

PROBATE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill makes amendments regarding probate, guardians, conservators, and funeral and burial arrangements.

Highlighted Provisions:

This bill:

- ▶ eliminates the need to mail notices to trust companies when an entity other than a trust company is to be appointed as a conservator, trustee, or personal representative;
- ▶ provides that advance directions regarding funeral and burial directions may be acknowledged before a Notary Public;
- ▶ changes and updates the definition of incapacity for the purpose of a guardianship;
- ▶ makes changes to the rule against perpetuities;
- ▶ allows the appointment of a personal representative or special administrator beyond three years after a decedent’s death when the will was not previously probated;
- ▶ updates the electronic filing procedures regarding the possession of an original will;
- ▶ makes the publishing of a notice to creditors permissive instead of mandatory;
- ▶ creates a provision to allow a notice to creditors to be published for small estates;
- ▶ clarifies and removes one of the exceptions when the representation by an attorney of an incapacitated or protected person terminates;
- ▶ modifies the requirements for who may be a guardian;



- 28 ▶ adds specific requirements for a guardian to notify interested persons when moving
- 29 a ward, or of a ward’s pending or actual death; and
- 30 ▶ makes technical and conforming cross-reference changes.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 **7-5-1**, as last amended by Laws of Utah 2011, Chapter 289
- 38 **58-9-601**, as last amended by Laws of Utah 2012, Chapter 274
- 39 **58-9-602**, as last amended by Laws of Utah 2012, Chapter 274
- 40 **58-17b-701**, as last amended by Laws of Utah 2011, Chapter 366
- 41 **58-31b-401**, as last amended by Laws of Utah 2011, Chapter 366
- 42 **58-67-601**, as last amended by Laws of Utah 2011, Chapter 366
- 43 **58-68-601**, as last amended by Laws of Utah 2011, Chapter 366
- 44 **58-69-601**, as last amended by Laws of Utah 2011, Chapter 366
- 45 **58-71-601**, as last amended by Laws of Utah 2011, Chapter 366
- 46 **62A-14-102**, as last amended by Laws of Utah 2009, Chapter 75
- 47 **75-1-201**, as last amended by Laws of Utah 2010, Chapter 93
- 48 **75-2-1203**, as last amended by Laws of Utah 2003, Chapter 301
- 49 **75-2-1204**, as enacted by Laws of Utah 1998, Chapter 39
- 50 **75-3-102**, as last amended by Laws of Utah 1988, Chapter 110
- 51 **75-3-107**, as last amended by Laws of Utah 1989, Chapter 107
- 52 **75-3-301**, as last amended by Laws of Utah 1977, Chapter 194
- 53 **75-3-303**, as last amended by Laws of Utah 1998, Chapter 39
- 54 **75-3-402**, as last amended by Laws of Utah 1977, Chapter 194
- 55 **75-3-801**, as last amended by Laws of Utah 2009, Chapter 388
- 56 **75-5-303**, as last amended by Laws of Utah 2012, Chapter 274
- 57 **75-5-311**, as last amended by Laws of Utah 1998, Chapter 288
- 58 **75-5-312**, as last amended by Laws of Utah 1992, Chapter 290

59 75-5-407, as last amended by Laws of Utah 2012, Chapter 274

60

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

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

63 **7-5-1. Definitions -- Allowable trust companies -- Exceptions.**

64 (1) As used in this chapter:

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

69 (b) "Trust business" means, except as provided in Subsection (1)(c), a business in
70 which one acts in any agency or fiduciary capacity, including that of personal representative,
71 executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under
72 appointment as trustee for any purpose permitted by law, including the definition of "trust" set
73 forth in Subsection 75-1-201(55).

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

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

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

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

84 (iv) money held by a homeowners' association or similar organization to pay
85 maintenance and other related costs for commonly owned property;

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

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

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

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

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

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

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

109 [~~(D) in the event guardianship services are needed, the person seeking appointment as a
110 guardian under this Subsection (1) is a specialized care professional, as that term is defined in
111 Section 75-5-311, or a business or state agency that employs the services of one of those
112 professionals for the purpose of caring for the incapacitated person, so long as the specialized
113 care professional, business, or state agency does not:]~~

114 [~~(E) profit financially or otherwise from, or receive compensation for acting in that
115 capacity, except for the direct costs of providing guardianship or conservatorship services; or]~~

116 [~~(F) otherwise have a conflict of interest in providing those services;]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

147 Section 2. Section **58-9-601** is amended to read:

148 **58-9-601. Advance directions.**

149 (1) A person may provide written directions, acknowledged before a Notary Public or
150 executed with the same formalities required of a will under Section 75-2-502, to direct the
151 preparation, type, and place of the person's disposition, including:

- 152 (a) designating a funeral service establishment;
- 153 (b) providing directions for burial arrangements; or
- 154 (c) providing directions for cremation arrangements.

155 (2) A funeral service director shall carry out the written directions of the decedent
156 prepared under this section to the extent that:

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

159 (3) Directions for disposition contained in a will shall be carried out pursuant to

160 Subsection (2) regardless of:

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

163 (4) A person may change or cancel written directions prepared under this section at any
164 time prior to the person's death by providing written notice to all applicable persons, including:

165 (a) if the written directions designate a funeral service establishment or funeral service
166 director, the funeral service establishment or funeral service director designated in the written
167 directions; and

168 (b) if the written directions are contained in a will, the personal representative as
169 defined in Section 75-1-201.

170 Section 3. Section **58-9-602** is amended to read:

171 **58-9-602. Determination of control of disposition.**

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

176 (1) the person designated:

177 (a) in a written instrument, excluding a power of attorney that terminates at death under
178 Sections 75-5-501 and 75-5-502, if the written instrument is acknowledged before a Notary
179 Public or executed with the same formalities required of a will under Section 75-2-502; or

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

183 (2) the surviving, legally recognized spouse of the decedent, unless a personal
184 representative was nominated by the decedent subsequent to the marriage, in which case the
185 personal representative shall take priority over the spouse;

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

188 (4) (a) the sole surviving child of the decedent, or if there is more than one child of the
189 decedent, the majority of the surviving children;

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

194 (5) the surviving parent or parents of the decedent, and if one of the surviving parents
195 is absent, the remaining parent is vested with the rights and duties of this section after
196 reasonable efforts have been unsuccessful in locating the absent surviving parent;

197 (6) (a) the surviving brother or sister of the decedent, or if there is more than one
198 sibling of the decedent, the majority of the surviving siblings;

199 (b) less than the majority of surviving siblings are vested with the rights and duties of
200 this section if they have used reasonable efforts to notify all other surviving siblings of their
201 instructions and are not aware of any opposition to those instructions on the part of more than
202 one-half of all surviving siblings;

203 (7) the person in the classes of the next degree of kinship, in descending order, under
204 the laws of descent and distribution to inherit the estate of the decedent, and if there is more
205 than one person of the same degree, any person of that degree may exercise the right of
206 disposition;

207 (8) any public official charged with arranging the disposition of deceased persons; and

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

213 Section 4. Section **58-17b-701** is amended to read:

214 **58-17b-701. Mentally incompetent or incapacitated pharmacist -- Division action**
215 **and procedures.**

216 (1) As used in this section:

217 (a) "Incapacitated person" is a person who is incapacitated, as defined in Section
218 75-1-201.

219 (b) "Mental illness" is as defined in Section 62A-15-602.

220 (2) If a court of competent jurisdiction determines a pharmacist is an incapacitated
221 person, or that the pharmacist has a mental illness and is unable to safely engage in the practice
222 of pharmacy, the director shall immediately suspend the license of the pharmacist upon the
223 entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4,
224 Administrative Procedures Act, regardless of whether an appeal from the court's ruling is
225 pending. The director shall promptly notify the pharmacist, in writing, of the suspension.

226 (3) (a) If the division and a majority of the board find reasonable cause to believe a
227 pharmacist, who is not determined judicially to be an incapacitated person or to have a mental
228 illness, is incapable of practicing pharmacy with reasonable skill regarding the safety of
229 patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
230 physical condition, the board shall recommend that the director file a petition with the division,
231 and cause the petition to be served upon the pharmacist with a notice of hearing on the sole
232 issue of the capacity of the pharmacist to competently and safely engage in the practice of
233 pharmacy.

