

FIRST REGULAR SESSION

# SENATE BILL NO. 465

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time February 23, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2033S.02I

## AN ACT

To repeal sections 473.730, 473.770, 473.771, 475.016, 475.082, 475.083, 475.094, 475.120, 475.123, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.290, 475.322, and 475.355, RSMo, and to enact in lieu thereof twenty-five new sections relating to guardianship proceedings.

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

Section A. Sections 473.730, 473.770, 473.771, 475.016, 475.082, 475.083, 2 475.094, 475.120, 475.123, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 3 475.290, 475.322, and 475.355, RSMo, are repealed and twenty-five new sections 4 enacted in lieu thereof, to be known as sections 473.730, 473.770, 473.771, 5 475.016, 475.082, 475.083, 475.094, 475.120, 475.123, 475.125, 475.130, 475.145, 6 475.230, 475.270, 475.276, 475.290, 475.322, 475.341, 475.342, 475.343, 475.344, 7 475.355, 475.357, 475.359, and 475.361, to read as follows:

473.730. 1. Every county in this state, except the City of St. Louis, shall 2 elect a public administrator at the general election in the year 1880, and every 3 four years thereafter, who shall be ex officio public guardian and conservator in 4 and for the public administrator's county. A candidate for public administrator 5 shall be at least twenty-one years of age and a resident of the state of Missouri 6 and the county in which he or she is a candidate for at least one year prior to the 7 date of the general election for such office. The candidate shall also be a 8 registered voter and shall be current in the payment of all personal and business 9 taxes. Before entering on the duties of the public administrator's office, the 10 public administrator shall take the oath required by the constitution, and enter 11 into bond to the state of Missouri in a sum not less than ten thousand dollars, 12 with two or more securities, approved by the court and conditioned that the public

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

13 administrator will faithfully discharge all the duties of the public administrator's  
14 office, which bond shall be given and oath of office taken on or before the first day  
15 of January following the public administrator's election, and it shall be the duty  
16 of the judge of the court to require the public administrator to make a statement  
17 annually, under oath, of the amount of property in the public administrator's  
18 hands or under the public administrator's control as such administrator, for the  
19 purpose of ascertaining the amount of bond necessary to secure such property;  
20 and such court may from time to time, as occasion shall require, demand  
21 additional security of such administrator, and, in default of giving the same  
22 within twenty days after such demand, may remove the administrator and  
23 appoint another.

24 2. The public administrator in all counties, in the performance of the  
25 duties required by chapters 473, 474, and 475, is a public officer. The duties  
26 specified by [section] **sections 475.120, 475.343, and 475.359** are  
27 discretionary. The county shall defend and indemnify the public administrator  
28 against any alleged breach of duty, provided that any such alleged breach of duty  
29 arose out of an act or omission occurring within the scope of duty or employment.

30 3. After January 1, 2001, all salaried public administrators shall be  
31 considered county officials for purposes of section 50.333, subject to the minimum  
32 salary requirements set forth in section 473.742.

33 4. The public administrator for the city of St. Louis shall be appointed by  
34 a majority of the circuit judges and associate circuit judges of the twenty-second  
35 judicial circuit, en banc. Such public administrator shall meet the same  
36 qualifications and requirements specified in subsection 1 of this section for  
37 elected public administrators. The elected public administrator holding office on  
38 August 28, 2013, shall continue to hold such office for the remainder of his or her  
39 term.

473.770. 1. Whenever, in the judgment of any public administrator in any  
2 county of the first class, it is necessary for the proper and efficient conduct of the  
3 business of the public administrator's office that the public administrator appoint  
4 any deputies to assist the public administrator in the performance of his or her  
5 official duties as public administrator or as executor, administrator, personal  
6 representative, guardian, or conservator in any estates wherein the public  
7 administrator has been specially appointed, the public administrator may appoint  
8 one or more deputies to assist him or her in the performance of his or her duties  
9 as public administrator and as executor, administrator, personal representative,

10 guardian, or conservator in the estates wherein the public administrator has been  
11 specially appointed. The appointment shall be in writing and shall be filed with  
12 the court, and, upon the filing, the court shall issue under its seal a certificate of  
13 the appointment for each deputy, stating that the appointee is vested with the  
14 powers and duties conferred by this section. The certificate shall be valid for one  
15 year from date, unless terminated prior thereto, and shall be renewed from year  
16 to year as long as the appointment remains in force, and may be taken as  
17 evidence of the authority of the deputy. The appointment and authority of any  
18 deputy may at any time be terminated by the public administrator by notice of  
19 the termination filed in the court, and upon termination the deputy shall  
20 surrender the public administrator's certificate of appointment.

21           2. In all counties of the first classification not having a charter form of  
22 government and containing a portion of a city having a population of three  
23 hundred thousand or more inhabitants, the compensation of each such deputy  
24 shall be set by the public administrator, with the approval of the governing body  
25 of the county, and shall be paid in equal monthly installments out of the county  
26 treasury. In all other counties of the first classification the compensation of each  
27 such deputy shall be prescribed and paid by the public administrator out of the  
28 fees to which he or she is legally entitled, and no part of such compensation shall  
29 be paid out of any public funds or assessed as costs or allowed in any estate.

30           3. Each deputy so appointed shall be authorized to perform such  
31 ministerial and nondiscretionary duties as may be delegated to him or her by the  
32 public administrator, including:

33           (1) Assembling, taking into possession, and listing moneys, checks, notes,  
34 stocks, bonds and other securities, and all other personal property of any and all  
35 estates in the charge of the public administrator;

36           (2) Depositing all moneys, checks, and other instruments for the payment  
37 of money in the bank accounts maintained by the public administrator for the  
38 deposit of such funds;

39           (3) Signing or countersigning any and all checks and other instruments  
40 for the payment of moneys out of such bank accounts, in pursuance of general  
41 authorization by the public administrator to the bank in which the same are  
42 deposited, as long as such authorization remains in effect;

43           (4) Entering the safe deposit box of any person or decedent whose estate  
44 is in the charge of the public administrator and any safe deposit box maintained  
45 by the public administrator for the safekeeping of assets in his or her charge, as

46 a deputy of the public administrator, pursuant to general authorization given by  
47 the public administrator to the bank or safe deposit company in charge of any  
48 such safe deposit box, as long as such deputy-authorization remains in effect, and  
49 withdrawing therefrom and depositing therein such assets as may be determined  
50 by the public administrator. The bank or safe deposit company shall not be  
51 charged with notice or knowledge or any limitation of authority of the authorized  
52 deputy, unless specially notified in writing thereof by the public administrator,  
53 and may allow the deputy access to the safe deposit box, in the absence of notice,  
54 to the full extent allowable to the public administrator in person.

55 4. The enumeration of the foregoing powers shall not operate as an  
56 exclusion of any powers not specifically conferred. No authorized deputy shall  
57 exercise any power, other than as prescribed in this section, which shall require  
58 the exercise of a discretion enjoined by law to be exercised personally by the  
59 executor, administrator, personal representative, guardian, or conservator in  
60 charge of the estate to which the discretionary power refers.

