

SECOND REGULAR SESSION

SENATE BILL NO. 1317

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CARTER.

3372S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 456.1-103, 475.010, 475.050, 475.055, 475.060, 475.075, 475.079, and 475.120, RSMo, and to enact in lieu thereof eight new sections relating to guardianships.

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

Section A. Sections 456.1-103, 475.010, 475.050, 475.055, 475.060, 475.075, 475.079, and 475.120, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 456.1-103, 475.010, 475.050, 475.055, 475.060, 475.075, 475.079, and 475.120, to read as follows:

456.1-103. In sections 456.1-101 to 456.11-1106, the following terms shall mean:

(1) "Action", with respect to an act of a trustee, includes a failure to act;

(2) "Ascertainable standard", a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2541(c)(1) of the Internal Revenue Code;

(3) "Beneficiary", a person that:

(a) Has a present or future beneficial interest in a trust, vested or contingent; or

(b) In a capacity other than that of trustee, holds a power of appointment over trust property;

(4) "Charitable trust", a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 456.4-405;

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

17 (5) "Conservator", a person described in subdivision
18 (3) of section 475.010. This term does not include a
19 conservator ad litem;

20 (6) "Conservator ad litem", a person appointed by the
21 court pursuant to the provisions of section 475.097;

22 (7) "Directed trust", any trust, including a split
23 interest trust, in which the trust instrument:

24 (a) Authorizes a trust protector to instruct or direct
25 the trustee;

26 (b) Charges a trust protector with any
27 responsibilities regarding the trust;

28 (c) Grants the trust protector one or more powers over
29 the trust; or

30 (d) Directs one or more powers over the trust to a
31 person, who is not serving as a trustee, and is not a
32 settlor or a beneficiary;

33 (8) "Environmental law", a federal, state, or local
34 law, rule, regulation, or ordinance relating to protection
35 of the environment;

45 (10) "Guardian", a person described in subdivision
46 [(8)] (9) of section 475.010. The term does not include a
47 guardian ad litem;

56 (12) "Interests of the beneficiaries", the beneficial
57 interests provided in the terms of the trust;

58 (13) "Internal Revenue Code", the United States
59 Internal Revenue Code of 1986, as in effect on January 1,
60 2005, or as later amended;

61 (14) "Jurisdiction", with respect to a geographic
62 area, includes a state or country;

68 (16) "Permissible distributee", a beneficiary who is
69 currently eligible to receive distributions of trust income
70 or principal, whether mandatory or discretionary;

71 (17) "Power of withdrawal", a presently exercisable
72 power of a beneficiary to withdraw assets from the trust
73 without the consent of the trustee or any other person;

80 principal place of administration is, in the following order
81 of priority:

82 (a) The usual place of business of the corporate
83 trustee if there is but one corporate cotrustee;

84 (b) The usual place of business or residence of the
85 trustee who is a professional fiduciary if there is but one
86 such trustee and no corporate cotrustee; or

87 (c) The usual place of business or residence of any of
88 the cotrustees;

89 (19) "Professional fiduciary", an individual who
90 represents himself or herself to the public as having
91 specialized training, experience or skills in the
92 administration of trusts;

93 (20) "Property", anything that may be the subject of
94 ownership, whether real or personal, legal or equitable, or
95 any interest therein;

96 (21) "Qualified beneficiary", a beneficiary who, on
97 the date the beneficiary's qualification is determined:

98 (a) Is a permissible distributee;

99 (b) Would be a permissible distributee if the
100 interests of the permissible distributees described in
101 paragraph (a) of this subdivision terminated on that date; or

102 (c) Would be a permissible distributee if the trust
103 terminated on that date;

104 (22) "Record", information that is inscribed on a
105 tangible medium or that is stored in an electronic or other
106 medium and is retrievable in perceivable form;

107 (23) "Revocable", as applied to a trust, means that
108 the settlor has the legal power to revoke the trust without
109 the consent of the trustee or a person holding an adverse
110 interest, regardless of whether the settlor has the mental
111 capacity to do so in fact;

112 (24) "Settlor", a person, including a testator, who
113 creates, or contributes property to, a trust. If more than
114 one person creates or contributes property to a trust, each
115 person is a settlor of the portion of the trust property
116 attributable to that person's contribution except to the
117 extent another person has the power to revoke or withdraw
118 that portion pursuant to the terms of the trust;

119 (25) "Sign", with present intent to authenticate or
120 adopt a record:

121 (a) To execute or adopt a tangible symbol; or
122 (b) To attach to or logically associate with the
123 record an electronic sound, symbol, or process;

124 (26) "Spendthrift provision", a term of a trust which
125 restrains either the voluntary or involuntary transfer or
126 both the voluntary and involuntary transfer of a
127 beneficiary's interest;

128 (27) "State", a state of the United States, the
129 District of Columbia, Puerto Rico, the United States Virgin
130 Islands, or any territory or insular possession subject to
131 the jurisdiction of the United States. The term includes an
132 Indian tribe or band recognized by federal law or formally
133 acknowledged by a state;

134 (28) "Terms of a trust", the manifestation of the
135 settlor's intent regarding a trust's provisions as expressed
136 in the trust instrument or as may be established by other
137 evidence that would be admissible in a judicial proceeding;

138 (29) "Trust instrument", an instrument executed by the
139 settlor that contains terms of the trust, including any
140 amendments thereto;

141 (30) "Trust protector", any person, group of persons,
142 or entity not serving as a trustee and not the settlor or a
143 beneficiary, designated in a trust instrument to instruct or

144 direct the trustee or charged in the trust instrument with
145 any responsibilities regarding the trust or expressly
146 granted in the trust instrument one or more powers over the
147 trust. The term trust protector includes, but is not
148 limited to, persons or entities identified in the trust
149 instrument as trust advisors, trust directors, distribution
150 advisors, or investment advisors;

151 (31) "Trustee", includes an original, additional, and
152 successor trustee, and a cotrustee.

