

75-5-101. Jurisdiction of subject matter -- Consolidation of proceedings.

(1) The court has jurisdiction over protective proceedings and guardianship proceedings.

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

Enacted by Chapter 150, 1975 General Session

75-5-102. Facility of payment or delivery.

(1) Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$10,000 per annum, by paying or delivering the money or property to:

(a) the minor, if he is married or if payment to the minor is expressly authorized by statute;

(b) any person having the care and custody of the minor with whom the minor resides; or

(c) a guardian of the minor.

(2) This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

(3) The persons, other than the minor, receiving money or property for a minor are obligated to apply the money to the support and education of the minor and may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor. Any balance not so used and any property received for the minor must be turned over to the minor when he attains majority.

(4) Persons receiving money under this section on behalf of a minor shall have the power to settle and release in whole or in part the claims belonging to the minor giving rise to the duty to pay money to the minor.

(5) Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

Amended by Chapter 198, 2004 General Session

75-5-103. Delegation of powers by parent or guardian.

A parent or a guardian of a minor or incapacitated person, by a properly-executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

Enacted by Chapter 150, 1975 General Session

75-5-104. Power of court to appoint guardian ad litem not affected.

Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to represent the interests of any minor interested in any suit or

matter pending before it.

Enacted by Chapter 150, 1975 General Session

75-5-105. Bond of guardian.

A guardian coming into the possession or control of funds or other property of a minor or incapacitated person may be required by the court to furnish a bond in an amount and under the conditions as set forth for conservators in Sections 75-5-411 and 75-5-412.

Enacted by Chapter 150, 1975 General Session

75-5-201. Status of guardian of minor -- General.

(1) (a) A person becomes a guardian of a minor by acceptance of a testamentary appointment, through appointment by a local school board under Section 53A-2-202, or upon appointment by the court.

(b) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

(2) (a) A document issued by other than a court of law which purports to award guardianship to a person who is not a legal resident of the jurisdiction in which the guardianship is awarded is not valid in the state of Utah until reviewed and approved by a Utah court.

(b) The procedure for obtaining approval of a guardianship under Subsection (2)(a) shall be identical to the procedure required under this part for obtaining a court appointment of a guardian.

Amended by Chapter 124, 1998 General Session

75-5-202. Appointment of guardian of minor.

(1) The parent of a minor may appoint a guardian of an unemancipated minor by will, as provided in this section, or by other written instrument as provided in Section 75-5-202.5.

(2) Subject to the rights of the minor and others under Section 75-5-203, an appointment by will or written instrument becomes effective upon filing the guardian's acceptance in the court in which the will is probated or the document is filed, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated.

(3) If both parents are dead, an effective appointment by the parent who died later has priority.

(4) This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.

(5) Upon acceptance of appointment, written notice of acceptance shall be given by the guardian to the minor and to the person having his care, or to his nearest adult relative.

Amended by Chapter 41, 1985 General Session

75-5-202.5. Appointment of guardian by written instrument.

(1) The parent of an unemancipated minor may appoint a guardian by written instrument designating the guardian. An appointment by written instrument becomes effective where:

(a) the written instrument is filed with the petition for appointment of guardian in the court having probate jurisdiction in the county of residence of the last parent to die, if death occurred in the state, and otherwise in the court having probate jurisdiction in the county in which the minor resides in the state; and

(b) the person appointed as guardian filed in the court having jurisdiction an affidavit of acceptance which states:

- (i) the name, address, and age, or birthday if known, of the minor;
- (ii) the name, address, and telephone number of the appointee-guardian;
- (iii) the names of the parents of the minor and that both are dead or that any surviving parent has been adjudged incapacitated;
- (iv) the name of the parent who was last to die and the county where that parent resided at the date of his death;
- (v) that the appointee-guardian knows of no other appointment of a guardian which supersedes the appointment by written instrument;
- (vi) that the appointee-guardian accepts the appointment.

(2) The latest document appointing a guardian, whether will or written instrument, which is executed by the last parent to die has priority.

(3) Upon acceptance of an appointment, written notice of acceptance shall be given by the guardian to the minor, if he is 14 years of age or older, and to the person having his care or to his nearest adult relative.

(4) For purposes of this chapter, "instrumental" refers to a written instrument as described in this section.

Enacted by Chapter 41, 1985 General Session

75-5-203. Objection to appointment.

Any person interested in the welfare of a minor, or a minor of 14 years or older, may file with the court in which the will is probated or the written instrument is filed a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude, after a hearing on the objection, appointment by the court in a proper proceeding of the testamentary or instrumental nominee, or any other suitable person.

Amended by Chapter 41, 1985 General Session

75-5-204. Court appointment of guardian of minor -- Conditions for appointment.

