

**Reorganization and Revision of Chapter 475 — Related Sections**  
**Latest Master Discussion Draft, October 20, 2015**

**Revisions of related sections affected by Chapter 475 revisions**

<b>10/20/15 Draft §</b>	<b>Existing RSMo §</b>	<b>Headnote (i.e., not part of law but key words to aid in reading sections—some proposed, some actual)</b>	<b>Page Begins</b>
1.020	1.020	Definitions i.e., to be used throughout RSMo.)	1
115.133	115.133	Qualifications of Voters	3
115.195	115.195	Death, felony, and misdemeanor convictions, persons adjudged incapacitated--records, when obtained.	4
302.010	302.010	Definitions in Chapter on Driving	4
302.060	302.060	Beginning January 1, 2017--License not to be issued to whom, exceptions--reinstatement requirements.	7
404.703	404.703	Definitions in chapter 404, the Missouri Durable Power of Attorney Law	10
404.727	404.727	Action for Accounting by Agent under durable power of attorney	11
442.035	442.035	Conveyance of estates by the entireties by minors or disabled persons, conservator's powers and duties.	13
451.300	451.300	Conveyance of property when one of the spouses is financially incapacitated and under conservatorship or a guardian ad litem is appointed.	15
452.314	452.314	Guardian for incapacitated person may file motion in domestic matters or a petition for dissolution or separation if ward is a victim of spousal abuse.	15
473.092	473.092	Court may order administration previously commenced pursuant to conservatorship law, dispensed with, when.	16
473.743	473.743	Duty of public administrator to take charge of estates, when.	16

**Related Sections Affected by Chapter 475 Revisions**

**Definitions.**

1.020. As used in the statutory laws of this state, unless otherwise specially provided or unless plainly repugnant to the intent of the legislature or to the context thereof:

(1) “Certified mail” or “certified mail with return receipt requested”, includes certified mail carried by the United States Postal Service, or any parcel or letter carried by an overnight, express, or ground delivery service that allows a sender or recipient to electronically track its location and provides record of the signature of the recipient;

(2) "County or circuit attorney" means prosecuting attorney;

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 “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).

~~(6) "Handicap"~~ (3) "Disability" means a mental or physical impairment that substantially limits one or more major life activities, whether the impairment is congenital or acquired by accident, injury, or disease, and where the impairment is verified by medical findings;

~~(3) (4)~~ (4) "Executor" includes administrator or personal representative where the subject matter applies to an administrator or personal representative;

~~(4) (5)~~ (5) "General election" means the election required to be held on the Tuesday succeeding the first Monday of November, biennially;

~~(5) (6)~~ (6) "Guardian", if used in a section in a context relating to property rights or obligations, means conservator of the estate as defined in chapter 475. "Guardianship", if used in a section in a context relating to rights and obligations other than property rights or obligations, means guardian of the person as defined in chapter 475;

(7) "Heretofore" means any time previous to the day when the statute containing it takes effect; and "hereafter" means the time after the statute containing it takes effect;

(8) "In vacation" includes any adjournment of court for more than one day whenever any act is authorized to be done by or any power given to a court, or judge thereof in vacation, or whenever any act is authorized to be done by or any power given to a clerk of any court in vacation;

(9) "Incompetent", if used in a section in a context relating to actual occupational ability without reference to a court adjudication of incompetency, means the actual ability of a person to perform in that occupation. "Incompetent", if used in a section in a context relating to the property rights and obligations of a person, means a ~~disabled~~ financially incapacitated person as defined in chapter 475. "Incompetent", if used in a section in a context relating to the rights and obligations of a person other than property rights and obligations, means an incapacitated person as defined in chapter 475;

(10) "Justice of the county court" means commissioner of the county commission;

(11) "Month" and "year". "Month" means a calendar month, and "year" means a calendar year unless otherwise expressed, and is equivalent to the words year of our Lord;

(12) The word "person" may extend and be applied to bodies politic and corporate, and to partnerships and other unincorporated associations;

(13) "Personal property" includes money, goods, chattels, things in action and evidences of debt;

(14) "Place of residence" means the place where the family of any person permanently resides in this state, and the place where any person having no family generally lodges;

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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).

