

SECOND REGULAR SESSION

SENATE BILL NO. 748

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ARTHUR.

3226S.02I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 475.010 and 475.082, RSMo, and to enact in lieu thereof three new sections relating to grievances against a guardian or conservator.

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

Section A. Sections 475.010 and 475.082, RSMo, are
2 repealed and three new sections enacted in lieu thereof, to be
3 known as sections 475.010, 475.082, and 475.088, to read as
4 follows:

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

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

5 (2) "Claims", liabilities of the protectee arising in
6 contract, in tort or otherwise, before or after the
7 appointment of a conservator, and liabilities of the estate
8 which arise at or after the adjudication of disability or
9 after the appointment of a conservator of the estate,
10 including expenses of the adjudication and of
11 administration. The term does not include demands or
12 disputes regarding title of the protectee to specific assets
13 alleged to be included in the estate;

14 (3) **"Concerned person", a person concerned about the**
15 **welfare of a protectee subject to a conservatorship or a**
16 **ward subject to a guardianship. The term "concerned**

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

17 **person", as used in this chapter, may include, but is not**
18 **limited to, a protectee, a ward, or an interested person;**

19 **(4)** "Conservator", one appointed by a court to have
20 the care and custody of the estate of a minor or a disabled
21 person. A "limited conservator" is one whose duties or
22 powers are limited. The term "conservator", as used in this
23 chapter, includes limited conservator unless otherwise
24 specified or apparent from the context;

25 **[(4)] (5)** "Conservator ad litem", one appointed by the
26 court in which particular litigation is pending regarding
27 the management of financial resources on behalf of a minor,
28 a disabled person, or an unborn person in that particular
29 proceeding or as otherwise specified in this chapter;

30 **[(5)] (6)** "Custodial parent", the parent of a minor
31 who has been awarded sole or joint physical custody of such
32 minor, or the parent of an incapacitated person who has been
33 appointed as guardian of such person, by an order or
34 judgment of a court of this state or of another state or
35 territory of the United States, or if there is no such order
36 or judgment, the parent with whom the minor or incapacitated
37 person primarily resides;

38 **[(6)] (7)** "Disabled" or "disabled person", one who is:

39 (a) Unable by reason of any physical, mental, or
40 cognitive condition to receive and evaluate information or
41 to communicate decisions to such an extent that the person
42 lacks ability to manage the person's financial resources; or

43 (b) The term disabled or disabled person, as used in
44 this chapter includes the terms partially disabled or
45 partially disabled person unless otherwise specified or
46 apparent from the context;

47 **[(7)] (8)** "Eligible person" or "qualified person", a
48 natural person, social service agency, corporation or

national or state banking organization qualified to act as guardian of the person or conservator of the estate pursuant to the provisions of section 475.055;

(9) "Grievance", a written communication with the court that contains sufficient nonspeculative factual allegations to support a basis for review by the court, but is not required to seek any particular relief;

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

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

[(10)] (12) "Habilitation", a process of treatment, training, care, or specialized attention that seeks to enhance and maximize the ability of a person with an intellectual disability or a developmental disability to cope with the environment and to live as determined by the person as much as possible, as is appropriate for the person considering his or her physical and mental condition and financial means;

[(11)] (13) "Incapacitated person", one who is unable by reason of any physical, mental, or cognitive condition to receive and evaluate information or to communicate decisions

81 to such an extent that the person, even with appropriate
82 services and assistive technology, lacks capacity to manage
83 the person's essential requirements for food, clothing,
84 shelter, safety or other care such that serious physical
85 injury, illness, or disease is likely to occur. The term
86 incapacitated person as used in this chapter includes the
87 term partially incapacitated person unless otherwise
88 specified or apparent from the context;

89 [(12)] (14) "Interested persons", spouses, children,
90 parents, adult members of a ward's or protectee's family,
91 creditors or any others having a property right or claim
92 against the estate of a protectee being administered,
93 trustees of a trust of which the ward or protectee is a
94 beneficiary, agents of a durable power of attorney for a
95 ward or protectee, and children of a protectee who may have
96 a property right or claim against or an interest in the
97 estate of a protectee. This meaning may vary at different
98 stages and different parts of a proceeding and shall be
99 determined according to the particular purpose and matter
100 involved;

101 [(13)] (15) "Least restrictive alternative", with
102 respect to the guardianship order and the exercise of power
103 by the guardian, a course of action or an alternative that
104 allows the incapacitated person to live, learn, and work
105 with minimum restrictions on the person, as are appropriate
106 for the person considering his or her physical and mental
107 condition and financial means. Least restrictive
108 alternative also means choosing the decision or approach
109 that:

110 (a) Places the least possible restriction on the
111 person's personal liberty and exercise of rights and that
112 promotes the greatest possible inclusion of the person into

113 his or her community, as is appropriate for the person
114 considering his or her physical and mental condition and
115 financial means; and

116 (b) Is consistent with meeting the person's essential
117 requirements for health, safety, habilitation, treatment,
118 and recovery and protecting the person from abuse, neglect,
119 and financial exploitation;

120 [(14)] (16) "Manage financial resources", either those
121 actions necessary to obtain, administer, and dispose of real
122 and personal property, intangible property, business
123 property, benefits, income or any assets, or those actions
124 necessary to prevent waste, loss or dissipation of property,
125 or those actions necessary to provide for the care and
126 support of such person or anyone legally dependent upon such
127 person by a person of ordinary skills and intelligence
128 commensurate with his or her training and education;

129 [(15)] (17) "Minor", any person who is under the age
130 of eighteen years;

131 [(16)] (18) "Parent", the biological or adoptive
132 mother or father of a child whose parental rights have not
133 been terminated under chapter 211, including:

