

LEGISLATIVE BILL 157

Approved by the Governor February 22, 2011

Introduced by Coash, 27; Ashford, 20; Council, 11; Nelson, 6; Wightman, 36.

FOR AN ACT relating to guardianship and conservatorship; to amend sections 25-2708, 25-2911, 25-2943, 30-1601, 30-2209, 30-2210, 30-2211, 30-2601, 30-2613, 30-2618, 30-2620, 30-2626, 30-2628, 30-2629, 30-2630.01, 30-2632, 30-2640, 30-2647, 30-2648, and 30-2655, Reissue Revised Statutes of Nebraska, and section 30-2201, Revised Statutes Cumulative Supplement, 2010; to provide for real estate filings, use of dispute resolution, duties for the State Court Administrator, and ex parte proceedings; to adopt the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; to provide and change duties for guardians and conservators; to provide a penalty; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 25-2708, Reissue Revised Statutes of Nebraska, is amended to read:

25-2708 In any proceeding in the county court involving (1) the probate of wills, (2) the administration of estates, (3) the determination of heirs, (4) the determination of inheritance tax, (5) guardianships, (6) conservatorships, where real estate is any part of the assets of the estate or proceeding, or (7) trusts, where real estate is specifically described as an asset of the trust, the county judge before whom the proceeding is pending shall issue a certificate which shall be filed with the register of deeds of the county in which the real estate is located within ten days after the description of the real estate is filed in the proceeding. A guardian or conservator shall file a copy of his or her letters with the register of deeds in every county in which the ward has real property or an interest in real property. The certificate shall be in the following form:

This is to certify that there is pending in the county court of County, a proceeding

(describe proceeding and name of person involved) in which the following described real estate is involved, to wit:

..... (describe real estate)

County Judge

Sec. 2. Section 25-2911, Reissue Revised Statutes of Nebraska, is amended to read:

25-2911 (1) The following types of cases may be accepted for dispute resolution at an approved center:

- (a) Civil claims and disputes, including, but not limited to, consumer and commercial complaints, disputes between neighbors, disputes between business associates, disputes between landlords and tenants, and disputes within communities;
(b) Disputes concerning child custody, parenting time, visitation, or other access and other areas of domestic relations; and
(c) Juvenile offenses and disputes involving juveniles; and-
(d) Contested guardianship and contested conservatorship proceedings.

(2) An approved center may accept cases referred by a court, an attorney, a law enforcement officer, a social service agency, a school, or any other interested person or agency or upon the request of the parties involved. A case may be referred prior to the commencement of formal judicial proceedings or may be referred as a pending court case. In order for a referral to be effective, all parties involved must consent to such referral. If a court refers a case to an approved center, the center shall provide information to the court as to whether an agreement was reached. If the court requests a copy of the agreement, the center shall provide it.

Sec. 3. Section 25-2943, Reissue Revised Statutes of Nebraska, is amended to read:

25-2943 A court may refer a civil case, including a contested guardianship or contested conservatorship proceeding, to mediation or another form of alternative dispute resolution and, unless otherwise ordered following a hearing upon a motion to object to such referral, may state a date for

the case to return to court. Such date shall be no longer than ninety days after the date the order was signed unless the court grants an extension upon request of the parties. Any agreement or resolution made in mediation or another form of alternative dispute resolution shall be voluntarily entered into by the parties. An individual trial court, an appellate court, or the Supreme Court on its own initiative may adopt rules of practice governing the procedures for referral of cases to mediation and other forms of dispute resolution. Such services may be provided by approved centers on a sliding scale of fees under the Dispute Resolution Act.

Sec. 4. Section 30-1601, Reissue Revised Statutes of Nebraska, is amended to read:

30-1601 (1) In all matters arising under the Nebraska Probate Code and in all matters in county court arising under the Nebraska Uniform Trust Code, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, or guardian ad litem, the appealing party shall, within thirty days after the entry of the judgment or final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) The appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested party person or upon the court's own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs.

