

LEGISLATIVE BILL 172

Approved by the Governor May 7, 2013

Introduced by Coash, 27; Wightman, 36.

FOR AN ACT relating to guardianships and conservatorships; to amend sections 30-2601, 30-2628, and 30-2647, Revised Statutes Cumulative Supplement, 2012; to redefine a term; to change and provide for court filings as prescribed; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 30-2601, Revised Statutes Cumulative Supplement, 2012, is amended to read:

30-2601 Unless otherwise apparent from the context, in the Nebraska Probate Code:

(1) Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself;

(2) A protective proceeding is a proceeding under the provisions of section 30-2630 to determine that a person cannot effectively manage or apply his or her estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief;

(3) A protected person is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) A ward is a person for whom a guardian has been appointed. A minor ward is a minor for whom a guardian has been appointed solely because of minority;

(5) Full guardianship means the guardian has been granted all powers which may be conferred upon a guardian by law;

(6) Limited guardianship means any guardianship which is not a full guardianship; and

(7) For purposes of article 26 of the Nebraska Probate Code, interested person means children, spouses, those persons who would be the heirs if the ward or person alleged to be incapacitated died without leaving a valid ~~last will and testament~~ who are adults and any trustee of any trust executed by the ward or person alleged to be incapacitated. After the death of a ward, interested person also includes the personal representative of a deceased ward's estate, the deceased ward's heirs in an intestate estate, and the deceased ward's devisees in a testate estate. The meaning of interested person as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. If there are no persons identified as interested persons above, then interested person shall also include any person or entity named as a devisee in the most recently executed ~~last will and testament~~ of the ward or person alleged to be incapacitated.

Sec. 2. Section 30-2628, Revised Statutes Cumulative Supplement, 2012, is amended to read:

30-2628 (a) Except as limited by section 30-2620, a guardian of an incapacitated person has the same powers, rights, and duties respecting the guardian's ward that a parent has respecting the parent's unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as may be specified by order of the court:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, a guardian is entitled to custody of the person of his or her ward and may establish the ward's place of abode within this state or, with court permission, outside of this state. When establishing the ward's place of abode, a guardian shall make every reasonable effort to ensure that the placement is the least restrictive alternative. A guardian shall authorize a placement to a more restrictive environment only after careful evaluation of the need for such placement. The guardian may obtain a professional evaluation or assessment that such placement is in the best interest of the ward.

(2) If entitled to custody of his or her ward, a guardian shall make provision for the care, comfort, and maintenance of his or her ward and, whenever appropriate, arrange for the ward's training and education.

Without regard to custodial rights of the ward's person, a guardian shall take reasonable care of his or her ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his or her ward is in need of protection.

(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical, psychiatric, psychological, or other professional care, counsel, treatment, or service. When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of the ward expressed prior to incompetency to the extent allowable by law. Notwithstanding this provision or any other provision of the Nebraska Probate Code, the ward may authorize the release of financial, medical, and other confidential records pursuant to sections 20-161 to 20-166.

(4) If no conservator for the estate of the ward has been appointed, a guardian shall, within thirty days after appointment, prepare and file with the appointing court a complete inventory of the ward's estate together with the guardian's oath or affirmation that the inventory is complete and accurate so far as the guardian is informed. The guardian shall mail a copy thereof by first-class mail to the ward, if the ward can be located and has attained the age of fourteen years, and to all other interested persons as defined in section 30-2601. The guardian shall file with the court a certificate of mailing showing that copies were sent to all interested persons by first-class mail along with a form to send back to the court that indicates if such person wants to continue receiving notifications about the proceedings. The guardian shall keep suitable records of the guardian's administration and exhibit the same on request of any interested person. To the extent a guardian, who has not been named a conservator, has possession or control of the ward's estate, the guardian shall file with the court an updated inventory every year along with an affidavit of mailing a certificate of mailing showing that copies were sent to all interested persons and, if a bond has been required, to the bonding company by first-class mail, along with a form to send back to the court that indicates if such person wants to continue receiving notifications about the proceedings.

(5) If no conservator for the estate of the ward has been appointed, a guardian may:

(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such person's duty;

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but a guardian may not use funds from his or her ward's estate for room and board which the guardian or the guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. A guardian must exercise care to conserve any excess for the ward's needs; and

(iii) Exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property when authorized by a court acting under the authority of subsection (f) of section 30-3854. In acting under the authority of subsection (f) of section 30-3854, the court shall proceed in the same manner as provided under subdivision (3) of section 30-2637.

(6) A guardian is required to report the condition of his or her ward and of the estate which has been subject to the guardian's possession or control, at least every year and as required by the court or court rule. The court shall receive from any interested person, for a period of thirty days after the filing of the guardian's report, any comments with regard to the need for continued guardianship or amendment of the guardianship order. If the court has reason to believe that additional rights should be returned to the ward or assigned to the guardian, the court shall set a date for a hearing and may provide all protections as set forth for the original finding of incapacity and appointment of a guardian.

(7) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in the Nebraska Probate Code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(c) Nothing in subdivision (a)(3) of this section or in any other part of this section shall be construed to alter the decisionmaking authority of an attorney in fact designated and authorized under sections 30-3401 to 30-3432 to make health care decisions pursuant to a power of attorney for health care.

Sec. 3. Section 30-2647, Revised Statutes Cumulative Supplement, 2012, is amended to read:

30-2647 Within thirty days after appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that the inventory is complete and accurate so far as he or she is informed. The conservator shall mail a copy thereof by first-class mail to the protected person, if the protected person can be located and has attained the age of fourteen years, and to all other interested persons as defined in section 30-2601. The conservator shall file with the court a certificate of mailing showing that copies were sent to all interested persons by first-class mail along with a form to send back to the court that indicates if such person wants to continue receiving notifications about the proceedings. Every conservator shall file an updated inventory with the annual accounting required under section 30-2648. The conservator shall keep suitable records of his or her administration and exhibit the same on request of any interested person.

Sec. 4. Original sections 30-2601, 30-2628, and 30-2647, Revised Statutes Cumulative Supplement, 2012, are repealed.