

FIRST REGULAR SESSION

HOUSE BILL NO. 626

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEELY.

1115H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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

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2 475.120, 475.123, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.290, 475.322, and 3 475.355, RSMo, are repealed and twenty-five new sections enacted in lieu thereof, to be known 4 as sections 473.730, 473.770, 473.771, 475.016, 475.082, 475.083, 475.094, 475.120,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

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

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

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

20 2. The public administrator in all counties, in the performance of the duties required by
21 chapters 473, 474, and 475, is a public officer. The duties specified by ~~[section]~~ **sections**
22 **475.120, 475.343, and 475.359** are discretionary. The county shall defend and indemnify the
23 public administrator against any alleged breach of duty, provided that any such alleged breach
24 of duty arose out of an act or omission occurring within the scope of duty or employment.

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

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

473.770. 1. Whenever, in the judgment of any public administrator in any county of the
2 first class, it is necessary for the proper and efficient conduct of the business of the public
3 administrator's office that the public administrator appoint any deputies to assist the public
4 administrator in the performance of his or her official duties as public administrator or as
5 executor, administrator, personal representative, guardian, or conservator in any estates wherein
6 the public administrator has been specially appointed, the public administrator may appoint one
7 or more deputies to assist him or her in the performance of his or her duties as public
8 administrator and as executor, administrator, personal representative, guardian, or conservator
9 in the estates wherein the public administrator has been specially appointed. The appointment
10 shall be in writing and shall be filed with the court, and, upon the filing, the court shall issue
11 under its seal a certificate of the appointment for each deputy, stating that the appointee is vested
12 with the powers and duties conferred by this section. The certificate shall be valid for one year
13 from date, unless terminated prior thereto, and shall be renewed from year to year as long as the
14 appointment remains in force, and may be taken as evidence of the authority of the deputy. The

15 appointment and authority of any deputy may at any time be terminated by the public
16 administrator by notice of the termination filed in the court, and upon termination the deputy
17 shall surrender the public administrator's certificate of appointment.

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

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

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

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

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

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

47 4. The enumeration of the foregoing powers shall not operate as an exclusion of any
48 powers not specifically conferred. No authorized deputy shall exercise any power, other than as
49 prescribed in this section, which shall require the exercise of a discretion enjoined by law to be

50 exercised personally by the executor, administrator, personal representative, guardian, or
51 conservator in charge of the estate to which the discretionary power refers.

52 5. Notwithstanding the provisions of subsections 3 and 4 of this section to the contrary,
53 a public administrator in a county of the first classification having a charter form of government
54 and containing all or part of a city with a population of at least three hundred thousand
55 inhabitants, and a public administrator in any county of the first classification may delegate to
56 any deputy appointed by the public administrator any of the duties of the public administrator
57 enumerated in section 473.743, and sections 475.120 [~~and~~] , 475.130, **475.343**, and **475.359**.
58 Such public administrator may also delegate to a deputy who is a licensed attorney the authority
59 to execute inventories, settlements, surety bonds, pleadings and other documents filed in any
60 court in the name of the public administrator, and the same shall have the force and effect as if
61 executed by the public administrator.

 473.771. 1. Whenever, in the judgment of any public administrator in any county which
2 is not a county of the first classification, it is necessary for the proper and efficient conduct of
3 the business of his or her office that the public administrator appoint a deputy to assist the public
4 administrator in the performance of his or her official duties as public administrator or as
5 executor, administrator, personal representative, guardian, or conservator in any estates wherein
6 the public administrator has been specially appointed, the public administrator may appoint a
7 deputy to assist him or her in the performance of his or her duties as public administrator and as
8 executor, administrator, personal representative, guardian, or conservator in the estates wherein
9 the public administrator has been specially appointed. The appointment shall be in writing and
10 shall be filed with the court, and, upon the filing, the court shall issue under its seal a certificate
11 of the appointment for the deputy, stating that the appointee is vested with the powers and duties
12 conferred by this section. The certificate shall be valid for one year from the date, unless
13 terminated prior thereto, and shall be renewed from year to year as long as the appointment
14 remains in force, and may be taken as evidence of the authority of the deputy. The appointment
15 and authority of a deputy may at any time be terminated by the public administrator by notice of
16 the termination filed in the court, and upon termination the deputy shall surrender his or her
17 certificate of appointment.

