

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 59

96TH GENERAL ASSEMBLY

0491L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 404.710, 456.3-301, 456.5-505, 456.8-813, 469.411, 469.437, 469.459, 475.060, 475.061, and 475.115, RSMo, and to enact in lieu thereof thirty-seven new sections relating to judicial procedures.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 404.710, 456.3-301, 456.5-505, 456.8-813, 469.411, 469.437, 469.459, 475.060, 475.061, and 475.115, RSMo, are repealed and thirty-seven new sections enacted in lieu thereof, to be known as sections 404.710, 456.3-301, 456.4-419, 456.5-505, 456.5-508, 456.8-813, 469.411, 469.437, 469.459, 475.060, 475.061, 475.115, 475.501, 475.502, 475.503, 475.504, 475.505, 475.506, 475.521, 475.522, 475.523, 475.524, 475.525, 475.526, 475.527, 475.528, 475.529, 475.531, 475.532, 475.541, 475.542, 475.543, 475.544, 475.551, 475.552, 475.555, and 1, to read as follows:

404.710. 1. A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or not durable.

2. If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section. When a power of attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 purposes, the enumeration of one or more specific subjects or purposes does not limit the general
15 authority granted by that power of attorney, unless otherwise provided in the power of attorney.

16 3. If the power of attorney states that general powers are granted to an attorney in fact
17 with respect to one or more express subjects or purposes for which general powers are conferred,
18 then the authority of the attorney in fact acting under the power of attorney shall extend to and
19 include each and every action or power, but only with respect to the specific subjects or purposes
20 expressed in the power of attorney that an adult who is nondisabled and nonincapacitated may
21 carry out through an agent specifically authorized in the premises, with respect to any and all
22 matters whatsoever, except as provided in subsections 6 and 7 of this section.

23 4. Except as provided in subsections 6 and 7 of this section, an attorney in fact with
24 general powers has, with respect to the subjects or purposes for which the powers are conferred,
25 all rights, power and authority to act for the principal that the principal would have with respect
26 to his or her own person or property, including property owned jointly or by the entireties with
27 another or others, as a nondisabled and nonincapacitated adult; and without limiting the
28 foregoing has with respect to the subjects or purposes of the power complete discretion to make
29 a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent
30 for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment,
31 contract, note, security instrument, consent, receipt, release, proof of claim, petition or other
32 pleading, tax document, notice, application, acknowledgment or other document necessary or
33 convenient to implement or confirm any act, transaction or decision. An attorney in fact with
34 general powers, whether power to act with respect to all lawful subjects and purposes, or only
35 with respect to one or more express subjects or purposes, shall have the power, unless
36 specifically denied by the terms of the power of attorney, to make, execute and deliver to or for
37 the benefit of or at the request of a third person, who is requested to rely upon an action of the
38 attorney in fact, an agreement indemnifying and holding harmless any third person or persons
39 from any liability, claims or expenses, including legal expenses, incurred by any such third
40 person by reason of acting or refraining from acting pursuant to the request of the attorney in
41 fact, and such indemnity agreement shall be binding upon the principal who has executed such
42 power of attorney and upon the principal's successor or successors in interest. No such
43 indemnity agreement shall protect any third person from any liability, claims or expenses
44 incurred by reason of the fact that, and to the extent that, the third person has honored the power
45 of attorney for actions outside the scope of authority granted by the power of attorney. In
46 addition, the attorney in fact has complete discretion to employ and compensate real estate
47 agents, brokers, attorneys, accountants and subagents of all types to represent and act for the
48 principal in any and all matters, including tax matters involving the United States government
49 or any other government or taxing entity, including, but not limited to, the execution of
50 supplemental or additional powers of attorney in the name of the principal in form that may be

51 required or preferred by any such taxing entity or other third person, and to deal with any or all
52 third persons in the name of the principal without limitation. No such supplemental or additional
53 power of attorney shall broaden the scope of authority granted to the attorney in fact in the
54 original power of attorney executed by the principal.

55 5. An attorney in fact, who is granted general powers for all subjects and purposes or
56 with respect to any express subjects or purposes, shall exercise the powers conferred according
57 to the principal's instructions, in the principal's best interest, in good faith, prudently and in
58 accordance with sections 404.712 and 404.714.

59 6. Any power of attorney, whether durable or not durable, and whether or not it grants
60 general powers for all subjects and purposes or with respect to express subjects or purposes, shall
61 be construed to grant power or authority to an attorney in fact to carry out any of the actions
62 described in this subsection if the actions are expressly enumerated and authorized in the power
63 of attorney. Any power of attorney may grant power of authority to an attorney in fact to carry
64 out any of the following actions if the actions are expressly authorized in the power of attorney:

65 (1) To execute, amend or revoke any trust agreement; **provided, however, it shall not**
66 **be necessary for a power of attorney granting general powers with respect to all lawful**
67 **subjects and purposes to expressly authorize the attorney in fact to amend or revoke a trust**
68 **agreement, if the trust agreement itself expressly authorizes the attorney in fact to amend**
69 **or revoke the agreement;**

70 (2) To fund with the principal's assets any trust not created by the principal;
71 (3) To make or revoke a gift of the principal's property in trust or otherwise;
72 (4) To disclaim a gift or devise of property to or for the benefit of the principal;

73 (5) To create or change survivorship interests in the principal's property or in property
74 in which the principal may have an interest; provided, however, that the inclusion of the
75 authority set out in this [paragraph] **subdivision** shall not be necessary in order to grant to an
76 attorney in fact acting under a power of attorney granting general powers with respect to all
77 lawful subjects and purposes the authority to withdraw funds or other property from any account,
78 contract or other similar arrangement held in the names of the principal and one or more other
79 persons with any financial institution, brokerage company or other depository to the same extent
80 that the principal would be authorized to do if the principal were present, not disabled or
81 incapacitated, and seeking to act in the principal's own behalf;

82 (6) To designate or change the designation of beneficiaries to receive any property,
83 benefit or contract right on the principal's death;

84 (7) To give or withhold consent to an autopsy or postmortem examination;
85 (8) To make [a] **an anatomical** gift of, or decline to make [a] **an anatomical** gift of, **all**
86 **or part of** the principal's body [parts] under the **Revised** Uniform Anatomical Gift Act **or to**
87 **exercise the right of sepulcher over the principal's body under section 194.119;**

88 (9) To nominate a guardian or conservator for the principal; and if so stated in the power
89 of attorney, the attorney in fact may nominate himself as such;

90 (10) To give consent to or prohibit any type of health care, medical care, treatment or
91 procedure to the extent authorized by sections 404.800 to 404.865, **including, but not limited**
92 **to exercising and giving consent to a do-not-resuscitate order on behalf of the principal;**
93 or

94 (11) To designate one or more substitute or successor or additional attorneys in fact.

95 7. No power of attorney, whether durable or not durable, and whether or not it delegates
96 general powers, may delegate or grant power or authority to an attorney in fact to do or carry out
97 any of the following actions for the principal:

98 (1) To make, publish, declare, amend or revoke a will for the principal;

99 (2) To make, execute, modify or revoke a living will declaration for the principal;

100 (3) To require the principal, against his or her will, to take any action or to refrain from
101 taking any action; or

102 (4) To carry out any actions specifically forbidden by the principal while not under any
103 disability or incapacity.

104 8. A third person may freely rely on, contract and deal with an attorney in fact delegated
105 general powers with respect to the subjects and purposes encompassed or expressed in the power
106 of attorney without regard to whether the power of attorney expressly identifies the specific
107 property, account, security, storage facility or matter as being within the scope of a subject or
108 purpose contained in the power of attorney, and without regard to whether the power of attorney
109 expressly authorizes the specific act, transaction or decision by the attorney in fact.

