other requirements of  
444 this section have not been met.

445 Section 6. Section **75-5-303** is amended to read:

446 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**  
447 **person.**

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

450 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of  
451 incapacity; and unless the allegedly incapacitated person has counsel of the person's own  
452 choice, it shall appoint an attorney to represent the person in the proceeding the cost of which  
453 shall be paid by the person alleged to be incapacitated, unless the court determines that the  
454 petition is without merit, in which case the attorney fees and court costs shall be paid by the  
455 person filing the petition.

456 (3) The person alleged to be incapacitated may be examined by a physician appointed  
457 by the court who shall submit a report in writing to the court and may be interviewed by a  
458 visitor sent by the court. The visitor also may interview the person seeking appointment as  
459 guardian, visit the present place of abode of the person alleged to be incapacitated and the place

460 it is proposed that the person will be detained or reside if the requested appointment is made,  
461 conduct other investigations or observations as directed by the court, and submit a report in  
462 writing to the court.

463 (4) (a) The person alleged to be incapacitated shall be present at the hearing in person  
464 and see or hear all evidence bearing upon the person's condition. If the person seeking the  
465 guardianship requests a waiver of presence of the person alleged to be incapacitated, the court  
466 shall order an investigation by a court visitor, the costs of which shall be paid by the person  
467 seeking the guardianship.

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

470 (i) fourth stage Alzheimer's Disease;

471 (ii) extended comatosis; or

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

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

474 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to  
475 present evidence, to cross-examine witnesses, including the court-appointed physician and the  
476 visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if  
477 the person alleged to be incapacitated or the person's counsel so requests.

478 Section 7. Section **75-5-311** is amended to read:

479 **75-5-311. Who may be guardian -- Priorities.**

480 (1) As used in this section:

481 (a) "Specialized care professional" means a person who ~~[-(i)]~~ has been certified [~~or~~  
482 ~~designated as a provider of guardianship services by a nationally recognized guardianship~~  
483 ~~accrediting organization]~~ as a National Certified Guardian or National Master Guardian by the  
484 Center for Guardianship Certification;

485 ~~[(ii) is licensed by or registered with the Division of Occupational and Professional~~  
486 ~~Licensing as a health care provider including, but not limited to, a registered nurse licensed~~  
487 ~~under Section 58-31b-301, a social service worker, certified social worker, or clinical social~~  
488 ~~worker licensed under Section 58-60-205, a marriage and family therapist licensed under~~  
489 ~~Section 58-60-305, a physician licensed under Title 58, Chapter 67, or a psychologist licensed~~  
490 ~~under Title 58, Chapter 61; or]~~

491 ~~[(iii) has been approved by the court as one with specialized training and experience in~~  
492 ~~the care of incapacitated persons.]~~

493 (b) "Suitable institution" means any nonprofit or for profit corporation, partnership,  
494 sole proprietorship, or other type of business organization that is owned, operated by, or  
495 employs a specialized care professional.

496 ~~[(2) Any competent person or suitable institution may be appointed guardian of an~~  
497 ~~incapacitated person.]~~

498 ~~[(3)]~~ (2) The court shall appoint a guardian in accordance with the incapacitated  
499 person's most recent nomination, unless that person is disqualified or the court finds other good  
500 cause why the person should not serve as guardian. That nomination shall have been made  
501 prior to the person's incapacity, shall be in writing and shall be signed by the person making the  
502 nomination. The nomination shall be in substantially the following form:

503 Nomination of Guardian by an Adult

504 I, (Name), being of sound mind and not acting under duress, fraud, or other undue  
505 influence, do hereby nominate (Name, current residence, and relationship, if any, of the  
506 nominee) to serve as my guardian in the event that after the date of this instrument I become  
507 incapacitated.

508 Executed at \_\_\_\_\_ (city, state)

509 on this \_\_\_\_\_ day of \_\_\_\_\_

510 \_\_\_\_\_  
511 (Signature)

512 ~~[(4)]~~ (3) Except as provided in Subsection ~~[(3)]~~ (2), persons who are not disqualified  
513 have priority for appointment as guardian in the following order:

514 (a) a person who has been nominated by the incapacitated person, by any means other  
515 than that described in Subsection ~~[(3)]~~ (2), if the incapacitated person was 14 years of age or  
516 older when the nomination was executed and, in the opinion of the court, that person acted  
517 with sufficient mental capacity to make the nomination;

518 (b) the spouse of the incapacitated person;

519 (c) an adult child of the incapacitated person;

520 (d) a parent of the incapacitated person, including a person nominated by will, written  
521 instrument, or other writing signed by a deceased parent;

522 (e) any relative of the incapacitated person with whom he has resided for more than six  
523 months prior to the filing of the petition;

524 (f) a person nominated by the person who is caring for him or paying benefits to him;  
525 [or]

526 (g) a specialized care professional, so long as the specialized care professional does  
527 not:

528 (i) profit financially or otherwise from or receive compensation for acting in that  
529 capacity, except for the direct costs of providing guardianship or conservatorship services; or

530 (ii) otherwise have a conflict of interest in providing those services[-]; or

531 (h) any competent person or suitable institution.