61 5. Notwithstanding the provisions of subsections 3 and 4 of this section  
62 to the contrary, a public administrator in a county of the first classification  
63 having a charter form of government and containing all or part of a city with a  
64 population of at least three hundred thousand inhabitants, and a public  
65 administrator in any county of the first classification may delegate to any deputy  
66 appointed by the public administrator any of the duties of the public  
67 administrator enumerated in section 473.743, and sections 475.120 [and],  
68 475.130, **475.343, and 475.359**. Such public administrator may also delegate to  
69 a deputy who is a licensed attorney the authority to execute inventories,  
70 settlements, surety bonds, pleadings and other documents filed in any court in  
71 the name of the public administrator, and the same shall have the force and effect  
72 as if executed by the public administrator.

473.771. 1. Whenever, in the judgment of any public administrator in any  
2 county which is not a county of the first classification, it is necessary for the  
3 proper and efficient conduct of the business of his or her office that the public  
4 administrator appoint a deputy to assist the public administrator in the  
5 performance of his or her official duties as public administrator or as executor,  
6 administrator, personal representative, guardian, or conservator in any estates  
7 wherein the public administrator has been specially appointed, the public  
8 administrator may appoint a deputy to assist him or her in the performance of his  
9 or her duties as public administrator and as executor, administrator, personal

10 representative, guardian, or conservator in the estates wherein the public  
11 administrator has been specially appointed. The appointment shall be in writing  
12 and shall be filed with the court, and, upon the filing, the court shall issue under  
13 its seal a certificate of the appointment for the deputy, stating that the appointee  
14 is vested with the powers and duties conferred by this section. The certificate  
15 shall be valid for one year from the date, unless terminated prior thereto, and  
16 shall be renewed from year to year as long as the appointment remains in force,  
17 and may be taken as evidence of the authority of the deputy. The appointment  
18 and authority of a deputy may at any time be terminated by the public  
19 administrator by notice of the termination filed in the court, and upon  
20 termination the deputy shall surrender his or her certificate of appointment.

21           2. The compensation of a deputy appointed pursuant to the provisions of  
22 this section shall be prescribed and paid by the public administrator out of the  
23 fees to which he or she is legally entitled.

24           3. A deputy appointed pursuant to the provisions of this section shall be  
25 authorized to perform such ministerial and nondiscretionary duties as may be  
26 delegated to him or her by the public administrator, including:

27           (1) Assembling, taking into possession, and listing moneys, checks, notes,  
28 stocks, bonds and other securities, and all other personal property of any and all  
29 estates in the charge of the public administrator;

30           (2) Depositing all moneys, checks, and other instruments for the payment  
31 of money in the bank accounts maintained by the public administrator for the  
32 deposit of such funds;

33           (3) Signing or countersigning any and all checks and other instruments  
34 for the payment of moneys out of such bank accounts, in pursuance of general  
35 authorization by the public administrator to the bank in which the same are  
36 deposited, as long as such authorization remains in effect;

37           (4) Entering the safe deposit box of any person or decedent whose estate  
38 is in the charge of the public administrator and any safe deposit box maintained  
39 by the public administrator for the safekeeping of assets in his or her charge, as  
40 a deputy of the public administrator, pursuant to general authorization given by  
41 the public administrator to the bank or safe deposit company in charge of any  
42 such safe deposit box, as long as such authorization as a deputy remains in effect,  
43 and withdrawing therefrom and depositing therein such assets as may be  
44 determined by the public administrator. The bank or safe deposit company shall  
45 not be charged with notice or knowledge or any limitation of authority of the

46 authorized deputy, unless specially notified in writing thereof by the public  
47 administrator, and may allow the deputy access to the safe deposit box, in the  
48 absence of notice, to the full extent allowable to the public administrator in  
49 person.

50 4. The enumeration of the foregoing powers shall not operate as an  
51 exclusion of any powers not specifically conferred. No authorized deputy shall  
52 exercise any power, other than as prescribed in this section, which shall require  
53 the exercise of a discretion enjoined by law to be exercised personally by the  
54 executor, administrator, personal representative, guardian, or conservator in  
55 charge of the estate to which the discretionary power refers.

56 5. Notwithstanding the provisions of subsections 3 and 4 of this section  
57 to the contrary, a public administrator in a county which is not a county of the  
58 first classification may delegate to any deputy appointed by the public  
59 administrator any of the duties of the public administrator enumerated in section  
60 473.743, and sections 475.120 [and], 475.130, **475.343, and 475.359**. Such  
61 public administrator may also delegate to a deputy who is a licensed attorney the  
62 authority to execute inventories, settlements, surety bonds, pleadings, and other  
63 documents filed in any court in the name of the public administrator, and the  
64 same shall have the force and effect as if executed by the public administrator.

475.016. 1. If there has been an adjudication of incompetency before  
2 September 28, 1983, any person so adjudicated shall be deemed totally  
3 incapacitated and totally disabled as defined in section 475.010, until such time  
4 as the probate division of the circuit court of the county of proper venue, upon the  
5 annual review proceeding prescribed by section 475.082 or otherwise, may review  
6 the nature of the incapacity or disability of the person so adjudicated and alter  
7 the nature of the adjudication if, as a consequence of the review, it appears to the  
8 court that the person is not both totally incapacitated and totally disabled as  
9 defined in section 475.010. A guardian of the person appointed before September  
10 28, 1983, shall be deemed a guardian as defined in section 475.010. A guardian  
11 of the estate appointed before September 28, 1983, shall be deemed a conservator  
12 as defined in section 475.010.

13 **2. Existing guardians and conservators shall have one year after**  
14 **August 28, 2017, to meet any annual and other reporting requirements**  
15 **that are different from the former requirements of chapter 475 prior to**  
16 **August 28, 2017.**

475.082. 1. At least annually, the court shall inquire into the status of

2 every **adult** ward and protectee under its jurisdiction for the purpose of  
3 determining whether the incapacity or disability may have ceased **or changed**  
4 and to insure that the guardian or conservator is discharging **[his] the**  
5 **guardian's or conservator's** responsibilities and duties in accordance with this  
6 chapter.

7         2. In order to implement the court review prescribed by this section, the  
8 guardian or limited guardian shall file annually on the anniversary date of **[his]**  
9 **the guardian's or limited guardian's** letters, a report concerning the personal  
10 status of the **adult ward and plans for future care**. Such report may be  
11 combined with the settlement of accounts if the guardian is also conservator of  
12 the estate of the ward. The report shall be in the form prescribed by the court  
13 and shall include the following information:

14           (1) The present address of the ward;

15           (2) The present address of the guardian;

16           (3) **Unless the report specifies that the ward is living with the**  
17 **guardian**, the number of times the guardian has had contact with the ward, and  
18 the nature of such contacts including the date the ward was last seen by the  
19 guardian;

20           (4) **A summary of the guardian's visits with the ward and**  
21 **activities on the ward's behalf and the extent to which the ward has**  
22 **participated in decision-making;**

23           (5) If the ward is institutionalized, whether the guardian has received a  
24 copy of the treatment or habilitation plan and whether the guardian agrees with  
25 its provision;

26           [(5)] (6) The date the ward was last seen by a physician **or other**  
27 **appropriate professional** and the purpose;

28           [(6) Any major changes in the physical or mental condition of the ward  
29 observed by the guardian] (7) **The current mental, physical, and social**  
30 **condition of the ward and any major changes in the ward's condition**  
31 **since the last report;**