Sec. 5. Sections 5 to 27 of this act shall be known and may be cited as the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Sec. 6. In the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:

(1) Adult means an individual who has attained nineteen years of age;

(2) Conservator means a person appointed by the court to administer the property of an adult, including a person appointed under the Nebraska Probate Code for an adult;

(3) Guardian means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under the Nebraska Probate Code for an adult;

(4) Guardianship order means an order appointing a guardian;

(5) Guardianship proceeding means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued;

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

(7) Party means 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, means 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 means an adult for whom a protective order has been issued;

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

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

(12) Record means 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 means an adult for whom a protective order or the appointment of a guardian is sought; and

(14) State means 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.

Sec. 7. A court of this state may treat a foreign country as if it were a state for the purpose of applying sections 5 to 21 and 25 to 27 of this act.

Sec. 8. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. 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.

Sec. 9. (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) Order that an evaluation or assessment be made of the respondent;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under subdivision (a) of this subsection or any other proceeding, any evidence otherwise produced under subdivision (b) of this subsection, and any evaluation or assessment prepared in compliance with an order under subdivision (c) or (d) of this subsection;

(f) 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; or

(g) 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 C.F.R. 160.103, as such regulation existed on January 1, 2011.

(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.

Sec. 10. (1) 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.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an

appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

Sec. 11. (1) For purposes of sections 11 to 19 of this act:

(a) Emergency means 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;

(b) Home state means 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; and

(c) Significant-connection state means 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 13 of this act and subsection (5) of section 20 of this act whether a respondent has a significant connection with a particular state, the court shall consider:

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

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

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

(d) 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.

Sec. 12. Sections 11 to 19 of this act provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Sec. 13. 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 the 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:

(i) A petition for an appointment or order is not filed in the respondent's home state;

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

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in section 16 of this act;

(3) This state does not have jurisdiction under either subdivision (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 14 of this act are met.

Sec. 14. (1) A court of this state lacking jurisdiction under section 13 of this act has special jurisdiction to do any of the following:

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

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

(c) 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 20 of this act.

(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.

Sec. 15. Except as otherwise provided in section 14 of this act, a court that has appointed a guardian or issued a protective order consistent with the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act 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.

Sec. 16. (1) A court of this state having jurisdiction under section 13 of this act 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 issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent;

(b) 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;

(c) The length of time the respondent was physically present in or was a legal resident of this or another state;

(d) The distance of the respondent from the court in each state;

(e) The financial circumstances of the respondent's estate;

(f) The nature and location of the evidence;

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) The familiarity of the court of each state with the facts and issues in the proceeding; and

(i) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Sec. 17. (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:

(a) Decline to exercise jurisdiction;

(b) 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

(c) Continue to exercise jurisdiction after considering:

(i) 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;

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subsection (3) of section 16 of this act; and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 13 of this act.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issued 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 the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Sec. 18. 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 must 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 must be given in the same manner as notice is required to be given in this state.

Sec. 19. 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 under subdivision (1) (a) or (b) of section 14 of this act, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state 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 13 of this act, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 13 of this act before the appointment or issuance of the order; and

(2) If the court in this state does not have jurisdiction under section 13 of this act, 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 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.

Sec. 20. (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 must be given to the 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:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) 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

(c) 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:

(a) 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 in subsection (2) of section 11 of this act;

(b) 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

(c) 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:

(a) 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 21 of this act; and

(b) The documents required to terminate a guardianship or conservatorship in this state.

Sec. 21. (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 20 of this act, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) of this section must 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 must 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:

(a) 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

(b) 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 20 of this act 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 a 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 the Nebraska Probate Code if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Sec. 22. 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. If the incapacitated person does not have a conservator and has real property or an interest in real property in Nebraska, the guardian shall file in every county where such property is located as required by section 25-2708.

Sec. 23. 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 every county in which property belonging to the protected person is located as required by section 25-2708, certified copies of the order and letters of office and of any bond.