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) "Conservator", one appointed by a court to have
15 the care and custody of the estate of a minor or a disabled
16 person. A "limited conservator" is one whose duties or
17 powers are limited. The term "conservator", as used in this
18 chapter, includes limited conservator unless otherwise
19 specified or apparent from the context;

20 (4) "Conservator ad litem", one appointed by the court
21 in which particular litigation is pending regarding the
22 management of financial resources on behalf of a minor, a

23 disabled person, or an unborn person in that particular
24 proceeding or as otherwise specified in this chapter;

25 (5) "Custodial parent", the parent of a minor who has
26 been awarded sole or joint physical custody of such minor,
27 or the parent of an incapacitated person who has been
28 appointed as guardian of such person, by an order or
29 judgment of a court of this state or of another state or
30 territory of the United States, or if there is no such order
31 or judgment, the parent with whom the minor or incapacitated
32 person primarily resides;

33 (6) "Disabled" or "disabled person", one who is:

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

38 (b) The term disabled or disabled person, as used in
39 this chapter includes the terms partially disabled or
40 partially disabled person unless otherwise specified or
41 apparent from the context;

42 (7) "Eligible person" or "qualified person", a natural
43 person, social service agency, corporation or national or
44 state banking organization qualified to act as guardian of
45 the person or conservator of the estate pursuant to the
46 provisions of section 475.055;

47 (8) **"Forensic guardianship"**, a guardianship in which
48 the division of probation and parole within the department
49 of corrections is appointed as a guardian pursuant to the
50 provisions of section 475.055;

51 (9) "Guardian", one appointed by a court to have the
52 care and custody of the person of a minor or of an
53 incapacitated person. A "limited guardian" is one whose
54 duties or powers are limited. A "standby guardian" is one

55 approved by the court to temporarily assume the duties of
56 guardian of a minor or of an incapacitated person under
57 section 475.046. The term guardian, as used in this
58 chapter, includes limited guardian and standby guardian
59 unless otherwise specified or apparent from the context;

60 **[(9)] (10)** "Guardian ad litem", one appointed by a
61 court, in which particular litigation is pending on behalf
62 of a minor, an incapacitated person, a disabled person, or
63 an unborn person in that particular proceeding or as
64 otherwise specified in this code;

65 **[(10)] (11)** "Habilitation", a process of treatment,
66 training, care, or specialized attention that seeks to
67 enhance and maximize the ability of a person with an
68 intellectual disability or a developmental disability to
69 cope with the environment and to live as determined by the
70 person as much as possible, as is appropriate for the person
71 considering his or her physical and mental condition and
72 financial means ;

73 **[(11)] (12)** "Incapacitated person", one who is unable
74 by reason of any physical, mental, or cognitive condition to
75 receive and evaluate information or to communicate decisions
76 to such an extent that the person, even with appropriate
77 services and assistive technology, lacks capacity to manage
78 the person's essential requirements for food, clothing,
79 shelter, safety or other care such that serious physical
80 injury, illness, or disease is likely to occur. The term
81 incapacitated person as used in this chapter includes the
82 term partially incapacitated person unless otherwise
83 specified or apparent from the context;

84 **[(12)] (13)** "Interested persons", spouses, children,
85 parents, adult members of a ward's or protectee's family,
86 creditors or any others having a property right or claim

87 against the estate of a protectee being administered,
88 trustees of a trust of which the ward or protectee is a
89 beneficiary, agents of a durable power of attorney for a
90 ward or protectee, and children of a protectee who may have
91 a property right or claim against or an interest in the
92 estate of a protectee. This meaning may vary at different
93 stages and different parts of a proceeding and shall be
94 determined according to the particular purpose and matter
95 involved;

96 **[(13)] (14)** "Least restrictive alternative", with
97 respect to the guardianship order and the exercise of power
98 by the guardian , a course of action or an alternative that
99 allows the incapacitated person to live, learn, and work
100 with minimum restrictions on the person, as are appropriate
101 for the person considering his or her physical and mental
102 condition and financial means. Least restrictive
103 alternative also means choosing the decision or approach
104 that:

105 (a) Places the least possible restriction on the
106 person's personal liberty and exercise of rights and that
107 promotes the greatest possible inclusion of the person into
108 his or her community, as is appropriate for the person
109 considering his or her physical and mental condition and
110 financial means; and

111 (b) Is consistent with meeting the person's essential
112 requirements for health, safety, habilitation, treatment,
113 and recovery and protecting the person from abuse, neglect,
114 and financial exploitation;