The court may appoint a guardian for an unemancipated minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will under Section 75-5-202, or by written instrument under Section 75-5-202.5, whose appointment has not been prevented or nullified under Section 75-5-203 has priority over any guardian who may be appointed by the court, but

the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

Amended by Chapter 41, 1985 General Session

75-5-205. Court appointment of guardian of minor -- Venue.

The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

Enacted by Chapter 150, 1975 General Session

75-5-206. Court appointment of guardian of minor -- Qualifications -- Priority of minor's nominee.

(1) (a) The court may appoint as guardian any person whose appointment would be in the best interests of the minor.

(b) In determining the minor's best interests, the court may consider the minor's physical, mental, moral, and emotional health needs.

(2) Except as provided in Subsection (3), the court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

(3) The court may deny the appointment of a guardian for a minor of school age if it finds that:

(a) if the minor is older than 11 years of age:

(i) the minor has not secured a certificate from the local police authority in the jurisdiction where the minor has lived during the past two years stating that there have been no criminal charges filed against the minor and the minor is not the subject of a criminal investigation in that jurisdiction and given a copy of the certificate to the superintendent of the school district in which the minor would attend school in Utah; or

(ii) a release has not been given by or on behalf of the minor to the superintendent of the school district in which the minor would attend school in Utah within a reasonable time prior to the guardianship hearing, allowing the superintendent full access to all criminal records of the minor in those jurisdictions outside the state where the minor has resided during the previous two years, which release remains part of the minor's school records together with verification of residence for the previous two years, except that information disclosed in the criminal records may not be made a part of the minor's school record;

(b) the school district has proven by a preponderance of the evidence that the primary purpose for the guardianship is to avoid the payment of tuition, which a school district may assess against a nonresident for attendance at a Utah public school; or

(c) after consideration of relevant evidence, including any presented by the school district in which the petitioner resides, the minor's behavior indicates an ongoing unwillingness to abide by applicable law or school rules.

(4) If a school district files an objection for reasons described in Subsection (3)(b), and the court does not find in favor of the school district, the court may award the petitioner attorney fees and costs if the court finds that the school district's arguments

lack a reasonable basis in law or fact.

Amended by Chapter 392, 2010 General Session

75-5-207. Court appointment of guardian of minor -- Procedure.

(1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by Section 75-1-401 to:

- (a) the minor, if the minor is 14 years of age or older;
- (b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition;
- (c) any living parent of the minor;
- (d) any guardian appointed by the will or written instrument of the parent of the minor who died last; and
- (e) the school district in which the petitioner resides and a representative of the school district may participate in the hearing.

(2) (a) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of Sections 75-5-204 and 75-5-206 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it may make the appointment.

(b) In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.

(3) (a) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor.

(b) The authority of a temporary guardian may not last longer than six months.

(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

Amended by Chapter 156, 1995 General Session

75-5-208. Consent to service by acceptance of appointment -- Notice.

By accepting a testamentary, instrumental, or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the minor. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship shall indicate whether the guardian was appointed by will, written instrument, or by court order.

Amended by Chapter 41, 1985 General Session

75-5-209. Powers and duties of guardian of minor -- Residual parental rights and duties -- Adoption of a ward.

(1) For purposes of this section, "residual parental rights and duties" is as defined in Section 78A-6-105.

(2) Except as provided in Subsection (4)(a), a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's unemancipated minor, including the powers and responsibilities described in Subsection (3).

(3) A guardian of a minor:

(a) must take reasonable care of the personal effects of the guardian's ward;

(b) must commence protective proceedings if necessary to protect other property of the guardian's ward;

(c) subject to Subsection (4)(b), may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of a:

(i) statutory benefit or insurance system;

(ii) private contract;

(iii) devise;

(iv) trust;

(v) conservatorship; or

(vi) custodianship;

(d) subject to Subsection (4)(b), may receive money or property of the ward paid or delivered by virtue of Section 75-5-102;

(e) except as provided in Subsection (4)(c), must exercise due care to conserve any excess money or property described in Subsection (3)(d) for the ward's future needs;

(f) unless otherwise provided by statute, may institute proceedings to compel the performance by any person of a duty to:

(i) support the ward; or

(ii) pay sums for the welfare of the ward;

(g) is empowered to:

(i) facilitate the ward's education, social, or other activities; and

(ii) subject to Subsection (4)(d), authorize medical or other professional care, treatment, or advice;

(h) may consent to the:

(i) marriage of the guardian's ward, if specifically authorized by a court to give this consent; or

(ii) adoption of the guardian's ward if the:

(A) guardian of the ward is specifically authorized by a court to give this consent; and

(B) parental rights of the ward's parents have been terminated; and

(i) must report the condition of the minor and of the minor's estate that has been subject to the guardian's possession or control:

(i) as ordered by court on petition of any person interested in the minor's welfare; or

(ii) as required by court rule.