110 9. It is the policy of this state that an attorney in fact acting pursuant to the provisions
111 of a power of attorney granting general powers shall be accorded the same rights and privileges
112 with respect to the personal welfare, property and business interests of the principal, and if the
113 power of attorney enumerates some express subjects or purposes, with respect to those subjects
114 or purposes, as if the principal himself or herself were personally present and acting or seeking
115 to act; and any provision of law and any purported waiver, consent or agreement executed or
116 granted by the principal to the contrary shall be void and unenforceable.

117 10. Sections 404.700 to 404.735 shall not be construed to preclude any person or
118 business enterprise from providing in a contract with the principal as to the procedure that
119 thereafter must be followed by the principal or the principal's attorney in fact in order to give a
120 valid notice to the person or business enterprise of any modification or termination of the
121 appointment of an attorney in fact by the principal; and any such contractual provision for notice
122 shall be valid and binding on the principal and the principal's successors so long as such
123 provision is reasonably capable of being carried out.

456.3-301. 1. Notice to a person who may represent and bind another person under
2 sections 456.3-301 to 456.3-305 has the same effect as if notice were given directly to the other
3 person.

4 2. The consent of a person who may represent and bind another person under sections
5 456.3-301 to 456.3-305 is binding on the person represented unless the person represented
6 objects to the representation before the consent would otherwise have become effective. **Except**
7 **that, such consent is binding on the person represented regardless of whether the person**
8 **represented objects under this subsection, if the person who may represent and bind is:**

9 (1) **The holder of a testamentary power of appointment described in section 456.3-**
10 **302 and the interests of the person represented are subject to the power;**

11 (2) **The conservator, conservator ad litem, or guardian described in subdivisions**
12 **(1), (2), or (3) of section 456.3-303 and the person represented is disabled; or**

13 (3) **A parent described in subdivision (4) of section 456.3-303 and the person**
14 **represented is a minor or unborn child of the parent.**

15 3. Except as otherwise provided in sections 456.4A-411 and 456.6-602, a person who
16 under sections 456.3-301 to 456.3-305 may represent a settlor who lacks capacity may receive
17 notice and give a binding consent on the settlor's behalf.

18 4. A settlor may not represent and bind a beneficiary under sections 456.3-301 to
19 456.3-305 with respect to the termination or modification of a trust under section 456.4A-411.

456.4-419. 1. Unless the terms of the trust instrument expressly provide otherwise,
2 a trustee who has discretionary power under the terms of a trust to make a distribution of
3 income or principal, whether or not limited by an ascertainable standard, to or for the
4 benefit of one or more beneficiaries of a trust, the "first trust", may instead exercise such
5 discretionary power by appointing all or part of the income or principal subject to such
6 discretionary power in favor of a trustee of a second trust, the "second trust", created
7 under either the same or different trust instrument in the event that the trustee of the first
8 trust decides that the appointment is necessary or desirable after taking into account the
9 terms and purposes of the first trust, the terms and purposes of the second trust, and the
10 consequences of the distribution.

2. The following provisions apply to any exercise of the authority granted by
12 subsection 1 of this section:

13 (1) The second trust may have as beneficiaries only one or more of those
14 beneficiaries of the first trust to or for whom any discretionary distribution may be made
15 from the first trust and who are proper objects of the exercise of the power, or one or more
16 of those other beneficiaries of the first trust to or for whom a distribution of income or
17 principal may have been made in the future from the first trust at a time or upon the
18 happening of an event specified under the first trust;

19 **(2) Unless the exercise of such power is limited by an ascertainable standard, no**
20 **trustee of the first trust may exercise such authority to make a distribution from the first**
21 **trust if:**

22 **(a) Such trustee is a beneficiary of the first trust; or**

23 **(b) Any beneficiary may remove and replace the trustee of the first trust with a**
24 **related or subordinate party to such beneficiary within the meaning of Section 672(c) of**
25 **the Internal Revenue Code;**

26 **(3) Except if participating in a change that is needed for a distribution to any such**
27 **beneficiary under an ascertainable standard, no trustee shall exercise such authority to the**
28 **extent that doing so would have the effect either of:**

29 **(a) Increasing the distributions that can be made in the future from the second trust**
30 **to the trustee of the first trust or to a beneficiary who can remove and replace the trustee**
31 **of the first trust with a related or subordinate party to such beneficiary within the meaning**
32 **of Section 672(c) of the Internal Revenue Code; or**

33 **(b) Removing restrictions on discretionary distributions imposed by the instrument**
34 **under which the first trust was created;**

35 **(4) In the case of any trust contributions which have been treated as gifts qualifying**
36 **for the exclusion from gift tax described in Section 2503(b) of the Internal Revenue Code,**
37 **by reason of the application of Section 2503(c), the governing instrument for the second**
38 **trust shall provide that the beneficiary's remainder interest shall vest no later than the date**
39 **upon which such interest would have vested under the terms of the governing instrument**
40 **for the first trust;**

41 **(5) The exercise of such authority may not reduce any income interest of any**
42 **income beneficiary of any of the following trusts:**

43 **(a) A trust for which a marital deduction has been taken for federal tax purposes**
44 **under Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under**
45 **any comparable provision of applicable state law;**

46 **(b) A charitable remainder trust under Section 664 of the Internal Revenue Code;**

47 **(c) A grantor retained annuity trust under Section 2702 of the Internal Revenue**
48 **Code; or**

49 **(d) A trust which has been qualified as a Subchapter S trust under Section 1361(d)**
50 **of the Internal Revenue Code or an electing small business trust under Section 1361(e) of**
51 **the Internal Revenue Code;**

52 **(6) The exercise of such authority does not apply to trust property subject to a**
53 **presently exercisable power of withdrawal held by a trust beneficiary to whom, or for the**
54 **benefit of whom, the trustee has authority to make distributions, unless after the exercise**

55 **of such authority, such beneficiary's power of withdrawal is unchanged with respect to the
56 trust property; and**

57 **(7) A spendthrift clause or a provision in the trust instrument that prohibits
58 amendment or revocation of the trust shall not preclude the trustee from exercising the
59 authority granted by subsection 1 of this section.**

60 **3. At least sixty days prior to making a discretionary distribution under subsection
61 1 of this section, the trustee of the first trust shall notify the permissible distributees of the
62 second trust, or the qualified beneficiaries of the second trust if there are no permissible
63 distributees of the second trust, of the distribution. A beneficiary may waive the right to
64 the notice required by this subsection and, with respect to future distributions, may
65 withdraw a waiver previously given.**

66 **4. In exercising the authority granted by subsection 1 of this section, the trustee
67 shall remain subject to all fiduciary duties otherwise imposed under the trust instrument
68 and Missouri law.**

69 **5. This section does not impose on a trustee a duty to exercise the authority granted
70 by subsection 1 of this section in favor of another trust or to consider exercising such
71 authority in favor of another trust.**

72 **6. This section is intended to codify and, from and after enactment, to provide
73 certain limitations to the common law of this state, and this section applies to any trust
74 governed by the laws of this state, including a trust whose principal place of administration
75 is transferred to this state before or after the enactment of this section.**

456.5-505. 1. Whether or not the terms of a trust contain a spendthrift provision, during
2 the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's
3 creditors.

4 2. With respect to an irrevocable trust without a spendthrift provision, a creditor or
5 assignee of the settlor may reach the maximum amount that can be distributed to or for the
6 settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a
7 particular settlor may reach may not exceed the settlor's interest in the portion of the trust
8 attributable to that settlor's contribution.

9 3. With respect to an irrevocable trust with a spendthrift provision, a spendthrift
10 provision will prevent the settlor's creditors from satisfying claims from the trust assets except:

11 (1) Where the conveyance of assets to the trust was fraudulent as to creditors pursuant
12 to the provisions of chapter 428; or

13 (2) To the extent of the settlor's beneficial interest in the trust assets, if at the time the
14 trust became irrevocable:

15 (a) The settlor was the sole beneficiary of either the income or principal of the trust or
16 retained the power to amend the trust; or

17 (b) The settlor was one of a class of beneficiaries and retained a right to receive a
18 specific portion of the income or principal of the trust that was determinable solely from the
19 provisions of the trust instrument.

