

CHAPTER 178**PROBATE CODE — GUARDIANSHIPS AND CONSERVATORSHIPS —
TRANSFER ON DEATH SECURITY REGISTRATION**

S.F. 241

AN ACT relating to the probate code including guardianships and conservatorships and adopting the uniform transfer on death security registration Act.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 633.3, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 18A. **FUNCTIONAL LIMITATIONS** — means the behavior or condition of a person which impairs the person's ability to care for the person's personal safety or to attend to or provide for necessities for the person.

Sec. 2. Section 633.3, subsection 22, Code 1997, is amended to read as follows:

22. **INCOMPETENT** — ~~includes~~ **means the condition** of any person who has been adjudicated by a court ~~to be incapable of managing the person's property, or caring for the person's own self, or both~~ **to meet at least one of the following conditions:**

a. To have a decision-making capacity which is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur.

b. To have a decision-making capacity which is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

c. To have a decision-making capacity which is so impaired that both paragraphs "a" and "b" are applicable to the person.

Sec. 3. Section 633.10, Code 1997, is amended by adding the following new subsection: **NEW SUBSECTION.** 5. **ACTIONS FOR ACCOUNTING.** An action for an accounting against a beneficiary of a transfer on death security registration, pursuant to this chapter.

Sec. 4. **NEW SECTION.** 633.551A **GUARDIANSHIPS AND CONSERVATORSHIPS — GENERAL PROVISIONS.**

1. The determination of incompetency of the proposed ward or ward and the determination of the need for the appointment of a guardian or conservator or of the modification or termination of a guardianship or conservatorship shall be supported by clear and convincing evidence.

2. The burden of persuasion is on the petitioner in an initial proceeding to appoint a guardian or conservator. In a proceeding to modify or terminate a guardianship or conservatorship, if the guardian or conservator is the petitioner, the burden of persuasion remains with the guardian or conservator. In a proceeding to terminate a guardianship or conservatorship, if the ward is the petitioner, the ward shall make a prima facie showing of some decision-making capacity. Once a prima facie showing is made, the burden of persuasion is on the guardian or conservator to show by clear and convincing evidence that the ward is incompetent.

3. In determining whether a guardianship or conservatorship is to be established, modified, or terminated, the district court shall consider if a limited guardianship or conservatorship pursuant to section 633.635 or 633.637 is appropriate. In making the determination, the court shall make findings of fact to support the powers conferred on the guardian or conservator.

4. In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the proposed ward or ward is incompetent as defined in section 633.3, the

court shall consider credible evidence from any source to the effect of third-party assistance in meeting the needs of the proposed ward or ward. However, neither party to the action shall have the burden to produce such evidence relating to third-party assistance.

Sec. 5. Section 633.552, subsection 2, paragraph a, Code 1997, is amended to read as follows:

~~a. By reason of mental, physical or other incapacity is unable to make or carry out important decisions concerning the proposed ward's person or affairs, other than financial affairs.~~

a. Is a person whose decision-making capacity is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.

Sec. 6. Section 633.556, Code 1997, is amended to read as follows:

633.556 APPOINTMENT OF GUARDIAN.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the court may appoint a guardian.

2. In all proceedings to appoint a guardian, the court shall consider the functional limitations of the proposed ward and whether a limited guardianship, as authorized in section 633.635, is appropriate.

3. Section 633.551A applies to the appointment of a conservator.*

Sec. 7. Section 633.557, Code 1997, is amended to read as follows:

633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY PETITION.

1. A guardian may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a guardian's powers as provided in section 633.562.

2. In all proceedings to appoint a guardian, the court shall consider whether a limited guardianship, as authorized in section 633.635, is appropriate.

Sec. 8. Section 633.560, Code 1997, is amended to read as follows:

633.560 APPOINTMENT OF GUARDIAN ON A STANDBY BASIS.

A petition for the appointment of a guardian on a standby basis may be filed by any person under the same procedure and requirements as provided in sections 633.591 to 633.597, for appointment of standby conservator, insofar as applicable. In all proceedings to appoint a guardian, the court shall consider whether a limited guardianship, as authorized in section 633.635, is appropriate.

Sec. 9. Section 633.566, subsection 2, paragraph a, Code 1997, is amended to read as follows:

~~a. By reason of mental, physical or other incapacity is unable to make or carry out important decisions concerning the proposed ward's financial affairs.~~

a. Is a person whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

Sec. 10. Section 633.570, Code 1997, is amended to read as follows:

633.570 APPOINTMENT OF CONSERVATOR.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by clear and convincing evidence, the court may appoint a conservator.

* The word "guardian" probably intended

2. In all proceedings to appoint a conservator, the court shall consider the functional limitations of the person and whether a limited conservatorship, as authorized in section 633.637, is appropriate.

3. Section 633.551A applies to the appointment of a conservator.

Sec. 11. Section 633.572, Code 1997, is amended to read as follows:

633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY PETITION.

1. A conservator may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a conservator's powers as provided in section 633.576.