234 (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
235 Administrative Procedures Act, except as provided in Subsection (4).

236 (4) (a) Every pharmacist who accepts the privilege of being licensed under this chapter
237 gives consent to:

238 (i) submitting at the pharmacist's own expense to an immediate mental or physical
239 examination when directed in writing by the division, with the consent of a majority of the
240 board, to do so; and

241 (ii) the admissibility of the reports of the examining practitioner's testimony or
242 examination in any proceeding regarding the license of the pharmacist, and waives all
243 objections on the ground the reports constitute a privileged communication.

244 (b) The examination may be ordered by the division, with the consent of a majority of

245 the board, only upon a finding of reasonable cause to believe:

246 (i) the pharmacist has a mental illness, is incapacitated or otherwise unable to practice
247 pharmacy with reasonable skill and safety; and

248 (ii) immediate action by the division and the board is necessary to prevent harm to the
249 pharmacist's patients or the general public.

250 (c) (i) Failure of a pharmacist to submit to the examination ordered under this section
251 is a ground for the division's immediate suspension of the pharmacist's license by written order
252 of the director.

253 (ii) The division may enter the order of suspension without further compliance with
254 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
255 submit to the examination ordered under this section was due to circumstances beyond the
256 control of the pharmacist and was not related directly to the illness or incapacity of the
257 pharmacist.

258 (5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the
259 right to a hearing to appeal the suspension within 10 days after the license is suspended.

260 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
261 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
262 for the continuance of the order of suspension in order to prevent harm to the pharmacist's
263 patients or the general public.

264 (6) A pharmacist whose license is revoked, suspended, or in any way restricted under
265 this section may request the division and the board to consider, at reasonable intervals,
266 evidence presented by the pharmacist, under procedures established by division rule, regarding
267 any change in the pharmacist's condition, to determine whether:

268 (a) the pharmacist is or is not able to safely and competently engage in the practice of
269 pharmacy; and

270 (b) the pharmacist is qualified to have the pharmacist's licensure to practice under this
271 chapter restored completely or in part.

272 Section 5. Section **58-31b-401** is amended to read:

273 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
274 **proceedings.**

275 (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the

276 license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee,
277 to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be
278 in accordance with Section 58-1-401.

279 (2) If a court of competent jurisdiction determines a nurse is [~~an~~] incapacitated [~~person~~]
280 as defined in Section 75-1-201 or that the nurse has a mental illness, as defined in Section
281 62A-15-602, and unable to safely engage in the practice of nursing, the director shall
282 immediately suspend the license of the nurse upon the entry of the judgment of the court,
283 without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
284 regardless of whether an appeal from the court's ruling is pending. The director shall promptly
285 notify the nurse in writing of the suspension.

286 (3) (a) If the division and the majority of the board find reasonable cause to believe a
287 nurse who is not determined judicially to be an incapacitated person or to have a mental illness,
288 is incapable of practicing nursing with reasonable skill regarding the safety of patients, because
289 of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition,
290 the board shall recommend that the director file a petition with the division, and cause the
291 petition to be served upon the nurse with a notice of hearing on the sole issue of the capacity of
292 the nurse to competently, safely engage in the practice of nursing.

293 (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
294 Administrative Procedures Act, except as provided in Subsection (4).

295 (4) (a) Every nurse who accepts the privilege of being licensed under this chapter gives
296 consent to:

297 (i) submitting to an immediate mental or physical examination, at the nurse's expense
298 and by a division-approved practitioner selected by the nurse when directed in writing by the
299 division and a majority of the board to do so; and

300 (ii) the admissibility of the reports of the examining practitioner's testimony or
301 examination, and waives all objections on the ground the reports constitute a privileged
302 communication.

303 (b) The examination may be ordered by the division, with the consent of a majority of
304 the board, only upon a finding of reasonable cause to believe:

305 (i) the nurse has a mental illness, is incapacitated, or otherwise unable to practice
306 nursing with reasonable skill and safety; and

307 (ii) immediate action by the division and the board is necessary to prevent harm to the
308 nurse's patients or the general public.

309 (c) (i) Failure of a nurse to submit to the examination ordered under this section is a
310 ground for the division's immediate suspension of the nurse's license by written order of the
311 director.

312 (ii) The division may enter the order of suspension without further compliance with
313 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
314 submit to the examination ordered under this section was due to circumstances beyond the
315 control of the nurse and was not related directly to the illness or incapacity of the nurse.

316 (5) (a) A nurse whose license is suspended under Subsection (2), (3), or (4)(c) has the
317 right to a hearing to appeal the suspension within 10 days after the license is suspended.

318 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
319 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
320 for the continuance of the order of suspension in order to prevent harm to the nurse's patients or
321 the general public.

322 (6) A nurse whose license is revoked, suspended, or in any way restricted under this
323 section may request the division and the board to consider, at reasonable intervals, evidence
324 presented by the nurse, under procedures established by division rule, regarding any change in
325 the nurse's condition, to determine whether:

326 (a) the nurse is or is not able to safely and competently engage in the practice of
327 nursing; and

328 (b) the nurse is qualified to have the nurse's license to practice under this chapter
329 restored completely or in part.

330 (7) Nothing in Section 63G-2-206 may be construed as limiting the authority of the
331 division to report current significant investigative information to the coordinated licensure
332 information system for transmission to party states as required of the division by Article VII of
333 the Nurse Licensure Compact in Section 58-31c-102.

334 (8) For purposes of this section:

335 (a) "licensed" or "license" includes "certified" or "certification" under this chapter; and

336 (b) any terms or conditions applied to the word "nurse" in this section also apply to a
337 medication aide certified.

338 Section 6. Section **58-67-601** is amended to read:

339 **58-67-601. Mentally incompetent or incapacitated physician.**

340 (1) As used in this section:

341 (a) "Incapacitated person" [is] means a person who is incapacitated, as defined in
342 Section 75-1-201.

343 (b) "Mental illness" is as defined in Section 62A-15-602.

344 (2) If a court of competent jurisdiction determines a physician is an incapacitated
345 person or that the physician has a mental illness and is unable to safely engage in the practice
346 of medicine, the director shall immediately suspend the license of the physician upon the entry
347 of the judgment of the court, without further proceedings under Title 63G, Chapter 4,
348 Administrative Procedures Act, regardless of whether an appeal from the court's ruling is
349 pending. The director shall promptly notify the physician, in writing, of the suspension.

350 (3) (a) If the division and a majority of the board find reasonable cause to believe a
351 physician, who is not determined judicially to be an incapacitated person or to have a mental
352 illness, is incapable of practicing medicine with reasonable skill regarding the safety of
353 patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
354 physical condition, the board shall recommend that the director file a petition with the division,
355 and cause the petition to be served upon the physician with a notice of hearing on the sole issue
356 of the capacity of the physician to competently and safely engage in the practice of medicine.

357 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
358 Administrative Procedures Act, except as provided in Subsection (4).

359 (4) (a) Every physician who accepts the privilege of being licensed under this chapter
360 gives consent to:

361 (i) submitting at the physician's own expense to an immediate mental or physical
362 examination when directed in writing by the division and a majority of the board to do so; and

363 (ii) the admissibility of the reports of the examining physician's testimony or
364 examination, and waives all objections on the ground the reports constitute a privileged
365 communication.

366 (b) The examination may be ordered by the division, with the consent of a majority of
367 the board, only upon a finding of reasonable cause to believe:

368 (i) the physician has a mental illness, is incapacitated, or otherwise unable to practice

369 medicine with reasonable skill and safety; and

370 (ii) immediate action by the division and the board is necessary to prevent harm to the
371 physician's patients or the general public.

372 (c) (i) Failure of a physician to submit to the examination ordered under this section is
373 a ground for the division's immediate suspension of the physician's license by written order of
374 the director.

375 (ii) The division may enter the order of suspension without further compliance with
376 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
377 submit to the examination ordered under this section was due to circumstances beyond the
378 control of the physician and was not related directly to the illness or incapacity of the
379 physician.

380 (5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right
381 to a hearing to appeal the suspension within 10 days after the license is suspended.

