

CONFERENCE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 806

AN ACT

To repeal sections 473.397, 473.398, 473.730, 473.770, 473.771, 475.010, 475.016, 475.050, 475.060, 475.061, 475.062, 475.070, 475.075, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.290, 475.320, 475.355, and 630.005, RSMo, and to enact in lieu thereof thirty-six new sections relating to guardianship proceedings.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 473.397, 473.398, 473.730, 473.770,
 2 473.771, 475.010, 475.016, 475.050, 475.060, 475.061, 475.062,
 3 475.070, 475.075, 475.078, 475.079, 475.080, 475.082, 475.083,
 4 475.094, 475.120, 475.125, 475.130, 475.145, 475.230, 475.270,
 5 475.276, 475.290, 475.320, 475.355, and 630.005, RSMo, are
 6 repealed and thirty-six new sections enacted in lieu thereof, to
 7 be known as sections 473.397, 473.398, 473.730, 473.770, 473.771,
 8 475.010, 475.016, 475.050, 475.060, 475.061, 475.062, 475.070,
 9 475.075, 475.078, 475.079, 475.080, 475.082, 475.083, 475.084,
 10 475.094, 475.120, 475.125, 475.130, 475.145, 475.230, 475.270,
 11 475.276, 475.290, 475.320, 475.341, 475.342, 475.343, 475.355,
 12 475.357, 475.361, and 630.005, to read as follows:
 13 473.397. All claims and statutory allowances against the

estate of a decedent shall be divided into the following classes:

(1) Costs;

(2) Expenses of administration;

(3) Exempt property, family and homestead allowances;

(4) Funeral expenses;

(5) Debts and taxes due the United States of America;

(6) Debts for medical assistance owed to the state of Missouri under section 473.398;

(7) Expenses of the last sickness, wages of servants, claims for medicine and medical attendance during the last sickness, and the reasonable cost of a tombstone;

[(7)] (8) Debts and taxes due the state of Missouri, any county, or any political subdivision of the state of Missouri;

[(8)] (9) Judgments rendered against the decedent in his lifetime and judgments rendered upon attachments levied upon property of decedent during his lifetime;

[(9)] (10) All other claims not barred by section 473.360.

473.398. 1. Upon the death of a person, who has been a participant of aid, assistance, care, services, or who has had moneys expended on his behalf by the department of health and senior services, department of social services, or the department of mental health, or by a county commission, the total amount paid to the decedent or expended upon his behalf after January 1, 1978, shall be a debt due the state or county, as the case may be, from the estate of the decedent. The debt shall be collected as provided by the probate code of Missouri, chapters 472, 473, 474 and 475.

2. Procedures for the allowance of such claims shall be in

1 accordance with this chapter, and such claims shall be allowed as
2 a claim of [the seventh] either the sixth or eighth class under
3 [subdivision (7)] subdivisions (6) and (8) of section 473.397.

4 3. Such claim shall not be filed or allowed if it is
5 determined that:

6 (1) The cost of collection will exceed the amount of the
7 claim;

8 (2) The collection of the claim will adversely affect the
9 need of the surviving spouse or dependents of the decedent to
10 reasonable care and support from the estate.

11 4. Claims consisting of moneys paid on the behalf of a
12 participant as defined in 42 U.S.C. 1396 shall be allowed, except
13 as provided in subsection 3 of this section, upon the showing by
14 the claimant of proof of moneys expended. Such proof may include
15 but is not limited to [the following items which are deemed to be
16 competent and substantial evidence of payment:

17 (1)] computerized records maintained by any governmental
18 entity as described in subsection 1 of this section of a request
19 for payment for services rendered to the participant[; and

20 (2) The certified statement of the treasurer or his
21 designee that the payment was made], which shall be deemed to be
22 competent and substantial evidence of payment.

23 5. The provisions of this section shall not apply to any
24 claims, adjustments or recoveries specifically prohibited by
25 federal statutes or regulations duly promulgated thereunder.
26 Further, the federal government shall receive from the amount
27 recovered any portion to which it is entitled.

28 6. Before any probate estate may be closed under this

1 chapter, with respect to a decedent who, at the time of death,
2 was enrolled in MO HealthNet, the personal representative of the
3 estate shall file with the clerk of the court exercising probate
4 jurisdiction a release from the MO HealthNet division evidencing
5 payment of all MO HealthNet benefits, premiums, or other such
6 costs due from the estate under law, unless waived by the MO
7 HealthNet division.

8 473.730. 1. Every county in this state, except the City of
9 St. Louis, shall elect a public administrator at the general
10 election in the year 1880, and every four years thereafter, who
11 shall be ex officio public guardian and conservator in and for
12 the public administrator's county. A candidate for public
13 administrator shall be at least twenty-one years of age and a
14 resident of the state of Missouri and the county in which he or
15 she is a candidate for at least one year prior to the date of the
16 general election for such office. The candidate shall also be a
17 registered voter and shall be current in the payment of all
18 personal and business taxes. Each candidate for public
19 administrator shall provide to the election authority a copy of a
20 signed affidavit from a surety company, indicating that the
21 candidate meets the bond requirements for the office of public
22 administrator under this section. The secretary of state shall
23 notify each election authority of the requirements of this
24 section. The secretary of state will provide the necessary forms
25 to assure compliance of the requirements of this section.

26 2. Before entering on the duties of the public
27 administrator's office, the public administrator shall take the
28 oath required by the constitution, and enter into bond to the

1 state of Missouri in a sum not less than ten thousand dollars,
2 with one or more securities, approved by the court and
3 conditioned that the public administrator will faithfully
4 discharge all the duties of the public administrator's office,
5 which bond shall be given and oath of office taken on or before
6 the first day of January following the public administrator's
7 election, and it shall be the duty of the judge of the court to
8 require the public administrator to make a statement annually,
9 under oath, of the amount of property in the public
10 administrator's hands or under the public administrator's control
11 as such administrator, for the purpose of ascertaining the amount
12 of bond necessary to secure such property; and such court may
13 from time to time, as occasion shall require, demand additional
14 security of such administrator, and, in default of giving the
15 same within twenty days after such demand, may remove the
16 administrator and appoint another.

17 3. The public administrator in all counties, in the
18 performance of the duties required by chapters 473, 474, and 475,
19 is a public officer. The duties specified by ~~[section]~~ sections
20 475.120 and 475.343 are discretionary. The county shall defend
21 and indemnify the public administrator against any alleged breach
22 of duty, provided that any such alleged breach of duty arose out
23 of an act or omission occurring within the scope of duty or
24 employment.

25 4. After January 1, 2001, all salaried public
26 administrators shall be considered county officials for purposes
27 of section 50.333, subject to the minimum salary requirements set
28 forth in section 473.742.

1 5. The public administrator for the City of St. Louis shall
2 be appointed by a majority of the circuit judges and associate
3 circuit judges of the twenty-second judicial circuit, en banc.
4 Such public administrator shall meet the same qualifications and
5 requirements specified in subsection 1 of this section for
6 elected public administrators. The elected public administrator
7 holding office on August 28, 2013, shall continue to hold such
8 office for the remainder of his or her term.

9 473.770. 1. Whenever, in the judgment of any public
10 administrator in any county of the first class, it is necessary
11 for the proper and efficient conduct of the business of the
12 public administrator's office that the public administrator
13 appoint any deputies to assist the public administrator in the
14 performance of his or her official duties as public administrator
15 or as executor, administrator, personal representative, guardian,
16 or conservator in any estates wherein the public administrator
17 has been specially appointed, the public administrator may
18 appoint one or more deputies to assist him or her in the
19 performance of his or her duties as public administrator and as
20 executor, administrator, personal representative, guardian, or
21 conservator in the estates wherein the public administrator has
22 been specially appointed. The appointment shall be in writing
23 and shall be filed with the court, and, upon the filing, the
24 court shall issue under its seal a certificate of the appointment
25 for each deputy, stating that the appointee is vested with the
26 powers and duties conferred by this section. The certificate
27 shall be valid for one year from date, unless terminated prior
28 thereto, and shall be renewed from year to year as long as the

1 appointment remains in force, and may be taken as evidence of the
2 authority of the deputy. The appointment and authority of any
3 deputy may at any time be terminated by the public administrator
4 by notice of the termination filed in the court, and upon
5 termination the deputy shall surrender the public administrator's
6 certificate of appointment.

7 2. In all counties of the first classification not having a
8 charter form of government and containing a portion of a city
9 having a population of three hundred thousand or more
10 inhabitants, the compensation of each such deputy shall be set by
11 the public administrator, with the approval of the governing body
12 of the county, and shall be paid in equal monthly installments
13 out of the county treasury. In all other counties of the first
14 classification the compensation of each such deputy shall be
15 prescribed and paid by the public administrator out of the fees
16 to which he or she is legally entitled, and no part of such
17 compensation shall be paid out of any public funds or assessed as
18 costs or allowed in any estate.

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

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

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

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

6 (4) Entering the safe deposit box of any person or decedent
7 whose estate is in the charge of the public administrator and any
8 safe deposit box maintained by the public administrator for the
9 safekeeping of assets in his or her charge, as a deputy of the
10 public administrator, pursuant to general authorization given by
11 the public administrator to the bank or safe deposit company in
12 charge of any such safe deposit box, as long as such
13 deputy-authorization remains in effect, and withdrawing therefrom
14 and depositing therein such assets as may be determined by the
15 public administrator. The bank or safe deposit company shall not
16 be charged with notice or knowledge or any limitation of
17 authority of the authorized deputy, unless specially notified in
18 writing thereof by the public administrator, and may allow the
19 deputy access to the safe deposit box, in the absence of notice,
20 to the full extent allowable to the public administrator in
21 person.

22 4. The enumeration of the foregoing powers shall not
23 operate as an exclusion of any powers not specifically conferred.
24 No authorized deputy shall exercise any power, other than as
25 prescribed in this section, which shall require the exercise of a
26 discretion enjoined by law to be exercised personally by the
27 executor, administrator, personal representative, guardian, or
28 conservator in charge of the estate to which the discretionary

1 power refers.

2 5. Notwithstanding the provisions of subsections 3 and 4 of
3 this section to the contrary, a public administrator in a county
4 of the first classification having a charter form of government
5 and containing all or part of a city with a population of at
6 least three hundred thousand inhabitants, and a public
7 administrator in any county of the first classification may
8 delegate to any deputy appointed by the public administrator any
9 of the duties of the public administrator enumerated in section
10 473.743, and sections 475.120 [and], 475.130, and 475.343. Such
11 public administrator may also delegate to a deputy who is a
12 licensed attorney the authority to execute inventories,
13 settlements, surety bonds, pleadings and other documents filed in
14 any court in the name of the public administrator, and the same
15 shall have the force and effect as if executed by the public
16 administrator.

