SENATE FILE 348
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 31)

(As Amended and Passed by the Senate March 8, 2021)

_____ and [= New Language by the Senate

* = Language Stricken by the Senate

A BILL FOR

An Act relating to the opening, administration, and termination of adult and minor guardianships and conservatorships.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

MINOR GUARDIANSHIPS

Section 1. Section 232.3, subsection 1, Code 2021, is amended to read as follows:

1. During the pendency of an action under this chapter, a party to the action is estopped from litigating concurrently the custody, guardianship, or placement of a child who is the subject of the action, in a court other than the juvenile court with jurisdiction of the pending action under this chapter. A district judge, district associate judge, juvenile court judge, magistrate, or judicial hospitalization referee, upon notice of the pendency of an action under this chapter, shall not issue an order, finding, or decision relating to the custody, guardianship, or placement of the child who is the subject of the action, under any law, including but not limited to chapter 232D, 598, or 598B~~, or 633~~.

Sec. 2. Section 232.3, Code 2021, is amended by adding the following new subsection:

NEW SUBSECTION. 3. An action which is pending under chapter 232D prior to an action being brought under this chapter shall be stayed by the court in the chapter 232D action unless the court follows the procedures in subsection 2 and authorizes a party to the action to litigate a specific issue under this chapter.

Sec. 3. Section 232D.103, Code 2021, is amended to read as follows:

232D.103 Jurisdiction.

The juvenile court has exclusive jurisdiction in a guardianship proceeding concerning a minor who is alleged to be in need of a guardianship and guardianships of minors.

Sec. 4. NEW SECTION. **232D.107 Confidentiality.**

Official juvenile court records in guardianship proceedings shall be confidential and are not public records. Confidential records may be inspected and their contents shall be disclosed to the following without court order, provided that a person

or entity who inspects or receives a confidential record under this section shall not disclose the confidential record or its contents unless required by law:

1. The judge and professional court staff.

2. The minor and the minor's counsel.

3. The minor's parent, guardian or custodian, court visitor, and any counsel representing such person.

Sec. 5. Section 232D.301, subsection 2, paragraph d, subparagraph (3), Code 2021, is amended to read as follows:

(3) Any adult who has had the primary care of the minor or with whom the minor has lived for ~~at least~~ any time during the six months ~~prior to~~ immediately preceding the filing of the petition.

Sec. 6. Section 232D.301, subsection 4, Code 2021, is amended to read as follows:

4. The petition shall state whether a limited guardianship is appropriate, and whether a conservatorship for the minor is already in existence.

Sec. 7. Section 232D.302, subsection 2, Code 2021, is amended to read as follows:

2. Notice shall be served upon the minor's known parents listed in the petition in accordance with the rules of civil procedure. If the parent has not filed a consent to the appointment of a guardian, the notice shall inform any parent named in the petition that the parent may be entitled to representation under the conditions described in section 232D.304.

Sec. 8. Section 232D.305, subsection 1, Code 2021, is amended to read as follows:

1. The court may appoint a court visitor for the minor. A person is qualified to serve as a court visitor if the court determines the person has demonstrated sufficient knowledge of guardianships to adequately perform the duties in subsection 3.

Sec. 9. Section 232D.306, Code 2021, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A hearing on the petition may be recorded if a court reporter is not used.

Sec. 10. Section 232D.307, subsection 1, Code 2021, is amended to read as follows:

1. The court shall request criminal record checks and checks of the child abuse, dependent adult abuse, and sex offender registries in this state for all proposed guardians other than financial institutions with Iowa trust powers unless a proposed guardian has undergone the required background checks in this section within the ~~twelve~~ six months prior to the filing of a petition and the background check has been provided to the court.

Sec. 11. Section 232D.401, subsection 1, Code 2021, is amended to read as follows:

1. The order by the court appointing a guardian for a minor shall state the basis for the order and the date on which the first reporting period for the guardianship will end.

Sec. 12. Section 232D.401, subsection 3, unnumbered paragraph 1, Code 2021, is amended to read as follows:

An order by the court appointing a guardian for a minor shall state the powers granted to the guardian until such time as the guardian files an initial care plan and such plan is approved by the court as required by section 232D.501, subsection 4. Except as otherwise limited by ~~court~~ an order appointing a guardian for a minor, the court may grant the guardian the following powers~~, which may be exercised without prior court approval~~:

Sec. 13. Section 232D.501, subsection 1, paragraph a, Code 2021, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (2A) The guardian's plan, if any, for applying for and receiving funds and benefits payable for the support of the minor.

Sec. 14. Section 232D.501, subsection 1, paragraph b, Code 2021, is amended by adding the following new subparagraphs:

NEW SUBPARAGRAPH. (11) The results of the guardian's

efforts to apply for funds or benefits for the minor, and an accounting for the use of such funds or benefits by the guardian.

NEW SUBPARAGRAPH. (12) Any other information the guardian deems necessary for the court to consider.

Sec. 15. Section 232D.501, Code 2021, is amended by adding the following new subsections:

NEW SUBSECTION. 5. The guardian shall provide a copy of the verified initial care plan and verified annual report required by this section to the protected person, the protected person's attorney, if any, and court visitor, if any.

NEW SUBSECTION. 6. The court, for good cause, may extend the deadline for filing required reports. Required reports of a guardian which are not timely filed and which are delinquent, and for which no extension for filing has been granted by the court, shall be administered in the same manner as provided in section 633.32.

DIVISION II

ADULT GUARDIANSHIPS AND MINOR AND ADULT CONSERVATORSHIPS

Sec. 16. Section 235B.6, subsection 2, paragraph d, Code 2021, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (7) To a district court conducting checks of the dependent adult abuse registry for all proposed guardians and conservators pursuant to section 633.564.