Sec. 24. (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 the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and other law of this state to enforce a registered order.

Sec. 25. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 26. The Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, as the act existed on January 1, 2011, but does not modify, limit, or supersede section 101(c) of the act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of the act, 15 U.S.C. 7003(b).

Sec. 27. (1) The Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act applies to guardianship and protective proceedings begun on or after January 1, 2012.

(2) Sections 5 to 10 and 20 to 27 of this act apply to proceedings begun before January 1, 2012, regardless of whether a guardianship or protective order has been issued.

Sec. 28. Section 30-2201, Revised Statutes Cumulative Supplement, 2010, is amended to read:

30-2201 Sections 30-2201 to 30-2902 and sections 5 to 27, 33, and 34 of this act shall be known and may be cited as the Nebraska Probate Code.

Sec. 29. Section 30-2209, Reissue Revised Statutes of Nebraska, is amended to read:

30-2209 Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in the Nebraska Probate Code:

(1) Application means a written request to the registrar for an order of informal probate or appointment under part 3 of Article 24.

(2) Beneficiary, as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer, and as it relates to a charitable trust includes any person entitled to enforce the trust.

(3) Child includes any individual entitled to take as a child under the code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, or a grandchild or any more remote descendant.

(4) Claim, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) Court means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as county court or, for purposes of guardianship of a juvenile over which a separate juvenile court already has jurisdiction, the county court or separate juvenile court.

(6) Conservator means a person who is appointed by a court to manage the estate of a protected person.

(7) Devise, when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(8) Devisee means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(9) Disability means cause for a protective order as described by section 30-2630.

(10) Disinterested witness to a will means any individual who acts as a witness to a will and is not an interested witness to such will.

(11) Distributee means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his or her hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, testamentary trustee includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(12) Estate includes the property of the decedent, trust, or other person whose affairs are subject to the Nebraska Probate Code as originally constituted and as it exists from time to time during administration.

(13) Exempt property means that property of a decedent's estate which is described in section 30-2323.

(14) Fiduciary includes personal representative, guardian, conservator, and trustee.

(15) Foreign personal representative means a personal representative of another jurisdiction.

(16) Formal proceedings mean those conducted before a judge with notice to interested persons.

(17) Guardian means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(18) Heirs mean those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) Incapacitated person is as defined in section 30-2601.

(20) Informal proceedings mean those conducted without notice to

interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(21) Interested Except for purposes of article 26 of the Nebraska Probate Code, interested person includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning 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.

(22) Interested witness to a will means any individual who acts as a witness to a will at the date of its execution and who is or would be entitled to receive any property thereunder if the testator then died under the circumstances existing at the date of its execution, but does not include any individual, merely because of such nomination, who acts as a witness to a will by which he or she is nominated as personal representative, conservator, guardian, or trustee.

(23) Issue of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in the Nebraska Probate Code.

(24) Lease includes an oil, gas, or other mineral lease.

(25) Letters include letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(26) Minor means an individual under nineteen years of age, but in case any person marries under the age of nineteen years his or her minority ends.

(27) Mortgage means any conveyance, agreement, or arrangement in which property is used as security.

(28) Nonresident decedent means a decedent who was domiciled in another jurisdiction at the time of his or her death.

(29) Notice means compliance with the requirements of notice pursuant to subdivisions (a)(1) and (a)(2) of section 30-2220.

(30) Organization includes a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or common interest, or any other legal entity.

(31) Parent includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under the Nebraska Probate Code, by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(32) Person means an individual, a corporation, an organization, a limited liability company, or other legal entity.

(33) Personal representative includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(34) Petition means a written request to the court for an order after notice.

(35) Proceeding includes action at law and suit in equity, but does not include a determination of inheritance tax under Chapter 77, article 20, or estate tax apportionment as provided in sections 77-2108 to 77-2112.

(36) Property includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(37) Protected person is as defined in section 30-2601.

(38) Protective proceeding is as defined in section 30-2601.