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

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

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

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

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

33 (4) Entering the safe deposit box of any person or decedent whose estate is in the charge
34 of the public administrator and any safe deposit box maintained by the public administrator for
35 the safekeeping of assets in his or her charge, as a deputy of the public administrator, pursuant
36 to general authorization given by the public administrator to the bank or safe deposit company
37 in charge of any such safe deposit box, as long as such authorization as a deputy remains in
38 effect, and withdrawing therefrom and depositing therein such assets as may be determined by
39 the public administrator. The bank or safe deposit company shall not be charged with notice or
40 knowledge or any limitation of authority of the authorized deputy, unless specially notified in
41 writing thereof by the public administrator, and may allow the deputy access to the safe deposit
42 box, in the absence of notice, to the full extent allowable to the public administrator in person.

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

48 5. Notwithstanding the provisions of subsections 3 and 4 of this section to the contrary,
49 a public administrator in a county which is not a county of the first classification may delegate
50 to any deputy appointed by the public administrator any of the duties of the public administrator
51 enumerated in section 473.743, and sections 475.120 [~~and~~] , 475.130, **475.343**, and **475.359**.
52 Such public administrator may also delegate to a deputy who is a licensed attorney the authority
53 to execute inventories, settlements, surety bonds, pleadings, and other documents filed in any
54 court in the name of the public administrator, and the same shall have the force and effect as if
55 executed by the public administrator.

475.016. 1. If there has been an adjudication of incompetency before September 28,
2 1983, any person so adjudicated shall be deemed totally incapacitated and totally disabled as
3 defined in section 475.010, until such time as the probate division of the circuit court of the
4 county of proper venue, upon the annual review proceeding prescribed by section 475.082 or

5 otherwise, may review the nature of the incapacity or disability of the person so adjudicated and
6 alter the nature of the adjudication if, as a consequence of the review, it appears to the court that
7 the person is not both totally incapacitated and totally disabled as defined in section 475.010.
8 A guardian of the person appointed before September 28, 1983, shall be deemed a guardian as
9 defined in section 475.010. A guardian of the estate appointed before September 28, 1983, shall
10 be deemed a conservator as defined in section 475.010.

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

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

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

12 (1) The present address of the ward;

13 (2) The present address of the guardian;

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

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

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

21 ~~[(5)]~~ (6) The date the ward was last seen by a physician **or other professional** and the
22 purpose;

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

26 ~~[(7)]~~ (8) The opinion of the guardian as to the need for the continuation of the
27 guardianship and whether it is necessary to increase or decrease the powers of the guardian;

28 ~~[(8) The opinion of the guardian as to the adequacy of the present care of the ward]~~ (9)
 29 **The medical, educational, vocational, and other services provided to the ward and the**
 30 **guardian's opinion as to the adequacy of the ward's care; and**

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

33 3. The court may as part of its review, in its discretion, order the performance of a mental
 34 status evaluation of ~~[an incapacitated]~~ **the ward** and may require any hospital, physician, or
 35 custodial facility to submit copies of their records relating to the treatment, habilitation, or care
 36 of the ward. **The court, as part of its review and in its discretion, may also contact the**
 37 **department of health and senior services or other appropriate agencies to investigate the**
 38 **conduct of the guardian and report its findings to the court.**

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

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

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

- 2 (1) When a minor ward becomes eighteen years of age;
- 3 (2) Upon an adjudication that an incapacitated or disabled person has been restored to
 4 ~~[his]~~ capacity or ability;
- 5 (3) Upon revocation of the letters of the guardian or conservator;

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

7 (5) Upon the death of the ward or protectee except that if there is no person other than
8 the estate of the ward or protectee liable for the funeral and burial expenses of the ward or
9 protectee the guardian or conservator may, with the approval of the court, contract for the funeral
10 and burial of the deceased ward or protectee;

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

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

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

16 (1) If the conservatorship estate is exhausted;

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

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

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

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

26 4. At any time the guardian, conservator or any person on behalf of the ward or protectee
27 may, individually or jointly with the ward or protectee, or the ward or protectee individually may
28 petition the court to restore the ward or protectee, or to decrease the powers of the guardian or
29 conservator **or return rights to the ward**, except that if the court determines that the petition
30 is frivolous, the court may summarily dismiss the petition without hearing. **The petition from**
31 **the ward or protectee or on behalf of the ward or protectee may be an informal letter to**
32 **the court. Anyone who interferes with the transmission of the ward's or protectee's letter**
33 **or petition may be cited by the court for contempt after notice and hearing. If at any time**
34 **the court, on its own motion, has reason to believe that the guardian's or conservator's**
35 **powers should be increased or decreased or additional rights should be returned to the**
36 **ward, the court shall set the matter for a hearing.**

37 5. Upon the filing of a joint petition by the guardian or conservator and the ward or
38 protectee, the court, if it finds restoration or modification to be in the best interests of the ward
39 or protectee, may summarily order restoration [~~or modification of the~~], **a decrease in** powers
40 of the guardian or conservator, **or return the rights to the ward** without the necessity of notice
41 and hearing.