Sec. 17. Section 633.556, subsections 4 and 5, Code 2021, are amended to read as follows:

4. The petition shall list the name and address of the ~~petitioner and the petitioner's relationship to the respondent~~ following:

a. The respondent.

b. The petitioner and the petitioner's relationship to the respondent.

c. The proposed guardian or conservator and the reason the proposed guardian or conservator should be selected.

5. The petition shall list the name and address, to the

extent known, of the following:

~~*a.* The name and address of the proposed guardian and the reason the proposed guardian should be selected.~~

b. Any spouse of the respondent.

c. Any adult children of the respondent.

d. Any parents of the respondent.

e. Any adult, who has had the primary care of the respondent or with whom the respondent has lived for ~~at least~~ any time during the six months ~~prior to~~ immediately preceding the filing of the petition, or any institution or facility where the respondent has resided ~~for at least six months prior to~~ any time during the six months immediately preceding the filing of the petition.

f. Any legal representative or representative payee of the respondent.

g. Any person designated as an attorney in fact in a durable power of attorney for health care which is valid under chapter 144B, or any person designated as an agent in a durable power of attorney which is valid under chapter 633B.

Sec. 18. Section 633.560, subsection 3, Code 2021, is amended to read as follows:

3. The court shall require the proposed guardian or conservator to attend the hearing on the petition but the court may excuse the proposed guardian's or conservator's attendance for good cause shown.

Sec. 19. Section 633.561, subsection 6, Code 2021, is amended to read as follows:

6. If the court determines that it would be in the respondent's best interest to have legal representation with respect to any further proceedings in a guardianship or conservatorship, the court may appoint an attorney to represent the respondent at the expense of the respondent or the respondent's estate, or if the respondent is indigent the cost of the court appointed attorney shall be assessed against the county in which the proceedings are pending.

Sec. 20. Section 633.562, subsection 1, Code 2021, is amended to read as follows:

1. If the court determines that the appointment of a court visitor would be in the best interest of the respondent, the court shall appoint a court visitor at the expense of the respondent or the respondent's estate, or, if the respondent is indigent, the cost of the court visitor shall be assessed against the county in which the proceedings are pending. The court may appoint any qualified person as a court visitor in a guardianship or conservatorship proceeding. A person is qualified to serve in this capacity if the court determines the person has demonstrated sufficient knowledge of guardianships or conservatorships to adequately perform the duties in subsection 3.

Sec. 21. Section 633.562, Code 2021, is amended by adding the following new subsection:

NEW SUBSECTION. 7. A court visitor shall be discharged from all further duties upon appointment of a guardian or conservator, unless otherwise ordered by the court. The court may order a court visitor to continue to serve if the court determines continued service would be in the best interest of the protected person. If the court continues the service of the court visitor, the court may limit the direct duties of the court visitor as the court deems necessary. The court visitor shall thereafter continue to serve until discharged by the court.

Sec. 22. Section 633.564, subsection 1, Code 2021, is amended to read as follows:

1. The court shall request criminal record checks and checks of the child abuse, dependent adult abuse, and sexual offender registries in this state for all proposed guardians and conservators, other than financial institutions with Iowa trust powers, unless a proposed guardian or conservator has undergone the required background checks required by this section within the six months prior to the filing of a petition

and the background check has been provided to the court.

Sec. 23. Section 633.569, Code 2021, is amended to read as follows:

633.569 Emergency appointment of temporary guardian or conservator.

1. A person authorized to file a petition under section ~~633.552, 633.553, or 633.554~~ 633.556 or 633.557 may file an application for the emergency appointment of a temporary guardian or conservator.

2. Such application shall state all of the following:

a. The name and address of the respondent.

0b. The name and address of the petitioner and the petitioner's relationship to the respondent.

b. The name and address of the proposed guardian or conservator and the reason the proposed guardian or conservator should be selected.

0c. The names and addresses, to the extent known, of any other persons who must be named in the petition for appointment of a guardian or conservator under section 633.556 or 633.557.

c. The reason the emergency appointment of a temporary guardian or conservator is sought.

3. The court may enter an ex parte order appointing a temporary guardian or conservator on an emergency basis under this section if the court finds that all of the following conditions are met:

a. There is not sufficient time to file a petition and hold a hearing pursuant to section ~~633.552, 633.553, or 633.554~~ 633.556, 633.557, or 633.560.

b. The appointment of a temporary guardian or conservator is necessary to avoid immediate or irreparable harm to the respondent before a hearing with notice to the respondent can be held.

c. There is reason to believe that the basis for appointment of guardian or conservator exists under section ~~633.552, 633.553, or 633.554~~ 633.556 or 633.557.

4. Notice of a petition for the appointment of a temporary guardian or conservator and the issuance of an ex parte order appointing a temporary guardian or conservator shall be provided to the respondent, the respondent's attorney, and any other person the court determines should receive notice.

5. Upon the issuance of an ex parte order, if the respondent is an adult, the respondent may file a request for a hearing. If the respondent is a minor, the respondent, a parent having legal custody of the respondent, or any other person having legal custody of the respondent may file a written request for a hearing. Such hearing shall be held no later than seven days after the filing of a written request.

6. The powers of the temporary guardian or conservator set forth in the order of the court shall be limited to those necessary to address the emergency situation requiring the appointment of a temporary guardian or conservator.

7. The temporary guardianship or conservatorship shall terminate within thirty days after the order is issued.

8. The court may order an extension of the temporary guardianship or conservatorship for thirty days for good cause shown, including a showing that a hearing on a petition for a guardianship or conservatorship under section 633.556 or 633.557 cannot be scheduled within thirty days after the order for a temporary guardianship or conservatorship is ordered. Prior to or contemporaneously with the filing for an application for the extension of time, the guardian or conservator shall file a report with the court setting forth all of the following:

a. All actions conducted by the guardian or conservator on behalf of the protected person from the time of the initial appointment of the guardian up to the time of the report.

b. All actions that the guardian or conservator plans to conduct on behalf of the protected person during the thirty-day extension period.

