

**Revisions and Reorganization of Chapter 475**  
**Latest Master Discussion Draft, December 15, 2015**

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## **Chapter 475 Definitions and General Provisions**

### **Definitions.**

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

- (1) "Adult", a person who has reached the age of eighteen years;
- (2) "Claims", liabilities of the protectee arising in contract, in tort or otherwise, before or after the appointment of a conservator, and liabilities of the estate which arise at or after the adjudication of ~~disability~~ financial incapacity or after the appointment of a conservator of the estate, including expenses of the adjudication and of administration. The term does not include demands or disputes regarding title of the protectee to specific assets alleged to be included in the estate;
- (3) "Conservator", one appointed by a court to have the care and custody of the estate of a minor or a ~~disabled~~ financially incapacitated person. A "limited conservator" is one whose duties or powers are limited. The term "conservator", as used in this chapter, includes limited conservator unless otherwise specified or apparent from the context;
- (4) "Conservator ad litem," one appointed by the court, in which particular litigation is pending regarding the management of financial resources, to represent a minor, a financially incapacitated person, or an unborn person in that particular proceeding or as otherwise specified in this code;



~~(4)~~ (5) "Custodial parent", the parent of a minor who has been awarded sole or joint physical custody of such minor, or the parent of an incapacitated person who has been appointed as guardian of such person, by an order or judgment of a court of this state or of another state or territory of the United States, or if there is no such order or judgment, the parent with whom the minor or incapacitated person primarily resides;

~~(5)~~ (6) "Eligible person" or "qualified person", a natural person, social service agency, corporation or national or state banking organization qualified to act as guardian of the person or conservator of the estate pursuant to the provisions of section ~~475.055~~ 475.125 and 475.206;

~~(6)~~ (7) "~~Disabled~~" "financially incapacitated" or "~~disabled person~~" "financially incapacitated person", one who is:

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

(b) The term "~~disabled~~" "financially incapacitated" or "~~disabled person~~" "financially incapacitated person", as used in this chapter includes the terms partially ~~disabled~~ financially incapacitated or partially ~~disabled~~ financially incapacitated person unless otherwise specified or apparent from the context;

~~(7)~~ (8) "Guardian", one appointed by a court to have the care and custody of the person of a minor or of an incapacitated person. A "limited guardian" is one whose duties or powers are limited. A "standby guardian" is one approved by the court to temporarily assume the duties of guardian of a minor or of an incapacitated person under section ~~475.046~~ 475.175 or 475.258. The term "guardian", as used in this chapter, includes limited guardian and standby guardian unless otherwise specified or apparent from the context;

~~(8)~~ (9) "Guardian ad litem", one appointed by the court, ~~in which particular litigation is pending, to represent a minor, an incapacitated person, a disabled person, or an unborn person in that particular proceeding or as otherwise specified in this code;~~

~~(9)~~ (10) "Habilitation", ~~instruction, training, guidance or treatment designed to enable and encourage a mentally retarded or developmentally disabled person as defined in chapter 630 to acquire and maintain those life skills needed to cope more effectively with the demands of his or her own person and of his or her environment~~ a process of treatment, training, care or specialized attention which seeks to enhance and maximize the ability of a person with an intellectual disability or a developmental disability to cope with the environment and to live as determined by the person as much as possible;

~~(10)~~ (11) "Incapacitated person", one who is unable by reason of any physical, ~~or~~ mental, or cognitive condition to receive and evaluate information or to communicate decisions to such an extent that ~~he or she~~ the person, even with appropriate services and assistive technology, lacks capacity to ~~meet~~ manage his or her the person's essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur. The

term "incapacitated person" as used in this chapter includes the term partially incapacitated person unless otherwise specified or apparent from the context;

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

~~(11)~~ (13) "Least restrictive alternative", that there shall be imposed on the personal liberty of the ward only such restraint as is necessary to prevent the ward from injuring himself or herself and others and to provide the ward with such care, habilitation and treatment as are appropriate for the ward considering his or her physical and mental condition and financial means with respect to the guardianship order and the exercise of power by the guardian, refers to a course of action or an alternative that allows the incapacitated person to live, learn and work with minimum restrictions on him or her. It means choosing the decision or approach which: (1) places the least possible restriction on the person's personal liberty and exercise of rights, and that promotes the greatest possible inclusion of the person into his or her community; and (2) is consistent with meeting his or her essential requirements for health, safety, habilitation, treatment, and recovery and protecting him or her from abuse, neglect and financial exploitation;

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

~~(13)~~ (15) "Minor", any person who is under the age of eighteen years;

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

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

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

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

~~(15)~~ (17) "Partially disabled financially incapacitated person", one who is unable by reason of any physical, or mental, or cognitive condition to receive and evaluate information or



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

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

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

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

~~(19)~~ (21) "Social service agency", a charitable organization organized and incorporated as a not-for-profit corporation under the laws of this state and which qualifies as an exempt organization within the meaning of section 501(c)(3), or any successor provision thereto of the federal Internal Revenue Code;

~~(20)~~ (22) "Standby guardian", one who is authorized to have the temporary care and custody of the person of a minor or of an incapacitated person under the provisions of section ~~475.046~~ 475.175 or 475.258;

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

~~(22)~~ (24) "Ward", a minor or an incapacitated person for whom a guardian, limited guardian, or standby guardian has been appointed.

**Persons adjudged incompetent prior to September 28, 1983, and prior to effective date of this act--review--effect on prior appointed guardians.**

475.016. 1. If there has been an adjudication of incompetency before September 28, 1983, any person so adjudicated shall be deemed totally incapacitated and totally disabled as defined in section 475.010, until such time as the probate division of the circuit court of the county of proper venue, upon the annual review proceeding prescribed by section ~~475.082~~ 475.330 or otherwise, may review the nature of the incapacity or disability of the person so adjudicated and alter the nature of the adjudication if, as a consequence of the review, it appears to the court that the person is not both totally incapacitated and totally disabled as defined in section 475.010. A guardian of the person appointed before September 28, 1983, shall be deemed a guardian as defined in section 475.010. A guardian of the estate appointed before September 28, 1983, shall be deemed a conservator as defined in section 475.010.

2. If there has been an adjudication of incapacity or partial incapacity since September 28, 1983, and before the effective date of this Act, any person so adjudicated shall continue to be

deemed to be incapacitated or partially incapacitated until such time as the probate division of the circuit court of the county of proper venue determines otherwise.

3. If there has been an adjudication of disability or partial disability since September 28, 1983, and before the effective date of this Act, any person so adjudicated shall be deemed to be financially incapacitated or partially financially incapacitated until such time as the probate division of the circuit court of the county of proper venue determines otherwise.

4. Existing guardians and conservators shall have one year after the effective date of this act to meet any annual and other reporting and planning requirements which are different than the former requirements of Chapter 475 before the effective date of this act.

### **Applicability of provisions of probate code to guardianship.**

475.020. The provisions of chapter 472, unless therein restricted to decedents' estates, apply to guardianships and conservatorships. Where sections in chapter 473 are specifically incorporated by reference by any provision of sections 475.010 to ~~475.370~~ 475.798, they shall be applied as if "decedent" or "deceased" read "ward" or "protectee", "executor" or "administrator" or "personal representative" read "guardian", "conservator" and the like, as the case may be, as far as applicable to guardianships and conservatorships and not inconsistent with the provisions of sections 475.010 to ~~475.370~~ 475.798. In other cases, where no rule is set forth for guardianships and conservatorships in sections 475.010 to ~~475.370~~ 475.798, the rule regarding decedents' estates in this law shall likewise apply to guardianships and conservatorships when applicable thereto and not inconsistent with the provisions of sections 475.010 to ~~475.370~~ 475.798, unless a contrary rule of court is duly promulgated or declared; provided that the provisions of sections 473.780 to 473.840, relating to independent administration, shall not apply to guardianships or conservatorships.

### **Subject-matter jurisdiction.**

475.030. 1. The probate division of the courts of this state has jurisdiction over guardianship for minors domiciled or present in this state subject to the Missouri Uniform Child Custody Jurisdiction and Enforcement Act, sections 452.700 to 452.930. The probate division of the courts of this state has jurisdiction over protective proceedings or conservatorship for minors domiciled in or having property located in this state.

2. The probate division of the courts of this state has jurisdiction over guardianship and protective proceedings or conservatorship for an adult individual as set in the Missouri Uniform Adult Guardianship Protective Proceedings Jurisdiction Act, sections 475.701 to 475.755.

3. The probate divisions of the courts of this state have jurisdiction over issues of the adjudication of incapacity, partial incapacity, financial incapacity, or partial incapacity and the appointment of a guardian, limited guardian, conservator, or limited conservator of an adult child age 18 or over whose parents have a pending matter under Chapter 452 or Chapter 210 for child custody or visitation of that child. The probate division shall have jurisdiction over the matters of child custody and visitation after such adjudication and appointment of a guardian for an adult

child. The court which has jurisdiction under Chapter 452 or Chapter 210 of the adult child's parents shall have the authority to enter orders only as to child support after such adjudication and appointment of a guardian by the probate division.

**Concurrent authority for minor guardianship.**

475.035. 1 Custody orders issued by the juvenile division pursuant to Chapter 211 shall take precedence over any guardianship order relating to custody for minors issued pursuant to this Chapter. Such questions may be certified to the juvenile division for hearing, determination or recommendation pursuant to section 211.051.

2. The probate division may transfer a guardianship proceeding involving the custody of a minor to the family court pursuant to section 487.090, or may transfer a guardianship proceeding to any other court in which a custody order has been granted, or is being sought, with respect to the same minor.

3. If another court has granted custody to one or both parents of a minor, the probate division may proceed with a guardianship proceeding involving a minor and the appointment of a guardian in the probate division will operate to terminate the custody order of the other court.

**Venue.**

475.040.1. The venue for the appointment of a guardian or conservator shall be:

(1) In the county in this state where the minor or alleged incapacitated or ~~disabled~~ financially incapacitated person is domiciled; or

(2) If the minor or alleged incapacitated or ~~disabled~~ financially incapacitated person has no domicile in this state, then in the county in which the minor or alleged incapacitated or ~~disabled~~ financially incapacitated person actually resides, or if he or she does not reside in any county, then in any county wherein there is any property of the minor or alleged incapacitated or ~~disabled~~ financially incapacitated person; or

(3) In the county, or on any federal reservation within the county, wherein the minor or alleged incapacitated or ~~disabled~~ financially incapacitated person or his or her property is found; or

(4) In a county of this state which is within a judicial circuit which has prior and continuing jurisdiction over the minor pursuant to subdivision (1) of subsection 1 of section 211.031.

2. If the minor has resided in a county other than the county of the minor's domicile for more than six months, or if a natural guardian or other person with rights to custody of the minor does not object to venue in the county where the minor resides, the court of that county may assume venue for the purpose of appointment of a guardian or conservator. [Six months is what the UGPPJA, section 475.721 definition of "home state."]

~~2.~~ 3. If the alleged incapacitated or ~~disabled~~ financially incapacitated person has resided in a county other than the county of ~~his or her~~ the person's domicile for more than one year six months, or if no interested person objects, the court of that county may assume venue for the purpose of appointment of a guardian or conservator. [Six months is what the UGPPJA, section 475.721 definition of "home state."]

~~3.~~ 4. If proceedings are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination of venue in the county where first commenced. The proceeding is deemed commenced by the filing of a petition; and the proceeding first legally commenced to appoint a conservator of the estate extends to all of the property of the protectee in this state.

### **Change of venue.**

475.045. If it appears to the court, acting on the petition of the guardian, the conservator, the respondent or of a ward over the age of fourteen, or on its own motion, at any time before the termination of the guardianship or conservatorship, that the proceeding was commenced in the wrong county, or that the domicile or residence of the ward or protectee has been changed to another county, or in case of conservatorship of the estate that it would be for the best interest of the ~~ward or disabled person~~ protectee and ~~his~~ the protectee's estate, the court may order the proceeding with all papers, files and a transcript of the proceedings transferred to the probate division of the circuit court of another county. The court to which the transfer is made shall take jurisdiction of the case, place the transcript of record and proceed to the final settlement of the case as if the appointment originally had been made by it.

### **Preference for spiritual healing not evidence of incapacity.**

~~475.044.~~ 475.050. Nothing in this chapter shall be construed to constitute evidence of incapacity or partial incapacity of a person solely because such person refuses medical treatment upon the grounds that such person has consistently relied on prayer for healing in accordance with the religion of any church which teaches reliance on spiritual means for healing.

### **Exhaustion of estate.**

~~475.370~~ 475.060. 1. If the estate of any incapacitated ward or protectee is insufficient to pay ~~his~~ the ward's or protectee's debts, to maintain ~~himself~~ the ward or the ward's or protectee's and family, or educate ~~his~~ the ward's or protectee's children, ~~his~~ the guardian or conservator may apply to the county commission of the proper county, by petition, setting forth the particulars, and praying for an appropriation from the county treasury for the support of ~~his~~ the ward or protectee.

2. The petition shall be accompanied by a true and perfect account of the guardianship or conservatorship, an inventory of the estate and effects, and a list of the debts due from such incapacitated or financially incapacitated person, and it shall be verified by the affidavit of the petitioner.

3. If the county commission is satisfied that the estate and effects are insufficient for the purposes above specified, it may order such sum to be paid to the guardian or conservator, out of the county treasury, as to it shall appear reasonable, and cause a warrant to be issued accordingly.

4. But no allowance shall be made, at any one time, for a period longer than one year, nor shall the order be made at any time, unless the guardian or conservator has duly accounted, and settled with the probate division of the circuit court, for the moneys and effects which have come to ~~his~~ the guardian's or conservator's hands for the support of ~~his-the~~ ward or protectee, out of the county treasury or otherwise.

### **Court-ordered health care.**

~~475.123.3-4~~ 475.070. 1. If the life of a person is threatened and ~~his~~ that person's consent to a necessary medical or surgical procedure cannot be obtained, a court, on petition or a second count of a petition filed pursuant to section ~~475.060~~ 475.210 for an adult or 475.130 for a minor, after hearing, may authorize consent on behalf of such person.

2. Any hearing conducted pursuant to subsection ~~3~~ 1 of this section, involving a life threatening medical emergency, may be conducted within or without the county at the medical facility where the person has been admitted with such notice and in such form as is practicable considering the time limitations imposed due to the condition of person. The fact of attempted oral notice to persons interested in the welfare of the person shall be made a part of the record of the hearing.

### **Admission to mental health or developmental disability facility.**

~~475.120.5 & 475.121.~~ 475.080. 1. No guardian of the person shall have authority to seek admission of the guardian's ward to a mental health or developmental disability ~~mental retardation~~ facility, as defined in Chapters 630-633, for more than thirty days for any purpose without court order except as otherwise provided by law.

2. Pursuant to an application alleging that the admission of the ward to a particular mental health or developmental disability facility is appropriate and in the best interest of the ward, the court may authorize the guardian or limited guardian to admit the ward to such facility. Such application shall be accompanied by a licensed physician's statement setting forth the factual basis for the need for continued admission including a statement of the ward's current diagnosis, plan of care, treatment or habilitation and the probable duration of the admission.

3. If the court finds that the application establishes the need for inpatient care, habilitation or treatment of the ward in a mental health or developmental disability facility without the adduction of further evidence, it shall issue an order authorizing the guardian to admit the ward to such facility in accordance with the provisions of section 632.120 or section 633.120.

4. The court may, in its discretion, appoint an attorney to represent the ward. The attorney shall meet with the ward and may request a hearing on the application. If a hearing is requested, the court shall set the application for hearing. If there is no request for hearing, the court may rule on

the application without a hearing. The attorney for the ward shall be allowed a reasonable fee for ~~his~~ the attorney's services rendered to be assessed as costs under ~~section 475.085~~ sections 475.198 and 475.280.

5. Proceedings under this section may be combined with a petition for adjudication proceedings under sections ~~475.075~~ 475.210 for an adult and 475.130 for a minor.

**Special needs trusts, protective arrangements, and single transactions, court's powers-- limitation of trustee's liability.**

475.092. 1. If it is established in a proceeding conducted in a manner similar to a proceeding for the appointment of a conservator of the estate that a person is a minor or ~~disabled~~ financially incapacitated, or has a physical or mental disability as defined under state or federal law, the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the person.

2. When it has been established in such a proceeding that the person is a minor or ~~disabled~~ financially incapacitated, or has a physical or mental disability as defined under state or federal law, the court, without appointing a conservator, may authorize, direct or ratify any contract or other transaction relating to the person's financial affairs or involving such person's estate if the court determines that the transaction is in the best interests of the person and if such action would otherwise be within the power of the court. A transaction pursuant to this section may include the establishment by the court or other grantor of an inter vivos trust, including a trust that complies with the provisions of 42 U.S.C. Section 1396p(d)(4), on behalf of the person provided that upon such person's death, after the payment of trustees' fees, any payments to the state Medicaid agency that are required by the provisions of 42 U.S.C. Section 1396p(d)(4) are made and, provided further, that any creditor of the person other than the state of Missouri shall also be paid all sums due for such person's care, maintenance and support, to the extent trust property is sufficient therefor, and, provided, such trust shall terminate upon such person's death and any amounts remaining in the trust after the foregoing payments shall be distributed to the remainder beneficiaries designated in the trust or as designated pursuant to the exercise of a power of appointment set forth in the trust. This section shall not be interpreted to require all such trusts to be established by a court proceeding.

3. Before approving a protective arrangement or other transaction pursuant to this section, the court shall consider the interests of creditors and dependents of the person and, in view of such person's ~~disability~~ financial incapacity, whether such person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized pursuant to this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

4. Notwithstanding any other law to the contrary, the trustee of any trust created or approved by a Missouri court prior to August 28, 1999, for the benefit of a person who is a minor or ~~disabled~~ financially incapacitated, or has a physical or mental disability as defined under state or federal



law shall not be liable to the state of Missouri or to any creditor of such person if, on August 28, 1999, the trust does not have sufficient assets to reimburse the state of Missouri for medical assistance paid on such person's behalf pursuant to a state plan as provided in Title 42 of the United States Code or to reimburse a creditor for sums due for such person's care, maintenance and support. Any such trust which is in existence as of August 28, 1999, shall be subject to subsection 2 of this section, as amended, notwithstanding any provisions of such trust to the contrary. The trustee shall not be liable for any distributions or payments made prior to August 28, 1999, pursuant to the terms of such trust.

### **Court may authorize participation in Missouri Family Trust.**

475.093. 1. If the court finds that the establishment of a trust would be in the protectee's best interest, the court may authorize the establishment of a trust account for the benefit of a protectee pursuant to sections 402.199 to 402.208, if it finds that the protectee qualifies as a life beneficiary pursuant to subdivision (1) of section 402.200, or the court may authorize the establishment of such trust for the benefit of a protectee pursuant to section 475.092.

2. A trust account established pursuant to sections 402.199 to 402.208 will be in the best interest of the protectee, notwithstanding the fact that a sum not exceeding twenty-five percent of the principal balance as defined in subdivision (9) of section 402.200 will be distributed to the charitable trust of the Missouri family trust as prescribed by section 402.203.

## **Appointment and Procedure – Minors**

### **Rights of parents as natural guardians of minors.**

~~475.025~~ 475.105. In all cases not otherwise provided for by law, the father and mother, with equal powers, rights and duties, while living, and in case of the death of either parent the survivor, or when there is no lawful father, then the mother, if living, is the natural guardian of their children, and has the custody and care of their persons and education. When the estate of a minor is derived from a parent, the parent as natural guardian has all of the powers of a conservator appointed by a court, with respect to property derived from ~~him~~ the parent, except that no court order or authorization is necessary to exercise these powers and the natural guardian may invest, sell and reinvest the estate of the minor in such property as is reasonable and prudent.

### **Temporary delegation of powers by parent of minor--exceptions.**

~~475.024~~ 475.110. A parent of a minor, by a properly executed power of attorney, may delegate to another individual, for a period not exceeding one year, any of ~~his or her~~ the parent's powers regarding care or custody of the minor child, except ~~his or her~~ the parent's power to consent to marriage or adoption of the minor child.

## **Who may be appointed guardian of minor.**

~~475.045~~ 475.120. 1. Except in cases where they fail or refuse to give required security or are adjudged unfit for the duties of guardianship or conservatorship, or waive their rights to be appointed, the following persons, if otherwise qualified, shall be appointed as guardians or conservators of minors:

(1) The parent or parents of the minor, except as provided in section ~~475.030~~ 475.190;

(2) If any minor over the age of fourteen years has no qualified parent living, a person nominated by the minor, unless the court finds appointment contrary to the best interests of the minor;

(3) Where both parents of a minor are dead, any person appointed under this section or section ~~475.046~~ 475.175 by the will of the last surviving parent, who has not been adjudged unfit or incompetent for the duties of guardian or conservator.