115 **[(14)] (15)** "Manage financial resources", either those
116 actions necessary to obtain, administer, and dispose of real
117 and personal property, intangible property, business
118 property, benefits, income or any assets, or those actions

119 necessary to prevent waste, loss or dissipation of property,
120 or those actions necessary to provide for the care and
121 support of such person or anyone legally dependent upon such
122 person by a person of ordinary skills and intelligence
123 commensurate with his or her training and education;

124 **[(15)] (16)** "Minor", any person who is under the age
125 of eighteen years;

126 **[(16)] (17)** "Parent", the biological or adoptive
127 mother or father of a child whose parental rights have not
128 been terminated under chapter 211, including:

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

132 (b) A person who has acknowledged paternity of the
133 child and has not rescinded that acknowledgment under
134 section 193.215; and

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

137 **[(17)] (18)** "Partially disabled person", one who is
138 unable by reason of any physical, mental, or cognitive
139 condition to receive and evaluate information or to
140 communicate decisions to such an extent that such person
141 lacks capacity to manage, in part, his or her financial
142 resources;

143 **[(18)] (19)** "Partially incapacitated person", one who
144 is unable by reason of any physical, mental, or cognitive
145 condition to receive and evaluate information or to
146 communicate decisions to the extent that such person lacks
147 capacity to meet, in part, essential requirements for food,
148 clothing, shelter, safety, or other care without court-
149 ordered assistance;

150 **[(19)] (20)** "Protectee", a person for whose estate a
151 conservator or limited conservator has been appointed or
152 with respect to whose estate a transaction has been
153 authorized by the court under section 475.092 without
154 appointment of a conservator or limited conservator;

155 **[(20)] (21)** "Seriously ill", a significant likelihood
156 that a person will become incapacitated or die within twelve
157 months;

158 **[(21)] (22)** "Social service agency", a charitable
159 organization organized and incorporated as a not-for-profit
160 corporation under the laws of this state and which qualifies
161 as an exempt organization within the meaning of Section
162 501(c) (3), or any successor provision thereto of the federal
163 Internal Revenue Code;

164 **[(22)] (23)** "Standby guardian", one who is authorized
165 to have the temporary care and custody of the person of a
166 minor or of an incapacitated person under the provisions of
167 section 475.046;

168 **[(23)] (24)** "Treatment", the prevention, amelioration
169 or cure of a person's physical and mental illnesses or
170 incapacities;

171 **[(24)] (25)** "Ward", a minor or an incapacitated person
172 for whom a guardian, limited guardian, or standby guardian
173 has been appointed.

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

7 (1) If the incapacitated or disabled person is, at the
8 time of the hearing, able to make and communicate a

9 reasonable choice, any eligible person nominated by the
10 person;

11 (2) Any eligible person nominated in a durable power
12 of attorney executed by the incapacitated or disabled
13 person, or in an instrument in writing signed by the
14 incapacitated or disabled person and by two witnesses who
15 signed at the incapacitated or disabled person's request,
16 before the inception of the person's incapacity or
17 disability;

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

21 (4) Any other eligible person or, with respect to the
22 estate only, any eligible organization or corporation,
23 nominated in a duly probated will of such a spouse or
24 relative.

25 2. The court shall not appoint an unrelated third
26 party as a guardian or conservator unless there is no
27 relative suitable and willing to serve or if the appointment
28 of a relative or nominee is otherwise contrary to the best
29 interests of the incapacitated or disabled person. If the
30 incapacitated or disabled person is a minor under the care
31 of the children's division and is entering adult
32 guardianship or conservatorship, it shall be a rebuttable
33 presumption that he or she has no relative suitable and
34 willing to serve as guardian or conservator.

35 3. Except for good cause shown, the court shall make
36 its appointment in accordance with the incapacitated or
37 disabled person's most recent valid nomination of an
38 eligible person qualified to serve as guardian of the person
39 or conservator of the estate.

40 4. Except for those individuals specified in
41 subdivisions (1) [and (2)] **to (3)** of this subsection, the
42 court shall require all guardians and conservators who are
43 seeking appointment and who have a fiduciary responsibility
44 to a ward, an incapacitated person, or a disabled person to
45 submit at their own expense to a background screening that
46 shall include the disqualification lists of the departments
47 of mental health, social services, and health and senior
48 services; the abuse and neglect registries for adults and
49 children; a Missouri criminal record review; and the sexual
50 offender registry. Individuals seeking appointment as a
51 conservator shall also submit, at their own expense, to a
52 credit history investigation. The nominated guardian or
53 conservator shall file the results of the reports with the
54 court at least ten days prior to the appointment hearing
55 date unless waived or modified by the court for good cause
56 shown by an affidavit filed simultaneously with the petition
57 for appointment or in the event the protected person
58 requests an expedited hearing. The provisions of this
59 subsection shall not apply to:

60 (1) Public administrators; [or]
61 (2) **Employees of the division of probation and parole**
62 **who serve as guardians on behalf of the division of**
63 **probation and parole in a forensic guardianship under**
64 **section 475.079; or**
65 (3) The ward's, incapacitated person's, or disabled
66 person's spouse, parents, children who have reached eighteen
67 years of age, or siblings who have reached eighteen years of
68 age.