9. The temporary guardian or conservator shall submit any

other report the court requires.

Sec. 24. Section 633.570, subsections 1 and 2, Code 2021, are amended to read as follows:

1. In a proceeding for the appointment of a guardian, the respondent shall be given written notice which advises the respondent ~~of the powers~~ that the court may grant a guardian ~~may exercise without court approval pursuant to~~ the powers set out in section 633.635, subsection 2, and the powers ~~that the guardian may exercise only with court approval pursuant to~~ set out in section 633.635, subsection 3.

2. In a proceeding for the appointment of a conservator, the respondent shall be given written notice which advises the respondent ~~of the powers~~ that the court may grant a conservator ~~may exercise without court approval pursuant to~~ the powers set out in section ~~633.646 and the powers that the guardian may exercise only with court approval pursuant to section 633.647~~ 633.642.

Sec. 25. Section 633.635, subsection 1, Code 2021, is amended to read as follows:

1. The order by the court appointing a guardian shall state the factual basis for the guardianship pursuant to section 633.552 and the date on which the first reporting period for the guardianship shall end.

Sec. 26. Section 633.635, subsection 2, unnumbered paragraph 1, Code 2021, is amended to read as follows:

~~Based upon the evidence produced at the hearing~~ An order by the court appointing a guardian for an adult shall state the powers granted to the guardian until such time as the guardian files an initial care plan and such plan is approved by the court as required by section 633.669. Except as otherwise limited by an order appointing a guardian for an adult, the court may grant a guardian the following powers ~~and duties with respect to a protected person which may be exercised without prior court approval~~:

Sec. 27. Section 633.635, subsection 3, unnumbered

paragraph 1, Code 2021, is amended to read as follows:

~~A~~ Notwithstanding subsection 2, a guardian may be granted the following powers which may only be exercised upon court approval:

Sec. 28. Section 633.641, subsection 3, Code 2021, is amended to read as follows:

3. ~~If a protected person has executed a valid power of attorney under chapter 633B, the conservator shall act in accordance with the applicable provisions of chapter 633B.~~ If the court appoints a conservator for a protected person who has previously executed a valid power of attorney under chapter 633B, the power of attorney is suspended unless the power of attorney provides otherwise or the court appointing the conservator orders that the power of attorney should continue. If the power of attorney continues, the agent is accountable to the conservator as well as the principal. The power of attorney shall be reinstated upon termination of the conservatorship for reasons other than the protected person's death.

Sec. 29. Section 633.642, Code 2021, is amended by striking the section and inserting in lieu thereof the following:

633.642 Powers of conservator.

1. An order by the court appointing a conservator shall state the basis for the conservatorship pursuant to section 633.553 or section 633.554.

2. Upon appointment by the court, and until such time as the conservator files an initial financial management plan and such plan is approved by the court as required by section 633.670, subsection 1, a conservator has the authority to exercise all powers applicable to fiduciaries pursuant to sections 633.63 through 633.162, unless expressly modified by the court.

3. In the order approving an initial financial management plan or an annual report, the court shall approve and set forth the specific powers of a conservator, which may be thereafter exercised by the conservator until further court order. Except

as otherwise ordered by the court, a conservator must give notice to persons entitled to notice and receive specific prior authorization by the court before the conservator may take any other action on behalf of the protected person.

4. Upon the filing of an appropriate oath by the conservator, the clerk of court shall issue letters of appointment. A copy of the initial order of the court shall be attached to the letters of appointment. Upon approval of an initial financial management plan, approval of an annual report, or further order of the court granting, modifying, limiting, or terminating powers of the conservator, the clerk of court shall issue new letters of appointment which shall reflect all powers thereafter held by the conservator.

Sec. 30. Section 633.669, Code 2021, is amended to read as follows:

633.669 ~~Reporting requirements — assistance~~ Reports by ~~clerk~~ guardians.

1. A guardian appointed by the court under this chapter shall file with the court the following ~~written~~ verified reports which shall not be waived by the court:

a. An initial care plan filed within sixty days of appointment. The information in the initial care plan shall include but not be limited to the following information:

(1) The current residence of the protected person and the guardian's plan for the protected person's living arrangements.

(2) The current sources of payment for the protected person's living expenses and other expenses, and the guardian's plan for payment of the protected person's living expenses and other expenses.

(3) The protected person's health status and health care needs, and the guardian's plan for meeting the protected person's ~~needs for medical, dental, and other~~ health care needs.

(3A) Whether the protected person has a living will or health care power of attorney.

(4) If applicable, the protected person's need for other professional services for mental, behavioral, or emotional health, and the guardian's plan for other professional services needed by the protected person.

(5) If applicable, the protected person's employment status, the protected person's need for educational, training, or vocational services, and the guardian's plan for meeting the educational, training, and vocational needs of the protected person.

(6) If applicable, the guardian's plan for facilitating the participation of the protected person in social activities.

(7) The guardian's plan for facilitating contacts between the protected person and the protected person's family members and other ~~significant~~ persons significant in the life of the protected person.

(8) The guardian's plan for contact with, and activities on behalf of, the protected person.

(9) The powers that the guardian requests to carry out the initial care plan.

(10) The guardian shall file an amended plan when there has been a significant change in the circumstances or the guardian seeks to deviate significantly from the plan. The guardian must obtain court approval of the amended plan before implementing any of its provisions.

b. An annual report, filed within sixty days of the close of the reporting period~~, unless the court otherwise orders on good cause shown~~. The ~~information in the~~ annual report shall include but not be limited to the following information:

(1) The current living arrangements of the protected person.