20 **4. In the event that a trust meets the requirements set forth in subsection 3 of this
21 section, a settlor's creditors may not reach the settlor's beneficial interest in that trust
22 regardless of any testamentary power of appointment retained by the settlor that is
23 exercisable by the settlor in favor of any appointees other than the settlor, the settlor's
24 estate, the settlor's creditors, or the creditors of the settlor's estate.**

25 **5. Any trustee who has a duty or power to pay the debts of a deceased settlor may publish
26 a notice in a newspaper published in the county designated in subdivision (3) of this subsection
27 once a week for four consecutive weeks in substantially the following form:**

28 To all persons interested in the estate of , decedent. The
29 undersigned is acting as Trustee under a trust the terms of which
30 provide that the debts of the decedent may be paid by the Trustee(s) upon receipt of proper proof
31 thereof. The address of the Trustee is All creditors of the
32 decedent are noticed to present their claims to the undersigned within six (6) months from the
33 date of the first publication of this notice or be forever barred.

34

35 Trustee

36 (1) If such publication is duly made by the trustee, any debts not presented to the trustee
37 within six months from the date of the first publication of the preceding notice shall be forever
38 barred as against the trustee and the trust property.

39 (2) A trustee shall not be liable to account to the decedent's personal representative under
40 the provisions of section 461.300 by reason of any debt barred under the provisions of this
41 subsection.

42 (3) Such publication shall be in a newspaper published in:

43 (a) The county in which the domicile of the settlor at the time of his or her death is
44 situated;

45 (b) If the settlor had no domicile in this state at the time of his or her death, any county
46 wherein trust assets are located; except that, when the major part of the trust assets in this state
47 consist of real estate, the notice shall be published in the county in which the real estate or the
48 major part thereof is located; or

49 (c) If the settlor had no domicile in this state at the time of his or her death and no trust
50 assets are located therein, the county wherein the principal place of administration of the trust
51 is located.

52 (4) For purposes of this subsection, the term "domicile" means the place in which the
53 settlor voluntarily fixed his or her abode, not for a mere special or temporary purpose, but with
54 a present intention of remaining there permanently or for an indefinite term.

55 [5.] **6.** For purposes of this section:

56 (1) During the period the power may be exercised, the holder of a power of withdrawal
57 is treated in the same manner as the settlor of a revocable trust to the extent of the property
58 subject to the power; and

59 (2) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of
60 the trust only to the extent the value of the property affected by the lapse, release, or waiver
61 exceeds the greater of the amount specified in Sections 2041(b)(2), 2514(e) or 2503(b) of the
62 Internal Revenue Code.

63 [6.] **7.** This section shall not apply to a spendthrift trust described, defined, or established
64 in section 456.014.

**456.5-508. 1. A creditor or other claimant of a beneficiary or other person holding
2 a special power of appointment or a testamentary general power of appointment may not
3 attach trust property or beneficial interests subject to the power, obtain an order from a
4 court forcing a judicial sale of the trust property, compel the exercise of the power, or
5 reach the trust property or beneficial interests by any other means.**

**6 2. This section shall not limit the ability of a creditor or other claimant to reach a
7 beneficial interest as otherwise provided in sections 456.5-501 to 456.5-507.**

**8 3. In this section "special power of appointment" means a power of appointment
9 exercisable in favor of one or more appointees other than the holder, the holder's estate,
10 the holder's creditors, or the creditors of the holder's estate, and a "testamentary general
11 power of appointment" means a power of appointment exercisable at the death of the
12 holder, without the consent of the creator of the power or of a person holding an adverse
13 interest in favor of the holder, the holder's estate, the holder's creditors, or the creditors
14 of the holder's estate.**

**456.8-813. 1. (1) A trustee shall keep the qualified beneficiaries of the trust reasonably
2 informed about the administration of the trust and of the material facts necessary for them to
3 protect their interests. A trustee shall be presumed to have fulfilled this duty if the trustee
4 complies with the notice and information requirements prescribed in subsections 2 to 7 of this
5 section.**

**6 (2) Unless unreasonable under the circumstances, a trustee shall promptly respond to a
7 beneficiary's request for information related to the administration of the trust.**

8 2. A trustee:

**9 (1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the
10 trust instrument;**

11 (2) within [60] **one hundred and twenty** days after accepting a trusteeship, shall notify
12 the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone
13 number;

14 (3) within [sixty] **one hundred and twenty** days after the date the trustee acquires
15 knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that
16 a formerly revocable trust has become irrevocable, whether by the death of the settlor or
17 otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the
18 settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a
19 trustee's report as provided in subsection 3 of this section; and

20 (4) shall notify the qualified beneficiaries in advance of any change in the method or rate
21 of the trustee's compensation.

22 3. A trustee shall send to the permissible distributees of trust income or principal, and
23 to other beneficiaries who request it, at least annually and at the termination of the trust, a report
24 of the trust property, liabilities, receipts, and disbursements, including the source and amount of
25 the trustee's compensation, a listing of the trust assets and, if feasible, their respective market
26 values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be
27 sent to the qualified beneficiaries by the former trustee. A personal representative, conservator,
28 or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated
29 trustee.

30 4. A beneficiary may waive the right to a trustee's report or other information otherwise
31 required to be furnished under this section. A beneficiary, with respect to future reports and
32 other information, may withdraw a waiver previously given.

33 5. A trustee may charge a reasonable fee to a beneficiary for providing information under
34 this section.

35 6. The request of any beneficiary for information under any provision of this section shall
36 be with respect to a single trust that is sufficiently identified to enable the trustee to locate the
37 records of the trust.

38 7. If the trustee is bound by any confidentiality restrictions with respect to an asset of a
39 trust, any beneficiary who is eligible to receive information pursuant to this section about such
40 asset shall agree to be bound by the confidentiality restrictions that bind the trustee before
41 receiving such information from the trustee.

42 8. This section does not apply to a trust created under a trust instrument that became
43 irrevocable before January 1, 2005, and the law in effect prior to January 1, 2005, regarding the
44 subject matter of this section shall continue to apply to those trusts.

469.411. 1. If the provisions of this section apply to a trust, the unitrust amount [shall
2 be determined as follows:] **determined for each accounting year of the trust shall be a**
3 **percentage between three and five percent of the average net fair market value of the trust,**

4 **as of the first day of the trust's current accounting year. The percentage applicable to a**
5 **trust shall be that percentage specified by the terms of the governing instrument or by the**
6 **election made in accordance with subdivision (2) of subsection 5 of this section.**

7 (1) [For the first three accounting periods of the trust, the unitrust amount for a current
8 valuation year of the trust shall be a percentage between three and five percent that is specified
9 by the terms of the governing instrument or by the election made in accordance with subdivision
10 (2) of subsection 5 of this section, of the net fair market values of the assets held in the trust on
11 the first business day of the current valuation year;

12 (2) Beginning with the fourth accounting period of the trust, the unitrust amount for a current
13 valuation year of the trust shall be a percentage between three and five percent that is specified
14 by the terms of the governing instrument or by the election made in accordance with
15 subdivision (2) of subsection 5 of this section, of the average of the net fair market values of the
16 assets held in the trust on the first business day of the current valuation year and the net fair
17 market values of the assets held in the trust on the first business day of each prior valuation year,
18 regardless of whether this section applied to the ascertainment of net income for all valuation
19 years;