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

72 6. An order appointing a guardian or conservator shall
73 not be signed by the judge until such reports have been
74 filed with the court and reviewed by the judge, who shall
75 consider the reports in determining whether to appoint a
76 guardian or conservator. Such reports, or lack thereof,
77 shall be certified either by an affidavit or by obtaining a
78 certified copy of the reports. No reports or national
79 criminal history record check shall be required by the court
80 upon the application of a petitioner for an emergency
81 temporary guardianship or emergency temporary
82 conservatorship. The court may waive the requirements of
83 this subsection for good cause shown. If appointed, a
84 guardian or conservator may petition the court for
85 reimbursement of the reasonable expenses of the credit
86 history investigation and background screenings.

475.055. 1. Except as herein otherwise provided:

2 (1) Any adult person may be appointed guardian of the
3 person or conservator of the estate, or both, of a minor or
4 incapacitated or disabled person, except that a parent shall
5 not be denied appointment as guardian of the person of a
6 minor for the reason that the parent is a minor;

7 (2) Any charitable organization organized and
8 incorporated as a not-for-profit corporation under the laws
9 of this state prior to January 1, 1902, shall be qualified
10 to continue to serve as guardian of the person of any ward
11 for whom such charitable organization has been appointed
12 guardian of the person prior to September 28, 1983, or to be
13 appointed guardian of the person or persons adjudicated
14 incapacitated subsequent to September 28, 1983;

15 (3) Any social service agency located within a county
16 of the first classification or within a city not within a
17 county except any county of the first classification without

18 a charter form of government with a population of one
19 hundred thousand or more inhabitants which contains all or
20 part of a city with a population of three hundred fifty
21 thousand or more inhabitants, which is found capable by the
22 court of providing an active and suitable program of
23 guardianship for the incapacitated person, taking into
24 consideration the nature of such person's disability and the
25 nature of such organization's services, may be appointed as
26 guardian of the person; however, no social service agency
27 shall be appointed as guardian of the person under this
28 subdivision unless it employs a licensed professional found
29 by the court to have sufficient expertise to meet the needs
30 of the ward, and it is found by the court that such
31 professional shall have primary responsibility for providing
32 guardianship services to the incapacitated person for which
33 such social service agency is appointed guardian. The court
34 shall not appoint as guardian of the person under this
35 subdivision a social service agency which is providing
36 residential services to the ward;

37 (4) Any corporation authorized to do business in this
38 state and empowered by its charter so to act or any national
39 banking association authorized so to act in this state may
40 be appointed conservator of the estate of a minor or
41 disabled person. No corporation other than a social service
42 agency may be appointed to serve as guardian of the
43 incapacitated person;

44 (5) (a) **The division of probation and parole within**
45 **the department of corrections may be appointed as a guardian**
46 **to an incapacitated person who is found by a court of**
47 **competent jurisdiction to:**

48 a. **Have a substantial criminal history of serious**
49 **offenses;**

50 b. Be under supervised or unsupervised probation or
51 parole;

52 c. Be under a court order requiring or prohibiting a
53 specified act;

54 d. Be required to register as a sex offender pursuant
55 to sections 589.400 to 589.425;

56 e. Have a likelihood of serious harm, as such term is
57 defined in section 632.005, to himself, herself, or others
58 or is likely to commit an offense or violate any term or
59 condition of the incapacitated person's probation or parole
60 or any other court order that the incapacitated person is
61 under;

62 f. Have a substance use disorder, as such term is
63 defined in section 478.001, and where such substance use
64 disorder results in the total or partial incapacity at issue
65 or significant incapacitation from alcohol or drugs; or

66 g. Have significant interaction with law enforcement
67 officers, as such term is defined in section 556.061.

68 (b) The division of probation and parole appointed as
69 a guardian under this subdivision shall have the same rights
70 and duties as a public administrator appointed as a guardian.

71 (c) The incapacitated person shall not be committed or
72 incarcerated in any government or privately operated
73 institution, facility, jail, prison, program, housing, or
74 mental health or psychiatric unit solely on the basis of
75 being in a forensic guardianship, and the incapacitated
76 person shall not be denied participation in and the benefits
77 from any government or privately operated institution,
78 facility, program, housing, or unit solely on the basis of
79 being in a forensic guardianship unless otherwise prohibited
80 by a clearly established state or federal law, rule, or
81 regulation or any term or condition of probation, parole,

82 **court order, or rule of any jail or prison work release**
83 **program.**

84 2. No person or corporation, other than the public
85 administrator of the county **and the division of probation**
86 **and parole**, shall be appointed guardian or conservator
87 unless the appointee has filed a consent to act. Except as
88 otherwise provided by this section, no person or corporation
89 licensed as a facility by the Missouri department of mental
90 health or the Missouri department of social services, nor
91 any administrator, owner, operator, manager or employee of
92 such a facility shall be appointed guardian of the person or
93 conservator of the estate of any resident of that facility,
94 unless related within the fourth degree of consanguinity or
95 affinity to the resident. No full-time judge of any court
96 of this state and no clerk, deputy clerk or division clerk
97 shall be appointed as guardian of the person or conservator
98 of the estate, but a judge, clerk, deputy clerk or division
99 clerk may serve as a guardian or conservator for a ward or
100 protectee who is a spouse or is within the third degree of
101 relationship by consanguinity or affinity as calculated
102 according to civil law. No natural person under eighteen
103 years of age, other than as provided in subsection 1 of this
104 section, no incapacitated or disabled person, and no
105 habitual drunkard shall be appointed guardian of the person
106 or conservator of the estate. No person whose letters of
107 guardianship or conservatorship are revoked shall be
108 appointed guardian or conservator within two years after the
109 revocation. No one shall be appointed guardian of the
110 person or conservator of the estate unless qualified to
111 perform the duties of said office or offices.