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

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

55 **8. In deciding whether to terminate or modify a guardianship or conservatorship,**
56 **the court may require a report by and consider the recommendations in the report of a**
57 **physician, licensed psychologist, or other appropriate qualified professional who has**
58 **experience or training in the alleged mental, physical, or cognitive impairment of the ward**
59 **or protectee.**

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

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

18 (2) Make a division of assets as provided under the Medicaid spousal
19 impoverishment provisions;

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

23 (4) Exercise or release a power of appointment;

24 (5) Create a revocable or irrevocable trust of property of the estate, whether the
25 trust extends beyond the duration of the conservatorship, or revoke or amend a trust
26 revocable by the protected person;

27 (6) Exercise rights to elect options and change beneficiaries under insurance
28 policies and annuities or surrender the policies and annuities for cash value;

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

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

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

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

39 (3) Eligibility for government assistance;

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

41 (5) The existing estate plan;

42 (6) The protectee's life expectancy and the probability that the conservatorship will
43 terminate before the protectee's death; and

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

45 3. Without authorization of the court, a conservator shall not revoke or amend a
46 durable power of attorney of which the protectee is the principal. If a durable power of
47 attorney is in effect, absent a court order to the contrary, a decision of the agent takes
48 precedence over that of a conservator.

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

3 ~~[2- A guardian or limited guardian of an incapacitated person shall act in the best interest~~
4 ~~of the ward. A limited guardian of an incapacitated person shall have the powers and duties~~
5 ~~enumerated by the court in the adjudication order or any later modifying order.-~~

- 6 ~~3. The general powers and duties of a guardian of an incapacitated person shall be to take~~
 7 ~~charge of the person of the ward and to provide for the ward's care, treatment, habilitation,~~
 8 ~~education, support and maintenance; and the powers and duties shall include, but not be limited~~
 9 ~~to, the following:~~
- 10 ~~(1) Assure that the ward resides in the best and least restrictive setting reasonably~~
 11 ~~available;~~
- 12 ~~(2) Assure that the ward receives medical care and other services that are needed;~~
- 13 ~~(3) Promote and protect the care, comfort, safety, health, and welfare of the ward;~~
- 14 ~~(4) Provide required consents on behalf of the ward;~~
- 15 ~~(5) To exercise all powers and discharge all duties necessary or proper to implement the~~
 16 ~~provisions of this section.~~
- 17 ~~4. A guardian of an adult or minor ward is not obligated by virtue of such guardian's~~
 18 ~~appointment to use the guardian's own financial resources for the support of the ward. If the~~
 19 ~~ward's estate and available public benefits are inadequate for the proper care of the ward, the~~
 20 ~~guardian or conservator may apply to the county commission pursuant to section 475.370.~~
- 21 ~~5. No guardian of the person shall have authority to seek admission of the guardian's~~
 22 ~~ward to a mental health or intellectual disability facility for more than thirty days for any purpose~~
 23 ~~without court order except as otherwise provided by law.~~
- 24 ~~6. Only the director or chief administrative officer of a social service agency serving as~~
 25 ~~guardian of an incapacitated person, or such person's designee, is legally authorized to act on~~
 26 ~~behalf of the ward.~~
- 27 ~~7. A social service agency serving as guardian of an incapacitated person shall notify the~~
 28 ~~court within fifteen days after any change in the identity of the professional individual who has~~
 29 ~~primary responsibility for providing guardianship services to the incapacitated person.~~
- 30 ~~8. Any social service agency serving as guardian may not provide other services to the~~
 31 ~~ward.]~~

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

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

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

12 4. Any hearing conducted pursuant to subsection 3 of this section, involving a life
13 threatening medical emergency, may be conducted within or without the county at the medical
14 facility where the person has been admitted with such notice and in such form as is practicable
15 considering the time limitations imposed due to the condition of person. The fact of attempted
16 oral notice to persons interested in the welfare of the person shall be made a part of the record
17 of the hearing.