(15) "Preceding" and "following", when used by way of reference to any section of the statutes, mean the section next preceding or next following that in which the reference is made, unless some other section is expressly designated in the reference;

(16) "Property" includes real and personal property;

(17) "Real property" or "premises" or "real estate" or "lands" is coextensive with lands, tenements and hereditaments;

(18) "State", when applied to any of the United States, includes the District of Columbia and the territories, and the words "United States" includes such district and territories;

(19) "Under legal disability" includes persons within the age of minority or of unsound mind or who are incapacitated or financially incapacitated as those terms are defined in Chapter 475 or imprisoned;

(20) "Ward", if used in a section in a context relating to the property rights and obligations of a person, means a protectee as defined in chapter 475. "Ward", if used in a section in a context relating to the rights and obligations of a person other than property rights and obligations, means a ward as defined in chapter 475;

(21) "Will" includes the words testament and codicil;

(22) "Written" and "in writing" and "writing word for word" includes printing, lithographing, or other mode of representing words and letters, but in all cases where the signature of any person is required, the proper handwriting of the person, or ~~his~~ the person's mark, is intended.

### **Qualifications of voters.**

115.133.1. Except as provided in subsection 2 of this section, any citizen of the United States who is a resident of the state of Missouri and seventeen years and six months of age or older shall be entitled to register and to vote in any election which is held on or after ~~his~~ the person's eighteenth birthday.

2. No person who is adjudged incapacitated shall be entitled to register or vote unless the right to vote has been expressly retained for that person in a judgment or order of the court having jurisdiction of that person. A person who has been adjudged partially incapacitated retains the right to register and vote unless those rights have been expressly denied to that person in a judgment or order of the court having jurisdiction of that person.

3. No person shall be entitled to vote:

(1) While confined under a sentence of imprisonment;

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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).

(2) While on probation or parole after conviction of a felony, until finally discharged from such probation or parole; or

(3) After conviction of a felony or misdemeanor connected with the right of suffrage.

4. Except as provided in federal law or federal elections and in section 115.277, no person shall be entitled to vote if the person has not registered to vote in the jurisdiction of ~~his or her~~ the person's residence prior to the deadline to register to vote.

**Death, felony, and misdemeanor convictions, persons adjudged incapacitated--records, when obtained.**

115.195. 1. At least once each month, the state or local registrar of vital statistics shall provide to the election authority a list of the name and address, if known, of each person over eighteen years of age in its jurisdiction whose death has been reported to him or her and provide a copy of the list of any death reported in the state to the secretary of state. The secretary of state shall notify the election authority of the jurisdiction in which the deceased resided of the information received pursuant to this subsection.

2. At least once each month, the clerk of the circuit court of each county and city not within a county shall provide to the election authority a list of the name and address, if known, of each person over eighteen years of age in the court's jurisdiction who has been convicted of any felony, or of a misdemeanor connected with the right of suffrage. A copy of the list shall also be submitted to the secretary of state. The secretary of state shall notify the election authority of the jurisdiction in which an offender resides of the information received pursuant to this subsection.

3. At least once each month, the clerk of the probate division of the circuit court of each county and city not within a county shall provide to the election authority a list of the name and address, if known, of each person over eighteen years of age in the court's jurisdiction who has been adjudged incapacitated, has not had the right to vote retained by order or judgment, and has not been restored to capacity. A copy of the list shall also be submitted to the secretary of state. The secretary of state shall notify the election authority of the jurisdiction in which such person resides of the information received pursuant to this subsection.

4. All state and local registrars and all clerks of probate divisions of the circuit courts and circuit courts shall provide the information specified in this section, without charge, to the election authority or the secretary of state.