382 (b) The hearing held under this subsection shall be conducted in accordance with
383 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
384 for the continuance of the order of suspension in order to prevent harm to the physician's
385 patients or the general public.

386 (6) A physician whose license is revoked, suspended, or in any way restricted under
387 this section may request the division and the board to consider, at reasonable intervals,
388 evidence presented by the physician, under procedures established by division rule, regarding
389 any change in the physician's condition, to determine whether:

390 (a) the physician is or is not able to safely and competently engage in the practice of
391 medicine; and

392 (b) the physician is qualified to have the physician's license to practice under this
393 chapter restored completely or in part.

394 Section 7. Section **58-68-601** is amended to read:

395 **58-68-601. Mentally incompetent or incapacitated osteopathic physician.**

396 (1) As used in this section:

397 (a) "Incapacitated person" [~~is~~] means a person who is incapacitated, as defined in
398 Section 75-1-201.

399 (b) "Mental illness" is as defined in Section 62A-15-602.

400 (2) If a court of competent jurisdiction determines an osteopathic physician and
401 surgeon is an incapacitated person or that the physician or surgeon has a mental illness and is
402 unable to safely engage in the practice of medicine, the director shall immediately suspend the
403 license of the osteopathic physician and surgeon upon the entry of the judgment of the court,
404 without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
405 regardless of whether an appeal from the court's ruling is pending. The director shall promptly
406 notify the osteopathic physician and surgeon, in writing, of the suspension.

407 (3) (a) If the division and a majority of the board find reasonable cause to believe an
408 osteopathic physician and surgeon, who is not determined judicially to be an incapacitated
409 person or to have a mental illness, is incapable of practicing osteopathic medicine with
410 reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or
411 alcohol, or as a result of any mental or physical condition, the board shall recommend that the
412 director file a petition with the division, and cause the petition to be served upon the
413 osteopathic physician and surgeon with a notice of hearing on the sole issue of the capacity of
414 the osteopathic physician and surgeon to competently and safely engage in the practice of
415 medicine.

416 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
417 Administrative Procedures Act, except as provided in Subsection (4).

418 (4) (a) Every osteopathic physician and surgeon who accepts the privilege of being
419 licensed under this chapter gives consent to:

420 (i) submitting at the physician's or surgeon's own expense to an immediate mental or
421 physical examination when directed in writing by the division and a majority of the board to do
422 so; and

423 (ii) the admissibility of the reports of the examining physician's testimony or
424 examination, and waives all objections on the ground the reports constitute a privileged
425 communication.

426 (b) The examination may be ordered by the division, with the consent of a majority of
427 the board, only upon a finding of reasonable cause to believe:

428 (i) the osteopathic physician and surgeon has a mental illness, is incapacitated, or
429 otherwise unable to practice medicine with reasonable skill and safety; and

430 (ii) immediate action by the division and the board is necessary to prevent harm to the

431 osteopathic physician and surgeon's patients or the general public.

432 (c) (i) Failure of an osteopathic physician and surgeon to submit to the examination
433 ordered under this section is a ground for the division's immediate suspension of the
434 osteopathic physician and surgeon's license by written order of the director.

435 (ii) The division may enter the order of suspension without further compliance with
436 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
437 submit to the examination ordered under this section was due to circumstances beyond the
438 control of the osteopathic physician and surgeon and was not related directly to the illness or
439 incapacity of the osteopathic physician and surgeon.

440 (5) (a) An osteopathic physician and surgeon whose license is suspended under
441 Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the
442 license is suspended.

443 (b) The hearing held under this subsection shall be conducted in accordance with
444 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
445 for the continuance of the order of suspension in order to prevent harm to the osteopathic
446 physician and surgeon's patients or the general public.

447 (6) An osteopathic physician and surgeon whose license is revoked, suspended, or in
448 any way restricted under this section may request the division and the board to consider, at
449 reasonable intervals, evidence presented by the osteopathic physician and surgeon, under
450 procedures established by division rule, regarding any change in the osteopathic physician and
451 surgeon's condition, to determine whether:

452 (a) the physician or surgeon is or is not able to safely and competently engage in the
453 practice of medicine; and

454 (b) the physician or surgeon is qualified to have the physician's or surgeon's license to
455 practice under this chapter restored completely or in part.

456 Section 8. Section **58-69-601** is amended to read:

457 **58-69-601. Mentally incompetent or incapacitated dentist or dental hygienist.**

458 (1) As used in this section:

459 (a) "Incapacitated person" [~~is~~] means a person who is incapacitated, as defined in
460 Section 75-1-201.

461 (b) "Mental illness" is as defined in Section 62A-15-602.

462 (2) If a court of competent jurisdiction determines a dentist or dental hygienist is an
463 incapacitated person or that the dentist or hygienist has a mental illness and is unable to safely
464 engage in the practice of dentistry or dental hygiene, the director shall immediately suspend the
465 license of the dentist or dental hygienist upon the entry of the judgment of the court, without
466 further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of
467 whether an appeal from the court's ruling is pending. The director shall promptly notify the
468 dentist or dental hygienist, in writing, of the suspension.

469 (3) (a) If the division and a majority of the board find reasonable cause to believe a
470 dentist or dental hygienist, who is not determined judicially to be an incapacitated person or to
471 have a mental illness, is incapable of practicing dentistry or dental hygiene with reasonable
472 skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as
473 a result of any mental or physical condition, the board shall recommend that the director file a
474 petition with the division, and cause the petition to be served upon the dentist or dental
475 hygienist with a notice of hearing on the sole issue of the capacity of the dentist or dental
476 hygienist to competently and safely engage in the practice of dentistry or dental hygiene.

477 (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
478 Administrative Procedures Act, except as provided in Subsection (4).

479 (4) (a) Every dentist or dental hygienist who accepts the privilege of being licensed
480 under this chapter gives consent to:

481 (i) submitting at the dentist or dental hygienist's own expense to an immediate mental
482 or physical examination when directed in writing by the division and a majority of the board to
483 do so; and

484 (ii) the admissibility of the reports of the examining practitioner's testimony or
485 examination, and waives all objections on the ground the reports constitute a privileged
486 communication.

487 (b) The examination may be ordered by the division, with the consent of a majority of
488 the board, only upon a finding of reasonable cause to believe:

489 (i) the dentist or dental hygienist has a mental illness, is incapacitated, or otherwise
490 unable to practice dentistry or dental hygiene with reasonable skill and safety; and

491 (ii) immediate action by the division and the board is necessary to prevent harm to the
492 dentist's or dental hygienist's patients or the general public.

493 (c) (i) Failure of a dentist or dental hygienist to submit to the examination ordered
494 under this section is a ground for the division's immediate suspension of the dentist's or dental
495 hygienist's license by written order of the director.

496 (ii) The division may enter the order of suspension without further compliance with
497 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
498 submit to the examination ordered under this section was due to circumstances beyond the
499 control of the dentist or dental hygienist and was not related directly to the illness or incapacity
500 of the dentist or dental hygienist.

501 (5) (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or
502 (3) has the right to a hearing to appeal the suspension within 10 days after the license is
503 suspended.

504 (b) The hearing held under this subsection shall be conducted in accordance with
505 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
506 for the continuance of the order of suspension in order to prevent harm to the dentist's or dental
507 hygienist's patients or the general public.

508 (6) A dentist or dental hygienist whose license is revoked, suspended, or in any way
509 restricted under this section may request the division and the board to consider, at reasonable
510 intervals, evidence presented by the dentist or dental hygienist, under procedures established by
511 division rule, regarding any change in the dentist's or dental hygienist's condition, to determine
512 whether:

513 (a) the dentist or dental hygienist is or is not able to safely and competently engage in
514 the practice of dentistry or dental hygiene; and

515 (b) the dentist or dental hygienist is qualified to have the dentist or dental hygienist's
516 licensure to practice under this chapter restored completely or in part.

517 Section 9. Section **58-71-601** is amended to read:

518 **58-71-601. Mentally incompetent or incapacitated naturopathic physician.**

519 (1) As used in this section:

520 (a) "Incapacitated person" [is] means a person who is incapacitated, as defined in
521 Section 75-1-201.