134 (a) A person registered as the father of the child by
135 reason of an unrevoked notice of intent to claim paternity
136 under section 192.016;

137 (b) A person who has acknowledged paternity of the
138 child and has not rescinded that acknowledgment under
139 section 193.215; and

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

142 [(17)] (19) "Partially disabled person", one who is
143 unable by reason of any physical, mental, or cognitive
144 condition to receive and evaluate information or to

145 communicate decisions to such an extent that such person
146 lacks capacity to manage, in part, his or her financial
147 resources;

148 [(18)] (20) "Partially incapacitated person", one who
149 is unable by reason of any physical, mental, or cognitive
150 condition to receive and evaluate information or to
151 communicate decisions to the extent that such person lacks
152 capacity to meet, in part, essential requirements for food,
153 clothing, shelter, safety, or other care without court-
154 ordered assistance;

155 [(19)] (21) "Protectee", a person for whose estate a
156 conservator or limited conservator has been appointed or
157 with respect to whose estate a transaction has been
158 authorized by the court under section 475.092 without
159 appointment of a conservator or limited conservator;

160 [(20)] (22) "Seriously ill", a significant likelihood
161 that a person will become incapacitated or die within twelve
162 months;

163 [(21)] (23) "Social service agency", a charitable
164 organization organized and incorporated as a not-for-profit
165 corporation under the laws of this state and which qualifies
166 as an exempt organization within the meaning of Section
167 501(c)(3), or any successor provision thereto of the federal
168 Internal Revenue Code;

169 [(22)] (24) "Standby guardian", one who is authorized
170 to have the temporary care and custody of the person of a
171 minor or of an incapacitated person under the provisions of
172 section 475.046;

173 [(23)] (25) "Treatment", the prevention, amelioration
174 or cure of a person's physical and mental illnesses or
175 incapacities;

176 [(24)] (26) "Ward", a minor or an incapacitated person
177 for whom a guardian, limited guardian, or standby guardian
178 has been appointed.

 475.082. 1. At least annually, the court shall
2 inquire into the status of every adult ward and protectee
3 under its jurisdiction for the purpose of determining
4 whether the incapacity or disability may have ceased or
5 changed and to insure that the guardian or conservator is
6 discharging the guardian's or conservator's responsibilities
7 and duties in accordance with this chapter.

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

18 (1) The present address of the ward;

19 (2) The present address of the guardian;

20 (3) Unless the report specifies that the ward is
21 living with the guardian, the number of times the guardian
22 has had contact with the ward, and the nature of such
23 contacts including the date the ward was last seen by the
24 guardian;

25 (4) A summary of the guardian's visits with the ward
26 and activities on the ward's behalf and the extent to which
27 the ward has participated in decisionmaking;

28 (5) If the ward is institutionalized, whether the
29 guardian has received a copy of the treatment or

30 habilitation plan and, if so, the date of such plan, and
31 whether the guardian agrees with its provision;

32 (6) The date the ward was last seen by a physician or
33 other professional and the purpose;

34 (7) The current mental and physical condition of the
35 ward and any major changes in the ward's condition since the
36 last report;

37 (8) The opinion of the guardian as to the need for the
38 continuation of the guardianship and whether it is necessary
39 to increase or decrease the powers of the guardian; and

40 (9) A summarized plan for the coming year. If an
41 individual support plan, treatment plan, or plan of care is
42 in place, such plan may be submitted in lieu of the
43 requirements of this subdivision.

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

54 4. If there is an indication that the incapacity or
55 disability of the ward or protectee has ceased, the court
56 shall appoint an attorney to file on behalf of the ward or
57 protectee a petition for termination of the guardianship or
58 conservatorship or for restoration.

59 5. **In addition to review by the court following the**
60 **filing of a grievance pursuant to section 475.088,** if it
61 appears to the court as part of its review or at any time

upon motion of any interested person, including the ward or protectee or some person on behalf of the ward or protectee, that the guardian or conservator is not discharging the guardian's or conservator's responsibilities and duties as required by this chapter or has not acted in the best interests of the ward or protectee, the court may order that a hearing be held and direct that the guardian or conservator appear before the court. In the event that such a hearing is ordered and the ward or protectee is not represented by an attorney, the court shall appoint an attorney to represent the ward or protectee in the proceedings. At the conclusion of the hearing, if the court finds that the guardian or conservator is not discharging his or her duties and responsibilities as required by this code or is not acting in the best interests of the ward or protectee, the court shall enter such orders as it deems appropriate under the circumstances. Such orders may include the removal of the guardian or conservator and the appointment of a successor guardian or conservator or termination of the guardianship or conservatorship on finding that the ward has recovered capacity or the protectee is no longer disabled. The court, in framing its orders and findings, shall give due consideration to the exercise by the guardian or conservator of any discretion vested in the guardian or conservator by law.

475.088. 1. A protectee subject to a conservatorship, a ward subject to a guardianship, or a concerned person that reasonably believes the guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with this chapter may file a grievance in a record with the court.

7 2. Subject to the provisions of subsection 3 of this
8 section, after receiving a grievance pursuant to subsection
9 1 of this section, the court:

10 (1) Shall review the grievance and, if necessary to
11 determine the appropriate response, court records related to
12 the guardianship or conservatorship; and

13 (2) May take any action supported by the evidence,
14 including:

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

18 (b) Appointing a guardian or conservator ad litem;

19 (c) Appointing an attorney for the protectee or the
20 ward; or

21 (d) Holding a hearing pursuant to subsection 5 of
22 section 475.082.

23 3. The court may decline to act under subsection 2 of
24 this section if a similar grievance was filed within six
25 months preceding the filing of the current grievance and the
26 court followed the procedures of subsection 2 of this
27 section in considering the earlier grievance.

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