(4) (a) Notwithstanding Subsection (2), a guardian of a minor is not:

(i) legally obligated to provide from the guardian's own funds for the ward; and

(ii) liable to third persons by reason of the guardian's relationship for acts of the

ward.

(b) Sums received under Subsection (3)(c) or (d):

(i) may not be used for compensation for the services of a guardian, except as:

(A) approved by court order; or

(B) determined by a duly appointed conservator other than the guardian; and

(ii) shall be applied to the ward's current needs for support, care, and education.

(c) Notwithstanding Subsection (3)(e), if a conservator is appointed for the estate of the ward, the excess shall be paid over at least annually to the conservator.

(d) A guardian of a minor is not, by reason of giving the authorization described in Subsection (3)(g)(ii), liable for injury to the minor resulting from the negligence or acts of third persons, unless it would have been illegal for a parent to have given the authorization.

(5) A parent of a minor for whom a guardian is appointed retains residual parental rights and duties.

(6) If a parent of a minor for whom a guardian is appointed consents to the adoption of the minor, the guardian is entitled to:

(a) receive notice of the adoption proceeding pursuant to Section 78B-6-110;

(b) intervene in the adoption; and

(c) present evidence to the court relevant to the best interest of the child pursuant to Subsection 78B-6-110(11).

(7) If a minor for whom a guardian is appointed is adopted subsequent to the appointment, the guardianship shall terminate when the adoption is finalized.

Amended by Chapter 3, 2008 General Session

75-5-210. Termination of appointment of guardian -- General.

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

Enacted by Chapter 150, 1975 General Session

75-5-211. Proceedings subsequent to appointment -- Venue.

(1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of an appointment by will or written instrument was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best

interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Amended by Chapter 41, 1985 General Session

75-5-212. Resignation or removal proceedings.

(1) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

Enacted by Chapter 150, 1975 General Session

75-5-301. Appointment of guardian for incapacitated person.

(1) The parent of an incapacitated person may by will, or by written instrument as provided in Section 75-5-202.5, appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, or where the written instrument is filed, if prior thereto both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings. A provision contained in a person's will or written instrument appointing a guardian of his minor children is not to be considered to be an appointment of a guardian of an incapacitated adult child unless it appears from the will that this was the testator's intention.

(2) The spouse of a married incapacitated person may by will or written instrument appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or with whom he resides or to at least one adult relative in the nearest degree of kinship to the incapacitated person in which there is an adult, the guardian files acceptance of appointment in the court in which the will is informally or formally probated or the written instrument is filed. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(3) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(4) On the filing with the court in which the will was probated or the written instrument was filed, of written objection to the appointment by the person for whom a testamentary or instrumental appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the nominee named by will or written instrument or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this part.

Amended by Chapter 41, 1985 General Session

75-5-302. Venue.

The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Enacted by Chapter 150, 1975 General Session

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

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

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated. If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition. If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.

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

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

(b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or

(c) upon an express finding of good cause, the court orders otherwise.

(4) The person alleged to be incapacitated may be examined by a physician appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or

reside if the requested appointment is made, conduct other investigations or observations as directed by the court, and submit a report in writing to the court.

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

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

- (i) fourth stage Alzheimer's Disease;
- (ii) extended comatosis; or
- (iii) (A) an intellectual disability; and
(B) an intelligence quotient score under 20 to 25.

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

Amended by Chapter 364, 2013 General Session

75-5-304. Findings -- Limited guardianship preferred -- Order of appointment.

(1) The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.

(2) The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.

(3) A guardian appointed by will or written instrument, under Section 75-5-301, whose appointment has not been prevented or nullified under Subsection 75-5-301(4), has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the appointment within 30 days after notice of the guardianship proceeding. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

Amended by Chapter 104, 1988 General Session

75-5-305. Acceptance of appointment -- Consent to jurisdiction.

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the ward. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his

address as listed in the court records and to his address as then known to the petitioner.

Amended by Chapter 194, 1977 General Session

75-5-306. Termination of guardianship for incapacitated person.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in Section 75-5-307. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

Amended by Chapter 194, 1977 General Session

75-5-307. Removal or resignation of guardian -- Termination of incapacity.

(1) On petition of the ward or any person interested in the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept the guardian's resignation and make any other order which may be appropriate.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(3) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian as provided in Section 75-5-303. The court is not required to appoint an attorney to represent the ward if the case is uncontested and the ward's incapacity is not at issue.

Amended by Chapter 274, 2012 General Session

75-5-308. Visitor in guardianship proceeding.

A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

Enacted by Chapter 150, 1975 General Session

75-5-309. Notices in guardianship proceedings.