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

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

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

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

24 **(3) Encourage and support the individual in understanding the facts and directing**
25 **a decision.**

26 **7. (1) To the extent the adult ward cannot currently direct the health care decision,**
27 **the guardian shall act in accordance with the ward's prior directions, directives, expressed**
28 **desires, and opinions about health care to the extent actually known or ascertainable by**
29 **the guardian. However, if the ward's prior directions, directives, expressed desires, and**
30 **opinions about health care are unknown and unascertainable, the guardian shall:**

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

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

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

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

475.125. 1. The court may make orders for the management of the estate of the protectee
2 for the care, education, treatment, habilitation, respite, support and maintenance of the protectee
3 and for the **support and** maintenance of ~~[his or her]~~ **the protectee's** family and education of ~~[his~~

4 ~~or her~~ **the protectee's spouse and** children, according to ~~his or her~~ **the protectee's** means and
5 obligation, if any, out of the proceeds of ~~his or her~~ **the protectee's** estate, and may direct that
6 payments for such purposes shall be made weekly, monthly, quarterly, semiannually or annually.
7 The payments ordered under this section may be decreased or increased from time to time as
8 ordered by the court.

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

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

20 ~~[3-]~~ **4.** In acting under this section the court shall take into account any duty imposed by
21 law or contract upon a parent or spouse of the protectee, a government agency, a trustee, or other
22 person or corporation, to make payments for the benefit of or provide support, education, care,
23 treatment, habilitation, respite, maintenance or safekeeping of the protectee and ~~his or her~~ **the**
24 **protectee's** dependents. The guardian of the person and the conservator of the estate shall
25 endeavor to enforce any such duty.

475.130. 1. The conservator of the estate of a minor or disabled person shall, under
2 supervision of the court, protect, preserve and manage the estate, apply it as provided in this
3 code, account for it faithfully, perform all other duties required of the conservator by law, and
4 at the termination of the conservatorship deliver the assets of the protectee to the persons entitled
5 thereto. In protecting, preserving and managing the estate, the conservator of the estate is under
6 a duty to use the degree of care, skill and prudence which an ordinarily prudent person uses in
7 managing the property of, and conducting transactions on behalf of, others. If a conservator of
8 the estate has special skills or is appointed on the basis of representations of special skills or
9 expertise, the conservator is under a duty to use those skills in the conduct of the protectee's
10 affairs. A conservator of the estate is under a duty to act in the interest of the protectee and to
11 avoid conflicts of interest which impair the conservator's ability so to act.

12 **2.** The conservator of the estate shall take possession of all of the protectee's real and
13 personal property, and of rents, income, issue and profits therefrom, whether accruing before or
14 after the conservator's appointment, and of the proceeds arising from the sale, mortgage, lease

15 or exchange thereof. Subject to such possession, the title to all such estate, and to the increment
 16 and proceeds thereof, is in the protectee and not in the conservator. Upon a showing that funds
 17 available or payable for the benefit of the protectee by any federal agency are being applied for
 18 the benefit of the protectee, or that such federal agency has refused to recognize the authority of
 19 the conservator to administer such funds, the court may waive, by order, the duty of the
 20 conservator to account therefor.

21 **3. In managing, investing, and distributing the estate of a disabled person, the**
 22 **conservator shall:**

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

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

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

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

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

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

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

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

34 ~~[4.]~~ **5.** The conservator of the estate shall prosecute and defend all actions instituted in
 35 behalf of or against the protectee; collect all debts due or becoming due to the protectee, and give
 36 acquittances and discharges therefor, and adjust, settle and pay all claims due or becoming due
 37 from the protectee so far as ~~his or her~~ **the protectee's** estate and effects will extend, except as
 38 provided in sections 507.150 and 507.188.