2. Unfitness of any of the persons mentioned in subsection 1 for the duties of guardianship or conservatorship may be adjudged by the court after due notice and hearing.

3. If no appointment is made under subsection 1 of this section, the court shall appoint as guardian or conservator of a minor the most suitable person who is willing to serve and whose appointment serves the best interests of the child to a stable and permanent placement.

## **Qualifications of guardians or conservators of minors.**

~~475.055~~ 475.125. 1. Except as herein otherwise provided:

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

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

~~(3) Any social service agency located within a county of the first classification or within a city not within a county except any county of the first classification without a charter form of government with a population of one hundred thousand or more inhabitants which contains all or part of a city with a population of three hundred fifty thousand or more inhabitants, which is found capable by the court of providing an active and suitable program of guardianship for the incapacitated person, taking into consideration the nature of such person's disability and the nature of such organization's services, may be appointed as guardian of the person; however, no~~

~~social service agency shall be appointed as guardian of the person under this subdivision unless it employs a licensed professional found by the court to have sufficient expertise to meet the needs of the ward, and it is found by the court that such professional shall have primary responsibility for providing guardianship services to the incapacitated person for which such social service agency is appointed guardian. The court shall not appoint as guardian of the person under this subdivision a social service agency which is providing residential services to the ward;~~

~~(2)~~ (4) Any corporation authorized to do business in this state and empowered by its charter so to act or any national banking association authorized so to act in this state may be appointed conservator of the estate of a minor ~~or disabled person~~.

2. No person or corporation, other than the public administrator of the county, shall be appointed guardian or conservator unless the appointee has filed a consent to act. Except as otherwise provided by this section, no person or corporation licensed as a facility by the Missouri department of mental health or the Missouri department of social services, nor any administrator, owner, operator, manager or employee of such a facility shall be appointed guardian of the person or conservator of the estate of any resident of that facility, unless related within the fourth degree of consanguinity or affinity to the resident. No full-time judge of any court of this state and no clerk, deputy clerk or division clerk shall be appointed as guardian of the person or conservator of the estate, but a judge, clerk, deputy clerk or division clerk may serve as a guardian or conservator for a ward or protectee who is a spouse or is within the third degree of relationship by consanguinity or affinity as calculated according to civil law. No natural person under eighteen years of age, other than as provided in subsection 1 of this section, no ~~incapacitated or disabled~~ financially incapacitated person, and no ~~habitual drunkard~~ substance abuser shall be appointed guardian of the person or conservator of the estate. No person whose letters of guardianship or conservatorship are revoked shall be appointed guardian or conservator within two years after the revocation. No one shall be appointed guardian of the person or conservator of the estate unless qualified to perform the duties of said office or offices.

2. A person becomes a guardian or conservator of a minor ~~or incapacitated or disabled person~~ upon issuance of letters of guardianship or conservatorship by the court. A person so appointed need not reside within this state in order to accept or serve as guardian or conservator, unless the court finds that such person, taking into consideration ~~his~~ the person's place of residence, is unable to effectively perform the duties of guardian or conservator as provided by this code. The guardianship or conservatorship status continues until terminated, without regard to the location from time to time, whether within or outside of this state, of the guardian and ward or conservator and protectee.

3. Subsections 3 and 4 of section 473.117, section 473.689, and section ~~475.338~~ 475.775 are applicable to nonresident guardians and conservators.

~~5. If a social service agency is appointed to act as guardian under this section, any other eligible person listed in subdivision (3) of subsection 1 of section 475.050 may petition the court to have the social service agency removed as guardian. The removal of a social service agency under such circumstances does not require evidence that the agency committed acts of misfeasance warranting the agency's removal pursuant to section 475.110~~ 476.645.

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

**Petition for guardianship--petition for guardianship requirements--~~incapacitated persons,~~  
petition requirements.**

~~475.060~~ 475.130. 1. Any person may file a petition for the appointment of himself or herself or some other qualified person as guardian of a minor. Such petition shall state:

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

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

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

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

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

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

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

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

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

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

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

(12) If the petitioner suggests the appointment of co-guardians or co-conservators, or both, a statement of the reasons why such appointment is sought and whether the petitioner

suggests that the co-guardians or co-conservators, if appointed, may act independently or whether they may act only together or only together with regard to specified matters; and

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

**Petition for conservatorship--may combine with petition for guardian of person.**

~~475.061~~ 475.140. 1. Any person may file a petition in the probate division of the circuit court of the county of proper venue for the appointment of himself or herself or some other qualified person as conservator of the estate of a minor ~~or disabled person~~. The petition shall contain the same allegations as are set forth in subdivisions (1), (8), and (10) of subsection 2 of section ~~475.060~~ 475.130 with respect to the appointment of a guardian for an-incapacitated person and; ~~in addition thereto, an allegation that the respondent is unable by reason of some specific physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the respondent lacks ability to manage his financial resources or that the respondent is under the age of eighteen years.~~

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

**Single guardianship or conservatorship for two or more persons.**

~~475.065~~ 475.145. When application is made for the appointment of a guardian or conservator for two or more minors ~~or incapacitated or disabled persons~~ who are children of a common parent, or are parent and child, or are husband and wife, it is not necessary that a separate petition, bond or other paper be filed for each minor ~~or incapacitated or disabled person~~ and the guardianship or conservatorship of all may be considered as one proceeding except that there shall be a separate accounting when the guardianship or conservatorship terminates as to one ward or ~~disabled person~~ protectee but not as to the others.

**Notice of petition for appointment of guardian or conservator for a minor--service on parents of minor not required, when.**

~~475.070~~ 475.150. 1. Before appointing a guardian or conservator for a minor, notice of the petition therefor shall be served upon the following unless they have signed such petition or have waived notice thereof:

- (1) The minor, if over fourteen years of age;
- (2) The parents of the minor;
- (3) The spouse of the minor;
- (4) If directed by the court:

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

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

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

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

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

4. The provisions of the Uniform Child Custody Jurisdiction and Enforcement Act, sections 452.700, RSMo, et seq., are applicable to the proceedings for the appointment of a guardian for a minor. The natural parents must be served with process and afforded the opportunity to file an answer pursuant to the Rules of Civil Procedure, as in other circuit-division civil cases, rather than under the less formal procedures of the Probate Code, unless the natural parents have filed an appropriate pleading indicating their consent to the relief being sought.

#### **Bond of conservator of estate of minor ~~or disabled financially incapacitated person.~~**

~~475.100~~ 475.160. Every conservator of the estate of a minor ~~or disabled person~~, before entering upon the duties of ~~his~~ the conservator's office, shall execute and file a bond, approved by the court, procured at the expense of the estate with sufficient surety in an amount fixed by the court. Sections 473.157 to 473.217, relating to the bonds of personal representatives, except subsection 1 of section 473.157 and subsection 1 of section 473.160, are applicable to the bonds of conservators.

#### **Order appointing guardian or conservator.**

~~475.079~~ 475.170. 1. If it appears to the court that a guardian should be appointed for a minor ~~who is not incapacitated or if it is found by the jury or the court upon proof by clear and convincing evidence that the person for whom a guardian is sought is incapacitated as defined in this law~~, the court may appoint a guardian of the person. The appointment of guardians of minors shall be made in accordance with section ~~475.045~~ 475.120, except that if a person entitled to appointment as a guardian or entitled to select a guardian fails to appear after notice or to apply



for such appointment or make selection in accordance with the order of the court the court may appoint any suitable person as guardian.

2. If it is found that the person for whom a conservator of the estate is sought is a minor ~~or is disabled as defined in section 475.010 by a disability other than or in addition to minority~~, the court may appoint a conservator of the estate, who may be the same person appointed guardian of the person.

**Standby guardian permitted, when--appointment procedure—authority effective, when.**

~~475.046~~ 475.175. 1. A custodial parent may designate a person to act as standby guardian of a minor ~~or incapacitated person~~ by a will that complies with the requirements of section 474.320 or by a separate written instrument which is dated and is either duly executed and acknowledged by the custodial parent or is signed by the custodial parent in the presence of at least two disinterested witnesses and subscribed by the witnesses. If the custodial parent executes more than one document designating a standby guardian and there is a conflict between the documents as to the person designated, the document bearing the latest date shall control.

2. If a custodial parent who has designated a standby guardian is or becomes seriously ill, the custodial parent or the person designated as standby guardian may file a petition in the probate division of the circuit court of the county which would be of proper venue for the appointment of a guardian of the minor ~~or incapacitated person~~ seeking appointment of the designated person as standby guardian. A copy of the will or separate written instrument designating the standby guardian and a consent to act as standby guardian signed by the person designated shall be filed with the petition, which petition shall state:

(1) The name, age, domicile, actual place of residence, and mailing address of the minor ~~or incapacitated person~~;

(2) The name and address of the custodial parent and of the designated standby guardian;

(3) The name and address of each parent of the minor ~~or incapacitated person~~ and whether that parent is living or dead;

(4) The name and address of the spouse, if applicable, and the names, ages, and addresses of all living children of the minor ~~or incapacitated person~~;

(5) If the person for whom appointment of a standby guardian is sought has been adjudicated incapacitated, the date of adjudication and the name and address of the court which entered the judgment; and

(6) The reasons why the appointment of a standby guardian is sought.

Proceedings on the petition shall be conducted in the same manner as would be applicable in a case for appointment of a successor guardian under section ~~475.115~~ 475.630.

3. The court shall determine appointment of a standby guardian in accordance with the best interests of the minor ~~or incapacitated person~~ after considering all relevant factors, including:

(1) Whether there is a parent other than the custodial parent and, if so, whether the other parent is willing, able, and fit to assume the duties of a parent;

(2) The suitability of a person nominated by the minor ~~or incapacitated person~~ if he or she is, at the time of hearing, able to communicate a reasonable choice; and

(3) The desirability of providing arrangements for the care, custody, and control of the minor ~~or incapacitated person~~ which shall minimize stress and disruption and avoid ~~his or her~~ the minor's placement in foster or similar care pending appointment of a guardian if the custodial parent is adjudicated incapacitated or dies.

4. If it appears to the court that a standby guardian should be appointed for a minor ~~or incapacitated person~~, the court may appoint a standby guardian.

5. The authority of a person to act as standby guardian for a minor ~~or incapacitated person~~ shall only take effect as follows:

(1) If the person has previously been appointed by the court as standby guardian, upon the granting of letters of standby guardianship to the person previously appointed as provided in the order appointing the standby guardian; or

(2) If the person has not previously been appointed by the court as standby guardian, either because a petition for appointment has not been filed or because a petition has been filed but the proceedings are still pending, upon the first to occur of the following:

(a) The consent of the custodial parent in a writing duly executed and acknowledged by the custodial parent;

(b) Entry of an order adjudicating the custodial parent to be incapacitated; or

(c) The death of the custodial parent.

The person shall, within ten days after he or she begins to act as standby guardian, notify the court in writing of that fact and of the reasons therefor. The court may grant letters of standby guardianship to the person or, if the court deems it advisable, conduct a hearing to determine the propriety of the person having begun, and continuing, to act as standby guardian and the propriety of issuing letters of standby guardianship to the person.

6. A person acting as standby guardian of a minor ~~or incapacitated person~~ shall, within sixty days after he or she begins to act, petition the court for appointment of the standby guardian or some other qualified person as guardian of the minor ~~or incapacitated person~~. Proceedings on the petition shall be conducted in the same manner as would be applicable in a case for appointment of a successor guardian under section ~~475.115~~ 475.630.

7. Nothing in this section shall be construed to:

(1) Deprive a parent of ~~his or her~~ the parent's legal rights with respect to a minor ~~or incapacitated person~~ who is a child of that parent, including court-ordered visitation with the child, nor to authorize a grant of authority to a standby guardian which would supersede any such rights; or

(2) Relieve a parent of ~~his or her~~ the parent's legal obligations or duties to a minor ~~or incapacitated person~~ who is a child of that parent, including a duty to support the child in accordance with a court or administrative order.

8. Except to the extent determined by the court to be inconsistent with the provisions of this section or as expressly provided in this section, the laws applicable to guardianship proceedings shall apply to all proceedings under this section.

**When conservatorship not necessary.**

~~475.330~~ 475.180. 1. When the whole estate of a minor does not exceed the value of ten thousand dollars, the court may, in its discretion, without the appointment of a conservator or the giving of bond, authorize:

(1) The deposit in a depository authorized to receive fiduciary funds, payable to the conservator of the estate when appointed or to the minor upon ~~his~~ the minor attaining the age of eighteen years; or

(2) The delivery thereof to a suitable person designated by the court, deliverable to the conservator of the estate when appointed or to the minor upon ~~his~~ the minor attaining the age of eighteen years; or

(3) The payment or delivery thereof to the parent of the minor, or to the person having care or custody of the minor or to the minor himself directly. The person receiving such money or other assets shall hold and dispose of the same in the manner directed by the court.

~~2. When the whole estate of a person over the age of eighteen who has been adjudicated to be disabled does not exceed the value of ten thousand dollars, the court may, in its discretion, without the appointment of a conservator or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court, or authorize the delivery thereof to a suitable person designated by the court. The person receiving such money or other assets shall hold and dispose of the same in such manner as the court directs.~~

~~3.~~ 2. When the whole estate of a minor ~~or a disabled person~~ does not exceed ten thousand dollars, the court may discharge the conservator of the estate and authorize disposition of the assets of the estate of the protectee in the same manner as provided in ~~subsections~~ subsection 1 ~~and 2~~ of this section.

~~4.~~ 3. The person or officer making payment, delivery, transfer or issuance of personal property or evidence thereof to the person designated by the court under this section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a conservator of the minor ~~or disabled person~~, and ~~he~~ the person or officer is not required to see to the application thereof, except that a person or officer making payment, delivery, transfer or issuance of money or personal property, or evidence thereof, to a next friend or guardian ad litem may be discharged and released as provided for in section 507.184.

### **Letters of guardianship and conservatorship issued, when.**

~~475.030. 1.~~ Letters of guardianship of the person may be granted for any person adjudged incapacitated. Letters of conservatorship of the estate may be granted for any person adjudged to be disabled.

~~2.~~ 475.190. 1. Letters of conservatorship of the estate of a minor shall be granted for that part of the estate of the minor which is not derived from a living parent who is acting as natural guardian.

~~3.~~ 2. Letters of conservatorship for the entire estate of a minor may be granted in the following cases:

(1) Where the minor has no parent living; or

(2) Where there is a natural guardian of the minor and where the court finds that the best interests of the minor require letters of conservatorship for all of ~~his~~ the minor's estate.

~~4.~~ 3. Letters of guardianship of the person of a minor may be granted in the following cases:

(1) Where a minor has no parent living;

(2) Where the parents or the sole surviving parent of a minor are unwilling, unable or adjudged unfit to assume the duties of guardianship;

(3) Where the parents or the sole surviving parent have had their parental rights terminated under chapter 211.

### **Form of letters of guardianship or conservatorship.**

~~475.105~~ 475.195. 1. When a duly appointed guardian or conservator has given bond, as required by law, and the bond has been approved, letters under the seal of the court shall be issued to the person appointed. Such letters shall specify whether they are of guardianship, limited guardianship, co-guardianship, or standby guardianship of the person, or conservatorship, ~~or~~ limited conservatorship, or co-conservatorship of the estate, or both, and the original or duly certified copies thereof shall be prima facie evidence of the facts therein stated.

2. Letters of guardianship and conservatorship for minors may be in the following form:

Chapter 475, RSMo, 12.15.2015 "Latest Master Discussion Draft." Text struck through ~~thus~~ is to be deleted; text underlined thus is new or added. Comments welcome to [www.mo-wings.org](http://www.mo-wings.org).

IN THE PROBATE DIVISION OF THE CIRCUIT COURT OF . . . . .  
COUNTY, MISSOURI

LETTERS OF (STANDBY) GUARDIANSHIP (AND CONSERVATORSHIP)  
OF MINOR

Estate No. . . . .

On . . . . . was appointed and has qualified as (standby) guardian of the  
person (and conservator of the estate) for the following minor(s):

. . . . . Born . . . . ., 20. . . . .  
. Born . . . . ., 20. . . . . Born . . . . ., 20. . . . .  
. . . . . Born . . . . ., 20. . . . .

By reason thereof, the above-named (standby) guardian (and conservator) is  
authorized and empowered to perform the duties of such (standby) guardian (and  
conservator) as provided by law under the supervision of the court having care and  
custody of the person (and of the estate) of the above-named minor(s).

IN TESTIMONY WHEREOF, the undersigned Clerk has signed these letters and  
affixed the seal of this court on . . . . .

. . . . .  
Clerk

Recorded on . . . . . in Book . . . . . at Page . . . . .

. . . . .  
Clerk

**Cost of proceedings for minors.**

475.198 1. The costs of proceedings involving minors shall be paid from the minor's estate or by the parents or, if the minor's estate or the parents' means is insufficient, costs shall be paid by the county; but if a guardian or conservator is not appointed, the costs shall be paid by the person filing the petition, unless the person filing the petition is a public employee acting in the employee's official capacity, in which case the costs shall be paid by the county.

2. Upon a showing of indigency, the court shall waive the applicable filing fee for a petition in regard to a minor or minor's parents. The costs of the proceeding shall be taxed after the court rules on the petition.

## **Appointment and Procedure – Adults**

### **Who may be appointed guardian or conservator of adults.**

~~475.050~~ 475.203. 1. Before appointing any other eligible person as guardian of an incapacitated person, or conservator of the estate of a disabled financially incapacitated person, the court shall consider the suitability of appointing any of the following persons who appear to be willing to serve:

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

(2) Any eligible person nominated in a durable power of attorney executed by the incapacitated or ~~disabled~~ financially incapacitated person, or in an instrument in writing signed by the incapacitated or ~~disabled~~ financially incapacitated person and by two witnesses who signed at the incapacitated or ~~disabled~~ financially incapacitated person's request, before the inception of the person's incapacity or ~~disability~~ financial incapacity, at a time ~~within five years before the hearing~~ when the person was able to make and communicate a reasonable choice;

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

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

2. Except for good cause shown, the court shall make its appointment in accordance with the incapacitated or ~~disabled~~ financially incapacitated person's most recent valid nomination of an eligible person qualified to serve as guardian of the person or conservator of the estate. ~~In the event there is not brought to the attention of the court any such valid nomination executed within five years before the hearing, then the court shall give consideration to the most recent valid nomination brought to its attention, but the court shall not be required to follow such nomination.~~

### **Qualifications of guardians or conservators of adults.**

~~475.055~~ 475.206. 1. Except as herein otherwise provided:

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

(2) Any charitable organization organized and incorporated as a not-for-profit corporation under the laws of this state prior to January 1, 1902, shall be qualified to continue to serve as guardian of the person of any ward for whom such charitable organization has been appointed



guardian of the person prior to September 28, 1983, or to be appointed guardian of the person or persons adjudicated incapacitated subsequent to September 28, 1983;

(3) Any social service agency ~~located within a county of the first classification or within a city not within a county except any county of the first classification without a charter form of government with a population of one hundred thousand or more inhabitants which contains all or part of a city with a population of three hundred fifty thousand or more inhabitants or not for profit organization under the laws of this state and which is qualified under section 501(c)(3) of the Internal Revenue Code, which is found to be capable by the court of providing an active and suitable program of guardianship for the incapacitated person, taking into consideration the nature of such person's disability incapacity and the nature of such organization's services, may be appointed as guardian of the person; however, no social service agency shall be appointed as guardian of the person under this subdivision unless it employs a licensed professional found by the court to have sufficient expertise to meet the needs of the ward, and it is found by the court that such professional shall have primary responsibility for providing guardianship services to the incapacitated person for which such social service agency is appointed guardian.; and no social service agency nor not-for-profit organization shall be appointed as guardian of the person under this subdivision unless it employs or contracts with a licensed professional or trained volunteer found by the court to have sufficient expertise to meet the needs of the ward, and it is found by the court that such professional or trained volunteer shall have primary responsibility for providing guardianship services to the ward .~~ The court shall not appoint as guardian of the person under this subdivision a social service agency which is providing residential services or personal care services to the ward.