17 473.771. 1. Whenever, in the judgment of any public
18 administrator in any county which is not a county of the first
19 classification, it is necessary for the proper and efficient
20 conduct of the business of his or her office that the public
21 administrator appoint a deputy to assist the public administrator
22 in the performance of his or her official duties as public
23 administrator or as executor, administrator, personal
24 representative, guardian, or conservator in any estates wherein
25 the public administrator has been specially appointed, the public
26 administrator may appoint a deputy to assist him or her in the
27 performance of his or her duties as public administrator and as
28 executor, administrator, personal representative, guardian, or

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

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

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

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

27 (2) Depositing all moneys, checks, and other instruments
28 for the payment of money in the bank accounts maintained by the

1 public administrator for the deposit of such funds;

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

7 (4) Entering the safe deposit box of any person or decedent
8 whose estate is in the charge of the public administrator and any
9 safe deposit box maintained by the public administrator for the
10 safekeeping of assets in his or her charge, as a deputy of the
11 public administrator, pursuant to general authorization given by
12 the public administrator to the bank or safe deposit company in
13 charge of any such safe deposit box, as long as such
14 authorization as a deputy remains in effect, and withdrawing
15 therefrom and depositing therein such assets as may be determined
16 by the public administrator. The bank or safe deposit company
17 shall not be charged with notice or knowledge or any limitation
18 of authority of the authorized deputy, unless specially notified
19 in writing thereof by the public administrator, and may allow the
20 deputy access to the safe deposit box, in the absence of notice,
21 to the full extent allowable to the public administrator in
22 person.

23 4. The enumeration of the foregoing powers shall not
24 operate as an exclusion of any powers not specifically conferred.
25 No authorized deputy shall exercise any power, other than as
26 prescribed in this section, which shall require the exercise of a
27 discretion enjoined by law to be exercised personally by the
28 executor, administrator, personal representative, guardian, or

1 conservator in charge of the estate to which the discretionary
2 power refers.

3 5. Notwithstanding the provisions of subsections 3 and 4 of
4 this section to the contrary, a public administrator in a county
5 which is not a county of the first classification may delegate to
6 any deputy appointed by the public administrator any of the
7 duties of the public administrator enumerated in section 473.743,
8 and sections 475.120 [and], 475.130, and 475.343. Such public
9 administrator may also delegate to a deputy who is a licensed
10 attorney the authority to execute inventories, settlements,
11 surety bonds, pleadings, and other documents filed in any court
12 in the name of the public administrator, and the same shall have
13 the force and effect as if executed by the public administrator.

14 475.010. When used in this chapter, unless otherwise
15 apparent from the context, the following terms mean:

16 (1) "Adult", a person who has reached the age of eighteen
17 years;

18 (2) "Claims", liabilities of the protectee arising in
19 contract, in tort or otherwise, before or after the appointment
20 of a conservator, and liabilities of the estate which arise at or
21 after the adjudication of disability or after the appointment of
22 a conservator of the estate, including expenses of the
23 adjudication and of administration. The term does not include
24 demands or disputes regarding title of the protectee to specific
25 assets alleged to be included in the estate;

26 (3) "Conservator", one appointed by a court to have the
27 care and custody of the estate of a minor or a disabled person.
28 A "limited conservator" is one whose duties or powers are

1 limited. The term "conservator", as used in this chapter,
2 includes limited conservator unless otherwise specified or
3 apparent from the context;

4 (4) "Conservator ad litem", one appointed by the court in
5 which particular litigation is pending regarding the management
6 of financial resources on behalf of a minor, a disabled person,
7 or an unborn person in that particular proceeding or as otherwise
8 specified in this chapter;

9 (5) "Custodial parent", the parent of a minor who has been
10 awarded sole or joint physical custody of such minor, or the
11 parent of an incapacitated person who has been appointed as
12 guardian of such person, by an order or judgment of a court of
13 this state or of another state or territory of the United States,
14 or if there is no such order or judgment, the parent with whom
15 the minor or incapacitated person primarily resides;

16 [(5)] (6) "Disabled" or "disabled person", one who is:

17 (a) Unable by reason of any physical [or], mental, or
18 cognitive condition to receive and evaluate information or to
19 communicate decisions to such an extent that the person lacks
20 ability to manage [his] the person's financial resources; or

21 (b) The term "disabled" or "disabled person", as used in
22 this chapter includes the terms partially disabled or partially
23 disabled person unless otherwise specified or apparent from the
24 context;

25 [(6)] (7) "Eligible person" or "qualified person", a
26 natural person, social service agency, corporation or national or
27 state banking organization qualified to act as guardian of the
28 person or conservator of the estate pursuant to the provisions of

1 section 475.055;

2 [(7)] (8) "Guardian", one appointed by a court to have the
3 care and custody of the person of a minor or of an incapacitated
4 person. A "limited guardian" is one whose duties or powers are
5 limited. A "standby guardian" is one approved by the court to
6 temporarily assume the duties of guardian of a minor or of an
7 incapacitated person under section 475.046. The term "guardian",
8 as used in this chapter, includes limited guardian and standby
9 guardian unless otherwise specified or apparent from the context;

10 [(8)] (9) "Guardian ad litem", one appointed by a court, in
11 which particular litigation is pending[, to represent] on behalf
12 of a minor, an incapacitated person, a disabled person, or an
13 unborn person in that particular proceeding or as otherwise
14 specified in this code;

15 [(9)] (10) "Habilitation", [instruction, training, guidance
16 or treatment designed to enable and encourage a intellectually
17 disabled or developmentally disabled person as defined in chapter
18 630 to acquire and maintain those life skills needed to cope more
19 effectively with the demands of his or her own person and of his
20 or her environment] a process of treatment, training, care, or
21 specialized attention that seeks to enhance and maximize the
22 ability of a person with an intellectual disability or a
23 developmental disability to cope with the environment and to live
24 as determined by the person as much as possible, as is
25 appropriate for the person considering his or her physical and
26 mental condition and financial means;

27 [(10)] (11) "Incapacitated person", one who is unable by
28 reason of any physical [or], mental, or cognitive condition to

1 receive and evaluate information or to communicate decisions to
2 such an extent that [he or she] the person, even with appropriate
3 services and assistive technology, lacks capacity to [meet]
4 manage the person's essential requirements for food, clothing,
5 shelter, safety or other care such that serious physical injury,
6 illness, or disease is likely to occur. The term "incapacitated
7 person" as used in this chapter includes the term partially
8 incapacitated person unless otherwise specified or apparent from
9 the context;

10 (12) "Interested persons", spouses, children, parents,
11 adult members of a ward's or protectee's family, creditors or any
12 others having a property right or claim against the estate of a
13 protectee being administered, trustees of a trust of which the
14 ward or protectee is a beneficiary, agents of a durable power of
15 attorney for a ward or protectee, and children of a protectee who
16 may have a property right or claim against or an interest in the
17 estate of a protectee. This meaning may vary at different stages
18 and different parts of a proceeding and shall be determined
19 according to the particular purpose and matter involved;

20 [(11)] (13) "Least restrictive [environment] alternative",
21 [that there shall be imposed on the personal liberty of the ward
22 only such restraint as is necessary to prevent the ward from
23 injuring himself or herself and others and to provide the ward
24 with such care, habilitation and treatment as are appropriate for
25 the ward considering his or her physical and mental condition and
26 financial means] with respect to the guardianship order and the
27 exercise of power by the guardian, a course of action or an
28 alternative that allows the incapacitated person to live, learn,

1 and work with minimum restrictions on the person, as are
2 appropriate for the person considering his or her physical and
3 mental condition and financial means. "Least restrictive
4 alternative" also means choosing the decision or approach that:

5 (a) Places the least possible restriction on the person's
6 personal liberty and exercise of rights and that promotes the
7 greatest possible inclusion of the person into his or her
8 community, as is appropriate for the person considering his or
9 her physical and mental condition and financial means; and

10 (b) Is consistent with meeting the person's essential
11 requirements for health, safety, habilitation, treatment, and
12 recovery and protecting the person from abuse, neglect, and
13 financial exploitation;

14 [(12)] (14) "Manage financial resources", either those
15 actions necessary to obtain, administer, and dispose of real and
16 personal property, intangible property, business property,
17 benefits, income or any assets, or those actions necessary to
18 prevent waste, loss or dissipation of property, or those actions
19 necessary to provide for the care and support of such person or
20 anyone legally dependent upon such person by a person of ordinary
21 skills and intelligence commensurate with his or her training and
22 education;

23 [(13)] (15) "Minor", any person who is under the age of
24 eighteen years;

25 [(14)] (16) "Parent", the biological or adoptive mother or
26 father of a child whose parental rights have not been terminated
27 under chapter 211, including:

28 (a) A person registered as the father of the child by

1 reason of an unrevoked notice of intent to claim paternity under
2 section 192.016;

3 (b) A person who has acknowledged paternity of the child
4 and has not rescinded that acknowledgment under section 193.215;
5 and

6 (c) A person presumed to be the natural father of the child
7 under section 210.822;

8 [(15)] (17) "Partially disabled person", one who is unable
9 by reason of any physical [or], mental, or cognitive condition to
10 receive and evaluate information or to communicate decisions to
11 such an extent that such person lacks capacity to manage, in
12 part, his or her financial resources;

13 [(16)] (18) "Partially incapacitated person", one who is
14 unable by reason of any physical [or], mental, or cognitive
15 condition to receive and evaluate information or to communicate
16 decisions to the extent that such person lacks capacity to meet,
17 in part, essential requirements for food, clothing, shelter,
18 safety, or other care without court-ordered assistance;

19 [(17)] (19) "Protectee", a person for whose estate a
20 conservator or limited conservator has been appointed or with
21 respect to whose estate a transaction has been authorized by the
22 court under section 475.092 without appointment of a conservator
23 or limited conservator;

24 [(18)] (20) "Seriously ill", a significant likelihood that
25 a person will become incapacitated or die within twelve months;

26 [(19)] (21) "Social service agency", a charitable
27 organization organized and incorporated as a not-for-profit
28 corporation under the laws of this state and which qualifies as

1 an exempt organization within the meaning of Section 501(c)(3),
2 or any successor provision thereto of the federal Internal
3 Revenue Code;

4 [(20)] (22) "Standby guardian", one who is authorized to
5 have the temporary care and custody of the person of a minor or
6 of an incapacitated person under the provisions of section
7 475.046;

8 [(21)] (23) "Treatment", the prevention, amelioration or
9 cure of a person's physical and mental illnesses or incapacities;

10 [(22)] (24) "Ward", a minor or an incapacitated person for
11 whom a guardian, limited guardian, or standby guardian has been
12 appointed.

13 475.016. 1. If there has been an adjudication of
14 incompetency before September 28, 1983, any person so adjudicated
15 shall be deemed totally incapacitated and totally disabled as
16 defined in section 475.010, until such time as the probate
17 division of the circuit court of the county of proper venue, upon
18 the annual review proceeding prescribed by section 475.082 or
19 otherwise, may review the nature of the incapacity or disability
20 of the person so adjudicated and alter the nature of the
21 adjudication if, as a consequence of the review, it appears to
22 the court that the person is not both totally incapacitated and
23 totally disabled as defined in section 475.010. A guardian of
24 the person appointed before September 28, 1983, shall be deemed a
25 guardian as defined in section 475.010. A guardian of the estate
26 appointed before September 28, 1983, shall be deemed a
27 conservator as defined in section 475.010.

28 2. Existing guardians and conservators shall have one year

1 after August 28, 2018, to meet any annual and other reporting
2 requirements that are different from the former requirements of
3 chapter 475 prior to August 28, 2018.