**Definitions in Chapter on Driving.**

302.010. Except where otherwise provided, when used in this chapter, the following words and phrases mean:

(1) "Circuit court", each circuit court in the state;

- (2) "Commercial motor vehicle", a motor vehicle designed or regularly used for carrying freight and merchandise, or more than fifteen passengers;
- (3) "Conviction", any final conviction; also a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction, except that when any conviction as a result of which points are assessed pursuant to section [302.302](#) is appealed, the term "conviction" means the original judgment of conviction for the purpose of determining the assessment of points, and the date of final judgment affirming the conviction shall be the date determining the beginning of any license suspension or revocation pursuant to section [302.304](#);
- (4) "Criminal history check", a search of criminal records, including criminal history record information as defined in section [43.500](#), maintained by the Missouri state highway patrol in the Missouri criminal records repository or by the Federal Bureau of Investigation as part of its criminal history records, including, but not limited to, any record of conviction, plea of guilty or nolo contendere, or finding of guilty in any state for any offense related to alcohol, controlled substances, or drugs;
- (5) "Director", the director of revenue acting directly or through the director's authorized officers and agents;
- (6) "Farm tractor", every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry;
- (7) "Highway", any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways, or alleys in any municipality;
- (8) "Incompetent to drive a motor vehicle", a person who has become physically incapable of meeting the prescribed requirements of an examination for an operator's license, or who has been adjudged by a probate division of the circuit court in a capacity hearing of being incapacitated unless the court specifically enters an order that the person can drive;
- (9) "License", a license issued by a state to a person which authorizes a person to operate a motor vehicle;
- (10) "Motor vehicle", any self-propelled vehicle not operated exclusively upon tracks except motorized bicycles, as defined in section [307.180](#);
- (11) "Motorcycle", a motor vehicle operated on two wheels; however, this definition shall not include motorized bicycles as defined in section [301.010](#);
- (12) "Motortricycle", a motor vehicle operated on three wheels, including a motorcycle operated with any conveyance, temporary or otherwise, requiring the use of a third wheel;

(13) "Moving violation", that character of traffic violation where at the time of violation the motor vehicle involved is in motion, except that the term does not include the driving of a motor vehicle without a valid motor vehicle registration license, or violations of sections [304.170](#) to [304.240](#), inclusive, relating to sizes and weights of vehicles;

(14) "Municipal court", every division of the circuit court having original jurisdiction to try persons for violations of city ordinances;

(15) "Nonresident", every person who is not a resident of this state;

(16) "Operator", every person who is in actual physical control of a motor vehicle upon a highway;

(17) "Owner", a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of sections [302.010](#) to [302.540](#);

(18) "Record" includes, but is not limited to, papers, documents, facsimile information, microphotographic process, electronically generated or electronically recorded information, digitized images, deposited or filed with the department of revenue;

(19) "Residence address", "residence", or "resident address" shall be the location at which a person has been physically present, and that the person regards as home. A residence address is a person's true, fixed, principal, and permanent home, to which a person intends to return and remain, even though currently residing elsewhere;

(20) "Restricted driving privilege", a sixty-day driving privilege issued by the director of revenue following a suspension of driving privileges for the limited purpose of driving in connection with the driver's business, occupation, employment, formal program of secondary, postsecondary or higher education, or for an alcohol education or treatment program or certified ignition interlock provider, or a ninety-day interlock restricted privilege issued by the director of revenue for the limited purpose of driving in connection with the driver's business, occupation, employment, seeking medical treatment for such driver or a dependent family member, attending school or other institution of higher education, attending alcohol- or drug-treatment programs, seeking the required services of a certified ignition interlock provider, fulfilling court obligations, including required appearances and probation and parole obligations, religious services, the care of a child or children, including scheduled visitation or custodial obligations pursuant to a court order, fueling requirements for any vehicle utilized, and seeking basic nutritional requirements;

(21) "School bus", when used in sections [302.010](#) to [302.540](#), means any motor vehicle, either publicly or privately owned, used to transport students to and from school, or to transport pupils

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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).

properly chaperoned to and from any place within the state for educational purposes. The term "school bus" shall not include a bus operated by a public utility, municipal corporation or common carrier authorized to conduct local or interstate transportation of passengers when such bus is not traveling a specific school bus route but is:

- (a) On a regularly scheduled route for the transportation of fare-paying passengers; or
- (b) Furnishing charter service for the transportation of persons enrolled as students on field trips or other special trips or in connection with other special events;

(22) "School bus operator", an operator who operates a school bus as defined in subdivision (21) of this section in the transportation of any schoolchildren and who receives compensation for such service. The term "school bus operator" shall not include any person who transports schoolchildren as an incident to employment with a school or school district, such as a teacher, coach, administrator, secretary, school nurse, or janitor unless such person is under contract with or employed by a school or school district as a school bus operator;