2. In all proceedings to appoint a conservator, the court shall consider whether a limited conservatorship, as authorized in section 633.637, is appropriate.

Sec. 12. Section 633.596, Code 1997, is amended to read as follows:

633.596 TIME OF CONSIDERATIONS — APPOINTMENT OF CONSERVATOR.

At the time such a standby petition is filed under this part, the court, without any notice, may appoint the conservator nominated in such petition or may set the petition for hearing on such notice as the court may prescribe shall consider whether a limited conservatorship, as authorized in section 633.637, is appropriate.

Sec. 13. Section 633.635, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A Based upon the evidence produced at the hearing, the court may grant a guardian may be granted the following powers and duties which may be exercised without prior court approval:

Sec. 14. Section 633.635, subsections 3 and 4, Code 1997, are amended to read as follows:

3. The court may take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, including the availability of third-party assistance to meet the needs of the ward or proposed ward, and may direct that the guardian have only a specially limited responsibility for the ward. In that event, the court shall state those areas of responsibility which shall be supervised by the guardian and all others shall be retained by the ward. The court may make a finding that the ward lacks the capacity to contract a valid marriage.

4. From time to time, upon a proper showing, the court may alter modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be based on clear and convincing evidence that the ward continues to fall within the categories of section 633.552, subsection 2, paragraph "a" or "b", and that the facts justify a modification of the guardianship. Section 633.551A applies to the modification proceedings. Any modification that would be less restrictive for the ward shall be based upon proof in accordance with the requirements of section 633.675.

Sec. 15. Section 633.637, Code 1997, is amended to read as follows:

633.637 POWERS OF WARD.

A ward 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 possesses the requisite testamentary capacity, unless the court determines that the ward has a limited ability to handle the ward's own funds. If the court makes such a finding, it shall specify to what extent the ward may possess and use the ward's own funds.

Any modification of the powers of the ward that would be more restrictive of the ward's control over the ward'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 control over the ward's financial affairs shall be based upon proof in accordance with the requirements of section 633.675.

Sec. 16. Section 633.675, subsection 3, Code 1997, is amended to read as follows:

3. A determination by the court that the ward is ~~competent and capable of managing the ward's property and affairs, and that the continuance of the guardianship or conservatorship would not be in the ward's best interests~~ no longer a person whose decision-making capacity is so impaired as to bring the ward within the categories of section 633.552, subsection 2, paragraph "a", or section 633.566, subsection 2, paragraph "a". In a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity. Once the ward has made that showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the ward's decision-making capacity is so impaired, as provided in section 633.552, subsection 2, paragraph "a", or section 633.566, subsection 2, paragraph "a", that the guardianship or conservatorship should not be terminated.

Sec. 17. NEW SECTION. 633.800 SHORT TITLE — RULES OF CONSTRUCTION.

1. This division shall be known and may be cited as the uniform transfer on death security registration Act.
2. The provisions of this division shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of its provisions among states enacting this uniform Act.
3. Unless displaced by the particular provisions of this division, the principles of law and equity supplement the provisions of this division.

Sec. 18. NEW SECTION. 633.801 DEFINITIONS.

As used in this division, unless the context otherwise requires:

1. "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.
2. "Devisee" means any person designated in a will to receive a disposition of real or personal property.
3. "Heir" means a person, including the surviving spouse, who is entitled under the statutes of intestate succession to the property of a decedent.
4. "Register" means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of the security.
5. "Registering entity" means a person who originates or transfers a security title by registration, including a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.
6. "Security" means a security as defined in section 502.102.
7. "Security account" means either of the following:
 - a. Any of the following:
 - (1) A reinvestment account associated with a security.
 - (2) A securities account with a broker.
 - (3) A cash balance in a brokerage account.
 - (4) Cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death.
 - b. A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.
8. "State" includes any state of the United States, the District of Columbia, the Common-

wealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

Sec. 19. NEW SECTION. 633.802 REGISTRATION IN BENEFICIARY FORM — SOLE OR JOINT TENANCY OWNERSHIP.

Only an individual whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form shall hold as joint tenants with rights of survivorship, tenants by the entireties, or owners of community property held in survivorship form and not as tenants in common.

Sec. 20. NEW SECTION. 633.803 REGISTRATION IN BENEFICIARY FORM — APPLICABLE LAW.

1. A security may be registered in beneficiary form if the form is authorized by this division or a similar statute of the state of any of the following:

- a. The state of organization of the issuer or registering entity.
- b. The state of location of the registering entity's principal office.
- c. The state of location of the office of the entity's transfer agent or the office of the entity making the registration.

d. The state of the address listed as the owner's at the time of registration.

2. A registration governed by the law of a jurisdiction in which this division or a similar statute is not in force or was not in force when a registration in beneficiary form was made is presumed to be valid and authorized as a matter of contract law.

Sec. 21. NEW SECTION. 633.804 ORIGINATION OF REGISTRATION IN BENEFICIARY FORM.

