

ARTICLE 5

MAINE UNIFORM GUARDIANSHIP, CONSERVATORSHIP AND PROTECTIVE PROCEEDINGS

PART 1

GENERAL PROVISIONS

§5-101. Short title

Parts 1, 2, 3, 4 and 5 of this Article may be known and cited as "the Maine Uniform Guardianship, Conservatorship and Protective Proceedings Act." [PL 2019, c. 417, Pt. A, §8 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §8 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-102. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Adult. "Adult" means an individual at least 18 years of age or an emancipated individual under 18 years of age.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Adult subject to conservatorship. "Adult subject to conservatorship" means an adult for whom a conservator has been appointed under this Act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Adult subject to guardianship. "Adult subject to guardianship" means an adult for whom a guardian has been appointed under this Act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Best interest of the minor. "Best interest of the minor" means the standard of the best interest of the child according to the factors set forth in Title 19-A, section 1653, subsection 3.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Claim. "Claim" includes a claim against an individual or conservatorship estate, whether arising in contract, tort or otherwise.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Conservator. "Conservator" means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship. "Conservator" includes a coconservator.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Conservatorship estate. "Conservatorship estate" means the property subject to conservatorship under this Act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Full conservatorship. "Full conservatorship" means a conservatorship that grants the conservator all powers available under this Act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Full guardianship. "Full guardianship" means a guardianship that grants the guardian all powers available under this Act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Guardian. "Guardian" means a person appointed by a court to make decisions with respect to the personal affairs of an individual. "Guardian" includes a coguardian but does not include a guardian ad litem.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

11. Guardian ad litem. "Guardian ad litem" means a person appointed to inform the court about, and to represent, the needs and best interest of an individual.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

12. Individual subject to conservatorship. "Individual subject to conservatorship" means an adult or minor for whom a conservator has been appointed.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

13. Individual subject to guardianship. "Individual subject to guardianship" means an adult or minor for whom a guardian has been appointed.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

14. Less restrictive alternative. "Less restrictive alternative" means an approach to meeting an individual's needs that restricts fewer rights than would the appointment of a guardian or conservator. "Less restrictive alternative" includes supported decision making, appropriate technological assistance, appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances, or appointment of a representative payee.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

15. Letters of office. "Letters of office" means judicial certification of guardianship or conservatorship.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

16. Limited conservatorship. "Limited conservatorship" means a conservatorship that grants the conservator less than all powers available under this Act, grants powers over only certain property or otherwise restricts the powers of the conservator.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

17. Limited guardianship. "Limited guardianship" means a guardianship that grants the guardian less than all powers available under this Act or otherwise restricts the powers of the guardian.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

18. Minor. "Minor" means an unemancipated individual who is under 18 years of age.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

19. Minor subject to conservatorship. "Minor subject to conservatorship" means a minor for whom a conservator has been appointed under this Act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

20. Minor subject to guardianship. "Minor subject to guardianship" means a minor for whom a guardian has been appointed under this Act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

21. Parent. "Parent" means a person who has established a parent-child relationship with the child under Title 19-A, chapter 61 and whose parental rights have not been terminated.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

22. Person. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

23. Property. "Property" means anything that may be the subject of ownership and includes both real and personal property, tangible and intangible, or any interest therein.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

24. Protective arrangement instead of conservatorship. "Protective arrangement instead of conservatorship" means a court order entered under section 5-503.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

25. Protective arrangement instead of guardianship. "Protective arrangement instead of guardianship" means a court order entered under section 5-502.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

26. Protective arrangement instead of guardianship or conservatorship. "Protective arrangement instead of guardianship or conservatorship" means a court order entered under Part 5, including an order authorizing a single transaction or more than one related transaction.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 209, c. 417, Pt. B, §14 (AFF).]

27. Record. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

28. Respondent. "Respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

29. Sign. "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. To attach to or logically associate with the record an electronic symbol, sound or process. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

30. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

31. Suitable. "Suitable," with respect to a guardian for a minor, means that the guardian can provide a safe and appropriate residence for the minor, understands and is prepared to follow the terms of the appointment and understands and can address the minor's needs and protect the minor from harm.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

32. Supported decision making. "Supported decision making" means assistance from one or more persons of an individual's choosing:

A. In understanding the nature and consequences of potential personal and financial decisions that enables the individual to make the decisions; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. When consistent with the individual's wishes, in communicating a decision once it is made. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-103. Facility of transfer

1. Transfer of money or personal property to minor. Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding the annual gift tax exclusion pursuant to 26 United States Code, Section 2503, by transferring it to:

A. A person who has the care and custody of the minor and with whom the minor resides; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A guardian of the minor; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A custodian under the Maine Uniform Transfers to Minors Act; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C-1. A qualified tuition program or a qualified ABLE program in the State, or both, under Sections 529 and 529A, respectively, of the federal Internal Revenue Code of 1986; [PL 2019, c. 417, Pt. A, §9 (NEW).]

D. A financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The minor, if married or emancipated. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §9 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

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

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. For benefit of minor; no personal financial benefit. A guardian or other person who receives money or property for a minor under subsection 1, paragraph A or B may apply it only to the support, care, education, health and welfare of the minor and may not derive a personal financial benefit, but may be reimbursed for necessary expenses for the benefit of the minor. Any excess must be preserved for the future support, care, education, health and welfare of the minor, and any balance must be transferred to the minor when the minor becomes an adult or is otherwise emancipated.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §9 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-104. Subject matter jurisdiction

1. Jurisdiction; minors. Except to the extent that jurisdiction is precluded by the Uniform Child Custody Jurisdiction and Enforcement Act and Title 4, section 152, subsection 5-A, the court has jurisdiction over a guardianship for a minor domiciled or present in this State. The court has jurisdiction over a conservatorship or protective arrangement instead of conservatorship for a minor domiciled in or having property located in this State.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1-A. At-risk noncitizen petitions. The court has original jurisdiction over a petition regarding the protection, well-being, care and custody of an unmarried noncitizen pursuant to Title 22, chapter 1071, subchapter 17 who has not attained 18 years of age.

[PL 2019, c. 366, §4 (NEW).]

2. Jurisdiction; adults. The court has jurisdiction over a guardianship, a conservatorship and an order for a protective arrangement instead of guardianship or conservatorship for an adult as provided in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Part 6. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Exclusive or concurrent jurisdiction. After service of notice in a proceeding seeking a guardianship, conservatorship or protective arrangement instead of guardianship or conservatorship and until termination of the proceeding, the court in which the petition is filed has:

A. Exclusive jurisdiction to determine the need for a guardianship, conservatorship or protective arrangement; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Exclusive jurisdiction to determine how property of the respondent that is subject to the law of this State must be managed, expended or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent or other claimant; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Concurrent jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. If a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Exclusive and continuing jurisdiction. A court that appoints a guardian or conservator, or authorizes a protective arrangement instead of guardianship or conservatorship, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the appointment or protective arrangement expires by its terms.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 366, §4 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-105. Transfer of proceeding

1. Guardianship or conservatorship subject to transfer provisions. This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of Part 6, subpart 3.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Transfer if serves best interest of individual. After the appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding to a court in another county in this State or to another state if transfer will serve the best interest of the individual subject to the guardianship or conservatorship.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Proceeding pending in another state or foreign country. If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship is filed in a court in this State, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Petition for appointment in this State. A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in this State if

jurisdiction in this State is or will be established. The appointment may be made on proof of appointment in the other state or foreign country and presentation of a certified copy of the part of the court record in the other state or country specified by the court in this State.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Notice; appointment unless not in best interest of respondent. Notice of hearing on a petition under subsection 4, together with a copy of the petition, must be given to the respondent, if the respondent is 14 years of age or older at the time of the hearing, and to the persons that would be entitled to notice if the procedures for appointment of a guardian or conservator under this Act were applicable. The court shall make the appointment in this State unless it determines that the appointment would not be in the best interest of the respondent.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Copy of order of appointment. Not later than 14 days after appointment under subsection 5, the guardian or conservator shall give a copy of the order of appointment to the individual subject to guardianship or conservatorship, if the individual is 14 years of age or older, and to all persons given notice of the hearing on the petition.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-106. Venue

1. Guardianship proceeding for minor. Venue for a guardianship proceeding for a minor is in:

A. The county or division of this State in which the minor, the petitioner or a parent or guardian of the child resides or is present at the time the proceeding commences; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The county or division of this State where another proceeding concerning the custody and parental rights of the minor is pending. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Guardianship proceeding or protective arrangement for adult. Venue for a guardianship proceeding or protective arrangement instead of guardianship for an adult is in:

A. The county of this State in which the respondent resides; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If the respondent has been admitted to an institution by order of a court of competent jurisdiction, the county in which the court is located; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. In a proceeding for appointment of an emergency guardian of an adult, the county in which the respondent is present. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Conservatorship proceeding or protective arrangement. Venue for a conservatorship proceeding or protective arrangement instead of conservatorship is in:

A. The county of this State in which the respondent resides, whether or not a guardian has been appointed in another county or another jurisdiction; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If the respondent does not reside in this State, any county of this State in which property of the respondent is located. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Proceedings in more than one county. If proceedings under this Act are brought in more than one county in this State, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-107. Practice in court

1. Rules. Except as otherwise provided in this Act, the Maine Rules of Probate Procedure, the Maine Rules of Civil Procedure and the Maine Rules of Evidence, including rules concerning appellate review, govern a proceeding under this Act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Consolidation. If proceedings under this Act for the same individual are commenced or pending in the same court, the proceedings may be consolidated.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-108. Letters of office

1. Guardian; letters of office. On a guardian's filing of an acceptance of appointment, the court shall issue appropriate letters of office.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Conservator; letters of office. On a conservator's filing of an acceptance of appointment and filing of any required bond or compliance with any other asset-protection arrangement required by the court, the court shall issue appropriate letters of office.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Limitations stated. Limitations on the powers of the guardian or conservator or on the property subject to conservatorship must be stated in the letters of office.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Limitations at any time; new letters of office; notice. Upon request or sua sponte, the court at any time may limit the powers conferred on the guardian or conservator. The court shall issue new letters of office to reflect the limitation. The court shall give notice of the limitation to the guardian or conservator, the individual subject to guardianship or conservatorship, each parent of a minor subject to guardianship or conservatorship and any other person as the court determines.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-109. Effect of acceptance of appointment

A guardian or conservator that accepts appointment submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-110. Coguardian; coconservator

1. Appointment at any time. The court at any time may appoint a coguardian or coconservator to serve immediately or when a designated future event occurs.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Acceptance of appointment. A coguardian or coconservator appointed to serve immediately may act when the coguardian or coconservator files an acceptance of appointment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Service upon designated future event. A coguardian or coconservator appointed to serve when a designated future event occurs may act when:

A. The designated event occurs; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The coguardian or coconservator files an acceptance of appointment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Joint decisions. Unless an order of appointment under subsection 1 or subsequent order states otherwise, coguardians or coconservators shall make decisions jointly.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-111. Judicial appointment of successor guardian or successor conservator

1. Appointment of successor by court. The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated future event occurs.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Petition to appoint successor. A person entitled under section 5-202 or 5-302 to petition the court to appoint a guardian may petition the court to appoint a successor guardian. A person entitled under section 5-402 to petition the court to appoint a conservator may petition the court to appoint a successor conservator.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Service upon designated future event. A successor guardian or successor conservator appointed to serve when a designated future event occurs may act as guardian or conservator if:

A. The designated event occurs; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The successor guardian or successor conservator files an acceptance of appointment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Succeeds to powers. A successor guardian or successor conservator succeeds to the predecessor's powers unless otherwise provided by the court.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-112. Effect of death, removal or resignation of guardian or conservator

1. Termination. Appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator or when the court approves a resignation of the guardian or conservator under subsection 2.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Petition to resign; approval. A guardian or conservator must petition the court to resign. The petition may include a request that the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation is approved by the court.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Liability. Death, removal or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for an action taken on behalf of the individual subject to guardianship or conservatorship or to account for the individual's money or other property.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-113. Notice of hearing

1. Notice by movant. If notice of a hearing under this Act is required, the movant shall give notice of the date, time and place of the hearing to the person to be notified unless otherwise ordered by the court for good cause. Except as otherwise provided in this Act, notice must be given in compliance with the Maine Rules of Probate Procedure, Rule 4 or the Maine Rules of Civil Procedure, Rule 4 at least 14 days before the hearing.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Proof of notice. Proof of notice of a hearing under this Act must be filed before the hearing.

[PL 2019, c. 417, Pt. A, §10 (AMD).]

3. Type size; plain language. Notice of a hearing under this Act must be in at least 16-point type, in plain language and, to the extent feasible, in a language in which the recipient is proficient.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §10 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-114. Waiver of notice

1. Waiver by person. Except as otherwise provided in subsection 2, a person may waive notice under this Act in a record signed by the person or the person's attorney and filed in the proceeding.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Waiver prohibited. Unless represented by an attorney, a respondent, an individual subject to guardianship, an individual subject to conservatorship, an individual subject to a protective arrangement instead of guardianship or conservatorship, an appointed guardian or an appointed conservator may not waive notice under this Act.

[PL 2019, c. 417, Pt. A, §11 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §11 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-115. Guardian ad litem

At any stage of a proceeding under this Act, the court may appoint a guardian ad litem for an individual to identify and represent the individual's best interest or perform other duties if the court determines the individual's interest otherwise would not be adequately represented. If a conflict of interest or potential conflict of interest does not exist, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state on the record the duties of the guardian ad litem and the reasons for the appointment, as well as responsibility for payment of the guardian ad litem fees. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-116. Request for notice

A person that is interested in the welfare of a respondent, individual subject to guardianship or conservatorship or individual subject to a protective arrangement instead of guardianship or conservatorship and that is not otherwise entitled to notice under this Act may file a request with the court for notice. The court shall send or deliver a copy of the request to the guardian, to the conservator if one has been appointed and to the individual who is subject to the guardianship, conservatorship or protective arrangement. The guardian, conservator and the individual who is subject to the guardianship, conservatorship or other protective arrangement may file an objection to the demand for notice within 60 days. If an objection is filed, the court shall hold a hearing on the request. If the court approves the request, the court shall give notice of the approval to the guardian or conservator if one has been appointed or to the respondent if no guardian or conservator has been appointed. The request must include a statement showing the interest of the person making it and the address of the person or an attorney for the person to whom notice is to be given. If the court approves the request or if no objection is filed within 60 days then the requesting party is entitled to notice. [PL 2019, c. 417, Pt. A, §12 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §12 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-117. Disclosure of bankruptcy or criminal history

1. Disclosure; petition. As part of the petition to be appointed a guardian or conservator, the petitioner shall disclose to the court whether the proposed guardian or conservator:

- A. Is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. Has been convicted of:
 - (1) A felony;
 - (2) A crime involving dishonesty, neglect, violence or use of physical force; or
 - (3) Any other crime relevant to the functions the individual would assume as guardian or conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §13 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Agent; convictions; approval. A guardian or conservator may not engage an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence or use of physical force or any other crime relevant to the functions the agent is being engaged to perform promptly without prior approval of the court.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Finances manager agent; debtor; disclosure. If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency or receivership proceeding, the conservator promptly shall disclose that knowledge to the court.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §13 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-118. Multiple appointments or nominations

If a respondent or other person makes more than one appointment or nomination of a guardian or a conservator, the latest in time governs. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-119. Compensation and expenses; in general

1. Attorney for respondent. Unless the court has made a finding that the respondent is indigent and has appointed an attorney for the respondent on that basis, an attorney for a respondent in a proceeding under this Act is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the respondent.

[PL 2019, c. 417, Pt. A, §14 (AMD).]

2. Attorney or other person. Unless the court has made a finding that the respondent is indigent, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or beneficial to an individual for whom a protective arrangement instead of guardianship or conservatorship was ordered is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the individual.

[PL 2019, c. 417, Pt. A, §14 (AMD).]

3. Court review. After notice to all interested persons, on petition of an interested person, the propriety of employment of any person by a conservator or guardian, including any attorney, accountant, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the propriety of employment and the reasonableness of compensation for an attorney for a respondent under subsection 1 and an attorney or other person under subsection 2, may be reviewed by the court. Any person who has received excessive compensation or reimbursement of inappropriate expenses for services rendered may be ordered to make appropriate refunds. The factors set forth in section 3-721, subsection 2 must be considered as guides in determining the reasonableness of compensation under this section.

[PL 2019, c. 417, Pt. A, §14 (AMD).]

4. Costs assessed against petitioner. If the court dismisses a petition under this Act and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or visitor, and any attorney's fees or other costs incurred by the respondent, against the petitioner.

[PL 2019, c. 417, Pt. A, §14 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §14 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-120. Liability of guardian or conservator for act of individual subject to guardianship or conservatorship

A guardian or conservator is not personally liable to a 3rd person for the act of an individual subject to guardianship or conservatorship solely by reason of the guardianship or conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-121. Petition after appointment for instructions or ratification

1. Petition. A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Instruction or order. On notice and hearing on a petition under subsection 1, the court may give an appropriate instruction and enter any appropriate order.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-122. Third-party acceptance of authority of guardian or conservator

1. Refusal to recognize authority required. A person must refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The person has actual knowledge or a reasonable belief that the guardian's or conservator's letters of office are invalid or that the guardian or conservator is exceeding or improperly exercising authority granted by the court; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Refusal to recognize authority discretionary. A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

A. The guardian's or conservator's proposed action would be inconsistent with this Act or any other law, rule or regulation; or [PL 2019, c. 417, Pt. A, §15 (AMD).]

B. The person makes, or has actual knowledge that another person has made, a report to adult protective services or child protective services stating a good faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation or

abandonment by the guardian or conservator or a person acting for or with the guardian or conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2019, c. 417, Pt. A, §15 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Report refusal to court. A person who refuses to accept the authority of a guardian or conservator in accordance with subsection 1 or 2 shall report the refusal and the reason for refusal to the court. The court on receiving a report shall consider whether removal of the guardian or conservator or other action is appropriate.
[PL 2019, c. 417, Pt. A, §16 (AMD).]

4. Petition to require acceptance. A guardian or conservator may petition the court to require a 3rd party to recognize the authority of a guardian or conservator or accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship, and if the court finds that the refusal of a 3rd party to recognize the authority of a guardian or conservator or accept the decision made by the guardian or conservator was in bad faith and without adequate justification, the court may charge the person who refuses to recognize the authority of a guardian or conservator or accept the decision of the guardian or conservator for attorney's fees and costs. Notice of the petition must be given to the adult subject to guardianship or conservatorship and to all persons entitled to notice under section 5-310, subsection 5, section 5-411, subsection 5 or a subsequent order.
[PL 2019, c. 417, Pt. A, §17 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§15-17 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-123. Use of agent by guardian or conservator

1. Delegation consistent with plan and fiduciary duty. Except as otherwise provided in subsection 3, a guardian or conservator may delegate a power to an agent that a prudent guardian or conservator of comparable skills could prudently delegate under the circumstances if the delegation is consistent with the guardian's or conservator's plan and fiduciary duty.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Delegating a power. In delegating a power under subsection 1, the guardian or conservator shall exercise reasonable care, skill and caution in:

A. Selecting the agent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Establishing the scope and terms of the agent's work in accordance with the guardian's or conservator's plan; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Monitoring the agent's performance and compliance with the delegation; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Redressing action or inaction of the agent that would constitute a breach of the guardian's or conservator's duties if performed by the guardian or conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Delegation limitation. A guardian or conservator may not delegate all powers to an agent.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Agent performing a delegated power. In performing a power delegated under this section, an agent shall:

A. Exercise reasonable care to comply with the terms of the delegation and use reasonable care in the performance of the delegated power; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If the agent has been delegated the power to make a decision on behalf of the individual subject to guardianship or conservatorship, in making the decision use the same decision-making standard the guardian or conservator would be required to use in making the decision. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Jurisdiction of court. By accepting a delegation of a power from a guardian or conservator under this section, an agent submits to the jurisdiction of the courts of this State in an action involving the agent's performance as agent.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Liability. A guardian or conservator that delegates and monitors a power in compliance with this section is not liable for the decisions or actions of the agent.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-124. Temporary substitute guardian or conservator

1. Temporary substitute guardian. The court may appoint a temporary substitute guardian for a period not longer than 6 months for an individual subject to guardianship if:

A. A proceeding to remove an existing guardian is pending; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The court finds an existing guardian is not effectively performing the guardian's duties and the welfare of the individual requires immediate action. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Temporary substitute conservator. The court may appoint a temporary substitute conservator for a period not longer than 6 months for an individual subject to conservatorship if:

A. A proceeding to remove an existing conservator is pending; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The court finds that an existing conservator is not effectively performing the conservator's duties and the welfare of the individual or the conservatorship estate requires immediate action. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Powers. Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order of appointment of the guardian or conservator. The authority of an existing guardian or conservator is suspended for as long as the temporary substitute guardian or conservator has authority.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Notice. The court shall give notice of appointment of a temporary substitute guardian or temporary substitute conservator under this section not later than 5 days after the appointment to:

A. The individual subject to guardianship or conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The affected guardian or conservator; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. In the case of a minor, each parent of the minor and any person currently having custody or care of the minor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Removal. The court may remove a temporary substitute guardian or temporary substitute conservator appointed under this section at any time. The temporary substitute guardian or temporary substitute conservator shall make any report the court requires.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Application. Except as otherwise provided in this section, the provisions of this Act:

A. Concerning a guardian for a minor apply to a temporary substitute guardian for a minor; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Concerning a guardian for an adult apply to a temporary substitute guardian for an adult; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Concerning a conservator apply to a temporary substitute conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-125. Registration of order; effect

1. Registration of guardianship order. If a guardian has been appointed for an individual in another state and a petition for guardianship of the individual is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in this State by filing as a foreign judgment, in a court of an appropriate county of this State, certified copies of the order and letters of office.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Registration of conservatorship order. If a conservator is appointed in another state and a petition for conservatorship is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court, may register the conservatorship in this State by filing as a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office and any bond or other asset-protection arrangement required by the court.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Exercise of powers. On registration of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in this State all powers authorized in the order except as prohibited by the law of this State other than this Act. If the guardian or conservator is not a resident of this State, the guardian or conservator may maintain an action or proceeding in this State subject to any condition imposed by this State on a nonresident party.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Enforcement of registered order. The court may grant any relief available under this Act and law of this State other than this Act to enforce a registered order.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-126. Grievance against guardian or conservator

1. File a grievance with the court. An individual who is subject to guardianship or conservatorship, or a person interested in the welfare of an individual subject to guardianship or conservatorship, who reasonably believes a guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with this Act may file a grievance with the court. The grievance must be in writing or another record.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Procedure upon receiving grievance. Subject to subsection 3, after receiving a grievance under subsection 1, the court:

A. Shall review the grievance and, if necessary to determine the appropriate response to the grievance, court records related to the guardianship or conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and the grievance supports a reasonable belief that:

(1) Removal of the guardian and appointment of a successor may be appropriate in accordance with section 5-318;

(2) Termination or modification of the guardianship may be appropriate under section 5-319;

(3) Removal of the conservator and appointment of a successor may be appropriate under section 5-430;

(4) Termination or modification of the conservatorship may be appropriate under section 5-431; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. May take any action supported by the grievance and record, including:

(1) Ordering the guardian or conservator to provide to the court a report, accounting, inventory, updated plan or other information;

(2) Appointing a guardian ad litem;

(3) Appointing an attorney for the individual subject to guardianship or conservatorship; or

(4) Scheduling a hearing. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Similar grievance filed within 6 months. The court may decline to proceed under subsection 2 if a similar grievance was made within the preceding 6 months and the court followed the procedures of subsection 2 in considering the grievance.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-127. Delegation by parent or guardian

1. Delegation; power of attorney. A parent or a guardian of a minor or individual subject to guardianship, by a power of attorney, may delegate to another person, for a period not exceeding 12 months, any power regarding care, custody or property of the minor or individual subject to guardianship, except the power to consent to marriage, adoption or termination of parental rights to the

minor. A delegation of powers by a court-appointed guardian becomes effective only when the power of attorney is filed with the court. A delegation of powers under this section does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor or individual subject to guardianship. A delegation of powers under this section is subject to the same court supervision that applies to temporary substitute guardians as described in section 5-124, subsection 5. Any delegation under this section may be revoked or amended by the appointing parent or guardian in writing and delivered to the person to whom the powers were delegated and to other interested persons. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. National Guard or Reserves; extension. Notwithstanding subsection 1, unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under that active duty order or until an order of the court so provides.

This subsection applies only if the parent's or guardian's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Temporary care of minor. This subsection applies when a parent or guardian executes a power of attorney under subsection 1 for the purpose of providing for the temporary care of a minor.

