

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 806

99TH GENERAL ASSEMBLY

2018

5457S.05T

AN ACT

To repeal sections 473.397, 473.398, 473.730, 473.770, 473.771, 475.010, 475.016, 475.050, 475.060, 475.061, 475.062, 475.070, 475.075, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.290, 475.320, 475.355, and 630.005, RSMo, and to enact in lieu thereof thirty-six new sections relating to guardianship proceedings.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 473.397, 473.398, 473.730, 473.770, 473.771, 475.010, 475.016, 475.050, 475.060, 475.061, 475.062, 475.070, 475.075, 475.078, 475.079, 475.080, 475.082, 475.083, 475.094, 475.120, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.290, 475.320, 475.355, and 630.005, RSMo, are repealed and thirty-six new sections enacted in lieu thereof, to be known as sections 473.397, 473.398, 473.730, 473.770, 473.771, 475.010, 475.016, 475.050, 475.060, 475.061, 475.062, 475.070, 475.075, 475.078, 475.079, 475.080, 475.082, 475.083, 475.084, 475.094, 475.120, 475.125, 475.130, 475.145, 475.230, 475.270, 475.276, 475.290, 475.320, 475.341, 475.342, 475.343, 475.355, 475.357, 475.361, and 630.005, to read as follows:

473.397. All claims and statutory allowances against the estate of a decedent shall be divided into the following classes:

- (1) Costs;
- (2) Expenses of administration;
- (3) Exempt property, family and homestead allowances;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

6 (4) Funeral expenses;

7 (5) Debts and taxes due the United States of America;

8 (6) **Debts for medical assistance owed to the state of Missouri**
9 **under section 473.398;**

10 (7) Expenses of the last sickness, wages of servants, claims for medicine
11 and medical attendance during the last sickness, and the reasonable cost of a
12 tombstone;

13 [(7)] (8) Debts and taxes due the state of Missouri, any county, or any
14 political subdivision of the state of Missouri;

15 [(8)] (9) Judgments rendered against the decedent in his lifetime and
16 judgments rendered upon attachments levied upon property of decedent during
17 his lifetime;

18 [(9)] (10) All other claims not barred by section 473.360.

473.398. 1. Upon the death of a person, who has been a participant of aid,
2 assistance, care, services, or who has had moneys expended on his behalf by the
3 department of health and senior services, department of social services, or the
4 department of mental health, or by a county commission, the total amount paid
5 to the decedent or expended upon his behalf after January 1, 1978, shall be a debt
6 due the state or county, as the case may be, from the estate of the decedent. The
7 debt shall be collected as provided by the probate code of Missouri, chapters 472,
8 473, 474 and 475.

9 2. Procedures for the allowance of such claims shall be in accordance with
10 this chapter, and such claims shall be allowed as a claim of [the seventh] **either**
11 **the sixth or eighth** class under [subdivision (7)] **subdivisions (6) and (8)** of
12 section 473.397.

13 3. Such claim shall not be filed or allowed if it is determined that:

14 (1) The cost of collection will exceed the amount of the claim;

15 (2) The collection of the claim will adversely affect the need of the
16 surviving spouse or dependents of the decedent to reasonable care and support
17 from the estate.

18 4. Claims consisting of moneys paid on the behalf of a participant as
19 defined in 42 U.S.C. 1396 shall be allowed, except as provided in subsection 3 of
20 this section, upon the showing by the claimant of proof of moneys expended. Such
21 proof may include but is not limited to [the following items which are deemed to
22 be competent and substantial evidence of payment:

23 (1)] computerized records maintained by any governmental entity as

24 described in subsection 1 of this section of a request for payment for services
25 rendered to the participant[; and

26 (2) The certified statement of the treasurer or his designee that the
27 payment was made], **which shall be deemed to be competent and**
28 **substantial evidence of payment.**

29 5. The provisions of this section shall not apply to any claims,
30 adjustments or recoveries specifically prohibited by federal statutes or regulations
31 duly promulgated thereunder. Further, the federal government shall receive from
32 the amount recovered any portion to which it is entitled.