32           [(7)] (8) The opinion of the guardian as to the need for the continuation  
33 of the guardianship and whether it is necessary to increase or decrease the  
34 powers of the guardian;

35           [(8) The opinion of the guardian as to the adequacy of the present care of  
36 the ward] (9) **The medical, educational, vocational, and other services**  
37 **provided to the ward and the guardian's opinion as to the adequacy of**

38 **the ward's care; and**

39 **(10) A plan for the coming year, including short-term and**  
40 **long-term goals, and the extent to which the ward has participated in**  
41 **the development of the plan.**

42 3. The court may as part of its review, in its discretion, order the  
43 performance of a mental status evaluation of [an incapacitated] **the** ward and  
44 may require any hospital, physician, or custodial facility to submit copies of their  
45 records relating to the treatment, habilitation, or care of the ward. **The court,**  
46 **as part of its review and in its discretion, may also contact the**  
47 **department of health and senior services or other appropriate agencies**  
48 **to investigate the conduct of the guardian and report its findings to the**  
49 **court.**

50 4. If there is an indication that the incapacity or disability of the ward or  
51 protectee has ceased, the court shall appoint an attorney to file on behalf of the  
52 ward or protectee a petition for termination of the guardianship or  
53 conservatorship or for restoration.

54 5. If it appears to the court as part of its review or at any time upon  
55 motion of any interested person **interested in the welfare of the ward,**  
56 including the ward or protectee or some person on [his] **the ward's** behalf, that  
57 the guardian or conservator is not discharging [his] **the guardian's or**  
58 **conservator's** responsibilities and duties as required by this chapter or has not  
59 acted in the best interests of [his] **the** ward or protectee, the court may order  
60 that a hearing be held and direct that the guardian or conservator appear before  
61 the court. In the event that such a hearing is ordered and the ward or protectee  
62 is not represented by an attorney, the court shall appoint an attorney to represent  
63 the ward or protectee in the proceedings. At the conclusion of the hearing, if the  
64 court finds that the guardian [or conservator] is not discharging [his] **the**  
65 **guardian's** duties and responsibilities as required by this code, or is not acting  
66 in the best interests of the ward or protectee, the court shall enter such orders as  
67 it deems appropriate under the circumstances. Such orders may include the  
68 removal of the guardian [or conservator] and the appointment of a successor  
69 guardian or conservator or termination of the guardianship or conservatorship on  
70 finding that the ward has recovered [his] capacity or the protectee is no longer  
71 disabled. The court in framing its orders and findings shall give due  
72 consideration to the exercise by the guardian or conservator of any discretion  
73 vested in [him] **the guardian or conservator** by law.



475.083. 1. The authority of a guardian or conservator terminates:

- 2 (1) When a minor ward becomes eighteen years of age;
- 3 (2) Upon an adjudication that an incapacitated or disabled person has  
4 been restored to [his] capacity or ability;
- 5 (3) Upon revocation of the letters of the guardian or conservator;
- 6 (4) Upon the acceptance by the court of the resignation of the guardian  
7 or conservator;
- 8 (5) Upon the death of the ward or protectee except that if there is no  
9 person other than the estate of the ward or protectee liable for the funeral and  
10 burial expenses of the ward or protectee the guardian or conservator may, with  
11 the approval of the court, contract for the funeral and burial of the deceased ward  
12 or protectee;
- 13 (6) Upon the expiration of an order appointing a guardian or conservator  
14 ad litem unless the court orders extension of the appointment;
- 15 (7) Upon an order of court terminating the guardianship or  
16 conservatorship.

17 2. A guardianship or conservatorship may be terminated by court order  
18 after such notice as the court may require:

- 19 (1) If the conservatorship estate is exhausted;
- 20 (2) If the conservatorship is no longer necessary for any other reason;
- 21 (3) If the court finds that a parent is fit, suitable and able to assume the  
22 duties of guardianship and it is in the best interest of the minor that the  
23 guardianship be terminated; **or**
- 24 (4) **If the court determines that the guardian is unable to provide**  
25 **the services of a guardian due to the ward's absence from the state or**  
26 **other particular circumstances of the ward.**

27 3. Notwithstanding the termination of the authority of a conservator, [he]  
28 **the conservator** shall continue to have such authority as may be necessary to  
29 wind up [his] administration.

30 4. At any time the guardian, conservator or any person on behalf of the  
31 ward or protectee may, individually or jointly with the ward or protectee, or the  
32 ward or protectee individually may petition the court to restore the ward or  
33 protectee, or to decrease the powers of the guardian or conservator **or return**  
34 **rights to the ward or the protectee**, except that if the court determines that  
35 the petition is frivolous, the court may summarily dismiss the petition without  
36 hearing. **The petition from the ward or protectee or on behalf of the**

37 ward or protectee may be an informal letter to the court. Anyone who  
38 interferes with the transmission of the ward's or protectee's letter or  
39 petition may be cited by the court for contempt after notice and  
40 hearing. If at any time the court, on its own motion, has reason to  
41 believe that the guardian's or conservator's powers should be increased  
42 or decreased or additional rights should be returned to the ward, the  
43 court shall set the matter for a hearing.

44 5. Upon the filing of a joint petition by the guardian or conservator and  
45 the ward or protectee, the court, if it finds restoration or modification to be in the  
46 best interests of the ward or protectee, may summarily order restoration [or  
47 modification of the], **a decrease in powers of the guardian or conservator, or**  
48 **return the rights to the ward or the protectee** without the necessity of  
49 notice and hearing.

50 6. Upon the filing of a petition without the joinder of the guardian or  
51 conservator **or if the court requires a hearing for a petition filed with the**  
52 **joinder of a guardian or conservator**, the court shall cause the petition to  
53 be set for hearing with notice to the guardian or conservator **and to such other**  
54 **persons as the court directs. The hearing shall be conducted in**  
55 **accordance with the provisions of section 475.075.** If the ward or protectee  
56 is not represented by an attorney, the court shall appoint an attorney to represent  
57 the ward or protectee in such proceeding. The burden of proof by a  
58 preponderance of the evidence shall be upon the petitioner. Such a petition may  
59 not be filed more than once every one hundred eighty days.

60 7. At any time the guardian [or], **limited guardian**, conservator, **or**  
61 **limited conservator** may petition the court to increase [his] **the guardian's**  
62 **or conservator's powers or to remove rights from the ward.** Proceedings  
63 on the petition shall be in accordance with the provisions of section 475.075.