20 (3)] The unitrust amount for the current [valuation] **accounting** year computed pursuant
21 to [subdivision (1) or (2) of this subsection] **this section** shall be proportionately reduced for any
22 distributions, in whole or in part, other than distributions of the unitrust amount, and for any
23 payments of expenses, including debts, disbursements and taxes, from the trust within a current
24 [valuation] **accounting** year that the trustee determines to be material and substantial, and shall
25 be proportionately increased for the receipt, other than a receipt that represents a return on
26 investment, of any additional property into the trust within a current [valuation] **accounting** year;

27 [(4)] (2) For purposes of [subdivision (2) of this subsection] **this section**, the net fair
28 market values of the assets held in the trust on the first business day of a prior [valuation year]
29 **accounting quarter** shall be adjusted to reflect any reduction, in the case of a distribution or
30 payment, or increase, in the case of a receipt, for the prior [valuation] **accounting** year pursuant
31 to subdivision [(3)] (1) of this subsection, as if the distribution, payment or receipt had occurred
32 on the first day of the prior [valuation] **accounting** year;

33 [(5)] (3) In the case of a short accounting period, the trustee shall prorate the unitrust
34 amount on a daily basis;

35 [(6)] (4) In the case where the net fair market value of an asset held in the trust has been
36 incorrectly determined [either in a current valuation year or in a prior valuation year] **in any**
37 **quarter**, the unitrust amount shall be increased in the case of an undervaluation, or be decreased
38 in the case of an overvaluation, by an amount equal to the difference between the unitrust amount
39 determined based on the correct valuation of the asset and the unitrust amount originally
40 determined.

41 2. As used in this section, the following terms mean:
42 (1) "**Average net fair market value**", a rolling average of the fair market value of
43 the assets held in the trust on the first business day of the lesser of the number of
44 accounting quarters of the trust from the date of inception of the trust to the determination
45 of the trust's average net fair market value, or twelve accounting quarters of the trust,
46 regardless of whether this section applied to the ascertainment of net income for all
47 valuation quarters;

48 (2) "Current [valuation] accounting year", the accounting period of the trust for which
49 the unitrust amount is being determined[;

50 (2) "Prior valuation year", each of the two accounting periods of the trust immediately
51 preceding the current valuation year].

52 3. In determining the [sum of the] **average** net fair market [values] **value** of the assets
53 held in the trust [for purposes of subdivisions (1) and (2) of subsection 1 of this section], there
54 shall not be included the value of:

55 (1) Any residential property or any tangible personal property that, as of the first business
56 day of the current valuation year, one or more income beneficiaries of the trust have or had the
57 right to occupy, or have or had the right to possess or control, other than in a capacity as trustee,
58 and instead the right of occupancy or the right to possession or control shall be deemed to be the
59 unitrust amount with respect to the residential property or the tangible personal property; or

60 (2) Any asset specifically given to a beneficiary under the terms of the trust and the
61 return on investment on that asset, which return on investment shall be distributable to the
62 beneficiary.

63 4. In determining the **average** net fair market value of [each asset] **the assets** held in the
64 trust pursuant to [subdivisions (1) and (2) of] subsection 1 of this section, the trustee shall, not
65 less often than annually, determine the fair market value of each asset of the trust that consists
66 primarily of real property or other property that is not traded on a regular basis in an active
67 market by appraisal or other reasonable method or estimate, and that determination, if made
68 reasonably and in good faith, shall be conclusive as to all persons interested in the trust. Any
69 claim based on a determination made pursuant to this subsection shall be barred if not asserted
70 in a judicial proceeding brought by any beneficiary with any interest whatsoever in the trust
71 within two years after the trustee has sent a report to all qualified beneficiaries that adequately
72 discloses the facts constituting the claim. The rules set forth in subsection 2 of section 469.409
73 shall apply to the barring of claims pursuant to this subsection.

74 5. This section shall apply to the following trusts:

75 (1) Any trust created after August 28, 2001, with respect to which the terms of the trust
76 clearly manifest an intent that this section apply;

77 (2) Any trust created under an instrument that became irrevocable on, before, or after
78 August 28, 2001, if the trustee, in the trustee's discretion, elects to have this section apply unless
79 the instrument creating the trust specifically prohibits an election under this subdivision. The
80 trustee shall deliver notice to all qualified beneficiaries and the settlor of the trust, if he or she
81 is then living, of the trustee's intent to make such an election at least sixty days before making
82 that election. The trustee shall have sole authority to make the election. Section 469.402 shall
83 apply for all purposes of this subdivision. An action or order by any court shall not be required.
84 The election shall be made by a signed writing delivered to the settlor of the trust, if he or she
85 is then living, and to all qualified beneficiaries. The election is irrevocable, unless revoked by
86 order of the court having jurisdiction of the trust. The election may specify the percentage used
87 to determine the unitrust amount pursuant to this section, provided that such percentage is
88 between three and five percent, or if no percentage is specified, then that percentage shall be
89 three percent. In making an election pursuant to this subsection, the trustee shall be subject to
90 the same limitations and conditions as apply to an adjustment between income and principal
91 pursuant to subsections 3 and 4 of section 469.405; **and**

92 (3) No action of any kind based on an election made by a trustee pursuant to subdivision
93 (2) of this subsection shall be brought against the trustee by any beneficiary of that trust three
94 years from the effective date of that election[;

95 (4) If this section is made applicable under this subdivision to an institutional
96 endowment fund, as defined in section 402.130, the restrictions contained in section 402.134
97 shall not apply to the extent payment of a unitrust amount would otherwise be prohibited].

98 **6. (1) Once the provisions of this section become applicable to a trust, the net
99 income of the trust shall be the unitrust amount.**

100 **(2) Unless otherwise provided by the governing instrument, the unitrust amount
101 distributed each year shall be paid from the following sources for that year up to the full
102 value of the unitrust amount in the following order:**

103 **(a) Net income as determined if the trust were not a unitrust;
104 (b) Other ordinary income as determined for federal income tax purposes;
105 (c) Assets of the trust principal for which there is a readily available market value;**
106 **and**

107 **(d) Other trust principal.**

108 **(3) Additionally, the trustee may allocate to trust income for each taxable year of
109 the trust, or portion thereof:**

110 **(a) Net short-term capital gain described in the Internal Revenue Code, 26 U.S.C.
111 Section 1222(5), for such year, or portion thereof, but only to the extent that the amount
112 so allocated together with all other amounts to trust income, as determined under the**

113 **provisions of this chapter without regard to this section, for such year, or portion thereof,**
114 **does not exceed the unitrust amount for such year, or portion thereof;**

115 **(b) Net long-term capital gain described in the Internal Revenue Code, 26 U.S.C.**
116 **Section 1222(7), for such year, or portion thereof, but only to the extent that the amount**
117 **so allocated together with all other amounts, including amounts described in paragraph**
118 **(a) of this subdivision, allocated to trust income for such year, or portion thereof, does not**
119 **exceed the unitrust amount for such year, or portion thereof.**

120 **7. A trust with respect to which this section applies on August 28, 2011, may**
121 **calculate the unitrust amount in accordance with the provisions of this section, as it existed**
122 **either before or after such date, as the trustee of such trust shall determine in a writing**
123 **kept with the records of the trust in the trustee's discretion.**

469.437. 1. As used in this section, the following terms mean:

2 (1) "Payment", an amount that is:

3 (a) Received or withdrawn from a plan; or

4 (b) One of a series of distributions that have been or will be received over a fixed
5 number of years or during the life of one or more individuals under any contractual or other
6 arrangement, or is a single payment from a plan that the trustee could have received over a fixed
7 number of years or during the life of one or more individuals;

8 (2) "Plan", a contractual, custodial, trust or other arrangement that provides for
9 distributions to the trust, including, but not limited to, qualified retirement plans, Individual
10 Retirement Accounts, Roth Individual Retirement Accounts, public and private annuities, and
11 deferred compensation, including payments received directly from an entity as defined in section
12 469.423 regardless of whether or not such distributions are made from a specific fund or account.