33 6. Before any probate estate may be closed under this chapter, with
34 respect to a decedent who, at the time of death, was enrolled in MO HealthNet,
35 the personal representative of the estate shall file with the clerk of the court
36 exercising probate jurisdiction a release from the MO HealthNet division
37 evidencing payment of all MO HealthNet benefits, premiums, or other such costs
38 due from the estate under law, unless waived by the MO HealthNet division.

473.730. 1. Every county in this state, except the City of St. Louis, shall
2 elect a public administrator at the general election in the year 1880, and every
3 four years thereafter, who shall be ex officio public guardian and conservator in
4 and for the public administrator's county. A candidate for public administrator
5 shall be at least twenty-one years of age and a resident of the state of Missouri
6 and the county in which he or she is a candidate for at least one year prior to the
7 date of the general election for such office. The candidate shall also be a
8 registered voter and shall be current in the payment of all personal and business
9 taxes. Each candidate for public administrator shall provide to the election
10 authority a copy of a signed affidavit from a surety company, indicating that the
11 candidate meets the bond requirements for the office of public administrator
12 under this section. The secretary of state shall notify each election authority of
13 the requirements of this section. The secretary of state will provide the necessary
14 forms to assure compliance of the requirements of this section.

15 2. Before entering on the duties of the public administrator's office, the
16 public administrator shall take the oath required by the constitution, and enter
17 into bond to the state of Missouri in a sum not less than ten thousand dollars,
18 with one or more securities, approved by the court and conditioned that the public
19 administrator will faithfully discharge all the duties of the public administrator's
20 office, which bond shall be given and oath of office taken on or before the first day
21 of January following the public administrator's election, and it shall be the duty

22 of the judge of the court to require the public administrator to make a statement
23 annually, under oath, of the amount of property in the public administrator's
24 hands or under the public administrator's control as such administrator, for the
25 purpose of ascertaining the amount of bond necessary to secure such property;
26 and such court may from time to time, as occasion shall require, demand
27 additional security of such administrator, and, in default of giving the same
28 within twenty days after such demand, may remove the administrator and
29 appoint another.

30 3. The public administrator in all counties, in the performance of the
31 duties required by chapters 473, 474, and 475, is a public officer. The duties
32 specified by [section] **sections 475.120 and 475.343** are discretionary. The
33 county shall defend and indemnify the public administrator against any alleged
34 breach of duty, provided that any such alleged breach of duty arose out of an act
35 or omission occurring within the scope of duty or employment.

36 4. After January 1, 2001, all salaried public administrators shall be
37 considered county officials for purposes of section 50.333, subject to the minimum
38 salary requirements set forth in section 473.742.

39 5. The public administrator for the City of St. Louis shall be appointed by
40 a majority of the circuit judges and associate circuit judges of the twenty-second
41 judicial circuit, en banc. Such public administrator shall meet the same
42 qualifications and requirements specified in subsection 1 of this section for
43 elected public administrators. The elected public administrator holding office on
44 August 28, 2013, shall continue to hold such office for the remainder of his or her
45 term.

473.770. 1. Whenever, in the judgment of any public administrator in any
2 county of the first class, it is necessary for the proper and efficient conduct of the
3 business of the public administrator's office that the public administrator appoint
4 any deputies to assist the public administrator in the performance of his or her
5 official duties as public administrator or as executor, administrator, personal
6 representative, guardian, or conservator in any estates wherein the public
7 administrator has been specially appointed, the public administrator may appoint
8 one or more deputies to assist him or her in the performance of his or her duties
9 as public administrator and as executor, administrator, personal representative,
10 guardian, or conservator in the estates wherein the public administrator has been
11 specially appointed. The appointment shall be in writing and shall be filed with
12 the court, and, upon the filing, the court shall issue under its seal a certificate of

13 the appointment for each deputy, stating that the appointee is vested with the
14 powers and duties conferred by this section. The certificate shall be valid for one
15 year from date, unless terminated prior thereto, and shall be renewed from year
16 to year as long as the appointment remains in force, and may be taken as
17 evidence of the authority of the deputy. The appointment and authority of any
18 deputy may at any time be terminated by the public administrator by notice of
19 the termination filed in the court, and upon termination the deputy shall
20 surrender the public administrator's certificate of appointment.