(1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and spouse, parents, and adult children of the ward or person;

(b) any person who is serving as guardian or conservator or who has care and custody of the ward or person;

(c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult relatives, if any can be found; and

(d) any guardian appointed by the will of the parent who died later or spouse of the incapacitated person.

(2) The notice shall be in plain language and large type and the form shall have the final approval of the Judicial Council. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the person receiving notice of rights, a list of rights, including the person's own or a court appointed counsel, and a copy of the petition.

(3) Notice shall be served personally on the alleged incapacitated person and the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in Section 75-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the visitor appointed pursuant to Section 75-5-303.

Amended by Chapter 104, 1988 General Session

75-5-310. Temporary guardians.

(1) If an incapacitated person has no guardian and an emergency exists or if an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, without notice, appoint an appropriate official as temporary guardian for the person for a specified period not to exceed 30 days pending notice and hearing.

(2) The court shall, in all cases in which a temporary guardian is appointed, hold a hearing within five days pursuant to Section 75-5-303. Unless the allegedly incapacitated person has already obtained counsel, the court may appoint an appropriate official or attorney to represent that person in the proceeding. Until the full hearing and order of the court, the temporary guardian shall be charged with the care and custody of the ward and shall not permit the ward to be removed from this state. The authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time, and shall obey such orders and make such reports as the court requires.

Amended by Chapter 244, 1979 General Session

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

(1) As used in this section:

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

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

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

Nomination of Guardian by an Adult

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

Executed at _____ (city, state)
on this _____ day of _____

(Signature)

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

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

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

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

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

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

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

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

(ii) otherwise have a conflict of interest in providing those services; or

(h) any competent person or suitable institution.

Amended by Chapter 364, 2013 General Session

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

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

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

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

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

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

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

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

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

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

(ii) A guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 30 days, based on:

(A) the guardian's own observations; or

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

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

(iv) Unless emergency conditions exist, a guardian is required to file with the court a notice of the guardian's intent to move the ward and to serve the notice on all interested persons at least 10 days before the move. The guardian shall take

reasonable steps to notify all interested persons and to file the notice with the court as soon as practicable following the earlier of the move or the date when the guardian's intention to move the ward is made known to the ward, the ward's care giver, or any other third party.

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

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

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

(viii) If a guardian:

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

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

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

(ix) These provisions and penalties governing annual reports do not apply if the guardian is the parent of the ward.

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

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

(3) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the

guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

Amended by Chapter 364, 2013 General Session

75-5-313. Proceedings subsequent to appointment -- Venue.

(1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian or in which acceptance of an appointment by will or written instrument was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

Amended by Chapter 41, 1985 General Session

75-5-314. Mentally incompetent veteran -- Evidence of necessity for appointment of guardian.

Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his duly authorized representative, that such person has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing such veterans administration and that the appointment of a guardian is a condition precedent to the payment of any money due such ward by the veterans administration, shall be prima facie evidence of the necessity for such appointment.

Enacted by Chapter 150, 1975 General Session

75-5-315. Copies of public records furnished to veterans administration.

When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on behalf of the authorized representative of the veterans administration with a certified copy of such record.

Enacted by Chapter 150, 1975 General Session

75-5-316. Expedited guardianship proceedings.

(1) (a) With regard to persons who are residents of the Utah State Developmental Center, the expedited process provided by this section may be applied

to obtain a limited guardianship.

(b) For purposes of this section:

(i) "Limited guardianship" means a guardianship solely for the purpose of granting consent for medical care and for participation in approval of the ward's individualized program plan.

(ii) "Ward" means a resident of the Utah State Developmental Center who is the subject of guardianship proceedings under this section.

(2) Any person interested in the incapacitated person's welfare may file a petition for a finding of incapacity and appointment of a guardian. That person may seek the limited guardianship pro se, using the forms described in this section. Any fee for filing a petition for a limited guardianship shall be waived if the guardian is proceeding under this section.

(3) Upon filing a petition for limited guardianship under this section, the court shall set a date for hearing.

(4) The ward has the right to be present at the hearing and to see and hear all evidence relating to his condition.

(5) At that hearing the court shall review the affidavit of the superintendent of the Utah State Developmental Center, described in Subsection (11), and determine whether notice has been given to the appropriate persons described in Subsection (6).

(6) If the proposed guardian is not a parent or relative of the ward, personal notice shall be given to the ward's spouse, parents, and any adult children of the ward. Personal notice shall also be given to other persons as the court may direct.

(7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in the hearing, and may request independent evaluation by a physician appointed by the court. The physician shall submit his findings to the court in writing.

(8) The court may grant the petition for a limited guardianship and sign the Order of Appointment if the court finds that:

(a) the appropriate parties have been given notice;

(b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah State Developmental Center and any affidavit or testimony of persons entitled to receive notice or requested to present evidence under this section; and

(c) it is necessary and desirable to establish the guardianship.