A. The execution of a power of attorney under subsection 1, without other evidence, does not constitute abandonment, abuse or neglect. A parent or guardian of a minor may not execute a power of attorney with the intention of permanently avoiding or divesting the parent or guardian of parental and legal responsibility for the care of the minor. Upon the expiration or termination of the power of attorney, the minor must be returned to the custody of the parent or guardian as soon as reasonably possible unless otherwise ordered by the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Unless the power of attorney is terminated, the agent named in the power of attorney shall exercise parental or legal authority on a continuous basis without compensation from the State for the duration of the power of attorney authorized by subsection 1. Nothing in this subsection disqualifies the agent from applying for and receiving benefits from any state or federal program of assistance for the minor or the agent. Nothing in this subsection prevents individuals or religious, community or other charitable organizations from voluntarily providing the agent with support related to the care of the minor while the minor is in the temporary care of the agent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A minor may not be considered placed in foster care or in any way a ward of the State by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection 1. The agent named in the power of attorney may not be considered a family foster home by virtue of the parent's or guardian's execution of a power of attorney authorized by subsection 1 and is not subject to any laws regarding the licensure or regulation of family foster homes unless licensed as a family foster home. Nothing in this subsection disqualifies the agent from being or becoming a family foster home licensed by the State or prevents the placement of the minor in the agent's care if the minor enters state custody. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Background check. An organization, other than an organization whose primary purpose is to provide free legal services or to provide hospital services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians with the process of executing a power of attorney for the temporary care of a minor shall ensure that a background check is conducted for the agent and any adult members of the agent's household, whether by completing the background check directly or by verifying that a current background check has already been conducted. The background check must include the following sources, and the results must be shared with the parent or guardian and the proposed agent:

A. A screening for child and adult abuse, neglect or exploitation cases in the records of the Department of Health and Human Services; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A criminal history record check that includes information obtained from the Federal Bureau of Investigation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

The organization shall maintain records on the training and background checks of agents, including the content and dates of training and full transcripts of background checks, for a period of not less than 5 years after the minor attains 18 years of age. The organization shall make the records available to a parent or guardian executing a power of attorney under this section and to the ombudsman under Title 22, section 4087-A and any local, state or federal authority conducting an investigation involving the agent, the parent or guardian or the minor.

Without regard to whether an organization is included or excluded by the terms of this subsection, nothing in this section changes the restrictions on the unauthorized practice of law as provided in Title 4, section 807 with regard to the preparation of powers of attorney.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Disqualification of agent. An employee or volunteer for an organization described in subsection 4 may not further assist with a process that results in the completion of a power of attorney for the temporary care of a minor if the background checks conducted pursuant to subsection 4, paragraphs A and B disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home in the State.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Penalties. The following penalties apply to violations of this section.

A. An organization that knowingly fails to perform or verify the background checks or fails to share the background check information as required by subsection 4 is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An organization or an employee or volunteer of an organization that continues to assist a parent, guardian or agent in completing a power of attorney under subsection 4 if the background checks conducted pursuant to subsection 4 disclose any substantiated allegations of child abuse, neglect or exploitation or any crimes that would disqualify the agent from becoming a licensed family foster home is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An organization or an employee or volunteer of an organization that knowingly fails to maintain records or to disclose information as required by subsection 4 is subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil action. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

PART 2

GUARDIANSHIP OF MINOR

§5-201. Appointment and status of guardian

A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location of the guardian or the minor. This section does not apply to permanency guardians appointed in District Court child protective proceedings under Title 22, section 4038-C. If a minor has a permanency guardian, the court may not appoint another guardian without leave of the District Court in which the child protective proceeding is pending. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-202. Parental appointment of guardian

1. Appointment by parent. A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment before confirmation by the court.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Petition to confirm selection, terminate right to object. Upon petition of an appointing parent and a finding that the appointing parent will likely become unable to care for the child within 2 years, and after notice as provided in section 5-205, subsection 1, the court, before the appointment becomes effective, may confirm the parent's selection of a guardian and terminate the rights of others to object.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Appointment effective. Subject to section 5-203, the appointment of a guardian becomes effective upon the appointing parent's death, an adjudication that the parent is an incapacitated person or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever first occurs.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Acceptance of appointment. The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:

A. File the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Give written notice of the acceptance of appointment to every parent, if living, the minor, if the minor has attained 14 years of age, and a person other than the parent having care and custody of the minor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Notice of right to object. Unless the appointment was previously confirmed by the court, the notice given under subsection 4, paragraph B must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 5-203. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Petition to confirm appointment. Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in section 5-205, subsection 1. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Parental rights not superseded; priority. The appointment of a guardian by a parent does not supersede the parental rights of any parent. If all parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent that is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Relation back of powers. The powers of a guardian who timely complies with the requirements of subsections 4 and 6 relate back to give acts by the guardian that are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Termination of authority. The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 5-203. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-203. Objection by minor or others to parental appointment

Until the court has confirmed an appointee under section 5-202, a minor who is the subject of an appointment by a parent and who has attained 14 years of age, the other parent or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent if all other requirements for appointment, including appointment over the objection of a parent, are met. The court may treat the filing of an objection as a petition for the appointment of an emergency or interim guardian under section 5-204 and proceed accordingly. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-204. Judicial appointment of guardian; conditions for appointment

1. Petition. A minor or a person interested in the welfare of a minor may petition for appointment of a guardian. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Appointment. The court may appoint a guardian for a minor if the court finds the appointment is in the best interest of the minor, finds the proposed guardian is suitable and finds:

A. That the parents consent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. That all parental rights have been terminated; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. By clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights, including but not limited to the following situations:

(1) The parent is currently unwilling or unable to meet the minor's needs and that will have a substantial adverse effect on the minor's well-being if the minor lives with the parent;

(2) The parent has failed, without good cause, to maintain a parental relationship with the minor, including but not limited to failing to maintain regular contact with the minor for a length of time that evidences an intent to abandon the minor; or

(3) A prior court order concerning the minor granted another parent, who is now deceased, exclusive parental rights and responsibilities with respect to all aspects of the minor's welfare without reserving for the parent who is now the respondent in the guardianship proceeding any rights to make decisions, to have access to records or to have contact with the minor and:

(a) Such order was in effect at the time of the death of the parent awarded exclusive parental rights and responsibilities; and

(b) There is neither a substantial change in circumstances between the time of the entry of the order and the parent's death nor other facts that would render a finding based on the order to be inequitable or unjust. [PL 2021, c. 340, §1 (AMD).]

[PL 2021, c. 340, §1 (AMD).]

3. Priority for appointment. If a guardian is appointed by a parent pursuant to section 5-202 and the appointment has not been prevented or terminated under section 5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 5-202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Appointment of a guardian on an emergency basis. The court may appoint a guardian on an emergency basis for a minor pursuant to this subsection.

A. On motion by a person who has also filed a petition for appointment of a guardian pursuant to subsection 1, the court may appoint a guardian for the minor on an emergency basis if the court finds by a preponderance of the evidence that:

(1) The sworn affidavit or testimony demonstrates that appointment of a guardian on an emergency basis is needed to prevent substantial harm to the minor's physical health or safety;

(2) No other person appears to have authority and willingness to act in the circumstances;

(3) Following the procedures set forth in section 5-205, including those for appointment of a guardian on an interim basis, will likely result in substantial harm to the minor's health or safety before a guardian can be appointed;

(4) A petition has been filed under subsection 1 and there is a substantial likelihood that a basis for appointment of a guardian under subsection 2 exists; and

(5) The requirements of this subsection for providing notice have been satisfied. [PL 2019, c. 417, Pt. A, §18 (NEW).]

B. The petitioner bears the burden of proof on the appropriateness of the appointment pursuant to this subsection. [PL 2019, c. 417, Pt. A, §18 (NEW).]

C. The duration of the authority of a guardian appointed pursuant to this subsection may not exceed 90 days, and the guardian may exercise only the powers specified in the order. [PL 2019, c. 417, Pt. A, §18 (NEW).]

D. Reasonable notice of the motion for appointment of an emergency guardian and the time and place of the hearing on the petition must be given by the petitioner to the minor, if the minor has attained 14 years of age, to each living parent of the minor and to a person having care or custody of the minor, if other than a parent. The court shall hold a hearing on the appointment of the guardian on an emergency basis within 14 days but not less than 7 days after the filing of the petition. [PL 2019, c. 417, Pt. A, §18 (NEW).]

E. The court may dispense with the notice requirement in paragraph D and appoint a guardian pursuant to this subsection on a temporary ex parte basis if it finds from affidavit or testimony that the minor will be substantially harmed before notice can be completed to all those entitled to receive notice and a hearing can be held on the petition. If the guardian is appointed without notice and hearing, the court shall schedule a hearing on the appointment of the guardian on an emergency basis within 14 days but not less than 7 days after issuance of the order appointing the guardian, except that a parent may request that the hearing take place sooner. Notice of the appointment and hearing must be given by the petitioner to the minor, if the minor has attained 14 years of age, to each living parent of the minor and to a person having care or custody of the minor, if other than a parent, within 48 hours after the appointment. [PL 2019, c. 417, Pt. A, §18 (NEW).]

F. The notices required under this subsection regarding guardianship on an emergency basis may be provided orally or in writing using a means that the petitioner in good faith believes is the most effective way to ensure actual notice. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice and to whom the notice was provided or attempted. The court shall make a determination as to whether the methods of notices or attempted notices by petitioner were reasonably calculated to give notice of the pendency of the petition. [PL 2019, c. 417, Pt. A, §18 (NEW).]

G. Appointment of a guardian on an emergency basis under this subsection is not a determination that the conditions required for appointment of a guardian under subsection 2 or the notice requirements set forth in section 5-205 have been satisfied. Before a guardian may be appointed pursuant to subsection 2, the petitioner must meet the notice requirements set forth in this Part and any applicable rules of procedure. [PL 2019, c. 417, Pt. A, §18 (NEW).]

[PL 2019, c. 417, Pt. A, §18 (RPR).]

5. Child support. When appointing a guardian, including on an emergency or interim basis, the court's order must indicate whether there are any support orders involving the child presently in effect through judicial or administrative proceedings and the effect of the guardianship appointment on the orders. The court shall consider whether to order a parent to pay child support to the guardian in accordance with Title 19-A, Part 3. A guardian must be treated as a caretaker relative for computation of a parental support obligation pursuant to Title 19-A, section 2006, subsection 4. The court may reserve the question of support or decline to issue an order if it determines that an order for support is not warranted at the time of the appointment. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this subsection.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §18 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 340, §1 (AMD).

§5-205. Judicial appointment of guardian; procedure

1. Petition; notice of hearing. After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

- A. The minor, if the minor has attained 14 years of age and is not the petitioner; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. Any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the petition; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. Each living parent of the minor or, if there is none, the adult nearest in kinship who can be found; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- D. Any person nominated as guardian by the minor if the minor has attained 14 years of age; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- E. Any appointee of a parent whose appointment has not been prevented or terminated under section 5-203; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- F. Any guardian or conservator currently acting for the minor in this State or elsewhere. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

If the court finds that receiving information from the Department of Health and Human Services may be necessary for the determination of any issue before the court, it may order a Department of Health and Human Services employee to attend the hearing and to provide information relevant to the proceeding. When receiving information by oral testimony that is confidential pursuant to Title 22, section 4008, the court shall close the proceeding and ensure that it is recorded. When receiving information contained in written or media records that is confidential pursuant to Title 22, section 4008, the court shall review those records in camera, weighing the confidentiality of such records against the necessity for counsel and the parties to have access to them, and enter an appropriate order regarding the scope and manner of access. The court, in its discretion, may take other measures necessary to preserve the confidentiality of the information received.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Appointment; other disposition. The court, after the hearing scheduled pursuant to subsection 1, shall make the appointment of a guardian if the court finds that venue is proper, the required notices have been given, the conditions of section 5-204, subsection 2 have been met and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Priority of minor's nominee. The court shall appoint a person or persons nominated by the minor, if the minor has attained 14 years of age, in accordance with the requirements of section 5-204. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Appointment of counsel. A nonconsenting parent whose parental rights have not been terminated is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent guardian or petitioner when a parent or legal custodian has counsel.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Attorney for a minor; notice to minor. If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, the

court may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age. A minor may appear with or through counsel, but the court is not restricted from requiring the minor to be present for some or all of a hearing or other proceeding. A minor 14 years of age or older must receive notice of any proceeding subsequent to the appointment of a guardian through the same means as required for any other party, and the minor may consent, object or otherwise participate in the proceeding.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Informed consent of parent. If the petition for guardianship is filed by or with the consent of a parent, the petition must include a consent signed by the parent verifying that the parent understands the nature of the guardianship and knowingly and voluntarily consents to the guardianship. If a parent informs the court after the petition has been filed that the parent wishes to consent to the guardianship, the court shall require the parent to sign the consent form at that time. The consent required by this section must be on a court form or substantially similar document.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Term or duration of order. The court may specify the term of the appointment based on the parties' agreement or the court's findings. The term may be extended or otherwise modified by agreement of the parties or after a hearing. If no term is specified, the appointment remains in place until modified or the occurrence of an event resulting in termination set forth in section 5-210.

If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides as long as the parent's service is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Forces activated during a period of war declared by the United States Congress or a period of national emergency declared by the President of the United States or the United States Congress. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Interim order. Upon motion by a party or the court's initiative, and pursuant to an agreement of the parties or findings made after a hearing, the court may enter an interim order appointing a guardian for a period of time up to 6 months or pending the court's order after the scheduled final hearing on a petition for appointment, if such an order is necessary to provide for the minor's housing, health, education, medical or other essential needs prior to the hearing. Any interim order must meet the requirements of section 5-204 and this section, including notice, and may be extended or modified pursuant to an agreement of the parties or findings made after a hearing.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Mediation. The court may refer the parties to mediation at any time after a petition or motion is filed, if meditation services are available at a reasonable fee or no cost, and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that any party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation. An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Identifying information sealed. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or the minor would be jeopardized by disclosure of identifying information, including but not limited to the address of a party or the minor, the information must be sealed by the register or clerk and not disclosed to any other party or to the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or minor and determines that the disclosure is in the interest of justice.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-206. Terms of order appointing guardian

1. Terms of order. An order appointing a guardian of a minor must include the following:

A. The reasons for the appointment of the guardian, including whether there was any agreement by the parties or findings after a hearing; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The powers and duties granted to the guardian, including those set forth in section 5-207; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The rights and responsibilities retained by the parent, as described in subsection 3; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The anticipated duration of the appointment, including whether it remains in place until a petition to modify or terminate and whether the parties agree to termination after a particular event, such as return from deployment; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. A description of the process and standards for modification and termination; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Notice of the court's authority to hold a hearing and find that a party has violated a part of the order and is in contempt and to order relief to the other party for the violations or contempt. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Other orders concerning minor. If any orders regarding custody or other parental rights with respect to a minor are in effect at the time of the appointment of a guardian of the minor, the order must refer to the orders and indicate the effect of the appointment on the rights and responsibilities set forth in the orders.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Rights and responsibilities retained by parent. An order appointing a guardian of a minor must specify whether the minor's parent retains any of the following rights and responsibilities after the appointment and, if any such rights or responsibilities are not retained, the reasons they are not retained:

A. A schedule of parent-child contact or a determination by the court that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the minor. The court may determine the reasonable frequency and duration of parent-child contact and may set conditions for parent-child contact that are in the best interest of the minor. Any schedule of contact must reflect any existing parent-child contact order in effect to the extent reasonably practicable and consistent with the court's findings or the agreement of the parties. The court may set forth

specific conditions that must be satisfied by the parent prior to the start of some or all aspects of the contact schedule; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Access to records and information regarding the minor as provided under Title 19-A, section 1653, subsection 2, paragraph D, subparagraph (4); [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Parental rights and responsibilities as described under Title 19-A, section 1501, subsection 5; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Child support as defined in Title 19-A, section 1501, subsection 2. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Parent as coguardian. A parent may copetition and be appointed as a coguardian of the parent's minor child if the court determines a joint appointment with a nonparent is in the best interest of the minor and is made with the parent's consent.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-207. Duties of guardian

1. Guardian has duties and responsibilities of a parent. Except as otherwise limited by the court, a guardian of a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health and welfare. A guardian shall act at all times in the best interest of the minor and exercise reasonable care, diligence and prudence.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Specific duties and responsibilities. A guardian shall:

A. Become or remain personally acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capacities, limitations, needs, opportunities and physical and mental health; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Take reasonable care of the minor's personal effects and bring a protective proceeding if necessary to protect other property of the minor; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Expend money of the minor that has been received by the guardian for the minor's current needs for support, care, education, health and welfare; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Conserve any excess money of the minor for the minor's future needs, but if a conservator has been appointed for the estate of the minor, the guardian shall pay the money at least quarterly to the conservator to be conserved for the minor's future needs; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Report the condition of the minor and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the minor's welfare or as required by court rule; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Inform the court of any change in the minor's custodial dwelling or address. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Reporting on the status of the minor. The court may require the guardian of a minor to submit regular status reports about the minor, to be submitted under oath or affirmation to the court and served on the parent and guardian ad litem, if still active, on an annual basis or under other conditions set by the court.

A. The court may require the status report to include specific information, including but not limited to the following to the extent applicable to the guardianship:

- (1) The current address of the minor and each parent;
- (2) The minor's health care and health needs, including any medical and mental health services the child received;
- (3) The minor's educational needs and progress, including the name of the minor's school, day care or other early education program, the minor's grade level and the minor's educational achievements;
- (4) Contact between the minor and the minor's parents, including the frequency and duration of the contact and whether it was supervised;
- (5) How the parents have been involved in decision making for the minor;
- (6) Whether the parents have provided any financial support for the minor;
- (7) How the guardian has carried out the guardian's responsibilities and duties under the order of appointment;
- (8) An accounting of any funds received on the minor's behalf;
- (9) The minor's strengths, challenges and any other areas of concern; and
- (10) Recommendations with supporting reasons as to whether the guardianship order should be continued, modified or terminated. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Before deciding whether to require status reports, the court shall consider whether reporting would create a substantial likelihood of harm to the health, safety or liberty of the minor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The contents of status reports are confidential and may not be released to any nonparty except by court order. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A parent may petition the court to seek a status report from the guardian if one is not otherwise required. A person who is not a parent but is interested in the minor's welfare may petition the court to seek a status report based upon specific concerns about the minor's care. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Nothing in this subsection limits a court's authority to otherwise supervise the guardianship, including scheduling a status conference to address matters raised in a status report or to be held at a specified time after the entry of the order or appointing a guardian ad litem or visitor to conduct an investigation. The court shall accept any information submitted by a minor 14 years of age or older regarding the guardianship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-208. Powers of guardian

1. Guardian has powers of a parent. Except as otherwise limited by the court, a guardian of a minor has the powers of a parent regarding the minor's support, care, education, health and welfare. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Specific powers. A guardian may:

A. Apply for and receive money for the support of the minor otherwise payable to the minor's parent, guardian or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship or custodianship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the minor, take custody of the minor and establish the minor's place of custodial dwelling, but may establish or move the minor's custodial dwelling outside the State only upon express authorization of the court; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. If a conservator for the estate of a minor has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor or to pay money for the benefit of the minor; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Except as limited by section 5-807, consent to medical or other care, treatment or service for the minor; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Consent to the marriage of the minor; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. If reasonable under all of the circumstances, delegate to the minor certain responsibilities for decisions affecting the minor's well-being. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Consent to adoption. The court may specifically authorize the guardian to consent to the adoption of the minor.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Powers of coguardians. If coguardians are appointed, the powers of the guardians are joint and several, unless limited by the appointing document.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-209. Rights and immunities of guardian

1. Reasonable compensation and reimbursement. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing provided by the guardian to the minor, but only as approved by the court. If a conservator, other than the guardian or a person who is affiliated with the guardian, has been appointed for the estate of the minor, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Personal liability. A guardian need not use the guardian's personal funds for the minor's expenses. A guardian is not liable to a 3rd person for acts of the minor solely by reason of the guardianship. A guardian is not liable for injury to the minor resulting from the negligence or act of a

3rd person providing medical or other care, treatment or service for the minor except to the extent that a parent would be liable under the circumstances.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-210. Modification or termination of guardianship; other proceedings after appointment

1. Modification of guardianship order. A guardian of a minor, a parent of a minor, a person interested in the welfare of a minor or the minor, if 14 years of age or older, may file a motion asking the court to modify the terms of an order appointing a guardian or to take other action in the best interest of the minor as circumstances require. The motion must be filed with the court and served on all parties entitled to notice. Unless the motion specifies that it is filed with the consent of all parties entitled to notice, the matter must be set for hearing to determine whether there has been a substantial change in circumstances necessitating modification of the order and how the court should modify the order in furtherance of the best interest of the minor and the parent's rights. The court may identify certain requirements that must be met before specific provisions of the order are modified. A court may modify a term of a guardianship order as needed to grant relief to a party to address contempt or other failure to follow the order.

[PL 2019, c. 417, Pt. A, §19 (AMD).]

2. Termination of guardianship. A guardianship of a minor terminates upon the minor's death, adoption, emancipation, marriage or attainment of majority or as ordered by the court pursuant to this section.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Termination of appointment. The appointment of a guardian or conservator terminates upon the death, resignation or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the court. A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the minor or protected person.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Petition for removal or permission to resign. A minor, if 14 years of age or older, a parent of the minor or a person interested in the welfare of the minor may petition for removal of a guardian on the ground that removal would be in the best interest of the minor or for other good cause. A guardian may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Appointment of additional or successor guardian. The court may appoint an additional guardian at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian becomes eligible to act on the occurrence of the vacancy or designated event or the filing of the acceptance of appointment, whichever last occurs. A successor guardian succeeds to the predecessor's powers.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Termination without consent; best interest; subsequent petitions. The court may not terminate the guardianship of a minor in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the minor. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the minor. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Parent's petition to terminate guardianship; burden of proof. A parent may bring a petition to terminate the guardianship of a minor. A parent's notification to the court of the revocation of prior consent for a guardianship must be considered a petition to terminate the guardianship. Before the court may apply the termination requirements in subsection 6, a party opposing a parent's petition to terminate a guardianship bears the burden of proving by clear and convincing evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the minor, in accordance with the standard set forth in section 5-204, subsection 2, paragraph C. If the party opposing termination of the guardianship fails to meet its burden of proof on the question of the parent's fitness to regain custody, the court shall terminate the guardianship and make any further order that may be appropriate. In a contested action, the court may appoint counsel for the minor or for any indigent guardian or parent. In ruling on a petition to terminate a guardianship, the court may modify the terms of the guardianship or order transitional arrangements pursuant to section 5-211.

[PL 2019, c. 417, Pt. A, §20 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§19, 20 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-211. Transitional arrangement for minors; continued contact with former guardian after termination

1. Transitional arrangements. In issuing, modifying or terminating an order of guardianship for a minor, the court may enter an order providing for transitional arrangements for the minor if the court determines that such arrangements will assist the minor with a transition of custody and are in the best interest of the minor. Orders providing for transitional arrangements may include, but are not limited to, rights of contact, housing, counseling or rehabilitation. Such orders must be time-limited and expire not later than 6 months after the entry of the order or at the conclusion of the minor's current school year, whichever is later. In determining the best interest of the minor, a court may consider the minor's relationship with the guardian and need for stability.

[PL 2019, c. 664, Pt. D, §1 (NEW).]

2. Continued contact with former guardian after termination. On timely motion of a parent or a guardian, the court terminating a guardianship may enter an order at the time of the termination or the expiration of a transitional arrangement pursuant to subsection 1 providing for communication or contact, including overnight visitation, between a minor and the former guardian after the termination of the guardianship if:

- A. The parent and guardian consent to the order; or [PL 2019, c. 664, Pt. D, §1 (NEW).]
- B. The court finds by clear and convincing evidence that ordering such continued communication or contact over the objection of the minor's parent:
 - (1) Is necessary to avoid a likelihood of harm to the minor resulting from severing the legal relationship with the former guardian;
 - (2) Would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the minor; and

(3) Is in the best interest of the minor due to the existing relationship between the minor and the former guardian because the former guardian was a primary caregiver and custodian of the minor for a significant period of time. [PL 2019, c. 664, Pt. D, §1 (NEW).]

Before ordering communication or contact pursuant to paragraph B the court shall grant due consideration to the specific objections of the parent to the entry of an order and determine whether ordering a period of transitional arrangements pursuant to subsection 1 is sufficient to mitigate harm to the minor. Except as Title 4, section 152, subsection 5-A may otherwise require, the court issuing the order for post-guardianship contact has continuing jurisdiction to modify, enforce or terminate the order and shall follow the procedure set forth in section 5-210.