4 475.050. 1. Before appointing any other eligible person as
5 guardian of an incapacitated person, or conservator of a disabled
6 person, the court shall consider the suitability of appointing
7 any of the following persons, listed in the order of priority,
8 who appear to be willing to serve:

9 (1) If the incapacitated or disabled person is, at the time
10 of the hearing, able to make and communicate a reasonable choice,
11 any eligible person nominated by the person;

12 (2) Any eligible person nominated in a durable power of
13 attorney executed by the incapacitated or disabled person, or in
14 an instrument in writing signed by the incapacitated or disabled
15 person and by two witnesses who signed at the incapacitated or
16 disabled person's request, before the inception of the person's
17 incapacity or disability[, at a time within five years before the
18 hearing when the person was able to make and communicate a
19 reasonable choice];

20 (3) The spouse, parents, adult children, adult brothers and
21 sisters and other close adult relatives of the incapacitated or
22 disabled person;

23 (4) Any other eligible person or, with respect to the
24 estate only, any eligible organization or corporation, nominated
25 in a duly probated will of such a spouse or relative [executed
26 within five years before the hearing].

27 2. The court shall not appoint an unrelated third party as
28 a guardian or conservator unless there is no relative suitable

1 and willing to serve or if the appointment of a relative or
2 nominee is otherwise contrary to the best interests of the
3 incapacitated or disabled person. If the incapacitated or
4 disabled person is a minor under the care of the children's
5 division and is entering adult guardianship or conservatorship,
6 it shall be a rebuttable presumption that he or she has no
7 relative suitable and willing to serve as guardian or
8 conservator.

9 3. Except for good cause shown, the court shall make its
10 appointment in accordance with the incapacitated or disabled
11 person's most recent valid nomination of an eligible person
12 qualified to serve as guardian of the person or conservator of
13 the estate. [In the event there is not brought to the attention
14 of the court any such valid nomination executed within five years
15 before the hearing, then the court shall give consideration to
16 the most recent valid nomination brought to its attention, but
17 the court shall not be required to follow such nomination.]

18 4. Except for those individuals specified in subdivisions
19 (1) and (2) of this subsection, the court shall require all
20 guardians and conservators who are seeking appointment and who
21 have a fiduciary responsibility to a ward, an incapacitated
22 person, or a disabled person to submit at their own expense to a
23 background screening that shall include the disqualification
24 lists of the departments of mental health, social services, and
25 health and senior services; the abuse and neglect registries for
26 adults and children; a Missouri criminal record review; and the
27 sexual offender registry. Individuals seeking appointment as a
28 conservator shall also submit, at their own expense, to a credit

1 history investigation. The nominated guardian or conservator
2 shall file the results of the reports with the court at least ten
3 days prior to the appointment hearing date unless waived or
4 modified by the court for good cause shown by an affidavit filed
5 simultaneously with the petition for appointment or in the event
6 the protected person requests an expedited hearing. The
7 provisions of this subsection shall not apply to:

8 (1) Public administrators; or

9 (2) The ward's, incapacitated person's, or disabled
10 person's spouse, parents, children who have reached eighteen
11 years of age, or siblings who have reached eighteen years of age.

12 5. Guardians certified by a national accrediting
13 organization may file proof of certification in lieu of the
14 requirements of subsections 4 and 6 of this section.

15 6. An order appointing a guardian or conservator shall not
16 be signed by the judge until such reports have been filed with
17 the court and reviewed by the judge, who shall consider the
18 reports in determining whether to appoint a guardian or
19 conservator. Such reports, or lack thereof, shall be certified
20 either by an affidavit or by obtaining a certified copy of the
21 reports. No reports or national criminal history record check
22 shall be required by the court upon the application of a
23 petitioner for an emergency temporary guardianship or emergency
24 temporary conservatorship. The court may waive the requirements
25 of this subsection for good cause shown. If appointed, a
26 guardian or conservator may petition the court for reimbursement
27 of the reasonable expenses of the credit history investigation
28 and background screenings.

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

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

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

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

13 (4) The name and address of the parents of the minor and
14 whether they are living or dead;

15 (5) The name and address of the spouse, and the names, ages
16 and addresses of all living children of the minor;

17 (6) The name and address of the person having custody of
18 the person of the minor or who claims to have custody of the
19 person of the minor;

20 (7) The name and address of any guardian of the person or
21 conservator of the estate of the minor appointed in this or any
22 other state;

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

27 (9) The name and address of the trustees and the purpose of
28 any trust of which the minor is a qualified beneficiary;

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

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

8 (12) If the petitioner requests the appointment of
9 co-guardians, a statement of the reasons why such appointment is
10 sought and whether the petitioner requests that the co-guardians,
11 if appointed, may act independently or whether they may act only
12 together or only together with regard to specified matters;

13 (13) That written consent has been obtained from any
14 person, including a public administrator, who is to be appointed
15 as a co-guardian; and

16 (14) Whether the petitioner knows of any other court having
17 jurisdiction over the minor and the name of the court, if known.

18 2. Any person may file a petition for the appointment of
19 himself or herself or some other qualified person as guardian or
20 limited guardian of an incapacitated person. Such petition shall
21 state:

22 (1) If known, the name, age, domicile, actual place of
23 residence, and post office address of the alleged incapacitated
24 person, and for the period of three years before the filing of
25 the petition, the most recent addresses, up to three, at which
26 the alleged incapacitated person lived prior to the most recent
27 address, and if any of these facts is unknown, the efforts made
28 to ascertain that fact. In the case of a petition filed by a

1 public official in his or her official capacity, the information
2 required by this subdivision need only be supplied to the extent
3 it is reasonably available to the petitioner;

4 (2) The estimated value of the alleged incapacitated
5 person's real and personal property, and the location and value
6 of any real property owned by the alleged incapacitated person
7 outside of this state;

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

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

14 (5) The name and address of the spouse, the names, ages,
15 and addresses of all living children of the alleged incapacitated
16 person, the names and addresses of the alleged incapacitated
17 person's closest known relatives, and the names and relationship,
18 if known, of any adults living with the alleged incapacitated
19 person; if no spouse, adult child, or parent is listed, the names
20 and addresses of the siblings and children of deceased siblings
21 of the alleged incapacitated person; the name and address of any
22 agent appointed by the alleged incapacitated person in any
23 durable power of attorney, and of the presently acting trustees
24 of any trust of which the alleged incapacitated person is the
25 grantor or is a qualified beneficiary or is or was the trustee or
26 cotrustee and the purpose of the power of attorney or trust;

27 (6) The name and address of the person having custody of
28 the person of the alleged incapacitated person;

1 (7) The name and address of any guardian of the person or
2 conservator of the estate of the alleged incapacitated person
3 appointed in this or any other state;

4 (8) If appointment is sought for a natural person, other
5 than the public administrator, the names and addresses of wards
6 and [disabled persons] protectees for whom such person is already
7 guardian or conservator;

8 (9) The [fact] factual basis for the petitioner's
9 conclusion that the person for whom guardianship is sought is
10 unable or partially unable by reason of some specified physical
11 [or], mental, or cognitive condition to receive and evaluate
12 information or to communicate decisions to such an extent that
13 the person lacks capacity to meet essential requirements for
14 food, clothing, shelter, safety, or other care such that serious
15 physical injury, illness, or disease is likely to occur;

16 (10) The reasons, incidents, and specific behaviors
17 demonstrating why the appointment of a guardian or limited
18 guardian is sought;

19 (11) If the petitioner suggests the appointment of
20 co-guardians, a statement of the reasons why such appointment is
21 sought and whether the petitioner suggests that the co-guardians,
22 if appointed, may act independently or whether they may act only
23 together or only together with regard to specified matters; and

24 (12) Written consent has been obtained from any person,
25 including a public administrator, who is to be appointed as a
26 co-guardian.

27 3. If the person filing the petition seeks the appointment
28 of an emergency guardian, the petition shall include the same

1 requirements as provided in subsection 1 of this section and
2 shall request the appointment per the requirements provided in
3 subsection 15 of section 475.075.

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

17 2. A petition for appointment of a conservator or limited
18 conservator of the estate may be combined with a petition for
19 appointment of a guardian or limited guardian of the person. In
20 such a combined petition allegations need not be repeated.

21 475.062. 1. **[**When a petition for appointment of a
22 conservator of the estate of an alleged disabled person is made
23 by said person, or said person's consent to the appointment
24 sought is endorsed on the petition or filed with it, the court,
25 after appointment of counsel for the alleged disabled person, if
26 satisfied, by interview with the alleged disabled person or
27 otherwise, that the alleged disability does exist, that the
28 disabled person wishes the appointment and has capacity to

1 understand the need for it and make a reasonable choice of
2 conservator and that the person nominated as conservator is
3 suitable, qualified and has or will accept the appointment, may,
4 without notice or hearing, appoint as conservator of the estate,
5 the person, organization or corporation designated by the
6 disabled person. If it appears that the alleged disabled person
7 is a codepositor or cotenant, the other codepositors and
8 cotenants shall, in any event, be given notice before the court
9 acts.

10 2.] When a petition for appointment of a conservator of the
11 estate of an alleged disabled person is not made or consented to
12 by said alleged disabled person, the procedures as to notice,
13 appointment of counsel, hearing and adjudication of disability as
14 prescribed by section 475.075 shall be followed.

15 2. If a petition for appointment of a conservator is made
16 by a person on account of that person's alleged disability or is
17 made by another on behalf of that person with that person's
18 consent endorsed on the petition or filed therewith, the court
19 shall first appoint an attorney for that person. The
20 court-appointed attorney shall advise the respondent of the
21 respondent's rights and of the consequences of the appointment of
22 the conservator.

23 3. If the court determines that the disability exists and
24 the respondent desires the appointment, understands its purpose,
25 and makes a reasonable choice of conservator, the court may,
26 without notice or hearing, appoint the person, organization, or
27 corporation designated by the respondent as conservator of the
28 respondent's estate, provided that the conservator is suitable

1 and qualified and has accepted or will accept the appointment.

2 4. If it appears that the respondent is a codepositor or
3 cotenant, the other codepositors and cotenants shall, in any
4 event, be given notice before the court acts.

5 [3.] 5. If the whereabouts of a person alleged to be
6 disappeared or detained pursuant to section 475.081 is unknown or
7 the place or nature of his confinement or detention prevents
8 personal service, service shall be made on him by publication in
9 accordance with the rules of civil procedure.

10 475.070. 1. Before appointing a guardian or conservator
11 for a minor, notice of the petition therefor shall be served upon
12 the following unless they have signed such petition or have
13 waived notice thereof:

14 (1) The minor, if over fourteen years of age;

15 (2) The parents of the minor;

16 (3) The spouse of the minor;

17 (4) The person or entity nominated to serve as guardian or
18 conservator;

19 (5) If directed by the court:

20 (a) Any person who has been appointed guardian or any
21 person having care and custody of the minor;

22 (b) Any department, bureau or agency of the United States
23 or of this state or any political subdivision thereof, which
24 makes or awards compensation, pension, insurance or other
25 allowance for the benefit of the ward's estate;

26 (c) Any department, bureau or agency of this state or any
27 political subdivision thereof or any charitable organization of
28 this state, which may be charged with the supervision, control or

1 custody of the minor.