(23) "Signature", any method determined by the director of revenue for the signing, subscribing or verifying of a record, report, application, driver's license, or other related document that shall have the same validity and consequences as the actual signing by the person providing the record, report, application, driver's license or related document;

(24) "Substance abuse traffic offender program", a program certified by the division of alcohol and drug abuse of the department of mental health to provide education or rehabilitation services pursuant to a professional assessment screening to identify the individual needs of the person who has been referred to the program as the result of an alcohol- or drug-related traffic offense. Successful completion of such a program includes participation in any education or rehabilitation program required to meet the needs identified in the assessment screening. The assignment recommendations based upon such assessment shall be subject to judicial review as provided in subsection 14 of section [302.304](#) and subsections 1 and 5 of section [302.540](#);

(25) "Vehicle", any mechanical device on wheels, designed primarily for use, or used on highways, except motorized bicycles, vehicles propelled or drawn by horses or human power, or vehicles used exclusively on fixed rails or tracks, or cotton trailers or motorized wheelchairs operated by handicapped persons.

**Beginning January 1, 2017--License not to be issued to whom,exceptions--reinstatement requirements.**

[302.060](#). 1. The director shall not issue any license and shall immediately deny any driving privilege:

- (1) To any person who is under the age of eighteen years, if such person operates a motor vehicle in the transportation of persons or property as classified in section [302.015](#);

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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).



- (2) To any person who is under the age of sixteen years, except as hereinafter provided;
- (3) To any person whose license has been suspended, during such suspension, or to any person whose license has been revoked, until the expiration of one year after such license was revoked;
- (4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;
- (5) To any person who has previously been adjudged to be incapacitated and who at the time of application has not been restored to partial capacity, unless the court specifically enters an order that the person can drive;
- (6) To any person who, when required by this law to take an examination, has failed to pass such examination;
- (7) To any person who has an unsatisfied judgment against such person, as defined in chapter 303, until such judgment has been satisfied or the financial responsibility of such person, as described in section [303.120](#), has been established;
- (8) To any person whose application shows that the person has been convicted within one year prior to such application of violating the laws of this state relating to failure to stop after an accident and to disclose the person's identity or driving a motor vehicle without the owner's consent;
- (9) To any person who has been convicted more than twice of violating state law, or a county or municipal ordinance where the defendant was represented by or waived the right to an attorney in writing, relating to driving while intoxicated; except that, after the expiration of ten years from the date of conviction of the last offense of violating such law or ordinance relating to driving while intoxicated, a person who was so convicted may petition the circuit court of the county in which such last conviction was rendered and the court shall review the person's habits and conduct since such conviction, including the results of a criminal history check as defined in section [302.010](#). If the court finds that the petitioner has not been found guilty of, and has no pending charges for any offense related to alcohol, controlled substances or drugs and has no other alcohol-related enforcement contacts as defined in section [302.525](#) during the preceding ten years and that the petitioner's habits and conduct show such petitioner to no longer pose a threat to the public safety of this state, the court shall order the director to issue a license to the petitioner if the petitioner is otherwise qualified pursuant to the provisions of sections [302.010](#) to [302.540](#). No person may obtain a license pursuant to the provisions of this subdivision through court action more than one time;
- (10) To any person who has been found guilty of acting with criminal negligence while driving while intoxicated to cause the death of another person, or to any person who has been convicted twice within a five-year period of violating state law, county or municipal ordinance of driving while intoxicated, or any other intoxication-related traffic offense as defined in section [577.001](#), except that, after the expiration of five years from the date of conviction of the last offense of

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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).



violating such law or ordinance, a person who was so convicted may petition the circuit court of the county in which such last conviction was rendered and the court shall review the person's habits and conduct since such conviction, including the results of a criminal history check as defined in section [302.010](#). If the court finds that the petitioner has not been found guilty of, and has no pending charges for any offense related to alcohol, controlled substances, or drugs and has no other alcohol-related enforcement contacts as defined in section [302.525](#) during the preceding five years, and that the petitioner's habits and conduct show such petitioner to no longer pose a threat to the public safety of this state, the court shall order the director to issue a license to the petitioner if the petitioner is otherwise qualified pursuant to the provisions of sections [302.010](#) to [302.540](#);