~~(4)(3)~~ Any corporation authorized to do business in this state and empowered by its charter so to act or any national banking association authorized so to act in this state may be appointed conservator of the estate of a ~~minor or disabled~~ financially incapacitated person. ~~No corporation other than a social service agency may be appointed to serve as guardian of the incapacitated person.~~

2. No person, agency, or corporation, other than the public administrator of the county, shall be appointed guardian or conservator unless the appointee has filed a consent to act. ~~Except as otherwise provided by this section, no~~ No person, agency, or corporation whether or not licensed as a facility by the Missouri department of mental health or the Missouri department of health and senior services, nor any administrator, owner, operator, manager or employee of such a facility shall be appointed guardian of the person or conservator of the estate of any resident of that facility, unless related within the fourth degree of consanguinity or affinity to the resident. No full-time judge of any court of this state and no clerk, deputy clerk or division clerk shall be appointed as guardian of the person or conservator of the estate, but a judge, clerk, deputy clerk or division clerk may serve as a guardian or conservator for a ward or protectee who is a spouse or is within the third degree of relationship by consanguinity or affinity as calculated according to civil law. No natural person under eighteen years of age, ~~other than as provided in subsection 4 of this section,~~ no incapacitated or ~~disabled~~ financially incapacitated person, and no habitual ~~drunkard~~ substance abuser shall be appointed guardian of the person or conservator of the estate. No person whose letters of guardianship or conservatorship are revoked shall be appointed guardian or conservator within two years after the revocation. No one shall be appointed

guardian of the person or conservator of the estate unless qualified to perform the duties of said office or offices.

3. A person becomes a guardian or conservator of a ~~minor or~~ incapacitated or ~~disabled~~ financially incapacitated person upon issuance of letters of guardianship or conservatorship by the court. A person so appointed need not reside within this state in order to accept or serve as guardian or conservator, unless the court finds that ~~such the~~ person, taking into consideration ~~his~~ the person's place of residence, is unable to effectively perform the duties of guardian or conservator as provided by this code. The guardianship or conservatorship status continues until terminated, without regard to the location from time to time, whether within or outside of this state, of the guardian and ward or conservator and protectee.

4. Subsections 3 and 4 of section 473.117, section 473.689, and section ~~475.338~~ 475.775 are applicable to nonresident guardians and conservators.

5. The court may only appoint the public administrator for the estates or person and estate of financially incapacitated or incapacitated persons, as defined in Chapter 475, in the public administrator's county who have no legal guardian or conservator, and no one competent to take charge of such estate, or to act as such guardian or conservator, can be found, or is known to the court having jurisdiction, who will qualify.

5. 6. If a social service agency or not-for-profit organization is appointed to act as guardian under this section, any other eligible person listed in subdivision (3) of subsection 1 of section ~~475.050~~ 475.216 may petition the court to have the social service agency or not-for-profit organization removed as guardian. The court shall grant the petition if it finds that the petitioner is qualified and will act in the best interests of the ~~disabled~~ financially incapacitated or incapacitated person. The removal of a social service agency or nonprofit organization under such circumstances does not require ~~evidence that the agency committed acts of misfeasance~~ a showing of cause warranting the agency's its removal pursuant to section ~~475.110~~ 475.645.

**Petition for guardianship--petition for guardianship requirements--incapacitated persons, petition requirements, and emergency appointment requirements.**

~~475.060.2.~~ 475.210. 1. Any person may file a petition for the appointment of himself or herself or some other qualified person as guardian or limited guardian of an incapacitated person. Such petition shall state:

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

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

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

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

(5) The name and address of the spouse, the names, ages, and addresses of all living children of the alleged incapacitated person, the names and addresses of the alleged incapacitated person's closest known relatives, and the names and relationship, if known, of any adults living with the alleged incapacitated person; if no spouse, adult child, or parent is listed, the names and addresses of the siblings and children of deceased siblings of the alleged incapacitated person; the name and address of any agent appointed by the alleged incapacitated person in any durable power of attorney, and of the presently acting trustees of any trust of which the alleged incapacitated person is the grantor or is a qualified beneficiary or is or was the trustee or co-trustee and the purpose of the power of attorney or trust;

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

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

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

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

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

2. If the person filing the petition seeks the appointment of an emergency guardian, then the petition shall include the same requirements as set in subsection 1 of this section or shall have a separate count and shall request the appointment per the requirements set out in section 475.244.

## **Relationship of guardianship provisions to uniform veterans' guardianship law--powers of Veterans' Administration.**

~~475.015~~ 475.211. 1. ~~Former sections~~ Sections 475.380 to 475.480, known as the "Uniform Veterans' Guardianship Act", do not apply to a guardianship proceeding, whether or not the ward is receiving or has received benefits from the Veterans' Administration, if the original petition for appointment of a guardian is filed after December 31, 1980.

~~2.~~ When the Veterans' Administration is paying disability compensation, dependency and indemnity compensation, or a pension to a person, it has standing to petition for the appointment of a guardian or conservator for that person, his or her property, or both, and to appear as an interested person in any guardianship or conservatorship proceeding instituted for the person or his or her property by anyone. For purposes of this subsection, none of the following are sufficient to make the Veterans' Administration an interested person in a guardianship proceeding:

- (1) Acceptance or guarantee of payment of a mortgage;
- (2) Payment of dividends on or proceeds of a government or national service life insurance policy;
- (3) Provision of a flag to cover a coffin, a tombstone or burial expenses;
- (4) Payment of tuition, cost of books and supplies, or a subsistence allowance to a person entitled to educational benefits;
- (5) Provision of hospitalization, surgery, or medical care.

### **Petition for conservatorship--may combine with petition for guardian of person.**

~~475.061~~ 475.213. 1. Any person may file a petition in the probate division of the circuit court of the county of proper venue for the appointment of himself or herself or some other qualified person as conservator of the estate of a ~~minor or disabled~~ financially incapacitated person. The petition shall contain the same allegations as are set forth in subdivisions (1), (8), and (10) of subsection 1 ~~2~~ of section ~~475.060~~ 475.210 with respect to the appointment of a guardian for an incapacitated person and, in addition thereto, an allegation that the respondent is unable by reason of some specific physical, ~~or~~ mental, or cognitive condition to receive and evaluate information or to communicate decisions to such an extent that the respondent lacks ability to manage ~~his~~ the respondent's financial resources ~~or that the respondent is under the age of eighteen years.~~

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

### **Single guardianship or conservatorship for two or more persons.**

~~475.065~~ 475.216. When application is made for the appointment of a guardian or conservator for ~~two or more minors or~~ incapacitated or ~~disabled~~ financially incapacitated persons who are children of a common parent, or are parent and child, or are husband and wife, it is not necessary that a separate petition, bond or other paper be filed for each ~~minor or~~ incapacitated or ~~disabled~~ financially incapacitated person and the guardianship or conservatorship of all may be considered as one proceeding except that there shall be a separate accounting when the guardianship or conservatorship terminates as to one ward or ~~disabled person~~ protectee but not as to the others.

### **Certain records to be open unless ordered closed to public for good cause, and some to be confidential**

475.218. 1. Proceedings for guardianship or conservatorship, or both, shall be open to the public. At the request of Respondent specifying the reasons for closing the records, the court may order, for good cause shown, that the petition or any documents submitted in support of the petition may be closed except that the court shall provide copies of the petition and supporting documents to persons required to receive notice of the proceeding and attorneys appointed by the court or who enter their appearance for parties in interest.

2. Any written report of the licensed physician, licensed psychologist, or other professional is confidential and must be sealed upon filing or admitted into evidencen, but is available to:

- (1) The court;
- (2) The guardian or conservator, or proposed guardian or conservator;
- (3) The respondent without limitation as to use;
- (4) The petitioner and the petitioner's and respondent's lawyers, for the purposes of the proceeding;
- (5) Lawyers who have entered their appearances for parties in interest; and
- (6) Other persons for such purposes as the court may order for good cause.

### **Prompt setting for hearing required on petition.**

~~475.075.1~~ 475.220. Except as otherwise provided in section ~~475.062~~ 475.247, when a petition for the appointment of a guardian ad litem, guardian, or conservator ~~against~~ for any person, ~~hereinafter~~ who is then referred to as the "respondent," or for the approval on behalf of the respondent of a transaction pursuant to section 475.092, or for the rendition of emergency medical treatment under the provisions of section 475.080, is filed under Chapter 475 on grounds other than minority, the court, if satisfied that there is good cause for the exercise of its jurisdiction authority, shall promptly set the petition for hearing.

## **Requirements for service of petition.**

~~475.075.2. 475.223. 1.~~ The respondent shall be served in person with the following: A copy of the petition; a written notice stating the time and place the proceeding will be heard by the court, the name and address of appointed counsel, and the names and addresses of the witnesses who may be called to testify in support of the petition; and with a copy of the respondent's rights as set forth in ~~subsections 7 and 8 of this section~~ 475.238.

2. The notice shall be signed by the judge or clerk of the court and served in person on the respondent a reasonable time before the date set for the hearing.

3. ~~The petition shall state the names and addresses of the~~ A copy of the petition, a written notice stating the time and place for the petition to be heard by the court, and the names and address of counsel appointed to represent the respondent shall be served upon the (1) spouse, parents, children who have reached the age of eighteen, (2) any person serving as ~~his~~ the respondent's guardian, conservator, limited guardian or limited conservator, (3) any person proposed to serve as guardian or conservator, (4) any person having power to act in a fiduciary capacity with respect to any of the respondent's financial resources, (5) ~~and~~ any person having his the respondent's care and custody known to the petitioner-, and (6) any cotenants or codepositors with the respondent.

4. Each person so listed shall be served ~~with like notice~~ in any manner permitted by section 472.100 RSMo. If no such spouse, parent or child is known, notice shall be given to at least one of ~~his the respondent's~~ closest relatives who has reached the age of eighteen.

5. The court shall not appoint the public administrator to serve as guardian, limited guardian, conservator, limited conservator, emergency guardian, emergency conservator, guardian ad litem, or conservator ad litem unless notice is first given to the public administrator as provided in this section and the public administrator has an opportunity to participate in any hearing on such matter, including the right to cross-examine witnesses and to offer witnesses and evidence. The public administrator may waive notice and the opportunity to participate.

## **Appointment of attorney and requirement for respondent's attorney—withdrawal of court-appointed attorney**

~~475.075.3. 475.226. 1.~~ Upon the filing of a petition under the provisions of ~~subsection 4 of his~~ section 475.220 or for the approval on behalf of the respondent of a transaction pursuant to section 475.092 or for the rendition of emergency medical treatment under the provisions of section ~~475.123~~ 475.080, the court shall immediately appoint an attorney to represent the respondent in the proceeding.

2. The attorney shall visit ~~his client~~ the respondent at least seven days prior to the hearing unless the Court finds good cause for waiving this requirement.

3. If the attorney finds that the respondent ~~client~~ is capable of understanding the matter in question or of contributing to the advancement of the ~~client's~~ respondent's interest, the attorney



shall obtain from the ~~client~~ respondent all possible aid. If the attorney finds that the respondent is so impaired that the respondent cannot communicate or participate in the proceedings, then ~~disability of a client compels the attorney to make decisions for the client~~, the attorney shall consider all circumstances then prevailing and act with care to safeguard and advance the interests of the ~~client~~ respondent.

4. When the Court enters an order appointing the attorney for the respondent, it shall specify that the attorney shall have the right to obtain all medical and financial information of the respondent from medical care providers and financial institutions, and no medical care provider or financial institutions shall be liable for damages or otherwise for the release of this information to the attorney appointed for the respondent.

~~4.5.~~ The court shall allow a reasonable attorney's fee for the services rendered, to be taxed as costs of the proceeding.

6. Upon entry of appearance by private counsel on behalf of respondent, the court may permit the court-appointed attorney ~~may be permitted to withdraw if the respondent employs private counsel who enters an appearance on behalf of said person only if after a hearing the court finds cause to permit the withdrawal.~~ The private counsel shall meet requirements of the court-appointed attorney in representing the respondent as set out in subsections 2 and 3 of this section.

7. The respondent's attorney shall not also serve as guardian ad litem or conservator ad litem for respondent, unless and until a judgment granting guardianship, conservatorship, limited guardianship, or limited conservatorship shall have been entered by the court. If the attorney for the respondent has filed or intends to file an appeal of said judgment, the attorney for respondent may not serve as guardian ad litem or conservator ad litem for respondent until all proceedings in connection with said appeal shall have been finally resolved.

8. The petitioner may not nominate an attorney for the respondent.

### **Court-ordered examination**

~~475.075.4-5~~ 475.229. 1. The court may direct that the respondent be examined by a licensed physician, ~~or~~ licensed psychologist, or other appropriate professional if that other professional has experience or training in the alleged mental, physical, or cognitive impairment. ~~and may allow a reasonable fee for the services rendered, to be taxed as costs in the proceeding.~~

2. The court-appointed licensed physician, licensed psychologist or other professional shall, prior to examination, explain to the respondent in simple language, the following:

(1) ~~Incapacity or disability as defined in section 475.010;~~ That the purpose of the examination is to produce evidence which may be used to determine whether the respondent is incapacitated, ~~disabled~~ financially incapacitated, partially incapacitated or ~~disabled~~ partially financially incapacitated;

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

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

3. The court-appointed licensed physician, licensed psychologist or other professional shall submit ~~his~~ the report in writing to the court and to counsel for all parties. It shall not be a valid objection to the review of the report by the court or the attorneys for the parties that the court will be responsible for the ultimate determination of incapacity or partial incapacity. If other objections are made to the report by any party, the court may order a hearing for the limited purpose of determining whether the court shall admit the report.

4. The court may allow a reasonable fee for the services rendered by the licensed physician, licensed psychologist, or other professional to be taxed as costs in the proceeding.

### **Compelling testimony of physician or other examiner and use of treating professional's reports.**

~~475.075.6. 475.232.~~ 1. If prima facie proof of partial or complete incapacity or ~~disability~~ financial incapacity, with or without the court-order evaluation set out in section 475.229, is made upon motion by any party or the court on its own motion, a licensed physician, ~~or~~ licensed psychologist, ~~or other appropriate professional~~ is competent and may be compelled by the court to testify as to information acquired from the respondent, despite otherwise applicable testimonial privileges and respondent's rights to confidentiality.

2. Evidence received under this subsection which would otherwise be privileged and confidential may not be used in any other civil action or criminal proceeding without the consent of the holder of the privilege. Any resulting report shall be shared with the respondent and counsel for all parties but shall not be used in any other civil action or criminal proceeding without the consent of the holder of the privilege.

### **Burden of proof**

~~475.075.7. 475.235.~~ The petitioner has the burden of proving incapacity, partial incapacity, ~~disability~~ financial incapacity, or partial ~~disability~~ financial incapacity by clear and convincing evidence.

### **Respondent's hearing rights**

~~475.075.8. 475.238.~~ 1. The respondent shall have the following rights in addition to those elsewhere specified and shall be advised of these rights by the attorney for the respondent:

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

(2) The right to have a jury trial;

(3) The right to present evidence in ~~his~~ the respondent's behalf;

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

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- (5) The right to remain silent;
- (6) The right to have the hearing opened or closed to the public as ~~he~~ the respondent elects;
- (7) The right to a hearing conducted in accordance with the rules of evidence in civil proceedings, except as modified by this chapter;
- (8) The right to be present at the hearing; and
- (9) The right to appeal the court's decision.

**Court requirements for denial of petition for appointment, finding of partial incapacity and appointing limited guardian or limited conservator with limitations specified, or finding of incapacity and appointing a guardian or conservator**

~~475.075.9-10;~~ 475.241. 1. Before appointing a guardian or conservator, the court shall consider whether the respondent's needs can be met without the necessity of the appointment of a guardian or conservator, or both, by a less restrictive alternative including but not limited to the following:

- (1) evidence that the respondent has appointed an agent in a durable power of attorney executed by the respondent before the petition was filed;
- (2) the management of the beneficial interests of respondent in a trust by a trustee;
- (3) evidence that a representative payee has been appointed to manage the respondent's public benefits;
- (4) the provision of protective or supportive services or arrangements provided by a public or private service or agency or agencies;
- (5) the use of appropriate services or assistive technology;
- (6) the appointment of a temporary emergency guardian or conservator ad litem pursuant to 475.244; or
- (7) the appointment of a limited guardian or conservator.

2. If the court finds that the respondent with such assistance possesses capacity to meet manage his the respondent's essential requirements for food, clothing, shelter, safety and other care or that he the respondent possesses the ability to manage his the respondent's financial resources, it the court shall deny the petition.

3. On the other hand, if the court finds that the capacity of the respondent to receive and evaluate information or to communicate decisions is impaired to such an extent as to render him the

respondent incapable of ~~meeting~~ managing some or all of his the respondent's essential requirements for food, clothing, shelter, safety or other care so that serious physical injury, illness, or disease is likely to occur, or that the ability capacity of the respondent to receive and evaluate information or to communicate decisions is impaired to such an extent so as to render him the respondent unable to manage some or all of his the respondent's financial resources, the court shall appoint a guardian or limited guardian, a conservator or limited conservator, or both in combination. it shall make and recite in its order detailed findings of fact stating:

- (1) The extent of his physical and mental incapacity to care for his person;
- (2) The extent of his physical and mental disability to manage his financial resources;
- (3) Whether or not he requires placement in a supervised living situation and, if so, the degree of supervision needed;
- (4) Whether or not his financial resources require supervision and, if so, the nature and extent of supervision needed.

4. If the court finds the respondent to be in some degree incapacitated or disabled financially incapacitated, or both, the court, in determining the degree of supervision necessary, shall apply the least restrictive environment alternative principle as defined in this chapter and shall not restrict his the respondent's personal liberty or his the respondent's freedom to manage his the respondent's financial resources to any greater extent than is necessary to protect his the respondent's person and his the respondent's financial resources. The court shall consider whether or not the respondent may be fully protected by the rendition of temporary protective services provided by a private or public agency or agencies; or by the appointment of a guardian or conservator ad litem; or by the appointment of a limited guardian or conservator; or, as a last resort, by the appointment of a guardian or conservator.

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

- (1) The extent of respondent's physical, mental, and cognitive incapacity to manage essential requirements for food, clothing, shelter, safety or other care;
- (2) The extent of the respondent's physical, mental, and cognitive incapacity to manage the respondent's financial resources;
- (3) Whether or not the respondent requires placement in a supervised living situation and, if so, the degree of supervision needed;
- (4) Whether or not the respondent's financial resources require supervision and, if so, the nature and extent of supervision needed; and
- (5) Whether or not the respondent retains the right to vote.

6. The limitations imposed upon the authority of the guardian or conservator as set forth in the findings of the court shall be stated in the letters of the guardian or conservator and shall be set forth in the notice of first publication of letters of conservatorship granted.

### **Criteria for and appointment of emergency guardian ad litem or conservator ad litem, or both**

~~475.075.11. 475.244.~~ 1. If it is alleged in a petition that an alleged incapacitated or disabled financially incapacitated ~~person~~ respondent has no guardian or conservator and an emergency exists which presents a substantial risk that serious physical harm will occur to ~~his~~ the respondent's person or irreparable damage will occur to ~~his~~ the respondent's property because of ~~his~~ the respondent's failure or inability to provide for ~~his~~ the respondent's essential human needs or to protect ~~his~~ the respondent's property, the court shall appoint an attorney to represent the respondent and provide notice to such person's attorney, as provided in ~~subsection 3~~ section 475.223 of this section, and service of notice upon such person as provided in 475.223 subsection 2 of this section, and, with or without notice to other persons interested in the proceeding, after hearing, appoint ~~a~~ an emergency guardian ad litem or conservator ad litem for a specified period not to exceed ~~thirty~~ thirty ninety days and for specified purposes.

2. Except for good cause shown, the court shall hold a hearing on petitions filed under this section within five business days of the filing of the petition.

3. Orders appointing the guardian or conservator ad litem may be modified upon motion and hearing.

4. ~~After~~ Only after hearing and a showing of continuing emergency need, ~~orders~~ the court may order the extension of the appointment of an emergency appointing the guardian ad litem or conservator ad litem may be extended from time to time, not to exceed ~~thirty~~ thirty ninety days each.

5. A guardian ad litem or conservator ad litem may be removed at any time and shall make any report the court requires.

6. Proceedings under this subsection shall not be employed as alternative to proceedings for the involuntary detention and treatment of a mentally ill person under the provisions of chapter 632.

7. If no petition for guardianship, conservatorship, limited guardianship, and/or limited conservatorship shall have been filed within the first thirty days following the granting of emergency authority pursuant to this section, the court shall may terminate the authority granted pursuant to the emergency letters, upon motion of attorney for respondent and a finding that doing so would not be manifestly contrary to the respondent's interests.

### **Voluntary conservatorship.**

~~475.062. 1. When a petition for appointment of a conservator of the estate of an alleged disabled person is made by said person, or said person's consent to the appointment sought is endorsed on the petition or filed with it, the court, after appointment of counsel for the alleged disabled~~

person, if satisfied, by interview with the alleged disabled person or otherwise, that the alleged disability does exist, that the disabled person wishes the appointment and has capacity to understand the need for it and make a reasonable choice of conservator and that the person nominated as conservator is suitable, qualified and has or will accept the appointment, may, without notice or hearing, appoint as conservator of the estate, the person, organization or corporation designated by the disabled person. If it appears that the alleged disabled person is a codepositor or cotenant, the other codepositors and cotenants shall, in any event, be given notice before the court acts.