522 (b) "Mental illness" is as defined in Section 62A-15-602.

523 (2) If a court of competent jurisdiction determines a naturopathic physician is an

524 incapacitated person or that the physician has a mental illness and is unable to safely engage in
525 the practice of medicine, the director shall immediately suspend the license of the naturopathic
526 physician upon the entry of the judgment of the court, without further proceedings under Title
527 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the
528 court's ruling is pending. The director shall promptly notify the naturopathic physician, in
529 writing, of the suspension.

530 (3) (a) If the division and a majority of the board find reasonable cause to believe a
531 naturopathic physician, who is not determined judicially to be an incapacitated person or to
532 have a mental illness, is incapable of practicing medicine with reasonable skill regarding the
533 safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any
534 mental or physical condition, the board shall recommend that the director file a petition with
535 the division, and cause the petition to be served upon the naturopathic physician with a notice
536 of hearing on the sole issue of the capacity of the naturopathic physician to competently and
537 safely engage in the practice of medicine.

538 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
539 Administrative Procedures Act, except as provided in Subsection (4).

540 (4) (a) Every naturopathic physician who accepts the privilege of being licensed under
541 this chapter gives consent to:

542 (i) submitting at the physician's own expense to an immediate mental or physical
543 examination when directed in writing by the division and a majority of the board to do so; and

544 (ii) the admissibility of the reports of the examining physician's testimony or
545 examination, and waives all objections on the ground the reports constitute a privileged
546 communication.

547 (b) The examination may be ordered by the division, with the consent of a majority of
548 the board, only upon a finding of reasonable cause to believe:

549 (i) the naturopathic physician has a mental illness, is incapacitated, or otherwise unable
550 to practice medicine with reasonable skill and safety; and

551 (ii) immediate action by the division and the board is necessary to prevent harm to the
552 naturopathic physician's patients or the general public.

553 (c) (i) Failure of a naturopathic physician to submit to the examination ordered under
554 this section is a ground for the division's immediate suspension of the naturopathic physician's

555 license by written order of the director.

556 (ii) The division may enter the order of suspension without further compliance with
557 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
558 submit to the examination ordered under this section was due to circumstances beyond the
559 control of the naturopathic physician and was not related directly to the illness or incapacity of
560 the naturopathic physician.

561 (5) (a) A naturopathic physician whose license is suspended under Subsection (2) or
562 (3) has the right to a hearing to appeal the suspension within 10 days after the license is
563 suspended.

564 (b) The hearing held under this subsection shall be conducted in accordance with
565 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
566 for the continuance of the order of suspension in order to prevent harm to the naturopathic
567 physician's patients or the general public.

568 (6) A naturopathic physician whose license is revoked, suspended, or in any way
569 restricted under this section may request the division and the board to consider, at reasonable
570 intervals, evidence presented by the naturopathic physician, under procedures established by
571 division rule, regarding any change in the naturopathic physician's condition, to determine
572 whether:

573 (a) the physician is or is not able to safely and competently engage in the practice of
574 medicine; and

575 (b) the physician is qualified to have the physician's license to practice under this
576 chapter restored completely or in part.

577 Section 10. Section **62A-14-102** is amended to read:

578 **62A-14-102. Definitions.**

579 As used in this chapter:

580 (1) "Conservator" is as defined in Section 75-1-201.

581 (2) "Court" is as defined in Section 75-1-201.

582 (3) "Estate" is as defined in Section 75-1-201.

583 (4) "Guardian" is as defined in Section 75-1-201.

584 (5) "Incapacitated [person]" means a person who has been determined by a court,
585 pursuant to Section 75-5-303, to be incapacitated, as defined in Section 75-1-201, after the

586 office has determined that the person is 18 years of age or older and suffers from a mental or
587 physical impairment as part of the prepetition assessment in Section 62A-14-107.

588 (6) "Office" means the Office of Public Guardian.

589 (7) "Property" is as defined in Section 75-1-201.

590 (8) "Ward" means an incapacitated person for whom the office has been appointed as
591 guardian or conservator.

592 Section 11. Section **75-1-201** is amended to read:

593 **75-1-201. General definitions.**

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

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

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

603 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any
604 present or future interest, vested or contingent, and also includes the owner of an interest by
605 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to
606 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a
607 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security
608 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar
609 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated
610 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a
611 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of
612 appointment, and a person in whose favor a power of attorney or a power held in any
613 individual, fiduciary, or representative capacity is exercised.

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

617 other nonprobate transfer at death.

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

621 (6) "Claims," in respect to estates of decedents and protected persons, includes
622 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,
623 and liabilities of the estate which arise at or after the death of the decedent or after the
624 appointment of a conservator, including funeral expenses and expenses of administration.

625 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of
626 a decedent or protected person to specific assets alleged to be included in the estate.

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

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

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

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

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

641 (12) "Disability" means cause for a protective order as described by Section 75-5-401.

642 (13) "Distributee" means any person who has received property of a decedent from his
643 personal representative other than as a creditor or purchaser. A testamentary trustee is a
644 distributee only to the extent of distributed assets or increment thereto remaining in his hands.
645 A beneficiary of a testamentary trust to whom the trustee has distributed property received from
646 a personal representative is a distributee of the personal representative. For purposes of this
647 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to

648 the extent of the devised assets.

649 (14) "Estate" includes the property of the decedent, trust, or other person whose affairs
650 are subject to this title as originally constituted and as it exists from time to time during
651 administration.

652 (15) "Exempt property" means that property of a decedent's estate which is described in
653 Section 75-2-403.

654 (16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

655 (17) "Foreign personal representative" means a personal representative of another
656 jurisdiction.

657 (18) "Formal proceedings" means proceedings conducted before a judge with notice to
658 interested persons.

659 (19) "Governing instrument" means a deed, will, trust, insurance or annuity policy,
660 account with POD designation, security registered in beneficiary form (TOD), pension,
661 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
662 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of
663 any similar type.

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

667 (21) "Heirs," except as controlled by Section 75-2-711, means persons, including the
668 surviving spouse and state, who are entitled under the statutes of intestate succession to the
669 property of a decedent.

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

674 (22) "Incapacitated" or "incapacity" is measured by functional limitations and means a
675 judicial determination after proof by clear and convincing evidence that an adult's ability to do
676 the following is impaired to the extent that the individual lacks the ability, even with
677 appropriate technological assistance, to meet the essential requirements for financial protection
678 or physical health, safety, or self-care:

679 (a) receive and evaluate information;

680 (b) make and communicate decisions; or

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

682 (23) "Informal proceedings" mean those conducted without notice to interested persons
683 by an officer of the court acting as a registrar for probate of a will or appointment of a personal
684 representative.

685 (24) "Interested person" includes heirs, devisees, children, spouses, creditors,
686 beneficiaries, and any others having a property right in or claim against a trust estate or the
687 estate of a decedent, ward, or protected person. It also includes persons having priority for
688 appointment as personal representative, other fiduciaries representing interested persons, a
689 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but
690 incapacitated. The meaning as it relates to particular persons may vary from time to time and
691 shall be determined according to the particular purposes of, and matter involved in, any
692 proceeding.

693 (25) "Issue" of a person means descendant as defined in Subsection (9).

694 (26) "Joint tenants with the right of survivorship" and "community property with the
695 right of survivorship" includes coowners of property held under circumstances that entitle one
696 or more to the whole of the property on the death of the other or others, but excludes forms of
697 coownership registration in which the underlying ownership of each party is in proportion to
698 that party's contribution.

699 (27) "Lease" includes an oil, gas, or other mineral lease.

700 (28) "Letters" includes letters testamentary, letters of guardianship, letters of
701 administration, and letters of conservatorship.

702 (29) "Minor" means a person who is under 18 years of age.

703 (30) "Mortgage" means any conveyance, agreement, or arrangement in which property
704 is used as security.

705 (31) "Nonresident decedent" means a decedent who was domiciled in another
706 jurisdiction at the time of his death.

707 (32) "Organization" includes a corporation, limited liability company, business trust,
708 estate, trust, partnership, joint venture, association, government or governmental subdivision or
709 agency, or any other legal or commercial entity.