(2) The sources of payment for the protected person's living expenses and other expenses.

(3) A description, if applicable, of the following:

(a) The protected person's ~~physical and mental~~ health status and the ~~medical, dental, and other professional~~ health

services provided to the protected person.

(b) If applicable, the protected person's employment status and the educational, training, and vocational services provided to the protected person.

(0c) The guardian's facilitation of the participation of the protected person in social activities.

(c) The contact of the protected person with family members and other significant persons.

(d) The nature and extent of the guardian's visits with, and activities on behalf of, the protected person.

(04) The guardian's changes to the care plan for the protected person for the next annual reporting period.

(004) The powers that the guardian requests to carry out the care plan for the protected person for the next annual reporting period.

(4) The guardian's recommendation as to the need for continuation of the guardianship.

(5) The ability of the guardian to continue as guardian.

(6) The need of the guardian for assistance in providing or arranging for the provision of the care and protection of the protected person.

(7) Any other information the guardian deems necessary for the court to consider.

c. A final report within thirty days of the termination of the guardianship under section 633.675 unless that time is extended by the court.

2. The court shall develop a simplified uniform reporting form for use in filing the required reports.

3. The clerk of the court shall notify the guardian in writing of the reporting requirements and shall provide information and assistance to the guardian in filing the reports.

4. Reports of guardians shall be reviewed and approved by a district court judge or referee.

5. The court, for good cause, may extend the deadline for

filing required reports. Required reports of a guardian which are not timely filed and which are delinquent, and for which no extension for filing has been granted by the court, shall be administered as provided in section 633.32.

6. The guardian shall provide a copy of the reports required by this section to the protected person, the protected person's attorney, if any, and the court visitor, if any.

Sec. 31. Section 633.670, Code 2021, is amended to read as follows:

633.670 Reports by conservators.

1. A conservator shall file ~~an~~ a verified initial financial management plan for protecting, managing, investing, expending, and distributing the assets of the conservatorship estate within ninety days after appointment which shall not be waived by the court. The plan must be based on the needs of the protected person and take into account the best interest of the protected person as well as the protected person's preference, values, and prior directions to the extent known to, or reasonably ascertainable by, the conservator.

a. ~~The initial plan shall include all of the following:~~ The initial financial management plan shall state the protected person's age, residence, living arrangements, and sources of payment for living expenses.

~~(1) A budget containing projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the protected person.~~

~~(2) A statement as to how the conservator will involve the protected person in decisions about management of the conservatorship estate.~~

~~(3) If ordered by the court, any step the conservator plans to take to develop or restore the ability of the protected person to manage the conservatorship estate.~~

~~(4) An estimate of the duration of the conservatorship.~~

b. If applicable, the protected person's will shall be filed with the court clerk and the protected person's prepaid burial trust and powers of attorney shall be described.

c. The conservator shall include a proposed budget for the protected person and budget-related information for the next annual reporting period including all of the following:

(1) The protected person's receipts and income and the projected sources of income including, if applicable, wages, social security income, pension and retirement plan distribution, veterans' benefits, rental income, interest earnings, and dividends, and the total estimated receipts and income.

(2) The protected person's liabilities and debts including, if applicable, mortgage, car loans, credit card debt, federal, state, and property taxes owed and the total estimated liabilities and debts; a list and concise explanation of any liability or debt owed by the protected person to the conservator; and a list and concise explanation of the liability of any other person for a liability of the protected person.

(3) The protected person's estimated expenses on a monthly and annual basis including, if applicable, nursing home or facility charge, real property expenses for residence, food and household expenses, utilities, household help and caregiver expenses, health services and health insurance expenses, educational and vocational expenses, personal auto and other transportation expenses, clothing expenses, personal allowance and other personal expenses, liabilities and debts, attorney fees and other professional expenses, conservator fees, and other administrative expenses.

d. The conservator shall include a list of the protected person's assets and the conservator's plan for management of these assets including, if applicable, financial accounts including checking and certificates of deposit and

cash, investments including stocks, bonds, mutual funds, exchange-traded funds, individual retirement accounts and other investment accounts, pension, profit-sharing, annuities, and retirement funds, personal property including household goods and vehicles, receivables including mortgages and liens payable to the protected person's estate or trust, life insurance, and other property.

e. The conservator shall include a statement as to how the conservator will involve the protected person in decisions about management of the conservatorship estate.

f. If ordered by the court, the conservator shall include any action the conservator plans to take to develop or restore the ability of the protected person to manage the conservatorship estate.

g. The conservator shall include the authority that the conservator requests to carry out the initial financial plan including expenditures in accordance with the proposed budget for the protected person and the plan for the management of the assets of the protected person for the next annual reporting period.

~~*b.*~~ *h.* ~~Within two days after filing the initial plan, the~~ The conservator shall ~~give~~ provide notice of the filing of the initial plan ~~with~~ and a copy of the initial plan to the protected person, the protected person's attorney, if any, and court visitor, if any, and others as directed by the court. The notice must state that any person entitled to a copy of the plan must file any objections to the plan not later than ~~fifteen days after it is filed~~ twenty days from the date of mailing notice of filing the initial plan.

~~*c.*~~ *i.* At least twenty days after the plan has been filed, the court shall review and determine whether the plan should be approved or revised, after considering objections filed and whether the plan is consistent with the conservator's powers and duties.

~~*d.*~~ *j.* After approval by the court, the conservator shall

provide a copy of the approved plan and order approving the plan to the protected person, the protected person's attorney, if any, and court visitor, if any, and others as directed by the court.