475.247. 1. When a petition for appointment of a conservator is made by a person on account of that person's alleged financial incapacity or is made by another on behalf of that person with that person's consent endorsed on the petition or filed therewith, the court shall first appoint counsel for that person. The court-appointed attorney shall advise the respondent of the respondent's rights and of the consequences of the appointment of the conservator.

2. If the court determines that the financial incapacity exists, that the respondent desires the appointment, understands its purpose and makes a reasonable choice of conservator, the court may, without notice or hearing, appoint the person, organization or corporation designated by the respondent as conservator of the respondent's estate, provided that the conservator is suitable, qualified and has accepted or will accept the appointment.

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

4. When a petition for appointment of a conservator of the estate of an alleged disabled financially incapacitated person is not made or consented to by said alleged disabled financially incapacitated person, the procedures as to notice, appointment of counsel, hearing and adjudication of disability financial incapacity as prescribed by section 475.075 sections 475.220 to 475.241 shall be followed.

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

### **Bond of conservator of estate of ~~minor~~ or financially incapacitated person.**

~~475.100~~ 475.250. Every conservator of the estate of a ~~minor or disabled~~ financially incapacitated person, before entering upon the duties of ~~his~~ the office, shall execute and file a bond, approved by the court, procured at the expense of the estate with sufficient surety in an amount fixed by the court. Sections 473.157 to 473.217, relating to the bonds of personal representatives, except subsection 1 of section 473.157 and subsection 1 of section 473.160, are applicable to the bonds of conservators.



### **Appointment of limited guardian or conservator.**

~~475.080~~ 475.253. 1. If the court, after hearing, finds that a person is partially incapacitated, and that the respondent's identified needs cannot be met by a less restrictive alternative, the court shall appoint a limited guardian of the person of the ward. The order of appointment shall specify the powers and duties of the limited guardian so as to permit the partially incapacitated ward to ~~care for himself~~ provide for self-care commensurate with ~~his~~ the ward's ability to do so and shall also specify the legal disabilities to which the ward is subject. In establishing a limited guardianship, the court shall impose only such legal disabilities and restraints on personal liberty as are necessary to promote and protect the well-being of the individual and shall design the guardianship so as to encourage the development of maximum self-reliance and independence in the individual.

2. If the court, after hearing, finds that a person is partially ~~disabled~~ financially incapacitated, and that the respondent's identified needs cannot be met by a less restrictive alternative, the court shall appoint a limited conservator of the estate. The order of appointment shall specify the powers and duties of the limited conservator so as to permit the partially ~~disabled~~ financially incapacitated person to manage ~~his~~ the person's financial resources commensurate with ~~his~~ the person's ability to do so.

3. The court may order mediation about who is to serve as limited guardian or limited conservator upon finding that there is a dispute among proposed guardians or conservators as to who should serve and upon finding that the proposed guardians or conservators are willing to pay the expenses of mediation or upon a finding that the respondent is partially financially incapacitated and that mediation is in the best interest of the respondent and the estate has sufficient assets or income to pay the expenses of mediation. The court may take into consideration the results of the mediation in appointing a qualified person to serve as a guardian or conservator if the parties to the mediation agreed as to whom should be appointed as guardian or conservator.

### **Order appointing guardian or conservator.**

~~475.079~~ 475.255. 1. If it appears to the court ~~that a guardian should be appointed for a minor who is not incapacitated~~ or if it is found by the jury or the court upon proof by clear and convincing evidence that the person for whom a guardian is sought is incapacitated as defined in this law, and that the respondent's identified needs cannot be met by a less restrictive alternative, the court may appoint a guardian of the person. ~~The appointment of guardians of minors shall be made in accordance with section 475.045, except that if a person entitled to appointment as a guardian or entitled to select a guardian fails to appear after notice or to apply for such appointment or make selection in accordance with the order of the court the court may appoint any suitable person as guardian.~~

2. If it is found that the person for whom a conservator of the estate is sought ~~is a minor or is disabled~~ financially incapacitated as defined in section 475.010 by a ~~disability~~ financial incapacity other than or in addition to minority, and that the respondent's identified needs cannot

be met by a less restrictive alternative, the court may appoint a conservator of the estate, who may be the same person appointed guardian of the person.

3. The court may order mediation about who is to serve as guardian or conservator upon finding that there is a dispute among proposed guardians or conservators as to who should serve and upon finding that the proposed guardians or conservators are willing to pay the expenses of mediation or upon a finding that the Respondent is financially incapacitated and that mediation is in the best interest of the Respondent and the estate has sufficient assets or income to pay the expenses of mediation. The court may take into consideration the results of the mediation in appointing a qualified person to serve as a guardian or conservator if the parties to the mediation agreed as to whom should be appointed as guardian or conservator.

**Standby guardian permitted, when--appointment procedure—authority effective, when.**

~~475.046~~ 475.258. 1. The custodial parent who has been appointed the guardian of an adult ward may include a request for a standby guardian in the petition appointing the parent. The court may appoint a successor to take office temporarily pursuant to this section.

2. A custodial parent, who has been appointed the guardian of an adult ward, may designate a person to act as standby guardian of a ~~minor or the~~ incapacitated person by a will that complies with the requirements of section 474.320 or by a separate written instrument which is dated and is either duly executed and acknowledged by the custodial parent or is signed by the custodial parent in the presence of at least two disinterested witnesses and subscribed by the witnesses. If the custodial parent executes more than one document designating a standby guardian and there is a conflict between the documents as to the person designated, the document bearing the latest date shall control.

3. If a custodial parent who has designated a standby successor guardian is or becomes seriously ill or if the court has appointed a successor guardian, the custodial parent or the person designated as ~~standby~~ successor guardian may file a petition in the probate division of the circuit court of the county which would be of proper venue for the appointment of a guardian of the ~~minor or~~ incapacitated person seeking appointment of the designated person as standby guardian. A copy of the will or separate written instrument designating the standby guardian and a consent to act as standby guardian signed by the person designated shall be filed with the petition, which petition shall state:

(1) The name, age, domicile, actual place of residence, and mailing address of the ~~minor~~ or incapacitated person;

(2) The name and address of the custodial parent and of the designated standby guardian;

(3) The name and address of each parent of the ~~minor or~~ incapacitated person and whether that parent is living or dead;

(4) The name and address of the spouse, if applicable, and the names, ages, and addresses of all living children of the ~~minor or~~ incapacitated person;

(5) If the person for whom appointment of a standby guardian is sought has been adjudicated incapacitated, the date of adjudication and the name and address of the court which entered the judgment; and

(6) The reasons why the appointment of a standby guardian is sought.

Proceedings on the petition shall be conducted in the same manner as would be applicable in a case for appointment of a successor guardian under section ~~475.115~~ 475.630.

3. The court shall determine appointment of a standby guardian in accordance with the best interests of the ~~minor or~~ incapacitated person after considering all relevant factors, including:

(1) Whether there is a parent other than the custodial parent and, if so, whether the other parent is willing, able, and fit to assume the duties of a custodial parent;

(2) The suitability of a person nominated by the ~~minor or~~ incapacitated person if he or she is, at the time of hearing, able to communicate a reasonable choice; and

(3) The desirability of providing arrangements for the care, custody, and control of the ~~minor or~~ incapacitated person which shall minimize stress and disruption ~~and avoid his or her the person's placement in foster or similar care pending appointment of a guardian~~ if the custodial parent is adjudicated incapacitated or dies.

4. If it appears to the court that a standby guardian should be appointed for a ~~minor or~~ incapacitated person, the court may appoint a standby guardian.

5. The authority of a person to act as standby guardian for a ~~minor or~~ incapacitated person shall only take effect as follows:

(1) If the person has previously been appointed by the court as standby guardian, upon the granting of letters of standby guardianship to the person previously appointed as provided in the order appointing the standby guardian; or

(2) If the person has not previously been appointed by the court as standby guardian, either because a petition for appointment has not been filed or because a petition has been filed but the proceedings are still pending, upon the first to occur of the following:

(a) The consent of the custodial parent in a writing duly executed and acknowledged by the custodial parent;

(b) Entry of an order adjudicating the custodial parent to be incapacitated n; or

(c) The death of the custodial parent.

The person shall, within ten days after he or she begins to act as standby guardian, notify the court in writing of that fact and of the reasons therefor. The court may grant letters of standby

guardianship to the person or, if the court deems it advisable, conduct a hearing to determine the propriety of the person having begun, and continuing, to act as standby guardian and the propriety of issuing letters of standby guardianship to the person.

6. A person acting as standby guardian of a ~~minor or an~~ incapacitated person shall, within sixty days after he or she begins to act, petition the court for appointment of the standby guardian or some other qualified person as guardian of the ~~minor or~~ incapacitated person. Proceedings on the petition shall be conducted in the same manner as would be applicable in a case for appointment of a successor guardian under section ~~475.115~~ 475.630.

7. Nothing in this section shall be construed to:

(1) Deprive a parent of ~~his or her~~ any legal rights with respect to a ~~minor or~~ incapacitated person who is a child of that parent, including court-ordered visitation with the child, nor to authorize a grant of authority to a standby guardian which would supersede any such rights; or

(2) Relieve a parent of ~~his or her~~ any legal obligations or duties to a ~~minor or~~ incapacitated person who is a child of that parent, including a duty to support the child in accordance with a court or administrative order.

8. Except to the extent determined by the court to be inconsistent with the provisions of this section or as expressly provided in this section, the laws applicable to guardianship proceedings shall apply to all proceedings under this section.

#### **Letters of guardianship and conservatorship issued, when.**

~~475.030.1~~ 475.260. Letters of guardianship of the person may be granted for any person adjudged incapacitated. Letters of conservatorship of the estate may be granted for any person adjudged to be ~~disabled~~ financially incapacitated.

#### **Letters of guardianship or conservatorship--form.**

~~475.105~~ 475.263. 1. When a duly appointed guardian or conservator has given bond, as required by law, and the bond has been approved, letters under the seal of the court shall be issued to the person appointed. Such letters shall specify whether they are of guardianship, limited guardianship, co-guardianship, or limited co-guardian or standby guardianship of the person, or conservatorship, ~~or~~ limited conservatorship, co-conservatorship, or limited co conservatorship of the estate, or both, and the original or duly certified copies thereof shall be prima facie evidence of the facts therein stated.

~~2. Letters of guardianship and conservatorship for minors may be in the following form:~~

~~IN THE PROBATE DIVISION OF THE CIRCUIT COURT OF .....~~  
~~COUNTY, MISSOURI~~

~~LETTERS OF (STANDBY) GUARDIANSHIP (AND CONSERVATORSHIP)~~  
~~OF MINOR~~

Chapter 475, RSMo, 12.15.2015 "Latest Master Discussion Draft." Text struck through ~~thus~~ is to be deleted; text underlined thus is new or added. Comments welcome to [www.mo-wings.org](http://www.mo-wings.org).

Estate No. ....

On ..... was appointed and has qualified as (standby) guardian of the person (and conservator of the estate) for the following minor(s):

..... Born ....., 20.....  
Born ....., 20..... Born ....., 20.....  
..... Born ....., 20.....

By reason thereof, the above named (standby) guardian (and conservator) is authorized and empowered to perform the duties of such (standby) guardian (and conservator) as provided by law under the supervision of the court having care and custody of the person (and of the estate) of the above named minor(s).

IN TESTIMONY WHEREOF, the undersigned Clerk has signed these letters and affixed the seal of this court on .....

.....

Clerk

Recorded on ..... in Book ..... at Page .....

.....

Clerk

2. Letters of guardianship and conservatorship for incapacitated and ~~disabled~~ financially incapacitated persons may be in the following form:

IN THE PROBATE DIVISION OF THE CIRCUIT COURT OF .....  
COUNTY, MISSOURI

LETTERS OF (STANDBY) GUARDIANSHIP OF INCAPACITATED  
PERSON (AND CONSERVATORSHIP OF ~~DISABLED~~ FINANCIALLY  
INCAPACITATED PERSON)

Estate No. ....

On ....., ..... was appointed and has qualified as (standby) guardian of the person (and conservator of the estate) for ....., an incapacitated (and ~~disabled~~ financially incapacitated) person.

By reason thereof, the above named (standby) guardian (and conservator) is authorized and empowered to perform the duties of such (standby) guardian (and conservator) as provided by law under the supervision of the court having care and

custody of the person (and estate) of the above-named incapacitated (and ~~disabled~~  
financially incapacitated) person.

IN TESTIMONY WHEREOF, the undersigned Clerk has signed these letters and  
affixed the seal of this court on. . . . ., 20 . . .

.....

Clerk

### **Effect of adjudication.**

~~475.078~~ 475.266. 1. An adjudication of partial incapacity or partial ~~disability~~ financial incapacity does not operate to impose upon the ward or protectee any legal disability provided by law except to the extent specified in the order of adjudication, provided that the court shall not impose upon the ward or protectee any legal disability other than those which are consistent with the condition of the ward or protectee.

2. An adjudication of incapacity or ~~disability~~ financial incapacity does operate to impose upon the ward or protectee all legal disabilities provided by law, except to the extent specified in the order of adjudication or otherwise in this Chapter, and provided further that the court is without ~~jurisdiction~~ authority to impose any legal disability upon a ~~disabled~~ financially incapacitated person for whom a conservator has been appointed by reason of ~~his~~ the person's disappearance, detention, or confinement.

3. A person who has been adjudicated incapacitated or ~~disabled~~ financially incapacitated or both shall be presumed to be incompetent, except as otherwise specified in this Chapter. A person who has been adjudicated partially incapacitated or partially ~~disabled~~ financially incapacitated or both shall be presumed to be competent. The court at any time after a hearing on the question may determine that an incapacitated, ~~disabled~~ financially incapacitated, or partially incapacitated or partially ~~disabled~~ financially incapacitated person is incompetent for some purposes and competent for other purposes.

4. The court may expressly enter an order that the right of the ward to vote shall be retained but is otherwise totally incapacitated.

### **Incapacitated public officer, proceedings.**

~~475.350~~ 475.269. If any person adjudicated incapacitated by the judge of the probate division of the circuit court is, at the time of the adjudication, a duly qualified public officer of this state, or of any county in this state, or of any municipality in this state, ~~his~~ the incapacitated person's office is deemed vacant, and the judge of the court shall certify the fact of such adjudication to the officer or tribunal having power to fill the vacancy; and the vacancy shall be filled during the incapacity of such officer.



## Notice of conservatorship of financially incapacitated persons.

~~475.140~~ 475.272. 1. The clerk, as soon as letters of conservatorship of the estate of any ~~disabled financially incapacitated~~ person are issued, upon the basis of a determination of ~~disability financially incapacity~~ other than minority, shall cause to be published in some newspaper a notice of the appointment of the conservator, in which shall be included a notice to creditors of the protectee to file their claims in the court or be forever barred. The notice shall be published once a week for four consecutive weeks in accordance with section 472.100. Such notice shall be in substantially the following form:

TO ALL PERSONS INTERESTED IN THE ESTATE OF ....., A  
~~DISABLED FINANCIALLY INCAPACITATED~~ PERSON:

On the ..... day of ....., 20..., ..... was appointed conservator of the estate of ....., a person adjudicated ~~disabled financially incapacitated~~ under the laws of Missouri, by the Probate Division of the Circuit Court of ..... County, Missouri. The business address of the conservator is ..... All creditors of said ~~disabled financially incapacitated~~ person are notified to file their claims in the Probate Division of the Circuit Court. Date of first publication .....

.....

Clerk of the Probate Division of the Circuit Court of

..... County, Missouri

2. The court, in its discretion, may waive publication of notice or defer it until a definite date or until further order of the court.
3. When a limited conservator has been appointed, the notice shall so specify.

## Persons having disappeared, absent from country, or forcibly detained, to be partially financially incapacitated, limited conservator appointed--procedure--termination

~~475.081~~ 475.275. 1. If a person has disappeared and cannot be located or has been forcibly detained either illegally or by a foreign government or is absent by reason of being physically located in a country other than the United States and is unable to return to the United States because of physical or mental condition, for a period of one month or more, and such disappearance, detention, or physical location makes it impossible for ~~that~~ the person, or any person legally acting on ~~his~~ the person's behalf, to manage ~~his~~ the person's financial resources as defined in section 475.010, any person may file a petition in the probate division of the circuit court of proper venue for appointment of himself or herself or some other qualified person as limited conservator for the disappeared, detained, or absent person. The court shall order a hearing in accordance with section ~~475.075~~ 475.220, in which the alleged disappeared, detained, or absent person shall be deemed to be an alleged partially ~~disabled financially incapacitated~~ person. If the court finds that the respondent has disappeared, is detained or is absent by reason of being physically located in a country other than the United States and is unable to return to the

United States because of physical or mental condition as provided in this section, the court may grant letters of limited conservatorship, but the powers granted to the limited conservator and the powers of the court shall be limited to those powers necessary for the support and maintenance of persons legally dependent upon the respondent and to powers necessary to prevent loss to the estate of the respondent during ~~his~~ the respondent's disappearance, detention, or absence. The estate shall be administered upon the presumption that the respondent is alive.

2. A conservator appointed pursuant to this section shall immediately notify the court if the protectee has been found, has been released or has been returned to the United States. Upon receiving knowledge of such facts from the conservator or from any other source, the court shall order the conservatorship terminated and require the conservator to file final settlement.

3. In addition to the provisions of sections ~~475.082~~ 475.330 and ~~475.270~~ 475.460, a conservator appointed pursuant to this section shall notify the court every three months of the continuing disappearance, detention, or absence of the protectee which notice shall include the then current address of the conservator and the addresses of all persons legally dependent upon the protectee.

#### **Judgment of incapacity or financial incapacity set aside, when.**

~~475.077~~ 475.278. The court may, if just cause appears, at any time within sixty days after a judgment as to the capacity or ~~disability~~ financial incapacity of any person has been entered, set aside the judgment and order a new hearing; but if the result of the new hearing is the same as the result of the first, then the judgment shall not be set aside.

#### **Cost of proceedings as to financial incapacity or incapacity.**

~~475.085~~ 475.280. 1. The costs of proceedings as to incapacity or ~~disability~~ financial incapacity of any person shall be paid from ~~his~~ the person's estate if ~~he~~ the person is found incapacitated or ~~disabled~~ financially incapacitated or, if ~~his~~ the person's estate is insufficient, costs shall be paid by the county; but if the person is found not to be incapacitated or ~~disabled~~ financially incapacitated the costs shall be paid by the person filing the petition, unless ~~he~~ the person filing the petition is a public employee acting in ~~his~~ the employee's official capacity, in which case the costs shall be paid by the county.

2. The court shall accept and act upon a petition as to an indigent respondent without requiring a filing fee. The costs of the proceeding shall be taxed after the court rules on the petition.

#### **Conservatorship not necessary.**

~~475.330~~ 475.285. 1. ~~When the whole estate of a minor does not exceed the value of ten thousand dollars, the court may, in its discretion, without the appointment of a conservator or the giving of bond, authorize:~~

(1) ~~The deposit in a depository authorized to receive fiduciary funds, payable to the conservator of the estate when appointed or to the minor upon his attaining the age of eighteen years; or~~

~~(2) The delivery thereof to a suitable person designated by the court, deliverable to the conservator of the estate when appointed or to the minor upon his attaining the age of eighteen years; or~~

~~(3) The payment or delivery thereof to the parent of the minor, or to the person having care or custody of the minor or to the minor himself. The person receiving such money or other assets shall hold and dispose of the same in the manner directed by the court.~~

~~2.1.~~ When the whole estate of a person over the age of eighteen who has been adjudicated to be ~~disabled~~ financially incapacitated does not exceed the value of ten thousand dollars, the court may, in its discretion, without the appointment of a conservator or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court, or authorize the delivery thereof to a suitable person designated by the court. The person receiving such money or other assets shall hold and dispose of the same in such manner as the court directs.

~~3. 2.~~ When the whole estate of a ~~minor or a disabled~~ financially incapacitated person does not exceed ten thousand dollars, the court may discharge the conservator of the estate and authorize disposition of the assets of the estate of the protectee in the same manner as provided in ~~subsections subsection~~ subsection 1 ~~and 2~~ of this section.

~~4. 3.~~ The person or officer making payment, delivery, transfer or issuance of personal property or evidence thereof to the person designated by the court under this section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a conservator of the ~~minor or disabled~~ financially incapacitated person, and ~~he the person or officer~~ is not required to see to the application thereof, except that a person or officer making payment, delivery, transfer or issuance of money or personal property, or evidence thereof, to a next friend or guardian ad litem may be discharged and released as provided for in section 507.184.