112 3. A person becomes a guardian or conservator of a
113 minor or incapacitated or disabled person upon issuance of

114 letters of guardianship or conservatorship by the court. A
115 person so appointed need not reside within this state in
116 order to accept or serve as guardian or conservator, unless
117 the court finds that such person, taking into consideration
118 his place of residence, is unable to effectively perform the
119 duties of guardian or conservator as provided by this code.
120 The guardianship or conservatorship status continues until
121 terminated, without regard to the location from time to
122 time, whether within or outside of this state, of the
123 guardian and ward or conservator and protectee.

124 4. Subsections 3 and 4 of section 473.117, section
125 473.689, and section 475.338 are applicable to nonresident
126 guardians and conservators.

127 5. If a social service agency is appointed to act as
128 guardian under this section, any other eligible person
129 listed in subdivision (3) of subsection 1 of section 475.050
130 may petition the court to have the social service agency
131 removed as guardian. The court shall grant the petition if
132 it finds that the petitioner is qualified and will act in
133 the best interests of the disabled or incapacitated person.
134 The removal of a social service agency under such
135 circumstances does not require evidence that the agency
136 committed acts of misfeasance warranting the agency's
137 removal pursuant to section 475.110.

138 6. A social service agency acting as a guardian
139 pursuant to subdivision (4) of subsection 1 of this section
140 may only authorize the withholding or withdrawal of
141 artificially provided nutrition or hydration as prescribed
142 under section 404.820.

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

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

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

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

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

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

36 petition shall clearly set out this limited request and
37 shall not be combined with a petition for conservatorship;

38 (12) If the petitioner requests the appointment of co-
39 guardians, a statement of the reasons why such appointment
40 is sought and whether the petitioner requests that the co-
41 guardians, if appointed, may act independently or whether
42 they may act only together or only together with regard to
43 specified matters;

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

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

50 2. Any person may file a petition for the appointment
51 of himself or herself or some other qualified person as
52 guardian or limited guardian of an incapacitated person.
53 Such petition shall state:

54 (1) If known, the name, age, domicile, actual place of
55 residence, and post office address of the alleged
56 incapacitated person, and for the period of three years
57 before the filing of the petition, the most recent
58 addresses, up to three, at which the alleged incapacitated
59 person lived prior to the most recent address, and if any of
60 these facts is unknown, the efforts made to ascertain that
61 fact. In the case of a petition filed by a public official
62 in his or her official capacity, the information required by
63 this subdivision need only be supplied to the extent it is
64 reasonably available to the petitioner;

65 (2) The estimated value of the alleged incapacitated
66 person's real and personal property, and the location and

67 value of any real property owned by the alleged
68 incapacitated person outside of this state;

69 (3) If the alleged incapacitated person has no
70 domicile or place of residence in this state, the county in
71 which the property or major part thereof of the alleged
72 incapacitated person is located;

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

75 (5) The name and address of the spouse, the names,
76 ages, and addresses of all living children of the alleged
77 incapacitated person, the names and addresses of the alleged
78 incapacitated person's closest known relatives, and the
79 names and relationship, if known, of any adults living with
80 the alleged incapacitated person; if no spouse, adult child,
81 or parent is listed, the names and addresses of the siblings
82 and children of deceased siblings of the alleged
83 incapacitated person; the name and address of any agent
84 appointed by the alleged incapacitated person in any durable
85 power of attorney, and of the presently acting trustees of
86 any trust of which the alleged incapacitated person is the
87 grantor or is a qualified beneficiary or is or was the
88 trustee or cotrustee and the purpose of the power of
89 attorney or trust;

90 (6) The name and address of the person having custody
91 of the person of the alleged incapacitated person;

92 (7) The name and address of any guardian of the person
93 or conservator of the estate of the alleged incapacitated
94 person appointed in this or any other state;

95 (8) If appointment is sought for a natural person,
96 other than the public administrator, the names and addresses
97 of wards and protectees for whom such person is already
98 guardian or conservator;

99 (9) The factual basis for the petitioner's conclusion
100 that the person for whom guardianship is sought is unable or
101 partially unable by reason of some specified physical,
102 mental, or cognitive condition to receive and evaluate
103 information or to communicate decisions to such an extent
104 that the person lacks capacity to meet essential
105 requirements for food, clothing, shelter, safety, or other
106 care such that serious physical injury, illness, or disease
107 is likely to occur;

108 (10) The reasons, incidents, and specific behaviors
109 demonstrating why the appointment of a guardian or limited
110 guardian is sought;

111 (11) If the petitioner suggests the appointment of co-
112 guardians, a statement of the reasons why such appointment
113 is sought and whether the petitioner suggests that the co-
114 guardians, if appointed, may act independently or whether
115 they may act only together or only together with regard to
116 specified matters; and

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

120 3. If the person filing the petition seeks the
121 appointment of an emergency guardian, the petition shall
122 include the same requirements as provided in subsection 1 of
123 this section and shall request the appointment per the
124 requirements provided in subsection [15] **16** of section
125 475.075.