[PL 2019, c. 664, Pt. D, §1 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2019, c. 664, Pt. D, §1 (RPR).

§5-212. Appointment of guardian ad litem for minor

In any proceeding under this Part, including for issuing, modifying or terminating an order of guardianship for a minor, the court may appoint a guardian ad litem for the minor. The appointment may be made at any time, but the court shall make every effort to make the appointment as soon as possible after the commencement of the proceeding. The court shall follow the requirements of section 1-111 and other applicable law or court rules in making the appointment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-213. Indian Child Welfare Act of 1978 and Maine Indian Child Welfare Act

The federal Indian Child Welfare Act of 1978, 25 United States Code, Section 1901 et seq. and the Maine Indian Child Welfare Act govern all proceedings under this Article that pertain to an Indian child as defined in those Acts. [PL 2023, c. 359, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 359, §1 (NEW).

PART 3

GUARDIANSHIP OF ADULT

§5-301. Basis for appointment of guardian for adult

1. Appointment. On petition and after notice and hearing, the court may:

A. Appoint a guardian for a respondent who is an adult if it finds by clear and convincing evidence that the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because:

(1) The respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provides adequate protection for the respondent;

- (2) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives that provide adequate protection for the respondent; and
- (3) The appointment is necessary or desirable as a means of enabling the respondent to meet essential requirements for physical health, safety or self-care; or [PL 2019, c. 417, Pt. A, §21 (AMD).]

B. With appropriate findings, and additional notice to persons the court determines are entitled to notice, treat the petition as one for a conservatorship under Part 4 or a protective arrangement instead of guardianship or conservatorship under Part 5, enter any other appropriate order or dismiss the proceeding. [PL 2019, c. 417, Pt. A, §21 (AMD).]

In making a determination on a petition under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.

[PL 2019, c. 417, Pt. A, §21 (AMD).]

2. Powers. The court shall grant to a guardian appointed under subsection 1 only those powers necessitated by the limitations and demonstrated needs of the respondent and enter orders that will encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship or other less restrictive alternatives would meet the needs of and provide adequate protection for the respondent.

[PL 2019, c. 417, Pt. A, §21 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §21 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-302. Petition for appointment of guardian for adult

1. Petition for appointment. A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for the appointment of a guardian for the adult.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Contents of petition. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

- (3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. The name and current address of each of the following, if applicable:
- (1) A person responsible for care or custody of the respondent;
 - (2) Any attorney currently representing the respondent;
 - (3) The representative payee appointed by the United States Social Security Administration for the respondent;
 - (4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;
 - (5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;
 - (6) The United States Department of Veterans Affairs fiduciary for the respondent;
 - (7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;
 - (8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;
 - (9) A person nominated as guardian by the respondent;
 - (10) A person nominated as guardian by the respondent's parent, spouse or domestic partner in a will or other signed record;
 - (11) A proposed guardian and the reason the proposed guardian should be selected; and
 - (12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition; [PL 2019, c. 417, Pt. A, §22 (AMD).]
- D. The reason a guardianship is necessary, including a brief description of:
- (1) The nature and extent of the respondent's alleged need;
 - (2) Any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented;
 - (3) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and
 - (4) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's alleged need; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- E. Whether the petitioner seeks a limited guardianship or full guardianship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- F. If the petitioner seeks a full guardianship, the reason limited guardianship or a protective arrangement instead of guardianship is inappropriate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- G. If a limited guardianship is requested, the powers to be granted to the guardian; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- H. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. If the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

J. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2019, c. 417, Pt. A, §22 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2019, c. 417, Pt. A, §23 (AMD).

§5-303. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition under section 5-302 for appointment of a guardian for a respondent who is an adult, the court shall set a date, time and place for hearing the petition.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notice to respondent. A copy of a petition under section 5-302 and notice of a hearing on the petition must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice to other persons. In a proceeding on a petition under section 5-302, notice of the hearing also must be given to any person required to be listed in the petition under section 5-302, subsection 2, paragraphs A to C and any other person the court determines is entitled to notice. Failure to give notice under this subsection does not preclude the court from appointing a guardian.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Notice of petition after appointment. Notice of a hearing on a petition that is filed after the appointment of a guardian and that seeks an order under this Part, together with a copy of the petition, must be given to the adult subject to guardianship, the guardian and any other person as the court determines.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-304. Appointment of visitor

1. Appointment of visitor. On receipt of a petition for appointment of a guardian for a respondent who is an adult under section 5-302, the court shall appoint a visitor. The visitor must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Interview with respondent. A visitor appointed under subsection 1 shall interview the petitioner and the proposed guardian and shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing and the general powers and duties of a guardian; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Determine the respondent's views about the appointment, including views about a proposed guardian, the guardian's proposed powers and duties and the scope and duration of the proposed guardianship, and general preferences and values; [PL 2019, c. 417, Pt. A, §23 (AMD).]

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §23 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Additional duties. In addition to the duties imposed by subsection 2, the visitor shall perform any duties that the court directs, which may include:

A. [PL 2019, c. 417, Pt. A, §24 (RP).]

B. Visiting the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the appointment is made; [PL 2019, c. 417, Pt. A, §24 (AMD).]

C. Obtaining information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition; and [PL 2019, c. 417, Pt. A, §24 (AMD).]

D. Investigating the allegations in the petition and any other matter relating to the petition as the court directs. [PL 2019, c. 417, Pt. A, §24 (AMD).]

[PL 2019, c. 417, Pt. A, §24 (AMD).]

4. Report of visitor. A visitor under this section shall file a report in a record with the court at least 10 days before any hearing on the petition. The report must include:

A. Whether or not the respondent wishes to contest any aspect of the proceedings or to seek any limitation on the proposed guardian's powers; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A recommendation whether an attorney should be appointed to represent the respondent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A summary of the respondent's medical conditions, cognitive functioning, everyday functioning, preferences and values and a summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance or supported decision making and cannot manage; [PL 2019, c. 417, Pt. A, §25 (AMD).]

D. Recommendations regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's needs are available and, if a guardianship is recommended, whether it should be full or limited and, if a limited guardianship, the powers to be granted to the guardian; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. A statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. A statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. A recommendation whether a further professional evaluation under section 5-306 is necessary; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H-1. A statement whether the respondent wishes to attend the hearing under paragraph H after being informed of the right to attend the hearing, the purposes of the hearing and the potential consequences of failing to attend; [PL 2019, c. 417, Pt. A, §26 (NEW).]

I. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

J. Any other matter as the court directs. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §§25, 26 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§23-26 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-305. Appointment and role of attorney for adult

1. Appointment of attorney required. The court shall appoint an attorney to represent the respondent in a proceeding on a petition under section 5-302 if:

A. Requested by the respondent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Recommended by the visitor; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The court determines that the respondent needs representation; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed guardian's powers. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Duties of attorney. An attorney representing the respondent in a proceeding on a petition under section 5-302 shall:

A. Make reasonable efforts to ascertain the respondent's wishes; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-306. Professional evaluation

1. Evaluation; report. In every adult guardianship matter, the respondent must be examined by a medical practitioner who is acceptable to the court and who is qualified to evaluate the respondent's alleged cognitive and functional abilities. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

- A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. A prognosis for improvement and recommendation for the appropriate treatment, support or habilitation plan; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- D. The date of the examination on which the report is based. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

As used in this subsection, "medical practitioner" means a licensed physician, a licensed physician assistant, a certified psychiatric clinical nurse specialist, a certified nurse practitioner or a licensed clinical psychologist.

[PL 2019, c. 627, Pt. B, §4 (AMD).]

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation ordered under subsection 1, the petitioner may request an examination under the Maine Rules of Civil Procedure, Rule 35. [PL 2019, c. 417, Pt. A, §27 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 276, §1 (AMD). PL 2019, c. 417, Pt. A, §27 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2019, c. 627, Pt. B, §4 (AMD).

§5-307. Attendance and rights at hearing

1. Attendance by respondent. Except as otherwise provided in subsection 2, a hearing under section 5-303 may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology or by telephone if real-time audiovisual technology is not available. [PL 2019, c. 417, Pt. A, §28 (AMD).]

2. Hearing without respondent in attendance. A hearing under section 5-303 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Assistance to respondent. The respondent may be assisted in a hearing under section 5-303 by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under section 5-303.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Rights of respondent at hearing. For or at a hearing under section 5-303, the respondent may:

A. Present evidence and subpoena witnesses and documents; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Examine witnesses, including any court-appointed evaluator and the visitor; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Otherwise participate in the hearing. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Attendance by proposed guardian required. Unless excused by the court for good cause, the proposed guardian shall attend a hearing under section 5-303 in person. Upon a showing of good cause, the court may allow the proposed guardian to participate using real-time audiovisual technology or by telephone if real-time audiovisual technology is not available.

[PL 2019, c. 417, Pt. A, §29 (AMD).]

7. Closed upon request; good cause. A hearing under section 5-303 must be closed on request of the respondent and a showing of good cause.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Participation; best interest of respondent. Any person may request to participate in a hearing under section 5-303. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§28, 29 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-308. Confidentiality of records

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 4/1/25)

1. Matter of public record; exception. The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the records after:

A. The respondent or individual subject to guardianship requests the records be sealed; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Either:

(1) The petition for guardianship is dismissed; or

(2) The guardianship is terminated. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Access to court records. An adult subject of a proceeding for a guardianship, whether or not a guardian is appointed, any attorney designated by the adult and a person entitled to notice under section 5-310, subsection 5 are entitled to access court records of the proceeding and resulting guardianship, including a guardian's report or plan. In addition, a person for good cause may petition the court for access to court records of the guardianship, including an annual report or guardian's plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interest of the adult.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Reports confidential; availability. A report under section 5-304 of a visitor or a professional evaluation under section 5-306 is confidential and must be sealed on filing but is available to:

A. The court; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The individual who is the subject of the report or evaluation, without limitation as to use; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. An agent appointed under a power of attorney for health care or advance health care directive, or power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Other persons when it is in the public interest or for a purpose the court orders for good cause. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Effective date. This section takes effect April 1, 2025.

[PL 2023, c. 4, §12 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §30 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 4, §2 (AMD). PL 2023, c. 4, §12 (AMD).

§5-309. Who may be guardian of adult; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a guardian for an adult shall consider persons otherwise qualified in the following order of priority:

A. A guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An agent appointed by the respondent under a power of attorney for health care or an advance health care directive; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A spouse or domestic partner of the respondent; [PL 2019, c. 417, Pt. A, §31 (AMD).]

E. [PL 2019, c. 417, Pt. A, §32 (RP).]

F. An adult child of the respondent; [PL 2019, c. 417, Pt. A, §33 (NEW).]

G. A parent of the respondent, including a person nominated by will or other writing signed by a deceased parent; [PL 2019, c. 417, Pt. A, §33 (NEW).]

H. Any relative of the respondent with whom the respondent resided for more than 6 months within the 12 months prior to the filing of the petition under section 5-302; and [PL 2019, c. 417, Pt. A, §33 (NEW).]

I. A family member or other individual who has exhibited special care and concern for the respondent. [PL 2019, c. 417, Pt. A, §33 (NEW).]

[PL 2019, c. 417, Pt. A, §§31-33 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential guardian's relationship with the respondent, the potential guardian's skills, the expressed wishes of the respondent, the extent to which the potential guardian and the respondent have similar values and preferences and the likelihood the potential guardian will be able to satisfy the duties of a guardian successfully.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection 1 and appoint a person having a lower priority or no priority. In its determination, the court may evaluate whatever factors the court determines appropriate, including comparing the following factors for the person having priority and the potential guardian who has a lower or no priority: relationships with the respondent, the higher priority person's and the potential guardian's skills, the expressed wishes of the respondent and the extent to which the person with higher priority and the potential guardian with lower or no priority have similar values and preferences as the respondent and the likelihood that the potential guardian will be able to satisfy the duties of a guardian successfully.

[PL 2019, c. 417, Pt. A, §34 (AMD).]

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

A. The individual is related to the respondent by blood, marriage or adoption; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Long-term care institution; exceptions. An owner, operator or employee of a long-term care institution at which the respondent is receiving care may not be appointed as guardian unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§31-34 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-310. Order of appointment

1. Order contents. A court order appointing a guardian for an adult must:

A. Include a finding that clear and convincing evidence has established that the basis for an appointment of a guardian, as required under section 5-301, has been met; and [PL 2019, c. 417, Pt. A, §35 (AMD).]

B. Include a finding that clear and convincing evidence established that the respondent was given proper notice of the hearing on the petition. [PL 2019, c. 417, Pt. A, §35 (AMD).]

C. [PL 2019, c. 417, Pt. A, §35 (RP).]

D. [PL 2019, c. 417, Pt. A, §35 (RP).]

[PL 2019, c. 417, Pt. A, §35 (AMD).]

2. Rights retained. An adult subject to guardianship retains the following rights:

A. The right to vote, unless the court orders otherwise. A court order removing the right to vote must include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process; [PL 2021, c. 500, §1 (NEW).]

B. The right to marry, unless the court orders otherwise. A court order removing the right to marry or placing conditions on the right to marry must include findings that support the removal of the right to marry or support conditions on the right to marry; and [PL 2021, c. 500, §1 (NEW).]

C. The right to retain an attorney for any reason and to communicate freely with counsel, the court, an ombudsman or any advocate for the adult subject to guardianship, including an advocate of the adult subject to guardianship's choosing or a person authorized by law to advocate for the adult subject to guardianship. A person may not interfere with the right of an adult subject to guardianship to retain an attorney or communicate as described in this paragraph. [PL 2021, c. 500, §1 (NEW).]

[PL 2021, c. 500, §1 (RPR).]

3. Basis for full guardianship. A court order establishing a full guardianship for an adult clearly must state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the adult subject to guardianship.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Limited guardianship; powers granted to guardian. A court order establishing a limited guardianship for an adult must state clearly the powers granted to the guardian.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Notice; access to reports and plans. The court shall, as part of any order establishing a guardianship for an adult, identify any person that subsequently is entitled to:

A. Notice of the rights of the adult subject to guardianship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Notice of a change in the primary dwelling of the adult subject to guardianship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Notice that the guardian has delegated:

- (1) The power to manage the care of the adult subject to guardianship;
- (2) The power to make decisions about where the adult subject to guardianship lives;
- (3) The power to make major medical decisions on behalf of the adult subject to guardianship;
- (4) Any power that requires court approval under section 5-315; or
- (5) Substantially all powers of the guardian. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Notice that the guardian will be unable to perform the guardian's duties for more than one month; [PL 2019, c. 417, Pt. A, §36 (AMD).]

E. A copy of the guardian's report and plan; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Access to court records pertaining to the guardianship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Notice of the death or significant change in the condition of the adult subject to guardianship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Notice that the court has limited or modified the powers of the guardian; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. Notice of the guardian's removal. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §36 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Entitled to notice; exceptions. A spouse, a domestic partner and the adult children of the adult subject to guardianship are entitled to notice under subsection 5 unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to guardianship or not in the best interest of the adult.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§35, 36 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 500, §1 (AMD).

§5-311. Notice of order of appointment; rights

A guardian appointed under section 5-309 shall give to the adult subject to guardianship and to all other persons given notice under section 5-303 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-312. Emergency guardian

1. Basis for emergency guardianship. On petition by a person interested in an adult's welfare or on its own after a petition has been filed under section 5-302, the court may appoint an emergency guardian for the adult if the court finds:

- A. Appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety or welfare.

For purposes of this paragraph, the delay of discharge of a patient in a hospital until the appointment of a guardian constitutes substantial harm; [PL 2021, c. 463, §1 (AMD).]

B. No other person appears to have authority and willingness to act in the circumstances; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. There is reason to believe that a basis for appointment of a guardian under section 5-301 may exist. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2021, c. 463, §1 (AMD).]

2. Limited time and powers. The duration of authority of an emergency guardian for an adult may not exceed 60 days and the emergency guardian may exercise only the powers specified in the order. The emergency guardian's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency guardian in subsection 1 continue. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

- (1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;
- (2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and
- (3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Notice under paragraph A must include the following information:

- (1) The temporary authority that the petitioner is requesting;
- (2) The location and telephone number of the court in which the petition is being filed; and
- (3) The name of the petitioner and the intended date of filing. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-303 do not apply to this section. [PL 2019, c. 417, Pt. A, §37 (AMD).]

D. Notice is not required under this subsection in the following circumstances:

- (1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;
- (2) Notice, if provided, would not be effective; or
- (3) The court determines that there is good cause not to provide notice. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §37 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Appointment without notice and hearing. The court may appoint an emergency guardian for an adult without notice and a hearing only if the court finds from an affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and any other person as the court determines of the appointment. If the respondent objects to the appointment, the court shall hold a hearing within 14 days of the appointment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4-A. Appointment without professional evaluation. A professional evaluation under section 5-306 is not required before the appointment of an emergency guardian if the court finds from the affidavit or testimony that the basis for an emergency has been met and the petitioner has good cause for not submitting a professional evaluation before the emergency order.

[PL 2019, c. 417, Pt. A, §38 (NEW).]

5. Not a determination. Appointment of an emergency guardian under this section is not a determination that the conditions required for appointment of a guardian under section 5-301 have been satisfied.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Removal; report; application. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires. In other respects, the provisions of this Act concerning guardians apply to an emergency guardian appointed under this section.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§37, 38 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 463, §1 (AMD).

§5-313. Duties of guardian for adult

1. Fiduciary. A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a guardian for an adult shall make decisions regarding the support, care, education, health and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Promote self-determination. A guardian for an adult shall promote the self-determination of the adult subject to guardianship and, to the extent reasonably feasible, encourage the adult to participate in decisions, act on the adult's own behalf and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian shall:

A. Become or remain personally acquainted with the adult subject to guardianship and maintain sufficient contact with the adult, including through regular visitation, to know of the adult's abilities, limitations, needs, opportunities and physical and mental health; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. To the extent reasonably feasible, identify the values and preferences of the adult subject to guardianship and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities and social interactions; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Make reasonable efforts to identify and facilitate supportive relationships and services for the adult subject to guardianship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Reasonable care, diligence and prudence. A guardian for an adult at all times shall exercise reasonable care, diligence and prudence when acting on behalf of or making decisions for the adult subject to guardianship. In furtherance of this duty, the guardian shall:

A. Take reasonable care of the personal effects, pets and service or support animals of the adult subject to guardianship and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the adult's property; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Expend money of the adult subject to guardianship that has been received by the guardian for the adult's current needs for support, care, education, health and welfare; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Administer assets of the adult subject to guardianship having a value of \$10,000 or less; [PL 2019, c. 417, Pt. A, §39 (AMD).]

D. Conserve any excess money of the adult subject to guardianship for the adult's future needs, but if a conservator has been appointed for the adult, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the adult's future needs; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Monitor the quality of services, including long-term care services, provided to the adult subject to guardianship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2019, c. 417, Pt. A, §39 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Decision of the adult. In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to guardianship would make if able, the guardian shall consider the adult's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the guardian.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Decision in best interest of the adult. If a guardian for an adult cannot make a decision under subsection 4 because the guardian does not know and cannot reasonably determine the decision that the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accordance with the best interest of the adult. In determining the best interest of the adult, the guardian shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Other information the guardian believes the adult would have considered if the adult were able to act; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Other factors that a reasonable person in the circumstances of the adult would consider, including consequences for others. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Notice to court. A guardian for an adult immediately shall notify the court if the condition of the adult subject to guardianship has changed so that the adult is capable of exercising rights previously removed.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §39 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-314. Powers of guardian for adult

1. Powers. Except as otherwise limited by the court, a guardian for an adult may:

A. Apply for or receive money, personal effects or benefits for the support of the adult and apply the money for support, care and education of the adult, unless a conservator has been appointed for the adult and the application or receipt is within the powers of the conservator, but the guardian may not use money from the adult's estate for room and board that the guardian or the guardian's spouse, parent or child has furnished to the adult unless a charge for the services is approved by order of the court; [PL 2019, c. 417, Pt. A, §40 (AMD).]

B. If otherwise consistent with an order by a court with jurisdiction relating to the dwelling of the adult, establish the adult's place of dwelling; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Consent to medical or other care, treatment or service for the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. If a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. To the extent reasonable, delegate to the adult certain responsibility for decisions affecting the adult's well-being; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Receive personally identifiable health care information concerning the adult. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §40 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Adoption. The court may by specific order authorize a guardian for an adult to consent to the adoption of the adult.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Specific order of court required. The court may by specific order authorize a guardian for an adult to:

A. Consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed or made subject to conditions under section 5-310; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Support or oppose a petition for divorce, dissolution or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Court's consideration. In determining whether to authorize a power under subsection 2 or 3, the court shall consider whether the underlying act would be in accordance with the adult's preferences, values and prior directions and whether the underlying act would be in the best interest of the adult.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Duties with respect to dwelling. In exercising the guardian's power under subsection 1, paragraph B to establish the dwelling of the adult subject to guardianship, a guardian shall:

A. Select a residential setting the guardian believes the adult would select if the adult were able, in accordance with the decision-making standard in section 5-313, subsections 4 and 5. If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship probably would choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall choose in accordance with section 5-313, subsection 5 a residential setting that is consistent with the best interest of the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. In selecting among residential settings, give priority to a residential setting that is in a location that will allow the adult subject to guardianship to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless doing so would be inconsistent with the decision-making standard in section 5-313, subsections 4 and 5; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Not later than 30 days after a change in the dwelling of the adult subject to guardianship, give notice of the change to the court, the adult subject to guardianship and any person identified as entitled to the notice in the court order appointing the guardian or a subsequent order. The notice must include the address and nature of the new dwelling and state whether the adult subject to guardianship received advance notice of the change and whether the adult objected to the change; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Establish or move the permanent place of dwelling of an adult subject to guardianship to a nursing home, mental health facility or other facility that places restrictions on the individual's ability to leave or have visitors only if:

(1) The establishment or move is generally set forth in the guardian's plan;

(2) The court authorizes the establishment or move; or

(3) Absent a compelling reason, notice of the establishment or move is given at least 14 days before the establishment or move to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order. The notice must be given orally and in writing to the adult subject to guardianship, and in writing to all persons entitled to notice under section 5-310, subsection 5 and must include the address of the current place of dwelling, the address and type of new permanent place of dwelling, the reason for the establishment or move to the new permanent place of dwelling and the right to object to the new place of dwelling; [PL 2019, c. 417, Pt. A, §41 (AMD).]

E. Establish or move the place of dwelling of an adult subject to guardianship outside this State only if consistent with the guardian's plan and authorized by the court by specific order; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Take action that would result in the sale of or surrender the lease to the primary dwelling of the adult subject to guardianship only if:

(1) The action is generally set forth in the guardian's plan;

(2) The court authorizes the action by specific order; or

(3) Notice of the action is given at least 14 days before the action to the adult subject to guardianship, orally and in writing, and in writing to all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order, and no objection has been filed within 14 days of the notice. [PL 2019, c. 417, Pt. A, §41 (AMD).]

[PL 2019, c. 417, Pt. A, §41 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Duties with respect to health care. In exercising the guardian's power under subsection 1, paragraph C to make health care decisions, a guardian shall:

A. Involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health care options; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Defer to a decision by an agent under a power of attorney for health care or an advance health care directive executed by the adult and cooperate to the extent feasible with the agent making the decision; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Take into account:

(1) The risks and benefits of treatment options; and

(2) The current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Application to existing guardianships. For guardianships established prior to September 1, 2019, the guardian is not subject to the duties of notice and restrictions of power set forth in subsection 5, paragraphs C, D and F until so ordered by the court.

[PL 2019, c. 417, Pt. A, §42 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§40-42 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-315. Special limitations on guardian's power

1. Limitations; health care; finances. Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend a power of attorney for health care or an advance health care directive or power of attorney for finances executed by the adult. If a power of attorney for health care or an advance health care directive is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Commitment to mental health facility. A guardian for an adult may not initiate the commitment of the adult to a mental health facility except in accordance with the State's procedure for involuntary civil commitment under Title 34-B, chapter 3, subchapter 4, article 3.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Restrictions on contact. A guardian for an adult may not restrict the ability of the adult to communicate, visit or interact with others, including receiving visitors or making or receiving telephone calls, personal mail or electronic communications, including through social media, or participating in social activities, unless:

A. Authorized by the court by specific order; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A protective order or a protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological or financial harm to the adult. The

guardian shall provide a notice, orally and in writing, of the restriction to the adult subject to guardianship immediately upon imposition of the restriction and shall provide written notice of the restriction to all other persons entitled to notice under section 5-310, subsection 5 within 7 days of imposition of the restriction. Notice must include a description of the restriction, contact information of the court and the right to object to the restriction. [PL 2019, c. 417, Pt. A, §43 (AMD).]