710 (33) "Parent" includes any person entitled to take, or who would be entitled to take if
711 the child died without a will, as a parent under this code by intestate succession from the child
712 whose relationship is in question and excludes any person who is only a stepparent, foster
713 parent, or grandparent.

714 (34) "Payor" means a trustee, insurer, business entity, employer, government,
715 governmental agency or subdivision, or any other person authorized or obligated by law or a
716 governing instrument to make payments.

717 (35) "Person" means an individual or an organization.

718 (36) (a) "Personal representative" includes executor, administrator, successor personal
719 representative, special administrator, and persons who perform substantially the same function
720 under the law governing their status.

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

722 (37) "Petition" means a written request to the court for an order after notice.

723 (38) "Proceeding" includes action at law and suit in equity.

724 (39) "Property" includes both real and personal property or any interest therein and
725 means anything that may be the subject of ownership.

726 (40) "Protected person" means a person for whom a conservator has been appointed. A
727 "minor protected person" means a minor for whom a conservator has been appointed because
728 of minority.

729 (41) "Protective proceeding" means a proceeding described in Section 75-5-401.

730 (42) "Record" means information that is inscribed on a tangible medium or that is
731 stored in an electronic or other medium and is retrievable in perceivable form.

732 (43) "Registrar" refers to the official of the court designated to perform the functions of
733 registrar as provided in Section 75-1-307.

734 (44) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of
735 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in
736 payments out of production under such a title or lease, collateral trust certificate, transferable
737 share, voting trust certificate, and, in general, any interest or instrument commonly known as a
738 security, or any certificate of interest or participation, any temporary or interim certificate,
739 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of
740 the foregoing.

741 (45) "Settlement," in reference to a decedent's estate, includes the full process of
742 administration, distribution, and closing.

743 (46) "Sign" means, with present intent to authenticate or adopt a record other than a
744 will:

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

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

748 (47) "Special administrator" means a personal representative as described in Sections
749 75-3-614 through 75-3-618.

750 (48) "State" means a state of the United States, the District of Columbia, the
751 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of
752 the United States, or a Native American tribe or band recognized by federal law or formally
753 acknowledged by a state.

754 (49) "Successor personal representative" means a personal representative, other than a
755 special administrator, who is appointed to succeed a previously appointed personal
756 representative.

757 (50) "Successors" means persons, other than creditors, who are entitled to property of a
758 decedent under the decedent's will or this title.

759 (51) "Supervised administration" refers to the proceedings described in Title 75,
760 Chapter 3, Part 5, Supervised Administration.

761 (52) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security
762 Registration Act, means that an individual has neither predeceased an event, including the
763 death of another individual, nor is considered to have predeceased an event under Section
764 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"
765 "survivor," and "surviving."

766 (53) "Testacy proceeding" means a proceeding to establish a will or determine
767 intestacy.

768 (54) "Testator" includes an individual of either sex.

769 (55) "Trust" includes a health savings account, as defined in Section 223, Internal
770 Revenue Code, any express trust, private or charitable, with additions thereto, wherever and
771 however created. The term also includes a trust created or determined by judgment or decree

772 under which the trust is to be administered in the manner of an express trust. The term
773 excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal
774 representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers,
775 custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts
776 providing for certificates to be issued to beneficiaries, common trust funds, voting trusts,
777 preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act, security
778 arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends,
779 interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any
780 arrangement under which a person is nominee or escrowee for another.

781 (56) "Trustee" includes an original, additional, and successor trustee, and cotrustee,
782 whether or not appointed or confirmed by the court.

783 (57) "Ward" means a person for whom a guardian has been appointed. A "minor ward"
784 is a minor for whom a guardian has been appointed solely because of minority.

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

789 Section 12. Section **75-2-1203** is amended to read:

790 **75-2-1203. Validity of nonvested property interest -- Validity of general power of**
791 **appointment subject to a condition precedent -- Validity of nongeneral or testamentary**
792 **power of appointment -- Effect of certain "later-of" type language.**

793 (1) A nonvested property interest is invalid unless within 1,000 years after the interest's
794 creation the interest vests or terminates.

795 (2) A general power of appointment not presently exercisable because of a condition
796 precedent is invalid unless within 1,000 years after the general power of appointment's creation
797 the power of appointment is irrevocably exercised or terminates.

798 (3) A nongeneral power of appointment or a general testamentary power of
799 appointment is invalid unless within 1,000 years after its creation the power of appointment is
800 irrevocably exercised or terminates.

801 (4) The language in a governing instrument is inoperative to the extent it produces a
802 period of time that exceeds [21] 1,000 years after [~~the death of the survivor of the specified~~

803 ~~lives,] if, in measuring a period from the creation of a trust or other property arrangement, the~~
804 ~~language:~~

805 (a) seeks to disallow the vesting or termination of any interest or trust beyond;
806 (b) seeks to postpone the vesting or termination of any interest or trust until; or
807 (c) seeks to operate in effect in any similar fashion upon, the later of:
808 (i) the expiration of a period of time not exceeding ~~[21]~~ 1,000 years ~~[after the death of~~
809 ~~the survivor of specified lives in being at the creation of the trust or other property~~
810 ~~arrangement]; or~~

811 (ii) the expiration of a period of time that exceeds or might exceed ~~[21]~~ 1,000 years
812 ~~[after the death of the survivor of lives in being at the creation of the trust or other property~~
813 ~~arrangement].~~

814 (5) If a nongeneral power of appointment is exercised to create a new presently
815 exercisable general power of appointment, all property interests subject to that new presently
816 exercisable general power of appointment are invalid unless, within 1,000 years after the
817 creation of the new presently exercisable general power of appointment, the property interests
818 that are subject to the new presently exercisable general power of appointment vest or
819 terminate.

820 (6) If a nongeneral power of appointment is exercised to create a new or successive
821 nongeneral power of appointment or a new or successive testamentary general power of
822 appointment, all property interests subject to the exercise of that new or successive nongeneral
823 or testamentary general power of appointment are invalid unless, within 1,000 years from the
824 time of creation of the original instrument or conveyance creating the original nongeneral
825 power of appointment that is exercised to create a new or successive nongeneral or
826 testamentary general power of appointment, the property interests that are subject to the new or
827 successive nongeneral or testamentary general power of appointment vest or terminate.

828 Section 13. Section **75-2-1204** is amended to read:

829 **75-2-1204. When nonvested property interest or power of appointment created.**

830 (1) Except as provided in Subsections (2) and (3) and in Section 75-2-1207, the time of
831 creation of a nonvested property interest or a power of appointment is determined under
832 general principles of property law.

833 (2) For purposes of this part, if there is a person who alone can exercise a power

834 created by a governing instrument to become the unqualified beneficial owner of:

835 (a) a nonvested property interest; or

836 (b) a property interest subject to a power of appointment described in ~~[Subsection]~~

837 Section 75-2-1203~~[(2)(a) or (b)]~~, the nonvested property interest or power of appointment is

838 created when the power to become the unqualified beneficial owner terminates.

839 (3) For purposes of this title, a nonvested property interest or a power of appointment

840 arising from a transfer of property to a previously funded trust or other existing property

841 arrangement is created when the nonvested property interest or power of appointment in the

842 original contribution was created.

843 Section 14. Section **75-3-102** is amended to read:

844 **75-3-102. Necessity of order of probate for will.**

845 Except as provided in Section 75-3-1201, to be effective to prove the transfer of any

846 property or to nominate a personal representative, a will must be declared to be valid by an

847 order of informal probate by the registrar, or an adjudication of probate by the court, except

848 that a duly executed and unrevoked will which has not been probated may be admitted as

849 evidence of a devise if both:

850 (1) no court proceeding concerning the succession or administration of the estate ~~[has~~

851 ~~occurred]~~ was commenced during the time period for testacy proceedings; and

852 (2) either the devisee or the devisee's successors and assigns possessed the property

853 devised in accordance with the provisions of the will, or the property devised was not

854 possessed or claimed by anyone by virtue of the decedent's title during the time period for

855 testacy proceedings.