~~c.~~ *k.* The conservator shall file an amended plan when there has been a significant change in circumstances or the conservator seeks to deviate significantly from the plan. Before the amended plan is implemented, the provisions for court approval of the plan shall be followed as provided in ~~paragraphs "b", "c", and "d"~~ the initial financial management plan.

2. A conservator shall ~~file~~ attach an inventory of the protected person's assets within ninety days after appointment and debts to the initial financial management plan, which includes an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. ~~Copies~~ After approval by the court, the conservator shall provide copies of the inventory ~~shall be provided~~ to the protected person, the protected person's attorney, if any, and court visitor, if any, and others as directed by the court. When the conservator receives additional property of the protected person, or becomes aware of its existence, a description of the property shall be included in the conservator's next annual report.

2A. A conservator shall attach to the initial financial management plan an inventory of the protected person's assets and debts, which includes an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. The conservator shall provide copies of the inventory to the protected person, the protected person's attorney, if any, and the court visitor, if any, and others as directed by the court. Any objections to the inventory shall be filed in the same manner and according to the same schedule as objections to the initial financial management plan. The court shall review the inventory and determine

whether the inventory should be approved at the same time as the court reviews the initial financial management plan. When the conservator receives an additional asset of the protected person or becomes aware of its existence, or becomes aware of additional debt of the protected person, a description of the asset or debt shall be included in the conservator's next annual report.

3. A conservator shall file a ~~written and~~ verified report on an annual basis for the period since the end of the preceding report period~~. The court~~ which shall not ~~waive these reports~~ be waived by the court.

a. ~~These reports shall include all of the following:~~ The annual report shall state the age, the residence, and the living arrangements of the protected person, and sources of payment for the protected person's living expenses during the reporting period.

~~(1) Balance of funds on hand at the beginning and end of the period.~~

~~(2) Disbursements made.~~

~~(3) Changes in the conservator's plan.~~

~~(4) List of assets as of the end of the period.~~

~~(5) Bond amount and surety's name.~~

~~(6) Residence and physical location of the protected person.~~

~~(7) General physical and mental condition of the protected person.~~

~~(8) Other information reflecting the condition of the conservatorship estate.~~

b. ~~These reports shall be filed:~~ The conservator shall submit with the annual report an inventory of the assets of the protected person as of the last day of the reporting period the total value of assets at the beginning and end of the reporting period.

~~(1) On an annual basis within sixty days of the end of the reporting period unless the court orders an extension for good~~

~~cause shown in accordance with the rules of probate procedure.~~

c. The annual report shall include an itemization of all income or funds received and all expenditures made by the conservator on behalf of the protected person. If any of the expenditures were made to provide support for or pay the debts of another person, the annual report shall include an explanation of these expenditures. If any of the expenditures were made to pay any liability or debt owed by the protected person to the conservator, the annual report shall include an explanation of these expenditures. If any of the expenditures were made to pay any liability or debt that is also owed by another person or entity, the annual report shall include an explanation of these expenditures.

d. The annual report shall include the following budget and information related to the budget for the protected person:

(1) A description of changes, if any, made in the budget approved by the court for the preceding reporting period.

(2) A proposed budget and budget-related information for the next reporting period containing the information set forth in subsection 1, paragraph "*c*".

(3) A request for approval of the proposed budget and authority to make expenditures in accordance with the proposed budget.

e. The annual report shall include the following information related to the management of the assets of the protected person:

(1) A description of changes, if any, in the plan for management of the assets of the protected person approved by the court for the preceding reporting period.

(2) A proposed plan for management of the assets of the protected person for the next reporting period.

(3) A request for approval of the proposed plan for management of the assets of the protected person and the authority to carry out the plan.

f. The conservator shall include a statement as to how the

conservator will involve the protected person in decisions about management of the conservatorship estate.

g. The annual report shall describe, if ordered by the court, the actions that have been taken and that will be taken by the conservator to develop or restore the ability of the protected person to manage the conservatorship's assets.

h. The conservator may request court approval of fees provided by an attorney on behalf of the conservatorship or the protected person during the preceding reporting period.

i. The conservator may request court approval of fees provided the conservator on behalf of the conservatorship or the protected person during the preceding reporting period.

4. The conservator shall file a verified final report with the court as follows:

~~(2)~~ *a.* Within thirty days following removal of the conservator.

~~(3)~~ *b.* Upon the conservator's filing of a resignation and before the resignation is accepted by the court.

~~(4)~~ *c.* Within sixty days following the termination of the conservatorship.

~~(5)~~ *d.* At other times as ordered by the court.

~~*c.*~~ 5. ~~Reports required by this section~~ The conservator shall provide a copy of the initial financial management plan, the inventory of the protected person's assets, and the annual report ~~shall be served on~~ to the protected person, the protected person's attorney, if any, and court visitor, if any, and the veterans administration if the protected person is receiving ~~veterans~~ veterans' benefits.

6. The court, for good cause, may extend the deadline for filing required reports. Required reports of a conservator which are not timely filed and which are delinquent, and for which no extension for filing has been granted by the court, shall be administered as provided in section 633.32.

Sec. 32. Section 633.675, subsections 2, 3, and 4, Code 2021, are amended to read as follows:

2. The court shall terminate a guardianship for an adult if ~~it~~ the court finds ~~by clear and convincing evidence~~ that the basis for appointing a guardian pursuant to section 633.552 has not been established.

3. The court shall terminate a conservatorship if the court finds ~~by clear and convincing evidence~~ that the basis for appointing a conservator pursuant to section 633.553 or 633.554 is not satisfied.

4. The standard of proof and the burden of proof to be applied in a termination proceeding to terminate a guardianship or conservatorship for an adult shall be the same as set forth in section 633.551, subsection 2.