2 2. If the minor is over fourteen years of age, there shall
3 be personal service upon him if personal service can be had.
4 Service on others may be had in accordance with section 472.100.

5 3. If a petition for the appointment of a guardian of a
6 minor is filed for the sole and specific purpose of school
7 registration or medical insurance coverage, upon the filing of an
8 affidavit by the petitioner stating that, after due and diligent
9 effort to the best of his or her ability, the whereabouts or
10 identity of either or both parents of the minor remains unknown,
11 the court may proceed with the appointment of such a guardian
12 without having obtained service upon the parents of the minor.

13 475.075. 1. Except as otherwise provided in section
14 475.062, when a petition for the appointment of a guardian ad
15 litem, guardian, or conservator ~~[against]~~ for any ~~[person]~~
16 potential ward or protectee, ~~[hereinafter]~~ who is then referred
17 to as the respondent, is filed under this chapter on grounds
18 other than minority, the court, if satisfied that there is good
19 cause for the exercise of its ~~[jurisdiction]~~ authority, shall
20 promptly set the petition for hearing.

21 2. The respondent shall be served in person with the
22 following: A copy of the petition; a written notice stating the
23 time and place the proceeding will be heard by the court, the
24 name and address of appointed counsel, and the names and
25 addresses of the witnesses who may be called to testify in
26 support of the petition; and with a copy of the respondent's
27 rights as set forth in subsections ~~[7 and 8]~~ 9 and 10 of this
28 section. The notice shall be signed by the judge or clerk of the

1 court and served in person on the respondent a reasonable time
2 before the date set for the hearing. [The petition shall state
3 the names and addresses of the] A written notice stating the time
4 and place for the petition to be heard by the court, and the name
5 and address of counsel appointed to represent the respondent
6 shall be served upon the spouse, parents, children who have
7 reached the age of eighteen, any person serving as [his] the
8 respondent's guardian, conservator, limited guardian, or limited
9 conservator, any person proposed to serve as guardian or
10 conservator, any person having power to act in a fiduciary
11 capacity with respect to any of the respondent's financial
12 resources, [and] any person having [his] the respondent's care
13 and custody known to the petitioner, and any cotenants or
14 codepositors with the respondent. Each person so listed shall be
15 served [with like notice] in any manner permitted by section
16 472.100. If no such spouse, parent, or child is known, notice
17 shall be given to at least one of [his] the respondent's closest
18 relatives who [has] have reached eighteen years of age.

19 3. If the public administrator is nominated as guardian or
20 conservator or at any stage of the proceeding is being considered
21 by the court to be nominated as guardian or conservator, the
22 public administrator shall receive a copy of the petition from
23 the petitioner or the court and any accompanying documents,
24 including exhibits and medical opinions, receive written notice
25 indicating the date and time of the proceeding, and have an
26 opportunity to attend and be heard.

27 4. Upon the filing of a petition under the provisions of
28 subsection 1 of this section or for the approval on behalf of the

1 respondent of a transaction pursuant to section 475.092 or for
2 the rendition of emergency medical treatment under the provisions
3 of section 475.123, the court shall immediately appoint an
4 attorney to represent the respondent in the proceeding. The
5 attorney shall visit [his client] the respondent at least twenty-
6 four hours prior to the hearing unless the court finds good cause
7 for waiving this requirement. If the [client] attorney finds
8 that the respondent is capable of understanding the matter in
9 question or of contributing to the advancement of the [client's]
10 respondent's interest, the attorney shall obtain from the
11 [client] respondent all possible aid. If the [disability of a
12 client compels the attorney to make decisions for the client,]
13 attorney finds that the respondent is so impaired that the
14 respondent cannot communicate or participate in the proceedings,
15 the attorney shall consider all circumstances then prevailing and
16 act with care to safeguard and advance the interests of the
17 [client] respondent.

18 5. If the court enters an order appointing an attorney for
19 the respondent, it shall specify that the attorney shall have the
20 right to obtain all medical and financial information of the
21 respondent from medical care providers and financial
22 institutions, and no medical care provider or financial
23 institution shall be liable for damages or otherwise for the
24 release of this information to the attorney appointed for the
25 respondent. The court shall allow a reasonable attorney's fee
26 for the services rendered, to be taxed as costs of the
27 proceeding. Upon entry of appearance by private counsel on
28 behalf of the respondent, the court may permit the

1 court-appointed attorney [may be permitted] to withdraw [if the
2 respondent employs private counsel who enters an appearance on
3 behalf of said person] only if after a hearing the court finds
4 cause to permit the withdrawal. The private counsel shall meet
5 the requirements of the court-appointed attorney in representing
6 the respondent as provided in subsection 4 of this section. The
7 respondent's attorney shall not also serve as guardian ad litem
8 or conservator ad litem for the respondent unless and until a
9 judgment granting guardianship, conservatorship, limited
10 guardianship, or limited conservatorship has been entered by the
11 court. If the attorney for the respondent has filed or intends
12 to file an appeal of such judgment, the attorney for the
13 respondent shall not serve as guardian ad litem or conservator ad
14 litem for the respondent until all proceedings in connection with
15 such appeal have been finally resolved. The petitioner shall not
16 nominate an attorney for the respondent.

17 [4.] 6. The court may direct that the respondent be
18 examined by a physician [or], licensed psychologist, or other
19 appropriate professional [designated by the court, and may allow
20 a reasonable fee for the services rendered, to be taxed as costs
21 in the proceeding] if the other professional has experience or
22 training in the alleged mental, physical, or cognitive
23 impairment. The court-appointed physician, licensed
24 psychologist, or other professional shall, prior to examination,
25 explain to the respondent in simple language, the following:

26 (1) [Incapacity or disability as defined in section
27 475.010;

28 (2)] That the purpose of the examination is to produce

1 evidence which may be used to determine whether the respondent is
2 incapacitated, disabled ~~[or]~~, partially incapacitated, or
3 partially disabled;

4 [(3)] (2) That respondent has the right to remain silent;

5 [(4)] (3) That anything respondent says may be used at the
6 court hearing, and in making the determination of incapacity or
7 disability.

8 [5.] 7. The court-appointed physician, licensed
9 psychologist, or other professional shall submit ~~[his]~~ a report
10 in writing to the court and to counsel for all parties. It shall
11 not be a valid objection to the review of the report by the court
12 or the attorneys for the parties that the court will be
13 responsible for the ultimate determination of incapacity or
14 partial incapacity. If other objections to the report are made
15 by any party, the court may order a hearing for the limited
16 purpose of determining whether the court shall admit the report.
17 The court may allow a reasonable fee for the services rendered by
18 the physician, licensed psychologist, or other professional to be
19 taxed as costs in the proceeding.

20 [6.] 8. If prima facie proof of partial or complete
21 incapacity or disability, with or without the court ordered
22 evaluation as provided in subsections 6 and 7 of this section, is
23 made upon motion by any party or the court on its own motion, a
24 physician [or], licensed psychologist, or other appropriate
25 professional is competent and may be compelled by the court to
26 testify as to information acquired from the respondent, despite
27 otherwise applicable testimonial privileges. Evidence received
28 under this subsection [which] ~~that~~ would otherwise be privileged

1 and confidential may not be used in any other civil action or
2 criminal proceeding without the consent of the holder of the
3 privilege. Any resulting report shall be shared with the
4 respondent and counsel for all parties but shall not be used in
5 any other civil action or criminal proceeding without the consent
6 of the holder of the privilege.

7 [7.] 9. The petitioner has the burden of proving
8 incapacity, partial incapacity, disability, or partial disability
9 by clear and convincing evidence.

10 [8.] 10. The respondent shall have the following rights in
11 addition to those elsewhere specified and shall be advised of
12 these rights by the attorney for the respondent:

- 13 (1) The right to be represented by an attorney;
- 14 (2) The right to have a jury trial;
- 15 (3) The right to present evidence in [his] the respondent's
16 behalf;
- 17 (4) The right to cross-examine witnesses who testify
18 against [him] the respondent;
- 19 (5) The right to remain silent;
- 20 (6) The right to have the hearing opened or closed to the
21 public as [he] the respondent elects;
- 22 (7) The right to a hearing conducted in accordance with the
23 rules of evidence in civil proceedings, except as modified by
24 this chapter;
- 25 (8) The right to be present at the hearing;
- 26 (9) The right to appeal the court's decision.

27 [9.] 11. If the court finds that the respondent possesses
28 capacity to [meet his] manage the respondent's essential

1 requirements for food, clothing, shelter, safety, and other care
2 or that [he] the respondent possesses the ability to manage [his]
3 the respondent's financial resources, [it] the court shall deny
4 the petition. On the other hand, if the court finds that the
5 capacity of the respondent to receive and evaluate information or
6 to communicate decisions is impaired to such an extent as to
7 render [him] the respondent incapable of [meeting] managing some
8 or all of [his] the respondent's essential requirements for food,
9 clothing, shelter, safety or other care so that serious physical
10 injury, illness, or disease is likely to occur, or that the
11 [ability] capacity of the respondent to receive and evaluate
12 information or to communicate decisions is impaired to such an
13 extent so as to render [him] the respondent unable to manage some
14 or all of [his] the respondent's financial resources, [it shall
15 make and recite in its order detailed findings of fact stating:

16 (1) The extent of his physical and mental incapacity to
17 care for his person;

18 (2) The extent of his physical and mental disability to
19 manage his financial resources;

20 (3) Whether or not he requires placement in a supervised
21 living situation and, if so, the degree of supervision needed;

22 (4) Whether or not his financial resources require
23 supervision and, if so, the nature and extent of supervision
24 needed] the court shall appoint a guardian or limited guardian, a
25 conservator or limited conservator, or both in combination.

26 [10.] 12. If the court finds the respondent to be in some
27 degree incapacitated or disabled, or both, the court, in
28 determining the degree of supervision necessary, shall apply the

1 least restrictive ~~[environment]~~ alternative principle as defined
2 in this chapter and shall not restrict ~~[his]~~ the respondent's
3 personal liberty or ~~[his]~~ the respondent's freedom to manage
4 ~~[his]~~ the respondent's financial resources to any greater extent
5 than is necessary to protect ~~[his]~~ the respondent's person and
6 ~~[his]~~ the respondent's financial resources. [The court shall
7 consider whether or not the respondent may be fully protected by
8 the rendition of temporary protective services provided by a
9 private or public agency or agencies; or by the appointment of a
10 guardian or conservator ad litem; or by the appointment of a
11 limited guardian or conservator; or, as a last resort, by the
12 appointment of a guardian or conservator.] The limitations
13 imposed upon the authority of the guardian or conservator as set
14 forth in the findings of the court shall be stated in the letters
15 of the guardian or conservator and shall be set forth in the
16 notice of first publication of letters of conservatorship
17 granted.