856 Section 15. Section **75-3-107** is amended to read:

857 **75-3-107. Probate, testacy, and appointment proceedings -- Ultimate time limit --**

858 **Presumption and order of intestacy.**

859 (1) No informal probate ~~[or appointment]~~ proceeding or formal testacy ~~[or~~

860 ~~appointment]~~ proceeding, other than a proceeding to probate a will previously probated at the

861 testator's domicile and appointment proceedings relating to an estate in which there has been a

862 prior appointment, may be commenced more than three years after the decedent's death, except:

863 (a) If a previous proceeding was dismissed because of doubt about the fact of the

864 decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained

865 at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of
866 the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the
867 subsequent proceeding.

868 (b) Appropriate probate, appointment, or testacy proceedings may be maintained in
869 relation to the estate of an absent, disappeared, or missing person for whose estate a
870 conservator has been appointed, at any time within three years after the conservator becomes
871 able to establish the death of the protected person.

872 (c) A proceeding to contest an informally probated will and to secure appointment of
873 the person with legal priority for appointment in the event the contest is successful, may be
874 commenced within the later of 12 months from the informal probate or three years from the
875 decedent's death.

876 (2) The limitations provided in Subsection (1) do not apply to proceedings to construe
877 probated wills or determine heirs of an intestate. In cases under Subsection (1)(a) or (b), the
878 date on which a testacy or appointment proceeding is properly commenced shall be deemed to
879 be the date of the decedent's death for purposes of other limitations provisions of this title
880 which relate to the date of death.

881 (3) If no will is probated within three years from death, the presumption of intestacy is
882 final and the court shall upon filing a proper petition enter an order to that effect [~~and provide~~
883 ~~for the distribution of the decedent's property in accordance with the laws of intestacy under~~
884 ~~Title 75, Chapter 2, Part 1,]. The court also has continuing jurisdiction to [~~handle all matters~~
885 ~~necessary to distribute the decedent's property, including jurisdiction to]:~~~~

886 (a) determine what property was owned by the decedent at the time of death[-]; and

887 (b) appoint a personal representative or special administrator to administer the
888 decedent's estate.

889 Section 16. Section **75-3-301** is amended to read:

890 **75-3-301. Informal probate or appointment proceedings -- Application --**
891 **Contents.**

892 (1) Applications for informal probate or informal appointment shall be directed to the
893 registrar, and verified by the applicant to be accurate and complete to the best of his knowledge
894 and belief as to the appropriate information required under this section.

895 (2) Every application for informal probate of a will or for informal appointment of a

896 personal representative, other than a special or successor representative, shall contain the
897 following:

898 (a) a statement of the interest of the applicant;

899 (b) the name and date of death of the decedent, his age, the county and state of his
900 domicile at the time of death, and the names and addresses of the spouse, children, heirs, and
901 devisees and the ages of any who are minors so far as known or ascertainable with reasonable
902 diligence by the applicant;

903 (c) if the decedent was not domiciled in the state at the time of his death, a statement
904 showing venue;

905 (d) a statement identifying and indicating the address of any personal representative of
906 the decedent appointed in this state or elsewhere whose appointment has not been terminated;

907 (e) a statement indicating whether the applicant has received a demand for notice or is
908 aware of any demand for notice of any probate or appointment proceeding concerning the
909 decedent that may have been filed in this state or elsewhere; and

910 (f) that the time limit for informal probate or appointment as provided in this chapter
911 has not expired either because three years or less have passed since the decedent's death, or if
912 more than three years from death have passed, that circumstances as described by Section
913 75-3-107 authorizing tardy probate or appointment have occurred.

914 (3) An application for informal probate of a will shall state the following in addition to
915 the statements required by Subsection (2):

916 (a) that the original of the decedent's last will is:

917 (i) in the possession of the court[~~-or~~];

918 (ii) was presented to the court for electronic storage and electronic filing and is now in
919 the possession of the applicant or the applicant's attorney; or

920 (iii) accompanies the application, or that an authenticated copy of a will probated in
921 another jurisdiction accompanies the application;

922 (b) that the applicant, to the best of his knowledge, believes the will to have been
923 validly executed; and

924 (c) that after the exercise of reasonable diligence, the applicant is unaware of any
925 instrument revoking the will, and that the applicant believes that the instrument which is the
926 subject of the application is the decedent's last will.

927 (4) An application for informal appointment of a personal representative to administer
928 an estate under a will shall describe the will by date of execution and state the time and place of
929 probate or the pending application or petition for probate. The application for appointment
930 shall adopt the statements in the application or petition for probate, state the name, address and
931 priority for appointment of the person whose appointment is sought, state whether or not bond
932 is required, and, if required, unless specified by the will, state the estimated value of the
933 personal and real estate of the decedent and of the income expected from the personal and real
934 estate during the next year.

935 (5) An application for informal appointment of an administrator in intestacy shall state
936 in addition to the statements required by Subsection (2):

937 (a) That after the exercise of reasonable diligence, the applicant is unaware of any
938 unrevoked testamentary instrument relating to property having a situs in this state under
939 Section 75-1-301, or, a statement why any such instrument of which he may be aware is not
940 being probated;

941 (b) The priority of the person whose appointment is sought and the names of any other
942 persons having a prior or equal right to the appointment under Section 75-3-203;

943 (c) If bond is required, the estimated value of the personal and real estate of the
944 decedent and of the income expected from the personal and real estate during the next year.

945 (6) An application for appointment of a personal representative to succeed a personal
946 representative appointed under a different testacy status shall refer to the order in the most
947 recent testacy proceeding, state the name and address of the person whose appointment is
948 sought and of the person whose appointment will be terminated if the application is granted,
949 and describe the priority of the applicant.

950 (7) An application for appointment of a personal representative to succeed a personal
951 representative who has tendered a resignation as provided in Subsection 75-3-610(3), or whose
952 appointment has been terminated by death or removal, shall adopt the statements in the
953 application or petition which led to the appointment of the person being succeeded, except as
954 specifically changed or corrected, state the name and address of the person who seeks
955 appointment as successor, and describe the priority of the applicant.

956 Section 17. Section **75-3-303** is amended to read:

957 **75-3-303. Informal probate -- Proof and findings required.**

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

960 (a) the application is complete;

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

963 (c) the applicant appears from the application to be an interested person as defined in
964 Subsection 75-1-201(24);

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

966 (e) an original, duly executed and apparently unrevoked will was presented to the court
967 for electronic storage and electronic filing and is now in the possession of the applicant or the
968 applicant's attorney, or is in the registrar's possession;

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

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

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

977 (3) A will which appears to have the required signatures and which contains an
978 attestation clause showing that requirements of execution under Section 75-2-502, 75-2-503, or
979 75-2-506 have been met shall be probated without further proof. In other cases, the registrar
980 may assume execution if the will appears to have been properly executed, or he may accept a
981 sworn statement or affidavit of any person having knowledge of the circumstances of
982 execution, whether or not the person was a witness to the will.

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

987 (5) A will from a place which does not provide for probate of a will after death and
988 which is not eligible for probate under Subsection (1) above may be probated in this state upon

989 receipt by the registrar of a duly authenticated copy of the will and a duly authenticated
990 certificate of its legal custodian that the copy filed is a true copy and that the will has become
991 operative under the law of the other place.

992 Section 18. Section **75-3-402** is amended to read:

993 **75-3-402. Formal testacy or appointment proceedings -- Petition -- Contents.**

994 (1) Petitions for formal probate of a will, or for adjudication of intestacy with or
995 without request for appointment of a personal representative, [~~must~~] shall be directed to the
996 court, request a judicial order after notice and hearing, and contain further statements as
997 indicated in this section. A petition for formal probate of a will:

998 (a) requests an order as to the testacy of the decedent in relation to a particular
999 instrument which may or may not have been informally probated and determining the heirs;

1000 (b) contains the statements required for informal applications as stated in Subsection
1001 75-3-301(2) and the statements required by Subsections 75-3-301(3)(b) and (c), and, if the
1002 petition requests appointment of a personal representative, the statements required by
1003 Subsection 75-3-301(4); and

1004 (c) states whether the original of the last will of the decedent is in the possession of the
1005 court [~~or~~], accompanies the petition[-], or was presented to the court for electronic storage or
1006 electronic filing and is not in the possession of the petitioner or the petitioner's attorney.