DIVISION III

CONFORMING CHANGES

Sec. 33. Section 633.3, subsections 9, 17, 22, and 23, Code 2021, are amended to read as follows:

9. *Conservator* — means a person appointed by the court to have the custody and control of the property of a ~~ward~~ protected person under the provisions of this probate code.

17. *Estate* — the real and personal property of either a decedent or a ~~ward~~ protected person, and may also refer to the real and personal property of a trust described in section 633.10.

22. *Guardian* — means the person appointed by the court to have the custody of the person of the ~~ward~~ protected person under the provisions of this probate code.

23. *Guardian of the property* — at the election of the person appointed by the court to have the custody and care of the property of a ~~ward~~ protected person, the term "*guardian of the property*" may be used, which term shall be synonymous with the term "*conservator*".

Sec. 34. Section 633.78, subsection 1, unnumbered paragraph 1, Code 2021, is amended to read as follows:

A fiduciary under this chapter may present a written request to any person for the purpose of obtaining property owned by

a decedent or by a ~~ward~~ protected person of a conservatorship for which the fiduciary has been appointed, or property to which a decedent or ~~ward~~ protected person is entitled, or for information about such property needed to perform the fiduciary's duties. The request must contain statements confirming all of the following:

Sec. 35. Section 633.78, subsection 1, paragraph b, Code 2021, is amended to read as follows:

b. The request has been signed by all fiduciaries acting on behalf of the decedent or ~~ward~~ protected person.

Sec. 36. Section 633.78, subsection 4, paragraph a, Code 2021, is amended to read as follows:

a. Damages sustained by the decedent's or ~~ward's~~ protected person's estate.

Sec. 37. Section 633.80, Code 2021, is amended to read as follows:

633.80 Fiduciary of a fiduciary.

A fiduciary has no authority to act in a matter wherein the fiduciary's decedent or ~~ward~~ protected person was merely a fiduciary, except that the fiduciary shall file a report and accounting on behalf of the decedent or ~~ward~~ protected person in said matter.

Sec. 38. Section 633.93, Code 2021, is amended to read as follows:

633.93 Limitation on actions affecting deeds.

No action for recovery of any real estate sold by any fiduciary can be maintained by any person claiming under the deceased, the ~~ward~~ protected person, or a beneficiary, unless brought within five years after the date of the recording of the conveyance.

Sec. 39. Section 633.112, Code 2021, is amended to read as follows:

633.112 Discovery of property.

The court may require any person suspected of having possession of any property, including records and documents,

of the decedent, ~~ward~~ protected person, or the estate, or of having had such property under the person's control, to appear and submit to an examination under oath touching such matters, and if on such examination it appears that the person has the wrongful possession of any such property, the court may order the delivery thereof to the fiduciary. Such a person shall be liable to the estate for all damages caused by the person's acts.

Sec. 40. Section 633.123, subsection 1, paragraph b, subparagraph (3), Code 2021, is amended to read as follows:

(3) The needs and rights of the beneficiaries or the ~~ward~~ protected person.

Sec. 41. Section 633.580, subsections 1 and 4, Code 2021, are amended to read as follows:

1. The name, age, and last known post office address of the proposed ~~ward~~ protected person.

4. A general description of the property of the proposed ~~ward~~ protected person within this state and of the proposed ~~ward's~~ protected person's right to receive property; also, the estimated present value of the real estate, the estimated value of the personal property, and the estimated gross annual income of the estate. If any money is payable, or to become payable, to the proposed ~~ward~~ protected person by the United States through the United States department of veterans affairs, the petition shall so state.

Sec. 42. Section 633.591A, Code 2021, is amended to read as follows:

633.591A Voluntary petition for appointment of conservator for a minor — standby basis.

A person having physical and legal custody of a minor may execute a verified petition for the appointment of a standby conservator of the proposed ~~ward's~~ protected person's property, upon the express condition that the petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the

mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition.

Sec. 43. Section 633.603, Code 2021, is amended to read as follows:

633.603 Appointment of foreign conservators.

When there is no conservatorship, nor any application therefor pending, in this state, the duly qualified foreign conservator or guardian of a nonresident ~~ward~~ protected person may, upon application, be appointed conservator of the property of such person in this state; provided that a resident conservator is appointed to serve with the foreign conservator; and provided further, that for good cause shown, the court may appoint the foreign conservator to act alone without the appointment of a resident conservator.

Sec. 44. Section 633.604, Code 2021, is amended to read as follows:

633.604 Application.

The application for appointment of a foreign conservator or guardian as conservator in this state shall include the name and address of the nonresident ~~ward~~ protected person, and of the nonresident conservator or guardian, and the name and address of the resident conservator to be appointed. It shall be accompanied by a certified copy of the original letters or other authority conferring the power upon the foreign conservator or guardian to act as such. The application shall also state the cause for the appointment of the foreign conservator to act as sole conservator, if such be the case.

Sec. 45. Section 633.605, Code 2021, is amended to read as follows:

633.605 Personal property.

A foreign conservator or guardian of a nonresident may be authorized by the court of the county wherein such ~~ward~~ protected person has personal property to receive the same upon compliance with the provisions of sections 633.606, 633.607 and

633.608.

Sec. 46. Section 633.607, Code 2021, is amended to read as follows:

633.607 Order for delivery.

Upon the filing of the bond as above provided, and the court being satisfied with the amount thereof, it shall order the personal property of the ~~ward~~ protected person delivered to such conservator or guardian.

Sec. 47. Section 633.633, Code 2021, is amended to read as follows:

633.633 Provisions applicable to all fiduciaries shall govern.

The provisions of this probate code applicable to all fiduciaries shall govern the appointment, qualification, oath and bond of guardians and conservators, except that a guardian shall not be required to give bond unless the court, for good cause, finds that the best interests of the ~~ward~~ protected person require a bond. The court shall then fix the terms and conditions of such bond.