[PL 2019, c. 417, Pt. A, §43 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Application to existing guardianships.

[PL 2021, c. 500, §2 (RP).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§43, 44 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 500, §2 (AMD).

§5-316. Guardian's plan

1. Plan; revision. The petitioner for appointment of a guardian for an adult shall file with the petition a plan for the care of the adult. When there is a subsequent change in circumstances, or the guardian seeks to deviate significantly from the plan previously filed, the guardian shall file with the court a revised plan for the care of the adult. The plan must be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the guardian. The plan must identify:

A. The living arrangement, services and supports the guardian expects to arrange, facilitate or continue for the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

A-1. The adult's medical conditions, cognitive functioning, everyday functioning and levels of supervision needed; [PL 2019, c. 417, Pt. A, §45 (NEW).]

B. Social and educational activities the guardian expects to facilitate on behalf of the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Any person with whom the adult has a relationship and any plan the guardian has for facilitating visits with the person; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The anticipated nature and frequency of the guardian's visits and communication with the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Goals for the adult including any goal related to the restoration of the adult's rights and how the guardian anticipates achieving the goals; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Whether the adult already has a plan in place and, if so, whether the guardian's plan is consistent with the adult's plan; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. A statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §45 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notice of revised plan. A guardian shall give notice of the filing of a revised plan under subsection 1, along with a copy of the plan, to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and other persons as the court determines. The notice must include a statement of the right to object to the revised plan and be given not later than 14 days after the filing.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Objection to revised plan. An adult subject to guardianship and any person entitled under subsection 2 to receive notice and a copy of the guardian's plan may object to the revised plan within 14 days of receipt of notice of the revised plan.
[PL 2019, c. 417, Pt. A, §46 (AMD).]

4. Court review of plan or revised plan; approval. The court shall review a guardian's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or the revised plan the court shall consider an objection under subsection 3 and whether the plan or revised plan is consistent with the guardian's duties and powers under sections 5-313 and 5-314. The court may schedule a hearing on any revised plan submitted and may not approve any revised plan until 30 days after its filing. The guardian may implement the revised plan 30 days after filing unless the court orders otherwise.
[PL 2019, c. 417, Pt. A, §46 (AMD).]

5. Copy of approved plan. After a guardian's plan under this section is approved by the court, the guardian shall provide a copy of the plan to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and other persons as the court determines.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Application to existing guardianship. For guardianships established prior to September 1, 2019, the guardian is not subject to the requirement for filing a revised plan until so ordered by the court.
[PL 2019, c. 417, Pt. A, §47 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§45-47 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-317. Guardian's report; monitoring of guardianship

1. Report; contents. A guardian for an adult at least annually shall submit to the court a report in a record regarding the condition of the adult and accounting for money and other property in the guardian's possession or subject to the guardian's control. Each report must state or contain:

- A. The mental, physical and social condition of the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. The living arrangements of the adult during the reporting period; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. A summary of the supported decision making, technological assistance, medical services, educational and vocational services and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- D. A summary of the guardian's visits with the adult, including the dates of the visits and the visits of agents designated by the guardian to visit on behalf of the guardian; [PL 2019, c. 417, Pt. A, §48 (AMD).]
- E. Action taken on behalf of the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- F. The extent to which the adult has participated in decision making; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- G. If the adult is living in a mental health facility or living in a facility that provides the adult with health care or other personal services, whether the guardian considers the facility's current plan for

support, care, treatment or habilitation consistent with the adult's preferences, values, prior directions and best interest; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Anything of more than de minimis value that the guardian, any individual who resides with the guardian or the spouse, domestic partner, parent, child or sibling of the guardian has received from an individual providing goods or services to the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. If the guardian has delegated powers to an agent, the powers delegated and the reason for the delegation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

J. Any business relation the guardian has with a person the guardian has paid or a person that has benefited from the property of the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

K. A copy of the guardian's most recent plan and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

L. Plans for future care and support; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

M. A recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship; [PL 2019, c. 417, Pt. A, §49 (AMD).]

N. Whether any coguardian or successor guardian appointed to serve when a designated future event occurs is alive and able to serve; and [PL 2019, c. 417, Pt. A, §49 (AMD).]

O. The fees that are paid to the guardian for the year or still outstanding. [PL 2019, c. 417, Pt. A, §50 (NEW).]

[PL 2019, c. 417, Pt. A, §§48-50 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Appointment of visitor. The court may appoint a visitor to review a report submitted under this section, interview the guardian or adult subject to guardianship or investigate any other matter involving the guardianship.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice of filing of report; copy. Notice of the filing of a guardian's report under this section, together with a copy of the report, must be given to the adult subject to guardianship, all persons entitled to notice under section 5-310, subsection 5 or a subsequent order and any other person as the court determines. The notice and report must be given not later than 14 days after the filing of the report.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. System to monitor reports. The court shall establish a system for monitoring reports submitted under this section and review each report at least annually to determine whether:

A. The report provides sufficient information to establish the guardian has complied with the guardian's duties; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The guardianship should continue; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The guardian's requested fees, if any, should be approved. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Noncompliance; modification or termination. If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:

A. Shall notify the adult, the guardian and all persons entitled to notice under section 5-310, subsection 5 or a subsequent order; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. May require additional information from the guardian; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. May appoint a visitor to interview the adult or guardian or investigate any matter involving the guardianship; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. May consider removing the guardian under section 5-318 or terminating the guardianship or changing the powers of the guardian or other terms of the guardianship under section 5-319. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Fees not reasonable. If the court has reason to believe that fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Approval of report. A guardian for an adult may petition the court for approval of a report filed under this section. The court after review may approve the report. If, after notice and hearing, the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Application to existing guardianship. For guardianships established prior to September 1, 2019, in which there is no existing order to file an annual report, the guardian is not subject to the requirements for filing an annual report until so ordered by the court.

[PL 2019, c. 417, Pt. A, §51 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§48-51 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-318. Removal of guardian for adult; appointment of successor

1. Removal; successor. The court may remove a guardian for an adult for failure to perform the guardian's duties or for other good cause and appoint a successor guardian to assume the duties of guardian.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Hearing. The court shall conduct a hearing to determine whether to remove a guardian for an adult and appoint a successor on:

A. Petition of the adult, the guardian or a person interested in the welfare of the adult that contains allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that removal of the guardian and appointment of a successor may be appropriate; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Determination by the court that a hearing would be in the best interest of the adult. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice. Notice of a petition under subsection 2, paragraph A must be given to the adult subject to guardianship, the guardian and such other persons as the court determines.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Attorney for the adult. An adult subject to guardianship who seeks to remove the guardian and have a successor appointed has a right to choose an attorney to represent the adult. If the adult subject to guardianship is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Procedure to select successor. In selecting a successor guardian of an adult subject to guardianship, the court shall follow the procedures under section 5-309.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Notice of appointment of successor. Not later than 30 days after appointing a successor guardian, the court shall give notice of the appointment to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-319. Termination or modification of guardianship for adult

1. Petition for termination or modification. An adult subject to guardianship, the guardian for the adult or a person interested in the welfare of the adult may petition for:

A. Termination of the guardianship on the ground that a basis for appointment under section 5-301 does not exist or termination would be in the best interest of the adult, or for other good cause; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Modification of the guardianship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Hearing. The court shall conduct a hearing to determine whether termination or modification of a guardianship of an adult is appropriate on:

A. Petition under subsection 1 that contains allegations that, if true, would support a reasonable belief that termination or modification of the guardianship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because of a change in the functional needs of the adult or supports or services available to the adult; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs of the adult or supports or services available to the adult have changed or a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the adult's needs are available; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A determination by the court that a hearing would be in the best interest of the adult. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice. Notice of a petition under subsection 2, paragraph A must be given to the adult subject to guardianship, the guardian and such other persons as the court determines.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Termination. On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that the basis for appointment of a guardian under section 5-301 is satisfied.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Modification. The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports or services or other circumstances.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Procedure. Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult that apply to a petition for guardianship.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Attorney for the adult. An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has a right to choose an attorney to represent the adult in this matter. If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

PART 4

CONSERVATORSHIP

§5-401. Basis for appointment of conservator

1. Conservator for minor; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of a minor, if the court finds by a preponderance of evidence that:

A. The minor owns money or property requiring management or protection that otherwise cannot be provided; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Appointment of a conservator is in the best interest of the minor and:

(1) If the minor has a parent, the court gives weight to any recommendation of the minor's parent whether an appointment is in the best interest of the minor; and

(2) Either:

(a) The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(b) Appointment is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Conservator for adult; findings. On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of an adult if the court determines by clear and convincing evidence that:

A. The adult is unable to manage property or financial affairs because:

(1) Of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appropriate supportive services, technological assistance and supported decision making that provide adequate protection for the respondent; or

(2) The adult is missing, detained or unable to return to the United States; [PL 2019, c. 417, Pt. A, §52 (AMD).]

B. Appointment is necessary to:

(1) Avoid harm to the adult or significant dissipation of the property of the adult; or

(2) Obtain or provide money needed for the support, care, education, health or welfare of the adult, or of an individual entitled to the adult's support, and protection is necessary or desirable to obtain or provide money for the purpose; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The respondent's identified needs cannot be met by less restrictive alternatives. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

In making a determination on a petition under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.

[PL 2019, c. 417, Pt. A, §52 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Powers. The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and enter orders that encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship or other less restrictive alternatives would meet the needs of and provide adequate protection for the respondent. [PL 2019, c. 417, Pt. A, §53 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§52, 53 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-402. Petition for appointment of conservator

1. Petitioner. The following may petition for the appointment of a conservator:

A. The individual for whom the order is sought; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A person interested in the estate, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property and financial affairs of the individual; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The guardian of the individual. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Contents. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before filing of the petition; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The name and current address of each of the following, if applicable:

(1) A person responsible for the care or custody of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for a respondent in this State or another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care or an advance health directive in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

(10) Any proposed conservator, including a person nominated by the respondent if the respondent is 14 years of age or older; and

(11) If the individual for whom a conservator is sought is a minor:

(a) An adult with whom the minor resides if not otherwise listed; and

(b) Any person not otherwise listed that had the care or custody of the minor for 60 or more days during the 2 years preceding the filing of the petition or any person that had the

primary care or custody of the minor for at least 730 days during the 5 years preceding the filing of the petition; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A general statement of the respondent's property with an estimate of its value, and the source and amount of other anticipated income or receipts; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The reason conservatorship is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need based on the respondent's medical conditions, cognitive functioning and everyday financial functioning and levels of supervision needed;

(2) If the petition alleges the respondent is missing, detained or unable to return to the United States, the relevant circumstances, including the time and nature of the disappearance or detention and any search or inquiry concerning the respondent's whereabouts;

(3) Any protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's alleged need which have been considered or implemented;

(4) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(5) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's need; [PL 2019, c. 417, Pt. A, §54 (AMD).]

F. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Whether the petitioner seeks a limited conservatorship or a full conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. If the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. If the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

J. If the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any other requested limitation on the authority of the conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2019, c. 417, Pt. A, §54 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §54 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-403. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition for appointment of a conservator under section 5-402, the court shall set a date, time and place for hearing the petition. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notice to respondent. A copy of a petition under section 5-402 and notice of a hearing on the petition must be served personally on the respondent at least 14 days before the hearing. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice to others. In a proceeding on a petition under section 5-402, notice of the hearing also must be given to the persons required to be listed in the petition under section 5-402, subsection 2, paragraphs A to C and any other person interested in the respondent's welfare as the court determines at least 14 days prior to the hearing. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

[RR 2021, c. 2, Pt. A, §38 (COR).]

4. Notice of petition after order. Notice of a hearing on a petition that is filed after the appointment of a conservator and that seeks an order under this Part, together with a copy of the petition, must be given to the individual subject to conservatorship if the individual is 14 years of age or older and is not missing, detained or unable to return to the United States, the conservator and any other person as the court determines.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). RR 2021, c. 2, Pt. A, §38 (COR).

§5-404. Petition for protective order

1. Petition. The person to be protected, any person who is interested in the estate, affairs or welfare of the person to be protected, including the parent, guardian, custodian or domestic partner of the person to be protected, or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for a protective order.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Contents of petition. A petition under subsection 1 must contain such information and be in such form as the Supreme Judicial Court by rule provides.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Purpose; priority scheduling. A petition for a protective order made under oath may be used to initiate court consideration, accounting and remediation of the actions of any individual responsible for the management of the property or affairs of another. In the case of an emergency, the petition must be given priority scheduling by the court.

A. The petition must include the following information and may include other information required by rule:

- (1) Name, address and telephone number of the petitioner;
- (2) Name, address and telephone number of the principal;
- (3) Name, address and telephone number of the person with actual or apparent authority to manage the property or affairs of the principal;
- (4) Facts concerning the extent and nature of the principal's inability to manage the principal's property or affairs effectively and any facts supporting an allegation that an emergency exists;

(5) Facts concerning the extent and nature of the actual or apparent agent's lack of management of the principal's property or affairs. If applicable, facts describing how the petitioner has already been adversely affected by the lack of management of the principal's property or affairs; and

(6) Names, addresses and relationships of all persons who are required to receive notice of the petition. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. This subsection does not limit any other purpose for the use of a petition for a protective order or any other remedy available to the court. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Order to preserve or apply property while proceeding pending. While a petition under section 5-402 is pending, after preliminary hearing and without notice to others, the court may issue an order to preserve and apply property of the respondent as required for the support of the respondent or an individual who is in fact dependent on the respondent.

[PL 2019, c. 417, Pt. A, §55 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §55 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-405. Appointment and role of visitor

1. Visitor for minor respondent. If the respondent in a proceeding to appoint a conservator is a minor, the court may appoint a visitor to investigate a matter related to the petition or to inform the minor or a parent of the minor about the petition or a related matter.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Visitor for adult respondent. If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a visitor unless the adult is represented by an attorney. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Duties of visitor for adult respondent. A visitor appointed for an adult under subsection 2 shall interview the petitioner and the proposed conservator and shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, the respondent's rights at the hearing and the general powers and duties of a conservator; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties and the scope and duration of the proposed conservatorship, and general financial preferences and values; [PL 2019, c. 417, Pt. A, §56 (AMD).]

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §56 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Additional duties. In addition to the duties imposed by subsection 3, the visitor appointed for an adult under subsection 2 shall perform any duties that the court directs, which may include:

- A. [PL 2019, c. 417, Pt. A, §56 (RP).]
 - B. Reviewing financial records of the respondent, if relevant to the visitor's recommendation under subsection 5, paragraph B; [PL 2019, c. 417, Pt. A, §56 (AMD).]
 - C. Stating whether the respondent's needs could be met by a less restrictive alternative, including a protective arrangement instead of conservatorship and, if so, identifying the less restrictive alternative; and [PL 2019, c. 417, Pt. A, §56 (AMD).]
 - D. Investigating the allegations in the petition and any other matter relating to the petition as the court directs. [PL 2019, c. 417, Pt. A, §56 (AMD).]
- [PL 2019, c. 417, Pt. A, §56 (AMD).]

5. Report. A visitor appointed for an adult under subsection 2 shall file a report in a record with the court at least 10 days before any hearing on the petition. The report must include:

A. Whether or not the respondent wants to challenge any aspect of the proceeding or to seek any limitation on the conservator's powers; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

A-1. A summary of the respondent's financial functioning, financial preferences and independent financial tasks the respondent can manage without assistance or with existing supports or could manage with the assistance of appropriate supportive services, technological assistance or supported decision making; [PL 2019, c. 417, Pt. A, §57 (NEW).]

B. A recommendation whether an attorney should be appointed to represent the respondent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A recommendation:

(1) Regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's needs are available;

(2) If a conservatorship is recommended, whether it should be full or limited; and

(3) If a limited conservatorship is recommended, the powers to be granted to the conservator and the property that should be placed under the conservator's control; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. A recommendation whether a further professional evaluation under section 5-407 is necessary; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. A statement whether the respondent is able to attend a hearing at the location court proceedings are typically conducted; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F-1. A statement whether the respondent wishes to attend the hearing under paragraph F after being informed of the right to attend the hearing, the purposes of the hearing and the potential consequences of failing to attend; [PL 2019, c. 417, Pt. A, §58 (NEW).]

G. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Any other matter as the court directs. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §§57, 58 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§56-58 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-406. Appointment and role of attorney

1. Attorney for respondent. The court shall appoint an attorney to represent a respondent in a proceeding on a petition under section 5-402 if:

A. Requested by the respondent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Recommended by the visitor; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The court determines that the respondent needs representation; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitation on the proposed conservator's powers. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Duties of attorney. The attorney representing the respondent in a proceeding on a petition under section 5-402 shall:

A. Make reasonable efforts to ascertain the respondent's wishes; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Attorney for parent of minor. The court may appoint an attorney to represent a parent of a minor who is the subject of a proceeding on a petition under section 5-402 if:

A. The parent objects to appointment of a conservator; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The court determines that counsel is needed to ensure that consent to appointment of a conservator is informed; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The court otherwise determines the parent needs representation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-407. Professional evaluation

1. Evaluation; report. The respondent must be examined by a licensed physician or psychologist who is acceptable to the court, who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and who will not be advantaged or disadvantaged by a decision to grant the petition and does not otherwise have a conflict of interest. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations with regard to the management of the respondent's property and financial affairs; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A prognosis for improvement with regard to the ability to manage the respondent's property and financial affairs; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The date of the examination on which the report is based. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation ordered under subsection 1, the petitioner may request an examination under the Maine Rules of Civil Procedure, Rule 35. [PL 2019, c. 417, Pt. A, §59 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §59 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-408. Attendance and rights at hearing

1. Attendance by respondent required. Except as otherwise provided in subsection 2, a hearing under section 5-403 may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology or by telephone if real-time audiovisual technology is not available. [PL 2019, c. 417, Pt. A, §60 (AMD).]

2. Hearing without respondent; findings. A hearing under section 5-403 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The respondent is a minor who has received proper notice and attendance would be harmful to the minor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Assistance to respondent. The respondent may be assisted in a hearing under section 5-403 by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or

a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under section 5-403.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Rights of respondent at hearing. At a hearing under section 5-403, the respondent may:

A. Present evidence and subpoena witnesses and documents; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Examine witnesses, including any court-appointed evaluator and the visitor; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Otherwise participate in the hearing. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Attendance by proposed conservator required. Unless excused by the court for good cause, the proposed conservator shall attend a hearing under section 5-403 in person. Upon a showing of good cause, the court may allow the proposed conservator to participate using real-time audiovisual technology or by telephone if real-time audiovisual technology is not available.

[PL 2019, c. 417, Pt. A, §61 (AMD).]

7. Closed upon request; good cause. A hearing under section 5-403 must be closed on request of the respondent and a showing of good cause.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Participation; best interest of respondent. Any person may request to participate in a hearing under section 5-403. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§60, 61 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-409. Confidentiality of records

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 4/1/25)

1. Matter of public record; exceptions. The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

A. The respondent, the individual subject to conservatorship or the parent of a minor subject to conservatorship requests the record be sealed; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Either:

(1) The petition for conservatorship is dismissed; or

(2) The conservatorship is terminated. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Access to records. An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the individual and a person entitled to notice under section 5-411 or a subsequent order are entitled to access court records of the proceeding and resulting conservatorship, including the conservator's plan and report. In addition, a person for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court shall grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Reports; availability. A report under section 5-405 of a visitor or professional evaluation under section 5-407 is confidential and must be sealed on filing but is available to:

A. The court; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The individual who is the subject of the report or evaluation, without limitation as to use; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. An agent appointed under a power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Other persons when it is in the public interest or for a purpose the court orders for good cause. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Effective date. This section takes effect April 1, 2025.

[PL 2023, c. 4, §13 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §62 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 4, §3 (AMD). PL 2023, c. 4, §13 (AMD).

§5-410. Who may be conservator; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a conservator shall consider persons otherwise qualified in the following order of priority:

A. A conservator, other than a temporary or emergency conservator, currently acting for the respondent in another jurisdiction; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A person nominated as conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An agent appointed by the respondent to manage the respondent's property under a power of attorney for finances; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A spouse or domestic partner of the respondent; [PL 2019, c. 417, Pt. A, §63 (AMD).]

E. [PL 2019, c. 417, Pt. A, §64 (RP).]

F. An adult child of the respondent; [PL 2019, c. 417, Pt. A, §65 (NEW).]

G. A parent of the respondent or a person nominated in the will of a deceased parent; and [PL 2019, c. 417, Pt. A, §65 (NEW).]

H. A family member or other individual who has exhibited special care and concern for the respondent. [PL 2019, c. 417, Pt. A, §65 (NEW).]
[PL 2019, c. 417, Pt. A, §§63-65 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential conservator's relationship with the respondent, the potential conservator's skills, the expressed wishes of the respondent, the extent to which the potential conservator and the respondent have similar values and preferences and the likelihood that the potential conservator will be able to satisfy the duties of a conservator successfully.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person having priority under subsection 1 and appoint a person having a lower priority or no priority. In its determination, the court may evaluate whatever factors the court determines appropriate, including comparing the following factors for the person having priority and the potential conservator who has a lower or no priority: relationships with the respondent, the higher priority person's and the potential conservator's skills, the expressed wishes of the respondent and the extent to which the person with higher priority and the potential conservator with lower priority or no priority have similar values and preferences as the respondent and the likelihood that the potential conservator will be able to satisfy the duties of a conservator successfully.
[PL 2019, c. 417, Pt. A, §66 (AMD).]

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as conservator unless:

A. The individual is related to the respondent by blood, marriage or adoption; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Long-term health care institution; exceptions. An owner, operator or employee of a long-term health care institution at which the respondent is receiving care may not be appointed as conservator unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§63-66 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-411. Order of appointment

1. Conservator for minor; findings. A court order appointing a conservator for a minor must include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Conservator for adult; findings. A court order appointing a conservator for an adult must include a finding by clear and convincing evidence that:

A. The basis for appointment of a conservator as required under section 5-401 has been met; and [PL 2019, c. 417, Pt. A, §67 (AMD).]

B. The respondent was given proper notice of the hearing on the petition. [PL 2019, c. 417, Pt. A, §67 (AMD).]
[PL 2019, c. 417, Pt. A, §67 (AMD).]

3. Basis for full conservatorship. A court order establishing a full conservatorship for an adult must state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult. [PL 2019, c. 417, Pt. A, §67 (AMD).]

4. Limited conservatorship; powers granted to conservator. A court order establishing a limited conservatorship must identify the property placed under the control of the conservator and the powers granted to the conservator. [PL 2019, c. 417, Pt. A, §67 (AMD).]

5. Notice; access to reports and plans. The court shall, as part of an order establishing a conservatorship, identify any person that subsequently is entitled to:

A. Notice of the rights of the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Notice of a sale of or surrender of a lease to the primary dwelling of the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Notice that the conservator has delegated any power that requires court approval under section 5-414 or substantially all powers of the conservator; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Notice that the conservator will be unavailable to perform the conservator's duties for more than one month; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Copies of the conservator's plan and report; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Access to court records pertaining to the conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. A transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Notice of the death or significant change in the condition of the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. Notice that the court has limited or modified the powers of the conservator; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

J. Notice of the conservator's removal. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Entitled to notice; exceptions. If an individual subject to conservatorship is an adult, the spouse, domestic partner and adult children of the adult subject to conservatorship are entitled under subsection 5 to notice unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to conservatorship or not in the best interest of the adult subject to conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Notice when minor is subject to conservatorship. If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under subsection 5 to notice unless the court determines notice would not be in the best interest of the minor.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §67 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-412. Notice of order of appointment; rights

1. Notice of appointment, order; rights. A conservator appointed under section 5-401 shall give to the individual subject to conservatorship and to all other persons given notice under section 5-403 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notice if person missing. If a conservator is appointed under section 5-401, subsection 2, paragraph A, subparagraph (2) and the individual subject to conservatorship is missing, notice under subsection 1 to the individual is not required.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-413. Emergency conservator

1. Appointment; findings. On petition by a person interested in an individual's welfare or on its own after a petition has been filed under section 5-402, the court may appoint an emergency conservator for the individual if the court finds:

A. Appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the respondent's property or financial interests; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. No other person appears to have authority and willingness to act in the circumstances; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. There is reason to believe that a basis for appointment of a conservator under section 5-401 may exist. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Duration of emergency conservatorship. The duration of authority of an emergency conservator may not exceed 60 days and the emergency conservator may exercise only the powers specified in the order. The emergency conservator's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency conservator in subsection 1 continue.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

(1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;

(2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and

(3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Notice under paragraph A must include the following information:

(1) The temporary authority that the petitioner is requesting;

(2) The location and telephone number of the court in which the petition is being filed; and

(3) The name of the petitioner and the intended date of filing. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-403 do not apply to this section. [PL 2019, c. 417, Pt. A, §68 (AMD).]