475.075. 1. Except as otherwise provided in section
2 475.062, when a petition for the appointment of a guardian
3 ad litem, guardian, or conservator for any potential ward or
4 protectee, who is then referred to as the respondent, is
5 filed under this chapter on grounds other than minority, the

6 court, if satisfied that there is good cause for the
7 exercise of its authority, shall promptly set the petition
8 for hearing.

9 2. The respondent shall be served in person with the
10 following: A copy of the petition; a written notice stating
11 the time and place the proceeding will be heard by the
12 court, the name and address of appointed counsel, and the
13 names and addresses of the witnesses who may be called to
14 testify in support of the petition; and with a copy of the
15 respondent's rights as set forth in subsections **[9 and]** 10
16 **and 11** of this section. The notice shall be signed by the
17 judge or clerk of the court and served in person on the
18 respondent a reasonable time before the date set for the
19 hearing. A written notice stating the time and place for
20 the petition to be heard by the court, and the name and
21 address of counsel appointed to represent the respondent
22 shall be served upon the spouse, parents, children who have
23 reached the age of eighteen, any person serving as the
24 respondent's guardian, conservator, limited guardian, or
25 limited conservator, any person proposed to serve as
26 guardian or conservator, any person having power to act in a
27 fiduciary capacity with respect to any of the respondent's
28 financial resources, any person having the respondent's care
29 and custody known to the petitioner, and any co-tenants or
30 co-depositors with the respondent. Each person so listed
31 shall be served in any manner permitted by section 472.100.
32 If no such spouse, parent, or child is known, notice shall
33 be given to at least one of the respondent's closest
34 relatives who have reached eighteen years of age.

35 3. If the public administrator is nominated as
36 guardian or conservator or at any stage of the proceeding is
37 being considered by the court to be nominated as guardian or

38 conservator, the public administrator shall receive a copy
39 of the petition from the petitioner or the court and any
40 accompanying documents, including exhibits and medical
41 opinions, receive written notice indicating the date and
42 time of the proceeding, and have an opportunity to attend
43 and be heard.

44 **4. If the division of probation and parole is
45 nominated to serve as guardian in a forensic guardianship or
46 at any stage of the proceeding is being considered by the
47 court to be nominated as guardian in a forensic
48 guardianship, the division of probation and parole shall
49 receive a copy of the petition from the petitioner or the
50 court and any accompanying documents, including exhibits and
51 medical opinions, receive written notice indicating the date
52 and time of the proceeding, and have an opportunity to
53 attend and be heard.**

54 **5. Upon the filing of a petition under the provisions
55 of subsection 1 of this section or for the approval on
56 behalf of the respondent of a transaction pursuant to
57 section 475.092 or for the rendition of emergency medical
58 treatment under the provisions of section 475.123, the court
59 shall immediately appoint an attorney to represent the
60 respondent in the proceeding. The attorney shall visit the
61 respondent at least twenty-four hours prior to the hearing
62 unless the court finds good cause for waiving this
63 requirement. If the attorney finds that the respondent is
64 capable of understanding the matter in question or of
65 contributing to the advancement of the respondent's
66 interest, the attorney shall obtain from the respondent all
67 possible aid. If the attorney finds that the respondent is
68 so impaired that the respondent cannot communicate or
69 participate in the proceedings, the attorney shall consider**

70 all circumstances then prevailing and act with care to
71 safeguard and advance the interests of the respondent.

72 [5.] 6. If the court enters an order appointing an
73 attorney for the respondent, it shall specify that the
74 attorney shall have the right to obtain all medical and
75 financial information of the respondent from medical care
76 providers and financial institutions, and no medical care
77 provider or financial institution shall be liable for
78 damages or otherwise for the release of this information to
79 the attorney appointed for the respondent. The court shall
80 allow a reasonable attorney's fee for the services rendered,
81 to be taxed as costs of the proceeding. Upon entry of
82 appearance by private counsel on behalf of the respondent,
83 the court may permit the court-appointed attorney to
84 withdraw only if after a hearing the court finds cause to
85 permit the withdrawal. The private counsel shall meet the
86 requirements of the court-appointed attorney in representing
87 the respondent as provided in subsection [4] 5 of this
88 section. The respondent's attorney shall not also serve as
89 guardian ad litem or conservator ad litem for the respondent
90 unless and until a judgment granting guardianship,
91 conservatorship, limited guardianship, or limited
92 conservatorship has been entered by the court. If the
93 attorney for the respondent has filed or intends to file an
94 appeal of such judgment, the attorney for the respondent
95 shall not serve as guardian ad litem or conservator ad litem
96 for the respondent until all proceedings in connection with
97 such appeal have been finally resolved. The petitioner
98 shall not nominate an attorney for the respondent.