64 8. **In deciding whether to terminate or modify a guardianship or**  
65 **conservatorship, the court may require a report by and consider the**  
66 **recommendations in the report of a physician, licensed psychologist, or**  
67 **other appropriate qualified professional who has experience or training**  
68 **in the alleged mental, physical, or cognitive impairment of the ward or**  
69 **protectee.**

475.094. [If the court determines and enters a finding that a permanently  
2 totally mentally disabled protectee's estate would be substantially depleted upon  
3 his death by the payment of federal estate taxes, the court is hereby empowered:

4 to exercise or release powers of appointment, to change the beneficiaries and elect  
5 options under insurance and annuity policies, to make gifts to the natural objects  
6 of the protectee's bounty, to convey or release his contingent and expectant  
7 interests in property including marital property rights and any right of  
8 survivorship incident to joint tenancy or tenancy by the entirety, to surrender  
9 insurance or annuity policies for their cash values, to exercise his right to an  
10 elective share in the estate of his deceased spouse, and to renounce any interest  
11 by testate or intestate succession or by inter vivos transfer, if such act or acts will  
12 not deplete the protectee's estate so as to impair the ability to provide for the  
13 protectee's foreseeable lifetime needs, and if such act will cause financial benefits  
14 to inure solely to the natural objects of the protectee's bounty. Such act shall be  
15 undertaken by the court only to the extent that it will result in a substantial  
16 saving of federal estate tax for the estate of the disabled protectee upon his  
17 death.] **1. After notice to interested persons and upon express**  
18 **authorization of the court, a conservator may:**

19 **(1) Make gifts that the protectee might have been expected to**  
20 **make including, but not limited to, gifts to qualify for government**  
21 **benefits or to reduce federal estate taxes;**

22 **(2) Make a division of assets as provided under the Medicaid**  
23 **spousal impoverishment provisions;**

24 **(3) Convey, release, or disclaim contingent and expectant**  
25 **interests in property, including marital property rights and any right**  
26 **of survivorship incident to joint tenancy or tenancy by the entireties;**

27 **(4) Exercise or release a power of appointment;**

28 **(5) Create a revocable or irrevocable trust of property of the**  
29 **estate, whether the trust extends beyond the duration of the**  
30 **conservatorship, or revoke or amend a trust revocable by the protected**  
31 **person;**

32 **(6) Exercise rights to elect options and change beneficiaries**  
33 **under insurance policies and annuities or surrender the policies and**  
34 **annuities for cash value;**

35 **(7) Exercise any right to an elective share in the estate of the**  
36 **protectee's deceased spouse and to renounce or disclaim any interest**  
37 **by testate or intestate succession or by transfer inter vivos.**

38 **2. The court, in exercising or in approving a conservator's**  
39 **exercise of the powers listed under subsection 1 of this section, shall**

40 **consider primarily the decision that the protectee would have made, to**  
41 **the extent that the decision can be ascertained. The court shall also**  
42 **consider:**

43 **(1) The financial needs of the protected person and the needs of**  
44 **individuals who are in fact dependent on the protectee for support and**  
45 **the interest of creditors;**

46 **(2) Possible reduction of income, estate, inheritance, or other tax**  
47 **liabilities;**

48 **(3) Eligibility for government assistance;**

49 **(4) The protectee's previous pattern of giving or level of support;**

50 **(5) The existing estate plan;**

51 **(6) The protectee's life expectancy and the probability that the**  
52 **conservatorship will terminate before the protectee's death; and**

53 **(7) Any other factors the court considers relevant.**

54 **3. Without authorization of the court, a conservator shall not**  
55 **revoke or amend a durable power of attorney of which the protectee is**  
56 **the principal. If a durable power of attorney is in effect, absent a court**  
57 **order to the contrary, a decision of the agent takes precedence over**  
58 **that of a conservator.**

475.120. [1.] The guardian of the person of a minor shall be entitled to  
2 the custody and control of the ward and shall provide for the ward's education,  
3 support, and maintenance.

4 [2. A guardian or limited guardian of an incapacitated person shall act in  
5 the best interest of the ward. A limited guardian of an incapacitated person shall  
6 have the powers and duties enumerated by the court in the adjudication order or  
7 any later modifying order.

8 3. The general powers and duties of a guardian of an incapacitated person  
9 shall be to take charge of the person of the ward and to provide for the ward's  
10 care, treatment, habilitation, education, support and maintenance; and the  
11 powers and duties shall include, but not be limited to, the following:

12 (1) Assure that the ward resides in the best and least restrictive setting  
13 reasonably available;

14 (2) Assure that the ward receives medical care and other services that are  
15 needed;

16 (3) Promote and protect the care, comfort, safety, health, and welfare of  
17 the ward;

18 (4) Provide required consents on behalf of the ward;  
19 (5) To exercise all powers and discharge all duties necessary or proper to  
20 implement the provisions of this section.

21 4. A guardian of an adult or minor ward is not obligated by virtue of such  
22 guardian's appointment to use the guardian's own financial resources for the  
23 support of the ward. If the ward's estate and available public benefits are  
24 inadequate for the proper care of the ward, the guardian or conservator may  
25 apply to the county commission pursuant to section 475.370.

26 5. No guardian of the person shall have authority to seek admission of the  
27 guardian's ward to a mental health or intellectual disability facility for more than  
28 thirty days for any purpose without court order except as otherwise provided by  
29 law.

30 6. Only the director or chief administrative officer of a social service  
31 agency serving as guardian of an incapacitated person, or such person's designee,  
32 is legally authorized to act on behalf of the ward.

33 7. A social service agency serving as guardian of an incapacitated person  
34 shall notify the court within fifteen days after any change in the identity of the  
35 professional individual who has primary responsibility for providing guardianship  
36 services to the incapacitated person.

37 8. Any social service agency serving as guardian may not provide other  
38 services to the ward.]

475.123. 1. **[No] Consent of the guardian shall be obtained as**  
2 **authorized by section 431.061 before a** medical or surgical procedure **[shall]**  
3 **may** be performed on any ward unless **[consent is obtained from the guardian of**  
4 **his person except as provided in subsections 2 and 3 hereof] emergency**  
5 **treatment is required and consent is excused as provided under section**  
6 **431.063.**

7 2. If the life of the ward is threatened and there is not time to obtain  
8 consent, a medical or surgical procedure may be performed without consent after  
9 the medical necessity for the procedure has been documented in the medical  
10 record of the ward.

11 3. If the life of a person is threatened and his **or her** consent to a  
12 necessary medical or surgical procedure cannot be obtained, a court, on petition  
13 filed pursuant to section 475.060, after hearing, may authorize consent on behalf  
14 of such person.

15 4. Any hearing conducted pursuant to subsection 3 of this section,

16 involving a life threatening medical emergency, may be conducted within or  
17 without the county at the medical facility where the person has been admitted  
18 with such notice and in such form as is practicable considering the time  
19 limitations imposed due to the condition of person. The fact of attempted oral  
20 notice to persons interested in the welfare of the person shall be made a part of  
21 the record of the hearing.