D. Notice is not required under this subsection in the following circumstances:

(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §68 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Appointment without notice and hearing. The court may appoint an emergency conservator without notice and a hearing only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and other persons as the court determines of the appointment. If a person objects to the appointment, the court shall hold a hearing within 14 days.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4-A. Appointment without professional evaluation. A professional evaluation under section 5-407 is not required before the appointment of an emergency conservator if the court finds from the affidavit or testimony that the basis for an emergency has been met and the petitioner has good cause for not submitting a professional evaluation before the emergency order.

[PL 2019, c. 417, Pt. A, §69 (NEW).]

5. Not a determination. Appointment of an emergency conservator under this section is not a determination that the conditions required for appointment of a conservator under section 5-401 have been satisfied.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Removal; report; application. The court may remove an emergency conservator appointed under this section at any time. The emergency conservator shall make any report the court requires. In other respects, the provisions of this Part concerning conservators apply to an emergency conservator appointed under this section.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§68, 69 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-414. Powers of conservator requiring court approval

1. Powers requiring specific authorization; notice. Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under section 5-403, subsection 4 and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

A. Except as provided in section 5-421, subsection 2, paragraph Y, make gifts, except those of de minimis value; [PL 2019, c. 417, Pt. A, §70 (AMD).]

B. Sell, encumber, convey or release an interest in, sign or revoke a transfer on death deed for or surrender a lease to the primary dwelling of the individual subject to conservatorship. For purposes of this paragraph, "transfer on death deed" has the same meaning as in section 6-402, subsection 6; [PL 2023, c. 73, §1 (AMD).]

C. Convey, release or disclaim contingent or expectant interests in property, including marital property and any right of survivorship incident to joint tenancy; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Exercise or release a power of appointment; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Exercise a right to an elective share in the estate of a deceased spouse or domestic partner of the individual subject to conservatorship or to renounce or disclaim a property interest; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Grant a creditor a priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to conservatorship and preferential treatment otherwise would be impermissible under section 5-428, subsection 5; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. Make, modify, amend or revoke the will of the individual subject to conservatorship, with the conservator treated as the individual making, modifying, amending or revoking the will. [PL 2019, c. 417, Pt. A, §71 (AMD).]

[PL 2023, c. 73, §1 (AMD).]

2. Approval based on decision of individual. In approving a conservator's exercise of the powers listed in subsection 1, the court shall consider primarily the decision the individual subject to conservatorship would make if able, to the extent the decision can be ascertained. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. To determine decision of individual. To determine under subsection 2 the decision the individual subject to conservatorship would make if able, the court shall consider the individual's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable. The court also shall consider:

A. The financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship for support, and the interest of creditors; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Possible reduction of income, estate, inheritance or other tax liabilities; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Eligibility for governmental assistance; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The previous pattern of giving or level of support provided by the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Any existing estate plan or lack of estate plan of the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. The life expectancy of the individual subject to conservatorship and the probability that the conservatorship will terminate before the individual's death; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Any other relevant factors. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Power of attorney for finances. A conservator may not revoke or amend a power of attorney for finances executed by the individual subject to conservatorship. If a power of attorney for finances is in effect, a decision of the agent takes precedence over that of the conservator, unless there is a court order to the contrary.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Application to existing conservatorships. For conservatorships established prior to September 1, 2019, the conservator is not subject to the notice and court authorization requirements under subsection 1, paragraph B until so ordered by the court.

[PL 2019, c. 417, Pt. A, §72 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§70-72 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2023, c. 73, §1 (AMD).

§5-415. Petition for order subsequent to appointment

An individual subject to conservatorship or a person interested in the welfare of the individual may file a petition in the court for an order: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Bond or collateral. Requiring the conservator to furnish bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished. This subsection does not apply to a public conservator;

[PL 2021, c. 398, Pt. KK, §1 (AMD).]

2. Accounting. Requiring an accounting for the administration of the conservatorship estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Distribution. Directing distribution; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Removal; temporary or successor. Removing the conservator and appointing a temporary or successor conservator; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Modification. Modifying the type of appointment or powers granted to the conservator, if the extent of protection or management previously granted is currently excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Inventory, plan or report. Rejecting or modifying the conservator's inventory, plan or report; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Other relief. Granting other appropriate relief. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 398, Pt. KK, §1 (AMD).

§5-416. Bond or alternative asset-protection arrangement

1. Bond or alternative asset-protection arrangement required. The court shall require a conservator of an estate of \$50,000 or more to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. The court may not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service except as provided by subsection 3. With respect to an estate of less than \$50,000, the court in its discretion may require a bond or other surety. [PL 2019, c. 417, Pt. A, §73 (AMD).]

2. Amount of bond; collateral. Unless the court directs otherwise, the bond required under this section must be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Bond not required. A regulated financial service institution qualified to do trust business in this State need not give a bond. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Spouse as conservator. The court in its discretion may waive the requirement of a bond or other surety for a spouse wishing to serve as conservator. [PL 2019, c. 417, Pt. A, §74 (NEW).]

5. Public conservator. The court may not require a bond for a public conservator. [PL 2021, c. 398, Pt. KK, §2 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§73, 74 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 398, Pt. KK, §2 (AMD).

§5-417. Terms and requirements of bond

1. Bond requirements. The following rules apply to the bond required under section 5-416.

A. Except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. By executing a bond provided by a conservator, a surety submits to the jurisdiction of the court that issued letters of office to the conservator in a proceeding pertaining to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the court records at the place where the bond is filed and any other address of the surety then known to the person required to provide the notice. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. On petition of a successor conservator or any person affected by a breach of the obligation of the bond, a proceeding may be brought against a surety for breach of the obligation of the bond. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A proceeding against the bond may be brought until liability under the bond is exhausted. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Proceeding against surety. A proceeding may not be brought against a surety of a bond under this section on a matter as to which a proceeding against the conservator is barred. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice of nonrenewal. The surety or sureties of the bond must immediately serve notice to the court and to the individual under conservatorship if the bond is not renewed by the conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-418. Duties of conservator

1. Duties as fiduciary. A conservator is a fiduciary and has a duty of prudence and duty of loyalty to the individual subject to conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Promote self-determination. A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf and develop or regain the capacity to manage the individual's personal affairs. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Decision of individual. In making a decision on behalf of the individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current directions, preferences, opinions, values and actions to the extent actually known or reasonably ascertainable by the conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Best interest of individual. If a conservator cannot make a decision under subsection 3 because the conservator does not know and cannot reasonably determine the decision that the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the conservator believes the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise would unreasonably harm or endanger the welfare of the individual, the conservator shall act in accordance with the best interest of the individual. In determining the best interest of the individual, the conservator shall consider:

A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Other information the conservator believes the individual would have considered if the individual were able to act; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Prudent investor standard. Except when inconsistent with the conservator's duties under subsections 1 to 4, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:

A. The circumstances of the individual subject to conservatorship and the conservatorship estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. General economic conditions; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The possible effect of inflation or deflation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The expected tax consequences of an investment decision or strategy; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The role of each investment or course of action in relation to the conservatorship estate as a whole; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. The expected total return from income and appreciation of capital; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. The need for liquidity, regularity of income and preservation or appreciation of capital; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. The special relationship or value, if any, of specific property to the individual subject to conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Propriety of investment and management. The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Reasonable effort to verify facts. A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Special skills or expertise. A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Consistent with estate plan and other instrument. In investing, selecting specific property for distribution and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative or other appointive instrument of the individual.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Insurance. A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or a court issues an order finding:

A. The property lacks sufficient equity; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual subject to conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

11. Cooperation, power of attorney for finances. If a power of attorney for finances is in effect, a conservator shall cooperate with the agent to the extent feasible.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

12. Digital assets. A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by court order.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

13. Adult becomes capable. A conservator of an adult shall notify the court if the condition of the adult subject to conservatorship has changed so that the adult is capable of exercising rights previously removed immediately upon learning of the change.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-419. Conservator's plan

1. Plan; revision. The petitioner for appointment as conservator for an adult shall file with the petition a plan for protecting, managing, expending and distributing the assets of the conservatorship estate. When there is a change in circumstances or when the conservator seeks to deviate significantly from the conservator's plan previously filed, the conservator shall file with the court a revised plan for protecting, managing, expending and distributing the assets of the conservatorship estate. The plan must be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the conservator. The conservator shall include in the plan:

A. A budget setting forth projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the

individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. How the conservator will involve the individual subject to conservatorship in decisions about management of the conservatorship estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Any step the conservator plans to take to develop or restore the ability of the individual subject to conservatorship to manage the conservatorship estate; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. An estimate of the duration of the conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notice of revised plan. A conservator shall give notice of the filing of a revised plan under subsection 1, along with a copy of the revised plan, to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must include a statement of the right to object to the revised plan and be given not later than 14 days after the filing.
[PL 2019, c. 417, Pt. A, §75 (AMD).]

3. Objection to revised plan. An individual subject to conservatorship and any person entitled under subsection 2 to receive notice and a copy of the conservator's revised plan may object to the revised plan within 14 days of receipt of notice of the revised plan.
[PL 2019, c. 417, Pt. A, §75 (AMD).]

4. Court review of plan or revised plan; approval. The court shall review a conservator's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or revised plan, the court shall consider any objection under subsection 3 and whether the plan or revised plan is consistent with the conservator's duties and powers. The court may schedule a hearing on any revised plan submitted and may not approve the plan or revised plan until 30 days after its filing. The conservator may implement the revised plan 30 days after filing unless the court orders otherwise.
[PL 2019, c. 417, Pt. A, §75 (AMD).]

5. Copy of approved plan. After a conservator's plan or revised plan under this section is approved by the court, the conservator shall provide a copy of the plan or revised plan to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Application to existing conservatorships. For conservatorships established prior to September 1, 2019, the conservator is not subject to the requirement for the filing of a revised plan until so ordered by the court.
[PL 2019, c. 417, Pt. A, §76 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§75, 76 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-420. Inventory; records

1. Inventory. Not later than 90 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.
[PL 2019, c. 417, Pt. A, §77 (AMD).]

2. Notice of filing of inventory. A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must be given not later than 14 days after the filing.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Records. A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian of the individual or any person as the conservator or the court determines.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §77 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-421. Administrative powers of conservator not requiring court approval

1. Powers unless limited; powers of trustee. Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional powers granted to a trustee by law of this State other than this Part.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Powers of conservator. A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the appointment, without specific court authorization or confirmation, may:

A. Collect, hold and retain property included in the conservatorship estate, including property in which the conservator has a personal interest and real property in this State or another state, until the conservator determines disposition of the property should be made; [PL 2019, c. 417, Pt. A, §78 (AMD).]

B. Receive additions to the conservatorship estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Continue or participate in the operation of a business or other enterprise; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Acquire an undivided interest in property included in the conservatorship estate in which the conservator, in a fiduciary capacity, holds an undivided interest; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Invest assets of the conservatorship estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Deposit money of the conservatorship estate in a financial institution, including one operated by the conservator; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Acquire or dispose of property of the conservatorship estate, including real property in this State or another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of or abandon property included in the conservatorship estate; [PL 2019, c. 417, Pt. A, §79 (AMD).]

H. Make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze existing or erect a new party wall or building; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. Subdivide, develop or dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation, exchange or partition land by giving or receiving

consideration and dedicate an easement to public use without consideration; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

J. Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

K. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

L. Grant an option involving disposition of property included in the conservatorship estate or accept or exercise an option for the acquisition of property; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

M. Vote a security, in person or by general or limited proxy; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

N. Pay a call, assessment or other sum chargeable or accruing against or on account of a security; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

O. Sell or exercise a stock subscription or conversion right; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

P. Consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Q. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

R. Insure the conservatorship estate against damage or loss in accordance with section 5-418, subsection 10 and the conservator against liability with respect to a 3rd party; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

S. Borrow money, with or without security, to be repaid from the conservatorship estate or otherwise; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

T. Advance money for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate as against the individual subject to conservatorship for the advances; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

U. Pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

V. Pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred in the collection, care, administration and protection of the conservatorship estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

W. Pay a sum distributable to an individual subject to conservatorship or individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the distributee:

- (1) To the guardian of the distributee;

(2) To a distributee's custodian under the Maine Uniform Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act of any state; or

(3) If there is no guardian, custodian or custodial trustee, to a relative or other person having physical custody of the distributee; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

X. Prosecute or defend an action, claim or proceeding in any jurisdiction for the protection of the conservatorship estate or of the conservator in the performance of the conservator's duties; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Y. Structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the individual's preferences, values and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Z. Execute and deliver any instrument that will accomplish or facilitate the exercise of a power vested in the conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §§78, 79 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§78, 79 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-422. Distribution from conservatorship estate

Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, and unless contrary to a conservator's plan filed under section 5-419, a conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with the following rules. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Appropriate standard. A conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health or welfare for the individual subject to conservatorship, or an individual who is in fact dependent on the individual subject to conservatorship, made by a guardian of the individual subject to conservatorship, if any, and, if the individual subject to conservatorship is a minor, a recommendation made by a guardian or parent of the minor.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Liability for distribution. A conservator acting in compliance with the conservator's duties under section 5-418 is not liable for a distribution made based on a recommendation under subsection 1 unless the conservator knows the distribution is not in the best interest of the individual subject to conservatorship.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Considerations for expenditure, distribution. In making an expenditure or distribution under this subsection, the conservator shall consider:

A. The size of the conservatorship estate, the estimated duration of the conservatorship and the likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The accustomed standard of living of the individual subject to conservatorship and an individual who is in fact dependent on the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Other money or source used for the support of the individual subject to conservatorship; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The preferences, values and prior directions of the individual subject to conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Compensation or reimbursement. Money expended or distributed under this subsection may be paid by the conservator to any person, including the individual subject to conservatorship, as reimbursement for expenditures the conservator might have made, or in advance for services to be rendered to the individual subject to conservatorship if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-423. Conservator's report and accounting; monitoring

1. Report. A conservator shall file a report in a record with the court regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or removal, on termination of the conservatorship and at any other time as the court directs. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Contents. A report under subsection 1 must state or contain:

A. An accounting that contains a list of property included in the conservatorship estate and of the receipts, disbursements, liabilities and distributions during the period for which the report is made; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A list of the services provided to the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how and why the conservator has deviated; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Any recommended change in the conservatorship, including its scope and whether the conservatorship needs to continue; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. To the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts and mortgages or other debts of the individual subject to conservatorship, with all but the last 4 digits of the account numbers and the individual's social security number redacted, and, if ordered by the court, a credit report of the individual subject to guardianship; [PL 2021, c. 4, §4 (AMD).]

F. Anything of more than de minimis value that the conservator, any individual who resides with the conservator or the spouse, domestic partner, parent, child or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Any business relation the conservator has with a person providing goods or services to the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Any business relation the conservator has with a person the conservator has paid or a person that has benefited from the property of the individual subject to conservatorship; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. Whether any coconservator or successor conservator appointed to serve when a designated future event occurs is alive and able to serve. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2021, c. 4, §4 (AMD).]

3. Visitor. The court may appoint a visitor to review a report under this section or conservator's plan under section 5-419, interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Notice of report; copy. Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order, and a person the court determines is entitled to the report. Notwithstanding section 5-409, the credit report provided pursuant to subsection 2, paragraph E is confidential and may not be provided with the rest of the conservator's report except to the individual subject to conservatorship. The notice and report must be given not later than 14 days after filing.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Monitoring; frequency of report. The court shall establish procedures for monitoring a conservator's plan and report and review the plan and report not less than annually to determine whether:

A. The plan and report provide sufficient information to establish the conservator has complied with the conservator's duties; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The conservatorship should continue; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The conservator's requested fees, if any, should be approved. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Noncompliance. If the court determines there is reason to believe the conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

A. Shall notify the conservator, the individual subject to conservatorship and all persons entitled to notice under section 5-411, subsection 5 or a subsequent order; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. May require additional information from the conservator; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. May appoint a visitor to interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. May, consistent with sections 5-430 and 5-431, hold a hearing to consider removal of the conservator, termination of the conservatorship or a change in the powers granted to the conservator or terms of the conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Unreasonable fees. If the court determines there is reason to believe a conservator's requested fees are not reasonable, the court shall hold a hearing to adjust the fees.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Approval of report or accounting. A conservator may petition the court for approval of a report or accounting filed under this section. The court after review may approve the report or accounting. An order, after notice and hearing, approving a final report or accounting discharges the conservator from all liabilities, claims and causes of action by a person given notice of the report or accounting and the hearing as to a matter adequately disclosed in the report or accounting.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Application to existing conservatorships. For conservatorships established prior to January 1, 2008, the conservator is not subject to the requirement for an annual report and accounting until so ordered by the court.

[PL 2019, c. 417, Pt. A, §81 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§80, 81 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 4, §4 (AMD).

§5-424. Attempted transfer of property by individual subject to conservatorship

1. Interest not transferable or assignable; not subject to claims. The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferable or assignable by the individual and is not subject to levy, garnishment or similar process for claims against the individual unless allowed under section 5-428.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Contract void against individual and property. If an individual subject to conservatorship enters into a contract after having the right to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Protection of 3rd parties. A 3rd party that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of this State other than this Act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-425. Transaction involving conflict of interest

A transaction involving a conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by the court by specific order after notice to all persons entitled to notice under section 5-411, subsection 5 or a subsequent order. A transaction affected by a substantial conflict between fiduciary duties and personal interests includes a sale, encumbrance or other transaction involving the conservatorship estate entered into by the conservator, an individual with whom the conservator resides,

the spouse, domestic partner, descendant, sibling, agent or attorney of the conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-426. Protection of person dealing with conservator

1. Protection of 3rd party. A person that assists or deals with a conservator in good faith and for value in any transaction, other than one requiring a court order under section 5-414, is protected as though the conservator properly exercised the power in question. Knowledge by a person that the person is dealing with a conservator does not alone require the person to inquire into the existence of the authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority that are stated in letters of office, or as otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Application of protection. Protection under subsection 1 extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and is not a substitute for protection provided to a person that assists or deals with a conservator by comparable provisions in law of this State other than this Act relating to commercial transactions or simplifying transfers of securities by fiduciaries.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-427. Death of individual subject to conservatorship

1. Delivery of will. If an individual subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual in the conservator's possession and inform the personal representative named in the will if feasible, or if not feasible a beneficiary named in the will, of the delivery.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Powers and duties of personal representative; notice. If 40 days after the death of an individual subject to conservatorship no personal representative has been appointed and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The conservator shall give notice to a person nominated as personal representative by a will of the decedent of which the conservator is aware and to all of the decedent's heirs and all devisees of the will, if any. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator has acquired the powers and duties of a personal representative.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Effect of appointment as personal representative. Issuance of an order under this section has the effect of an order of appointment of a personal representative under section 3-308 and Article 3, Parts 6 to 10.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Distribution; discharge. On the death of an individual subject to conservatorship, the conservator shall conclude the administration of the conservatorship estate by distributing property subject to conservatorship to the individual's successors. Not later than 30 days after distribution, the conservator shall file a final report and petition for discharge.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-428. Presentation and allowance of claim

1. Claims against estate or protected person. A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the individual subject to conservatorship arising before or during the conservatorship on presentation and allowance in accordance with the priorities under subsection 4. A claimant may present a claim by:

A. Sending or delivering to the conservator a statement in a record of the claim, indicating its basis, the name and address of the claimant and the amount claimed; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Filing with the court a record of the claim, in a form acceptable to the court, and sending or delivering a copy of the statement to the conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Presented claim; allowance; disallowance. A claim under subsection 1 is presented on receipt by the conservator of the statement of claim by the conservator or the filing with the court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed by the conservator in a record sent or delivered to the claimant not later than 60 days after its presentation. Before payment the conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a claim tolls the running of a statute of limitations that has not expired relating to the claim until 30 days after its disallowance.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Unpaid claim. A claimant whose claim under subsection 1 has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Distribution; order. If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

A. Costs and expenses of administration; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A claim of the Federal Government or State Government having priority under law other than this Act; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A claim incurred by the conservator for support, care, education, health or welfare previously provided to the individual subject to conservatorship or an individual who is in fact dependent on

the individual subject to conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A claim arising before the conservatorship; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. All other claims. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Preference of claims. Preference may not be given in the payment of a claim under subsection 4 over another claim of the same class. A claim due and payable may not be preferred over a claim not due unless:

A. Doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health care expenses of the individual subject to conservatorship; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The court authorizes the preference under section 5-414, subsection 1, paragraph H. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Security interest in conservatorship estate. If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the individual subject to conservatorship, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-429. Personal liability of conservator

1. Not personally liable. Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the conservator fails to reveal in the contract or before entering into the contract the conservator's representative capacity.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Personally liable. A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Claims asserted against conservator. A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate or a claim based on a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Determination of liability. A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge or indemnification or another appropriate proceeding or action.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-430. Removal of conservator; appointment of successor

1. Removal by court. The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Hearing upon petition, communication or determination. The court shall conduct a hearing to determine whether to remove a conservator and appoint a successor on:

A. Petition of the individual subject to conservatorship, conservator or person interested in the welfare of the individual that contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Communication from the individual subject to conservatorship, conservator or person interested in the welfare of the individual that supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Determination by the court that a hearing would be in the best interest of the individual subject to conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice of petition. Notice of a petition under subsection 2, paragraph A must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to remove the conservator and have a successor appointed is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-406. The court shall award reasonable attorney's fees to the attorney for the individual as provided in section 5-119.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Selection of successor conservator. In selecting a successor conservator, the court shall follow the procedures under section 5-410.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Notice of appointment of successor conservator. Not later than 30 days after appointing a successor conservator, the court shall give notice of the appointment to the individual subject to conservatorship and all persons entitled to the notice under section 5-411, subsection 5 or a subsequent order.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-431. Termination or modification of conservatorship

1. Conservatorship for a minor. A conservatorship for a minor terminates on the earlier of:

A. An order of the court; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The minor becoming an adult or, if the minor consents or the court finds by clear and convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining 21 years of age; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Emancipation of the minor; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Death of the minor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Conservatorship for an adult. A conservatorship for an adult terminates on order of the court or when the adult dies.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Petition for termination or modification. An individual subject to conservatorship, the conservator or a person interested in the welfare of the individual may petition for:

A. Termination of the conservatorship on the ground that a basis for appointment under section 5-401 does not exist or termination would be in the best interest of the individual, or for other good cause; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Hearing. The court shall conduct a hearing to determine whether termination or modification of a conservatorship is appropriate on:

A. Petition under subsection 3 that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A communication from the individual subject to conservatorship, the conservator or a person interested in the welfare of the individual that supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because of a change in the functional needs of the individual or in the supports or services available to the individual; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual subject to conservatorship have changed or a protective arrangement of conservatorship or other less restrictive alternatives are available; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A determination by the court that a hearing would be in the best interest of the individual. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Notice of petition. Notice of a petition under subsection 3 must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Termination. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless a basis for appointment of a conservator under section 5-401 is satisfied.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Modification. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Safeguard rights of individual. Unless the court otherwise orders for good cause, before terminating or modifying a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.

[PL 2021, c. 4, §5 (AMD).]

9. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship is not represented by an attorney, the court shall appoint an attorney under the same conditions in section 5-406. The court shall award reasonable attorney's fees to the individual's attorney as provided in section 5-119.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Property; report; petition for discharge. On termination of a conservatorship and whether or not formally distributed by the conservator, property of the conservatorship estate passes to the individual formerly subject to conservatorship or other persons entitled to the property. The order of termination must provide for expenses of administration and direct the conservator to file a final report and petition for discharge on approval of the final report.

[PL 2019, c. 417, Pt. A, §82 (AMD).]

11. Discharge. The court shall enter a final order of discharge on the approval of the final report and satisfaction by the conservator of any other condition placed by the court on the conservator's discharge.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

12. Distribution. On the death of an individual subject to conservatorship or other event terminating or partially terminating the conservatorship, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual or other persons entitled to it. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be effected.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §82 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 4, §5 (AMD).