Sec. 48. Section 633.633B, Code 2021, is amended to read as follows:

633.633B Tort liability of guardians and conservators.

The fact that a person is a guardian or conservator shall not in itself make the person personally liable for damages for the acts of the ~~ward~~ protected person.

Sec. 49. Section 633.636, Code 2021, is amended to read as follows:

633.636 Effect of appointment of guardian or conservator.

The appointment of a guardian or conservator shall not constitute an adjudication that the ~~ward~~ protected person is of unsound mind.

Sec. 50. Section 633.637, Code 2021, is amended to read as follows:

633.637 Powers of ~~ward~~ protected person.

1. A ~~ward~~ protected person for whom a conservator has been

appointed shall not have the power to convey, encumber, or dispose of property in any manner, other than by will if the ~~ward~~ protected person possesses the requisite testamentary capacity, unless the court determines that the ~~ward~~ protected person has a limited ability to handle the ~~ward's~~ protected person's own funds. If the court makes such a finding, the court shall specify to what extent the ~~ward~~ protected person may possess and use the ~~ward's~~ protected person's own funds.

2. Any modification of the powers of the ~~ward~~ protected person that would be more restrictive of the ~~ward's~~ protected person's control over the ~~ward's~~ protected person's financial affairs shall be based upon clear and convincing evidence and the burden of persuasion is on the conservator. Any modification that would be less restrictive of the ~~ward's~~ protected person's control over the ~~ward's~~ protected person's financial affairs shall be based upon proof in accordance with the requirements of section 633.675.

Sec. 51. Section 633.637A, Code 2021, is amended to read as follows:

633.637A Rights of ~~ward~~ protected person under guardianship.

An adult ~~ward~~ protected person under a guardianship has the right of communication, visitation, or interaction with other persons upon the consent of the adult ~~ward~~ protected person, subject to section 633.635, subsection 2, paragraph "*i*", and section 633.635, subsection 3, paragraph "*c*". If an adult ~~ward~~ protected person is unable to give express consent to such communication, visitation, or interaction with a person due to a physical or mental condition, consent of an adult ~~ward~~ protected person may be presumed by a guardian or a court based on an adult ~~ward's~~ protected person's prior relationship with such person.

Sec. 52. Section 633.638, Code 2021, is amended to read as follows:

633.638 Presumption of fraud.

If a conservator be appointed, all contracts, transfers and

gifts made by the ~~ward~~ protected person after the filing of the petition shall be presumed to be a fraud against the rights and interest of the ~~ward~~ protected person except as otherwise directed by the court pursuant to section 633.637.

Sec. 53. Section 633.639, Code 2021, is amended to read as follows:

633.639 Title to ~~ward's~~ protected person's property.

The title to all property of the ~~ward~~ protected person is in the ~~ward~~ protected person and not the conservator subject, however, to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition, under the provisions of the law. Any real property titled at any time in the name of a conservatorship shall be deemed to be titled in the ~~ward's~~ protected person's name subject to the conservator's right of possession.

Sec. 54. Section 633.640, Code 2021, is amended to read as follows:

633.640 Conservator's right to possession.

Every conservator shall have a right to, and shall take, possession of all of the real and personal property of the ~~ward~~ protected person. The conservator shall pay the taxes and collect the income therefrom until the conservatorship is terminated. The conservator may maintain an action for the possession of the property, and to determine the title to the same.

Sec. 55. Section 633.643, Code 2021, is amended to read as follows:

633.643 Disposal of will by conservator.

When an instrument purporting to be the will of the ~~ward~~ protected person comes into the hands of a conservator, the conservator shall immediately deliver it to the court.

Sec. 56. Section 633.644, Code 2021, is amended to read as follows:

633.644 Court order to preserve testamentary intent of ~~ward~~

protected person.

Upon receiving an instrument purporting to be the will of a living ~~ward~~ protected person under the provisions of section 633.643, the court may open said will and read it. The court with or without notice, as it may determine, may enter such orders in the conservatorship as it deems advisable for the proper administration of the conservatorship in light of the expressed testamentary intent of the ~~ward~~ protected person.

Sec. 57. Section 633.645, Code 2021, is amended to read as follows:

633.645 Court to deliver will to clerk.

An instrument purporting to be the will of a ~~ward~~ protected person coming into the hands of the court under the provisions of section 633.643, shall thereafter be resealed by the court and be deposited with the clerk to be held by said clerk as provided in sections 633.286 through 633.289.

Sec. 58. Section 633.653A, Code 2021, is amended to read as follows:

633.653A Claims for cost of medical care or services.

The provision of medical care or services to a ~~ward~~ protected person who is a recipient of medical assistance under chapter 249A creates a claim against the conservatorship for the amount owed to the provider under the medical assistance program for the care or services. The amount of the claim, after being allowed or established as provided in this part, shall be paid by the conservator from the assets of the conservatorship.

Sec. 59. Section 633.654, Code 2021, is amended to read as follows:

633.654 Form and verification of claims — general requirements.

No claim shall be allowed against the estate of a ~~ward~~ protected person upon application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, and describing the nature and the amount thereof, if ascertainable. It shall be

accompanied by the affidavit of the claimant, or of someone for the claimant, that the amount is justly due, or if not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. The duplicate of said claim shall be mailed by the clerk to the conservator or the conservator's attorney of record; however, valid contract claims arising in the ordinary course of the conduct of the business or affairs of the ~~ward~~ protected person by the conservator may be paid by the conservator without requiring affidavit or filing.

Sec. 60. Section 633.656, Code 2021, is amended to read as follows:

633.656 How claim entitled.

All claims filed against the estate of the ~~ward~~ protected person shall be entitled in the name of the claimant against the conservator as such, naming the conservator, and in all further proceedings thereon, this title shall be preserved.