(39) Registrar refers to the official of the court designated to perform the functions of registrar as provided in section 30-2216.

(40) Relative or relation of a person means all persons who are related to him or her by blood or legal adoption.

(41) Security includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral-trust certificate, transferable share, voting-trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(42) Settlement, in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(43) Special administrator means a personal representative as

described by sections 30-2457 to 30-2461.

(44) State includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(45) Successor personal representative means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(46) Successors mean those persons, other than creditors, who are entitled to property of a decedent under his or her will or the Nebraska Probate Code.

(47) Supervised administration refers to the proceedings described in Article 24, part 5.

(48) Testacy proceeding means a proceeding to establish a will or determine intestacy.

(49) Testator means the maker of a will.

(50) Trust includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article 27, custodial arrangements pursuant to the Nebraska Uniform Transfers to Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(51) Trustee includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(52) Ward is as defined in section 30-2601.

(53) Will means any instrument, including any codicil or other testamentary instrument complying with sections 30-2326 to 30-2338, which disposes of personal or real property, appoints a personal representative, conservator, guardian, or trustee, revokes or revises an earlier executed testamentary instrument, or encompasses any one or more of such objects or purposes.

Sec. 30. Section 30-2210, Reissue Revised Statutes of Nebraska, is amended to read:

30-2210 Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, (3) incapacitated persons and minors in this state, except as provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, and (4) survivorship and related accounts in this state.

Sec. 31. Section 30-2211, Reissue Revised Statutes of Nebraska, is amended to read:

30-2211 (a) To the full extent permitted by the Constitution of Nebraska, the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and (2) protection of minors and incapacitated persons, except as provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

(b) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Sec. 32. Section 30-2601, Reissue Revised Statutes of Nebraska, 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; and

(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. 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. 33. During the pendency of any proceeding under sections 30-2601 to 30-2661 after a guardian or conservator is appointed, upon application by any interested person and if the accompanying affidavit of such person or his or her agent shows to the court that the ward's or protected person's safety, health, or financial welfare is at issue, the court may issue ex parte orders to address the situation. Ex parte orders issued under this section shall remain in full force and effect for no more than ten days or until a hearing is held thereon, whichever is earlier. Anyone who violates such order after service shall be guilty of a Class II misdemeanor. Any interested person that submits an affidavit under this section in bad faith, or submits an affidavit under this section that lacks a factual basis as determined by the court, shall be ordered to pay the opposing party reasonable attorney's fees and costs.

Sec. 34. (1) A person, except for a financial institution as that term is defined in subdivision (12) of section 8-101 or its officers, directors, employees, or agents or a trust company, who has been nominated for appointment as a guardian or conservator shall obtain a national criminal history record check through a process approved by the State Court Administrator and a report of the results and file such report with the court at least ten days prior to the appointment hearing date, unless waived or modified by the court (a) for good cause shown by affidavit filed simultaneously with the petition for appointment or (b) in the event the protected person requests an expedited hearing under section 30-2630.01.

(2) An order appointing a guardian or conservator shall not be signed by the judge until such report has been filed with the court and reviewed by the judge. Such report, or the lack thereof, shall be certified either by affidavit or by obtaining a certified copy of the report. No report or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conservatorship. The court may waive the requirements of this section for good cause shown.

Sec. 35. Section 30-2613, Reissue Revised Statutes of Nebraska, is amended to read:

30-2613 (1) A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his or her minor and unemancipated child, except that a guardian is not legally obligated to provide from his or her own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He or she must take reasonable care of his or her ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He or she may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He or she also may receive money or property of the ward paid or delivered by virtue of section 30-2603. Any sums so received shall be applied to the ward's current needs for support, care and education, except as provided in ~~subdivisions~~ subsections (2) and (3) of this section. He or she must exercise due care to conserve any excess for the

ward's future needs unless a conservator has been appointed for the estate of the ward, in which case such excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his or her services except as approved by order of court. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his or her ward.