A security, whether evidenced by a certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

Sec. 22. NEW SECTION. 633.805 FORM OF REGISTRATION IN BENEFICIARY FORM.

Registration in beneficiary form may be shown by any of the following, appearing after the name of the registered owner and before the name of a beneficiary:

1. The words "transfer on death" or the abbreviation "TOD".
2. The words "pay on death" or the abbreviation "POD".

Sec. 23. NEW SECTION. 633.806 EFFECT OF REGISTRATION IN BENEFICIARY FORM.

The designation of a transfer on death or pay on death beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all surviving owners without the consent of the beneficiary.

Sec. 24. NEW SECTION. 633.807 CLAIMS AGAINST A BENEFICIARY OF A TRANSFER ON DEATH SECURITY REGISTRATION.

1. If other assets of the estate of a deceased owner are insufficient to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children, a transfer at death of a security registered in beneficiary form is not effective against the estate of the deceased sole owner, or if multiple owners, against the estate of the last owner to die, to the extent needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children.

2. A beneficiary of a transfer on death security registration under this division is liable to account to the personal representative of the deceased owner for the value of the security as of the time of the deceased owner's death to the extent necessary to discharge debts, taxes,

and expenses of administration, including statutory allowances to the surviving spouse and children. A proceeding against a beneficiary to assert liability shall not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a minor child of the deceased owner.

3. An action for an accounting under this section must be commenced within two years after the death of the owner.

4. A beneficiary against whom a proceeding is brought may elect to transfer to the personal representative the security registered in the name of the beneficiary if the beneficiary still owns the security, or the net proceeds received by the beneficiary upon disposition of the security by the beneficiary. Such transfer fully discharges the beneficiary from all liability under this section.

5. A beneficiary against whom a proceeding for an accounting is brought may join as a party to the proceeding a beneficiary of any other security registered in beneficiary form by the deceased owner.

6. Amounts recovered by the personal representative with respect to a security shall be administered as part of the deceased owner's estate.

7. A district court in this state shall have subject matter jurisdiction over a claim against a designated beneficiary brought by the decedent's personal representative or by a claimant to an interest in a security registered under this division. Any provision in a security registration form restricting jurisdiction over a claim, or restricting a choice of forum, to a forum outside this state is void.

8. In an action for an accounting brought under this section, where the deceased owner was domiciled in this state, the laws of this state shall apply.

Sec. 25. NEW SECTION. 633.808 DEATH OF THE OWNER.

On the death of a sole owner or on the death of the sole surviving owner of multiple owners, the ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. A registering entity shall provide notice to the department of revenue and finance of all reregistrations made pursuant to this division. The notice shall include the name, address, and social security number of the decedent and all transferees. Until the division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of multiple owners.

Sec. 26. NEW SECTION. 633.809 PROTECTION OF REGISTERING ENTITY.

1. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections provided to the registering entity by this division.

2. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration in beneficiary form shall be implemented on the death of the deceased owners as provided in this division.

3. A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if the registering entity registers a transfer of the security in accordance with section 633.808 and does so in good faith reliance on all of the following:

a. The registration.

b. The provisions of this division.

c. Information provided by affidavit of the personal representative of the deceased owner, the surviving beneficiary, or the surviving beneficiary's representative, or other information available to the registering entity.

The protections of this division do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this division.

4. The protection provided by this division to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the transferred security, its value, or its proceeds.

Sec. 27. NEW SECTION. 633.810 NONTESTAMENTARY TRANSFER ON DEATH.

1. A transfer on death resulting from a registration in beneficiary form shall be effective by reason of the contract regarding the registration between the owner and the registering entity under the provisions of this division, and is not testamentary.

2. The provisions of this division do not limit the rights of creditors or security owners against beneficiaries and other transferees under other laws of this state.

Sec. 28. NEW SECTION. 633.811 TERMS, CONDITIONS, AND FORMS FOR REGISTRATION.

1. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which the registering entity receives requests for either of the following:

a. Registration in beneficiary form.

b. Implementation of registrations in beneficiary form, including requests for cancellation of previously registered transfer on death or pay on death beneficiary designations and requests for reregistration to effect a change of beneficiary.

2. a. The terms and conditions established by the registering entity may provide for proving death, avoiding or resolving problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the beneficiary the letters "LDPS" standing for "lineal descendants per stirpes". This designation shall substitute a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to survive, with the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

b. The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: OWNER'S NAME transfer on death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

(2) Multiple owners-sole beneficiary: OWNERS' NAMES, as joint tenants or tenants in the entirety, transfer on death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

(3) Multiple owners-primary and secondary (substituted) beneficiaries: OWNERS' NAMES as joint tenants or tenants in the entirety, transfer on death (TOD) or pay on death (POD) to BENEFICIARY'S NAME, or lineal descendants per stirpes.

Sec. 29. APPLICATION. The provisions of this division apply to registrations of securities in beneficiary form made before, on, or after the effective date of this Act, by decedents dying on or after the effective date of this Act.