(11) To any person who is otherwise disqualified pursuant to the provisions of this chapter, chapter 303, or section [544.046](#);

(12) To any person who is under the age of eighteen years, if such person's parents or legal guardians file a certified document with the department of revenue stating that the director shall not issue such person a driver's license. Each document filed by the person's parents or legal guardians shall be made upon a form furnished by the director and shall include identifying information of the person for whom the parents or legal guardians are denying the driver's license. The document shall also contain identifying information of the person's parents or legal guardians. The document shall be certified by the parents or legal guardians to be true and correct. This provision shall not apply to any person who is legally emancipated. The parents or legal guardians may later file an additional document with the department of revenue which reinstates the person's ability to receive a driver's license.

2. Any person whose license is reinstated under the provisions of subdivision (9) or (10) of subsection 1 of this section shall be required to file proof with the director of revenue that any motor vehicle operated by the person is equipped with a functioning, certified ignition interlock device as a required condition of reinstatement. The ignition interlock device required for reinstatement under this subsection and for obtaining a limited driving privilege under paragraph (a) or (b) of subdivision (8) of subsection 3 of section [302.309](#) shall have a photo identification technology feature, and a court may require a global positioning system feature for such device. The ignition interlock device shall further be required to be maintained on all motor vehicles operated by the person for a period of not less than six months immediately following the date of reinstatement. If the monthly monitoring reports show that the ignition interlock device has registered any confirmed blood alcohol concentration readings above the alcohol setpoint established by the department of transportation or that the person has tampered with or circumvented the ignition interlock device within the last three months of the six-month period of required installation of the ignition interlock device, then the period for which the person must maintain the ignition interlock device following the date of reinstatement shall be extended until the person has completed three consecutive months with no violations as described in this section. If the person fails to maintain such proof with the director, the license shall be suspended until proof as required by this section is filed with the director.

3. Any person who petitions the court for reinstatement of his or her license pursuant to subdivision (9) or (10) of subsection 1 of this section shall make application with the Missouri state highway patrol as provided in section [43.540](#), and shall submit two sets of fingerprints collected pursuant to standards as determined by the highway patrol. One set of fingerprints shall be used by the highway patrol to search the criminal history repository and the second set shall be forwarded to the Federal Bureau of Investigation for searching the federal criminal history files. At the time of application, the applicant shall supply to the highway patrol the court name and case number for the court where he or she has filed his or her petition for reinstatement. The applicant shall pay the fee for the state criminal history check pursuant to section [43.530](#) and pay the appropriate fee determined by the Federal Bureau of Investigation for the federal criminal history record. The Missouri highway patrol, upon receipt of the results of the criminal history check, shall forward a copy of the results to the circuit court designated by the applicant and to the department. Notwithstanding the provisions of section [610.120](#), all records related to any criminal history check shall be accessible and available to the director and the court.

### **Definitions in chapter 404, the Missouri Durable Power of Attorney Law.**

404.703. As used in sections [404.700](#) to [404.735](#) the following terms mean:

- (1) "Attorney in fact", an individual or corporation appointed to act as agent of a principal in a written power of attorney;
- (2) "Court", the circuit court including the probate division of the circuit court;
- (3) ~~"Disabled"~~ "Financially incapacitated" or "incapacitated", a person who is wholly or partially ~~disabled~~ financially incapacitated or incapacitated as defined in section [475.010](#) or in a similar law of the place having jurisdiction of the person whose capacity is in question;
- (4) "Durable power of attorney", a written power of attorney in which the authority of the attorney in fact does not terminate in the event the principal becomes disabled or incapacitated or in the event of later uncertainty as to whether the principal is dead or alive and which complies with subsection 1 of section [404.705](#) or is durable under the laws of any of the following places:
  - (a) The law of the place where executed;
  - (b) The law of the place of the residence of the principal when executed; or
  - (c) The law of a place designated in the written power of attorney if that place has a reasonable relationship to the purpose of the instrument;
- (5) "Legal representative", a decedent's personal representative, a guardian of a person or the conservator of the estate of a person, whether denominated as general, limited or temporary, or a person legally authorized to perform substantially the same functions;