### **Temporary emergency detention.**

~~475.355 475.290.~~ 1. If, upon the filing of a petition for the adjudication of incapacity or ~~disability~~ financial incapacity it appears that the respondent, by reason of a mental disorder or intellectual disability or developmental disability, presents a likelihood of serious physical harm to ~~himself~~ the respondent or others, ~~he the respondent~~ may be detained in accordance with the provisions of chapter 632 if suffering from a mental disorder, or chapter 633 if the ~~person~~ respondent has an intellectual or developmental disability, pending a hearing on the petition for adjudication.

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

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

## **Administration of Guardianship of Minors**

### **General powers and duties of guardian of a minor.**

~~475.120. 1-8.~~ 475.310. 1. A guardian of a minor shall act in the best interest of the ward.

2. The guardian of the person of a minor shall be entitled to the custody and control of the ward similar to that of a parent of a minor child and shall provide for the ward's education, support and maintenance.

### **Medical and surgical procedures of a minor--consent--emergency.**

~~475.123~~ 475.320. 1. No medical or surgical procedure shall be performed on any minor ward unless consent is obtained from the guardian ~~of his person~~ except as provided in subsections 2 and ~~3 hereof of~~ 475.080.

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

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

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

### **Review of status of persons under guardianship – report required, content.**

~~475.082~~ 475.330. 1. ~~At least annually, the~~ The court ~~shall~~ may inquire occasionally or periodically into the status of every a minor ward ~~and protectee~~ under its jurisdiction ~~for the purpose of determining whether the incapacity or disability may have ceased and to insure~~ ensure that the guardian ~~or conservator~~ is discharging ~~his~~ the guardian's responsibilities and duties in accordance with this chapter.

2. In order to implement ~~the~~ a court review prescribed by ~~this section under subsection 1,~~ the court may require that the guardian or limited guardian ~~shall file annually on the anniversary date of his guardian's or limited guardian's letters,~~ a report concerning the personal status of the ward and plans for future care. Such report may be combined with the settlement of accounts if the guardian is also conservator of the estate of the ward. The report shall be in the form prescribed by the court and, except as otherwise ordered by the court, ~~shall~~ include the following information:

(1) The present address of the ward;

(2) The present address of the guardian;

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

(4) If the ward does not live with the guardian, a summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;

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

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

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

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

(9) ~~The opinion of the guardian as to the adequacy of the present care of the ward. The~~ medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care.

3. The court may as part of its review, in its discretion, order the performance of a mental status evaluation of the minor ward and may require any hospital, physician, or custodial facility to submit copies of their records relating to the treatment, habilitation or care of the ward.

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

~~5. (1) 4.~~ If it appears to the court as part of its review or at any time upon motion of any ~~interested~~ person interested in the welfare of the ward, including the ward ~~or protectee~~ or some person on ~~his~~ the ward's behalf, that the guardian ~~or conservator~~ is not discharging ~~his~~ the guardian's responsibilities and duties as required by this chapter or has not acted in the best interests of ~~his~~ the ward or protectee, the court may order that a hearing be held and direct that the guardian ~~or conservator~~ appear before the court.

~~(2) (1)~~ In the event that such a hearing is ordered and the ward ~~or protectee~~ is not represented by an attorney, the court shall appoint an attorney to represent the ward ~~or protectee~~ in the proceedings.

~~(3)~~ (2) At the conclusion of the hearing, if the court finds that the guardian ~~or conservator~~ is not discharging ~~his~~ the guardian's duties and responsibilities as required by this code, or is not acting in the best interests of the ward ~~or protectee~~, the court shall enter such orders as it deems appropriate under the circumstances. Such orders may include the removal of the guardian ~~or conservator~~ and the appointment of a successor guardian. ~~or conservator or termination of the guardianship or conservatorship on finding that the ward has recovered his capacity or the protectee is no longer disabled.~~

~~(4)~~ (3) The court in framing its orders and findings shall give due consideration to the exercise by the guardian ~~or conservator~~ of any discretion vested in ~~him~~ the guardian by law.

### **Family access matters for minors**

475.340. 1. The guardian may permit visitation with and by natural parents, grandparents, and others who have demonstrated to the guardian's satisfaction that it would be in the best interest of the child to visit with them.

2. If the guardian unreasonably fails to permit visitation or family access to a natural parent, a grandparent, or others who can demonstrate to the court that it would be in the best interest of the minor for such visitation to occur, then that person who has been denied access may file a petition that the guardian is being unreasonable in denying such visitation or family access.

(1) The petition shall be served on the guardian and set for hearing within a reasonable period of time.

(2) Upon a finding that the guardian has unreasonably denied or limited such visitation or family access and that it would be in the best interest of the child to have visitation and family access with the petitioner, the court may set out an order for visitation and family access.

(3) If the court finds that the visitation or family access should be denied or limited in the best interest of the child, the court shall order that the visitation or family access be limited or denied.

(4) The provisions of the Uniform Child Custody Jurisdiction and Enforcement Act, Sections 452.700, et seq., where applicable, shall apply to actions under this section. The guardian must be served with process and afforded the opportunity to file an answer pursuant to the Rules of Civil Procedure, as in other circuit-division civil cases, rather than under the less formal procedures of the Probate Code, unless the guardian has filed an appropriate pleading indicating consent to the relief being sought.

3. The court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from minor's estate.



## Compensation of guardians of minors

~~475.265~~ 475.350. 1. A guardian ~~or conservator~~ shall be allowed such compensation for ~~his~~ the guardian's services ~~as guardian or conservator~~, as the court shall deem just and reasonable unless waived by the guardian.

2. Additional compensation may be allowed for ~~his necessary services as attorney and for other necessary services not required of a guardian or conservator~~ the necessary services of an attorney. Compensation may also be allowed for necessary expenses in the administration of ~~his trust~~ the guardianship, including reasonable attorney fees if the employment of an attorney for the particular purpose is necessary.

3. In all cases, compensation of the guardian ~~or conservator~~ and ~~his~~ the guardian's expenses including attorney fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time before final settlement the guardian ~~or conservator~~ or ~~his~~ the guardian's attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian ~~or conservator~~ and for attorney fees for services already performed.

4. If the court finds that the guardian ~~or conservator~~ has failed to discharge ~~his~~ the guardian's duties as such in any respect, ~~it~~ the court may deny ~~him~~ the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. The court may consider ties of blood, marriage or adoption, in making allowances of compensation to guardians and conservators.

## Administration of Adult Guardianship

### General powers and duties of guardian of the person

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

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

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

- ~~(1) Assure that the ward resides in the best and least restrictive setting reasonably available;~~
- ~~(2) Assure that the ward receives medical care and other services that are needed;~~
- ~~(3) Promote and protect the care, comfort, safety, health, and welfare of the ward;~~
- ~~(4) Provide required consents on behalf of the ward;~~

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

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

[Subsection 4 moved to 475.410.6]

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

[Subsection 5 moved to 475.450]

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

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

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

[Subsections 6-8 moved to section 475.440]

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

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

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

(1) First, the guardian shall ask the ward what the ward wants.

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

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

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

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

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

(2) File a report with the court within 90 days of appointment indicating that the guardian has met with the ward and describing how the guardian will meet the needs of the ward and address the ward's preferences. This report may include a plan from a service provider;

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

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

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

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

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

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

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

6. A guardian of an adult or minor ward is not obligated by virtue of such guardian's appointment to use the guardian's own financial resources for the support of the ward. If the ward's estate and available public benefits are inadequate for the proper care of the ward, the guardian or conservator may apply to the county commission pursuant to section ~~475.370~~ 475.060. [Subsection 6 was formerly 475.120.4]

## **Rights and privileges retained upon appointment of guardian**

475.420. 1. The provisions of Section 475.266 notwithstanding, in every guardianship, the ward has the right to:

- (1) A guardian who acts in the best interests of the ward;
- (2) A guardian who is reasonably accessible to the ward;
- (3) Communicate freely and privately with family, friends and other persons other than the guardian, except that such right may be limited by the guardian for good cause but only as necessary to ensure the ward's condition, safety, habilitation, or sound therapeutic treatment.
- (4) Individually, or through the ward's representative or legal counsel, bring an action relating to the guardianship, including the right to file a petition alleging that the ward is being unjustly denied a right or privilege granted by this chapter, including the right to bring an action to modify or terminate the guardianship pursuant to the provisions of section 475.083.
- (5) The least restrictive form of guardianship assistance, taking into consideration the ward's functional limitations, personal needs, and preferences;
- (6) Be restored to capacity at the earliest possible time;
- (7) Receive information from the court that describes the ward's rights, including rights the ward may seek by petitioning the court; and
- (8) Participate in any health care decision making process.

2. The ward may petition the court to grant the ward the right to:

- (1) Contract to marry or to petition for dissolution of marriage;
- (2) Make, modify, or terminate other contracts or ratify contracts made by the ward;
- (3) Consent to medical treatment;
- (4) Establish a residence or dwelling place;
- (5) Change domicile;
- (6) Bring or defend any action at law or equity, except an action relating to the guardianship; or
- (7) Drive a motor vehicle if the ward can pass the required driving test.

3. The appointment of a guardian does not revoke the powers of an agent who was previously appointed by the ward to act as an agent under a durable power of attorney for health care.

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

### **Health care decision-making for adult wards.**

~~475.123.1 2.~~ 475.430.1. No Consent of the guardian shall be obtained as authorized by Section 431.061 before a medical or surgical procedure shall may be performed on any ward unless consent is obtained from the guardian of his person except as provided in subsections 2 and 3 hereof emergency treatment is required and consent is excused as provided in Section 431.063.

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

3. The guardian, in making health care decisions for the ward or in seeking court approval for such decisions, shall maximize the participation of the ward.

4. The guardian, in making health care decisions for the ward or in seeking court approval for such decisions, shall:

(1) Consider the medical facts;

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

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

5. To the extent the ward cannot currently direct the health care decision, the guardian shall act in accordance with the ward's prior directions, directives, expressed desires, and opinions about health care to the extent actually known or ascertainable by the guardian; or, if unknown and unascertainable:

(1) Act in accordance with the ward's prior general statements, actions, values, and preferences to the extent actually known or ascertainable by the guardian; or, if unknown and unascertainable;

(2) Act in accordance with reasonable information received from professionals and persons who demonstrate sufficient interest in the ward's welfare, to determine the ward's best interests, which determination shall include consideration of consequences for others that an individual in the ward's circumstances would consider;

(3) In the event of an emergency, the guardian shall grant or deny authorization of emergency health care treatment based on a reasonable assessment of the criteria listed in Section 2.

6. The guardian shall monitor, promote, and maintain the person's health and well-being and

shall seek to ensure that the person receives appropriate health care.

~~7. A social service agency or not-for-profit agency acting as a guardian pursuant to subdivision (4) of subsection 1 of this section 475.206 may only authorize the withholding or withdrawal of artificially provided nutrition or hydration as prescribed under section 404.820. [This is from section 475.055.6]~~

### **Social service agency as guardian**

~~475.120.6-8. 475.440.1.~~ Only the director or chief administrative officer of a social service agency serving as guardian of an incapacitated person, or such person's designee, is legally authorized to act on behalf of the ward.

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

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

### **Annual report dockets--notice to guardians.**

~~475.280. 1. The clerk shall keep a docket in which shall be entered the names of all conservators and the particular day upon which their annual settlements are required.~~

~~2. The clerk shall notify each conservator by ordinary mail of the day on which each of his annual settlements is required to be filed at least thirty days before such date. Failure to receive the notice herein required does not excuse a conservator from making settlement as required by law.~~

~~3. Sections 473.560 to 473.567 as to decedents' estates apply to conservators and their settlements.~~

475.450.1. The clerk shall notify each guardian or limited guardian by ordinary mail of the day on which the guardian's annual report is required to be filed, at least thirty days before such date. Failure to receive the notice herein required does not excuse a guardian or limited guardian from making a report as required by law.

2. The clerk shall also keep a docket in which shall be entered the names of all guardians and limited guardians and the particular day upon which their report of annual personal review is required. The clerk shall notify such guardians in the same manner as prescribed in subsection 2 of this section. Failure to receive the notice herein required does not excuse such guardians from making the report as required by law.



**Review of status of persons under guardianship ~~or conservatorship~~-required report, content.**

~~475.082~~ 475.460. 1. At least annually, the court shall inquire into the status of every ward ~~and~~ ~~protectee~~ under its jurisdiction for the purpose of determining whether the incapacity ~~or~~ ~~disability~~ may have ceased or changed and to insure that the guardian ~~or conservator~~ is discharging ~~his~~ the guardian's responsibilities and duties in accordance with this chapter.

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

- (1) The present address of the ward;
- (2) The present address of the guardian;
- (3) Unless the report specifies that the ward is living with the guardian, the number of times the guardian has had contact with the ward, and the nature of such contacts including the date the ward was last seen by the guardian;
- (4) A summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;
- (5) If the ward is institutionalized, whether the guardian has received a copy of the treatment or habilitation plan and whether the guardian agrees with its provisions;
- (6) The date the ward was last seen by a licensed physician or other professional and the purpose;
- (7) Any major changes in the physical or mental condition of the ward observed by the guardian; The current mental, physical, and social condition of the ward and any major changes in the ward's condition since the last report;
- (8) The opinion of the guardian as to the need for the continuation of the guardianship and whether it is necessary to increase or decrease the powers of the guardian;
- (9) The opinion of the guardian as to the adequacy of the present care of the ward. The medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;
- (10) A plan for the coming year, including short-term and long-term goals, and the extent to which the ward has participated in the development of the plan.

3. The court may as part of its review, in its discretion, order the performance of a mental status evaluation of an ~~incapacitated~~ ward and may require any hospital, physician, or custodial facility to submit copies of their records relating to the treatment, habilitation or care of the ward. The court, as part of its review and in its discretion, may also contact DHSS or other appropriate agencies to investigate the conduct of the guardian and report its findings to the court.

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

5. ~~(4)~~ If it appears to the court as part of its review or at any time upon motion of any interested person interested in the welfare of the ward, including the ward ~~or protectee~~ or some person on ~~his~~ the ward's behalf, that the guardian ~~or conservator~~ is not discharging ~~his~~ the guardian's responsibilities and duties as required by this chapter or has not acted in the best interests of ~~his~~ the ward or protectee, the court may order that a hearing be held and direct that the guardian ~~or conservator~~ appear before the court.

~~(2)~~ (1) In the event that such a hearing is ordered and the ward ~~or protectee~~ is not represented by an attorney, the court shall appoint an attorney to represent the ward ~~or protectee~~ in the proceedings.

~~(3)~~ (2) At the conclusion of the hearing, if the court finds that the guardian ~~or conservator~~ is not discharging ~~his~~ the guardian's duties and responsibilities as required by this code, or is not acting in the best interests of the ward ~~or protectee~~, the court shall enter such orders as it deems appropriate under the circumstances. Such orders may include the removal of the guardian ~~or conservator~~ and the appointment of a successor guardian ~~or conservator~~ or termination of the guardianship ~~or conservatorship~~ on finding that the ward has recovered ~~his~~ capacity ~~or the protectee is no longer disabled.~~

~~(4)~~ (3) The court in framing its orders and findings shall give due consideration to the exercise by the guardian or conservator of any discretion vested in ~~him~~ the guardian by law.

### **Compensation of guardians.**

~~475.265.~~ 475.470.1. A guardian ~~or conservator~~ shall be allowed such compensation for ~~his~~ the guardian's services as ~~guardian or conservator~~, as the court shall deem just and reasonable.

2. Additional compensation may be allowed for ~~his necessary services as attorney and for other necessary services not required of a guardian or conservator~~ the necessary services of an attorney. Compensation may also be allowed for necessary expenses in the administration of ~~his trust~~ the guardianship, including reasonable attorney fees if the employment of an attorney for the particular purpose is necessary.

3. In all cases, compensation of the guardian ~~or conservator~~ and ~~his~~ the guardian's expenses including attorney fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time before final settlement the guardian ~~or conservator~~ or ~~his~~ the

guardian's attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian ~~or conservator~~ and for attorney fees for services already performed.

4. If the court finds that the guardian ~~or conservator~~ has failed to discharge ~~his~~ the guardian's duties as such in any respect, ~~it~~ the court may deny ~~him~~ the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. The court may consider ties of blood, marriage or adoption, in making allowances of compensation to guardians and conservators.

## **Administration of Conservatorship for minors and adults**

### **General duties and powers of conservator of estate.**

~~475.130~~ 475.501. 1. The conservator of the estate of a minor or ~~disabled~~ financially incapacitated person shall, under supervision of the court, protect, preserve and manage the estate, apply it as provided in this code, account for it faithfully, perform all other duties required of the conservator by law, and at the termination of the conservatorship deliver the assets of the protectee to the persons entitled thereto. In protecting, preserving and managing the estate, the conservator of the estate is under a duty to use the degree of care, skill and prudence which an ordinarily prudent person uses in managing the property of, and conducting transactions on behalf of, others. If a conservator of the estate has special skills or is appointed on the basis of representations of special skills or expertise, the conservator is under a duty to use those skills in the conduct of the protectee's affairs. A conservator of the estate is under a duty to act in the interest of the protectee and to avoid conflicts of interest which impair the conservator's ability so to act.

#### 2. The conservator shall use reasonable efforts to:

- (1) Ascertain the income, assets, and liabilities of the protectee;
- (2) Ascertain the needs and preferences of the protectee;
- (3) Coordinate with the guardian and consult with others close to the protectee;
- (4) Prepare a plan for the management of the protectee's income and assets
- (5) Provide oversight to any income and assets of the protectee under the control of the protectee.

### **Duty of loyalty.**

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

- (1) was approved by the court;

(2) involves a contract entered into or claim acquired by the conservator before the person became or contemplated becoming conservator;

(3) involves a deposit of estate money to a bank operated by the conservator; or

(4) involves an advance by the conservator of money for the protection of the estate.

**Duty to separate and identify conservatorship property.**

475.505 The conservator shall:

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

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

**Specific powers of conservator, protection for third parties.**

~~475.501.5 - 6~~ 475.507.1. A conservator of the estate has power, without authorization or approval of the court, to:

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

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

(3) Receive additions to the estate;

~~(3)~~(4) Sell, or agree to sell, chattels and choses in action reasonably worth not more than ~~one~~ five thousand dollars for cash or upon terms involving a reasonable extension of credit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) ~~(11)~~ Invest the estate in accordance with the provisions of section 475.190 475.519.

2. If, in exercising any power conferred by subsection 1 of this section, a conservator breaches any of the duties enumerated in subsection 1 of this section 475.501, the conservator may be surcharged for losses to the estate caused by the breach but persons who dealt with the conservator in good faith, without knowledge of or reason to suspect the breach of duty, may enforce and retain the benefits of any transaction with the conservator which the conservator has power under subsection 1 of this section to conduct.

## **Management of property, defense and prosecution of claims.**

~~475.130.2~~ 475.509. 1. The conservator of the estate shall take possession of all of the protectee's real and personal property, and of rents, income, issue and profits therefrom, whether accruing before or after the conservator's appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject to such possession, the title to all such estate, and to the increment and proceeds thereof, is in the protectee and not in the conservator. Upon a showing that funds available or payable for the benefit of the protectee by any federal agency are being applied for the benefit of the protectee, or that such federal agency has refused to recognize the authority of the conservator to administer such funds, the court may waive, by order, the duty of the conservator to account therefor.

~~3.~~ 2. The court has full authority under the rules of civil procedure to enjoin any person from interfering with the right of the conservator to possession of the assets of the protectee, including benefits payable from any source.

~~4.~~ 3. The conservator of the estate shall prosecute and defend all actions instituted in behalf of or against the protectee; collect all debts due or becoming due to the protectee, and give acquittances and discharges therefor, and adjust, settle and pay all claims due or becoming due from the protectee so far as ~~his or her~~ the protectee's estate and effects will extend, except as provided in sections 507.150 and 507.188.

## **Standards for decision-making for adult protectee's estate.**

475.511. 1. The conservator shall manage the estate in a way that maximizes the dignity, autonomy, and self-determination of the protectee consistent with the protectee's level of functioning;

2. The conservator shall, when making decisions regarding investing, spending, and management of the income and assets, including asset recovery;

(1) Give priority to the needs and preferences of the protectee; and

(2) Weigh the costs and benefits to the estate.

## **Assets of protectee, action to obtain, procedure.**

~~475.160~~ 475.513. Any conservator, protectee, creditor or other person, including a person interested in expectancy, reversion or otherwise, who claims an interest in property which is claimed to be an asset of the estate of a protectee or which is claimed should be an asset of such an estate, may file a verified petition in any court having jurisdiction of such estate seeking determination of the title and right of possession thereto. The petition shall describe the property, if known, shall allege the nature of the interest of the petitioner and that title or possession of the property, or both, are being adversely withheld or claimed. The court shall proceed on such petition in accordance with the provisions of section 473.340.