1007 (2) If the original will is [~~neither~~] not in the possession of the court [~~nor accompanies~~],
1008 has not been presented to the court for electronic storage or electronic filing, does not
1009 accompany the petition, and no authenticated copy of a will probated in another jurisdiction
1010 accompanies the petition, the petition also [~~must~~] shall state the contents of the will and
1011 indicate that it is lost, destroyed, or otherwise unavailable.

1012 (3) A petition for adjudication of intestacy and appointment of an administrator in
1013 intestacy [~~must~~] shall request a judicial finding and order that the decedent left no will and,
1014 determining the heirs, contain the statements required by Subsections 75-3-301(2) and
1015 75-3-301(5) and indicate whether supervised administration is sought. A petition may request
1016 an order determining intestacy and heirs without requesting the appointment of an
1017 administrator, in which case, the statements required by Subsection 75-3-301(5)(b) [~~above~~]
1018 may be omitted.

1019 Section 19. Section **75-3-801** is amended to read:

1020 **75-3-801. Notice to creditors.**

1021 (1) (a) [~~Unless notice has already been given under this section, a~~] A personal
1022 representative, upon [~~his~~] appointment [~~shall~~], may publish a notice to creditors announcing the
1023 personal representative's appointment and address and notifying creditors of the estate to
1024 present their claims within three months after the date of the first publication of the notice or be
1025 forever barred.

1026 (b) The notice described in Subsection (1)(a) shall be published:

1027 (i) once a week for three successive weeks in a newspaper of general circulation in the
1028 county; and

1029 (ii) in accordance with Section 45-1-101 for three weeks.

1030 (2) A personal representative may give written notice by mail or other delivery to any
1031 creditor, notifying the creditor to present his claim within 90 days from the published notice if
1032 given as provided in Subsection (1) above or within 60 days from the mailing or other delivery
1033 of the notice, whichever is later, or be forever barred. Written notice shall be the notice
1034 described in Subsection (1) above or a similar notice.

1035 (3) The personal representative shall not be liable to any creditor or to any successor of
1036 the decedent for giving or failing to give notice under this section.

1037 (4) If the estate is being administered in accordance with Section 75-3-1201, a notice to
1038 creditors may be published in an affidavit in accordance with this section by the person
1039 claiming to be the successor or the decedent.

1040 Section 20. Section **75-5-303** is amended to read:

1041 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**
1042 **person.**

1043 (1) The incapacitated person or any person interested in the incapacitated person's
1044 welfare may petition for a finding of incapacity and appointment of a guardian.

1045 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of
1046 incapacity. Unless the allegedly incapacitated person has counsel of the person's own choice,
1047 the court shall appoint an attorney to represent the person in the proceeding the cost of which
1048 shall be paid by the person alleged to be incapacitated. If the court determines that the petition
1049 is without merit, the attorney fees and court costs shall be paid by the person filing the petition.
1050 If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated

1051 person, regardless of whether the nominee is specified in the moving petition or nominated
1052 during the proceedings, the petitioner shall be entitled to receive from the incapacitated person
1053 reasonable attorney fees and court costs incurred in bringing ~~[and]~~, prosecuting, or defending
1054 the petition.

1055 (3) The legal representation of the incapacitated person by an attorney shall terminate
1056 upon the appointment of a guardian, unless:

1057 (a) there are separate conservatorship proceedings still pending before the court
1058 subsequent to the appointment of a guardian;

1059 ~~[(b) the appointed guardian elects at the time to maintain the attorney's representation~~
1060 ~~of the incapacitated person;]~~

1061 ~~[(c)]~~ (b) there is a timely filed appeal of the appointment of the guardian or the
1062 determination of incapacity; or

1063 ~~[(d)]~~ (c) upon an express finding of good cause, the court orders otherwise.

1064 (4) The person alleged to be incapacitated may be examined by a physician appointed
1065 by the court who shall submit a report in writing to the court and may be interviewed by a
1066 visitor sent by the court. The visitor also may interview the person seeking appointment as
1067 guardian, visit the present place of abode of the person alleged to be incapacitated and the place
1068 it is proposed that the person will be detained or reside if the requested appointment is made,
1069 conduct other investigations or observations as directed by the court, and submit a report in
1070 writing to the court.

1071 (5) (a) The person alleged to be incapacitated shall be present at the hearing in person
1072 and see or hear all evidence bearing upon the person's condition. If the person seeking the
1073 guardianship requests a waiver of presence of the person alleged to be incapacitated, the court
1074 shall order an investigation by a court visitor, the costs of which shall be paid by the person
1075 seeking the guardianship.

1076 (b) The investigation by a court visitor is not required if there is clear and convincing
1077 evidence from a physician that the person alleged to be incapacitated has:

1078 (i) fourth stage Alzheimer's Disease;

1079 (ii) extended comatosis; or

1080 (iii) (A) an intellectual disability; and

1081 (B) an intelligence quotient score under 20 to 25.

1082 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to
1083 present evidence, to cross-examine witnesses, including the court-appointed physician and the
1084 visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if
1085 the person alleged to be incapacitated or the person's counsel so requests.

1086 Section 21. Section **75-5-311** is amended to read:

1087 **75-5-311. Who may be guardian -- Priorities.**

1088 (1) As used in this section:

1089 (a) "Specialized care professional" means a person who[:] is certified as a National
1090 Certified Guardian or National Master Guardian by the Center for Guardianship Certification
1091 or similar organization.

1092 [~~(i) has been certified or designated as a provider of guardianship services by a~~
1093 ~~nationally recognized guardianship accrediting organization;]~~

1094 [~~(ii) is licensed by or registered with the Division of Occupational and Professional~~
1095 ~~Licensing as a health care provider including, but not limited to, a registered nurse licensed~~
1096 ~~under Section 58-31b-301, a social service worker, certified social worker, or clinical social~~
1097 ~~worker licensed under Section 58-60-205, a marriage and family therapist licensed under~~
1098 ~~Section 58-60-305, a physician licensed under Title 58, Chapter 67, or a psychologist licensed~~
1099 ~~under Title 58, Chapter 61; or]~~

1100 [~~(iii) has been approved by the court as one with specialized training and experience in~~
1101 ~~the care of incapacitated persons.]~~

1102 (b) "Suitable institution" means any nonprofit or for profit corporation, partnership,
1103 sole proprietorship, or other type of business organization that is owned, operated by, or
1104 employs a specialized care professional.

1105 [~~(2) Any competent person or suitable institution may be appointed guardian of an~~
1106 ~~incapacitated person.]~~

1107 [~~(3)~~ (2) The court shall appoint a guardian in accordance with the incapacitated
1108 person's most recent nomination, unless that person is disqualified or the court finds other good
1109 cause why the person should not serve as guardian. That nomination shall have been made
1110 prior to the person's incapacity, shall be in writing and shall be signed by the person making the
1111 nomination. The nomination shall be in substantially the following form:

1112 Nomination of Guardian by an Adult

1113 I, (Name), being of sound mind and not acting under duress, fraud, or other undue
1114 influence, do hereby nominate (Name, current residence, and relationship, if any, of the
1115 nominee) to serve as my guardian in the event that after the date of this instrument I become
1116 incapacitated.

1117 Executed at _____ (city, state)

1118 on this _____ day of _____

1119 _____

1120 (Signature)

1121 [~~(4)~~] (3) Except as provided in Subsection [~~(3)~~] (2), persons who are not disqualified
1122 have priority for appointment as guardian in the following order:

1123 (a) a person who has been nominated by the incapacitated person, by any means other
1124 than that described in Subsection [~~(3)~~] (2), if the incapacitated person was 14 years of age or
1125 older when the nomination was executed and, in the opinion of the court, that person acted
1126 with sufficient mental capacity to make the nomination;

1127 (b) the spouse of the incapacitated person;

1128 (c) an adult child of the incapacitated person;

1129 (d) a parent of the incapacitated person, including a person nominated by will, written
1130 instrument, or other writing signed by a deceased parent;

1131 (e) any relative of the incapacitated person with whom he has resided for more than six
1132 months prior to the filing of the petition;

1133 (f) a person nominated by the person who is caring for him or paying benefits to him;

1134 [or]

1135 (g) a specialized care professional, so long as the specialized care professional does
1136 not:

1137 (i) profit financially or otherwise from or receive compensation for acting in that
1138 capacity, except for the direct costs of providing guardianship or conservatorship services; or

1139 (ii) otherwise have a conflict of interest in providing those services[-]; or

1140 (h) any competent person or suitable institution.