- (6) "Person", an individual, corporation, or other legal entity;
- (7) "Personal representative", a legal representative of a decedent's estate as defined in section [472.010](#);
- (8) "Power of attorney", a written power of attorney, either durable or not durable;
- (9) "Principal's family", the principal's parent, grandparent, uncle, aunt, brother, sister, son, daughter, grandson, granddaughter and their descendants, whether of the whole blood or the half blood, or by adoption, and the principal's spouse, stepparent and stepchild;
- (10) "Third person", any individual, corporation or legal entity that acts on a request from, contracts with, relies on or otherwise deals with an attorney in fact pursuant to authority granted by a principal in a power of attorney and includes a partnership, either general or limited, governmental agency, financial institution, issuer of securities, transfer agent, securities or commodities broker, real estate broker, title insurance company, insurance company, benefit plan, legal representative, custodian or trustee.

#### **Action for Accounting by Agent under durable power of attorney**

404.727. 1. The principal may petition the court for an accounting by the principal's attorney in fact or the legal representative of the attorney in fact. If the principal is disabled, incapacitated or deceased, a petition for accounting may be filed by the principal's legal representative, an adult member of the principal's family or any person interested in the welfare of the principal.

2. Any requirement for an accounting may be waived or an accounting may be approved by the court without hearing, if the accounting is waived or approved by a principal who is not disabled, or by a principal whose legal capacity has been restored, or by all creditors and distributees of a deceased principal's estate whose claims or distributions theretofore have not been satisfied in full. The approval or waiver shall be in writing, signed by the affected persons and filed with the court.

3. For the purposes of subsection 2 of this section, a legal representative or a person providing services to the principal's estate shall not be considered a creditor of the principal's estate; and no express approval or waiver shall be required from the legal representative of a disabled or incapacitated principal if the principal's legal capacity has been restored, or from the personal representative of a deceased principal's estate, or from any other person entitled to compensation or expense for services rendered to a disabled, incapacitated or deceased principal's estate, unless the principal or the principal's estate is unable to pay in full the compensation and expense to which the person rendering the services may be entitled.

4. The principal, the principal's attorney in fact, an adult member of the principal's family or any person interested in the welfare of the principal may petition the probate division of the circuit

court in the county or city where the principal is then residing to determine and declare whether a principal, who has executed a power of attorney, is a disabled or incapacitated person.

5. If the principal is a ~~disabled~~ financially incapacitated or incapacitated person, on petition of the principal's legal representative, an adult member of the principal's family or any interested person, including a person interested in the welfare of the principal, for good cause shown the court, may:

(1) Order the attorney in fact to exercise or refrain from exercising authority in a durable power of attorney in a particular manner or for a particular purpose;

(2) Modify the authority of an attorney in fact under a durable power of attorney;

(3) Declare suspended a power of attorney that is not durable;

(4) Terminate a durable power of attorney;

(5) Remove the attorney in fact under a durable power of attorney;

(6) Confirm the authority of an attorney in fact or a successor attorney in fact to act under a durable power of attorney; and

(7) Issue such other orders as the court finds will be in the best interest of the ~~disabled~~ financially incapacitated or incapacitated principal, including appointment of a guardian or conservator for the principal.

6. If, after notice and hearing, the court determines that there has been a prima facie showing that the principal is a ~~disabled~~ financially incapacitated or incapacitated person and that the attorney in fact has breached his fiduciary duty to the principal or that there is a reasonable likelihood that he may do so in the immediate future, the court may, in its discretion, issue an order that some or all of the authority granted by the power of attorney be suspended or modified, and that a different attorney in fact be authorized to exercise some or all of the powers granted by the power of attorney. Such attorney in fact may be designated by the court. The court may require any person petitioning for any such order to file a bond in such amount and with such sureties as required by the court to indemnify either the attorney in fact who has been acting on behalf of the principal or the principal and the principal's successors in interest for the expenses, including attorney's fees, incurred by any such persons with respect to such proceeding. The court may, after hearing, allow payment or enter judgment for any such amount in the manner as provided by subsection 6 of section [404.731](#). None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to all persons identified in a verified statement supplied by the petitioner who is requesting such action identifying the immediate relatives of the principal and any other persons known to the petitioner to be interested in the welfare of the principal; except that in the event of an emergency as determined by the court, the court may, without notice, enter such temporary order as seems proper to the court, but no such