532 Section 8. Section **75-5-312** is amended to read:

533 **75-5-312. General powers and duties of guardian -- Penalties.**

534 (1) A guardian of an incapacitated person has only the powers, rights, and duties  
535 respecting the ward granted in the order of appointment under Section 75-5-304.

536 (2) Absent a specific limitation on the guardian's power in the order of appointment,  
537 the guardian has the same powers, rights, and duties respecting the ward that a parent has  
538 respecting the parent's unemancipated minor child except that a guardian is not liable to third  
539 persons for acts of the ward solely by reason of the parental relationship. In particular, and  
540 without qualifying the foregoing, a guardian has the following powers and duties, except as  
541 modified by order of the court:

542 (a) To the extent that it is consistent with the terms of any order by a court of  
543 competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled  
544 to custody of the person of the ward and may establish the ward's place of abode within or  
545 without this state.

546 (b) If entitled to custody of the ward the guardian shall provide for the care, comfort,  
547 and maintenance of the ward and, whenever appropriate, arrange for the ward's training and  
548 education. Without regard to custodial rights of the ward's person, the guardian shall take  
549 reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and  
550 commence protective proceedings if other property of the ward is in need of protection.

551 (c) A guardian may give any consents or approvals that may be necessary to enable the  
552 ward to receive medical or other professional care, counsel, treatment, or service.

553 (d) If no conservator for the estate of the ward has been appointed, the guardian may:

554 (i) institute proceedings to compel any person under a duty to support the ward or to  
555 pay sums for the welfare of the ward to perform that duty; or

556 (ii) receive money and tangible property deliverable to the ward and apply the money  
557 and property for support, care, and education of the ward; but the guardian may not use funds  
558 from the ward's estate for room and board which the guardian, the guardian's spouse, parent, or  
559 child have furnished the ward unless a charge for the service is approved by order of the court  
560 made upon notice to at least one adult relative in the nearest degree of kinship to the ward in  
561 which there is an adult. The guardian must exercise care to conserve any excess for the ward's  
562 needs.

563 (e) (i) A guardian is required to report the condition of the ward and of the estate which  
564 has been subject to the guardian's possession or control, as required by the court or court rule.

565 (ii) The guardian shall, for all estates in excess of \$50,000, excluding the residence  
566 owned by the ward, send a report with a full accounting to the court on an annual basis. For  
567 estates less than \$50,000, excluding the residence owned by the ward, the guardian shall fill out  
568 an informal annual report and mail the report to the court. The report shall include the  
569 following: a statement of assets at the beginning and end of the reporting year, income received  
570 during the year, disbursements for the support of the ward, and other expenses incurred by the  
571 estate. The guardian shall also report the physical conditions of the ward, the place of  
572 residence, and a list of others living in the same household. The court may require additional  
573 information. The forms for both the informal report for estates under \$50,000, excluding the  
574 residence owned by the ward, and the full accounting report for larger estates shall be approved  
575 by the Judicial Council. This annual report shall be examined and approved by the court. If  
576 the ward's income is limited to a federal or state program requiring an annual accounting  
577 report, a copy of that report may be submitted to the court in lieu of the required annual report.

578 (iii) Corporate fiduciaries are not required to petition the court, but shall submit their  
579 internal report annually to the court. The report shall be examined and approved by the court.

580 (iv) The guardian shall also render an annual accounting of the status of the person to  
581 the court which shall be included in the petition or the informal annual report as required under  
582 Subsection (2)(e). If a fee is paid for an accounting of an estate, no fee shall be charged for an  
583 accounting of the status of a person.

584 (v) If a guardian:

585 (A) makes a substantial misstatement on filings of annual reports;

586 (B) is guilty of gross impropriety in handling the property of the ward; or

587 (C) willfully fails to file the report required by this subsection, after receiving written  
588 notice from the court of the failure to file and after a grace period of two months has elapsed,  
589 the court may impose a penalty in an amount not to exceed \$5,000. The court may also order  
590 restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the  
591 guardian and may not be paid by the estate.

592 (f) Within 90 days after appointment, the guardian shall file and serve a management  
593 plan as required by court rule or court order, describing the strategies that will be used to  
594 implement the court order.

595 [~~(vi)~~] (g) These provisions and penalties governing [~~annual~~] reports and plans do not  
596 apply if the guardian is the parent of the ward with developmental disabilities.

597 [~~(f)~~] (h) If a conservator has been appointed, all of the ward's estate received by the  
598 guardian in excess of those funds expended to meet current expenses for support, care, and  
599 education of the ward must be paid to the conservator for management as provided in this code;  
600 and the guardian must account to the conservator for funds expended.

601 (3) Any guardian of one for whom a conservator also has been appointed shall control  
602 the custody and care of the ward and is entitled to receive reasonable sums for services and for  
603 room and board furnished to the ward as agreed upon between the guardian and the  
604 conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian  
605 may request the conservator to expend the ward's estate by payment to third persons or  
606 institutions for the ward's care and maintenance.

607 Section 9. **Effective date.**

608 This bill takes effect January 1, 2013.