22 **5. The guardian, in making health care decisions for the adult**  
23 **ward or in seeking court approval for such decisions, shall maximize**  
24 **the participation of the ward.**

25 **6. The guardian, in making health care decisions for the adult**  
26 **ward or in seeking court approval for such decisions, shall:**

27 **(1) Consider the medical facts;**

28 **(2) Consider the health care options and risks and benefits of**  
29 **each; and**

30 **(3) Encourage and support the ward in understanding the facts**  
31 **and directing a decision.**

32 **7. (1) To the extent the adult ward cannot currently direct the**  
33 **health care decision, the guardian shall act in accordance with the**  
34 **ward's prior directions, directives, expressed desires, and opinions**  
35 **about health care to the extent actually known or ascertainable by the**  
36 **guardian. However, if the ward's prior directions, directives, expressed**  
37 **desires, and opinions about health care are unknown and**  
38 **unascertainable, the guardian shall:**

39 **(a) Act in accordance with the adult ward's prior general**  
40 **statements, actions, values, and preferences to the extent actually**  
41 **known or ascertainable by the guardian; or**

42 **(b) Act in accordance with reasonable information received from**  
43 **professionals and persons who demonstrate sufficient interest in the**  
44 **adult ward's welfare, to determine the ward's best interests. Such**  
45 **determination shall include consideration of consequences for others**  
46 **that an individual in the ward's circumstances would consider.**

47 **(2) In the event of an emergency, the guardian shall grant or**  
48 **deny authorization of emergency health care treatment based on a**  
49 **reasonable assessment of the criteria listed in section 475.359.**

50 **8. The guardian shall monitor, promote, and maintain the**  
51 **person's health and well-being and shall seek to ensure that the person**  
52 **receives appropriate health care.**

475.125. 1. The court may make orders for the management of the estate  
2 of the protectee for the care, education, treatment, habilitation, respite, support  
3 and maintenance of the protectee and for the **support and** maintenance of [his  
4 or her] **the protectee's** family and education of [his or her] **the protectee's**  
5 **spouse and** children, according to [his or her] **the protectee's** means and  
6 obligation, if any, out of the proceeds of [his or her] **the protectee's** estate, and  
7 may direct that payments for such purposes shall be made weekly, monthly,  
8 quarterly, semiannually or annually. The payments ordered under this section  
9 may be decreased or increased from time to time as ordered by the court.

10 2. **In setting the amount of the support allowance for the**  
11 **protectee or any other persons entitled to such support, the court shall**  
12 **consider the previous standard of living of the spouse or other family**  
13 **members, the composition of the estate, the income and other assets**  
14 **available to the protectee and the other persons, and the expenses of**  
15 **the protectee or the other persons entitled to support.**

16 3. Appropriations for any such purposes, expenses of administration and  
17 allowed claims shall be paid from the property or income of the estate. The court  
18 may authorize the conservator to borrow money and obligate the estate for the  
19 payment thereof if the court finds that funds of the estate for the payment of such  
20 obligation will be available within a reasonable time and that the loan is  
21 necessary. If payments are made to another under the order of the court, the  
22 conservator of the estate is not bound to see to the application thereof.

23 [3.] 4. In acting under this section the court shall take into account any  
24 duty imposed by law or contract upon a parent or spouse of the protectee, a  
25 government agency, a trustee, or other person or corporation, to make payments  
26 for the benefit of or provide support, education, care, treatment, habilitation,  
27 respite, maintenance or safekeeping of the protectee and [his or her] **the**  
28 **protectee's** dependents. The guardian of the person and the conservator of the  
29 estate shall endeavor to enforce any such duty.

475.130. 1. The conservator of the estate of a minor or disabled person  
2 shall, under supervision of the court, protect, preserve and manage the estate,  
3 apply it as provided in this code, account for it faithfully, perform all other duties  
4 required of the conservator by law, and at the termination of the conservatorship  
5 deliver the assets of the protectee to the persons entitled thereto. In protecting,  
6 preserving and managing the estate, the conservator of the estate is under a duty  
7 to use the degree of care, skill and prudence which an ordinarily prudent person

8 uses in managing the property of, and conducting transactions on behalf of,  
9 others. If a conservator of the estate has special skills or is appointed on the  
10 basis of representations of special skills or expertise, the conservator is under a  
11 duty to use those skills in the conduct of the protectee's affairs. A conservator of  
12 the estate is under a duty to act in the interest of the protectee and to avoid  
13 conflicts of interest which impair the conservator's ability so to act.

14       2. The conservator of the estate shall take possession of all of the  
15 protectee's real and personal property, and of rents, income, issue and profits  
16 therefrom, whether accruing before or after the conservator's appointment, and  
17 of the proceeds arising from the sale, mortgage, lease or exchange  
18 thereof. Subject to such possession, the title to all such estate, and to the  
19 increment and proceeds thereof, is in the protectee and not in the  
20 conservator. Upon a showing that funds available or payable for the benefit of  
21 the protectee by any federal agency are being applied for the benefit of the  
22 protectee, or that such federal agency has refused to recognize the authority of  
23 the conservator to administer such funds, the court may waive, by order, the duty  
24 of the conservator to account therefor.

25       3. **In managing, investing, and distributing the estate of a**  
26 **protectee, the conservator shall:**

27       **(1) Ascertain the income, assets, and liabilities of the protectee;**  
28 **and**

29       **(2) Use reasonable efforts to:**

30       **(a) Ascertain the income, assets, and liabilities of the protectee;**

31       **(b) Ascertain the needs and preferences of the protectee;**

32       **(c) Coordinate with the guardian and consult with others close**  
33 **to the protectee;**

34       **(d) Prepare a plan for the management of the protectee's income**  
35 **and assets; and**

36       **(e) Provide oversight to any income and assets of the protectee**  
37 **under the control of the protectee.**

38       4. The court has full authority under the rules of civil procedure to enjoin  
39 any person from interfering with the right of the conservator to possession of the  
40 assets of the protectee, including benefits payable from any source.

41       [4.] 5. The conservator of the estate shall prosecute and defend all  
42 actions instituted in behalf of or against the protectee; collect all debts due or  
43 becoming due to the protectee, and give acquittances and discharges therefor, and



44 adjust, settle and pay all claims due or becoming due from the protectee so far as  
45 [his or her] **the protectee's** estate and effects will extend, except as provided in  
46 sections 507.150 and 507.188.

47 [5.] **6.** A conservator of the estate has power, without authorization or  
48 approval of the court, to:

49 (1) Settle or compromise a claim against the protectee or the estate  
50 agreeing to pay or paying not more than [one] **five** thousand dollars;

51 (2) Settle, abandon or compromise a claim in favor of the estate which  
52 does not exceed [one] **five** thousand dollars;

53 (3) **Receive additions to the estate;**

54 (4) Sell, or agree to sell, chattels and choses in action reasonably worth  
55 not more than [one] **five** thousand dollars for cash or upon terms involving a  
56 reasonable extension of credit;

57 [(4)] **(5)** Exchange, or agree to exchange, chattels and choses in action for  
58 other such property of equivalent value, not in excess of [one] **five** thousand  
59 dollars;

60 [(5)] **(6)** Insure or contract for insurance of property of the estate against  
61 fire, theft and other hazards;

62 [(6)] **(7)** Insure or contract for insurance protecting the protectee against  
63 any liability likely to be incurred, including medical and hospital expenses, and  
64 protecting the conservator against liability to third parties arising from acts or  
65 omissions connected with possession or management of the estate;

66 [(7)] **(8)** Contract for needed repairs and maintenance of property of the  
67 estate;

68 [(8)] **(9)** Lease land and buildings for terms not exceeding one year,  
69 reserving reasonable rent, and renew any such lease for a like term;

70 [(9)] **(10)** Vote corporate stock in person or by general or limited proxy;

71 [(10)] **(11)** Contract for the provision of board, lodging, education,  
72 medical care, or necessities of the protectee for periods not exceeding one year,  
73 and renew any such contract for a like period;