Sec. 61. Section 633.660, Code 2021, is amended to read as follows:

633.660 Execution and levy prohibited.

No execution shall issue upon, nor shall any levy be made against, any property of the estate of a ~~ward~~ protected person under any judgment against the ~~ward~~ protected person or a conservator, but the provisions of this section shall not be so construed as to prevent the enforcement of a mortgage, pledge, or other lien upon property in an appropriate proceeding.

Sec. 62. Section 633.661, Code 2021, is amended to read as follows:

633.661 Claims of conservators.

If the conservator is a creditor of the ward, the conservator shall file the claim as other creditors, and the court shall appoint some competent person as temporary conservator to represent the ~~ward~~ protected person at the hearing on the conservator's claim. The same procedure shall be followed in

the case of coconservators where all such conservators are creditors of the ~~ward~~ protected person; but if one of the coconservators is not a creditor of the ~~ward~~ protected person, such disinterested conservator shall represent the ward at the hearing on any claim against the ~~ward~~ protected person by a coconservator.

Sec. 63. Section 633.662, Code 2021, is amended to read as follows:

633.662 Claims not filed.

The conservator may pay any valid claim against the estate of the ~~ward~~ protected person even though such claim has not been filed, but all such payments made by the conservator shall be at the conservator's own peril.

Sec. 64. Section 633.664, Code 2021, is amended to read as follows:

633.664 Liens not affected by failure to file claim.

Nothing in sections 633.654 and 633.658 shall affect or prevent an action or proceeding to enforce any mortgage, pledge, or other lien upon the property of the ~~ward~~ protected person.

Sec. 65. Section 633.665, Code 2021, is amended to read as follows:

633.665 Separate actions and claims.

1. Any action pending against the ~~ward~~ protected person at the time the conservator is appointed shall also be considered a claim filed in the conservatorship if notice of substitution is served on the conservator as defendant and a duplicate of the proof of service of notice of such proceeding is filed in the conservatorship proceeding.

2. A separate action based on a debt or other liability of the ~~ward~~ protected person may be commenced against the conservator in lieu of filing a claim in the conservatorship. Such an action shall be commenced by serving an original notice on the conservator and filing a duplicate of the proof of service of notice of such proceeding in the conservatorship

proceeding. Such an action shall also be considered a claim filed in the conservatorship. Such an action may be commenced only in a county where the venue would have been proper if there were no conservatorship and the action had been commenced against the ~~ward~~ protected person.

Sec. 66. Section 633.667, Code 2021, is amended to read as follows:

633.667 Payment of claims in insolvent conservatorships.

When it appears that the assets in a conservatorship are insufficient to pay in full all the claims against such conservatorship, the conservator shall report such matter to the court, and the court shall, upon hearing, with notice to all persons who have filed claims in the conservatorship, make an order for the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ~~ward~~ protected person were not under conservatorship.

Sec. 67. Section 633.668, Code 2021, is amended to read as follows:

633.668 Conservator may make gifts.

For good cause shown and under order of court, a conservator may make gifts on behalf of the ~~ward~~ protected person out of the assets under a conservatorship to persons or religious, educational, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the commencement of the conservatorship, or on a showing to the court that such gifts would benefit the ~~ward~~ protected person or the ~~ward's~~ protected person's estate from the standpoint of income, gift, estate or inheritance taxes. The making of gifts out of the assets must not foreseeably impair the ability to provide adequately for the best interests of the ~~ward~~ protected person.

Sec. 68. Section 633.673, Code 2021, is amended to read as follows:

633.673 Court costs in guardianships.

The ~~ward~~ protected person or the ~~ward's~~ protected person's

estate shall be charged with the court costs of a ward's guardianship, including the guardian's fees and the fees of the attorney for the guardian. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the ~~ward~~ protected person or ~~ward's~~ protected person's estate becomes financially capable of paying any waived costs, the costs shall be paid immediately.

Sec. 69. Section 633.676, Code 2021, is amended to read as follows:

633.676 Assets exhausted.

At any time that the assets of the ~~ward's~~ protected person's estate do not exceed the amount of the charges and claims against it, the court may direct the conservator to proceed to terminate the conservatorship.

Sec. 70. Section 633.677, Code 2021, is amended to read as follows:

633.677 Accounting to ~~ward~~ protected person — notice.

Upon the termination of a conservatorship, the conservator shall pay the costs of administration and shall render a full and complete accounting to the ~~ward~~ protected person or the ~~ward's~~ protected person's personal representative and to the court. Notice of the final report of a conservator shall be served on the ~~ward~~ protected person or the ~~ward's~~ protected person's personal representative, in accordance with section 633.40, unless notice is waived. An order prescribing notice may be made before or after the filing of the final report.

Sec. 71. Section 633.681, Code 2021, is amended to read as follows:

633.681 Assets of minor ~~ward~~ protected person exhausted.

When the assets of a minor ~~ward's~~ protected person's conservatorship are exhausted or consist of personal property only of an aggregate value not in excess of twenty-five thousand dollars, the court, upon application or upon its own motion, may terminate the conservatorship. The order for termination shall direct the conservator to deliver any

property remaining after the payment of allowed claims and expenses of administration to a custodian under any uniform transfers to minors Act. Such delivery shall have the same force and effect as if delivery had been made to the ~~ward~~ protected person after attaining majority.

Sec. 72. Section 633.682, Code 2021, is amended to read as follows:

633.682 Discharge of conservator and release of bond.

Upon settlement of the final accounting of a conservator, and upon determining that the property of the ~~ward~~ protected person has been delivered to the person or persons lawfully entitled thereto, the court shall discharge the conservator and exonerate the surety on the conservator's bond.