PART 5

OTHER PROTECTIVE ARRANGEMENTS

§5-501. Authority for protective arrangements

1. Order protective arrangement. Under this Part, a court:

A. Upon receiving a petition for a guardianship for an adult may order one or more protective arrangements instead of guardianship as a less restrictive alternative to guardianship; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Upon receiving a petition for a conservatorship for an individual may order one or more protective arrangements instead of conservatorship as a less restrictive alternative to conservatorship. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Protective arrangement instead of guardianship. A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this Part for one or more protective arrangements instead of guardianship.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Protective arrangement instead of conservatorship. The following persons may petition under this Part for one or more protective arrangements instead of conservatorship:

A. The individual for whom the protective arrangements are sought; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A person interested in the property, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The guardian of the individual. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-502. Basis for protective arrangements instead of guardianship for adult

1. Findings. After the hearing conducted on a petition for guardianship under section 5-302 or one or more protective arrangements instead of guardianship under section 5-501, subsection 2, the court may enter an order for one or more protective arrangements instead of guardianship under subsection 2 if the court finds by clear and convincing evidence that:

A. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, after the court's consideration of the respondent's ability to use appropriate supportive services, technological assistance or supported decision making that provides adequate protection for the respondent; and [PL 2019, c. 417, Pt. A, §83 (AMD).]

B. The respondent's identified needs cannot be met by less restrictive alternatives that provide adequate protection for the respondent. [PL 2019, c. 417, Pt. A, §83 (AMD).]

[PL 2019, c. 417, Pt. A, §83 (AMD).]

2. Orders other than guardianship. If the court makes the findings under subsection 1, the court, instead of appointing a guardian, may:

A. Authorize or direct one or more transactions necessary to meet the respondent's need for health, safety or care, including but not limited to:

(1) One or more particular medical treatments or refusals of particular medical treatments;

(2) A move to a specified place of dwelling; or

(3) Visitation or supervised visitation between the respondent and another person; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Restrict access to the respondent by a person whose access places the respondent at serious risk of physical or psychological harm; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Order other arrangements on a limited basis that are appropriate. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Factors. In deciding whether to enter an order under this section, the court shall consider the factors under sections 5-313 and 5-314 that a guardian must consider when making a decision on behalf of an adult subject to guardianship. In addition, in deciding whether to enter an order under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.
[PL 2019, c. 417, Pt. A, §84 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§83, 84 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-503. Basis for protective arrangements instead of conservatorship for adult or minor

1. Findings. After the hearing conducted on a petition for conservatorship for an adult under section 5-402 or one or more protective arrangements instead of conservatorship for an adult under section 5-501, subsection 3, the court may enter an order for one or more protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds:

A. By clear and convincing evidence that the respondent is unable to manage property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provides adequate protection for the respondent, or the adult is missing, detained or unable to return to the United States; [PL 2019, c. 417, Pt. A, §85 (AMD).]

B. By a preponderance of the evidence that:

(1) The respondent has property likely to be wasted or dissipated unless management is provided; or

(2) The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the adult or an individual who is entitled to the respondent's support and protection; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The respondent's identified needs cannot be met by less restrictive alternatives. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2019, c. 417, Pt. A, §85 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Protective arrangements for minors. After the hearing conducted on a petition for conservatorship for a minor under section 5-402 or a protective arrangement instead of conservatorship for a minor under section 5-501, subsection 3, the court may enter an order for a protective arrangement or protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds by a preponderance of the evidence that the minor owns money or property requiring management or protection that cannot be provided otherwise and:

A. The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Orders other than conservatorship. If the court makes the findings under subsection 1 or 2, the court, instead of appointing a conservator, may:

A. Authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including but not limited to:

- (1) An action to establish eligibility for benefits;
- (2) Payment, delivery, deposit or retention of funds or property;
- (3) Sale, mortgage, lease or other transfer of property;
- (4) Purchase of an annuity;
- (5) Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;
- (6) Addition to or establishment of a trust;
- (6-A) Creation, modification, amendment or revocation of a will or a codicil;
- (7) Ratification or invalidation of a contract, trust, will or other transaction, including a transaction related to the property or business affairs of the respondent; or
- (8) Settlement of a claim; or [PL 2019, c. 417, Pt. A, §86 (AMD).]

B. Restrict access to the respondent's property by a person whose access to the property places the respondent at serious risk of financial harm. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §86 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Order to restrict access. If, after the hearing conducted under section 5-505 on a petition under section 5-501, subsection 1, paragraph B or section 5-501, subsection 3, a court may enter an order to restrict access to the respondent or the respondent's property by a person that the court by clear and convincing evidence finds:

A. Through fraud, coercion, duress or the use of deception and control, caused or attempted to cause harm to the respondent or the respondent's property; or [PL 2019, c. 417, Pt. A, §87 (AMD).]

B. Poses a significant risk of harm to the respondent or the respondent's property. [PL 2019, c. 417, Pt. A, §87 (AMD).]

[PL 2019, c. 417, Pt. A, §87 (AMD).]

5. Factors. In deciding whether to enter an order under subsection 3 or 4, the court shall consider the factors under section 5-418 a conservator must consider when making a decision on behalf of an individual subject to conservatorship. In addition, in deciding whether to enter an order under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.

[PL 2019, c. 417, Pt. A, §88 (AMD).]

6. Minors; factors. In deciding whether to enter an order under subsection 3 or 4 for a respondent who is a minor, the court also shall consider the best interest of the respondent, the preference of the parents of the respondent and the preference of the respondent if the minor is 14 years of age or older. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§85-88 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-504. Petition

1. Petition contents. A petition for one or more protective arrangements instead of guardianship or conservatorship must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the protective arrangements and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

(2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The name and current address of each of the following, if applicable:

(1) A person responsible for care or custody of the respondent;

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian or conservator by the respondent;

(10) A person nominated as guardian by the respondent's parent or spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected;

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition; and

(13) If the respondent is a minor:

(a) An adult with whom the respondent resides if not otherwise listed; and

(b) Any person not otherwise listed that had primary care or custody of the respondent for 60 or more days during the 2 years immediately preceding the filing of the petition or any person that had primary care or custody of the respondent for at least 730 days during the 5 years immediately preceding the filing of the petition; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The nature of the protective arrangement or protective arrangements sought; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The reason a protective arrangement sought is necessary, including a brief description of:

(1) The nature and extent of the respondent's alleged need;

(2) Any less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented and, if there are none, the reason they have not been considered or implemented; and

(3) The reason other less restrictive alternatives are insufficient to meet the respondent's alleged need; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. If one or more protective arrangements instead of conservatorship are sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. If one or more protective arrangements instead of guardianship are sought and the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Attorney for petitioner. A petition under subsection 1 must state the name and address of an attorney representing the petitioner, if any.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-505. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition under section 5-501, the court shall set a date, time and place for hearing on the petition.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notice to respondent. A copy of a petition under section 5-501 and notice of the hearing under subsection 1 must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Notice to others. In a hearing under subsection 1, notice of the hearing also must be given to the persons listed in the petition and any other person interested in the respondent's welfare as the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Notice of petition after order. Notice of a hearing on a petition filed under this Act after the court has ordered a protective arrangement or protective arrangements under this Part, together with a copy of the petition, must be given to the respondent and any other person as the court determines.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-506. Appointment of visitor

1. Petition for protective arrangement. On receipt of a petition for one or more protective arrangements instead of guardianship under section 5-501, the court shall appoint a visitor. A visitor appointed under this subsection must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Protective order for minor. On receipt of a petition for a protective order instead of conservatorship for a minor under section 5-501, the court may appoint a visitor to investigate a matter related to the petition or to inform the respondent or a parent of the respondent about the petition or a related matter.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Protective order for adult. On receipt of a petition for a protective order instead of conservatorship for an adult under section 5-501, the court shall appoint a visitor unless the respondent is represented by an attorney.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Visitor's duties. A visitor appointed under subsection 1 or 3 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, and the respondent's rights at the hearing; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Determine the respondent's views, preferences and values with respect to the order sought; [PL 2019, c. 417, Pt. A, §89 (AMD).]

C. Inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and [PL 2019, c. 417, Pt. A, §89 (AMD).]

D. Inform the respondent that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets. [PL 2019, c. 417, Pt. A, §89 (AMD).]

- E. [PL 2019, c. 417, Pt. A, §90 (RP).]
 - F. [PL 2019, c. 417, Pt. A, §90 (RP).]
 - G. [PL 2019, c. 417, Pt. A, §90 (RP).]
 - H. [PL 2019, c. 417, Pt. A, §90 (RP).]
- [PL 2019, c. 417, Pt. A, §§89, 90 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4-A. Additional visitor duties. In addition to the duties imposed by subsection 4, the visitor shall perform any duties that the court directs, which may include:

- A. Visiting the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted; [PL 2019, c. 417, Pt. A, §91 (NEW).]
 - B. Obtaining information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition; [PL 2019, c. 417, Pt. A, §91 (NEW).]
 - C. Reviewing financial records of the respondent if relevant to the visitor's recommendation; and [PL 2019, c. 417, Pt. A, §91 (NEW).]
 - D. Investigating the allegations in the petition and any other matter relating to the petition as the court directs. [PL 2019, c. 417, Pt. A, §91 (NEW).]
- [PL 2019, c. 417, Pt. A, §91 (NEW).]

5. Report. A visitor under this section promptly shall file a report in a record with the court, which, in addition to reporting on the additional visitor duties directed by the court under subsection 4-A, must include:

- A. A recommendation whether an attorney should be appointed to represent the respondent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. To the extent relevant to the order sought, a summary of self-care, independent living tasks and financial management tasks the respondent can manage without assistance or with existing supports or could manage with the assistance of appropriate supportive services, technological assistance or supported decision making that provides adequate protections for the respondent; [PL 2019, c. 417, Pt. A, §92 (AMD).]
- B-1. To the extent relevant to the order sought, a summary of the respondent's medical conditions, cognitive functioning, everyday functioning, values and preferences, risks and levels of supervision needed and any means to enhance the respondent's capacity; [PL 2019, c. 417, Pt. A, §92 (NEW).]
- C. Recommendations regarding the appropriateness of the protective arrangement sought and whether less restrictive alternatives for meeting the respondent's needs are available that provide adequate protections for the respondent; [PL 2019, c. 417, Pt. A, §92 (AMD).]
- D. If the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- E. A recommendation whether a professional evaluation under section 5-508 is necessary; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- F. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F-1. A statement whether the respondent wishes to attend a hearing under paragraph F, after being informed of the right to attend the hearing, the purposes of the hearing and the potential consequences of failing to attend the hearing; [PL 2019, c. 417, Pt. A, §92 (NEW).]

G. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Any other matter as the court directs. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §92 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§89-92 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-507. Appointment and role of attorney

1. Appointment of attorney. The court shall appoint an attorney to represent the respondent in a proceeding under this Part if:

A. Requested by the respondent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Recommended by the visitor; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The court determines that the respondent needs representation; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitations on the protective arrangement. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Attorney's duties. An attorney representing the respondent in a proceeding under this Part shall:

A. Make reasonable efforts to ascertain the respondent's wishes; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Attorney for parent of minor. The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under this Part if:

A. The parent objects to the entry of an order for a protective arrangement or protective arrangements instead of guardianship or conservatorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The court determines that counsel is needed to ensure that consent to the entry of an order for one or more protective arrangements is informed; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The court otherwise determines the parent needs representation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-508. Professional evaluation

1. Order professional evaluation. At or before a hearing on a petition under this Part for a protective arrangement, the court shall order a professional evaluation of the respondent:

A. If the respondent requests the evaluation; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Examination; report. If the court orders an evaluation under subsection 1, the respondent must be examined by a licensed physician or psychologist approved by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report must contain:

A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A prognosis for improvement, including with regard to the ability to manage the respondent's property and financial affairs if a limitation in that ability is alleged, and recommendation for the appropriate treatment, support or habilitation plan; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The date of the examination on which the report is based. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation ordered under subsection 1, the petitioner may request an examination under the Maine Rules of Civil Procedure, Rule 35.

[PL 2019, c. 417, Pt. A, §93 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §93 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-509. Attendance and rights at hearing

1. Attendance by respondent required. Except as otherwise provided in subsection 2, a hearing under this Part may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the

court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology or by telephone if real-time audiovisual technology is not available.

[PL 2019, c. 417, Pt. A, §94 (AMD).]

2. Hearing without respondent; findings. A hearing under this Part may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The respondent is represented by an attorney and the attorney represents that the respondent does not want to attend the hearing; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The visitor has confirmed with the respondent that the respondent has no objection to the protective arrangements and that the respondent does not wish to attend the hearing; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The respondent is a minor who has received proper notice and attendance would be harmful to the minor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Assistance to respondent. The respondent may be assisted in a hearing under this Part by a person or persons of the respondent's choosing, assistive technology or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under this Part.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Rights of respondent at hearing. At a hearing under this Part, the respondent may:

A. Present evidence and subpoena witnesses and documents; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Examine witnesses, including any court-appointed evaluator and the visitor; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Otherwise participate in the hearing. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Closed upon request; good cause. A hearing under this Part must be closed on request of the respondent and a showing of good cause.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Participation; best interest of respondent. Any person may request to participate in a hearing under this Part. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §94 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-510. Notice of order

The court shall give notice of an order under this Part to the individual who is the subject of the protective arrangements instead of guardianship or conservatorship, a person whose access to the respondent is restricted by the order and any other person as the court determines. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-511. Confidentiality of records

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 4/1/25)

1. Matter of public record; exceptions. The existence of a proceeding for or the existence of one or more protective arrangements instead of a guardianship or conservatorship is a matter of public record unless the court seals the record after:

- A. The respondent, the individual subject to the protective arrangements or the parent of a minor subject to the protective arrangements requests the record be sealed; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. Either:
 - (1) The proceeding is dismissed;
 - (2) The protective arrangement is no longer in effect; or
 - (3) Any act authorized by the order granting the protective arrangement has been completed.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Access to records. A respondent, an individual subject to a proceeding for one or more protective arrangements instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to one or more protective arrangements and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangements or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Reports sealed; availability. A report of a visitor or professional evaluation generated in the course of a proceeding under this Part must be sealed on filing but is available to:

- A. The court; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. The individual who is the subject of the report or evaluation, without limitation as to use; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. If the order is for one or more protective arrangements instead of guardianship and unless the court directs otherwise, an agent appointed under a power of attorney for health care in which the respondent is identified as the principal; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Other persons when it is in the public interest or for a purpose the court orders for good cause. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Effective date. This section takes effect April 1, 2025.
[PL 2023, c. 4, §14 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §95 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 4, §6 (AMD). PL 2023, c. 4, §14 (AMD).

PART 6

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

SUBPART 1

GENERAL PROVISIONS

§5-601. Short title

This Part may be known and cited as "the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act." [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-602. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Adult. "Adult" means an individual who has attained 18 years of age.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Conservator. "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Part 4.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Guardian. "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Part 3.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Guardianship proceeding. "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Individual subject to guardianship. "Individual subject to guardianship" means an adult for whom a guardian has been appointed.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Party. "Party" means an interested person within the meaning of section 1-201, subsection 26, including the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Person. "Person," except in the term "protected person," means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; public corporation; government or governmental subdivision, agency or instrumentality; or any other legal or commercial entity.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Protected person. "Protected person" means an adult for whom a protective order has been issued.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Protective order. "Protective order" means an order appointing a conservator or other order related to management or disposition of an adult's property.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Protective proceeding. "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

11. Respondent. "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-603. International application of Part

A court of this State may treat a foreign country as if it were a state for the purpose of applying this Part. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-604. Communication between courts

1. Communication between courts; participation; record. A court of this State may communicate with a court in another state concerning a proceeding arising under this Part. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. No record required. Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-605. Cooperation between courts

1. Request of court of another state. In a guardianship proceeding or protective proceeding in this State, a court of this State may request the appropriate court of another state to do any of the following:

- A. Hold an evidentiary hearing; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- B. Order a person in that state to produce evidence or give testimony pursuant to procedures of that state; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. Order that an evaluation or assessment be made of the respondent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- D. Order any appropriate investigation of a person involved in a proceeding; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- E. Forward to the court a certified copy of the transcript or other record of a hearing under paragraph A or any other proceeding, any evidence otherwise produced under paragraph B and any evaluation or assessment prepared in compliance with an order under paragraph C or D; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- F. Issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the individual subject to guardianship or protected person; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
- G. Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 Code of Federal Regulations, Section 160.103, as amended. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Jurisdiction to comply with request. If a court of another state in which a guardianship proceeding or protective proceeding is pending requests assistance of the kind provided in subsection 1, a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-606. Taking testimony in another state

1. Testimony of witness in another state. In a guardianship proceeding or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another

state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Deposition or testimony by electronic means. In a guardianship proceeding or protective proceeding, a court in this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this State shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Documentary evidence transmitted, no original writing. Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

SUBPART 2

JURISDICTION

§5-621. Definitions; significant-connection factors

1. Definitions. As used in this subpart, unless the context otherwise indicates, the following terms have the following meanings.

A. "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety or welfare and for which the appointment of a guardian is necessary. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian or, if the respondent was not physically present in a single state for the 6 months immediately preceding the filing of the petition, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Significant-connection factors. In determining under section 5-623 and section 5-631, subsection 5 whether a respondent has a significant connection with a particular state, the court shall consider:

A. The location of the respondent's family and other persons required to be notified of the guardianship proceeding or protective proceeding; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The length of time the respondent at any time was physically present in the state and the duration of any absence; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The location of the respondent's property; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-622. Exclusive basis

This subpart provides the exclusive jurisdictional basis for a court of this State to appoint a guardian or issue a protective order for an adult. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-623. Jurisdiction

A court of this State has jurisdiction to appoint a guardian or issue a protective order for a respondent if: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Respondent's home state. This State is the respondent's home state; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Significant-connection state and other factors. On the date the petition is filed, this State is a significant-connection state and:

A. The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this State is a more appropriate forum; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and, before the court makes the appointment or issues the order:

(1) A petition for an appointment or order is not filed in the respondent's home state;

(2) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(3) The court in this State concludes that it is an appropriate forum under the factors set forth in section 5-626; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. This State does not have jurisdiction under either paragraph A or B, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum and jurisdiction in this State is consistent with the Constitution of Maine and the United States Constitution; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The requirements for special jurisdiction under section 5-624 are met. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-624. Special jurisdiction

1. Special jurisdiction. If this State is not the respondent's home state and not a significant-connection state, a court of this State has special jurisdiction to do any of the following:

A. Appoint a guardian in an emergency for a term not exceeding 6 months for a respondent who is physically present in this State; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Issue a protective order with respect to real or tangible personal property located in this State; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Appoint a guardian or conservator for an individual subject to guardianship or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to those in section 5-631. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Emergency appointment. If a petition for the appointment of a guardian in an emergency is brought in this State and this State was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-625. Exclusive and continuing jurisdiction

Except as otherwise provided in section 5-624, a court that has appointed a guardian or issued a protective order consistent with this Part has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-626. Appropriate forum

1. Decline jurisdiction. A court of this State having jurisdiction under section 5-623 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Actions by court that declines jurisdiction. If a court of this State declines to exercise its jurisdiction under subsection 1, it shall either:

A. Dismiss or stay the proceeding; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Appropriate forum factors. In determining whether it is an appropriate forum, the court shall consider all relevant factors, which may include:

A. Any expressed preference of the respondent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The length of time the respondent was physically present in or was a legal resident of this State or another state; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The distance of the respondent from the court in each state; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The financial circumstances of the respondent's estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. The nature and location of the evidence; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. The familiarity of the court of each state with the facts and issues in the proceeding; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-627. Jurisdiction declined by reason of conduct

1. Jurisdiction because of unjustifiable conduct. If at any time a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

A. Decline to exercise jurisdiction; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Continue to exercise jurisdiction after considering:

(1) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(2) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 5-626, subsection 3; and

(3) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 5-623. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Assessment of expenses. If a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this State or a governmental subdivision, agency or instrumentality of this State unless authorized by law other than this Part.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-628. Notice of proceeding

If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this State.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-629. Proceedings in more than one state

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this State under section 5-624, subsection 1, paragraph A or B, if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following apply. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Jurisdiction proper; proceed with case. If the court in this State has jurisdiction under section 5-623, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 5-623 before the appointment or issuance of the order.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Lack of jurisdiction; communication with court. If the court in this State does not have jurisdiction under section 5-623, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

SUBPART 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

§5-631. Transfer of guardianship or conservatorship to another state

1. Petition. A guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notice. Notice of a petition under subsection 1 must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Hearing or opportunity for hearing. On the court's own motion or on request of the guardian or conservator, the individual subject to guardianship or protected person or other person required to be notified of the petition, the court shall hold a hearing or provide an opportunity for a hearing to be held on a petition filed pursuant to subsection 1.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Provisional order; guardianship. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

A. The individual subject to guardianship is physically present in or is reasonably expected to move permanently to the other state; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An objection to the transfer has not been made or, if an objection has been made, the objector has not established by a preponderance of the evidence that the transfer would be contrary to the best interest of the individual subject to guardianship; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Plans for care and services for the individual subject to guardianship in the other state are reasonable and sufficient. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Provisional order; conservatorship. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

A. The protected person is physically present in or is reasonably expected to move permanently to the other state or the protected person has a significant connection to the other state considering the factors in section 5-621, subsection 2; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An objection to the transfer has not been made or, if an objection has been made, the objector has not established by a preponderance of the evidence that the transfer would be contrary to the best interest of the protected person; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Adequate arrangements will be made for management or disposition of the protected person's property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Final order. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

A. A provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued under provisions similar to section 5-632; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The documents required to terminate a guardianship or conservatorship in this State. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-632. Accepting guardianship or conservatorship transferred from another state

1. Petition. To confirm transfer of a guardianship or conservatorship transferred to this State under provisions similar to section 5-631, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notice. Notice of a petition under subsection 1 must be given to those persons who would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Hearing. On the court's own motion or on request of the guardian or conservator, the individual subject to guardianship or protected person or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Provisional order. The court shall issue an order provisionally granting a petition filed under subsection 1 unless:

A. An objection is made and the objector establishes by a preponderance of the evidence that transfer of the proceeding would be contrary to the best interest of the individual subject to guardianship or protected person; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The guardian or conservator is ineligible for appointment in this State. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Final order. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 5-631 transferring the proceeding to this State.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Recognition of order from other state. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the individual subject to guardianship's or protected person's need for guardianship or protective order and the appointment of the guardian or conservator.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Denial; other proceedings unaffected. The denial by a court of this State of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this State under Part 3 or 4 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

SUBPART 4

MISCELLANEOUS PROVISIONS

§5-641. Uniformity of application and construction

In applying and construing this Part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-642. Relation to Electronic Signatures in Global and National Commerce Act

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b). [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-643. Transitional provisions

1. Proceedings on or after September 1, 2019. This Part applies to guardianship and protective proceedings begun on or after September 1, 2019.

[PL 2019, c. 417, Pt. B, §5 (AMD).]

2. Proceedings before September 1, 2019. Subparts 1 and 3 and sections 5-641 and 5-642 apply to proceedings begun before September 1, 2019, regardless of whether a guardianship or protective order has been issued.

[PL 2019, c. 417, Pt. B, §5 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §5 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

PART 7

PUBLIC GUARDIAN AND CONSERVATOR

§5-701. Public guardians and conservators; general

1. Appointment of public guardian or conservator. In any case in which a guardian or conservator may be appointed by the court under this Article, the court may appoint a public guardian or conservator as provided in this Part for persons who are in need of protective services.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Department of Health and Human Services. The Department of Health and Human Services shall act as the public guardian or conservator for persons in need of protective services.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Article applies to public guardians and conservators. Except as otherwise provided in this Part, the appointment, termination, rights and duties and other provisions for guardians and conservators in this Article apply to public guardians and conservators.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Access to records. In any case in which a public guardian or conservator may be or has been appointed by the court under this Article, the Department of Health and Human Services shall disclose to the respondent and the respondent's attorney relevant information from the department's records as required by Title 22, section 3474, subsection 3, paragraph F.

[PL 2023, c. 151, §1 (NEW).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2023, c. 151, §1 (AMD).

§5-702. Priority of private guardian or conservator

A public guardian or conservator may not be appointed if the court determines that a suitable private guardian or conservator is available and willing to assume the responsibilities of a guardian or conservator. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-703. Exclusiveness of public guardian or conservator

When the court has appointed a public guardian under this Part, no coguardian may be appointed for the same individual subject to guardianship. When the court has appointed a public conservator under this Part, a coconservator may not be appointed for the same individual subject to conservatorship. [PL 2019, c. 417, Pt. A, §96 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §96 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-704. Nomination of public guardian or conservator

1. Nomination of public guardian. Any person who is eligible to petition for appointment of a guardian under section 5-302, subsection 1, including the commissioner of any state department, the head of any state institution, the board of overseers and the welfare director or health officer of any municipality, may nominate the public guardian.

[PL 2021, c. 275, §5 (AMD).]