74 **(12) Commence a proceeding, including an administrative**  
75 **proceeding, or take other appropriate action to compel a person to**  
76 **support the protectee or to pay moneys for the benefit of the protectee;**

77 **(13) Deposit funds in a bank, including a bank operated by the**  
78 **conservator;**

79 **(14) Hold a security in the name of a nominee or in other form**

80 without disclosure of the conservatorship so title to the security may  
81 pass by delivery, but the conservator is liable for any act of the  
82 nominee in connection with the stock so held;

83 (15) Pay taxes, assessments, and other expenses incurred in the  
84 collection, care, administration, and protection of the estate;

85 (16) Pay any sum distributable to a protectee or the protectee's  
86 dependent without liability to the conservator, by paying the sum to  
87 the distributee or by paying the sum for the use of the distributee  
88 either to the distributee's guardian or, if none, to a relative or other  
89 person with custody of the distributee;

90 (17) Prosecute or defend actions, claims, or proceedings in any  
91 jurisdiction for the protection of estate assets and of the conservator  
92 in the performance of the conservator's duties;

93 (18) Execute and deliver all instruments which will accomplish  
94 or facilitate the exercise of the powers vested in the conservator; and

95 [(11)] (19) On or after August 28, 2009, invest the estate in accordance  
96 with the provisions of section 475.190.

97 [6.] 7. If, in exercising any power conferred by subsection [5] 6 of this  
98 section, a conservator breaches any of the duties enumerated in subsection 1 of  
99 this section, the conservator may be surcharged for losses to the estate caused by  
100 the breach but persons who dealt with the conservator in good faith, without  
101 knowledge of or reason to suspect the breach of duty, may enforce and retain the  
102 benefits of any transaction with the conservator which the conservator has power  
103 under subsection [5] 6 of this section to conduct.

475.145. When a conservator of the estate has been appointed, an  
2 inventory and appraisal of the estate of the protectee shall be made in the  
3 same manner and within the same time and subject to the same requirements as  
4 are provided in sections 473.233 to 473.243 for the inventory and appraisal  
5 of a decedent's estate. The inventory shall include property as to which the  
6 protectee is a joint tenant or tenant by the entirety and all policies of life  
7 insurance owned by the protectee, whether or not payable to a named beneficiary,  
8 together with a statement of all income and benefits to which the protectee is or  
9 will be entitled to receive. **The inventory shall also disclose any**  
10 **nonprobate transferees designated to receive nonprobate transfers**  
11 **after the protectee's death.**

475.230. 1. Sales of real estate of protectees shall be conducted in the

2 same manner and the same proceedings shall be had with reference thereto as in  
3 cases of sale of real estate of decedents for payment of claims[, except that there  
4 shall be no notice to parties in interest before the making of the order].

5 **2. Unless waived by the court for cause, the protectee is entitled**  
6 **to ten days prior notice of a required court hearing on the petition for**  
7 **the sale of the protectee's real or tangible personal property. The**  
8 **protectee is not entitled to notice of a hearing on the petition for the**  
9 **sale of the protectee's intangible personal property.**

475.270. 1. Every conservator shall file with the court, **annually or**  
2 **more often if required by the court**, a settlement of [his] **the conservator's**  
3 accounts [once a year or oftener] if required by the court **detailing the current**  
4 **status of the estate under conservatorship.** The annual settlement shall be  
5 made at a time fixed by the court within [thirty] **sixty** days after the anniversary  
6 of the appointment of such conservator [and on the corresponding date of each  
7 year thereafter until the final settlement].

8 2. Each settlement of a conservator shall conform to the requirements of  
9 section 473.543 as to settlements in decedents' estates.

10 3. If the conservatorship estate meets the indigency standards prescribed  
11 by chapter 208, **are under the control of another fiduciary, including a**  
12 **Social Security representative payee or veterans affairs fiduciary**, or if  
13 the assets of a protectee have been placed in restricted custody, the court may  
14 waive the requirements [of subsection 2 of this] **that the settlement comply**  
15 **with the requirement of** section **473.453** and require the conservator to report,  
16 in a form prescribed by the court, the following information:

17 (1) A statement of any money or property received during the preceding  
18 year including the date, source and amount or value;

19 (2) A statement of disbursements made and the purpose thereof;

20 (3) The total amount of money or property on hand;

21 (4) The name and address of any depositary where estate funds are  
22 deposited and the amounts thereof.

23 **4. In addition to the information required under subsection 3 of**  
24 **this section, the settlement shall include:**

25 **(1) The present address of the protectee;**

26 **(2) The present address of the conservator;**

27 **(3) The services being provided to the protected person;**

28 **(4) The significant actions taken by the conservator during the**

29 reporting period;

30 (5) An opinion of the conservator as to the continued need for  
31 conservatorship and any recommended changes in the scope of the  
32 conservatorship;

33 (6) The compensation requested and the reasonable and  
34 necessary expenses incurred by the conservator;

35 (7) A plan for the coming year, including short-term or long-term  
36 goals, and the extent to which the protectee has participated in the  
37 development of the plan; and

38 (8) Any other information requested by the court or useful in the  
39 opinion of the conservator.

475.276. 1. If the assets of the protectee are under the control of  
2 another fiduciary, including a Social Security representative payee or  
3 veterans affairs fiduciary, or if the value of the assets of the estate of a  
4 protectee does not exceed the value prescribed by chapter 208 for [welfare]  
5 public benefit eligibility and whether or not such protectee receives other [old  
6 age, disability or dependency] public benefits from the federal government or the  
7 state of Missouri, the court may, upon satisfactory proof that adequate provision  
8 has been made for the care and maintenance of the protectee, waive or modify the  
9 requirements of sections 475.270 and 475.275.

10 2. If the estate of a protectee consists solely of cash or its equivalent  
11 which has been placed in restricted custody so that no withdrawals may be made  
12 except on order of the court as prescribed by section 473.160, the court may waive  
13 or modify the requirements of sections 475.270 and 475.275.

14 3. Any order entered pursuant to subsection 1 or 2 of this section shall  
15 specify the events or circumstances which shall cause the same to terminate. The  
16 order may also provide that the estate shall not be liable for court costs or other  
17 expenses of administration so long as the order remains in effect and may direct  
18 any state agency or require the conservator of the estate to request a federal  
19 agency to pay benefits directly to the custodial facility in which the protectee  
20 resides.

475.290. 1. Conservators shall make final settlement of their  
2 conservatorship at a time fixed by the court, either by rule or otherwise, within  
3 [sixty] ninety days after termination of their authority. For the purpose of  
4 settlement, the conservator shall make a just and true exhibit of the account  
5 between himself or herself and [his] the protectee, and file the same in the

6 court having jurisdiction thereof, and cause a copy of the account, together with  
7 a written notice stating the day on which and the court in which [he] **the**  
8 **conservator** will make settlement, to be delivered to [his] **the** protectee or, in  
9 case of revocation or resignation, to the succeeding conservator or in case of death  
10 of [his] **the** protectee to [his] **the** executor or administrator **of the protectee's**  
11 **estate** or other person designated by the court, at least twenty days before the  
12 date set for settlement.

13 2. If, for any cause, a copy of the account and written notice cannot be  
14 delivered to the protectee or other person entitled thereto, the court may order  
15 notice of the filing of the account, and of the time and place at which final  
16 settlement is to be made, to be given by publication once a week for four weeks  
17 next before the date set for settlement in accordance with section 472.100.