18 13. Before appointing a guardian or conservator, the court
19 shall consider whether the respondent's needs may be met without
20 the necessity of the appointment of a guardian or conservator, or
21 both, by a less restrictive alternative including, but not
22 limited to, the following:

23 (1) Evidence that the respondent has appointed an attorney-
24 in-fact in a durable power of attorney executed by the respondent
25 before the petition was filed;

26 (2) The management of the beneficial interests of the
27 respondent in a trust by a trustee;

28 (3) Evidence that a representative payee has been appointed

1 to manage the respondent's public benefits;

2 (4) Supported decision-making agreements or the provision
3 of protective or supportive services or arrangements provided by
4 individuals or public or private services or agencies;

5 (5) The use of appropriate services or assistive
6 technology;

7 (6) The appointment of a temporary emergency guardian ad
8 litem or conservator ad litem under subsection 15 of this
9 section; or

10 (7) The appointment of a limited guardian or conservator.

11 14. The court shall make and recite in its order detailed
12 findings of fact stating:

13 (1) The extent of the respondent's physical, mental, and
14 cognitive incapacity to manage essential requirements for food,
15 clothing, shelter, safety, or other care;

16 (2) The extent of the respondent's physical, mental, and
17 cognitive incapacity to manage the respondent's financial
18 resources;

19 (3) Whether the respondent requires placement in a
20 supervised living situation and, if so, the degree of supervision
21 needed;

22 (4) Whether the respondent's financial resources require
23 supervision and, if so, the nature and extent of supervision
24 needed;

25 (5) Whether the respondent retains the right to vote;

26 (6) Whether the respondent is permitted to drive a motor
27 vehicle if the respondent can pass the required driving test; and

28 (7) Whether the respondent retains the right to marry.

1 [11.] 15. If it is alleged in a petition that an alleged
2 incapacitated or disabled ~~[person]~~ respondent has no guardian or
3 conservator and an emergency exists ~~[which]~~ that presents a
4 substantial risk that serious physical harm will occur to ~~[his]~~
5 the respondent's person or irreparable damage will occur to ~~[his]~~
6 the respondent's property because of ~~[his]~~ the respondent's
7 failure or inability to provide for ~~[his]~~ the respondent's
8 essential human needs or to protect ~~[his]~~ the respondent's
9 property, the court may, with notice to such person's attorney,
10 as provided in subsection ~~[3]~~ 4 of this section, and service of
11 notice upon such person as provided in subsection 2 of this
12 section, and, with or without notice to other persons interested
13 in the proceeding, after hearing, appoint ~~[a]~~ an emergency
14 guardian ad litem or conservator ad litem for a specified period
15 not to exceed ~~[thirty]~~ ninety days and for specified purposes.
16 Except for good cause shown, the court shall hold a hearing on
17 petitions filed under this section within five business days of
18 the filing of the petition. Orders appointing the guardian or
19 conservator ad litem may be modified upon motion and hearing.
20 Only after a hearing and a showing of continuing emergency need,
21 ~~[orders appointing the]~~ the court may order the extension of the
22 appointment of an emergency guardian ad litem or conservator ad
23 litem ~~[may be extended]~~ from time to time, not to exceed ~~[thirty]~~
24 ninety days each. A guardian ad litem or conservator ad litem
25 may be removed at any time and shall make any report the court
26 requires. Proceedings under this subsection shall not be
27 employed as alternative to proceedings for the involuntary
28 detention and treatment of a mentally ill person under the

1 provisions of chapter 632. If no petition for guardianship,
2 conservatorship, limited guardianship, or limited conservatorship
3 has been filed within the first ninety days following the
4 granting of emergency authority under this section, the court may
5 terminate the authority granted under the emergency letters upon
6 motion of the attorney for the respondent and a finding that
7 doing so would not be manifestly contrary to the respondent's
8 interest.

9 475.078. 1. An adjudication of partial incapacity or
10 partial disability does not operate to impose upon the ward or
11 protectee any legal disability provided by law except to the
12 extent specified in the order of adjudication, provided that the
13 court shall not impose upon the ward or protectee any legal
14 disability other than those which are consistent with the
15 condition of the ward or protectee.

16 2. An adjudication of incapacity or disability does operate
17 to impose upon the ward or protectee all legal disabilities
18 provided by law, except to the extent specified in the order of
19 adjudication or otherwise in this chapter, and provided further
20 that the court is without [jurisdiction] authority to impose any
21 legal disability upon a disabled person for whom a conservator
22 has been appointed by reason of [his] the person's disappearance,
23 detention, or confinement.

24 3. A person who has been adjudicated incapacitated or
25 disabled or both shall be presumed to be incompetent, except as
26 otherwise specified in this chapter. A person who has been
27 adjudicated partially incapacitated or partially disabled or both
28 shall be presumed to be competent. The court at any time after a

1 hearing on the question may determine that an incapacitated,
2 disabled, or partially incapacitated or partially disabled person
3 is incompetent for some purposes and competent for other
4 purposes.

5 4. The court may expressly enter an order that the ward's
6 or protectee's right to vote shall be retained even though the
7 ward or protectee is otherwise totally incapacitated; that the
8 ward or protectee is permitted to drive a motor vehicle if the
9 ward or protectee can pass the required driving test; or that the
10 ward or protectee retains the right to marry.

11 475.079. 1. If it appears to the court [that a guardian
12 should be appointed for a minor who is not incapacitated] or if
13 it is found by the jury or the court upon proof by clear and
14 convincing evidence that the person for whom a guardian is sought
15 is incapacitated as defined in this law and that the respondent's
16 identified needs cannot be met by a less restrictive alternative,
17 the court may appoint a guardian of the person. [The appointment
18 of guardians of minors shall be made in accordance with section
19 475.045, except that if a person entitled to appointment as a
20 guardian or entitled to select a guardian fails to appear after
21 notice or to apply for such appointment or make selection in
22 accordance with the order of the court the court may appoint any
23 suitable person as guardian.]

24 2. If it is found that the person for whom a conservator of
25 the estate is sought is a minor or is disabled as defined in
26 section 475.010 by a disability other than or in addition to
27 minority and that the respondent's identified needs cannot be met
28 by a less restrictive alternative, the court may appoint a

1 conservator of the estate, who may be the same person appointed
2 guardian of the person.

3 3. The court shall not appoint the public administrator to
4 serve as guardian, limited guardian, conservator, limited
5 conservator, emergency guardian, emergency conservator, guardian
6 ad litem, or conservator ad litem unless notice is first given to
7 the public administrator as provided in subsection 3 of section
8 475.075 and the public administrator has an opportunity to
9 participate in any hearing on such matter, including the right to
10 cross-examine witnesses and to offer witnesses and evidence. The
11 public administrator may waive notice and the opportunity to
12 participate.

13 475.080. 1. If the court, after hearing, finds that a
14 person is partially incapacitated and that the respondent's
15 identified needs cannot be met by a less restrictive alternative,
16 the court shall appoint a limited guardian of the person of the
17 ward. The order of appointment shall specify the powers and
18 duties of the limited guardian so as to permit the partially
19 incapacitated ward to **[care for himself]** provide for self-care
20 commensurate with **[his]** the ward's ability to do so and shall
21 also specify the legal disabilities to which the ward is subject.
22 In establishing a limited guardianship, the court shall impose
23 only such legal disabilities and restraints on personal liberty
24 as are necessary to promote and protect the well-being of the
25 individual and shall design the guardianship so as to encourage
26 the development of maximum self-reliance and independence in the
27 individual.

28 2. If the court, after hearing, finds that a person is

1 partially disabled and that the respondent's identified needs
2 cannot be met by a less restrictive alternative, the court shall
3 appoint a limited conservator of the estate. The order of
4 appointment shall specify the powers and duties of the limited
5 conservator so as to permit the partially disabled person to
6 manage [his] the person's financial resources commensurate with
7 [his] the person's ability to do so.

8 475.082. 1. At least annually, the court shall inquire
9 into the status of every adult ward and protectee under its
10 jurisdiction for the purpose of determining whether the
11 incapacity or disability may have ceased or changed and to insure
12 that the guardian or conservator is discharging [his] the
13 guardian's or conservator's responsibilities and duties in
14 accordance with this chapter.

15 2. In order to implement the court review prescribed by
16 this section, the guardian or limited guardian shall file
17 annually on the anniversary date of [his] the guardian's or
18 limited guardian's letters[,] a report concerning the personal
19 status of the adult ward and plans by the guardian or limited
20 guardian for future care. Such report may be combined with the
21 settlement of accounts if the guardian is also conservator of the
22 estate of the ward. The report shall be in the form prescribed
23 by the court and shall include the following information:

24 (1) The present address of the ward;

25 (2) The present address of the guardian;

26 (3) Unless the report specifies that the ward is living
27 with the guardian, the number of times the guardian has had
28 contact with the ward, and the nature of such contacts including

1 the date the ward was last seen by the guardian;

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

5 (5) If the ward is institutionalized, whether the guardian
6 has received a copy of the treatment or habilitation plan and, if
7 so, the date of such plan, and whether the guardian agrees with
8 its provision;

9 [(5)] (6) The date the ward was last seen by a physician or
10 other professional and the purpose;

11 [(6) Any major changes in the physical or mental condition
12 of the ward observed by the guardian] (7) The current mental and
13 physical condition of the ward and any major changes in the
14 ward's condition since the last report;

15 [(7)] (8) The opinion of the guardian as to the need for
16 the continuation of the guardianship and whether it is necessary
17 to increase or decrease the powers of the guardian; and

18 [(8) The opinion of the guardian as to the adequacy of the
19 present care of the ward] (9) A summarized plan for the coming
20 year. If an individual support plan, treatment plan, or plan of
21 care is in place, such plan may be submitted in lieu of the
22 requirements of this subdivision.

23 3. The court may as part of its review, in its discretion,
24 order the performance of a mental status evaluation of [an
25 incapacitated] the ward and may require any hospital, physician,
26 or custodial facility to submit copies of their records relating
27 to the treatment, habilitation, or care of the ward. The court,
28 as part of its review and in its discretion, may also contact the

1 department of health and senior services or other appropriate
2 agencies to investigate the conduct of the guardian and report
3 its findings to the court.

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

9 5. If it appears to the court as part of its review or at
10 any time upon motion of any interested person, including the ward
11 or protectee or some person on [his] behalf of the ward or
12 protectee, that the guardian or conservator is not discharging
13 [his] the guardian's or conservator's responsibilities and duties
14 as required by this chapter or has not acted in the best
15 interests of [his] the ward or protectee, the court may order
16 that a hearing be held and direct that the guardian or
17 conservator appear before the court. In the event that such a
18 hearing is ordered and the ward or protectee is not represented
19 by an attorney, the court shall appoint an attorney to represent
20 the ward or protectee in the proceedings. At the conclusion of
21 the hearing, if the court finds that the guardian or conservator
22 is not discharging his or her duties and responsibilities as
23 required by this code[,] or is not acting in the best interests
24 of the ward or protectee, the court shall enter such orders as it
25 deems appropriate under the circumstances. Such orders may
26 include the removal of the guardian or conservator and the
27 appointment of a successor guardian or conservator or termination
28 of the guardianship or conservatorship on finding that the ward

1 has recovered [his] capacity or the protectee is no longer
2 disabled. The court, in framing its orders and findings, shall
3 give due consideration to the exercise by the guardian or
4 conservator of any discretion vested in [him] the guardian or
5 conservator by law.