(d) A guardian must report the condition of his or her ward and of the ward's estate which has been subject to his or her possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule, and upon termination of the guardianship settle his or her accounts with the ward or his or her legal representatives and pay over and deliver all of the estate and effects remaining in his or her hands or due from him or her on settlement to the person or persons who shall be lawfully entitled thereto.

(2) The appointment of a guardian for a minor shall not relieve his or her parent or parents, liable for the support of such minor, from their obligation to provide for such minor. For the purposes of guardianship of minors, the application of guardianship income and principal after payment of debts and charges of managing the estate, in relationship to the respective obligations owed by fathers, mothers, and others, for the support, maintenance and education of the minor shall be:

(a) The income and property of the father and mother of the minor in such manner as they can reasonably afford, regard being had to the situation of the family and to all the circumstances of the case;

(b) The guardianship income, in whole or in part, as shall be judged reasonable considering the extent of the guardianship income and the parents' financial ability;

(c) The income and property of any other person having a legal obligation to support the minor, in such manner as the person can reasonably afford, regard being had to the situation of the person's family and to all the circumstances of the case; and

(d) The guardianship principal, either personal or real estate, in whole or in part, as shall be judged for the best interest of the minor, considering all the circumstances of the minor and those liable for his or her support.

(3) Notwithstanding the provisions of subsection (2) of this section, the court may from time to time authorize the guardian to use so much of the guardianship income or principal, whether personal or real estate, as it may deem proper, considering all the circumstances of the minor and those liable for his or her support, if it is shown that (a) an emergency exists which justifies an expenditure, or (b) a fund has been given to the minor for a special purpose and the court can, with reasonable certainty, ascertain such purpose.

(4) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of section 30-2640.

(5) A guardian shall not change a ward's place of abode to a location outside of the State of Nebraska without court permission.

Sec. 36. Section 30-2618, Reissue Revised Statutes of Nebraska, is amended to read:

30-2618 ~~The~~ Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present, or where property is located if he or she is a nonresident. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Sec. 37. Section 30-2620, Reissue Revised Statutes of Nebraska, is amended to read:

30-2620 (a) The court may appoint a guardian if it is satisfied by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as the least restrictive alternative available for providing continuing care or supervision of the person of the person alleged to be incapacitated. If the court finds that a guardianship should be created, the guardianship shall be a limited guardianship unless the court finds by clear and convincing evidence that a full guardianship is necessary. If a limited guardianship is created, the

court shall, at the time of appointment or later, specify the authorities and responsibilities which the guardian and ward, acting together or singly, shall have with regard to:

(1) Selecting the ward's place of abode within this state or, with court permission, outside of ~~without~~ this state;

(2) Arranging for medical care for the ward;

(3) Protecting the personal effects of the ward;

(4) Giving necessary consent, approval, or releases on behalf of the ward;

(5) Arranging for training, education, or other habilitating services appropriate for the ward;

(6) Applying for private or governmental benefits to which the ward may be entitled;

(7) Instituting 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 duty, if no conservator has been appointed;

(8) Entering into contractual arrangements on behalf of the ward, if no conservator has been appointed; and

(9) Receiving money and tangible property deliverable to the ward and applying such money and property to the ward's expenses for room and board, medical care, personal effects, training, education, and habilitating services, if no conservator has been appointed, or requesting the conservator to expend the ward's estate by payment to third persons to meet such expenses.

(b) In a limited guardianship, the powers shall be endorsed upon the letters of appointment of the guardian and shall be treated as specific limitations upon the general powers, rights, and duties accorded by law to the guardian. In a full guardianship, the letters of appointment shall specify that the guardian is granted all powers conferred upon guardians by law. After appointment, the ward may retain an attorney for the sole purpose of challenging the guardianship, the terms of the guardianship, or the actions of the guardian on behalf of the ward.

(c) A guardian shall not change a ward's place of abode to a location outside of the State of Nebraska without court permission.