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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).

temporary order shall be effective for more than thirty days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

7. If a power of attorney is suspended or terminated by the court or the attorney in fact is removed by the court, the court may require an accounting from the attorney in fact and order delivery of any property belonging to the principal and copies of any necessary records of the attorney in fact concerning the principal's property and affairs to a successor attorney in fact or the principal's legal representative.

8. In a proceeding under sections [404.700](#) to [404.735](#) or in any other proceeding, or upon petition of an attorney in fact or successor, the court may:

(1) Require or permit an attorney in fact under a durable power of attorney to account;

(2) Authorize the attorney in fact under a durable power of attorney to enter into any transaction, or approve, ratify, confirm and validate any transaction entered into by the attorney in fact that the court finds is, was or will be beneficial to the principal and which the court has power to authorize for a guardian or conservator under chapter 475; and

(3) Relieve the attorney in fact of any obligation to exercise authority for a disabled or incapacitated principal under a durable power of attorney.

9. Unless previously barred by adjudication, consent or limitation, any cause of action against an attorney in fact or successor for breach of duty to the principal shall be barred as to any principal who has received an account or other statement fully disclosing the matter unless a proceeding to assert the cause of action is commenced within two years after receipt of the account or statement by him or, if the principal is a disabled or incapacitated person, by a guardian or conservator of his estate; provided that, if a disabled or incapacitated person has no guardian or conservator of his estate at the time an account or statement is presented, then the cause of action shall not be barred until one year after the removal of the principal's disability or incapacity, one year after the appointment of a conservator for the principal, or one year after the death of the principal. The cause of action thus barred does not include any action to recover from an attorney in fact or successor for fraud, misrepresentation or concealment related to the settlement of any transaction involving the agency relationship of the attorney in fact with the principal.

**Conveyance of estates by the entireties by minors or financially incapacitated persons, conservator's powers and duties.**

[442.035](#). 1. If any property, real or personal, including homestead property, is held by a husband and wife as tenants by the entirety, whether such entireties estate was created before or is created after July 1, 1997, and if one spouse is an adult and competent and the other spouse is under the age of eighteen or ~~disabled~~ financially incapacitated as defined in chapter 475, or if both spouses are under the age of eighteen or ~~disabled~~ financially incapacitated, or if one spouse is under the age of eighteen and the other is ~~disabled~~ financially incapacitated, the conservator of any such

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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).

spouse, 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 property that the protectee could do if such protectee were an adult and competent; 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 entiresities. In the event 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 entiresities is the conservator of the other spouse, such conservator shall not represent such conservator's protectee in any negotiations for agreement respecting disposition of the entiresities 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 guardian ad litem. In such cases, on petition or application by the adult and competent spouse, acting individually or as conservator, for disposition of the entiresities property, the court shall appoint a guardian ad litem to represent the protectee in the matter of a proposed disposition of the property, and the guardian 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. In the event the agreed proposed disposition is approved by the court, the guardian 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. In the event no agreement is reached after a reasonable time with reference to disposition of the property, the guardian 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.

**Conveyance of property when one of the spouses is financially incapacitated and under conservatorship or a guardian ad litem is appointed.**

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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).