6 475.083. 1. The authority of a guardian or conservator
7 terminates:

8 (1) When a minor ward becomes eighteen years of age;

9 (2) Upon an adjudication that an incapacitated or disabled
10 person has been restored to [his] capacity or ability;

11 (3) Upon revocation of the letters of the guardian or
12 conservator;

13 (4) Upon the acceptance by the court of the resignation of
14 the guardian or conservator;

15 (5) Upon the death of the ward or protectee except that if
16 there is no person other than the estate of the ward or protectee
17 liable for the funeral and burial expenses of the ward or
18 protectee the guardian or conservator may, with the approval of
19 the court, contract for the funeral and burial of the deceased
20 ward or protectee;

21 (6) Upon the expiration of an order appointing a guardian
22 or conservator ad litem unless the court orders extension of the
23 appointment;

24 (7) Upon an order of court terminating the guardianship or
25 conservatorship.

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

28 (1) If the conservatorship estate is exhausted;

1 (2) If the conservatorship is no longer necessary for any
2 other reason;

3 (3) If the court finds that a parent is fit, suitable and
4 able to assume the duties of guardianship and it is in the best
5 interest of the minor that the guardianship be terminated; or

6 (4) If the court determines that the guardian is unable to
7 provide the services of a guardian due to the ward's absence from
8 the state or other particular circumstances of the ward.

9 3. Notwithstanding the termination of the authority of a
10 conservator, [he] the conservator shall continue to have such
11 authority as may be necessary to wind up [his] administration.

12 4. At any time the guardian, conservator, or any person on
13 behalf of the ward or protectee may, individually or jointly with
14 the ward or protectee, or the ward or protectee individually may
15 petition the court to restore the ward or protectee, [or] to
16 decrease the powers of the guardian or conservator, or to return
17 rights to the ward or protectee; except that, if the court
18 determines that the petition is frivolous, the court may
19 summarily dismiss the petition without hearing. The petition
20 from the ward or protectee or on behalf of the ward or protectee
21 may be an informal letter to the court. Anyone who interferes
22 with the transmission of the ward's or protectee's letter or
23 petition may be cited by the court for contempt after notice and
24 hearing. If at any time the court, on its own motion, has reason
25 to believe that the guardian's or conservator's powers should be
26 increased or decreased or additional rights should be returned to
27 the ward or protectee, the court shall set the matter for a
28 hearing.

1 5. Upon the filing of a joint petition by the guardian or
2 conservator and the ward or protectee, the court, if it finds
3 restoration or modification to be in the best interests of the
4 ward or protectee, may summarily order restoration [or
5 modification of the] or a decrease in powers of the guardian or
6 conservator or return rights to the ward or protectee without the
7 necessity of notice and hearing.

8 6. Upon the filing of a petition without the joinder of the
9 guardian or conservator or if the court requires a hearing for a
10 petition filed with the joinder of a guardian or conservator, the
11 court shall cause the petition to be set for hearing with notice
12 to the guardian or conservator and to such other persons as the
13 court directs. The hearing shall be conducted in accordance with
14 the provisions of section 475.075. If the ward or protectee is
15 not represented by an attorney, the court shall appoint an
16 attorney to represent the ward or protectee in such proceeding.
17 The burden of proof by a preponderance of the evidence shall be
18 upon the petitioner. Such a petition may not be filed more than
19 once every one hundred eighty days.

20 7. At any time the guardian [or], limited guardian,
21 conservator, or limited conservator may petition the court to
22 increase [his] the guardian's or conservator's powers or to
23 remove rights from the ward or protectee. Proceedings on the
24 petition shall be in accordance with the provisions of section
25 475.075.

26 8. In deciding whether to terminate or modify a
27 guardianship or conservatorship, the court may require a report
28 by and consider the recommendations in the report of a physician,

1 licensed psychologist, or other appropriate qualified
2 professional who has experience or training in the alleged
3 mental, physical, or cognitive impairment of the ward or
4 protectee.

5 475.084. If a guardian has been appointed for a minor under
6 the provisions of subdivision (2) of subsection 4 of section
7 475.030, then a parent of the minor may petition the court for
8 periods of visitation. The court may order visitation if
9 visitation is in the best interest of the child.

10 475.094. [If the court determines and enters a finding that
11 a permanently totally mentally disabled protectee's estate would
12 be substantially depleted upon his death by the payment of
13 federal estate taxes, the court is hereby empowered: to exercise
14 or release powers of appointment, to change the beneficiaries and
15 elect options under insurance and annuity policies, to make gifts
16 to the natural objects of the protectee's bounty, to convey or
17 release his contingent and expectant interests in property
18 including marital property rights and any right of survivorship
19 incident to joint tenancy or tenancy by the entirety, to
20 surrender insurance or annuity policies for their cash values, to
21 exercise his right to an elective share in the estate of his
22 deceased spouse, and to renounce any interest by testate or
23 intestate succession or by inter vivos transfer, if such act or
24 acts will not deplete the protectee's estate so as to impair the
25 ability to provide for the protectee's foreseeable lifetime
26 needs, and if such act will cause financial benefits to inure
27 solely to the natural objects of the protectee's bounty. Such
28 act shall be undertaken by the court only to the extent that it

1 will result in a substantial saving of federal estate tax for the
2 estate of the disabled protectee upon his death.] 1. After
3 notice to interested persons and upon express authorization of
4 the court, a conservator may:

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

8 (2) Convey, release, or disclaim contingent and expectant
9 interests in property, including marital property rights and any
10 right of survivorship incident to joint tenancy or tenancy by the
11 entireties;

12 (3) Exercise or release a power of appointment;

13 (4) Create a revocable or irrevocable trust of property of
14 the estate, whether the trust extends beyond the duration of the
15 conservatorship, or revoke or amend a trust revocable by the
16 protected person;

17 (5) Exercise rights to elect options and change
18 beneficiaries under insurance policies and annuities or surrender
19 the policies and annuities for cash value;

20 (6) Exercise any right to an elective share in the estate
21 of the protectee's deceased spouse and to renounce or disclaim
22 any interest by testate or intestate succession or by transfer
23 during lifetime.

24 2. The court, in exercising or in approving a conservator's
25 exercise of the powers listed under subsection 1 of this section,
26 shall consider primarily the decision that the protectee would
27 have made, to the extent that the decision can be ascertained.
28 The court shall also consider:

1 (1) The financial needs of the protectee and the needs of
2 individuals who are in fact dependent on the protectee for
3 support and the interest of creditors;

4 (2) Possible reduction of income, estate, inheritance, or
5 other tax liabilities;

6 (3) Eligibility for government assistance;

7 (4) The protectee's previous pattern of giving or level of
8 support;

9 (5) The existing estate plan;

10 (6) The protectee's life expectancy and the probability
11 that the conservatorship will terminate before the protectee's
12 death; and

13 (7) Any other factors the court considers relevant.

14 3. Without authorization of the court, a conservator shall
15 not revoke or amend a durable power of attorney of which the
16 protectee is the principal.

17 475.120. 1. The guardian of the person of a minor shall be
18 entitled to the custody and control of the ward and shall provide
19 for the ward's education, support, and maintenance.

20 2. A guardian or limited guardian of an incapacitated
21 person shall act in the best interest of the ward. A limited
22 guardian of an incapacitated person shall have the powers and
23 duties enumerated by the court in the adjudication order or any
24 later modifying order.

25 3. The general powers and duties of a guardian of an
26 incapacitated person shall be to take charge of the person of the
27 ward and to provide for the ward's care, treatment, habilitation,
28 education, support and maintenance; and the powers and duties

1 shall include, but not be limited to, the following:

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

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

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

8 (4) Provide required consents on behalf of the ward;

9 (5) To exercise all powers and discharge all duties
10 necessary or proper to implement the provisions of this section.

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

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

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

26 7. A social service agency serving as guardian of an
27 incapacitated person shall notify the court within fifteen days
28 after any change in the identity of the professional individual

1 who has primary responsibility for providing guardianship
2 services to the incapacitated person.

3 8. Any social service agency serving as guardian may not
4 provide other services to the ward.

5 9. In the absence of any written direction from the ward to
6 the contrary, a guardian may execute a preneed contract for the
7 ward's funeral services, including cremation, or an irrevocable
8 life insurance policy to pay for the ward's funeral services,
9 including cremation, and authorize the payment of such services
10 from the ward's resources. Nothing in this section shall
11 interfere with the rights of next-of-kin to direct the
12 disposition of the body of the ward upon death under section
13 194.119. If a preneed arrangement such as that authorized by
14 this subsection is in place and no next-of-kin exercises the
15 right of sepulcher within ten days of the death of the ward, the
16 guardian may sign consents for the disposition of the body,
17 including cremation, without any liability therefor. A guardian
18 who exercises the authority granted in this subsection shall not
19 be personally financially responsible for the payment of
20 services.

21 10. Except as otherwise limited by the court, a guardian
22 shall make decisions regarding the adult ward's support, care,
23 education, health, and welfare. A guardian shall exercise
24 authority only as necessitated by the adult ward's limitations
25 and, to the extent possible, shall encourage the adult ward to
26 participate in decisions, act on the adult ward's own behalf, and
27 develop or regain the capacity to manage the adult ward's
28 personal affairs.

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

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

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

28 [3.] 4. In acting under this section the court shall take

1 into account any duty imposed by law or contract upon a parent or
2 spouse of the protectee, a government agency, a trustee, or other
3 person or corporation, to make payments for the benefit of or
4 provide support, education, care, treatment, habilitation,
5 respite, maintenance or safekeeping of the protectee and [his or
6 her] the protectee's dependents. The guardian of the person and
7 the conservator of the estate shall endeavor to enforce any such
8 duty.

9 475.130. 1. The conservator of the estate of a minor or
10 disabled person shall, under supervision of the court, protect,
11 preserve, and manage the estate, apply it as provided in this
12 code, account for it faithfully, perform all other duties
13 required of the conservator by law, and at the termination of the
14 conservatorship deliver the assets of the protectee to the
15 persons entitled thereto. In protecting, preserving, and
16 managing the estate, the conservator of the estate is under a
17 duty to use the degree of care, skill, and prudence [which] that
18 an ordinarily prudent person uses in managing the property of,
19 and conducting transactions on behalf of, others. If a
20 conservator of the estate has special skills or is appointed on
21 the basis of representations of special skills or expertise, the
22 conservator is under a duty to use those skills in the conduct of
23 the protectee's affairs. A conservator of the estate is under a
24 duty to act in the interest of the protectee and to avoid
25 conflicts of interest which impair the conservator's ability so
26 to act.

27 2. The conservator of the estate shall take possession of
28 all of the protectee's real and personal property, and of rents,

1 income, issue, and profits therefrom, whether accruing before or
2 after the conservator's appointment, and of the proceeds arising
3 from the sale, mortgage, lease, or exchange thereof. Subject to
4 such possession, the title to all such estate, and to the
5 increment and proceeds thereof, is in the protectee and not in
6 the conservator. Upon a showing that funds available or payable
7 for the benefit of the protectee by any federal agency are being
8 applied for the benefit of the protectee, or that such federal
9 agency has refused to recognize the authority of the conservator
10 to administer such funds, the court may waive, by order, the duty
11 of the conservator to account therefor.