13 2. If any portion of a payment is characterized as a distribution to the trustee of interest,
14 dividends or a dividend equivalent, the trustee shall allocate the portion so characterized to
15 income. The trustee shall allocate the balance of that payment to principal.

16 3. If no part of a payment is allocated to income pursuant to subsection 2 of this section,
17 then for each accounting period of the trust that any payment is received by the trust with respect
18 to the trust's interest in a plan, the trustee shall allocate to income that portion of the aggregate
19 value of all payments received by the trustee in that accounting period equal to the amount of
20 plan income attributable to the trust's interest in the plan for that calendar year. The trustee shall
21 allocate the balance of that payment to principal.

22 4. For purposes of this section, if a payment is received from a plan that maintains a
23 separate account or fund for its participants or account holders, including, but not limited to,
24 defined contribution retirement plans, Individual Retirement Accounts, Roth Individual
25 Retirement Accounts, and some types of deferred compensation plans, the phrase "plan income"
26 shall mean either the amount of the plan account or fund held for the benefit of the trust that, if

27 the plan account or fund were a trust, would be allocated to income pursuant to sections 469.401
28 to 469.467 for that accounting period, or four percent of the value of the plan account or fund
29 on the first day of that accounting period. The method of determining plan income pursuant to
30 this subsection shall be chosen by the trustee in the trustee's discretion. The trustees may change
31 the method of determining plan income pursuant to this subsection for any future accounting
32 period.

33 5. For purposes of this section if the payment is received from a plan that does not
34 maintain a separate account or fund for its participants or account holders, including by way of
35 example and not limitation defined benefit retirement plans and some types of deferred
36 compensation plans, the term "plan income" shall mean four percent of the total present value
37 of the trust's interest in the plan as of the first day of the accounting period, based on reasonable
38 actuarial assumptions as determined by the trustee.

39 6. **Notwithstanding subsections 1 to 5 of this section, with respect to a trust where
40 an election to qualify for a marital deduction under Section 2056(b)(7) or Section 2523(f)
41 of the Internal Revenue Code of 1986, as amended, has been made, or a trust that qualified
42 for the marital deduction under either Section 2056(b)(5) or Section 2523(e) of the Internal
43 Revenue Code of 1986, as amended, a trustee shall determine the plan income for the
44 accounting period as if the plan were a trust subject to sections 469.401 to 469.467. Upon
45 request of the surviving spouse, the trustee shall demand that the person administering the
46 plan distribute the plan income to the trust. The trustee shall allocate a payment from the
47 plan to income to the extent of the plan income and distribute that amount to the surviving
48 spouse. The trustee shall allocate the balance of the payment to principal. Upon request
49 of the surviving spouse, the trustee shall allocate principal to income to the extent the plan
50 income exceeds payments made from the plan to the trust during the accounting period.**

51 7. If, to obtain an estate or gift tax marital deduction for a trust, a trustee shall allocate
52 more of a payment to income than provided for by this section, the trustee shall allocate to
53 income the additional amount necessary to obtain the marital deduction.

469.459. 1. A tax required to be paid by a trustee based on receipts allocated to income
2 shall be paid from income.

3 2. A tax required to be paid by a trustee based on receipts allocated to principal shall be
4 paid from principal, even if the tax is called an income tax by the taxing authority.

5 3. A tax required to be paid by a trustee on the trust's share of an entity's taxable income
6 shall be paid [proportionately]:

7 (1) From income to the extent that receipts from the entity are allocated to income; and
8 (2) From principal to the extent that[:

9 (a)] receipts from the entity are allocated **only** to principal[; and

10 (b) The trust's share of the entity's taxable income exceeds the total receipts described
11 in subdivision (1) of this subsection and paragraph (a) of this subdivision].

12 4. [For purposes of this section, receipts allocated to principal or income shall be reduced
13 by the amount distributed to a beneficiary from principal or income for which the trust receives
14 a deduction in calculating the tax] **After applying subsections 1 to 3 of this section, the trustee
15 shall adjust income or principal receipts to the extent that the trust's taxes are reduced
16 because the trust receives a deduction for payment made to a beneficiary.**

475.060. 1. Any person may file a petition for the appointment of himself **or herself** or
2 some other qualified person as guardian of a minor [or guardian of an incapacitated person].
3 Such petition shall state:

4 (1) The name, age, domicile, actual place of residence and post office address of the
5 minor [or incapacitated person] if known and if any of these facts is unknown, the efforts made
6 to ascertain that fact;

7 (2) The estimated value of [his] **the minor's real and personal property, and the location
8 and value of any real property owned by the minor outside of this state;**

9 (3) If the minor [or incapacitated person] has no domicile or place of residence in this
10 state, the county in which the property or major part thereof of the minor [or incapacitated
11 person] is located;

12 (4) The name and address of the parents of the minor [or incapacitated person] and
13 whether they are living or dead;

14 (5) The name and address of the spouse, and the names, ages and addresses of all living
15 children of the minor [or incapacitated person];

16 (6) The name and address of the person having custody of the person of the minor [or
17 incapacitated person];

18 (7) The name and address of any guardian of the person or conservator of the estate of
19 the minor [or incapacitated person] appointed in this or any other state;

20 (8) If appointment is sought for a natural person, other than the public administrator, the
21 names and addresses of wards and disabled persons for whom such person is already guardian
22 or conservator;

23 (9) [In the case of an incapacitated person, the fact that the person for whom
24 guardianship is sought is unable by reason of some specified physical or mental condition to
25 receive and evaluate information or to communicate decisions to such an extent that the person
26 lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such
27 that serious physical injury, illness or disease is likely to occur] **The name and address of the
28 trustees and the purpose of any trust of which the minor is a qualified beneficiary;**

29 (10) The reasons why the appointment of a guardian is sought;

30 (11) A petition for the appointment of a guardian of a minor may be filed for the sole and
31 specific purpose of school registration or medical insurance coverage. Such a petition shall
32 clearly set out this limited request and shall not be combined with a petition for conservatorship.

33 **2. Any person may file a petition for the appointment of himself or herself or some
34 other qualified person as guardian of an incapacitated person. Such petition shall state:**

35 **(1) The name, age, domicile, actual place of residence and post office address of the
36 alleged incapacitated person, if known, and if any of these facts is unknown, the efforts
37 made to ascertain that fact; in addition, for the period of three years before the filing of the
38 petition, the most recent addresses, up to three, at which the alleged incapacitated person
39 lived prior to the most recent address. In the case of a petition filed by a public official in
40 his or her official capacity, the information required by this subdivision need only be
41 supplied to the extent it is reasonably available to the petitioner; in the case of any other
42 petition, if any information required by this subdivision is not available, the petition shall
43 state the efforts made to obtain such information;**

44 **(2) The estimated value of the alleged incapacitated person's real and personal
45 property, and the location and value of any real property owned by the alleged
46 incapacitated person outside of this state;**

47 **(3) If the alleged incapacitated person has no domicile or place of residence in this
48 state, the county in which the property or major part thereof of the alleged incapacitated
49 person is located;**

50 **(4) The name and address of the parents of the alleged incapacitated person and
51 whether they are living or dead;**

52 **(5) The name and address of the spouse, the names, ages, and addresses of all living
53 children of the alleged incapacitated person, the names and addresses of the alleged
54 incapacitated person's closest known relatives, and the names and relationship, if known,
55 of any adults living with the alleged incapacitated person; if no spouse, adult child, or
56 parent is listed, the names and addresses of the siblings and children of deceased siblings
57 of the alleged incapacitated person; the name and address of any agent appointed by the
58 alleged incapacitated person in any durable power of attorney, and of the presently acting
59 trustees of any trust of which the alleged incapacitated person is the grantor or is a
60 qualified beneficiary or is or was the trustee or co-trustee and the purpose of the power of
61 attorney or trust;**

