

**PROBATE AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: \_\_\_\_\_

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**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



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, depositary, 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.

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**Legislative Review Note**

as of 2-14-13 11:53 AM

**Office of Legislative Research and General Counsel**