12 3. In managing, investing, and distributing the estate of a
13 protectee, the conservator shall use reasonable efforts to:

14 (1) Ascertain the income, assets, and liabilities of the
15 protectee;

16 (2) Ascertain the needs and preferences of the protectee;

17 (3) Coordinate with the guardian and consult with others
18 close to the protectee;

19 (4) Prepare a plan for the management of the protectee's
20 income and assets; and

21 (5) Provide oversight to any income and assets of the
22 protectee under the control of the protectee.

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

27 [4.] 5. The conservator of the estate shall prosecute and
28 defend all actions instituted in behalf of or against the

1 protectee[;], collect all debts due or becoming due to the
2 protectee, and give acquittances and discharges therefor, and
3 adjust, settle, and pay all claims due or becoming due from the
4 protectee so far as [his or her] the protectee's estate and
5 effects will extend, except as provided in sections 507.150 and
6 507.188.

7 [5.] 6. A conservator of the estate has power, without
8 authorization or approval of the court, to:

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

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

14 (3) Receive additions to the estate;

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

18 [(4)] (5) Exchange, or agree to exchange, chattels and
19 choses in action for other such property of equivalent value, not
20 in excess of [one] five thousand dollars;

21 [(5)] (6) Insure or contract for insurance of property of
22 the estate against fire, theft and other hazards;

23 [(6)] (7) Insure or contract for insurance protecting the
24 protectee against any liability likely to be incurred, including
25 medical and hospital expenses, and protecting the conservator
26 against liability to third parties arising from acts or omissions
27 connected with possession or management of the estate;

28 [(7)] (8) Contract for needed repairs and maintenance of

1 property of the estate;

2 [(8)] (9) Lease land and buildings for terms not exceeding
3 one year, reserving reasonable rent, and renew any such lease for
4 a like term;

5 [(9)] (10) Vote corporate stock in person or by general or
6 limited proxy;

7 [(10)] (11) Contract for the provision of board, lodging,
8 education, medical care, or necessities of the protectee for
9 periods not exceeding one year, and renew any such contract for a
10 like period;

11 (12) Deposit funds in a bank;

12 (13) Pay taxes, assessments, and other expenses incurred in
13 the collection, care, administration, and protection of the
14 estate;

15 (14) Prosecute or defend actions, claims, or proceedings in
16 any jurisdiction for the protection of estate assets;

17 (15) Execute and deliver all instruments that will
18 accomplish or facilitate the exercise of the powers vested in the
19 conservator; and

20 [(11)] (16) On or after August 28, 2009, invest the estate
21 in accordance with the provisions of section 475.190.

22 [6.] 7. If, in exercising any power conferred by subsection
23 [5] 6 of this section, a conservator breaches any of the duties
24 enumerated in subsection 1 of this section, the conservator may
25 be surcharged for losses to the estate caused by the breach but
26 persons who dealt with the conservator in good faith, without
27 knowledge of or reason to suspect the breach of duty, may enforce
28 and retain the benefits of any transaction with the conservator

1 which the conservator has power under subsection [5] 6 of this
2 section to conduct.

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

16 475.230. 1. Sales of real estate of protectees shall be
17 conducted in the same manner and the same proceedings shall be
18 had with reference thereto as in cases of sale of real estate of
19 decedents for payment of claims[, except that there shall be no
20 notice to parties in interest before the making of the order].

21 2. Unless waived by the court for cause, the protectee
22 shall have ten days' prior notice of a required court hearing on
23 the petition for the sale of the protectee's real or tangible
24 personal property. The protectee is not entitled to notice of a
25 hearing on the petition for the sale of the protectee's
26 intangible personal property.

27 475.270. 1. Every conservator shall file with the court
28 annually, or more often if required by the court, a settlement of

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

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

11 3. If the conservatorship estate meets the indigency
12 standards prescribed by chapter 208, is under the control of
13 another fiduciary, including a Social Security representative
14 payee or Veterans Affairs fiduciary, or if the assets of a
15 protectee have been placed in restricted custody, the court may
16 waive the requirements [of subsection 2 of this] that the
17 settlement comply with the requirements of section 473.543 and
18 require the conservator to report, in a form prescribed by the
19 court, the following information:

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

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

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

26 (4) The name and address of any depository where estate
27 funds are deposited and the amounts thereof.

28 4. Except when a public administrator is serving as

1 conservator, in addition to the information required under
2 subsection 3 of this section, the settlement shall include:

3 (1) The present address of the protectee;

4 (2) The present address of the conservator;

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

6 (4) The significant actions taken by the conservator during
7 the reporting period;

8 (5) An opinion of the conservator as to the continued need
9 for conservatorship and any recommended changes in the scope of
10 the conservatorship;

11 (6) The compensation requested and the reasonable and
12 necessary expenses incurred by the conservator;

13 (7) A plan for the coming year; and

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

16 475.276. 1. If the assets of the protectee are under the
17 control of another fiduciary, including a Social Security
18 representative payee or Veterans Affairs fiduciary, or if the
19 value of the assets of the estate of a protectee does not exceed
20 the value prescribed by chapter 208 for [welfare] public benefit
21 eligibility and whether or not such protectee receives other [old
22 age, disability or dependency] public benefits from the federal
23 government or the state of Missouri, the court may, upon
24 satisfactory proof that adequate provision has been made for the
25 care and maintenance of the protectee, waive or modify the
26 requirements of sections 475.270 and 475.275.

27 2. If the estate of a protectee consists solely of cash or
28 its equivalent which has been placed in restricted custody so

1 that no withdrawals may be made except on order of the court as
2 prescribed by section 473.160, the court may waive or modify the
3 requirements of sections 475.270 and 475.275.

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

12 475.290. 1. Conservators shall make final settlement of
13 their conservatorship at a time fixed by the court, either by
14 rule or otherwise, within ~~[sixty]~~ ninety days after termination
15 of their authority, except for those cases where the court has
16 ordered that no letters of administration be granted under
17 section 475.320. For the purpose of settlement, the conservator
18 shall make a just and true exhibit of the account between himself
19 or herself and ~~[his]~~ the protectee, and file the same in the
20 court having jurisdiction thereof, and cause a copy of the
21 account, together with a written notice stating the day on which
22 and the court in which ~~[he]~~ the conservator will make settlement,
23 to be delivered to ~~[his]~~ the protectee or, in case of revocation
24 or resignation, to the succeeding conservator or in case of death
25 of ~~[his]~~ the protectee to ~~[his]~~ the executor or administrator of
26 the protectee's estate or other person designated by the court,
27 at least twenty days before the date set for settlement.

28 2. If, for any cause, a copy of the account and written

1 notice cannot be delivered to the protectee or other person
2 entitled thereto, the court may order notice of the filing of the
3 account, and of the time and place at which final settlement is
4 to be made, to be given by publication once a week for four weeks
5 next before the date set for settlement in accordance with
6 section 472.100.

7 3. At the time specified in the notice, the court, upon
8 satisfactory proof of the delivery of a copy of the account and
9 written notice of the settlement to the protectee or person
10 entitled thereto, or [his] the protectee's written waiver
11 thereof, or in case the court has ordered notice to be given by
12 publication, then upon proof of compliance with such order, shall
13 proceed to examine the accounts of the conservator, correct all
14 errors therein, if any there be, and make a final settlement with
15 the conservator; or the court may, for good cause, continue the
16 settlement and proceed therein at any time agreed upon by the
17 parties or fixed by the court.

18 475.320. 1. Except in cases mentioned in subsection 2, the
19 court, upon the death of any protectee, may order that no letters
20 of administration shall be granted upon his estate, but the
21 funeral and burial expenses and estate taxes for which the estate
22 of the deceased protectee is liable, and obligations of the
23 protectee incurred by the conservator, as well as expenses of
24 administration, may be paid out of the estate by the conservator
25 on order of the court and after the final settlement of the
26 conservator is approved, and upon a showing that all obligations
27 of the estate which have been authorized by the court have been
28 paid, the court shall order the conservator to make distribution

1 to the heirs in the same manner and with the same effect as in
2 the case of an administrator. In such case the conservator is
3 subject in all respects and to the same extent to the liabilities
4 of an administrator and liability on the conservator's bond
5 continues and applies to the complete administration of the
6 estate of the deceased protectee, including settlements as
7 required by section 473.540.

8 2. Whenever a protectee dies leaving debts, other than
9 those payable by the conservator under subsection 1 hereof, for
10 which his estate would be liable in an action, or whenever a
11 protectee dies, leaving a will valid under the law respecting
12 wills, letters testamentary or of administration shall be granted
13 on the estate of the deceased protectee, in the manner provided
14 by law, as in case of other testators or intestates.

15 475.341. 1. Except when a public administrator is serving
16 as conservator, a sale, encumbrance, or other transaction
17 involving the management of the conservatorship entered into by
18 the conservator for the conservator's own personal gain or which
19 is otherwise affected by a conflict between the conservator's
20 fiduciary and personal interests is voidable unless the
21 transaction:

22 (1) Was approved by the court;

23 (2) Involves a contract entered into or claim acquired by
24 the conservator before the person became or contemplated becoming
25 conservator;

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

28 (4) Involves an advance by the conservator of moneys for

1 the protection of the estate.

2 2. When a public administrator is serving as conservator,
3 the public administrator shall not enter into a transaction for
4 his or her own personal gain.

5 475.342. The conservator shall:

6 (1) Keep estate property separate from the conservator's
7 own property; and

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

12 475.343. 1. A guardian of an adult or minor ward is not
13 obligated by virtue of such guardian's appointment to use the
14 guardian's own financial resources for the support of the ward.
15 If the ward's estate and available public benefits are inadequate
16 for the proper care of the ward, the guardian or conservator may
17 apply to the county commission under section 475.370.

18 2. No guardian shall have authority to seek admission of
19 the guardian's ward to a mental health facility or an
20 intellectual disability facility for more than thirty days for
21 any purpose without court order except as otherwise provided by
22 law.

23 3. Only the director or chief administrative officer of a
24 social service agency serving as guardian of an incapacitated
25 person, or such person's designee, is legally authorized to act
26 on behalf of such person.

27 4. A social service agency serving as guardian of an
28 incapacitated person shall notify the court within fifteen days

1 after any change in the identity of the professional individual
2 who has primary responsibility for providing guardianship
3 services to the incapacitated person.

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

6 475.355. 1. If, upon the filing of a petition for the
7 adjudication of incapacity or disability it appears that the
8 respondent, by reason of a mental disorder or intellectual
9 disability or developmental disability, presents a likelihood of
10 serious physical harm to [himself] the respondent or others, [he]
11 the respondent may be detained in accordance with the provisions
12 of chapter 632 if suffering from a mental disorder, or chapter
13 633 if the [person] respondent has an intellectual or
14 developmental disability, pending a hearing on the petition for
15 adjudication.

16 2. As used in this section, the terms "mental disorder" and
17 "intellectual disability" or "developmental disability" shall be
18 as defined in chapter 630 and the term "likelihood of serious
19 physical harm to [himself] the respondent or others" shall be as
20 the term "likelihood of serious harm" is defined in chapter 632.