## **Court's powers on estates or affairs of minors or financially incapacitated persons.**

~~475.091.~~ 475.515. The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of minors and ~~disabled persons~~ financially incapacitated persons:

(1) While a petition for appointment of a conservator of the estate is pending, on motion and with notice to the attorney appointed to represent the minor or alleged ~~disabled~~ financially incapacitated person and after preliminary hearing and finding of probable cause that the allegations of the petition and motion are true, the court may appoint a conservator ad litem to collect, protect and preserve the assets of the minor or alleged ~~disabled~~ financially incapacitated person and, on order of court, disburse funds for the necessary support and maintenance of the minor or alleged ~~disabled~~ financially incapacitated person and ~~those dependent~~ those dependent members of ~~his~~ the person's family ~~who are dependent upon him~~;

(2) Upon finding that the transaction was or is beneficial to the protectee, the court may approve, ratify, confirm and validate any transaction entered into by a conservator of the estate, without court authorization which it has power under this section to authorize the conservator to conduct. The power of the court to approve, ratify, confirm and validate transactions entered into by a conservator of the estate without court authorization includes, without limitation, retention of real or personal property, compromises of claims by and against the estate, investments, purchases, sales, mortgages, exchanges, abandonment, leases of any duration, improvements, contracts to improve, contracts to sell, contracts to purchase, contracts to exchange and grants of options, easements, profits or other rights with respect to land or other property. It also includes, without limitation, payment of a mortgage indebtedness on the real estate of the protectee out of ~~his~~ the protectee's personal estate and purchase of real estate at a sale made under a mortgage, deed of trust, vendor's lien or other lien held by the protectee. It also includes the power to make, ratify and undertake proceedings for, and agreements incident to, dissolution of the marriage or a legal separation in the marriage of the protectee, and transactions involving conflicts of interest between conservator and protectee.

## **Inventory and appraisal**

~~475.145.1 and 475.150~~ 475.517. 1. When a conservator of the estate has been appointed, an inventory and appraisal of the estate of the protectee shall be made in the same manner and within the same time and subject to the same requirements as are provided in sections 473.233 to 473.243 for the inventory and appraisal of a decedent's estate. The inventory shall include property as to which the protectee is a joint tenant or tenant by the entirety and all policies of life insurance owned by the protectee, whether or not payable to a named beneficiary, together with a statement of all income and benefits to which the protectee is or will be entitled to receive. The inventory shall also disclose any non-probate transferees designated to receive non-probate transfers of accounts owned by protectee after protectee's death.

2. When any personal estate is received by a conservator from a personal representative, or former conservator, which has been appraised, it is not necessary for the conservator to cause the same to be appraised again, but he shall state in ~~his~~ the inventory the appraised value as it

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appears in the appraisal of the personal representative, or former conservator, and be held to account accordingly.

### **Investment of assets of estate of protectee--reports.**

~~475.190~~475.519. 1. On or after August 28, 2009, the conservator shall invest ~~liquid~~ assets of the estate of the protectee, other than funds needed to meet debts and expenses currently payable, in accordance with the provisions of the Missouri Prudent Investor Act, sections 469.900 to 469.913, subject to the following exceptions:

(1) Investment of any part or all of the liquid assets:

(a) In direct obligation of or obligations unconditionally guaranteed as to principal and interest by the United States; or

(b) In interest-bearing accounts and time deposits, including time certificates of deposit, in financial institutions to the extent the account or deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, shall constitute prudent investments;

(2) If the conservator determines it appropriate to delegate investment and management functions to an agent as provided in section 469.909, the agent to whom the delegation is made shall acknowledge in a writing delivered to the conservator that the agent is acting as an investment fiduciary on the account.

2. Every conservator shall make a report at every annual settlement of the disposition made by the conservator of the money belonging to the protectee entrusted to the conservator. If it appears that the money is invested in securities, then the conservator shall report a detailed description of the securities and shall describe any real estate security and state where it is situated, and its value, which report shall be filed in the court. The court shall carefully examine into the report as soon as made, and, if in the opinion of the court the security is insufficient, the court shall make such orders as are necessary to protect the interest of the protectee. The conservator and the conservator's sureties are liable on their bond for any omission to comply with the orders of the court. If the money has not been invested as authorized by law the conservator shall state that fact and the reasons, and shall state that the conservator has been unable to make an investment after diligent effort to do so.

3. If any conservator refuses or neglects to make the report at the time aforesaid, or makes a false report thereof, the conservator and the conservator's sureties are liable on their bond for all loss or damage to the protectee occasioned by reason of the conservator's neglect or refusal so to report, or by making a false report, and the conservator may, on account thereof, be removed from the conservator's trust in the discretion of the court.

## **Continuation of business.**

~~475.155~~ 475.521. In all cases where the court deems it advantageous to continue the business of a protectee, such business may be continued by the conservator of the estate on order of the court and according to the rules specified in section 473.300 for the continuation of the business of a decedent by a personal representative when no testamentary provisions are involved.

## **Delegation by conservator**

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

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

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

3. By accepting a delegation of powers or duties from the conservator of a conservatorship that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state with regard to all matters relating to the conservatorship.

## **Support and education of protectee and dependents.**

~~475.125~~ 475.525. 1. The court may make orders for the management of the estate of the protectee for the care, education, treatment, habilitation, support and maintenance of the protectee and for the support and maintenance of ~~his~~ the protectee's family and education of ~~his~~ the protectee's spouse and children, according to ~~his~~ the protectee's means and obligations, if any, out of the proceeds of ~~his~~ the protectee's estate, and may direct that payments for such purposes shall be made weekly, monthly, quarterly, semiannually or annually. The payments ordered under this section may be decreased or increased from time to time as ordered by the court.

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

~~2.~~ 3. Appropriations for any such purposes, expenses of administration and allowed claims shall be paid from the property or income of the estate. The court may authorize the conservator to borrow money and obligate the estate for the payment thereof if the court finds that funds of the

Chapter 475, RSMo, 12.15.2015 "Latest Master Discussion Draft." Text struck through ~~thus~~ is to be deleted; text underlined thus is new or added. Comments welcome to [www.mo-wings.org](http://www.mo-wings.org).

estate for the payment of such obligation will be available within a reasonable time and that the loan is necessary. If payments are made to another under the order of the court, the conservator of the estate is not bound to see to the application thereof.

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

### **Preservation of estate plan.**

~~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 any property held in tenancy by the entirety, the provisions of section 442.035 shall be applicable and the conservator, with or without court approval, shall not have authority to redeem, withdraw, sell, exchange or mortgage the protectee's estate or interest in such entirety property without the approval of the other tenant by the entirety. The court shall not authorize or approve such redemption, withdrawal, sale, exchange or mortgage as to the share contributed to the purchase of such bonds, the making of deposits in such an account, or the acquisition of such joint or entirety property by the co-owner or beneficiary of the bonds, a joint depositor, a person to whom an account is payable on death, a beneficiary of a revocable trust of an account, or a cotenant of property.~~

475.527. 1. Except as set out in section 475.533, the conservator shall administer a protectee's estate by maintaining the protectee's estate plan as evidenced by the protectee's will, trust, real and personal property assets held jointly with right of survivorship, and assets titled in protectee's name with non-probate transfers under 461.003-461.081 and other assets with beneficiary designations including, but not limited to, those in bank or credit union accounts,

investment accounts, motor vehicles, insurance policies and annuities, individual retirement accounts, and deferred compensation accounts. A conservator may examine the will and any other donative, nominative, or other appointive instrument of the protectee.

2. To the extent that the conservator must pay expenses of the unmarried protectee or the protectee's dependents under section 475.525 or claims under sections 475.552 to 475.561 or 475.585, because the protectee's estate does not have sufficient assets in the protectee's or estate's name solely, the conservator may apply for an order of the court authorizing the redemption or liquidation of the decedent's joint assets or assets titled with nonprobate transfers in the following order of priority only as necessary to pay expenses and claims of the protectee's estate at the time of application:

(1) Assets owned solely by the unmarried protectee or the protectee's estate with beneficiary designations under the non-probate transfer law as set out in sections 461.003 to 461.081, banking law, and other property with beneficiary designations including insurance policies and annuities, individual retirement accounts, deferred compensation and other contributory pension accounts, and any other assets with beneficiary designations.

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

### **Conservator's power if protectee married**

475.530.1. If the protectee is married, then the conservator, subject to the provisions of +subsections 2 and 3, shall have full power to act for such conservator's protectee and to do all things with respect to the assets and property that the protectee could do if such protectee did not have a conservator; and without limiting the generality of the foregoing, the conservator acting with the other spouse or the other conservator may sell, convey, exchange, mortgage or pledge to secure loans of cash or purchase money, lease, invest, reinvest, partition the property or its proceeds in equal shares, convert the property or its proceeds into a tenancy in common in equal shares, or otherwise dispose of the property.

2. The power confirmed in a conservator by this section shall at all times be subject to the approval, control, and supervision of the probate division of the circuit court having venue of the conservatorship. Either the conservator or the adult and competent spouse may petition or apply to the appropriate court for approval of an agreed proposed disposition of property held by entireties. If the court finds that the proposed disposition is fair and equitable to the protectee taking into consideration all of the circumstances of the case including the proper interests of the other spouse, the court shall make appropriate authorization of disposition and such orders as are necessary and proper in the case. Insofar as is practicable, procedure in the probate division of the circuit court shall be in accord with the procedure provided in Chapter 475 for a similar type of disposition of property. The court in its discretion may tax the costs against both parties in equal or unequal shares, or solely against one party, or solely against the other party.

3. If one of the spouses who hold by entireties is the conservator of the other spouse, the conservator shall not represent such conservator's protectee in any negotiations for agreement respecting disposition of the entireties property or in any proceedings for approval of an agreed

proposed disposition of such property, but in all such matters the protectee shall be represented by a conservator *ad litem*. In such cases, on petition or application by the adult and competent spouse, acting individually or as conservator, for disposition of the entireties property, the court shall appoint a conservator *ad litem* to represent the protectee in the matter of a proposed disposition of the property, and the conservator *ad litem* shall represent the protectee in any negotiations for agreement with the adult and competent spouse and in any proceedings for approval of the agreed proposed disposition of the property. If the agreed proposed disposition is approved by the court, the conservator *ad litem* shall be discharged and the conservator shall resume such conservator's full conservatorship and shall do all things necessary to carry into effect the disposition of the property as approved pursuant to authorization and orders by the court. If no agreement is reached after a reasonable time with reference to disposition of the property, the conservator *ad litem* shall be discharged.

4. This section has no application to the conveyance, encumbrance or sale of property by a person under the age of eighteen who holds such property as a tenant by the entirety and who is authorized by law to make such conveyance, encumbrance or sale in person.

### **Court approval for special purpose transfers**

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

475.533.1. After notice to interested persons and upon express authorization of the court, a conservator may:

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

(2) Make a division of assets as provided under the Medicaid Spousal Impoverishment provisions;

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



(4) Exercise or release a power of appointment;

(5) Create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;

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

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

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

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

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

(3) Eligibility for governmental assistance;

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

(5) The existing estate plan;

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

(7) Any other factors the court considers relevant.

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

### **Review of status of persons under conservatorship-required report, content**

~~475.082~~ 475.536. 1. At least annually, the court shall inquire into the status of every ~~ward and~~ protectee under its jurisdiction for the purpose of determining whether the ~~incapacity or disability~~ financial incapacity may have ceased and to ~~insure~~ ensure that the ~~guardian or~~ conservator is discharging ~~his~~ the conservator's responsibilities and duties in accordance with this chapter.

~~2. In order to implement the court review prescribed by this section, the guardian or limited guardian shall file annually on the anniversary date of his letters, a report concerning the personal status of the ward. Such report may be combined with the settlement of accounts if the guardian is also conservator of the estate of the ward. The report shall be in the form prescribed by the court and shall include the following information:~~

~~(1) The present address of the ward;~~

~~(2) The present address of the guardian;~~

~~(3) The number of times the guardian has had contact with the ward, and the nature of such contacts including the date the ward was last seen by the guardian;~~

~~(4) If the ward is institutionalized, whether the guardian has received a copy of the treatment or habilitation plan and whether the guardian agrees with its provision;~~

~~(5) The date the ward was last seen by a physician and the purpose;~~

~~(6) Any major changes in the physical or mental condition of the ward observed by the guardian;~~

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

~~(8) The opinion of the guardian as to the adequacy of the present care of the ward.~~

~~3. The court may as part of its review, in its discretion, order the performance of a mental status evaluation of an incapacitated ward and may require any hospital, physician, or custodial facility to submit copies of their records relating to the treatment, habilitation or care of the ward.~~

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

2. If there is any indication that the financial incapacity of the protectee has ceased, the court shall appoint an attorney to file on behalf of the protectee a petition for termination of the conservatorship or for restoration.

~~5. (1) 3.~~ If it appears to the court as part of its review or at any time upon motion of any interested person, including the ~~ward or~~ protectee or some person on ~~his~~ the protectee's behalf, that the ~~guardian or~~ conservator is not discharging ~~his~~ the conservator's responsibilities and duties as required by this chapter or has not acted in the best interests of ~~his ward or the~~ protectee, the court may order that a hearing be held and direct that the ~~guardian or~~ conservator appear before the court.

~~(2)~~ (1) In the event that such a hearing is ordered and the ~~ward or~~ protectee is not represented by an attorney, the court shall appoint an attorney to represent the ~~ward or~~ protectee in the proceedings.

~~(3)~~ (2) At the conclusion of the hearing, if the court finds that the ~~guardian or~~ conservator is not discharging ~~his~~ the conservator's duties and responsibilities as required by this code, or is not acting in the best interests of the ~~ward or~~ protectee, the court shall enter such orders as it deems appropriate under the circumstances. Such orders may include the removal of the ~~guardian or~~ conservator and the appointment of a successor ~~guardian or~~ conservator or termination of the guardianship or conservatorship on finding that the ward has recovered his capacity or the protectee is no longer disabled.

~~(4)~~ (3) The court in framing its orders and findings shall give due consideration to the exercise by the ~~guardian or~~ conservator of any discretion vested in him by law.

### **Annual settlements required, exception**

~~475.270~~ 475.540. 1. In order to implement the court review prescribed by Section 475.536, ~~Every~~ the conservator shall file with the court annually or more often if required by the court, a settlement of ~~his~~ the conservator's accounts ~~once a year or oftener~~ if required by the court detailing the current status of the estate under conservatorship. The annual settlement shall be made at a time fixed by the court within ~~thirty~~ sixty days after the anniversary of the appointment of such conservator ~~and on the corresponding date of each year thereafter until the final settlement~~.

2. Each settlement of a conservator shall conform to the requirements of section 473.543 as to settlements in decedents' estates.—~~3.~~ If the conservatorship estate meets the indigency standards prescribed by chapter 208 or if all or nearly all the income or assets of the conservatorship are under the control of another fiduciary, including a Social Security representative payee or Veterans Administration fiduciary, or if the assets of a protectee have been placed in restricted custody, the court may waive the requirements ~~of subsection 2 of this~~ that the settlement comply with the requirement of section 473.453 and require the conservator to report, in a form prescribed by the court, the following information:

- (1) A statement of any money or property received during the preceding year including the date, source and amount or value;
- (2) A statement of disbursements made and the purpose thereof;
- (3) The total amount of money or property on hand;
- (4) The name and address of any depository where estate funds are deposited and the amounts thereof.

3. In addition to the information required by subsection 2, the settlement shall include:

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

**Settlement and report dockets--notice to conservators and guardians.**

~~475.280~~ 475.543. 1. The clerk shall keep a docket in which shall be entered the names of all conservators and the particular day upon which their annual settlements are required.

2. The clerk shall notify each conservator by ordinary mail of the day on which each of ~~his~~ the conservator's annual settlements is required to be filed at least thirty days before such date. Failure to receive the notice herein required does not excuse a conservator from making settlement as required by law.

3. Sections 473.560 to 473.567 as to decedents' estates apply to conservators and their settlements.

~~4. The clerk shall also keep a docket in which shall be entered the names of all guardians and limited guardians and the particular day upon which their report of annual personal review is required. The clerk shall notify such guardians in the same manner as prescribed in subsection 2 of this section. Failure to receive the notice herein required does not excuse such guardians from making the report as required by law.~~

**Verification of securities held by conservator--pooled accounts, defined, restrictions on--audit of pooled accounts, when.**

~~475.275~~ 475.546. 1. The conservator, at the time of filing any settlement with the court, shall exhibit all securities or investments held by ~~him~~ the conservator to an officer of the bank or other depository wherein the securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on ~~his~~ the conservator's bond, or to the judge or

clerk of a court of record in this state, or upon request of the conservator or other interested party, to any other reputable person designated by the court, who shall certify in writing that ~~he~~ the person has examined the securities or investments and identified them with those described in the account and shall note any omission or discrepancies. If the depository is the conservator, the certifying officer shall not be the officer verifying the account. The conservator may exhibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof, a certificate that the securities or investments shown therein as held by the conservator were each in fact exhibited to ~~him~~ the judge and that those exhibited to ~~him~~ the judge were the same as those in the account and noting any omission or discrepancy. The certificate, and the certificate of an official of the bank in which are deposited any funds for which the conservator is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the conservator with ~~his~~ the conservator's account.

2. (1) As used in and pursuant to this section, a "pooled account" is an account within the meaning of this section and means any account maintained by a fiduciary for more than one principal and is established for the purpose of managing and investing and to manage and invest the funds of such principals. No fiduciary shall or may place funds into a pooled account unless the account meets the following criteria:

- (a) The pooled account is maintained at a bank or savings and loan institution;
- (b) The pooled account is titled in such a way as to reflect that the account is being held by a fiduciary in a custodial capacity;
- (c) The fiduciary maintains, or causes to be maintained, records containing information as to the name and ownership interest of each principal in the pooled account;
- (d) The fiduciary's records contain a statement of all accretions and disbursements; and
- (e) The fiduciary's records are maintained in the ordinary course of business and in good faith.

(2) The public administrator of any county ~~with a charter form of government and with more than six hundred thousand but less than seven hundred thousand inhabitants~~ serving as a conservator and using and utilizing pooled accounts for the investing, investment, and management of conservatorship funds shall have any such accounts ~~audited~~ examined on at least an annual basis ~~and no less than one time per year~~ by an independent certified public accountant. ~~The audit provided shall review the records of the receipts and disbursements of each estate account.~~ Upon completion of the ~~investigation~~ examination, the certified public accountant shall render a report to the judge of record in this state showing ~~the receipts, disbursements, and account balances as to each estate and as well as~~ the total assets on deposit in the pooled account on the last calendar day of each year. The examiner shall also certify that the conservator has met the conditions for establishing a pooled account. The county shall provide for the expense of such ~~audit report~~. If and where the public administrator has provided the judge with the audit pursuant to and required by this subsection and section, the public administrator shall not be required to obtain the written certification of an officer of a bank or other depository on any

estate asset maintained within the pooled account as otherwise required in and under subsection 1 of this section.

### **Order waiving settlement, when.**

~~475.276~~ 475.549. 1. If the assets of the protectee are under the control of another fiduciary, including a Social Security representative payee or Veterans Administration fiduciary, or if the value of the assets of the estate of a protectee does not exceed the value prescribed by chapter 208 for welfare public benefit eligibility and whether or not such protectee receives other old age, disability or dependency public benefits from the federal government or the state of Missouri, the court may, upon satisfactory proof that adequate provision has been made for the care and maintenance of the protectee, waive or modify the requirements of sections ~~475.270~~ 475.540 and ~~475.275~~ 475.546.

2. If the estate of a protectee consists solely of cash or its equivalent which has been placed in restricted custody so that no withdrawals may be made except on order of the court as prescribed by section 473.160, the court may waive or modify the requirements of sections ~~475.270~~ 475.540 and ~~475.275~~ 475.546.

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

### **Filing of notice of pendency of action in other court against conservator, effect--financially incapacitated persons, application of law**

~~475.210~~ 475.552. 1. The filing in the probate division of the circuit court of a notice of the pendency in some other court or division of an action, suit or proceeding against the protectee or the conservator, or of a copy of the judgment or decree of such other court or division in such action, suit or proceeding shall be deemed a filing of the claim asserted in such action, suit or proceeding.

2. Section 473.360 shall not apply to the estates of ~~disabled~~ financially incapacitated persons.

3. This section shall apply to the estates of ~~disabled~~ financially incapacitated persons whose ~~disability~~ financial incapacity is adjudicated on or after August 28, 1993.