99 [6.] 7. The court may direct that the respondent be
100 examined by a physician, licensed psychologist, or other
101 appropriate professional if the other professional has

102 experience or training in the alleged mental, physical, or
103 cognitive impairment. The court-appointed physician,
104 licensed psychologist, or other professional shall, prior to
105 examination, explain to the respondent in simple language,
106 the following:

107 (1) That the purpose of the examination is to produce
108 evidence which may be used to determine whether the
109 respondent is incapacitated, disabled, partially
110 incapacitated, or partially disabled;

111 (2) That respondent has the right to remain silent;

112 (3) That anything respondent says may be used at the
113 court hearing, and in making the determination of incapacity
114 or disability.

115 [7.] 8. The court-appointed physician, licensed
116 psychologist, or other professional shall submit a report in
117 writing to the court and to counsel for all parties. It
118 shall not be a valid objection to the review of the report
119 by the court or the attorneys for the parties that the court
120 will be responsible for the ultimate determination of
121 incapacity or partial incapacity. If other objections to
122 the report are made by any party, the court may order a
123 hearing for the limited purpose of determining whether the
124 court shall admit the report. The court may allow a
125 reasonable fee for the services rendered by the physician,
126 licensed psychologist, or other professional to be taxed as
127 costs in the proceeding.

128 [8.] 9. If prima facie proof of partial or complete
129 incapacity or disability, with or without the court-ordered
130 evaluation as provided in subsections [6 and] 7 and 8 of
131 this section, is made upon motion by any party or the court
132 on its own motion, a physician, licensed psychologist, or
133 other appropriate professional is competent and may be

134 compelled by the court to testify as to information acquired
135 from the respondent, despite otherwise applicable
136 testimonial privileges. Evidence received under this
137 subsection that would otherwise be privileged and
138 confidential may not be used in any other civil action or
139 criminal proceeding without the consent of the holder of the
140 privilege. Any resulting report shall be shared with the
141 respondent and counsel for all parties but shall not be used
142 in any other civil action or criminal proceeding without the
143 consent of the holder of the privilege.

144 [9.] **10.** The petitioner has the burden of proving
145 incapacity, partial incapacity, disability, or partial
146 disability by clear and convincing evidence.

147 [10.] **11.** The respondent shall have the following
148 rights in addition to those elsewhere specified and shall be
149 advised of these rights by the attorney for the respondent:

150 (1) The right to be represented by an attorney;

151 (2) The right to have a jury trial;

152 (3) The right to present evidence in the respondent's
153 behalf;

154 (4) The right to cross-examine witnesses who testify
155 against the respondent;

156 (5) The right to remain silent;

157 (6) The right to have the hearing opened or closed to
158 the public as the respondent elects;

159 (7) The right to a hearing conducted in accordance
160 with the rules of evidence in civil proceedings, except as
161 modified by this chapter;

162 (8) The right to be present at the hearing;

163 (9) The right to appeal the court's decision.

164 [11.] **12.** If the court finds that the respondent
165 possesses capacity to manage the respondent's essential

166 requirements for food, clothing, shelter, safety, and other
167 care or that the respondent possesses the ability to manage
168 the respondent's financial resources, the court shall deny
169 the petition. On the other hand, if the court finds that
170 the capacity of the respondent to receive and evaluate
171 information or to communicate decisions is impaired to such
172 an extent as to render the respondent incapable of managing
173 some or all of the respondent's essential requirements for
174 food, clothing, shelter, safety or other care so that
175 serious physical injury, illness, or disease is likely to
176 occur, or that the capacity of the respondent to receive and
177 evaluate information or to communicate decisions is impaired
178 to such an extent so as to render the respondent unable to
179 manage some or all of the respondent's financial resources,
180 the court shall appoint a guardian or limited guardian, a
181 conservator or limited conservator, or both in combination.

182 [12.] **13.** If the court finds the respondent to be in
183 some degree incapacitated or disabled, or both, the court,
184 in determining the degree of supervision necessary, shall
185 apply the least restrictive alternative principle as defined
186 in this chapter and shall not restrict the respondent's
187 personal liberty or the respondent's freedom to manage the
188 respondent's financial resources to any greater extent than
189 is necessary to protect the respondent's person and the
190 respondent's financial resources. The limitations imposed
191 upon the authority of the guardian or conservator as set
192 forth in the findings of the court shall be stated in the
193 letters of the guardian or conservator and shall be set
194 forth in the notice of first publication of letters of
195 conservatorship granted.

196 [13.] **14.** Before appointing a guardian or conservator,
197 the court shall consider whether the respondent's needs may

198 be met without the necessity of the appointment of a
199 guardian or conservator, or both, by a less restrictive
200 alternative including, but not limited to, the following:

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

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

206 (3) Evidence that a representative payee has been
207 appointed to manage the respondent's public benefits;

208 (4) Supported decision-making agreements or the
209 provision of protective or supportive services or
210 arrangements provided by individuals or public or private
211 services or agencies;

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

214 (6) The appointment of a temporary emergency guardian
215 ad litem or conservator ad litem under subsection **[15] 16** of
216 this section; or

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

219 **[14.] 15.** The court shall make and recite in its order
220 detailed findings of fact stating:

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

224 (2) The extent of the respondent's physical, mental,
225 and cognitive incapacity to manage the respondent's
226 financial resources;