(9) Venue for these expedited guardianship proceedings shall be the same as that described in Section 75-5-302.

(10) A petition for a limited guardianship shall include the following information:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the ward;

(c) verification that the ward is a resident of the Utah State Developmental Center;

(d) the name and address of the nearest relative of the ward; and

(e) the reason for appointment of guardianship.

(11) The petitioner shall also provide the court with an affidavit of the superintendent of the Utah State Developmental Center that includes the following information:

(a) that the ward is a resident of the Utah State Developmental Center;

(b) the date the ward was originally admitted to the Utah State Developmental

Center;

(c) the diagnosis of the ward, including a description of the ward's disabling condition, the level of the ward's intellectual disability, and any medical or physical conditions of the ward;

(d) that the Utah State Developmental Center is certified as an intermediate care facility for people with an intellectual disability;

(e) that because of that certification, the Utah State Developmental Center receives financial participation from the United States Government for its operation and maintenance costs; and

(f) that federal regulations under Title XIX require the ward to have a guardian appointed for the sole purpose of giving consent for medical and dental care and of participation in and approval of the ward's individual program plan.

(12) If the court finds that, under the requirements of this section the proposed limited guardian should be appointed, it shall enter an order establishing that limited guardianship in substantially the following form:

The court finds that:

(a) appointment of a limited guardianship for (named ward) is necessary and desirable as a means of providing continuing care and supervision and to ensure his welfare;

(b) the ward is incapacitated;

(c) (named guardian) is appointed as the limited guardian of (named ward); and

(d) the guardianship is a limited guardianship solely for the purpose of:

(i) granting permission for medical and dental care on behalf of the ward; and

(ii) participation in the development and approval of the ward's individual program plan.

(13) Appointment of guardianship under this section places no additional responsibility or liability on the guardian with regard to the ward. The limited guardianship is solely for consent for medical care and approval of the ward's individualized program plan, and shall not be construed to increase or create liability or responsibility for the guardian.

Amended by Chapter 366, 2011 General Session

75-5-401. Protective proceedings.

(1) Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(a) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by minority, or that funds are needed for the minor's support and education and protection is necessary or desirable to obtain or provide funds.

(b) The provisions of Subsection (1)(a) may be applied to a person beyond minority up to age 21 under special circumstances as determined by the court.

(2) Appointment of a conservator or other protective order may be made in

relation to the estate and affairs of a person if the court determines that the person:

(a) is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) has property which will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and protection is necessary or desirable to obtain or provide funds.

(3) Appointment of a conservator or other protective order may not be denied solely on the basis that the person for whom the conservatorship or other protective order is sought has a valid power of attorney in effect.

Amended by Chapter 375, 2001 General Session

75-5-402. Protective proceedings -- Jurisdiction of affairs of protected persons.

After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents;

(3) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

Amended by Chapter 30, 1992 General Session

75-5-403. Venue.

Venue for proceedings under this part is:

(1) In the county in this state where the person to be protected resides, whether or not a guardian has been appointed in another place; or

(2) If the person to be protected does not reside in this state, in any county where he has property.

Amended by Chapter 30, 1992 General Session

75-5-404. Original petition for appointment or protective order.

(1) The person to be protected, any person who is interested in his estate, affairs, or welfare, including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(2) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and

address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

Enacted by Chapter 150, 1975 General Session

75-5-405. Notice.

(1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least 10 days before the date of the hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with Section 75-1-401. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under Section 75-5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in Subsection (1) above, notice shall be given in accordance with Section 75-1-401.

Enacted by Chapter 150, 1975 General Session

75-5-406. Protective proceedings -- Request for notice -- Interested person.

Any interested person who desires to be notified before any order is made in a protective proceeding may file with the registrar a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

Enacted by Chapter 150, 1975 General Session

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

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

powers and duties of a guardian ad litem.

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

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

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

(b) there is a timely filed appeal of the appointment of the conservator; or

(c) upon an express finding of good cause, the court orders otherwise.

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

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

Amended by Chapter 364, 2013 General Session

75-5-408. Permissible court orders.

(1) The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(a) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the person's benefit or the benefit of the person's dependents.

(b) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and the members of the minor's household.

(c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs that the person could exercise if present and not under disability, except the power to make a will. These powers include the power to:

(i) make gifts;

(ii) convey or release the person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or

tenancy by the entirety;

(iii) exercise or release the person's powers as personal representative, custodian for minors, conservator, or donee of a power of appointment;

(iv) enter into contracts;

(v) create revocable or irrevocable trusts of property of the estate that may extend beyond the person's disability or life;

(vi) exercise options of the person with a disability to purchase securities or other property;

(vii) exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;

(viii) exercise the person's right to an elective share in the estate of the person's deceased spouse; and

(ix) renounce any interest by testate or intestate succession or by inter vivos transfer.