62 **(6) The name and address of the person having custody of the person of the alleged
63 incapacitated person;**

64 **(7) The name and address of any guardian of the person or conservator of the
65 estate of the alleged incapacitated person appointed in this or any other state;**

66 **(8) If appointment is sought for a natural person, other than the public
67 administrator, the names and addresses of wards and disabled persons for whom such
68 person is already guardian or conservator;**

69 **(9) The fact that the person for whom guardianship is sought is unable by reason
70 of some specified physical or mental condition to receive and evaluate information or to
71 communicate decisions to such an extent that the person lacks capacity to meet essential
72 requirements for food, clothing, shelter, safety, or other care such that serious physical
73 injury, illness, or disease is likely to occur;**

74 **(10) The reasons why the appointment of a guardian is sought.**

475.061. 1. Any person may file a petition in the probate division of the circuit court of
2 the county of proper venue for the appointment of himself or some other qualified person as
3 conservator of the estate of a minor or disabled person. The petition shall contain the same
4 allegations as are set forth in subdivisions (1), (8), and (10) of subsection 2 of section 475.060
5 with respect to the appointment of a guardian for an incapacitated person and, in addition thereto,
6 an allegation that the respondent is unable by reason of some specific physical or mental
7 condition to receive and evaluate information or to communicate decisions to such an extent that
8 the respondent lacks ability to manage his financial resources or that the respondent is under the
9 age of eighteen years.

10 2. A petition for appointment of a conservator or limited conservator of the estate may
11 be combined with a petition for appointment of a guardian or limited guardian of the person. In
12 such a combined petition allegations need not be repeated.

475.115. 1. When a guardian or conservator dies, is removed by order of the court, or
2 resigns and his or her resignation is accepted by the court, the court shall have the same
3 authority as it has in like cases over personal representatives and their sureties and may appoint
4 another guardian or conservator in the same manner and subject to the same requirements as are
5 herein provided for an original appointment of a guardian or conservator.

6 **2. A public administrator may request transfer of any case to the jurisdiction of
7 another county by filing a petition for transfer. If the receiving county meets the venue
8 requirements of section 475.035 and the public administrator of the receiving county
9 consents to the transfer, and the ward does not file an answer opposing the petition for
10 transfer, the court shall transfer the case. The court with jurisdiction over the receiving
11 county shall, without the necessity of any hearing as required by section 475.075, appoint
12 the public administrator of the receiving county as successor guardian and/or successor
13 conservator and issue letters therein. In the case of a conservatorship, the final settlement
14 of the public administrator's conservatorship shall be filed within thirty days of the court's
15 transfer of the case, in the court with jurisdiction over the original conservatorship, and
16 forwarded to the receiving county upon audit and approval.**

ARTICLE 1

GENERAL PROVISIONS

475.501. Sections 475.501 to 475.555 may be cited as the "Uniform Adult
2 Guardianship and Protective Proceedings Jurisdiction Act".

475.502. Notwithstanding the definitions in section 475.010, when used in sections
2 475.501 to 475.555, the following terms mean:

- 3 (1) "Adult", an individual who has attained eighteen years of age;
- 4 (2) "Conservator", a person appointed by the court to administer the property of
5 an adult, including a person appointed under this chapter;
- 6 (3) "Guardian", a person appointed by the court to make decisions regarding the
7 person of an adult, including a person appointed under this chapter;
- 8 (4) "Guardianship order", an order appointing a guardian;
- 9 (5) "Guardianship proceeding", a proceeding in which an order for the
10 appointment of a guardian is sought or has been issued;
- 11 (6) "Incapacitated person", an adult for whom a guardian has been appointed;
- 12 (7) "Party", the respondent, petitioner, guardian, conservator, or any other person
13 allowed by the court to participate in a guardianship or protective proceeding;
- 14 (8) "Person", except in the term "incapacitated person" or "protected person", an
15 individual, corporation, business trust, estate, trust, partnership, limited liability company,
16 association, joint venture, public corporation, government or governmental subdivision,
17 agency, or instrumentality, or any other legal or commercial entity;
- 18 (9) "Protected person", an adult for whom a protective order has been issued;
- 19 (10) "Protective order", an order appointing a conservator or other order related
20 to management of an adult's property;
- 21 (11) "Protective proceeding", a judicial proceeding in which a protective order is
22 sought or has been issued;
- 23 (12) "Record", information that is inscribed on a tangible medium or that is stored
24 in an electronic or other medium and is retrievable in perceivable form;
- 25 (13) "Respondent", an adult for whom a protective order or the appointment of a
26 guardian is sought;
- 27 (14) "State", a state of the United States, the District of Columbia, Puerto Rico, the
28 United States Virgin Islands, a federally recognized Indian tribe, or any territory or
29 insular possession subject to the jurisdiction of the United States.

475.503. A court of this state may treat a foreign country as if it were a state for the
2 purpose of applying this article and articles 2, 3, and 5.

475.504. 1. A court of this state may communicate with a court in another state
2 concerning a proceeding arising under sections 475.501 to 475.555. The court may allow

3 the parties to participate in the communication. Except as otherwise provided in
4 subsection 2 of this section, the court shall make a record of the communication. The
5 record may be limited to the fact that the communication occurred.

6 2. Courts may communicate concerning schedules, calendars, court records, and
7 other administrative matters without making a record.

1 **475.505. 1. In a guardianship or protective proceeding in this state, a court of this**
2 state may request the appropriate court of another state to:

3 (1) Hold an evidentiary hearing;

4 (2) Order a person in that state to produce evidence or give testimony pursuant to
5 procedures of that state;

6 (3) Order that an evaluation or assessment be made of the respondent;

7 (4) Order any appropriate investigation of a person involved in a proceeding;

8 (5) Forward to the court of this state a certified copy of the transcript or other
9 record of a hearing under subdivision (1) of subsection 1 of this section or any other
10 proceeding, any evidence otherwise produced under subdivision (2) of subsection 1 of this
11 section, and any evaluation or assessment prepared in compliance with an order under
12 subdivisions (3) and (4) of subsection 1 of this section;

13 (6) Issue any order necessary to assure the appearance in the proceeding of a
14 person whose presence is necessary for the court to make a determination, including the
15 respondent or the incapacitated or protected person;

16 (7) Issue an order authorizing the release of medical, financial, criminal, or other
17 relevant information in that state, including protected health information as defined in
18 CFR 160.103, as amended.

19 2. If a court of another state in which a guardianship or protective proceeding is
20 pending requests assistance of the kind provided in subsection 1 of this section, a court of
21 this state has jurisdiction for the limited purpose of granting the request or making
22 reasonable efforts to comply with the request.

1 **475.506. 1. In a guardianship or protective proceeding, in addition to other**
2 procedures that may be available, testimony of a witness who is located in another state
3 may be offered by deposition or other means allowable in this state for testimony taken in
4 another state. The court on its own motion may order that the testimony of a witness be
5 taken in another state and may prescribe the manner in which and the terms upon which
6 the testimony is to be taken.

7 2. In a guardianship or protective proceeding, a court in this state may permit a
8 witness located in another state to be deposed or to testify by telephone or audiovisual or
9 other electronic means. A court of this state shall cooperate with court of the other state
10 in designating an appropriate location for the deposition or testimony.