Sec. 38. Section 30-2626, Reissue Revised Statutes of Nebraska, is amended to read:

30-2626 (a) If a person alleged to be incapacitated has no guardian and an emergency exists, the court may, pending notice and hearing, exercise the power of a guardian or enter an ex parte order appointing a temporary guardian to address the emergency. The order and letters of temporary guardianship shall specify the powers and duties of the temporary guardian limiting the powers and duties to those necessary to address the emergency.

(b) When the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be incapacitated, or by any interested ~~party,~~ person, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the guardian. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary guardianship continues to be necessary to address the emergency situation. Unless the person alleged to be incapacitated has counsel of his or her own choice, the court may appoint an attorney to represent the person alleged to be incapacitated at the hearing as provided in section 30-2619.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2625. The notice shall specify that a temporary guardian has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary guardian in the letters of temporary guardianship and shall be effective for a single ninety-day period. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods.

(e) The temporary guardianship shall terminate at the end of the ninety-day period in which the temporary guardianship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2619 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant

to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) If an appointed guardian is not effectively performing his or her duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, pending notice and hearing in accordance with section 30-2220, appoint a temporary guardian for the incapacitated person for a specified period not to exceed ninety days. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods. A temporary guardian appointed pursuant to this subsection has only the powers and duties specified in the previously appointed guardian's letters of guardianship, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.

(i) A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires, except that a temporary guardian shall not be required to provide the check or report under section 34 of this act. In other respects the provisions of the Nebraska Probate Code concerning guardians apply to temporary guardians.

Sec. 39. Section 30-2628, Reissue Revised Statutes of Nebraska, is amended to read:

30-2628 (a) Except as limited by an order entered pursuant to section 30-2620, a guardian of an incapacitated person has the same powers, rights, and duties respecting ~~his or her~~ the guardian's ward that a parent has respecting ~~his or her~~ 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, ~~he or she~~ 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 ~~without~~ 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, ~~he or she~~ a guardian shall make provision for the care, comfort, and maintenance of his or her ward and, whenever appropriate, arrange for ~~his or her~~ the ward's training and education. Without regard to custodial rights of the ward's person, ~~he or she~~ 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 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 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.

~~(4)~~ (5) If no conservator for the estate of the ward has been appointed, ~~he or she~~ 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 ~~his or her~~ 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 ~~he or she~~ a guardian may not use funds from his or her ward's estate for room and board which ~~he or she, his or her~~ 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. ~~He or she~~ 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.

~~(5)~~ (6) A guardian is required to report the condition of his or her ward and of the estate which has been subject to ~~his or her~~ 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.

~~(6)~~ (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 ~~his or her~~ the guardian's services and for room and board furnished to the ward as agreed upon between ~~him or her~~ the guardian and the conservator, ~~provided 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. 40. Section 30-2629, Reissue Revised Statutes of Nebraska, is amended to read:

30-2629 (a) ~~The~~ Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.

(b) ~~If~~ Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

(c) Any action or proposed action by a guardian may be challenged at any time by any interested person.

Sec. 41. Section 30-2630.01, Reissue Revised Statutes of Nebraska, is amended to read:

30-2630.01 (a) If a person alleged to be in need of protection under section 30-2630 has no conservator and an emergency exists, the court may,

pending notice and hearing, exercise the power of a conservator or enter an emergency protective order appointing a temporary conservator to address the emergency.

(b) When the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be in need of protection, or by any interested ~~party~~, person, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the conservator. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary conservatorship continues to be necessary to address the emergency situation. Unless the person alleged to be in need of protection has counsel of his or her own choice, the court may appoint an attorney to represent the person at the hearing as provided in section 30-2636.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2634. The notice shall specify that a temporary conservator has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary conservator in the letters of temporary conservatorship and shall be effective for a ninety-day period. For good cause shown, the court may extend the temporary conservatorship for successive ninety-day periods.