(d) The court may exercise, or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that the person either is incapable of consenting or has consented to the proposed exercise of power.

(2) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person.

Amended by Chapter 274, 2012 General Session

75-5-409. Protective arrangements and single transactions authorized.

(1) If it is established in a proper proceeding that a basis exists as described in Section 75-5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in Section 75-5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the

continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

Amended by Chapter 194, 1977 General Session

75-5-410. Who may be appointed conservator -- Priorities.

(1) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the court shall appoint a conservator in accordance with the protected person's most recent nomination, unless the potential conservator is disqualified or the court finds other good cause why that person should not serve as conservator. The nomination shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Conservator

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as the conservator of my property in the event that after the date of this instrument I become incapacitated or have other need for protection.

Executed at _____ (city, state)
on this _____ day of _____

(Signature)

(d) a person who has been nominated by the protected person, by any means other than that described in Subsection (1)(c), if the protected person was 14 years of age or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;

(e) the spouse of the protected person;

(f) an adult child of the protected person;

(g) a parent of the protected person, or a person nominated by the will of a deceased parent;

(h) any relative of the protected person with whom he has resided for more than six months prior to the filing of the petition;

(i) a person nominated by the person who is caring for him or paying benefits to him.

(2) A person in the priorities described in Subsection (1)(a), (e), (f), (g), or (h) may nominate in writing a person to serve in his stead. With respect to persons having

equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

Amended by Chapter 324, 2010 General Session

75-5-411. Bond.

Subject to the provisions of Title 7 relating to the bonding requirements for corporate fiduciaries, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify, unless the court dispenses with such bond for good cause shown. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one year's estimated income minus the value of securities and cash deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

Amended by Chapter 194, 1977 General Session

75-5-412. Terms and requirements of bonds.

(1) The following requirements and provisions apply to any bond required under Section 75-5-411:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of the proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation under this code.

Enacted by Chapter 150, 1975 General Session

75-5-413. Acceptance of appointment -- Consent to jurisdiction.

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any

interested person. Notice of any proceeding shall be delivered to the conservator or mailed to him by registered or certified mail at his address as listed in the petition for appointment, or as thereafter reported to the court, and to his address as then known to the petitioner.

Enacted by Chapter 150, 1975 General Session

75-5-414. Compensation and expenses.

If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate. If the court appoints the petitioner or the petitioner's nominee as conservator over the protected person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner is entitled to receive from the estate reasonable attorney fees and court costs incurred in bringing and defending the petition.

Amended by Chapter 274, 2012 General Session

75-5-415. Death, resignation, or removal of conservator.

(1) The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After the death, resignation, or removal of a conservator, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the preceding conservator.

(2) Before removing a conservator, accepting the resignation of a conservator, or ordering that a protected person's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the protected person as apply to a petition for appointment of a conservator as provided in Section 75-5-407.

Amended by Chapter 274, 2012 General Session

75-5-416. Petitions for orders subsequent to appointment.

(1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

- (a) Requiring bond or security or additional bond or security, or reducing bond;
- (b) Requiring an accounting for the administration of the trust;
- (c) Directing distribution;
- (d) Removing the conservator and appointing a temporary or successor

conservator; or

- (e) Granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(3) Upon notice and hearing the court may give appropriate instructions or make any appropriate order.

Enacted by Chapter 150, 1975 General Session

75-5-417. General duty of conservator.

(1) A conservator shall act as a fiduciary and shall observe the standards of care as set forth in Section 75-7-902.

(2) The conservator shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis. For estates less than \$50,000, excluding the residence owned by the ward, the conservator shall fill out an informal annual report and mail the report to the court. The report shall include the following: a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The court may require additional information. The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the judicial council. This annual report shall be examined and approved by the court.

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

(4) (a) The court may impose a fine in an amount not to exceed \$5,000, if, after receiving written notice of the failure to file and after a grace period of two months have elapsed, a conservator or corporate fiduciary:

- (i) makes a substantial misstatement on filings of any required annual reports;
- (ii) is guilty of gross impropriety in handling the property of the ward; or
- (iii) willfully fails to file the report required by this section.

(b) The court may also order restitution of funds misappropriated from the estate of a ward.

(c) The penalty shall be paid by the conservator or corporate fiduciary and may not be paid by the estate.

(5) These provisions and penalties governing annual reports do not apply if the conservator is the parent of the ward.

Amended by Chapter 89, 2004 General Session

75-5-418. Inventory and records.

(1) Within 90 days after appointment of a conservator, the conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with an oath or affirmation that it is complete and accurate so far as the conservator is informed. The estate of the protected person does not include the assets of a trust.