### **Claims against estate--procedure**

~~475.205~~ 475.555. All claims against the estate of a protectee, whether they constitute liabilities of the protectee which arose before or after the conservatorship, or liabilities incurred by the conservator for the benefit of the protectee or ~~his~~ the protectee's estate, may be filed in the probate division of the circuit court. After hearing, the probate division of the circuit court may



allow a claim so filed, in whole or in part, or disallow it. An order allowing a claim has the effect of a judgment and bears interest at the legal rate, unless the claim provides for a different rate, in which case the judgment shall be rendered accordingly.

### **Claims against minors or protectees, classification**

~~475.211~~ 475.558. All claims against the estate of a minor or other protectee shall be divided into the following classes:

- (1) Court costs;
- (2) Expenses of administration including fees of the guardian and conservator and their attorneys;
- (3) Expenses for the reasonable support and maintenance of the protectee;
- (4) All other claims which are filed against the estate as provided by law.

### **Payment of claims according to priority.**

~~475.213~~ 475.561. 1. All claims filed against the estate of a protectee shall be paid by the conservator as far as ~~he~~ the conservator has assets subject thereto, in the order specified in section ~~475.211~~ 475.558, and, unless otherwise provided by law, no claim of one class shall be paid until all previous classes are satisfied. If there are not sufficient assets subject thereto to pay the whole of any one class, claims of that class shall be paid in proportion to their amounts, unless otherwise provided by law.

2. Whether or not there has been notice under section ~~475.140~~ 475.272, the court, upon its own motion or the motion of any interested person, may at any time direct the giving of notice to creditors of a protectee requiring them to file their claims in the court within a period stated in the notice, not less than two months from the date of the first publication of the notice. Any creditor who fails to file ~~his~~ a claim within the time prescribed in the notice provided for by this subsection shall be barred from participating in any disbursement ordered paid by the court from assets then on hand. The conservator shall list the complete name and address of every creditor of the estate known to ~~him~~ the conservator and shall give each creditor so listed written notice by ordinary mail of the time for filing claims. On or before the expiration of the period stated in the notice, the conservator shall file the list of creditors along with proof of service as provided in section 472.110, and any written waivers, in the court. Thereafter, the court may direct the conservator to pay out assets available for payment of claims in accordance with section ~~475.211~~ 475.558 and subsection 1 of this section.

### **Purposes for which property may be sold--petition, examination, order.**

~~475.200~~ 475.564. 1. The real or personal property of the protectee, or any part thereof or any interest therein, may be sold, mortgaged, pledged, leased or exchanged by the conservator of the estate upon such terms as the court may order for the purpose of providing for ~~his~~ the protectee's

care, education, treatment, habilitation, support and maintenance ~~of the protectee~~ or for the care and maintenance of ~~his the protectee's~~ family or education of ~~his the protectee's~~ children, and for the payment of the protectee's debts, the payment of expenses and costs of administration, for investment of the proceeds, or in any other case where it is for the best interests of the protectee.

2. To obtain an order to sell, mortgage, lease or exchange real or personal property, the conservator shall present to the court a petition setting forth the condition of the estate and the facts and circumstances on which the petition is founded. If, after a full examination of the petition and the testimony of credible and disinterested witnesses, if such testimony is deemed necessary, it appears to the court that it is for the best interests of the protectee, an appropriate order may be made for any of the purposes under subsection 1 hereof as the court considers suited to the case.

3. If the conservator does not make such application, a creditor or other person interested in the estate may file a like petition, giving twenty days' notice to the conservator. On the filing of the petition the court may order the conservator to furnish such information and records as the court deems necessary.

4. If, upon settlement of the conservator, it appears that the money on hand and anticipated income of the estate is not sufficient for the payment of the costs of the care, education, treatment, habilitation, support and maintenance of the protectee as required by section ~~475.120~~ ~~475.310~~, for the maintenance of ~~his the protectee's~~ family and education of ~~his the protectee's~~ children under section ~~475.125~~ ~~475.525~~, or the payment of claims against the estate, the court may require a hearing to determine if real or personal property of the estate should be sold, mortgaged, pledged, leased or exchanged for that purpose. Upon hearing the matter, the court shall proceed as in the case of a petition filed under either of the preceding subsections.

### **Sales of real estate and tangible personal property, how made.**

~~475.230~~ ~~475.567~~. 1. Sales of real estate of protectees shall be conducted in the same manner and the same proceedings shall be had with reference thereto as in cases of sale of real estate of decedents for payment of claims, ~~except that there shall be no notice to parties in interest before the making of the order.~~

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

### **Order of sale, contents**

~~475.235~~ ~~475.570~~. The court may order the real estate sold at public or private sale, or it may, in its order, provide that the conservator may sell at either public or private sale, at ~~his the~~ conservator's option; but in no case shall the same be sold for less than three-fourths of its appraised value, nor shall the conservator become the purchaser, either directly or indirectly, of any of the property sold under the provisions of this law.

## **Report and approval of sale**

~~475.240~~ 475.573. Whenever any conservator sells any real estate belonging to ~~his~~ the protectee, under an order of court, ~~he~~ the conservator shall report the sale to the court ordering the sale, within the same time and in the same manner as personal representatives are required by law to report sales of real estate made by them for the payment of debts. The report shall remain on file ten days before being acted upon and shall be proceeded upon as in the case of sales of real estate by a personal representative. Any sale, if approved by the court, is valid to all intents and purposes. If the court refuses to approve the report, the order of sale may be renewed, and the same proceedings shall be had as upon the original order.

## **Deeds by conservator or successor, acknowledgment, evidentiary effect--sheriff of county to sign deed, when.**

~~475.245~~ 475.576. 1. Any conservator, having received payment of the purchase money for any real estate sold by ~~him~~ the conservator under this law, shall execute and deliver to the purchaser thereof deeds of conveyance for the same, referring in apt and appropriate terms to the order of the court, the advertisement and appraisal and description of the real estate, the time, place and terms of sale, and the payment of the purchase money, and conveying to the purchaser all the right, title and interest of the protectee in the real estate sold. The recitals in the deed are prima facie evidence of the facts stated therein.

2. If any conservator, because of death, removal or other cause, fails to complete any sale, or make the deed, ~~his~~ the conservator's successor, or if there be none, then the sheriff of the county, on order of the court, shall complete the sale or make the deed.

3. All deeds and conveyances executed by conservators shall be acknowledged and recorded as other instruments conveying real estate, and with like effect, and, when so acknowledged, shall be received in evidence in all courts of this state without further proof.

## **Effect of conveyance.**

~~475.250~~ 475.579. Every conveyance, mortgage, lease and assurance made under the order of the probate division of a circuit court, pursuant to the provisions of this law, is as valid and as effectual as if the same had been executed by a person of full age and of sound mind.

## **When transactions of protectees voidable**

~~475.345~~ 475.582. A sale, exchange, lease, gift, contract, release or other transaction affecting ~~his~~ the protectee's estate entered into by ~~a~~ the protectee at a time when ~~he~~ the protectee is a minor or lacks sufficient mental financial capacity to understand the transaction and its effect upon ~~his~~ the protectee's estate, rights and future welfare is voidable at the option of the protectee or the conservator of ~~his~~ the protectee's estate unless entered into with the consent of the conservator in the case of transactions which the conservator could enter into without court authorization under section ~~475.430~~ 475.501 or with the authorization or approval of the court. The conservator is

under a duty to treat as voidable transactions which are voidable at his option and not beneficial to the protectee or ~~his~~ the protectee's estate.

### **Actions against protectee, process, enforcement of judgments.**

~~475.260~~ 475.585. 1. When there is a conservator of the estate, all actions between the protectee or the conservator and third persons in which it is sought to charge or benefit the estate of the protectee shall be prosecuted by or against the conservator of the estate as such. ~~He~~ The conservator shall represent the interests of the protectee in the action and all process shall be served on ~~him~~ the conservator instead of on the protectee.

2. When the conservator of the estate is under personal liability for ~~his~~ the conservator's own contracts and acts made and performed on behalf of the estate, ~~he~~ the conservator may be sued both as conservator and in his or her personal capacity in the same action. Misnomer or the bringing of an action by or against the protectee shall not be ground for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the protectee before the appointment of a conservator of ~~his~~ the protectee's estate, such conservator when appointed may be substituted as a party for the protectee. If the appointment of the conservator of the estate is terminated, ~~his~~ the conservator's successor may be substituted; if the protectee dies, ~~his~~ the protectee's personal representative may be substituted; if ~~he~~ the protectee becomes of age or ~~his~~ the protectee's disability ceases, ~~he~~ the protectee may be substituted.

3. When there is a conservator of the estate, the property and rights of action of the protectee shall not be subject to garnishment or attachment, and execution shall not issue to obtain satisfaction of any judgment against the protectee or the conservator of ~~his~~ the protectee's estate as such, but judgments against the estate of the protectee shall be enforced in the manner provided for the enforcement of judgments against the estates of decedents.

### **Individual liability of conservator**

~~475.132~~ 475.588. 1. Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his or her capacity as conservator in the course of administration of the estate unless ~~he~~ the conservator fails to reveal ~~his~~ the representative capacity and identify the estate in the contract.

2. The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if ~~he~~ the conservator is personally at fault.

3. Claims based on contracts entered into by a conservator in ~~his~~ the conservator's fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in ~~his~~ the conservator's fiduciary capacity, whether or not the conservator is individually liable therefor.

4. Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

### **Protection of persons dealing with conservator**

~~475.134~~ 475.591. A person who in good faith either assists a conservator or deals with ~~him~~ a conservator for value in any transaction other than those requiring a court order is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. For the purposes of the rules protecting bona fide purchasers and mortgagees for value, conservators of the estate shall be deemed to be trustees of the property of the protectee. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

### **Receipts and acknowledgments of conservators, effect**

~~475.255~~ 475.594. Receipts or acknowledgments given by a conservator during the continuance of ~~his~~ the conservator's office, for the payment of any debts, rents or other money or property due to ~~his~~ the protectee, are valid in favor of all persons who take them in good faith; but the conservator and ~~his~~ the conservator's sureties are liable to the party injured, if the receipts or acknowledgments are given illegally or fraudulently.

### **Compensation of conservators**

~~475.265~~ 475.597. 1. A ~~guardian or~~ conservator shall be allowed such compensation for ~~his~~ the conservator's services as ~~guardian or conservator~~, as the court shall deem just and reasonable.

2. Additional compensation may be allowed for ~~his necessary services as attorney and for other necessary services not required of a guardian or conservator~~ the necessary services of an attorney. Compensation may also be allowed for necessary expenses in the administration of ~~his trust~~ the conservatorship, including reasonable attorney fees if the employment of an attorney for the particular purpose is necessary.

3. In all cases, compensation of the ~~guardian or~~ conservator and ~~his~~ the conservator's expenses including attorney fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time before final settlement the ~~guardian or~~ conservator or ~~his~~ the conservator's attorney may apply to the court for an allowance upon the compensation or necessary expenses of the ~~guardian or~~ conservator and for attorney fees for services already performed.

4. If the court finds that the ~~guardian or~~ conservator has failed to discharge ~~his~~ the conservator's duties ~~as such~~ in any respect, it may deny ~~him~~ the conservator any compensation whatsoever or

may reduce the compensation which would otherwise be allowed. The court may consider ties of blood, marriage or adoption, in making allowances of compensation to ~~guardians and~~ conservators.

### **Termination, Restoration, and Other Changes in Appointment**

#### **Petition to increase or decrease powers.**

~~475.083.7~~ 475.610.1. At any time the guardian, limited guardian, ~~or~~ conservator, or limited conservator may petition the court to modify the order appointing any of them to increase or decrease his the guardian's or conservator's powers. Proceedings on the petition shall be in accordance with the provisions of section ~~475.075~~ 475.220, subsection 1 of section 475.223, and sections 475.226, 475.229, 475.232, 475.238 (if to increase powers), and 475.241.

2. In determining whether to increase or decrease the guardian or conservator's powers, the court shall consider:

(1) The extent of respondent's physical and mental capacity to manage essential requirements for food, clothing, shelter, safety or other care;

(2) The extent of the respondent's physical and mental capacity to manage the respondent's financial resources;

(3) Whether or not the respondent's financial resources require supervision and, if so, the nature and extent of supervision needed.

#### **Termination of guardianship or conservatorship**

~~475.083.1-3.~~ 475.620. 1. The authority of a guardian or conservator terminates for a minor or adult:

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

(2) Upon an adjudication that an incapacitated or ~~disabled~~ financially incapacitated person has been restored to ~~his~~ capacity or financial capacity per section 475.625;

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

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

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



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

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

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

(1) If the conservatorship estate is exhausted;

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

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

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

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

### **Restoration of ward or protectee**

~~475.083.4-6. 475.625. 1.~~ 1. At any time the guardian, conservator, or any person on behalf of the ward or protectee may, individually or jointly with the ward or protectee, or the ward or protectee individually may petition the court to restore the ward or protectee, or to decrease the powers of the guardian or conservator, except that if the court determines that the petition is frivolous, the court may summarily dismiss the petition without hearing. The petition from the ward or protectee or on behalf of the ward or protectee may be an informal letter to the court. No person may interfere with the transmission of the ward's or protectee's letter or petition to the court.

2. If at any time the court, on its own motion, has reason to believe that the guardians or conservator's powers should be decreased or additional rights should be returned to the ward, the court shall set the matter for a hearing.

3. Upon the filing of a joint petition by the guardian or conservator and the ward or protectee, the court, if it finds restoration or a modification or a decrease in powers to be in the best interests of the ward or protectee, may summarily order restoration or ~~modification of the~~ a decrease in powers of the guardian or conservator without the necessity of notice and hearing.

4. Upon the filing of a petition without the joinder of the guardian or conservator or if the court requires a hearing if filed with the guardian or conservator, the court shall cause the petition to be set for hearing with notice to the guardian or conservator and to such other persons as the court directs. The hearing shall be conducted in accordance with the provisions of section 475.220,

subsection 1 of section 475.223, and sections 475.226, 475.229, 475.232, 475.238 (if to increase powers), and 475.241. If the ward or protectee is not represented by an attorney, the court shall appoint an attorney to represent the ward or protectee in such proceeding. The court shall consider the factors in section 475.610.2. The burden of proof by a preponderance of the evidence shall be upon the petitioner. Such a petition may not be filed more than once every one hundred eighty days.

5. In deciding whether a ward or protectee should be fully or partially restored, the court may order a report by, and consider the recommendations in a report of, a licensed physician, licensed psychologist or other appropriate qualified professional if that professional has experience or training in the alleged mental, physical, or cognitive impairment of the ward or protectee. Such report shall be assessed as court costs to be paid upon a finding and order of the court as to who will be responsible for payment.

### **Appointment of successor guardian or conservator--transfer of case, procedure**

~~475.115~~ 475.630. 1. When a guardian or conservator dies, is removed by order of the court, or resigns and ~~his or her~~ the resignation is accepted by the court, the court shall have the same authority as it has in like cases over personal representatives and their sureties and may appoint another guardian or conservator in the same manner and subject to the same requirements as are herein provided for an original appointment of a guardian or conservator.

2. Any interested person, an adult member of the ward's or protectee's family, or any person interested in the welfare of the ward or protectee may file

3. A public administrator may request transfer of any case to the jurisdiction of another county by filing a petition for transfer. If the receiving county meets the venue requirements of section 475.035 and the public administrator of the receiving county consents to the transfer, the court shall transfer the case. The court with jurisdiction over the receiving county shall, without the necessity of any hearing as required by section ~~475.075~~ 475.220, appoint the public administrator of the receiving county as successor guardian and/or successor conservator and issue letters therein.

### **Appointment of Conservator ad litem or guardian ad litem--conflicts of interest, removal**

~~475.097~~ 475.640. 1. If a natural or appointed guardian or conservator is not effectively performing ~~his~~ the ~~guardian's or conservator's~~ duties and the court further finds that the welfare of the minor or incapacitated or ~~disabled~~ financially incapacitated person requires immediate action, it may, with or without notice, appoint a guardian ad litem or conservator ad litem for the minor or incapacitated or ~~disabled~~ financially incapacitated person. An appointment of a guardian or conservator ad litem shall be by its terms limited in duration to the period preceding the hearing on a petition for appointment or removal of a permanent guardian or conservator or for a specified period not to exceed six months. A guardian ad litem of the person is entitled to the care and custody of the ward, a conservator ad litem is entitled to the care and custody of the property of the protectee, and the authority of a permanent guardian or conservator previously appointed by the court is suspended so long as a guardian or conservator ad litem has authority.

A guardian or conservator ad litem may be removed at any time. A guardian or conservator ad litem shall make any report the court requires. The expenses and reasonable compensation of a guardian or conservator ad litem may be taxed as costs. In other respects the provisions of this code concerning guardians and conservators apply to guardians and conservators ad litem.

2. In addition to the provisions of the rules of civil procedure relating to parties, if it is suggested in a petition filed by the protectee, creditor or other ~~interested~~ person interested in the welfare of the ward or protectee, including a person interested in expectancy, reversion or otherwise, or if it affirmatively appears to the court that there is a possible conflict of interest between the ward or protectee and ~~his~~ the protectee's guardian or conservator, the court may appoint a guardian or conservator ad litem to represent the ward or protectee in any proceeding to adjudicate the rights of the parties. The guardian or conservator ad litem shall have only such authority as is provided in the order of appointment and shall serve until discharged by the court.

**Removal of guardian or conservator--incapacitated or financially incapacitated person, continuation of guardianship after dissolution of marriage, when**

~~475.110~~ 475.645. 1. When a minor ward has attained the age of fourteen years, the guardian of ~~his or her~~ the minor's person may be removed on petition of the ward to have another person appointed guardian if it is for the best interests of the ward that such other person be appointed.

2. When the spouse of an incapacitated or ~~disabled~~ financially incapacitated person is appointed ~~his or her~~ as the person's guardian or conservator, such spouse shall be removed as guardian or conservator upon dissolution of his or her marriage with the incapacitated or ~~disabled~~ financially incapacitated person. A guardian or conservator may also be removed on the same grounds as is provided in section 473.140 for the removal of personal representatives.

~~2.~~ 3. Notwithstanding subsection ~~1~~ 2 of this section, a spouse whose marriage to the ward was dissolved may petition the court to remain as or be reappointed guardian or conservator of the incapacitated or ~~disabled~~ financially incapacitated person in accordance with section ~~475.115~~ 475.630.

4. Any interested person, an adult member of the ward's or protectee's family, or any person interested in the welfare of the ward or protectee may petition for the removal of the guardian, limited guardian, conservator, or limited conservator and the appointment of another fiduciary to serve. The court shall set the matter for hearing on the issue of the removal without an adjudication of incapacity, partial incapacity, financial incapacity, or partial incapacity using the same procedures as for the original appointment of a guardian, limited guardian, conservator, or limited conservator. If the court finds good cause to remove the guardian, limited guardian, conservator, or limited conservator and appoint another qualified person to serve, then the court shall remove the guardian, limited guardian, conservator, or limited conservator and appoint another person who is qualified and competent to succeed the removed guardian, limited guardian, conservator, or limited conservator and serve in such a capacity.

## Requirements for final settlement

~~475.290~~ 475.650. 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.

## Order for payment to protectee of amount due.

~~475.300~~ 475.655. The court shall order payment of the amount found to be due, and the rendition of any effects, property, rights or credits belonging to the protectee, ~~to the protectee~~, or to the successor of the conservator, or to the personal representative of the protectee, or other person designated by the court, as the case may be, and enforce the order by attachment or execution against the conservator and ~~his~~ the conservator's sureties.

## Receipt by protectee, successor or others, discharge

~~475.315~~ 475.660 . Successors of conservators or personal representatives, having received all money and other estate found to be due to their protectees or to the estate of a deceased protectee, and protectees having received all money and other estate due from their conservators on the expiration of their conservatorship, shall acknowledge satisfaction of record in the proper court; or if the protectee, on due notice, neglects or refuses to make acknowledgment, or cannot be found in the county to be served with notice, the court shall enter a discharge of ~~his~~ the protectee's conservator on the record and give ~~him~~ the conservator a certificate therefor but the court shall not enter the discharge, nor give such certificate, until the conservator has exhibited to the court the written statement of the protectee, acknowledging the receipt of all money and other property due from the conservator, which written statement shall be signed by the protectee and in every case acknowledged by the protectee to be ~~his~~ the protectee's free act and deed, before

some officer authorized by law to take acknowledgment of deeds. Upon acknowledgment of satisfaction the conservator shall be discharged of record.

### **Enforcement of order of payment**

~~475.305~~ 475.665. If the conservator fails to pay the money ordered to be paid, the same proceedings may be had against ~~him~~ the conservator and ~~his~~ the conservator's sureties to compel payment as are authorized in cases where a personal representative fails, when ordered, to pay claims against an estate.