11 **3. Documentary evidence transmitted from another state to a court of this state by**
12 **technological means that do not produce an original writing may not be excluded from**
13 **evidence on an objection based on the best evidence rule.**

ARTICLE 2

JURISDICTION

475.521. 1. In this article, the following terms mean:

2 **(1) "Emergency", a circumstance that likely will result in substantial harm to a**
3 **respondent's health, safety, or welfare, and for which the appointment of a guardian is**
4 **necessary because no other person has authority and is willing to act on the respondent's**
5 **behalf;**

6 **(2) "Home state", the state in which the respondent was physically present,**
7 **including any period of temporary absence, for at least six consecutive months immediately**
8 **before the filing of a petition for a protective order or the appointment of a guardian; or**
9 **if none, the state in which the respondent was physically present, including any period of**
10 **temporary absence, for at least six consecutive months ending within the six months prior**
11 **to the filing of the petition;**

12 **(3) "Significant-connection state", a state, other than the home state, with which**
13 **a respondent has a significant connection other than mere physical presence and in which**
14 **substantial evidence concerning the respondent is available.**

15 **2. In determining under section 475.523 and subsection 5 of section 475.531**
16 **whether a respondent has a significant connection with a particular state, the court shall**
17 **consider:**

18 **(1) The location of the respondent's family and other persons required to be**
19 **notified of the guardianship or protective proceeding;**

20 **(2) The length of time the respondent at any time was physically present in the state**
21 **and the duration of any absence;**

22 **(3) The location of the respondent's property; and**

23 **(4) The extent to which the respondent has ties to the state such as voting**
24 **registration, state or local tax return filing, vehicle registration, driver's license, social**
25 **relationship, and receipt of services.**

475.522. This article provides the exclusive jurisdictional basis for a court of this
state to appoint a guardian or issue a protective order for an adult.

475.523. A court of this state has jurisdiction to appoint a guardian or issue a
protective order for a respondent if:

3 **(1) This state is the respondent's home state;**

4 **(2) On the date a petition is filed, this state is a significant-connection state and:**

5 (a) The respondent does not have a home state or a court of the respondent's home
6 state has declined to exercise jurisdiction because this state is a more appropriate forum;
7 or

8 (b) The respondent has a home state, a petition for an appointment or order is not
9 pending in a court of that state or another significant-connection state, and, before the
10 court makes the appointment or issues the order:

11 a. A petition for an appointment or order is not filed in the respondent's home
12 state;

13 b. An objection to the court's jurisdiction is not filed by a person required to be
14 notified of the proceeding; and

15 c. The court in this state concludes that it is an appropriate forum under the factors
16 set forth in section 475.526;

17 (3) This state does not have jurisdiction under either subdivisions (1) or (2) of this
18 section, the respondent's home state and all significant-connection states have declined to
19 exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in
20 this state is consistent with the constitutions of this state and the United States; or

21 (4) The requirements for special jurisdiction under section 475.524 are met.

475.524. 1. A court of this state lacking jurisdiction under section 475.523 has
2 special jurisdiction to do any of the following:

3 (1) Appoint a guardian in an emergency for a term not exceeding ninety days for
4 a respondent who is physically present in this state;

5 (2) Issue a protective order with respect to real or tangible personal property
6 located in this state;

7 (3) Appoint a guardian or conservator for an incapacitated or protected person for
8 whom a provisional order to transfer the proceeding from another state has been issued
9 under procedures similar to section 475.531.

10 2. If a petition for the appointment of a guardian in an emergency is brought in this
11 state and this state was not the respondent's home state on the date the petition was filed,
12 the court shall dismiss the proceeding at the request of the court of the home state, if any,
13 whether dismissal is requested before or after the emergency appointment.

475.525. Except as otherwise provided in section 475.524, a court that has
2 appointed a guardian or issued a protective order consistent with sections 475.501 to
3 475.555 has exclusive and continuing jurisdiction over the proceeding until it is terminated
4 by the court or the appointment or order expires by its own terms.

475.526. 1. A court of this state having jurisdiction under section 475.523 to
2 appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it
3 determines at any time that a court of another state is a more appropriate forum.

4 **2. If a court of this state declines to exercise its jurisdiction under subsection 1 of**
5 **this section, it shall either dismiss or stay the proceeding. The court may impose any**
6 **condition the court considers just and proper, including the condition that a petition for**
7 **the appointment of a guardian or protective order be promptly filed in another state.**

8 **3. In determining whether it is an appropriate forum, the court shall consider all**
9 **relevant factors, including:**

- 10 **(1) Any expressed preference of the respondent;**
- 11 **(2) Whether abuse, neglect, or exploitation of the respondent has occurred or is**
12 **likely to occur and which state could best protect the respondent from the abuse, neglect,**
13 **or exploitation;**
- 14 **(3) The length of time the respondent was physically present in or was a legal**
15 **resident of this or another state;**
- 16 **(4) The distance of the respondent from the court in each state;**
- 17 **(5) The financial circumstances of the respondent's estate;**
- 18 **(6) The nature and location of the evidence;**
- 19 **(7) The ability of the court in each state to decide the issue expeditiously and the**
20 **procedures necessary to present evidence;**
- 21 **(8) The familiarity of the court of each state with the facts and issues in the**
22 **proceeding; and**
- 23 **(9) If an appointment were made, the court's ability to monitor the conduct of the**
24 **guardian or conservator.**

475.527. 1. If at any time a court of this state determines that it acquired
2 jurisdiction to appoint a guardian or issue a protective order because of unjustifiable
3 conduct, the court may:

- 4 **(1) Decline to exercise jurisdiction;**
- 5 **(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate**
6 **remedy to ensure the health, safety, and welfare of the respondent or the protection of the**
7 **respondent's property or prevent a repetition of the unjustifiable conduct, including**
8 **staying the proceeding until a petition for the appointment of a guardian or issuance of a**
9 **protective order is filed in a court of another state having jurisdiction; or**
- 10 **(3) Continue to exercise jurisdiction after considering:**
 - 11 **(a) The extent to which the respondent and all persons required to be notified of**
12 **the proceedings have acquiesced in the exercise of the court's jurisdiction;**
 - 13 **(b) Whether it is a more appropriate forum than the court of any other state under**
14 **the factors set forth in subsection 3 of section 475.526; and**

15 (c) Whether the court of any other state would have jurisdiction under factual
16 circumstances in substantial conformity with the jurisdictional standards of section
17 475.523.

18 2. If a court of this state determines that it acquired jurisdiction to appoint a
19 guardian or issue a protective order because a party seeking to invoke its jurisdiction
20 engaged in unjustifiable conduct, it may assess against that party necessary and reasonable
21 expenses, including attorney's fees, investigative fees, court costs, communication expenses,
22 witness fees and expenses, and travel expenses. The court may not assess fees, costs, or
23 expenses of any kind against this state or a governmental subdivision, agency, or
24 instrumentality of this state unless authorized by law other than sections 475.501 to
25 475.555.

475.528. If a petition for the appointment of a guardian or issuance of a protective
2 order is brought in this state and this state was not the respondent's home state on the date
3 the petition was filed, in addition to complying with the notice requirements of this state,
4 notice of the petition shall be given to those persons who would be entitled to notice of the
5 petition if a proceeding were brought in the respondent's home state. The notice shall be
6 given in the same manner as notice is required to be given in this state.

475.529. Except for a petition for the appointment of a guardian in an emergency
2 or issuance of a protective order limited to property located in this state as provided in
3 subdivision (1) or (2) of subsection 1 of section 475.524, if a petition for the appointment
4 of a guardian or issuance of a protective order is filed in this and in another state and
5 neither petition has been dismissed or withdrawn, the following rules apply:

6 (1) If the court in this state has jurisdiction under section 475.523, it may proceed
7 with the case unless a court in another state acquires jurisdiction under provisions similar
8 to section 475.523 before the appointment or issuance of the order.

9 (2) If the court in this state does not have jurisdiction under section 475.523,
10 whether at the time the petition is filed or at any time before the appointment or issuance
11 of the order, the court shall stay the proceeding and communicate with the court in the
12 other state. If the court in the other state has jurisdiction, the court in this state shall
13 dismiss the petition unless the court in the other state determines that the court in this state
14 is a more appropriate forum.