18 3. At the time specified in the notice, the court, upon satisfactory proof of  
19 the delivery of a copy of the account and written notice of the settlement to the  
20 protectee or person entitled thereto, or [his] **the protectee's** written waiver  
21 thereof, or in case the court has ordered notice to be given by publication, then  
22 upon proof of compliance with such order, shall proceed to examine the accounts  
23 of the conservator, correct all errors therein, if any there be, and make a final  
24 settlement with the conservator; or the court may, for good cause, continue the  
25 settlement and proceed therein at any time agreed upon by the parties or fixed  
26 by the court.

475.322. [When a protectee:

2 (1) Purchased United States bonds in co-ownership form, payable to  
3 himself and another or the survivor, or in beneficiary form, payable to himself  
4 during his lifetime and to another upon his death;

5 (2) Deposited funds in a joint account in the name of himself and any one  
6 or more other persons, and in form to be paid to any one or more of them, or the  
7 survivor or survivors of them, or in an account payable to himself during his  
8 lifetime and upon his death to another, or in an account in his own name upon  
9 revocable trust for another; or

10 (3) Owns real or personal property in joint tenancy or tenancy by the  
11 entirety;

12 the conservator may, with the authorization or approval of the court, redeem such  
13 bonds, withdraw funds from such account, and sell, exchange or mortgage the  
14 protectee's estate or interest in such joint or entirety property, to the extent that  
15 funds are needed to pay expenses under section 475.125 or claims under section

16 475.211. With respect to property held in joint tenancy, the provisions of sections  
17 362.470 and 369.174 shall be applicable and with respect to any property held in  
18 tenancy by the entirety, the provisions of section 442.035 shall be applicable and  
19 the conservator, with or without court approval, shall not have authority to  
20 redeem, withdraw, sell, exchange or mortgage the protectee's estate or interest  
21 in such entirety property without the approval of the other tenant by the  
22 entirety. The court shall not authorize or approve such redemption, withdrawal,  
23 sale, exchange or mortgage as to the share contributed to the purchase of such  
24 bonds, the making of deposits in such an account, or the acquisition of such joint  
25 or entirety property by the co-owner or beneficiary of the bonds, a joint depositor,  
26 a person to whom an account is payable on death, a beneficiary of a revocable  
27 trust of an account, or a cotenant of property.] **1. Except as provided for**  
28 **under section 475.094, the conservator shall administer a protectee's**  
29 **estate by maintaining the protectee's estate plan as evidenced by the**  
30 **protectee's will, trust, real and personal property assets held jointly**  
31 **with right of survivorship, and assets titled in protectee's name with**  
32 **nonprobate transfers under sections 461.003 to 461.081 and other assets**  
33 **with beneficiary designations including, but not limited to, those in**  
34 **bank or credit union accounts, investment accounts, motor vehicles,**  
35 **insurance policies and annuities, individual retirement accounts, and**  
36 **deferred compensation accounts. A conservator may examine the will**  
37 **and any other donative, nominative, or other appointive instrument of**  
38 **the protectee.**

39 **2. To the extent that the conservator shall pay expenses of the**  
40 **protectee or the protectee's dependents under section 475.125 or claims**  
41 **under sections 475.205 to 475.213 or section 475.260 because the**  
42 **protectee's estate does not have sufficient assets in the protectee's or**  
43 **estate's name solely, the conservator may apply for an order of the**  
44 **court authorizing the redemption or liquidation of the protectee's joint**  
45 **assets or assets titled with nonprobate transfers in the following order**  
46 **of priority only as necessary to pay expenses and claims of the**  
47 **protectee's estate at the time of application:**

48 **(1) Assets owned solely by the unmarried protectee or the**  
49 **protectee's estate with beneficiary designations under the nonprobate**  
50 **transfer law as provided for under sections 461.003 to 461.081, banking**  
51 **law, and other property with beneficiary designations, including**  
52 **insurance policies and annuities, individual retirement accounts,**

53 deferred compensation and other contributory pension accounts, and  
54 any other assets with beneficiary designations;

55 (2) The proportional interest in some or all of the jointly-held  
56 assets upon notice and after opportunity to be heard by the other joint  
57 owners.

475.341. A sale, encumbrance, or other transaction involving the  
2 management of the conservatorship entered into by the conservator for  
3 the conservator's own personal gain or which is otherwise affected by  
4 a conflict between the conservator's fiduciary and personal interests is  
5 voidable unless the transaction:

6 (1) Was approved by the court;

7 (2) Involves a contract entered into or claim acquired by the  
8 conservator before the person became or contemplated becoming  
9 conservator;

10 (3) Involves a deposit of estate moneys to a bank operated by the  
11 conservator; or

12 (4) Involves an advance by the conservator of moneys for the  
13 protection of the estate.

475.342. The conservator shall:

2 (1) Keep estate property separate from the conservator's own  
3 property; and

4 (2) Cause the estate's property to be designated so that any  
5 ownership interest of the estate, to the extent feasible, appears in  
6 records maintained by a financial institution or party other than the  
7 conservator or protectee.

475.343. 1. A guardian of an adult or minor ward is not obligated  
2 by virtue of such guardian's appointment to use the guardian's own  
3 financial resources for the support of the ward. If the ward's estate and  
4 available public benefits are inadequate for the proper care of the  
5 ward, the guardian or conservator may apply to the county commission  
6 under section 475.370.

7 2. No guardian of the person shall have authority to seek  
8 admission of the guardian's ward to a mental health facility or an  
9 intellectual disability facility for more than thirty days for any purpose  
10 without court order except as otherwise provided by law.

11 3. Only the director or chief administrative officer of a social  
12 service agency serving as guardian of an incapacitated person, or such

13 person's designee, is legally authorized to act on behalf of the ward.

14 4. A social service agency serving as guardian of an  
15 incapacitated person shall notify the court within fifteen days after any  
16 change in the identity of the professional individual who has primary  
17 responsibility for providing guardianship services to the incapacitated  
18 person.

19 5. Any social service agency serving as guardian shall not  
20 provide other services to the ward.

475.344. 1. With the approval of the court, a conservator may  
2 delegate to an agent duties and powers that are prudent under the  
3 circumstances. The conservator shall exercise reasonable care, skill,  
4 and caution in:

- 5 (1) Selecting an agent;
- 6 (2) Establishing the scope and terms of the delegation, consistent  
7 with the purposes and terms of the conservatorship; and
- 8 (3) Periodically reviewing the agent's actions in order to monitor  
9 the agent's performance and compliance with the terms of the  
10 delegation.

11 2. In performing a delegated function, an agent owes a duty to  
12 the protectee to exercise reasonable care to comply with the terms of  
13 the delegation.

14 3. By accepting a delegation of powers or duties from the  
15 conservator of a conservatorship that is subject to the law of this state,  
16 an agent submits to the jurisdiction of the courts of this state.