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

24 475.357. The probate divisions of the courts of this state
25 have jurisdiction over issues of the adjudication of incapacity,
26 partial incapacity, disability, or partial disability and the
27 appointment of a guardian, limited guardian, conservator, or
28 limited conservator of an adult eighteen years of age or older

1 whose parents have a pending matter under chapter 210 or chapter
2 452 for child custody or visitation of that child. The court
3 that has jurisdiction under chapter 210 or chapter 452 shall have
4 the authority to enter orders only as to child support after such
5 adjudication and appointment of a guardian by the probate
6 division.

7 475.361. 1. The provisions of section 475.078
8 notwithstanding to the contrary, in every guardianship, the ward
9 has the right to:

10 (1) A guardian who acts in the best interests of the ward;
11 (2) A guardian who is reasonably accessible to the ward;
12 (3) Communicate freely and privately with family, friends,
13 and other persons other than the guardian; except that, such
14 right may be limited by the guardian for good cause but only as
15 necessary to ensure the ward's condition, safety, habilitation,
16 or sound therapeutic treatment;

17 (4) Individually or through the ward's representative or
18 legal counsel, bring an action relating to the guardianship,
19 including the right to file a petition alleging that the ward is
20 being unjustly denied a right or privilege granted by this
21 chapter, including the right to bring an action to modify or
22 terminate the guardianship under the provisions of section
23 475.083;

24 (5) The least restrictive form of guardianship assistance,
25 taking into consideration the ward's functional limitations,
26 personal needs, and preferences;

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

28 (7) Receive information from the court that describes the

1 ward's rights, including rights the ward may seek by petitioning
2 the court; and

3 (8) Participate in any health care decision-making process.

4 2. An adult ward may petition the court to grant the ward
5 the right to:

6 (1) Contract to marry or to petition for dissolution of
7 marriage;

8 (2) Make, modify, or terminate other contracts or ratify
9 contracts made by the ward;

10 (3) Consent to medical treatment;

11 (4) Establish a residence or dwelling place;

12 (5) Change domicile;

13 (6) Bring or defend any action at law or equity, except an
14 action relating to the guardianship; or

15 (7) Drive a motor vehicle if the ward can pass the required
16 driving test.

17 3. The appointment of a guardian shall revoke the powers of
18 an agent who was previously appointed by the ward to act as an
19 agent under a durable power of attorney for health care, unless
20 the court so orders.

21 4. The appointment of a guardian is not a determination
22 that the ward lacks testamentary capacity.

23 630.005. As used in this chapter and chapters 631, 632, and
24 633, unless the context clearly requires otherwise, the following
25 terms shall mean:

26 (1) "Administrative entity", a provider of specialized
27 services other than transportation to clients of the department
28 on behalf of a division of the department;

1 (2) "Alcohol abuse", the use of any alcoholic beverage,
2 which use results in intoxication or in a psychological or
3 physiological dependency from continued use, which dependency
4 induces a mental, emotional or physical impairment and which
5 causes socially dysfunctional behavior;

6 (3) "Chemical restraint", medication administered with the
7 primary intent of restraining a patient who presents a likelihood
8 of serious physical injury to himself or others, and not
9 prescribed to treat a person's medical condition;

10 (4) "Client", any person who is placed by the department in
11 a facility or program licensed and funded by the department or
12 who is a recipient of services from a regional center, as defined
13 in section 633.005;

14 (5) "Commission", the state mental health commission;

15 (6) "Consumer", a person:

16 (a) Who qualifies to receive department services; or

17 (b) Who is a parent, child or sibling of a person who
18 receives department services; or

19 (c) Who has a personal interest in services provided by the
20 department.

21
22 A person who provides services to persons affected by
23 intellectual disabilities, developmental disabilities, mental
24 disorders, mental illness, or alcohol or drug abuse shall not be
25 considered a consumer;

26 (7) "Day program", a place conducted or maintained by any
27 person who advertises or holds himself out as providing
28 prevention, evaluation, treatment, habilitation or rehabilitation

1 for persons affected by mental disorders, mental illness,
2 intellectual disabilities, developmental disabilities or alcohol
3 or drug abuse for less than the full twenty-four hours comprising
4 each daily period;

5 (8) "Department", the department of mental health of the
6 state of Missouri;

7 (9) "Developmental disability", a disability:

8 (a) Which is attributable to:

9 a. Intellectual disability, cerebral palsy, epilepsy, head
10 injury or autism, or a learning disability related to a brain
11 dysfunction; or

12 b. Any other mental or physical impairment or combination
13 of mental or physical impairments; and

14 (b) Is manifested before the person attains age twenty-two;
15 and

16 (c) Is likely to continue indefinitely; and

17 (d) Results in substantial functional limitations in two or
18 more of the following areas of major life activities:

19 a. Self-care;

20 b. Receptive and expressive language development and use;

21 c. Learning;

22 d. Self-direction;

23 e. Capacity for independent living or economic
24 self-sufficiency;

25 f. Mobility; and

26 (e) Reflects the person's need for a combination and
27 sequence of special, interdisciplinary, or generic care,
28 habilitation or other services which may be of lifelong or

1 extended duration and are individually planned and coordinated;

2 (10) "Director", the director of the department of mental
3 health, or his designee;

4 (11) "Domiciled in Missouri", a permanent connection
5 between an individual and the state of Missouri, which is more
6 than mere residence in the state; it may be established by the
7 individual being physically present in Missouri with the
8 intention to abandon his previous domicile and to remain in
9 Missouri permanently or indefinitely;

10 (12) "Drug abuse", the use of any drug without compelling
11 medical reason, which use results in a temporary mental,
12 emotional or physical impairment and causes socially
13 dysfunctional behavior, or in psychological or physiological
14 dependency resulting from continued use, which dependency induces
15 a mental, emotional or physical impairment and causes socially
16 dysfunctional behavior;

17 (13) "Habilitation", a process of treatment, training, care
18 or specialized attention [which] that seeks to enhance and
19 maximize a person with an intellectual disability or a
20 developmental disability to cope with the environment and to live
21 as [normally] determined by the person as much as possible, as is
22 appropriate for the person considering his or her physical and
23 mental condition and financial means;

24 (14) "Habilitation center", a residential facility operated
25 by the department and serving only persons who are
26 developmentally disabled;

27 (15) "Head of the facility", the chief administrative
28 officer, or his designee, of any residential facility;

1 (16) "Head of the program", the chief administrative
2 officer, or his designee, of any day program;

3 (17) "Individualized habilitation plan", a document which
4 sets forth habilitation goals and objectives for residents and
5 clients with an intellectual disability or a developmental
6 disability, and which details the habilitation program as
7 required by law, rules and funding sources;

8 (18) "Individualized rehabilitation plan", a document which
9 sets forth the care, treatment and rehabilitation goals and
10 objectives for patients and clients affected by alcohol or drug
11 abuse, and which details the rehabilitation program as required
12 by law, rules and funding sources;

13 (19) "Individualized treatment plan", a document which sets
14 forth the care, treatment and rehabilitation goals and objectives
15 for patients and clients with mental disorders or mental illness,
16 and which details the treatment program as required by law, rules
17 and funding sources;

18 (20) "Intellectual disability", significantly subaverage
19 general intellectual functioning which:

20 (a) Originates before age eighteen; and

21 (b) Is associated with a significant impairment in adaptive
22 behavior;

23 (21) "Investigator", an employee or contract agent of the
24 department of mental health who is performing an investigation
25 regarding an allegation of abuse or neglect or an investigation
26 at the request of the director of the department of mental health
27 or his designee;

28 (22) "Least restrictive environment", a reasonably

1 available setting or mental health program where care, treatment,
2 habilitation or rehabilitation is particularly suited to the
3 level and quality of services necessary to implement a person's
4 individualized treatment, habilitation or rehabilitation plan and
5 to enable the person to maximize his or her functioning potential
6 to participate as freely as feasible in normal living activities,
7 giving due consideration to potentially harmful effects on the
8 person and the safety of other facility or program clients and
9 public safety. For some persons with mental disorders,
10 intellectual disabilities, or developmental disabilities, the
11 least restrictive environment may be a facility operated by the
12 department, a private facility, a supported community living
13 situation, or an alternative community program designed for
14 persons who are civilly detained for outpatient treatment or who
15 are conditionally released pursuant to chapter 632;

16 (23) "Mental disorder", any organic, mental or emotional
17 impairment which has substantial adverse effects on a person's
18 cognitive, volitional or emotional function and which constitutes
19 a substantial impairment in a person's ability to participate in
20 activities of normal living;

21 (24) "Mental illness", a state of impaired mental
22 processes, which impairment results in a distortion of a person's
23 capacity to recognize reality due to hallucinations, delusions,
24 faulty perceptions or alterations of mood, and interferes with an
25 individual's ability to reason, understand or exercise conscious
26 control over his actions. The term "mental illness" does not
27 include the following conditions unless they are accompanied by a
28 mental illness as otherwise defined in this subdivision:

1 (a) Intellectual disability, developmental disability or
2 narcolepsy;

3 (b) Simple intoxication caused by substances such as
4 alcohol or drugs;

5 (c) Dependence upon or addiction to any substances such as
6 alcohol or drugs;

7 (d) Any other disorders such as senility, which are not of
8 an actively psychotic nature;

9 (25) "Minor", any person under the age of eighteen years;

10 (26) "Patient", an individual under observation, care,
11 treatment or rehabilitation by any hospital or other mental
12 health facility or mental health program pursuant to the
13 provisions of chapter 632;

14 (27) "Psychosurgery":

15 (a) Surgery on the normal brain tissue of an individual not
16 suffering from physical disease for the purpose of changing or
17 controlling behavior; or

18 (b) Surgery on diseased brain tissue of an individual if
19 the sole object of the surgery is to control, change or affect
20 behavioral disturbances, except seizure disorders;

21 (28) "Rehabilitation", a process of restoration of a
22 person's ability to attain or maintain normal or optimum health
23 or constructive activity through care, treatment, training,
24 counseling or specialized attention;

25 (29) "Residence", the place where the patient has last
26 generally lodged prior to admission or, in case of a minor, where
27 his family has so lodged; except, that admission or detention in
28 any facility of the department shall not be deemed an absence

1 from the place of residence and shall not constitute a change in
2 residence;

3 (30) "Resident", a person receiving residential services
4 from a facility, other than mental health facility, operated,
5 funded or licensed by the department;

6 (31) "Residential facility", any premises where residential
7 prevention, evaluation, care, treatment, habilitation or
8 rehabilitation is provided for persons affected by mental
9 disorders, mental illness, intellectual disability, developmental
10 disabilities or alcohol or drug abuse; except the person's
11 dwelling;

12 (32) "Specialized service", an entity which provides
13 prevention, evaluation, transportation, care, treatment,
14 habilitation or rehabilitation services to persons affected by
15 mental disorders, mental illness, intellectual disabilities,
16 developmental disabilities or alcohol or drug abuse;

17 (33) "Vendor", a person or entity under contract with the
18 department, other than as a department employee, who provides
19 services to patients, residents or clients;

20 (34) "Vulnerable person", any person in the custody, care,
21 or control of the department that is receiving services from an
22 operated, funded, licensed, or certified program.

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Sandy Crawford

Jim Neely