(2) The conservator shall provide a copy of the inventory to the protected person if the person:

- (a) can be located;
- (b) has attained the age of 14 years; and
- (c) has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.

(3) The conservator shall keep suitable administrative records and produce them upon the request of any interested person.

Amended by Chapter 274, 2012 General Session

75-5-419. Accounts.

(1) Every conservator must account to the court for the administration of the estate upon resignation or removal and at any other times the court may direct.

(2) On termination of the protected person's minority or disability, a conservator may account to the court, the former protected person, or the personal representative of the protected person.

(3) Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to any liabilities concerning the matters considered in connection with the protected person's account, and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.

(4) In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.

Amended by Chapter 274, 2012 General Session

75-5-420. Conservators -- Title by appointment.

(1) The appointment of a conservator vests in the conservator title as fiduciary to all property of the protected person, presently held or thereafter acquired, not including the assets of a trust, including title to any property previously held for the protected person by custodians or attorneys-in-fact, except for property held pursuant to any uniform gifts to minors act or provisions.

(2) The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of any rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

Amended by Chapter 274, 2012 General Session

75-5-421. Recording of conservator's letters.

Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person.

Enacted by Chapter 150, 1975 General Session

75-5-422. Sale, encumbrance or transaction involving conflict of interest -- Voidable -- Exceptions.

Any sale or encumbrance to a conservator, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest, is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

Enacted by Chapter 150, 1975 General Session

75-5-423. Persons dealing with conservators -- Protection.

A person who in good faith either assists a conservator or deals with him for value in any transaction, other than those requiring a court order as provided in Section 75-5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in Section 75-5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

Enacted by Chapter 150, 1975 General Session

75-5-424. Powers of conservator in administration.

(1) A conservator has all of the powers conferred in this chapter and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 75-5-209 until the minor attains majority or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Part 2 of this chapter.

(2) A conservator has power without court authorization or confirmation to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, may act without court authorization or confirmation, to:

(a) collect, hold, and retain assets of the estate, including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) receive additions to the estate;

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

(d) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

- (e) invest and reinvest estate assets in accordance with Subsection (2);
- (f) deposit estate funds in a bank including a bank operated by the conservator;
- (g) acquire or dispose of an estate asset, including land in another state, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- (i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;
- (j) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;
- (k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (l) grant an option involving disposition of an estate asset or take an option for the acquisition of any asset;
- (m) vote a security, in person or by general or limited proxy;
- (n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (o) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (p) 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, but the conservator is liable for any act of the nominee in connection with the stock so held;
- (q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;
- (r) borrow money to be repaid from estate assets or otherwise; and advance money for the protection of the estate or the protected person, and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;
- (s) pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
- (t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (v) pay any sum distributable to a protected person or dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the distributee's guardian, or if none, to a relative or other

person with custody of the person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties; act upon their recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

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

(y) act as a qualified beneficiary of any trust in which the protected person is a qualified beneficiary; and

(z) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

Amended by Chapter 274, 2012 General Session

75-5-425. Distributive duties and powers of conservator.

(1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to:

(i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage the protected person's affairs and the estate which has been conserved for the protected person;

(ii) the accustomed standard of living of the protected person and members of the protected person's household; and

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this Subsection (1) may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by Subsection (1), a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year 20% of the income from the estate.

(3) When a person who is a minor and who has not been adjudged to have a disability under Subsection 75-5-401(2)(a) attains the age of majority, the person's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(4) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(5) If a protected person dies, the conservator:

(a) shall:

(i) deliver to the court for safekeeping any will of the deceased protected person that may have come into the conservator's possession;

(ii) inform the executor or a beneficiary named in the will that the conservator has done so; and

(iii) retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to it;

(b) may continue to pay the obligations lawfully due against the estate and to protect the estate from waste, injury, or damages that might reasonably be foreseeable; and

(c) may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment, provided that at least 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court.

(6) Upon application for an order granting the powers of a personal representative to a conservator as provided in Subsection (5)(c) and after notice as provided in Section 75-3-310, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Section 75-3-308 and Chapter 3, Parts 6 through 10, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

Amended by Chapter 274, 2012 General Session

75-5-426. Enlargement or limitation of powers of conservator.

Subject to the restrictions of Subsection 75-5-408(1)(d), the court may confer on

a conservator at the time of appointment or later, in addition to the powers conferred on him by Sections 75-5-424 and 75-5-425, any power which the court itself could exercise under Subsections 75-5-408(1)(b) and 75-5-408(1)(c). The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by Sections 75-5-424 and 75-5-425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by Section 75-5-424 or 75-5-425, the limitation shall be endorsed upon his letters of appointment.

Enacted by Chapter 150, 1975 General Session

75-5-427. Preservation of estate plan.