2. Nomination of public conservator. Any person who is eligible to petition for appointment of a conservator under section 5-402, subsection 1, including the commissioner of any state department, the head of any state institution, the board of overseers and the welfare director or health officer of any municipality, may nominate the public conservator.

[PL 2021, c. 275, §5 (AMD).]

3. Article applies to proceedings for determining appointment. Except as supplemented by section 5-705, the proceedings for determining the appointment of a public guardian or conservator are governed by the provisions of this Article for the appointment of guardians and conservators generally.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 275, §5 (AMD).

§5-705. Acceptance by public guardian or conservator; plan

Prior to the appointment of a public guardian or conservator, the appropriate agency nominated shall accept or reject the nomination in writing within 30 days of its receipt of notification that it has been nominated and if the nomination is accepted shall file a plan under section 5-316 for a guardianship and section 5-419 for a conservatorship. [PL 2019, c. 417, Pt. A, §97 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §97 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-706. Officials authorized to act as public guardian or conservator

1. Commissioner of Health and Human Services. When the Department of Health and Human Services is appointed public guardian or conservator of a person, the authority of the public guardian or conservator must be exercised by the Commissioner of Health and Human Services and by any persons duly delegated by the commissioner to exercise such authority.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 2019, Pt. B, §14 (AFF).]

2. Delegation of authority. Persons duly delegated by the officials authorized to act under subsection 1 may include a staff of competent social workers or competent social workers assigned to the public guardian or conservator by the Department of Health and Human Services. In the event that the delegation is to an individual, such individual must be qualified by reason of education or experience, or both, in administering to the needs of the individual or individuals over whom the individual is to exercise administrative or supervisory authority under the public guardian.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-707. Duties and powers of a public guardian or conservator

A public guardian or conservator has the same powers, rights and duties respecting the individual subject to guardianship or the individual subject to conservatorship as provided for guardians and conservators by the other Parts of this Article except as otherwise specifically provided in this Part, including the following particular provisions. [PL 2019, c. 417, Pt. A, §98 (AMD).]

1. Placement in licensed facility; removal. A public guardian may place an individual subject to guardianship in a facility described in Title 22, section 1811 only if the facility is duly licensed. In the event that the license of any such facility is suspended or revoked, the public guardian having any individual subject to guardianship placed in that facility shall remove the individual and effect an

appropriate placement of the individual as soon as practicable after knowledge of the suspension or revocation of the license.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Examination and evaluation; report to court.

[PL 2019, c. 417, Pt. A, §99 (RP).]

3. Records.

[PL 2019, c. 417, Pt. A, §99 (RP).]

4. In absence of kin, autopsy and burial. A public guardian, in the absence of available next of kin, may authorize the performance of an autopsy upon the body of a deceased individual subject to guardianship. The public guardian, in the absence of available next of kin, or in the event that next of kin refuses to assume responsibility for the deceased individual subject to guardianship, shall cause any deceased individual subject to guardianship to be suitably buried and has authority to expend funds of the individual for that purpose, and in the event the individual is without funds at the time of death, the public guardian shall cause the individual to be suitably buried at public expense, as in the case of the burial of any other deceased indigent person.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§98, 99 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-708. No change in rights to services

The appointment of a public guardian or conservator in no way enlarges or diminishes the individual subject to guardianship's or protected person's right to services made available to all persons in need of service or protection in the State except for the provision of guardianship or conservatorship services as provided under this Article. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-709. No change in powers and duties of agency heads and trustees

Nothing in this Article abrogates any other powers or duties vested by law in the head of any public institution, or vested by the settlor of a trust in the trustee thereof, for the benefit of any individual subject to guardianship or protected person for whom the public guardian or conservator is appointed. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-710. Bond not required

The public guardian or conservator is not required to file bonds in individual guardianships or conservatorships. [PL 2021, c. 398, Pt. KK, §3 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 398, Pt. KK, §3 (AMD).

§5-711. Compensation

1. Reasonable expenses; account for costs. The public guardian or conservator may receive such reasonable amounts for its expenses as guardian or conservator as the Probate Court may allow. The amounts so allowed must be allocated to an account from which may be drawn expenses for filing fees, court costs and other expenses required in the administration of the functions of the public guardian or conservator. No amounts thus received may inure to the benefit of any employee of the public guardian or conservator. Any balance in the account at the end of a fiscal year does not lapse but is carried forward from year to year and used for the purposes provided for in this subsection.

[PL 2021, c. 398, Pt. KK, §4 (AMD).]

2. Reimbursement of personal expenditures. Any personal expenditures made on the individual subject to guardianship's or protected person's behalf by the public guardian or conservator must, when properly evidenced, be reimbursed out of the individual subject to guardianship's or protected person's estate. Claims for services rendered by state agencies must be submitted to the Probate Court for approval before payment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 398, Pt. KK, §4 (AMD).

§5-712. Individuals subject to guardianship; guardian ad litem costs

1. Guardian ad litem, other special costs. The costs of the guardian ad litem or any other special costs may be paid by the Department of Health and Human Services, within the limits of the department's budget, when:

A. A person is in need of protective services and:

(1) A guardian ad litem is appointed under the provisions of this Code; or

(2) A court incurs special costs in a proceeding concerning the person; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Appointment of a public guardian or conservator is sought or the person, within 3 months prior to the filing of the petition:

(1) Is or has been a client of the Department of Health and Human Services; or

(2) Has received services from a worker from the Department of Health and Human Services.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Payment of costs. The Department of Health and Human Services is not liable for the costs set out in subsection 1 if the department can demonstrate that the person has assets against which the costs may be assessed or that another more appropriate funding source is available and subject to the court's jurisdiction.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-713. Limited public guardianships

The provisions of Parts 2 and 3 regarding limited guardianships apply to the appointment of public guardians. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

PART 8

UNIFORM HEALTH CARE DECISIONS ACT

§5-801. Short title

This Part may be known and cited as "the Uniform Health Care Decisions Act." [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-802. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Advance health care directive. "Advance health care directive" means an individual instruction from, or a power of attorney for health care by, an individual with capacity. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Agent. "Agent" means an individual with capacity designated in a power of attorney for health care to make a health care decision for the individual granting the power. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Capacity. "Capacity" means the ability to have a basic understanding of the diagnosed condition and to understand the significant benefits, risks and alternatives to the proposed health care and the consequences of forgoing the proposed treatment, the ability to make and communicate a health care decision and the ability to understand the consequences of designating an agent or surrogate to make health care decisions. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Guardian. "Guardian" means a judicially appointed guardian or conservator having authority to make a health care decision for an individual. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Health care. "Health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Health care decision. "Health care decision" means a decision made by an individual with capacity or by the individual's agent, guardian or surrogate regarding the individual's health care, including:

A. Selection and discharge of health care providers and institutions; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Health care institution. "Health care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §417 (AFF).]

8. Health care provider. "Health care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Individual instruction. "Individual instruction" means a direction from an individual with capacity concerning a health care decision for the individual.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Life-sustaining treatment. "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a person without capacity and in either a terminal condition or a persistent vegetative state, will serve only to prolong the process of dying. "Life-sustaining treatment" may include artificially administered nutrition and hydration, which is the provision of nutrients and liquids through the use of tubes, intravenous procedures or similar medical interventions.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

11. Persistent vegetative state. "Persistent vegetative state" means a state that occurs after coma in which the patient totally lacks higher cortical and cognitive function, but maintains vegetative brain stem processes, with no realistic possibility of recovery, as diagnosed in accordance with acceptable medical standards.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

12. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

13. Physician. "Physician" means an individual authorized to practice medicine under Title 32.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

14. Power of attorney for health care. "Power of attorney for health care" means the designation of an agent with capacity to make health care decisions for the individual granting the power.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

15. Primary physician. "Primary physician" means a physician designated by an individual with capacity or by the individual's agent, guardian or surrogate to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

16. Reasonably available. "Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

17. Supervising health care provider. "Supervising health care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for a patient's health care.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

18. Surrogate. "Surrogate" means an individual with capacity, other than a patient's agent or guardian, authorized under this Part to make health care decisions as provided in section 5-806. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

19. Terminal condition. "Terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment, in the opinion of the primary physician, will result in death within a relatively short time. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-803. Advance health care directives

1. Individual instruction. An adult or emancipated minor with capacity may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises. An oral instruction is valid only if made to a health care provider or to an individual who may serve as a surrogate under section 5-806, subsection 2. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Power of attorney for health care. An adult or emancipated minor with capacity may execute a power of attorney for health care, which may authorize the agent to make any health care decision the principal could have made while having capacity. The power must be in writing and signed by the principal and 2 witnesses. Notwithstanding any law validating electronic or digital signatures, signatures of the principal and witnesses must be made in person and not by electronic means. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a residential long-term health care institution at which the principal is receiving care. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Effective upon determination that principal lacks capacity. Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has recovered capacity. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Determination. Unless otherwise specified in a written advance health care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of an advance health care directive must be made by the primary physician, by a court of competent jurisdiction or, for an individual who has included a directive authorizing mental health treatment in an advance health care directive, by a person qualified to conduct an examination pursuant to Title 34-B, section 3863. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Decision in accordance with instructions, wishes, best interest. An agent shall make a health care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Effective without judicial approval. A health care decision made by an agent for a principal is effective without judicial approval. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Nomination of guardian. A written advance health care directive may include the individual's nomination of a guardian of the person.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Validity of advance health care directive. An advance health care directive is valid for purposes of this Part if it complies with this Part, regardless of when or where executed or communicated, or if it is valid under the laws of the state in which it was executed. An advance health care directive that is valid where executed or communicated is valid for the purposes of this Part.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Directing mental health treatment. An advance health care directive is valid for purposes of directing mental health treatment. The terms of the directive must be construed in accordance with this Part and Title 34-B, sections 3831 and 3862.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Personal representative for purposes of federal law. A surrogate or an agent named in an advance health care directive has the power and authority to serve as the personal representative of the patient who executed the health care directive for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal Regulations, Parts 160-164. The surrogate or agent has all the rights of the patient with respect to the use and disclosure of the individually identifiable health information and other medical records of the patient.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-803-A. Remote signing of advance health care directives in health care facilities

When a principal in a hospital or a residential health care facility has an infectious disease and is confined to a room or ward where isolation precautions prevent the physical presence of individuals or documents necessary for executing the principal's advance health care directives, staff, employees and agents of a hospital or a residential health care facility where the principal is located may assist and facilitate the execution of advance health care directives using the process provided in this section. [PL 2021, c. 452, §1 (NEW).]

The principal may direct another individual physically located beyond the isolation area but in the same facility to sign the principal's name to the advance health care directive. If necessary, the principal may employ 2-way audiovisual communication technology to direct the individual to sign and to allow the signing to be witnessed. This audiovisual technology must allow direct contemporaneous interaction between the principal, the individual signing the document and any witness by sight and sound in real time. [PL 2021, c. 452, §1 (NEW).]

The principal must be provided with an unsigned copy of the advance health care directive prior to the signing for the principal to review. The individual signing for the principal must be provided with the original advance health care directive. After it is signed and witnessed, a copy of the original advance health care directive must be given to the principal or the principal's agent if named in the advance health care directive. The signed and witnessed original advance health care directive must be filed with the principal's medical record as soon as possible. [PL 2021, c. 452, §1 (NEW).]

If the principal or the principal's agent identifies any substantive difference between the unsigned copy and the signed and witnessed original advance health care directive, the principal or the agent may revoke the advance health care directive by notifying the primary physician either orally or in writing. [PL 2021, c. 452, §1 (NEW).]

Staff, employees and agents of a hospital or a residential health care facility are immune from suit or legal liability for their good faith actions or omissions arising out of their use of the procedures described in this section. [PL 2021, c. 452, §1 (NEW).]

This section does not apply to any other documents or settings or when advance health care directives are notarized. [PL 2021, c. 452, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 452, §1 (NEW).

§5-804. Revocation of advance health care directive

1. Revocation of designation of agent. An individual with capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Revocation of advance health care directive. An individual with capacity may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Communication of revocation. A health care provider, agent, guardian or surrogate who is informed of a revocation by an individual with capacity shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution at which the patient is receiving care. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Revocation of spouse as agent. A decree of annulment, divorce, dissolution of marriage or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Revocation of earlier advance health care directive in conflict. An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-805. Optional form

The following form may, but need not, be used to create an advance health care directive. The other sections of this Part govern the effect of this or any other writing used to create an advance health care directive. An individual with capacity may complete or modify all or any part of the following form.

ADVANCE HEALTH CARE DIRECTIVE

Explanation [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a residential long-term health care institution at which you are receiving care. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

(1) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

(2) Select or discharge health care providers and institutions; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

(3) Approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

(4) Direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

Part 4 of this form lets you designate a physician to have primary responsibility for your health care. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

After completing this form, sign and date the form at the end. You must have 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

You have the right to revoke this advance health care directive or replace this form at any time. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

.....

(name of individual you choose as agent)

.....

(address) (city) (state) (zip code)

.....

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health care decision for me, I designate as my first alternate agent:

.....

(name of individual you choose as first alternate agent)

.....

(address) (city) (state) (zip code)

.....

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health care decision for me, I designate as my second alternate agent:

.....

(name of individual you choose as second alternate agent)

.....

(address) (city) (state) (zip code)

.....

(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

.....

.....

.....

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box [], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In

determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

[] (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

[] (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box [], artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

.....
.....

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

.....
.....

(Add additional sheets if needed) [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

PART 3

DONATION OF ORGANS AT DEATH

(OPTIONAL)

(10) UPON MY DEATH: (mark applicable box)

[] (a) I give any needed organs, tissues or parts, OR

[] (b) I give the following organs, tissues or parts only:

.....

(c) My gift is for the following purposes: (strike any of the following you do not want)

(i) Transplant

(ii) Therapy

(iii) Research

(iv) Education [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

PART 4

PRIMARY PHYSICIAN

(OPTIONAL)

DESIGNATION OF PRIMARY PHYSICIAN

(11) I designate the following physician as my primary physician:

.....

(name of physician)

.....

(address) (city) (state) (zip code)

.....

(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

.....

(name of physician)

.....

(address) (city) (state) (zip code)

.....

(phone)

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

.....

(date) (sign your name)

.....

(address) (print your name)

.....

(city) (state)

SIGNATURES OF WITNESSES:

First witness

2nd witness

.....

(print name)

(print name)

.....

(address)

(address)

.....

(city)

(state)

(city)

(state)

.....

(signature of witness)

(signature of witness)

.....

(date)
§14 (AFF).]

(date) [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B,

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-806. Decisions by surrogate

1. Decisions by surrogate. A surrogate may make a decision to withhold or withdraw life-sustaining treatment for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity, no agent or guardian has been appointed or the agent or guardian is not reasonably available and the patient is in a terminal condition or a persistent vegetative state as determined by the primary physician.

A surrogate also is authorized to make any other health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian exists, except that a surrogate may not deny surgery, procedures or other interventions that are lifesaving and medically necessary.

A medically necessary procedure is one providing the most patient-appropriate intervention or procedure that can be safely and effectively given.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Priority of who may act as surrogate. Any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

A. The spouse, unless legally separated; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An adult who shares an emotional, physical and financial relationship with the patient similar to that of a spouse; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An adult child; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A parent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. An adult brother or sister; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. An adult grandchild; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. An adult niece or nephew, related by blood or adoption; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. An adult aunt or uncle, related by blood or adoption; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. Any adult relative of the patient, related by blood or adoption, who is familiar with the patient's personal values and is reasonably available for consultation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Adult who has exhibited special concern. If none of the individuals eligible to act as surrogate under subsection 2 is reasonably available, an adult who has exhibited special concern for the patient, who is familiar with the patient's personal values and who is reasonably available may act as surrogate. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Communication of assumption of authority. A surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of the patient's family specified in subsection 2 who can be readily contacted.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Conflict among potential surrogates; neutral 3rd party or court. If more than one member of a class assumes authority to act as surrogate and they, or members of different classes who are reasonably available, do not agree on a health care decision and the supervising health care provider is so informed, the supervising health care provider may comply with the decision of the class having priority or a majority of the members of that class who have communicated their views to the provider. The health care provider may refer the members of the class or classes to a neutral 3rd party for assistance in resolving the dispute or to a court of competent jurisdiction. If the class is evenly divided concerning the health care decision and the supervising health care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Decision in accordance with instructions, wishes, best interest. A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest and in good faith. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate. A consent is not valid if it conflicts with the intention of the patient previously expressed to the surrogate.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Effective without judicial approval. A health care decision made by a surrogate for a patient lacking capacity is effective without judicial approval.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Disqualification. An individual with capacity at any time may disqualify another, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the supervising health care provider of the disqualification.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Conflict of interest. A surrogate may not be an owner, operator or employee of a residential long-term health care institution at which the patient is receiving care unless the surrogate is one of the following:

A. The spouse of the patient; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An adult child of the patient; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A parent of the patient; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A relative of the patient with whom the patient has resided for more than 6 months prior to the decision. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Written declaration supporting authority. A supervising health care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-807. Decisions by guardian

1. Compliance with expressed wishes; cannot revoke advance health care directive. Except as authorized by a court of competent jurisdiction, a guardian shall comply with the individual subject to guardianship's individual instructions and other wishes, if any, expressed while the individual subject to guardianship had capacity and to the extent known to the guardian and may not revoke the individual subject to guardianship's advance health care directive unless the appointing court expressly so authorizes.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Agent's decision takes precedence. Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Effective without judicial approval; exceptions. A health care decision made by a guardian for the individual subject to guardianship is effective without judicial approval, except under the following circumstances:

A. The guardian's decision is contrary to the individual subject to guardianship's individual instructions and other wishes, expressed while the individual subject to guardianship had capacity; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The guardian seeks to withhold or withdraw life-sustaining treatment from the individual subject to guardianship, against the advice of the individual subject to guardianship's primary physician and in the absence of instructions from the individual subject to guardianship, made while the individual subject to guardianship had capacity. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-808. Obligations of health care provider

1. Communicate to patient. Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Include in record advance health care directive, surrogate, revocation, disqualification. A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health care record.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Include in record determinations on capacity; communicate. A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent, guardian or surrogate or the validity of an advance health care directive shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Compliance. Except as provided in subsections 5 and 6, a health care provider or health care institution providing care to a patient shall:

A. Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Decline to comply; not in compliance; reasons of conscience; contrary to policy. A health care provider may decline to comply with an individual instruction or health care decision if the instruction or decision appears not to be in compliance with this Part or for reasons of conscience. A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision appears not to be in compliance with this Part or if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Decline to comply; ineffective health care; contrary to generally accepted standards. A health care provider or health care institution may decline to comply with an individual instruction or health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Duties if decline to comply. A health care provider or health care institution that declines to comply with an individual instruction or health care decision shall:

A. Promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Provide continuing care to the patient until a transfer can be effected or a court of competent jurisdiction issues a final order regarding the decision; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Not as a condition for providing health care. A health care provider or health care institution may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-809. Health care information

Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health care information. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-810. Immunities

1. Health care provider or institution. A health care provider or health care institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or health care institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

A. Complying with a health care decision of a person apparently having authority and capacity to make a health care decision for a patient, including a decision to withhold or withdraw health care; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Declining to comply with a health care decision of a person based on a belief that the person then lacked authority or capacity or that the decision otherwise does not comply with this Part; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Complying with an advance health care directive and assuming that the directive was valid when made and has not been revoked or terminated; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Seeking judicial relief from a court of competent jurisdiction. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Agent, guardian or surrogate. An individual acting as agent, guardian or surrogate under this Part is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-811. Statutory damages

1. Health care provider or institution; intentional violation. A health care provider or health care institution that intentionally violates this Part is subject to liability to the aggrieved individual for damages of \$500 or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Interference with autonomy to make health care decisions. A person who intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance health care directive or a revocation of an advance health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke or not to give an advance health care directive, is subject to liability to that individual for damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-812. Capacity

1. Right to make health care decisions while having capacity. This Part does not affect the right of an individual to make health care decisions while having capacity to do so.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Presumed to have capacity; rebuttal. An individual is presumed to have capacity to make a health care decision, to give or revoke an advance health care directive and to designate or disqualify a surrogate. This presumption may be rebutted by a determination by the individual's primary physician or by a court of competent jurisdiction.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-813. Effect of copy

A copy of a written advance health care directive, revocation of an advance health care directive or designation or disqualification of a surrogate has the same effect as the original. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-814. Effect of Part

1. No presumption concerning intention if no advance health care directive or if revoked. This Part does not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health care directive.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Death resulting from withholding or withdrawing health care. Death resulting from the withholding or withdrawal of health care in accordance with this Part does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Prohibited by other statutes. This Part does not authorize mercy killing, assisted suicide, euthanasia or the provision, withholding or withdrawal of health care to the extent prohibited by other statutes of this State. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Health care contrary to generally accepted health care standards. This Part does not authorize or require a health care provider or health care institution to provide health care contrary to generally accepted health care standards applicable to the health care provider or health care institution. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Admission to a mental health institution. This Part does not authorize an agent or surrogate to consent to the admission of an individual to a mental health institution unless the individual's written advance health care directive expressly so provides. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Other statutes governing treatment for mental illness. This Part does not affect other statutes of this State governing treatment for mental illness of an individual involuntarily committed to a mental health institution. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-815. Judicial relief

On petition of a patient, the patient's agent, guardian or surrogate, a health care or social services provider or health care institution involved with the patient's care, a state agency mandated to provide adult protective services pursuant to Title 22, chapter 958-A, or an adult relative or adult friend of the patient, the court may enjoin or direct a health care decision or other equitable relief. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-816. Uniformity of application and construction

This Part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this Part among states enacting it. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-817. Military advanced medical directives

A military advanced medical directive executed in accordance with 10 United States Code, Section 1044c is valid in this State. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

PART 9

MAINE UNIFORM POWER OF ATTORNEY ACT

SUBPART 1

GENERAL PROVISIONS AND DEFINITIONS

§5-901. Short title

This Part may be known and cited as "the Maine Uniform Power of Attorney Act." [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-902. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Agent. "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact or otherwise. "Agent" includes an original agent, coagent, successor agent and a person to whom an agent's authority is delegated. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Durable. "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Electronic. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Good faith. "Good faith" means honesty in fact. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Incapacity. "Incapacity" means inability of an individual to effectively manage property or business affairs because the individual:

A. Is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent that the individual lacks sufficient understanding, capacity or ability to receive and evaluate information or make or communicate decisions regarding the individual's property or business affairs; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Is:

- (1) Missing;
- (2) Detained, including incarcerated in a penal system; or

(3) Outside the United States and unable to return. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Power of attorney. "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term "power of attorney" is used.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Presently exercisable general power of appointment. "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors or the creditors of the principal's estate. "Presently exercisable general power of appointment" includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard or the passage of the specified period. "Presently exercisable general power of appointment" does not include a power exercisable in a fiduciary capacity or only by will.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Principal. "Principal" means an individual who grants authority to an agent in a power of attorney.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Property. "Property" means anything that may be the subject of ownership, whether real or personal or legal or equitable, or any interest or right therein.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

11. Sign. "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. To attach to or logically associate with the record an electronic sound, symbol or process. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

12. Stocks and bonds. "Stocks and bonds" means stocks, bonds, mutual funds and all other types of securities and financial instruments, whether held directly, indirectly or in any other manner. "Stocks and bonds" does not include commodity futures contracts and call or put options on stocks or stock indexes.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-903. Applicability

This Part applies to all powers of attorney except: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Coupled with an interest in the subject of the power. A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Health care decisions. A power to make health care decisions;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Proxy or other delegation to exercise rights. A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Governmental purpose. A power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-904. Power of attorney is durable

A power of attorney created under this Part is durable unless it expressly provides that it is terminated by the incapacity of the principal. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-905. Execution of power of attorney; notices

1. Signed by principal; acknowledged. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A power of attorney under this Part is not valid unless it is acknowledged before a notary public or other individual authorized by law to take acknowledgments.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Notices for durable power of attorney. A durable power of attorney under this Part is not valid unless it contains the following notices substantially in the following form:

"Notice to the Principal: As the "Principal" you are using this power of attorney to grant power to another person (called the Agent) to make decisions about your property and to use your property on your behalf. Under this power of attorney you give your Agent broad and sweeping powers to sell or otherwise dispose of your property without notice to you. Under this document your Agent will continue to have these powers after you become incapacitated. The powers that you give your Agent are explained more fully in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 9. You have the right to revoke this power of attorney at any time as long as you are not incapacitated. If there is anything about this power of attorney that you do not understand, you should ask an attorney to explain it to you.