475.355. 1. If, upon the filing of a petition for the adjudication of  
2 incapacity or disability it appears that the respondent, by reason of a mental  
3 disorder or intellectual disability or developmental disability, presents a  
4 likelihood of serious physical harm to [himself] **the respondent** or others, [he]  
5 **the respondent** may be detained in accordance with the provisions of chapter  
6 632 if suffering from a mental disorder, or chapter 633 if the [person]  
7 **respondent** has an intellectual or developmental disability, pending a hearing  
8 on the petition for adjudication.

9 2. As used in this section, the terms "mental disorder" and "intellectual  
10 disability" or "**developmental disability**" shall be as defined in chapter 630  
11 and the term "likelihood of serious physical harm to [himself] **the respondent**  
12 or others" shall be as the term "likelihood of serious harm" is defined in chapter



13 632.

14 3. The procedure for obtaining an order of temporary emergency detention  
15 shall be as prescribed by chapter 632, relating to prehearing detention of  
16 mentally disordered persons.

**475.357. The probate divisions of the courts of this state have  
2 jurisdiction over issues of the adjudication of incapacity, partial  
3 incapacity, disability, or partial disability and the appointment of a  
4 guardian, limited guardian, conservator, or limited conservator of an  
5 adult eighteen years of age or older or over whose parents have a  
6 pending matter under chapter 210 or chapter 452 for child custody or  
7 visitation of that child. The court that has jurisdiction under chapter  
8 210 or chapter 452 shall have the authority to enter orders only as to  
9 child support after such adjudication and appointment of a guardian  
10 by the probate division.**

**475.359. 1. A guardian or limited guardian of an incapacitated  
2 person or partially incapacitated person shall act in the best interest  
3 of the adult ward taking into consideration the ward's communications  
4 as to the adult ward's goals, needs, and preferences. A limited guardian  
5 of a partially incapacitated person shall have the powers and duties  
6 enumerated by the court in the adjudication order or any later  
7 modifying order.**

**8 2. Except as otherwise limited by the court, a guardian shall  
9 make decisions regarding the adult ward's support, care, education,  
10 health, and welfare. A guardian shall exercise authority only as  
11 necessitated by the adult ward's limitations and, to the extent possible,  
12 shall encourage the ward to participate in decisions, act on the adult  
13 ward's own behalf, and develop or regain the capacity to manage the  
14 ward's personal affairs.**

**15 3. Before making decisions on behalf of the adult ward, the  
16 guardian shall, to the extent possible, ascertain the adult ward's goals,  
17 needs, and preferences as follows:**

**18 (1) First, the guardian shall ask the adult ward his or her goals,  
19 needs, and preferences;**

**20 (2) Second, if the ward has difficulty expressing his or her goals,  
21 needs, and preferences, the guardian shall do everything possible to  
22 help the ward express his or her goals, needs, and preferences; and**

**23 (3) Third, if the adult ward, even with assistance, cannot express**

24 his or her goals and preferences, the guardian shall seek input from  
25 others familiar with the adult ward to determine what the adult ward  
26 would have wanted.

27 4. In making decisions on behalf of the ward, the guardian shall  
28 consider the ascertained goals, needs, and preferences of the ward to  
29 the extent possible. The guardian shall make a decision in accordance  
30 with the ward's goals, needs, and preferences unless the guardian  
31 determines, after considering all of the options and their potential risks  
32 and benefits, that such a decision would not be in the ward's best  
33 interest. If the ward's goals, needs, and preferences cannot be  
34 ascertained, the guardian shall make a decision based solely on what  
35 a reasonable person would do after considering all of the options and  
36 their potential risks and benefits.

37 5. The general powers and duties of a guardian of an  
38 incapacitated person shall be to take charge of the person of the ward  
39 and to provide for the ward's care, treatment, habilitation, education,  
40 support and maintenance; and the powers and duties shall include, but  
41 not be limited to, the following:

42 (1) Maintain sufficient contact, including at least one in-person  
43 annual visit, with the ward to know of the ward's capacities,  
44 limitations, needs, opportunities, and physical and mental health;

45 (2) File a report with the court within ninety days of the in-  
46 person annual visit, required under subdivision (1) of this subsection,  
47 indicating that the guardian has met with the ward and describing how  
48 the guardian will meet the needs of the ward and address the ward's  
49 preferences. Such report may include a plan from a service provider;

50 (3) Assure that the ward resides in the best and least restrictive  
51 setting reasonably available. The guardian shall give priority to home  
52 or community-based settings if not inconsistent with the ward's goals  
53 and preferences;

54 (4) Assure that the ward receives medical care and other services  
55 that are needed;

56 (5) Promote and protect the care, comfort, safety, health, and  
57 welfare of the ward;

58 (6) Provide required consents on behalf of the ward;

59 (7) Exercise all powers and discharge all duties necessary or  
60 proper to implement the provisions of this section;

61           **(8) Make a good faith effort to cooperate with other fiduciaries**  
62 **for the ward as applicable including, but not limited to, any other**  
63 **guardian, conservator, agent under a power of attorney, trustee,**  
64 **veterans affairs fiduciary, or representative payee; and**

65           **(9) Notify the court if, in the opinion of the guardian, the ward's**  
66 **condition has changed to the extent that the ward is capable of**  
67 **exercising rights previously removed.**

**475.361. 1. The provisions of section 475.078 notwithstanding, in**  
2 **every guardianship, the ward has the right to:**

3           **(1) A guardian who acts in the best interests of the ward;**

4           **(2) A guardian who is reasonably accessible to the ward;**

5           **(3) Communicate freely and privately with family, friends, and**  
6 **other persons other than the guardian; except that, such right may be**  
7 **limited by the guardian for good cause but only as necessary to ensure**  
8 **the ward's condition, safety, habilitation, or sound therapeutic**  
9 **treatment;**

10          **(4) Individually or through the ward's representative or legal**  
11 **counsel, bring an action relating to the guardianship, including the**  
12 **right to file a petition alleging that the ward is being unjustly denied**  
13 **a right or privilege granted by this chapter, including the right to bring**  
14 **an action to modify or terminate the guardianship under the provisions**  
15 **of section 475.083;**

16          **(5) The least restrictive form of guardianship assistance, taking**  
17 **into consideration the ward's functional limitations, personal needs,**  
18 **and preferences;**

19          **(6) Be restored to capacity at the earliest possible time;**

20          **(7) Receive information from the court that describes the ward's**  
21 **rights, including rights the ward may seek by petitioning the court; and**

22          **(8) Participate in any health care decision making process.**

23          **2. An adult ward may petition the court to grant the ward the**  
24 **right to:**

25          **(1) Contract to marry or to petition for dissolution of marriage;**

26          **(2) Make, modify, or terminate other contracts or ratify contracts**  
27 **made by the ward;**

28          **(3) Consent to medical treatment;**

29          **(4) Establish a residence or dwelling place;**

30          **(5) Change domicile;**

31           **(6) Bring or defend any action at law or equity, except an action**  
32 **relating to the guardianship; or**

33           **(7) Drive a motor vehicle if the ward can pass the required**  
34 **driving test.**

35           **3. The appointment of a guardian does not revoke the powers of**  
36 **an agent who was previously appointed by the ward to act as an agent**  
37 **under a durable power of attorney for health care, unless the court so**  
38 **orders.**

39           **4. The appointment of a guardian is not a determination that the**  
40 **ward lacks testamentary capacity.**

Unofficial

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