39 ~~[5.]~~ **6.** A conservator of the estate has power, without authorization or approval of the
 40 court, to:

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

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

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

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

48 ~~[(4)]~~ **(5)** Exchange, or agree to exchange, chattels and choses in action for other such
 49 property of equivalent value, not in excess of ~~[one]~~ **five** thousand dollars;

50 ~~[(5)]~~ (6) Insure or contract for insurance of property of the estate against fire, theft and
51 other hazards;

52 ~~[(6)]~~ (7) Insure or contract for insurance protecting the protectee against any liability
53 likely to be incurred, including medical and hospital expenses, and protecting the conservator
54 against liability to third parties arising from acts or omissions connected with possession or
55 management of the estate;

56 ~~[(7)]~~ (8) Contract for needed repairs and maintenance of property of the estate;

57 ~~[(8)]~~ (9) Lease land and buildings for terms not exceeding one year, reserving reasonable
58 rent, and renew any such lease for a like term;

59 ~~[(9)]~~ (10) Vote corporate stock in person or by general or limited proxy;

60 ~~[(10)]~~ (11) Contract for the provision of board, lodging, education, medical care, or
61 necessities of the protectee for periods not exceeding one year, and renew any such contract for
62 a like period;

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

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

67 **(14) Hold a security in the name of a nominee or in other form without disclosure**
68 **of the conservatorship so title to the security may pass by delivery, but the conservator is**
69 **liable for any act of the nominee in connection with the stock so held;**

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

72 **(16) Pay any sum distributable to a protectee or the protectee's dependent without**
73 **liability to the conservator, by paying the sum to the distributee or by paying the sum for**
74 **the use of the distributee either to the distributee's guardian or, if none, to a relative or**
75 **other person with custody of the distributee;**

76 **(17) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the**
77 **protection of estate assets and of the conservator in the performance of the conservator's**
78 **duties;**

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

81 ~~[(11)]~~ (19) On or after August 28, 2009, invest the estate in accordance with the
82 provisions of section 475.190.

83 ~~[(6-)]~~ 7. If, in exercising any power conferred by subsection ~~[(5)]~~ 6 of this section, a
84 conservator breaches any of the duties enumerated in subsection 1 of this section, the conservator
85 may be surcharged for losses to the estate caused by the breach but persons who dealt with the

86 conservator in good faith, without knowledge of or reason to suspect the breach of duty, may
87 enforce and retain the benefits of any transaction with the conservator which the conservator has
88 power under subsection [5] 6 of this section to conduct.

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

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

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

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

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

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

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

- 17 (2) A statement of disbursements made and the purpose thereof;
 18 (3) The total amount of money or property on hand;
 19 (4) The name and address of any depository where estate funds are deposited and the
 20 amounts thereof.

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

- 23 **(1) The present address of the protectee;**
 24 **(2) The present address of the conservator;**
 25 **(3) The services being provided to the protected person;**
 26 **(4) The significant actions taken by the conservator during the reporting period;**
 27 **(5) An opinion of the conservator as to the continued need for conservatorship and**
 28 **any recommended changes in the scope of the conservatorship;**
 29 **(6) The compensation requested and the reasonable and necessary expenses**
 30 **incurred by the conservator;**
 31 **(7) A plan for the coming year, including short-term or long-term goals, and the**
 32 **extent to which the protectee has participated in the development of the plan; and**
 33 **(8) Any other information requested by the court or useful in the opinion of the**
 34 **conservator.**

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

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

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

475.290. 1. Conservators shall make final settlement of their conservatorship at a time fixed by the court, either by rule or otherwise, within ~~[sixty]~~ **ninety** days after termination of their authority. For the purpose of settlement, the conservator shall make a just and true exhibit of the account between himself ~~or herself~~ and ~~[his]~~ **the** protectee, and file the same in the court having jurisdiction thereof, and cause a copy of the account, together with a written notice stating the day on which and the court in which ~~[he]~~ **the conservator** will make settlement, to be delivered to ~~[his]~~ **the** protectee or, in case of revocation or resignation, to the succeeding conservator or in case of death of ~~[his]~~ **the** protectee to ~~[his]~~ **the** executor or administrator ~~of the protectee's estate~~ or other person designated by the court, at least twenty days before the date set for settlement.

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

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

475.322. ~~[When a protectee:~~

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

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

~~———— (3) Owns real or personal property in joint tenancy or tenancy by the entirety;~~

~~the conservator may, with the authorization or approval of the court, redeem such bonds, withdraw funds from such account, and sell, exchange or mortgage the protectee's estate or interest in such joint or entirety property, to the extent that funds are needed to pay expenses under section 475.125 or claims under section 475.211. With respect to property held in joint tenancy, the provisions of sections 362.470 and 369.174 shall be applicable and with respect to~~

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

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

40 **(1) Assets owned solely by the unmarried protectee or the protectee's estate with**
41 **beneficiary designations under the nonprobate transfer law as provided for under sections**
42 **461.003 to 461.081, banking law, and other property with beneficiary designations,**
43 **including insurance policies and annuities, individual retirement accounts, deferred**
44 **compensation and other contributory pension accounts, and any other assets with**
45 **beneficiary designations;**

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

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

- 5 (1) Was approved by the court;
- 6 (2) Involves a contract entered into or claim acquired by the conservator before the
- 7 person became or contemplated becoming conservator;
- 8 (3) Involves a deposit of estate moneys to a bank operated by the conservator; or
- 9 (4) Involves an advance by the conservator of moneys for the protection of the
- 10 estate.