227 (3) Whether the respondent requires placement in a
228 supervised living situation and, if so, the degree of
229 supervision needed;

230 (4) Whether the respondent's financial resources
231 require supervision and, if so, the nature and extent of
232 supervision needed;

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

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

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

238 **[15.] 16.** If it is alleged in a petition that an
239 alleged incapacitated or disabled respondent has no guardian
240 or conservator and an emergency exists that presents a
241 substantial risk that serious physical harm will occur to
242 the respondent's person or irreparable damage will occur to
243 the respondent's property because of the respondent's
244 failure or inability to provide for the respondent's
245 essential human needs or to protect the respondent's
246 property, the court may, with notice to such person's
247 attorney, as provided in subsection **[4]** 5 of this section,
248 and service of notice upon such person as provided in
249 subsection 2 of this section, and, with or without notice to
250 other persons interested in the proceeding, after hearing,
251 appoint an emergency guardian ad litem or conservator ad
252 litem for a specified period not to exceed ninety days and
253 for specified purposes. Except for good cause shown, the
254 court shall hold a hearing on petitions filed under this
255 section within five business days of the filing of the
256 petition. Orders appointing the guardian or conservator ad
257 litem may be modified upon motion and hearing. Only after a
258 hearing and a showing of continuing emergency need, the
259 court may order the extension of the appointment of an
260 emergency guardian ad litem or conservator ad litem from
261 time to time, not to exceed ninety days each. A guardian ad

262 litem or conservator ad litem may be removed at any time and
263 shall make any report the court requires. Proceedings under
264 this subsection shall not be employed as alternative to
265 proceedings for the involuntary detention and treatment of a
266 mentally ill person under the provisions of chapter 632. If
267 no petition for guardianship, conservatorship, limited
268 guardianship, or limited conservatorship has been filed
269 within the first ninety days following the granting of
270 emergency authority under this section, the court may
271 terminate the authority granted under the emergency letters
272 upon motion of the attorney for the respondent and a finding
273 that doing so would not be manifestly contrary to the
274 respondent's interest.

475.079. 1. If it appears to the court or if it is
2 found by the jury or the court upon proof by clear and
3 convincing evidence that the person for whom a guardian is
4 sought is incapacitated as defined in this law and that the
5 respondent's identified needs cannot be met by a less
6 restrictive alternative, the court may appoint a guardian of
7 the person.

8 2. If it is found that the person for whom a
9 conservator of the estate is sought is a minor or is
10 disabled as defined in section 475.010 by a disability other
11 than or in addition to minority and that the respondent's
12 identified needs cannot be met by a less restrictive
13 alternative, the court may appoint a conservator of the
14 estate, who may be the same person appointed guardian of the
15 person.

16 3. The court shall not appoint the public
17 administrator to serve as guardian, limited guardian,
18 conservator, limited conservator, emergency guardian,
19 emergency conservator, guardian ad litem, or conservator ad

20 item unless notice is first given to the public
21 administrator as provided in subsection 3 of section 475.075
22 and the public administrator has an opportunity to
23 participate in any hearing on such matter, including the
24 right to cross examine witnesses and to offer witnesses and
25 evidence. The public administrator may waive notice and the
26 opportunity to participate.

27 **4. The court shall not appoint the division of
28 probation and parole to serve in a forensic guardianship
29 unless notice is first given to the division of probation
30 and parole as provided in subsection 4 of section 475.075
31 and the division of probation and parole has an opportunity
32 to participate in any hearing on such matter, including the
33 right to cross examine witnesses and to offer witnesses and
34 evidence. The division of probation and parole may waive
35 notice and the opportunity to participate.**

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

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

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

17 capacity to manage the adult ward's personal affairs. The
18 general powers and duties of a guardian of an incapacitated
19 person shall include, but not be limited to, the following:

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

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

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

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

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

30 4. A guardian of an adult or minor ward is not
31 obligated by virtue of such guardian's appointment to use
32 the guardian's own financial resources for the support of
33 the ward. If the ward's estate and available public
34 benefits are inadequate for the proper care of the ward, the
35 guardian or conservator may apply to the county commission
36 pursuant to section 475.370.

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

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

46 7. A social service agency serving as guardian of an
47 incapacitated person shall notify the court within fifteen
48 days after any change in the identity of the professional

49 individual who has primary responsibility for providing
50 guardianship services to the incapacitated person.

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

53 9. In the absence of any written direction from the
54 ward to the contrary, a guardian may execute a preneed
55 contract for the ward's funeral services, including
56 cremation, or an irrevocable life insurance policy to pay
57 for the ward's funeral services, including cremation, and
58 authorize the payment of such services from the ward's
59 resources. Nothing in this section shall interfere with the
60 rights of next-of-kin to direct the disposition of the body
61 of the ward upon death under section 194.119. If a preneed
62 arrangement such as that authorized by this subsection is in
63 place and no next-of-kin exercises the right of sepulcher
64 within ten days of the death of the ward, the guardian may
65 sign consents for the disposition of the body, including
66 cremation, without any liability therefor. A guardian who
67 exercises the authority granted in this subsection shall not
68 be personally financially responsible for the payment of
69 services.

70 **10. A forensic guardianship shall operate in**
71 **accordance with the provisions of this section.**

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