

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 172
Final Reading

Introduced by Coash, 27; Wightman, 36.

Read first time January 14, 2013

Committee: Judiciary

A BILL

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

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

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

3 30-2601 Unless otherwise apparent from the context, in
4 the Nebraska Probate Code:

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

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

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

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

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

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

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

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

21 30-2628 (a) Except as limited by section 30-2620, a
22 guardian of an incapacitated person has the same powers, rights, and
23 duties respecting the guardian's ward that a parent has respecting
24 the parent's unemancipated minor child, except that a guardian is not
25 liable to third persons for acts of the ward solely by reason of the

1 parental relationship. In particular, and without qualifying the
2 foregoing, a guardian has the following powers and duties, except as
3 may be specified by order of the court:

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

16 (2) If entitled to custody of his or her ward, a guardian
17 shall make provision for the care, comfort, and maintenance of his or
18 her ward and, whenever appropriate, arrange for the ward's training
19 and education. Without regard to custodial rights of the ward's
20 person, a guardian shall take reasonable care of his or her ward's
21 clothing, furniture, vehicles, and other personal effects and
22 commence protective proceedings if other property of his or her ward
23 is in need of protection.

24 (3) A guardian may give any consents or approvals that
25 may be necessary to enable the ward to receive medical, psychiatric,

1 psychological, or other professional care, counsel, treatment, or
2 service. When making such medical or psychiatric decisions, the
3 guardian shall consider and carry out the intent of the ward
4 expressed prior to incompetency to the extent allowable by law.
5 Notwithstanding this provision or any other provision of the Nebraska
6 Probate Code, the ward may authorize the release of financial,
7 medical, and other confidential records pursuant to sections 20-161
8 to 20-166.

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

1 along with ~~an affidavit of mailing a certificate of mailing showing~~
2 that copies were sent to all interested persons and, if a bond has
3 been required, to the bonding company by first-class mail. ~~along with~~
4 ~~a form to send back to the court that indicates if such person wants~~
5 ~~to continue receiving notifications about the proceedings.~~

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

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

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

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

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

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

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

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

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

8 30-2647 Within thirty days after appointment, every
9 conservator shall prepare and file with the appointing court a
10 complete inventory of the estate of the protected person together
11 with the conservator's oath or affirmation that the inventory is
12 complete and accurate so far as he or she is informed. The
13 conservator shall mail a copy thereof by first-class mail to the
14 protected person, if the protected person can be located and has
15 attained the age of fourteen years, and to all other interested
16 persons as defined in section 30-2601. The conservator shall file
17 with the court a certificate of mailing showing that copies were sent
18 to all interested persons by first-class mail along with a form to
19 send back to the court that indicates if such person wants to
20 continue receiving notifications about the proceedings. Every
21 conservator shall file an updated inventory with the annual
22 accounting required under section 30-2648. The conservator shall keep
23 suitable records of his or her administration and exhibit the same on
24 request of any interested person.

25 Sec. 4. Original sections 30-2601, 30-2628, and 30-2647,

1 Revised Statutes Cumulative Supplement, 2012, are repealed.