475.342. The conservator shall:

- 2 (1) Keep estate property separate from the conservator's own property; and
- 3 (2) Cause the estate's property to be designated so that any ownership interest of
- 4 the estate, to the extent feasible, appears in records maintained by a financial institution
- 5 or party other than the conservator or protectee.

475.343. 1. A guardian of an adult or minor ward is not obligated by virtue of such

2 **guardian's appointment to use the guardian's own financial resources for the support of**

3 **the ward. If the ward's estate and available public benefits are inadequate for the proper**

4 **care of the ward, the guardian or conservator may apply to the county commission under**

5 **section 475.370.**

6 **2. No guardian of the person shall have authority to seek admission of the**

7 **guardian's ward to a mental health facility or an intellectual disability facility for more**

8 **than thirty days for any purpose without court order except as otherwise provided by law.**

9 **3. Only the director or chief administrative officer of a social service agency serving**

10 **as guardian of an incapacitated person, or such person's designee, is legally authorized to**

11 **act on behalf of the ward.**

12 **4. A social service agency serving as guardian of an incapacitated person shall**

13 **notify the court within fifteen days after any change in the identity of the professional**

14 **individual who has primary responsibility for providing guardianship services to the**

15 **incapacitated person.**

16 **5. Any social service agency serving as guardian shall not provide other services to**

17 **the ward.**

475.344. 1. With the approval of the court, a conservator may delegate to an agent

2 **duties and powers that are prudent under the circumstances. The conservator shall**

3 **exercise reasonable care, skill, and caution in:**

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

9 **2. In performing a delegated function, an agent owes a duty to the protectee to**
10 **exercise reasonable care to comply with the terms of the delegation.**

11 **3. By accepting a delegation of powers or duties from the conservator of a**
12 **conservatorship that is subject to the law of this state, an agent submits to the jurisdiction**
13 **of the courts of this state.**

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

7 2. As used in this section, the terms "mental disorder" and "intellectual disability" **or**
8 **"developmental disability"** shall be as defined in chapter 630 and the term "likelihood of
9 serious physical harm to [~~himself~~] **the respondent** or others" shall be as the term "likelihood of
10 serious harm" is defined in chapter 632.

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

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

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

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

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

13 **(1) First, the guardian shall ask the ward what the ward wants;**

14 **(2) Second, if the ward has difficulty expressing what the ward wants, the guardian**
15 **shall do everything possible to help the ward express his or her goals, needs, and**
16 **preferences; and**

17 **(3) Third, if the ward, even with assistance, cannot express his or her goals and**
18 **preferences, the guardian shall seek input from others familiar with the person to**
19 **determine what the individual would have wanted.**

20 **4. In making decisions on behalf of the ward, the guardian shall consider the**
21 **ascertained goals, needs, and preferences of the ward to the extent possible. The guardian**
22 **shall make a decision in accordance with the ward's goals, needs, and preferences unless**
23 **the guardian determines, after considering all of the options and their potential risks and**
24 **benefits, that such a decision would not be in the ward's best interest. If the ward's goals,**
25 **needs, and preferences cannot be ascertained, the guardian shall make a decision based**
26 **solely on what a reasonable person would do after considering all of the options and their**
27 **potential risks and benefits.**

28 **5. The general powers and duties of a guardian of an incapacitated person shall be**
29 **to take charge of the person of the ward and to provide for the ward's care, treatment,**
30 **habilitation, education, support and maintenance; and the powers and duties shall include,**
31 **but not be limited to, the following:**

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

35 **(2) File a report with the court within ninety days of appointment indicating that**
36 **the guardian has met with the ward and describing how the guardian will meet the needs**
37 **of the ward and address the ward's preferences. Such report may include a plan from a**
38 **service provider;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **(5) Change domicile;**

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

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

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

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

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