1141 Section 22. Section 75-5-312 is amended to read:

1142 **75-5-312. General powers and duties of guardian -- Penalties.**

1143 (1) A guardian of an incapacitated person has only the powers, rights, and duties

1144 respecting the ward granted in the order of appointment under Section 75-5-304.

1145 (2) Absent a specific limitation on the guardian's power in the order of appointment,
1146 the guardian has the same powers, rights, and duties respecting the ward that a parent has
1147 respecting the parent's unemancipated minor child except that a guardian is not liable to third
1148 persons for acts of the ward solely by reason of the parental relationship. In particular, and
1149 without qualifying the foregoing, a guardian has the following powers and duties, except as
1150 modified by order of the court:

1151 (a) To the extent that it is consistent with the terms of any order by a court of
1152 competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled
1153 to custody of the person of the ward and may establish the ward's place of abode within or
1154 without this state.

1155 (b) If entitled to custody of the ward the guardian shall provide for the care, comfort,
1156 and maintenance of the ward and, whenever appropriate, arrange for the ward's training and
1157 education. Without regard to custodial rights of the ward's person, the guardian shall take
1158 reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and
1159 commence protective proceedings if other property of the ward is in need of protection.

1160 (c) A guardian may give any consents or approvals that may be necessary to enable the
1161 ward to receive medical or other professional care, counsel, treatment, or service.

1162 (d) If no conservator for the estate of the ward has been appointed, the guardian may:

1163 (i) institute proceedings to compel any person under a duty to support the ward or to
1164 pay sums for the welfare of the ward to perform that duty; or

1165 (ii) receive money and tangible property deliverable to the ward and apply the money
1166 and property for support, care, and education of the ward; but the guardian may not use funds
1167 from the ward's estate for room and board which the guardian, the guardian's spouse, parent, or
1168 child have furnished the ward unless a charge for the service is approved by order of the court
1169 made upon notice to at least one adult relative in the nearest degree of kinship to the ward in
1170 which there is an adult. The guardian must exercise care to conserve any excess for the ward's
1171 needs.

1172 (e) (i) A guardian is required to report the condition of the ward and of the estate which
1173 has been subject to the guardian's possession or control, as required by the court or court rule.

1174 (ii) A guardian is required to immediately notify all interested persons if the guardian

1175 reasonably believes that the ward's death is likely to occur within the next 30 days, based on:

1176 (A) the guardian's own observations; or

1177 (B) information from the ward's physician or other medical care providers.

1178 (iii) A guardian is required to immediately notify all interested persons of the ward's

1179 death.

1180 (iv) Unless emergency conditions exist, a guardian is required to file with the court a

1181 notice of the guardian's intent to move the ward and to serve the notice on all interested persons

1182 at least 10 days before the move. The guardian shall take reasonable steps to notify all

1183 interested persons and to file the notice with the court as soon as practicable following the

1184 earlier of the move or the date when the guardian's intention to move the ward is made known

1185 to the ward, the ward's care giver, or any other third party.

1186 ~~[(ii)]~~ (v) The guardian shall, for all estates in excess of \$50,000, excluding the
1187 residence owned by the ward, send a report with a full accounting to the court on an annual
1188 basis. For estates less than \$50,000, excluding the residence owned by the ward, the guardian
1189 shall fill out an informal annual report and mail the report to the court. The report shall include
1190 the following: a statement of assets at the beginning and end of the reporting year, income
1191 received during the year, disbursements for the support of the ward, and other expenses
1192 incurred by the estate. The guardian shall also report the physical conditions of the ward, the
1193 place of residence, and a list of others living in the same household. The court may require
1194 additional information. The forms for both the informal report for estates under \$50,000,
1195 excluding the residence owned by the ward, and the full accounting report for larger estates
1196 shall be approved by the Judicial Council. This annual report shall be examined and approved
1197 by the court. If the ward's income is limited to a federal or state program requiring an annual
1198 accounting report, a copy of that report may be submitted to the court in lieu of the required
1199 annual report.

1200 ~~[(iii)]~~ (vi) Corporate fiduciaries are not required to petition the court, but shall submit
1201 their internal report annually to the court. The report shall be examined and approved by the
1202 court.

1203 ~~[(iv)]~~ (vii) The guardian shall also render an annual accounting of the status of the
1204 person to the court which shall be included in the petition or the informal annual report as
1205 required under Subsection (2)(e). If a fee is paid for an accounting of an estate, no fee shall be

1206 charged for an accounting of the status of a person.

1207 [~~(v)~~] (viii) If a guardian:

1208 (A) makes a substantial misstatement on filings of annual reports;

1209 (B) is guilty of gross impropriety in handling the property of the ward; or

1210 (C) willfully fails to file the report required by this subsection, after receiving written
1211 notice from the court of the failure to file and after a grace period of two months has elapsed,
1212 the court may impose a penalty in an amount not to exceed \$5,000. The court may also order
1213 restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the
1214 guardian and may not be paid by the estate.

1215 [~~(vi)~~] (ix) These provisions and penalties governing annual reports do not apply if the
1216 guardian is the parent of the ward.

1217 (x) For the purposes of Subsections (2)(e)(i), (ii), (iii), and (iv), "interested persons"
1218 means those persons required to receive notice in guardianship proceedings as set forth in
1219 Section 75-5-309.

1220 (f) If a conservator has been appointed, all of the ward's estate received by the guardian
1221 in excess of those funds expended to meet current expenses for support, care, and education of
1222 the ward [~~must~~] shall be paid to the conservator for management as provided in this code; and
1223 the guardian [~~must~~] shall account to the conservator for funds expended.

1224 (3) Any guardian of one for whom a conservator also has been appointed shall control
1225 the custody and care of the ward and is entitled to receive reasonable sums for services and for
1226 room and board furnished to the ward as agreed upon between the guardian and the
1227 conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian
1228 may request the conservator to expend the ward's estate by payment to third persons or
1229 institutions for the ward's care and maintenance.

1230 Section 23. Section **75-5-407** is amended to read:

1231 **75-5-407. Procedure concerning hearing and order on original petition.**

1232 (1) Upon receipt of a petition for appointment of a conservator or other protective order
1233 because of minority, the court shall set a date for the hearing on the matters alleged in the
1234 petition. If, at any time in the proceeding, the court determines that the interests of the minor
1235 are or may be inadequately represented, it may appoint an attorney to represent the minor,
1236 giving consideration to the choice of the minor if 14 years of age or older. An attorney

1237 appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

1238 (2) Upon receipt of a petition for appointment of a conservator or other protective order
1239 for reasons other than minority, the court shall set a date for hearing. Unless the person to be
1240 protected has already retained counsel, the court may appoint an attorney to represent the
1241 person to be protected who then has the powers and duties of a guardian ad litem.

1242 (3) The legal representation of the protected person by an attorney shall terminate upon
1243 the appointment of a conservator, unless:

1244 (a) there are separate guardianship proceedings still pending before the court
1245 subsequent to the appointment of a conservator;

1246 [~~(b) the appointed conservator elects at the time to maintain the attorney's~~
1247 ~~representation of the protected person;]~~

1248 [~~(c)~~] (b) there is a timely filed appeal of the appointment of the conservator [~~or the~~
1249 ~~determination of the incapacity]; or~~

1250 [~~(d)~~] (c) upon an express finding of good cause, the court orders otherwise.

1251 (4) If the alleged disability is mental illness, mental deficiency, physical illness or
1252 disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that
1253 the person to be protected be examined by a physician designated by the court, preferably a
1254 physician who is not connected with any institution in which the person is a patient or is
1255 detained. The court may send a visitor to interview the person to be protected. The visitor may
1256 be a guardian ad litem or an officer or employee of the court.

1257 (5) After hearing, upon finding that a basis for the appointment of a conservator or
1258 other protective order has been established, the court shall make an appointment or other
1259 appropriate protective order.

Legislative Review Note

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