In investing the estate, and in selecting assets of the estate for distribution under Subsections 75-5-425(1) and (2), in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

Amended by Chapter 194, 1977 General Session

75-5-428. Claims against protected person -- Enforcement.

(1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court.

(2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

Amended by Chapter 306, 2007 General Session

75-5-429. Individual liability of conservator.

(1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

Enacted by Chapter 150, 1975 General Session

75-5-430. Termination of proceeding.

The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors, subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors to evidence the transfer.

Enacted by Chapter 150, 1975 General Session

75-5-431. Payment of debt and delivery of property to foreign conservator without local proceedings.

(1) Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person, may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his

behalf stating:

- (a) That no protective proceeding relating to the protected person is pending in this state; and
 - (b) That the foreign conservator is entitled to payment or to receive delivery.
- (2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

Enacted by Chapter 150, 1975 General Session

75-5-432. Foreign conservator -- Proof of authority -- Bond -- Powers.

If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a court in this state in a county in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

Amended by Chapter 194, 1977 General Session

75-5-433. Embezzlement of protected person's estate -- Citation to person suspected.

Upon petition made by any interested person against anyone suspected of having concealed, embezzled, or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the protected person, ward, or to his estate, the court may cite the suspected person to appear before it and may examine and proceed with him on the charge; and if on such examination it appears that he has wrongful possession of any such property, the court may order the delivery of the same to the conservator or guardian.

Amended by Chapter 194, 1977 General Session

75-5-501. Power of attorney not affected by disability or lapse of time -- Agent responsibilities.

(1) Whenever a principal designates another as the principal's attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney-in-fact or agent is exercisable by the attorney-in-fact or agent as provided in the power on behalf of the principal notwithstanding:

- (a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or
- (b) the lapse of time since the execution of the instrument, unless the instrument

states a time of termination.

(2) If an attorney-in-fact or agent determines that the principal has become incapacitated or has acquired a disability and the power of attorney by its terms remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent shall:

(a) notify all interested persons of the attorney-in-fact's or agent's status as the power of attorney holder within 30 days of the principal's incapacitation, and provide them with the attorney-in-fact's or agent's name and address;

(b) provide to any interested persons upon written request, a copy of the power of attorney;

(c) provide to any interested persons upon written request, an annual accounting of the assets to which the power of attorney applies, unless the power of attorney specifically directs that the attorney-in-fact or agent is not required to do so; and

(d) notify all interested persons upon the death of the principal.

(3) All interested persons shall be notified within 10 days if the attorney-in-fact or agent changes. The notification shall be made by the new attorney-in-fact or agent who shall then be accountable to the interested persons in accordance with Subsection (2).

(4) All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's heirs, devisees, and personal representative as if the principal were alive, competent, and did not have a disability, except as provided in Section 75-5-503.

(5) A conservator may be appointed for a principal even though the principal has a valid power of attorney in place. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator, pursuant to court order, has the same power the principal would have had, if the principal did not have a disability or was not incompetent, to revoke, suspend, or terminate all or any part of the power of attorney or agency.

(6) For the purposes of this section, "interested person" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable.

Amended by Chapter 274, 2012 General Session

75-5-502. Other powers of attorney not revoked until notice of death or disability.

(1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by Section 75-5-501, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives. This power is exercisable notwithstanding the lapse of time since the execution of the instrument, unless the instrument states a time of termination.

(2) An affidavit, executed by the attorney-in-fact or agent stating that he did not

have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for the record is likewise recordable.

(3) This section may not be construed to alter or affect any provision for revocation or termination contained in the power of attorney. Notwithstanding any provision of the power of attorney to the contrary, the power of attorney ends at death subject to the provisions of this section.

Amended by Chapter 82, 1994 General Session

75-5-503. Power of attorney -- Prohibitions and restrictions.

A power of attorney may not be construed to grant authority to an attorney-in-fact or agent to perform any of the following, unless expressly authorized in the power of attorney:

- (1) create, modify, or revoke an inter vivos revocable trust created by the principal;
- (2) fund, with the principal's property, a trust not created by the principal or by a person authorized to create a trust on behalf of the principal;
- (3) make or revoke a gift of the principal's property, in trust or otherwise; or
- (4) designate or change the designation of beneficiaries to receive any property, benefit, or contract right on the principal's death.

Enacted by Chapter 241, 2003 General Session

75-5-504. Voidable transactions.

Any loan, sale, or encumbrance on behalf of a principal with his attorney-in-fact, or with the attorney-in-fact's spouse, agent, or attorney, or any entity or trust in which the attorney-in-fact has a substantial beneficial interest, or any transaction involving the attorney-in-fact which is affected by a substantial conflict of interest, is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

Enacted by Chapter 241, 2003 General Session