### **Death of protectee, distribution of estate--administration, when**

~~475.320. 1. Except in cases mentioned in subsection 2, the court, upon the death of any protectee, may order that no letters of administration shall be granted upon his estate, but the funeral and burial expenses and estate taxes for which the estate of the deceased protectee is liable, and obligations of the protectee incurred by the conservator, as well as expenses of administration, may be paid out of the estate by the conservator on order of the court and after the final settlement of the conservator is approved, and upon a showing that all obligations of the estate which have been authorized by the court have been paid, the court shall order the conservator to make distribution to the heirs in the same manner and with the same effect as in the case of an administrator. In such case the conservator is subject in all respects and to the same extent to the liabilities of an administrator and liability on the conservator's bond continues and applies to the complete administration of the estate of the deceased protectee.~~

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

475.670.1. After the death of the protectee and upon petition by any person who could have applied to the court pursuant to the process for refusal of letters under Section 473.090 or pursuant to the process for distribution of small estates under Section 473.097, the court shall order that the estate of the deceased protectee be closed by following the procedures of Sections 473.090 or 473.097, respectively, after approval of the final settlement and upon a showing that all obligations of the estate authorized by the court have been paid.

2. After the death of the protectee if neither section 473.090 nor section 473.097 applies, and upon application by the conservator, the court may order that letters of administration or letters testamentary shall be granted upon the protectee's estate to the conservator pursuant to the procedures set out in this subsection:

(1) If the deceased protectee has a will, it shall be presented and admitted to probate in the protectee's conservatorship estate pursuant to applicable procedures of Chapter 474. If the person nominated as personal representative in the will is not the conservator, that person may renounce the right to serve for this subsection to apply. If the person nominated in the will chooses not to resign, then the court shall grant letters testamentary on the estate in the manner Chapter 475, RSMo, 12.15.2015 "Latest Master Discussion Draft." Text struck through ~~thus~~ is to be deleted; text underlined thus is new or added. Comments welcome to [www.mo-wings.org](http://www.mo-wings.org).

provided by law. Before the conservatorship estate is closed, the conservator may pay the funeral and burial expenses and taxes for which the estate of the deceased protectee is liable, and obligations of the protectee incurred by the conservator, as well as expenses of administration, of the estate on order of the court and have the final settlement of the conservator approved.

(2) The funeral and burial expenses and taxes for which the estate of the deceased protectee is liable, the obligations of the protectee incurred by the conservator, as well as expenses of administration, shall be paid out of the estate by the conservator on order of the court pursuant to the same procedures and priorities as for creditors of decedent's estate as set out in Chapter 473.

(3) A final settlement of the conservator must be approved showing that all obligations of the estate which have been authorized by the court have been paid.

(4) Any creditors shall comply with the provisions of Chapter 473 as to their claims, and the Conservator shall publish notice to creditors pursuant to that Chapter.

(5) As part of the court's order that no letters be granted, the court shall order the conservator to make distribution to the heirs and devisees in the same manner and with the same effect as in the case of a personal representative. In such case the conservator is subject in all respects and to the same extent to the liabilities of a personal representative and liability on the conservator's bond continues and applies to the complete administration of the estate of the deceased protectee.

3. If the protectee had any accounts or property interests that were held for the protectee's benefit in a trust, tenancy by the entireties, joint tenancy with right of survivorship, designated with pay-on-death beneficiaries, designated to have beneficiaries such as insurance policies or individual retirement accounts, or designated to have a title with transfer-on-death beneficiaries, including a beneficiary deed for real estate, then those accounts and property interests shall be reported on the final settlement by the conservator as transferred to the spouses, joint owners, or beneficiaries by operation of law. However, under the provisions of section 461.300, RSMo., such accounts or property may be subject to payment to certain surviving spouses, unmarried minor children, and creditors upon filing claims in the proceeding affecting the deceased protectee's estate within the time permitted by that section.

#### **Escheat of minor's estate, when.**

~~475.325~~ 475.680. If upon the final settlement of a minor's estate, made upon ~~his arrival at the~~ minor attaining eighteen years of age, the residence or whereabouts of the ~~protectee~~ minor is unknown to ~~his~~ the minor's conservator or the court before whom such settlement is made or if the ~~protectee~~ minor refuses to accept and receipt for the balance found owing to ~~him~~ the minor before the time for appeal from the settlement has expired, any funds remaining in the conservator's hands shall be ordered paid into the state treasury in like manner and subject to the same provisions in favor of the protectee as now provided by sections 470.010 to 470.260 in cases of nonappearing and nonclaiming distributees and legatees.



## **Death of conservator, personal representative to make settlement--waived when**

~~475.295~~ 475.690. 1. In case of the death of a conservator, ~~his~~ the conservator's personal representative shall make settlement with ~~his~~ the conservator's successor, and deliver the property and money belonging to the protectee whose estate was managed by ~~his~~ the conservator's decedent to such successor. When the sole purpose of administering the estate of the deceased conservator is to make settlement of the estate of the protectee, the court may waive the appointment of a personal representative for the deceased conservator. In such circumstances, the successor shall file a settlement showing the condition of the estate of the protectee and, upon approval by the court, shall be charged with such assets as are shown therein, provided, however, that such successor shall not be relieved of the duty to account for assets of the protectee not shown on such settlement.

2. If a deceased conservator leaves no estate subject to administration, and letters are issued to ~~his~~ the conservator's personal representative solely for the purpose of making settlement under this section, the costs and expenses of administration of such administration shall be paid by the estate of the protectee of which the decedent was conservator; and, in the administration proceeding in the estate of the deceased conservator there need be no publication as required by section 473.033.

## **Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and other Interstate Provisions Affecting Minors and Adult Proceedings**

### **Short title.**

~~475.501~~ 475.701. Sections ~~475.501 to 475.555~~ 475.701 to 475.755 may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

### **Definitions.**

~~475.502~~ 475.702. Notwithstanding the definitions in section 475.010, when used in sections ~~475.501 to 475.555~~ 475.701 to 475.755, the following terms mean:

- (1) "Adult", an individual who has attained eighteen years of age;
- (2) "Conservator", a person appointed by the court to administer the property of an adult, including a person appointed under this chapter;
- (3) "Guardian", a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under this chapter;
- (4) "Guardianship order", an order appointing a guardian;
- (5) "Guardianship proceeding", a proceeding in which an order for the appointment of a guardian is sought or has been issued;

(6) "Incapacitated person", an adult for whom a guardian has been appointed;

(7) "Party", the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding;

(8) "Person", except in the term "incapacitated person" or "protected person", an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(9) "Protected person", an adult for whom a protective order has been issued;

(10) "Protective order", an order appointing a conservator or other order related to management of an adult's property;

(11) "Protective proceeding", a judicial proceeding in which a protective order is sought or has been issued;

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

(13) "Respondent", an adult for whom a protective order or the appointment of a guardian is sought;

(14) "State", a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

### **International application of act**

~~475.503~~ 475.703. 1. A court of this state may treat a foreign country as if it were a state for the purpose of applying ~~this article and articles 2, 3, and 5~~ sections 475.701 to 475.755.

### **Communication between courts**

~~475.504~~ 475.704. 1. A court of this state may communicate with a court in another state concerning a proceeding arising under sections ~~475.501 to 475.555~~ 475.701 to 475.755. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection 2 of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

2. Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

## **Cooperation between courts**

~~475.505~~ 475.705. 1. In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to:

- (1) Hold an evidentiary hearing;
- (2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (3) Order that an evaluation or assessment be made of the respondent;
- (4) Order any appropriate investigation of a person involved in a proceeding;
- (5) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (1) of subsection 1 of this section or any other proceeding, any evidence otherwise produced under subdivision (2) of subsection 1 of this section, and any evaluation or assessment prepared in compliance with an order under subdivisions (3) and (4) of subsection 1 of this section;
- (6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;
- (7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 CFR 160.103, as amended.

2. If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection 1 of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

## **Taking testimony in another state**

~~475.506~~ 475.706. In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

## **Definitions--significant connection factors**

~~475.521~~ 475.721. 1. In ~~this Article~~ sections 475.721 to 475.729, the following terms mean:

(1) "Emergency", a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(2) "Home state", the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition;

(3) "Significant-connection state", a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

2. In determining under section ~~475.523~~ 475.723 and subsection 5 of section ~~475.531~~ 475.731 whether a respondent has a significant connection with a particular state, the court shall consider:

(1) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) The location of the respondent's property; and

(4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

#### **Exclusive basis.**

~~475.522~~ 475.722. ~~This Article provides~~ Sections 475.721 to 475.729 provide the exclusive jurisdictional bases for a court of this state to appoint a guardian or issue a protective order for an adult.

#### **Jurisdiction**

~~475.523~~ 475.723. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date a petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

a. A petition for an appointment or order is not filed in the respondent's home state;

b. An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

c. The court in this state concludes that it is an appropriate forum under the factors set forth in section ~~475.526~~ 475.726;

(3) This state does not have jurisdiction under either subdivisions (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section ~~475.524~~ 475.724 are met.

### **Special jurisdiction**

~~475.524~~ 475.724. 1. A court of this state lacking jurisdiction under section ~~475.523~~ 475.723 has special jurisdiction to do any of the following:

(1) Appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in this state;

(2) Issue a protective order with respect to real or tangible personal property located in this state;

(3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section ~~475.531~~ 475.731.

2. If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

### **Exclusive and continuing jurisdiction.**

~~475.525~~ 475.725. Except as otherwise provided in section ~~475.524~~ 475.724, a court that has appointed a guardian or issued a protective order consistent with sections ~~475.501 to 475.555~~ 475.701 to 475.555 has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

## **Appropriate forum**

~~475.526~~ 475.726. 1. A court of this state having jurisdiction under section ~~475.523~~ 475.723 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

2. If a court of this state declines to exercise its jurisdiction under subsection 1 of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or protective order be promptly filed in another state.

3. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (1) Any expressed preference of the respondent;
  - (2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
  - (3) The length of time the respondent was physically present in or was a legal resident of this or another state;
  - (4) The distance of the respondent from the court in each state;
  - (5) The financial circumstances of the respondent's estate;
  - (6) The nature and location of the evidence;
  - (7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
  - (8) The familiarity of the court of each state with the facts and issues in the proceeding;
- and
- (9) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

## **Jurisdiction declined by reason of conduct**

~~475.527~~ 475.727. 1. If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (1) Decline to exercise jurisdiction;
- (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding



until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) Continue to exercise jurisdiction after considering:

(a) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(b) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection 3 of section ~~475.526~~ 475.726; and

(c) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section ~~475.523~~ 475.723.

2. If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than sections ~~475.501 to 475.555~~ 475.701 to 475.755.

### **Notice of proceeding.**

~~475.528~~ 475.728. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in this state.

### **Proceedings in more than one state.**

~~475.529~~ 475.729. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state as provided in subdivision (1) or (2) of subsection 1 of section ~~475.524~~ 475.724, if a petition for the appointment of a guardian or issuance of a protective order is filed in this and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section ~~475.523~~ 475.723, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section ~~475.523~~ 475.723 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under section ~~475.523~~ 475.723, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the Chapter 475, RSMo, 12.15.2015 "Latest Master Discussion Draft." Text struck through ~~thus~~ is to be deleted; text underlined thus is new or added. Comments welcome to [www.mo-wings.org](http://www.mo-wings.org).

court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

### **Transfer of guardianship or conservatorship to another state.**

~~475.531~~ 475.731. 1. A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

2. Notice of a petition under subsection 1 of this section shall be given to those persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection 1 of this section.

4. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

5. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors set forth in subsection 2 of section ~~475.521~~ 475.721;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Adequate arrangements will be made for management of the protected person's property.

6. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section ~~475.532~~ 475.732; and

(2) The documents required to terminate a guardianship or conservatorship in this state.

**Accepting guardianship or conservatorship transferred from another state.**

~~475.532~~ 475.732. 1. To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to those in section ~~475.531~~ 475.731, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

2. Notice of a petition under subsection 1 of this section shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice shall be given in the same manner as notice is required to be given in this state.

3. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection 1 of this section.

4. The court shall issue an order provisionally granting a petition filed under subsection 1 of this section unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) The guardian or conservator is ineligible for appointment in this state.

5. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section ~~475.531~~ 475.731 transferring the proceeding to this state.

6. Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

7. In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

8. The denial by a court of this state of a petition to accept guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under this chapter if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

### **Registration of guardianship orders**

~~475.541~~ 475.741. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

### **Registration of protective orders**

~~475.542~~ 475.742. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

### **Effect of registration**

~~475.543~~ 475.743. 1. Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

2. A court of this state may grant any relief available under sections ~~475.501 to 475.555~~ 475.701 to 475.755 and other law of this state to enforce a registered order.

### **State law applicability**

~~475.544~~ 475.744. Except where inconsistent with sections ~~475.541, 475.542, and 475.543~~ 475.741, 475.742, and 475.743, the laws of this state relating to the registration and recognition of the acts of a foreign guardian, curator, or conservator contained in sections ~~475.335 to 475.340~~ 475.760 to 475.785 shall be applicable.

### **Uniformity of application and construction**

~~475.551~~ 475.751. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

## **Relation to Electronic Signatures in Global and National Commerce Act.**

~~475.552~~ 475.752. Sections ~~475.501 to 475.555~~ 475.701 to 475.755 modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

### **Effective date.**

~~475.555~~ 475.755. 1. Sections ~~475.501~~ 475.701 to ~~475.555~~ 475.755 apply to guardianship and protective proceedings begun on or after August 28, 2011.

2. ~~Articles 1, 3, 4~~ Section 475.701 to 475.706, and sections ~~475.551~~ 475.731 to 475.744 and ~~475.552~~ apply to proceedings begun before August 28, 2011, regardless of whether a guardianship or protective order has been issued.

### **Payment and delivery to foreign guardian or conservator.**

~~475.335~~ 475.760. Any person indebted to a minor or ~~disabled~~ financially incapacitated person or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a minor or ~~disabled~~ financially incapacitated person may pay such debt or deliver such property or instrument to a conservator, curator, committee, guardian of the estate or other like fiduciary appointed by a court of the state of residence of the person, upon being presented with proof of ~~his~~ the person's appointment and an affidavit made by ~~him~~ the person or on ~~his~~ the person's behalf stating:

(1) That no application for appointment of a conservator or conservatorship proceeding relating to the person is pending in this state; and

(2) That the foreign guardian, conservator, committee or curator is entitled to payment or to receive delivery. If the person to whom the affidavit is presented is not aware of any conservatorship proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

### **Effect of filing letters of foreign guardian ~~or curator~~.**

~~475.336~~ 475.765. If no local conservator has been appointed and no petition in a conservatorship proceeding is pending in this state, a domiciliary foreign guardian, ~~curator, committee~~ or conservator may file with a court of a county in this state in which property belonging to the minor or ~~disabled~~ financially incapacitated person is located, authenticated copies of ~~his~~ the conservator's appointment and of any official bond ~~he~~ the conservator has given. Thereafter, ~~he~~ the conservator may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

### **Jurisdiction by act of foreign guardian or conservator**

~~475.337~~ 475.770. A foreign guardian, ~~curator, committee~~ or conservator submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by filing authenticated copies of ~~his~~ the guardian's or conservator's appointment as provided in section ~~475.336~~ 475.765, receiving payment of money or taking delivery of personal property under section ~~475.335~~ 475.760, or doing any act as a guardian or conservator in this state which would have given the state jurisdiction over ~~him~~ the guardian or conservator as an individual. Jurisdiction for receiving payment of money or taking delivery of personal property under section ~~475.335~~ 475.760 is limited to the money or value of personal property collected.

### **Service on foreign guardian or conservator**

~~475.338~~ 475.775. 1. Service of process may be made upon the foreign guardian, ~~curator, committee~~ or conservator by registered or certified mail, addressed to ~~his~~ the guardian's or conservator's last reasonably ascertainable address. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign guardian, ~~curator, committee~~ or conservator in the manner in which service could have been made under other laws of this state.

2. If service is made upon a foreign guardian, ~~curator, committee~~ or conservator as provided in subsection 1 of this section, ~~he~~ the guardian or conservator shall be allowed at least thirty days within which to appear or respond.

### **Nonresident domiciliary guardian or conservator**

~~475.339~~ 475.780. Notwithstanding any other provision of law, a domiciliary guardian, ~~committee, curator~~ or conservator of a nonresident person, although a nonresident of this state or a corporation of another state or country, whether or not authorized to do business in this state, may act as such domiciliary guardian or conservator in this state under sections ~~475.335~~ 475.760 and ~~475.336~~ 475.765 and may be appointed and act as local guardian or conservator under section ~~475.030~~ 475.260.

### **Mortgage or sale of real estate of ward by nonresident conservator.**

~~475.340~~ 475.785. 1. When a nonresident person, owning real estate in this state, has a guardian, ~~committee, curator~~ or conservator of the estate in the state or territory in which ~~he~~ the person resides, the probate division of the circuit court in the proper county may authorize ~~his~~ the person's guardian, ~~committee, curator~~ or conservator of the estate, either in person or by ~~his~~ the person's agent, acting under power of attorney, to mortgage, or renew or extend any mortgage, on the person's real estate, or to sell the real estate and receive the proceeds of sale, and in case the person dies before the sale is completed, the guardian, ~~curator~~, conservator, or agent shall complete the sale and pay the proceeds to the personal representative of the person.

2. Before any order is made for the payment of money to a nonresident guardian, ~~curator, committee~~ or conservator of the estate, or for the sale, mortgage, or renewal or extension of a



mortgage on the property of the person by ~~him~~ the guardian or conservator, ~~he~~ the guardian or conservator shall produce satisfactory evidence to the court that ~~he~~ the guardian or conservator has given bond and security, as ~~guardian, curator, committee or conservator~~, in the state or territory in which ~~he~~ the guardian or conservator and the person reside, in an amount sufficient under the laws of the state or territory in which ~~he~~ the guardian or conservator and ~~his~~ the ward reside to cover the sum to be paid ~~him~~ to the guardian or conservator or the appraised value of the property to be sold, in addition to such other property as is in ~~his~~ the guardian or conservator's hands; and the proof shall consist of a copy of the record setting forth ~~his~~ the guardian's or conservator's appointment as ~~guardian, committee, curator or conservator~~, and also a copy of ~~his~~ the guardian's or conservator's bond, executed as such, certified according to the act of Congress which regulates the authentication of records.

### **Conservator of the estate of nonresident minors and financially incapacitated persons**

~~475.095~~ 475.790. 1. If any minor or ~~disabled~~ financially incapacitated person domiciled and residing without this state has any estate within this state, the probate division of the circuit court of the county in which the estate or any part thereof is located may appoint some competent person to be conservator of the estate of the minor or ~~disabled~~ financially incapacitated person and the conservatorship which is first lawfully granted of the estate of the minor or ~~disabled~~ financially incapacitated person extends to all of the estate of such person within this state and excludes the jurisdiction of every other court.

2. The court and the conservator of the estate of the minor or ~~disabled~~ financially incapacitated person have the same powers and shall perform the same duties, and are under the same restrictions and requirements, in all respects, as far as the same may apply, as provided in this code for the court and the conservators of estates of resident minors and ~~disabled~~ financially incapacitated persons.

### **Estate delivered by resident conservator to foreign guardian or conservator, when**

~~475.310~~ 475.795. Whenever it appears to the court that any protectee, having a conservator in this state, is not a resident of this state, and has a guardian, ~~conservator, committee~~ or curator in another state, who has a bond adequate to protect the estate, the court may authorize or compel the conservator of such protectee to deliver over to the foreign guardian or conservator ~~conservator, committee~~ or curator all the property of which ~~he~~ the conservator may have the custody, belonging to the protectee, and make a full and perfect settlement of ~~his~~ the conservatorship with the foreign guardian, ~~conservator, committee~~ or curator. Before the court makes any order under this section, notice of the application therefor shall be given the resident conservator and after hearing the court may grant or refuse the order in accordance with the best interests of the protectee. When such an order is made, the receipt of the foreign guardian-~~or conservator, committee~~ or curator fully discharges the resident conservator, and ~~his~~ the conservator's sureties, from all liability on account of the property delivered to the foreign guardian or conservator, ~~committee~~ or curator. This section applies when the protectee or ~~his~~ the protectee's family, being residents of this state, remove to another state or when the court finds it is to the best interests of the protectee that ~~his~~ the protectee's residence be moved to another state.

**Application to fiduciaries of other states with comparable powers and duties**

475.798. The provisions of sections 475.760 through 475.795 shall apply to all fiduciaries appointed pursuant to the orders of a court of a foreign state with powers and duties comparable to guardians and conservators appointed under the laws of this state.