Notice to the Agent: As the "Agent" you are given power under this power of attorney to make decisions about the property belonging to the Principal and to dispose of the Principal's property on the Principal's behalf in accordance with the terms of this power of attorney. This power of attorney is valid only if the Principal is of sound mind when the Principal signs it. When you accept the authority

granted under this power of attorney, a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. The duties are more fully explained in the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 9 and Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are generally not entitled to use the Principal's property for your own benefit or to make gifts to yourself or others unless the power of attorney gives you such authority. If you violate your duty under this power of attorney, you may be liable for damages and may be subject to criminal prosecution. You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events of termination are more fully explained in the Maine Uniform Power of Attorney Act and include, but are not limited to, revocation of your authority or of the power of attorney by the Principal, the death of the Principal or the commencement of divorce proceedings between you and the Principal. If there is anything about this power of attorney or your duties under it that you do not understand, you should ask an attorney to explain it to you."

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-906. Validity of power of attorney

1. Executed on or after September 1, 2019. A power of attorney executed in this State on or after September 1, 2019 is valid if its execution complies with section 5-905.

[PL 2019, c. 417, Pt. B, §6 (AMD).]

2. Executed on or after July 1, 2010 but before September 1, 2019. A power of attorney executed on or after July 1, 2010 but before September 1, 2019 is valid if its execution complied with former Title 18-A, section 5-906.

[PL 2019, c. 417, Pt. B, §6 (AMD).]

3. Executed before July 1, 2010. A power of attorney executed in this State before July 1, 2010 is valid if its execution complied with the law of this State as it existed at the time of execution.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Executed other than in this State. A power of attorney executed other than in this State is valid in this State if, when the power of attorney was executed, the execution complied with:

A. The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 5-907; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The requirements for a military power of attorney pursuant to 10 United States Code, Section 1044b, as amended. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Defective notice. A power of attorney executed in this State is valid and enforceable 2 years after execution if the notice required by section 5-905, subsection 2 or the former Title 18-A, section 5-905, subsection (b) is included but is incomplete or defective in any respect.

[PL 2019, c. 598, §5 (AMD).]

6. Copy. Except as otherwise provided by statute other than this Part, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §6 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2019, c. 598, §5 (AMD).

§5-907. Meaning and effect of power of attorney

The meaning and effect of a power of attorney are determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-908. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary

1. Nomination of conservator or guardian. In a power of attorney, a principal may nominate a conservator of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Relation of agent to court-appointed fiduciary. If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended or terminated by the court.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-909. When power of attorney effective

1. Effective when executed unless otherwise provided. A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Future event or contingency; determination. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Incapacity; determination. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

A. A physician that the principal is incapacitated within the meaning of section 5-902, subsection 5, paragraph A; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An attorney, a judge or an appropriate governmental official that the principal is incapacitated within the meaning of section 5-902, subsection 5, paragraph B. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Personal representative pursuant to federal law. A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-910. Termination of power of attorney or agent's authority

1. Termination of power of attorney. A power of attorney terminates when:

A. The principal dies; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The principal becomes incapacitated, if the power of attorney is not durable; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The principal revokes the power of attorney; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The power of attorney provides that it terminates; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The purpose of the power of attorney is accomplished; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. The principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns and the power of attorney does not provide for another agent to act under the power of attorney. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Termination of agent's authority. An agent's authority terminates:

A. When the principal revokes the authority; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. When the agent dies, becomes incapacitated or resigns; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. When an action is filed for the termination or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Upon the sooner to occur of either:

(1) The marriage of the principal to a person other than the agent if upon or after execution of the power of attorney the principal and the agent are or became registered domestic partners, the filing with the domestic partner registry, in accordance with Title 22, section 2710, subsection 4, of a notice consenting to the termination of a registered domestic partnership of the principal and the agent; or

(2) Upon service, in accordance with Title 22, section 2710, subsection 4, of a notice of intent to terminate the registered domestic partnership of the principal and the agent; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. When the power of attorney terminates. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Agent's authority until termination. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection 2, notwithstanding a lapse of time since the execution of the power of attorney.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Termination of authority not effective without actual knowledge. Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Incapacity does not revoke or terminate nondurable power of attorney without actual knowledge. Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Previously executed power of attorney not revoked unless provided. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-911. Coagents and successor agents

1. Coagents. A principal may designate 2 or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Successor agents. A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office or function. Unless the power of attorney otherwise provides, a successor agent:

A. Has the same authority as that granted to the original agent; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve or have declined to serve. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Not liable for actions of other agent. Except as otherwise provided in the power of attorney and subsection 4, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Actual knowledge of breach or imminent breach; damages. An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's interests. An agent that fails to notify the principal or take action as required

by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-912. Reimbursement and compensation of agent

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances. The factors set forth in section 3-721, subsection 2 should be considered as guides in determining the reasonableness of compensation under this section. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-913. Agent's acceptance

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-914. Agent's duties

1. Minimum mandatory duties. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

A. Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise act as a fiduciary under the standards of care applicable to trustees as described under Title 18-B, sections 802 to 807 and Title 18-B, chapter 9; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Act in good faith; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Act only within the scope of authority granted in the power of attorney. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Default duties. Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

A. Act loyally for the principal's benefit; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Act so as not to create a conflict of interest that impairs the agent's ability to act impartially; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Keep a record of all receipts, disbursements and transactions made on behalf of the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Cooperate with a person that has authority to make health care decisions for the principal to carry out such decisions; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Attempt to preserve the principal's estate plan, to the extent actually known by the agent, based on all relevant factors, including:

- (1) The value and nature of the principal's property;
- (2) The principal's foreseeable obligations and need for maintenance;
- (3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; and
- (4) Eligibility for a benefit, a program or assistance under a statute, rule or regulation. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Failure to preserve estate plan; good faith. An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Agent also benefits. An agent that acts with care, competence and diligence for the sole interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Special skills or expertise. If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Value of property declines. Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Delegation of authority. An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Disclosure upon request. Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-915. Exoneration of agent

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Dishonesty, improper motive, reckless indifference. Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive or with reckless indifference to the purposes of the power of attorney; or
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Abuse of relationship. Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-916. Judicial relief

1. Petition. The following persons may petition the Probate Court or the Superior Court for the county in which either the principal or the agent resides to construe a power of attorney or review the agent's conduct and grant appropriate relief:

A. The principal or the agent; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A guardian, conservator or other fiduciary acting for the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A person authorized to make health care decisions for the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. The principal's spouse, domestic partner, parent or descendant; [PL 2021, c. 567, §13 (AMD).]

E. An individual who would qualify as a presumptive heir of the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. A person named as a beneficiary to receive any property, benefit or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. A governmental agency having regulatory authority to protect the welfare of the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. A person asked to accept the power of attorney. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2021, c. 567, §13 (AMD).]

2. Motion by principal to dismiss; lack of capacity. Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 567, §13 (AMD).

§5-917. Agent's liability

An agent that violates this Part is liable to the principal or the principal's successors in interest for the amount required to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Restore property. Restore the value of the principal's property to what it would have been had the violation not occurred; and

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Reimburse fees and costs. Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-918. Agent's resignation; notice

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Conservator, guardian, coagent, successor agent. To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Caregiver, interested person, governmental agency. If there is no person described in subsection 1, to:

A. The principal's caregiver; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A governmental agency having authority to protect the welfare of the principal. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-919. Acceptance of and reliance upon acknowledged power of attorney

1. Acknowledged. For purposes of this section and section 5-920, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgments.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Signature not genuine. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under section 5-905 that the signature is genuine.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Void, invalid or terminated; exceeding or improper authority. A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid or terminated, that the purported agent's authority is void, invalid or terminated or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect and the agent had not exceeded and had properly exercised the authority.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Request and rely upon. A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

A. An agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Expense of translation or opinion of counsel. An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Employee without actual knowledge. For purposes of this section and section 5-920, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-920. Liability for refusal to accept acknowledged power of attorney

1. Request within 7 days; accept within 5 days of receipt. Except as otherwise provided in subsection 2:

A. A person shall either accept an acknowledged power of attorney or request a certification, a translation or an opinion of counsel under section 5-919, subsection 4 no later than 7 business days after presentation of the power of attorney for acceptance; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. If a person requests a certification, a translation or an opinion of counsel under section 5-919, subsection 4, the person shall accept the power of attorney no later than 5 business days after receipt of the certification, translation or opinion of counsel; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Acceptance not required. A person is not required to accept an acknowledged power of attorney if:

A. The person is not otherwise required to engage in a transaction with the principal in the same circumstances; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A request for a certification, a translation or an opinion of counsel under section 5-919, subsection 4 is refused; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation or an opinion of counsel under section 5-919, subsection 4 has been requested or provided; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. The person has a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or a person acting for or with the agent and the person makes, or has actual knowledge that another person has made, a report to the Department of Health and Human Services regarding such beliefs. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Consequences of refusal. A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

A. A court order mandating acceptance of the power of attorney; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-921. Principles of law and equity

Unless displaced by a provision of this Part, the principles of law and equity supplement this Part. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-922. Laws applicable to financial institutions and entities

This Part does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this Part. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-923. Remedies under other law

The remedies under this Part are not exclusive and do not abrogate any right or remedy under the law of this State other than this Part. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

SUBPART 2

AUTHORITY

§5-931. Authority that requires specific grant; grant of general authority

1. Specific grant of authority required. An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

A. Create, amend, revoke or terminate an inter vivos trust; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Make a gift; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Create or change rights of survivorship; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Create or change a beneficiary designation. The authority under this paragraph, unless otherwise expressly limited in the power of attorney, includes the authority to create, change or revoke a transfer on death deed as defined in section 6-402, subsection 6; [PL 2019, c. 598, §6 (AMD).]

E. Delegate authority granted under the power of attorney; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Exercise fiduciary powers that the principal has authority to delegate; [PL 2019, c. 417, Pt. A, §100 (AMD).]

H. Disclaim property, including a power of appointment; and [PL 2019, c. 417, Pt. A, §100 (AMD).]

I. Exercise authority over the content of an electronic communication of the principal in accordance with the Maine Revised Uniform Fiduciary Access to Digital Assets Act. [PL 2019, c. 417, Pt. A, §101 (NEW).]

[PL 2019, c. 598, §6 (AMD).]

2. Limitation on creating interest in principal's property. Notwithstanding a grant of authority to do an act described in subsection 1, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, domestic partner or descendant of the principal may not exercise authority

under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

[PL 2021, c. 567, §14 (AMD).]

3. General authority. Subject to subsections 1, 2, 4 and 5, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 5-934 to 5-946.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Authority to make a gift. Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 5-947.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Overlapping subjects. Subject to subsections 1, 2 and 4, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Authority with respect to principal's property. Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this State and whether or not the authority is exercised or the power of attorney is executed in this State.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Act pursuant to power of attorney. An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§100, 101 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2019, c. 598, §6 (AMD). PL 2021, c. 567, §14 (AMD).

§5-932. Incorporation of authority

1. Reference to subject. An agent has authority described in this subpart if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in sections 5-934 to 5-947 or cites the section in which the authority is described.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Reference to section number. A reference in a power of attorney to general authority with respect to the descriptive term for a subject in sections 5-934 to 5-947 or a citation to a section of sections 5-934 to 5-947 incorporates the entire section as if it were set out in full in the power of attorney.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Modify incorporated authority. A principal may modify authority incorporated by reference.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-933. Construction of authority generally

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 5-934 to 5-947 or that grants to an agent

authority to do all acts that a principal could do pursuant to section 5-931, subsection 3, a principal authorizes the agent, with respect to that subject, to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Money or another thing of value. Demand, receive and obtain, by litigation or otherwise, money or another thing of value to which the principal is, may become or claims to be entitled and conserve, invest, disburse or use anything so received or obtained for the purposes intended; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Contracts. Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release or modify the contract or another contract made by or on behalf of the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Instrument or communication. Execute, acknowledge, seal, deliver, file or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Claim in favor of or against principal; intervene. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Assistance of court or governmental agency. Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Advisors. Engage, compensate and discharge an attorney, accountant, discretionary investment manager, expert witness or other advisor; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Record, report or other document. Prepare, execute and file a record, report or other document to safeguard or promote the principal's interest under a statute, rule or regulation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Communication with government or instrumentality. Communicate with any representative or employee of a government or governmental subdivision, agency or instrumentality on behalf of the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Access communications. Access communications intended for and communicate on behalf of the principal, whether by mail, electronic transmission, telephone or other means; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Any lawful act. Do any lawful act with respect to the subject and all property related to the subject. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-934. Real property

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Acquire or reject an interest in real property. Demand, buy, lease, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject an interest in real property or a right incident to real property; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Grant or dispose of an interest in real property. Sell; exchange; convey with or without covenants, representations or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Interest in real property as security. Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Claim to real property. Release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other claim to real property that exists or is asserted; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Manage or conserve interest in real property. Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

A. Insuring against liability or casualty or other loss; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Purchasing supplies, hiring assistance or labor and making repairs or alterations to the real property; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Structures or other improvements. Use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Reorganization with respect to real property. Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

A. Selling or otherwise disposing of them; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Exercising or selling an option, right of conversion or similar right with respect to them; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Exercising any voting rights in person or by proxy; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Form of title. Change the form of title of an interest in or right incident to real property; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Public use. Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-935. Tangible personal property

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Acquire or reject interest in tangible personal property. Demand, buy, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Grant or otherwise dispose of interest in tangible personal property. Sell; exchange; convey with or without covenants, representations or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Security interest in tangible personal property. Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Claim to tangible personal property. Release, assign, satisfy or enforce by litigation or otherwise a security interest, lien or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; and

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Manage or conserve tangible personal property. Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

A. Insuring against liability or casualty or other loss; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Obtaining or regaining possession of or protecting the property or interest by litigation or otherwise; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Moving the property from place to place; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Storing the property for hire or on a gratuitous bailment; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Using and making repairs, alterations or improvements to the property; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Changing the form of title of an interest in tangible personal property. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-936. Stocks and bonds

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Buy, sell and exchange. Buy, sell and exchange stocks and bonds; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Stocks and bonds account. Establish, continue, modify or terminate an account with respect to stocks and bonds; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Security. Pledge stocks and bonds as security to borrow, pay, renew or extend the time of payment of a debt of the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Evidences of ownership. Receive certificates and other evidences of ownership with respect to stocks and bonds; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Voting rights. Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts and consent to limitations on the right to vote. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-937. Commodities and options

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Commodity futures, stock options. Buy, sell, exchange, assign, settle and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Option accounts. Establish, continue, modify and terminate option accounts. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-938. Banks and other financial institutions

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Banking arrangement by principal. Continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Banking arrangement selected by agent. Establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Contract for services. Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Withdraw property of principal. Withdraw, by check, order, electronic funds transfer or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Receive and act on documents. Receive statements of account, vouchers, notices and similar documents from a financial institution and act with respect to them;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Safe deposit box or vault. Enter a safe deposit box or vault and withdraw or add to the contents;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Borrow and pledge as security. Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Negotiable and nonnegotiable paper of the principal. Make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; transfer money; receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Receive and act on negotiable and nonnegotiable instruments. Receive for the principal and act upon a sight draft, warehouse receipt or other document of title, whether tangible or electronic, or other negotiable or nonnegotiable instrument;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Letters of credit. Apply for, receive and use letters of credit, credit and debit cards, electronic transaction authorizations and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

11. Extension of time of payment. Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-939. Operation of entity or business

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Ownership interest. Operate, buy, sell, enlarge, reduce or terminate an ownership interest; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Duty, liability, right, power, privilege or option. Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege or option that the principal has, may have or claims to have; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Ownership agreement. Enforce the terms of an ownership agreement; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Ownership interest litigation. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Stocks and bonds. Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege or option the principal has or claims to have as the holder of stocks and bonds; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Stocks and bonds litigation. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Sole ownership. With respect to an entity or business owned solely by the principal:

A. Continue, modify, renegotiate, extend and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Determine:

(1) The location of its operation;

(2) The nature and extent of its business;

(3) The methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in its operation;

(4) The amount and types of insurance carried; and

(5) The mode of engaging, compensating and dealing with its employees and accountants, attorneys or other advisors; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Additional capital. Put additional capital into an entity or business in which the principal has an interest;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Reorganization, consolidation, conversion, domestication or merger. Join in a plan of reorganization, consolidation, conversion, domestication or merger of the entity or business in which the principal has an interest;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Sell or liquidate. Sell or liquidate all or part of an entity or business in which the principal has an interest;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

11. Buy-out agreement value. Establish the value of an entity or business under a buy-out agreement to which the principal is a party;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

12. Reports and other papers; payments. Prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments; and
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

13. Taxes, assessments, fines and penalties. Pay, compromise or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-940. Insurance and annuities

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Insurance or annuity contract procured by principal. Continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. New insurance or annuity contract for principal and family. Procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, domestic partner, children and other dependents and select the amount, type of insurance or annuity and mode of payment;
[PL 2021, c. 567, §15 (AMD).]

3. Insurance or annuity contract procured by agent. Pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Loan secured by insurance or annuity contract. Apply for and receive a loan secured by a contract of insurance or annuity;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Surrender, cash on insurance or annuity contract. Surrender and receive the cash surrender value on a contract of insurance or annuity;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Election. Exercise an election;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Investment powers. Exercise investment powers available under a contract of insurance or annuity;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Manner of paying premiums. Change the manner of paying premiums on a contract of insurance or annuity;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Change or convert type. Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

10. Benefit or assistance to guarantee or pay premiums. Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

11. Interest of principal in contract. Collect, sell, assign, hypothecate, borrow against or pledge the interest of the principal in a contract of insurance or annuity;

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

12. Form and timing of payment of proceeds. Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

13. Tax or assessment. Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 567, §15 (AMD).

§5-941. Estate, trust and other beneficial interest

1. Definition. As used in this section, "estate, trust and other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow or custodianship or a fund from which the principal is, may become or claims to be entitled to a share or payment.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. General authority. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to an estate, trust and other beneficial interest authorizes the agent to:

A. Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment from the fund; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Demand or obtain money or another thing of value to which the principal is, may become or claims to be entitled by reason of the fund, by litigation or otherwise; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to ascertain the meaning, validity or effect of a deed, will, declaration of trust or other instrument or transaction affecting the interest of the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to remove, substitute or surcharge a fiduciary; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Conserve, invest, disburse or use anything received for an authorized purpose; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities and other property to the trustee of a revocable trust created by the principal as settlor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-942. Claims and litigation

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Assert and maintain claim. Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or defense, including an action to recover property or other thing of value, or recover damages sustained by the principal; eliminate or modify tax liability; or seek an injunction, specific performance or other relief; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Participate in litigation. Bring an action to determine adverse claims or intervene or otherwise participate in litigation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Effect or satisfy judgment, order or decree. Seek an attachment, garnishment, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Offer of judgment or admission of facts; bind principal. Make or accept a tender, offer of judgment or admission of facts, submit a controversy on an agreed statement of facts, consent to examination and bind the principal in litigation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Alternative dispute resolution, settle and compromise. Submit to alternative dispute resolution, settle and propose or accept a compromise;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

6. Service of process; procedure. Waive the issuance and service of process upon the principal; accept service of process; appear for the principal; designate persons upon which process directed to the principal may be served; execute and file or deliver stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and give surety and indemnity bonds; contract and pay for the preparation and printing of records and briefs; and receive, execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

7. Bankruptcy or insolvency; reorganization, receivership or appointment of receiver or trustee. Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

8. Pay claim or litigation. Pay a judgment, award or order against the principal or a settlement made in connection with a claim or litigation; and
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

9. Receive settlement of or proceeds of claim or litigation. Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-943. Personal and family maintenance

1. General authority. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

A. Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse or the principal's domestic partner and the following individuals, whether living when the power of attorney is executed or later born:

- (1) Individuals legally entitled to be supported by the principal; and
- (2) Individuals whom the principal has customarily supported or indicated the intent to support;
[PL 2021, c. 567, §16 (AMD).]

B. Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Provide living quarters for the individuals described in paragraph A by:

- (1) Purchase, lease or other contract; or
- (2) Paying the operating costs, including interest, amortization payments, repairs, improvements and taxes, for premises owned by the principal or occupied by those individuals;
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Provide normal domestic help, usual vacations and travel expenses and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph A; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph A; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., as amended, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing them, for the individuals described in paragraph A; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Maintain credit and debit accounts for the convenience of the individuals described in paragraph A and open new accounts; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

I. Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or to continue contributions to those organizations. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2021, c. 567, §16 (AMD).]

2. Authority with respect to gifts. Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this Part.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 567, §16 (AMD).

§5-944. Benefits from governmental programs or civil or military service

1. Definition. As used in this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute, rule or regulation including Social Security, Medicare and Medicaid.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. General authority. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

A. Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 5-943, subsection 1, paragraph A and for shipment of their household effects; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or

other instrument for that purpose; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Enroll in, apply for, select, reject, change, amend or discontinue, on the principal's behalf, a benefit or program; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Prepare, file and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute, rule or regulation; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute, rule or regulation; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Receive the financial proceeds of a claim described in paragraph D and conserve, invest, disburse or use for a lawful purpose anything so received. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-945. Retirement plans

1. Definition. As used in this section, "retirement plan" means a plan or account created by an employer, the principal or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary or owner, including a plan or account under the following sections of the federal Internal Revenue Code:

A. An individual retirement account under 26 United States Code, Section 408, as amended; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A Roth individual retirement account under 26 United States Code, Section 408A, as amended; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A deemed individual retirement account under 26 United States Code, Section 408(q), as amended; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. An annuity or mutual fund custodial account under 26 United States Code, Section 403(b), as amended; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. A pension, profit-sharing, stock bonus or other retirement plan qualified under 26 United States Code, Section 401(a), as amended; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. A plan under 26 United States Code, Section 457(b), as amended; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

G. A nonqualified deferred compensation plan under 26 United States Code, Section 409A, as amended. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. General authority. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

A. Select the form and timing of payments under a retirement plan and withdraw benefits from a plan; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Establish a retirement plan in the principal's name; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Make contributions to a retirement plan; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. Exercise investment powers available under a retirement plan; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

F. Borrow from, sell assets to or purchase assets from a retirement plan. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-946. Taxes

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Prepare, sign and file returns and other documents. Prepare, sign and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under 26 United States Code, Section 2032A, as amended, closing agreements and any power of attorney required by the federal Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Taxes due, refunds, bonds, confidential information and deficiencies. Pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the federal Internal Revenue Service or other taxing authority; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Election under tax law. Exercise any election available to the principal under federal, state, local or foreign tax law; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Act for principal in all tax matters. Act for the principal in all tax matters for all periods before the federal Internal Revenue Service or other taxing authority. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-947. Gifts

1. Gift. For the purposes of this section, a gift for the benefit of a person includes a gift to a trust, an account under the Maine Uniform Transfers to Minors Act and a tuition savings account or prepaid tuition plan as defined under 26 United States Code, Section 529, as amended. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Consistent with principal's objectives. An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if known by the agent and, if unknown, as the agent determines is consistent with the principal's objectives based on all relevant factors, including:

A. The value and nature of the principal's property; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The principal's foreseeable obligations and need for maintenance; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. Eligibility for a benefit, a program or assistance under a statute, rule or regulation; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

E. The principal's personal history of making or joining in making gifts. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

SUBPART 3

STATUTORY FORMS

§5-951. Agent's certification

The following optional form may be used by an agent to certify facts concerning a power of attorney.

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of

County of

I, (Name of Agent), certify under penalty of perjury that (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated

I further certify that to my knowledge:

(1) The Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) If the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4)

.....

.....
.....
.....

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

.....
Agent's Signature Date

.....
Agent's Name Printed

.....
Agent's Address

.....
Agent's Telephone Number

This document was acknowledged before me on (Date)

by

(Name of Agent)

..... (Seal, if any)

Signature of Notary/Attorney

My commission expires:

This document prepared by:

..... [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

SUBPART 4

MISCELLANEOUS PROVISIONS

§5-961. Uniformity of application and construction

In applying and construing this Part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-962. Relation to Electronic Signatures in Global and National Commerce Act

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b). [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§5-963. Effect on existing powers of attorney

Except as otherwise provided in this Part: [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

1. Application to powers of attorney. This Part applies to a power of attorney created before, on or after September 1, 2019; [PL 2019, c. 417, Pt. B, §7 (AMD).]

2. Application to judicial proceedings commenced on or after September 1, 2019. This Part applies to a judicial proceeding concerning a power of attorney commenced on or after September 1, 2019; and [PL 2019, c. 417, Pt. B, §7 (AMD).]

3. Application to judicial proceedings commenced before September 1, 2019. This Part applies to a judicial proceeding concerning a power of attorney commenced before September 1, 2019, unless the court finds that application of a provision of this Part would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies. [PL 2019, c. 417, Pt. B, §7 (AMD).]

An act done before September 1, 2019 is not affected by this Part. [PL 2019, c. 417, Pt. B, §7 (AMD).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §8 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

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