451.300. The spouse of any person who is under conservatorship may join with the conservator in making partition of his or her own real estate held in joint tenancy, or in common, and may, jointly with the conservator, make any release or other conveyance necessary and proper for that purpose; and he or she may sell and convey his or her own real estate by joining with the conservator in such sale and conveyance, to be under the order and supervision of the proper court, and deeds executed jointly by himself or herself and such conservator shall have the same force and effect as if done with his or her spouse if such spouse had been under no disability; and in all cases where the real estate of such person shall be sold by his or her conservator in due conformity to law, he or she may relinquish his or her right in such real estate as fully as if his or her spouse joined in the deed of release; and when a person is found to be ~~disabled~~ financially incapacitated as defined in chapter 475, and his or her spouse is the owner of real estate in this state that he or she desires to convey, then, upon provision made for such ~~disabled~~ financially incapacitated person, according to his or her needs, and according to the ability, situation in life and circumstances of his or her spouse, and to his or her safely secured under the order and control of the proper court, the conservator of such ~~disabled~~ financially incapacitated person may, under the order and approval of the court, join in a deed, on behalf of such ~~disabled~~ financially incapacitated person, for the purpose of conveying his or her homestead, interest in such real estate; and if he or she has no conservator, then the court may appoint a guardian ad litem pursuant to chapter 475 who may, in like manner, upon the conditions and under the order of the court, join with the spouse on his or her behalf in such deed; and such conveyance, when executed, as aforesaid, by either the conservator or the guardian ad litem and the spouse of such person, shall be as valid and effectual to convey any land owned by such spouse, including his or her homestead, and shall have the effect of releasing the spouse's homestead in the real estate as fully as if he or she had, under no disability, of his or her own free will, executed and acknowledged the same; provided, that no such order of conveyance shall be made by the court until application made thereto, in writing, by such spouse, setting forth the facts, and twenty days' public notice given of the time and place of hearing such application has been given by publication in a weekly newspaper of general circulation published in the county.

**Guardian for incapacitated person may file motion in domestic matters or a petition for dissolution or separation if ward is a victim of spousal abuse.**

452.314. Notwithstanding any other provision of law to the contrary, a guardian for an incapacitated person may file a:

(1) Any motion permissible under chapter 452 that may be filed on behalf of such incapacitated person;

(2) A petition for dissolution of the marriage of, or if the incapacitated person has a history of religious objection to divorce, the guardian may file for a legal separation for such incapacitated person and may give testimony in support of the allegations contained in the petition, if the guardian has reasonable cause to believe that the incapacitated person has been the victim of abuse by the spouse of such incapacitated person.

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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 may order administration previously commenced pursuant to conservatorship law, dispensed with, when.**

473.092. At any time during a proceeding commenced pursuant to this chapter, or, after the death of a ~~ward~~ protectee, at any time during a proceeding commenced pursuant to chapter 475, upon petition by any person who could have applied to the court pursuant to section 473.090 or section 473.097, if the court finds the requirements of either section would have been initially met, the court may order the pending matter be completed under section 473.090 or section 473.097 and proceed pursuant to either section as authorized by statute. The court may proceed with or without notice to any interested party.

**Duty of public administrator to take charge of estates, when.**

473.743. It shall be the duty of the public administrator to take into ~~his or her~~ the public administrator's charge and custody the estates of all deceased persons, and the person and estates of all minors, and the estates or person and estate of all incapacitated persons in ~~his or her~~ the public administrator's county, in the following cases:

- (1) When a stranger dies intestate in the county without relations, or dies leaving a will, and the personal representative named is absent, or fails to qualify;
- (2) When persons die intestate without any known heirs;
- (3) When persons unknown die or are found dead in the county;
- (4) When money, property, papers or other estate are left in a situation exposed to loss or damage, and no other person administers on the same;
- (5) When any estate of any person who dies intestate therein, or elsewhere, is left in the county liable to be injured, wasted or lost, when the intestate does not leave a known husband, widow or heirs in this state;
- (6) The persons of all minors under the age of fourteen years, whose parents are dead, and who have no legal guardian or conservator;
- (7) The estates of all minors whose parents are dead, or, if living, refuse or neglect to qualify as conservator, or, having qualified have been removed, or are, from any cause, incompetent to act as such conservator, and who have no one authorized by law to take care of and manage their estate;
- (8) The estates or person and estate of all ~~disabled~~ financially incapacitated or incapacitated persons, as defined in Chapter 475, in ~~his or her~~ 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;
- (9) Where from any other good cause, the court shall order ~~him~~ the public administrator to take possession of any estate to prevent its being injured, wasted, purloined or lost;

Chapter 475, RSMo Revision, Conforming Changes to sections in other Chapters, 10.20.2015 "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).

(10) When moneys are delivered to the public administrator from the county coroner;

(11) The public administrator shall act as trustee when appointed by the circuit court or the probate division of the circuit court.