(e) The temporary conservatorship shall terminate at the end of the ninety-day period in which the temporary conservatorship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary conservatorship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2636 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) A temporary conservator may be removed at any time. A temporary conservator shall make any report the court requires, except that a temporary conservator shall not be required to provide the national criminal history record check and report under section 34 of this act. In other respects the provisions of the Nebraska Probate Code concerning conservators apply to temporary conservators.

Sec. 42. Section 30-2632, Reissue Revised Statutes of Nebraska, is amended to read:

30-2632 Venue Unless otherwise provided in the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, venue for proceedings under this part is:

(1) In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) If the person to be protected does not reside in this state, in any place where he or she has property.

Sec. 43. Section 30-2640, Reissue Revised Statutes of Nebraska, is amended to read:

30-2640 The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify and may eliminate the requirement or decrease or increase the required amount of any such bond previously furnished. The amount of the bond may be fixed at the discretion of the court, but if not otherwise fixed by the court, the amount of the bond shall be in the amount of the aggregate capital value of the personal property of the estate in his or her control plus one year's estimated income from all sources minus the value of securities deposited under arrangements requiring an order of the court for their removal. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land. The court may consider the desires of the protected person as expressed in any written power of attorney in determining whether a bond shall be required and the amount thereof.

For estates with a net value of more than ten thousand dollars, the bond for a conservator shall be in the amount of the aggregate capital

value of the personal property of the estate in the conservator's control plus one year's estimated income from all sources minus the value of securities and other assets deposited under arrangements requiring an order of the court for their removal. The bond of the conservator shall be conditioned upon the faithful discharge of all duties of the trust according to law, with sureties as the court shall specify. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land owned by the conservator. For good cause shown, the court may eliminate the requirement of a bond or decrease or increase the required amount of any such bond previously furnished. The court shall not require a bond if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond. The court shall consider as one of the factors of good cause, when determining whether a bond should be required and the amount thereof, the protected person's choice of any attorney in fact or alternative attorney in fact. No bond shall be required of any financial institution, as that term is defined in subdivision (12) of section 8-101, or any officer, director, employee, or agent of the financial institution serving as a conservator, or any trust company serving as a conservator.

Sec. 44. Section 30-2647, Reissue Revised Statutes of Nebraska, is amended to read:

30-2647 Within ~~ninety~~ thirty days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his the conservator's oath or affirmation that ~~it~~ the inventory is complete and accurate so far as he or she is informed. The conservator shall ~~provide~~ mail a copy thereof by first-class mail to the protected person, ~~if he~~ the protected person can be located, and has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. all other interested persons as defined in section 30-2601. 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. 45. Section 30-2648, Reissue Revised Statutes of Nebraska, is amended to read:

30-2648 Every conservator must account to the court for his or her administration of the trust annually, upon his or her resignation or removal, and at such other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or ~~he~~ the conservator may account to the former protected person or his the former protected person's personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his the conservator's liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his or her control, to be made in any manner the court may specify.

Sec. 46. Section 30-2655, Reissue Revised Statutes of Nebraska, is amended to read:

30-2655 (a) The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 30-2653 and 30-2654, or previously conferred by the court, and may at any time relieve ~~him~~ the conservator of any limitation. If the court limits any power conferred on the conservator by section 30-2653 or 30-2654, the limitation shall be endorsed upon his the conservator's letters of appointment.

(b) A conservator shall not change a protected person's place of abode to a location outside of the State of Nebraska without court permission.

Sec. 47. The Revisor of Statutes shall assign sections 33 and 34 of this act within Chapter 30, article 26, Part 1.

Sec. 48. This act becomes operative on January 1, 2012.

Sec. 49. Original sections 25-2708, 25-2911, 25-2943, 30-1601, 30-2209, 30-2210, 30-2211, 30-2601, 30-2613, 30-2618, 30-2620, 30-2626, 30-2628, 30-2629, 30-2630.01, 30-2632, 30-2640, 30-2647, 30-2648, and 30-2655, Reissue Revised Statutes of Nebraska, and section 30-2201, Revised Statutes Cumulative Supplement, 2010, are repealed.