ARTICLE 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

475.531. 1. A guardian or conservator appointed in this state may petition the
2 court to transfer the guardianship or conservatorship to another state.

3 **2. Notice of a petition under subsection 1 of this section shall be given to those**
4 **persons that would be entitled to notice of a petition in this state for the appointment of a**
5 **guardian or conservator.**

6 **3. On the court's own motion or on request of the guardian or conservator, the**
7 **incapacitated or protected person, or other person required to be notified of the petition,**
8 **the court shall hold a hearing on a petition filed pursuant to subsection 1 of this section.**

9 **4. The court shall issue an order provisionally granting a petition to transfer a**
10 **guardianship and shall direct the guardian to petition for guardianship in the other state**
11 **if the court is satisfied that the guardianship will be accepted by the court in the other state**
12 **and the court finds that:**

13 **(1) The incapacitated person is physically present in or is reasonably expected to**
14 **move permanently to the other state;**

15 **(2) An objection to the transfer has not been made or, if an objection has been**
16 **made, the objector has not established that the transfer would be contrary to the interests**
17 **of the incapacitated person; and**

18 **(3) Plans for care and services for the incapacitated person in the other state are**
19 **reasonable and sufficient.**

20 **5. The court shall issue a provisional order granting a petition to transfer a**
21 **conservatorship and shall direct the conservator to petition for conservatorship in the**
22 **other state if the court is satisfied that the conservatorship will be accepted by the court of**
23 **the other state and the court finds that:**

24 **(1) The protected person is physically present in or is reasonably expected to move**
25 **permanently to the other state, or the protected person has a significant connection to the**
26 **other state considering the factors set forth in subsection 2 of section 475.521;**

27 **(2) An objection to the transfer has not been made or, if an objection has been**
28 **made, the objector has not established that the transfer would be contrary to the interests**
29 **of the protected person; and**

30 **(3) Adequate arrangements will be made for management of the protected person's**
31 **property.**

32 **6. The court shall issue a final order confirming the transfer and terminating the**
33 **guardianship or conservatorship upon its receipt of:**

34 **(1) A provisional order accepting the proceeding from the court to which the**
35 **proceeding is to be transferred which is issued under provisions similar to section 475.532;**
36 **and**

37 **(2) The documents required to terminate a guardianship or conservatorship in this**
38 **state.**

475.532. 1. To confirm transfer of a guardianship or conservatorship transferred
2 to this state under provisions similar to those in section 475.531, the guardian or
3 conservator shall petition the court in this state to accept the guardianship or
4 conservatorship. The petition shall include a certified copy of the other state's provisional
5 order of transfer.

6 2. Notice of a petition under subsection 1 of this section shall be given to those
7 persons that would be entitled to notice if the petition were a petition for the appointment
8 of a guardian or issuance of a protective order in both the transferring state and this state.
9 The notice shall be given in the same manner as notice is required to be given in this state.

10 3. On the court's own motion or on request of the guardian or conservator, the
11 incapacitated or protected person, or other person required to be notified of the
12 proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1 of
13 this section.

14 4. The court shall issue an order provisionally granting a petition filed under
15 subsection 1 of this section unless:

16 (1) An objection is made and the objector establishes that transfer of the
17 proceeding would be contrary to the interests of the incapacitated or protected person; or

18 (2) The guardian or conservator is ineligible for appointment in this state.

19 5. The court shall issue a final order accepting the proceeding and appointing the
20 guardian or conservator as guardian or conservator in this state upon its receipt from the
21 court from which the proceeding is being transferred of a final order issued under
22 provisions similar to section 475.531 transferring the proceeding to this state.

23 6. Not later than ninety days after issuance of a final order accepting transfer of a
24 guardianship or conservatorship, the court shall determine whether the guardianship or
25 conservatorship needs to be modified to conform to the law of this state.

26 7. In granting a petition under this section, the court shall recognize a guardianship
27 or conservatorship order from the other state, including the determination of the
28 incapacitated or protected person's incapacity and the appointment of the guardian or
29 conservator.

30 8. The denial by a court of this state of a petition to accept guardianship or
31 conservatorship transferred from another state does not affect the ability of the guardian
32 or conservator to seek appointment as guardian or conservator in this state under this
33 chapter if the court has jurisdiction to make an appointment other than by reason of the
34 provisional order of transfer.

ARTICLE 4

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

475.541. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

475.542. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

475.543. 1. Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

2. A court of this state may grant any relief available under sections 475.501 to 475.555 and other law of this state to enforce a registered order.

475.544. Except where inconsistent with sections 475.541, 475.542, and 475.543, the laws of this state relating to the registration and recognition of the acts of a foreign guardian, curator, or conservator contained in sections 475.335 to 475.340 shall be applicable.

ARTICLE 5

MISCELLANEOUS PROVISIONS

475.551. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

475.552. Sections 475.501 to 475.555 modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

475.555. 1. Sections 475.501 to 475.555 apply to guardianship and protective proceedings begun on or after August 28, 2011.

2. Articles 1, 3, 4, and sections 475.551 and 475.552 apply to proceedings begun before August 28, 2011, regardless of whether a guardianship or protective order has been issued.

Section 1. 1. As used in this section, "qualified spousal trust" means a trust:

(1) The settlors of which are husband and wife at the time of the creation of the trust; and

(2) The terms of which provide that during the joint lives of the settlors all property or interests in property transferred to or held by the trustee are either:

(a) Held and administered in one trust for the benefit of both settlors, revocable by either or both settlors acting together while either or both are alive, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from the entire trust for the joint lives of the settlors and for the survivor's life; or

(b) Held and administered in two separate shares of one trust for the benefit of each of the settlors, with the trust revocable by each settlor with respect to that settlor's separate share of that trust without the participation or consent of the other settlor, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from that settlor's separate share for that settlor's life.

2. A qualified spousal trust may contain any other trust terms that are not inconsistent with the provisions of this section.

3. Property or interests in property held as tenants by the entirety by a husband and wife that is at any time transferred to the trustee of a qualified spousal trust of which the husband and wife are the settlors shall be held and administered as provided by the trust terms in accordance with either paragraph (a) or (b) of subdivision (2) of subsection 1 of this section, and all such property and interests in property, including the proceeds thereof, the income thereon, and any property into which such property, proceeds, or income may be converted, shall thereafter have the same immunity from the claims of the separate creditors of the settlors as would have existed if the settlors had continued to hold that property as husband and wife as tenants by the entirety, so long as:

(1) Both settlors are alive and remain married; and

(2) The property, proceeds, or income continue to be held in trust by the trustee of the qualified spousal trust.

4. Property or interests in property held by a husband and wife or held in the sole name of a husband or wife that is not held as tenants by the entirety and is transferred to a qualified spousal trust shall be held as directed in the qualified spousal trust's governing instrument or in the instrument of transfer and the rights of any claimant to any interest in that property shall not be affected by this section.

5. Upon the death of each settlor, all property and interests in property held by the trustee of the qualified spousal trust shall be distributed as directed by the then current terms of the governing instrument of such trust. Upon the death of the first settlor to die,

38 if immediately prior to death the predeceased settlor's interest in the qualified spousal trust
39 was then held in such settlor's separate share, the property or interests in property in such
40 settlor's separate share may pass into an irrevocable trust for the benefit of the surviving
41 settlor upon such terms as the governing instrument shall direct, including without
42 limitation a spendthrift provision as provided in section 456.5-502.

43 6. No transfer by a husband and wife as settlors to a qualified spousal trust shall
44 affect or change either settlor's marital property rights to the transferred property or
45 interest therein immediately prior to such transfer in the event of dissolution of marriage
46 of the spouses, unless both spouses otherwise expressly agree in writing.

47 7. This section shall apply to all trusts which fulfill the criteria set forth herein for
48 a qualified spousal trust regardless of whether such trust was created before or after the
49 effective date of this section.

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