21 2. In all counties of the first classification not having a charter form of
22 government and containing a portion of a city having a population of three
23 hundred thousand or more inhabitants, the compensation of each such deputy
24 shall be set by the public administrator, with the approval of the governing body
25 of the county, and shall be paid in equal monthly installments out of the county
26 treasury. In all other counties of the first classification the compensation of each
27 such deputy shall be prescribed and paid by the public administrator out of the
28 fees to which he or she is legally entitled, and no part of such compensation shall
29 be paid out of any public funds or assessed as costs or allowed in any estate.

30 3. Each deputy so appointed shall be authorized to perform such
31 ministerial and nondiscretionary duties as may be delegated to him or her by the
32 public administrator, including:

33 (1) Assembling, taking into possession, and listing moneys, checks, notes,
34 stocks, bonds and other securities, and all other personal property of any and all
35 estates in the charge of the public administrator;

36 (2) Depositing all moneys, checks, and other instruments for the payment
37 of money in the bank accounts maintained by the public administrator for the
38 deposit of such funds;

39 (3) Signing or countersigning any and all checks and other instruments
40 for the payment of moneys out of such bank accounts, in pursuance of general
41 authorization by the public administrator to the bank in which the same are
42 deposited, as long as such authorization remains in effect;

43 (4) Entering the safe deposit box of any person or decedent whose estate
44 is in the charge of the public administrator and any safe deposit box maintained
45 by the public administrator for the safekeeping of assets in his or her charge, as
46 a deputy of the public administrator, pursuant to general authorization given by
47 the public administrator to the bank or safe deposit company in charge of any
48 such safe deposit box, as long as such deputy-authorization remains in effect, and

49 withdrawing therefrom and depositing therein such assets as may be determined
50 by the public administrator. The bank or safe deposit company shall not be
51 charged with notice or knowledge or any limitation of authority of the authorized
52 deputy, unless specially notified in writing thereof by the public administrator,
53 and may allow the deputy access to the safe deposit box, in the absence of notice,
54 to the full extent allowable to the public administrator in person.

55 4. The enumeration of the foregoing powers shall not operate as an
56 exclusion of any powers not specifically conferred. No authorized deputy shall
57 exercise any power, other than as prescribed in this section, which shall require
58 the exercise of a discretion enjoined by law to be exercised personally by the
59 executor, administrator, personal representative, guardian, or conservator in
60 charge of the estate to which the discretionary power refers.

61 5. Notwithstanding the provisions of subsections 3 and 4 of this section
62 to the contrary, a public administrator in a county of the first classification
63 having a charter form of government and containing all or part of a city with a
64 population of at least three hundred thousand inhabitants, and a public
65 administrator in any county of the first classification may delegate to any deputy
66 appointed by the public administrator any of the duties of the public
67 administrator enumerated in section 473.743, and sections 475.120 [and],
68 475.130, **and 475.343**. Such public administrator may also delegate to a deputy
69 who is a licensed attorney the authority to execute inventories, settlements,
70 surety bonds, pleadings and other documents filed in any court in the name of the
71 public administrator, and the same shall have the force and effect as if executed
72 by the public administrator.

473.771. 1. Whenever, in the judgment of any public administrator in any
2 county which is not a county of the first classification, it is necessary for the
3 proper and efficient conduct of the business of his or her office that the public
4 administrator appoint a deputy to assist the public administrator in the
5 performance of his or her official duties as public administrator or as executor,
6 administrator, personal representative, guardian, or conservator in any estates
7 wherein the public administrator has been specially appointed, the public
8 administrator may appoint a deputy to assist him or her in the performance of his
9 or her duties as public administrator and as executor, administrator, personal
10 representative, guardian, or conservator in the estates wherein the public
11 administrator has been specially appointed. The appointment shall be in writing
12 and shall be filed with the court, and, upon the filing, the court shall issue under

13 its seal a certificate of the appointment for the deputy, stating that the appointee
14 is vested with the powers and duties conferred by this section. The certificate
15 shall be valid for one year from the date, unless terminated prior thereto, and
16 shall be renewed from year to year as long as the appointment remains in force,
17 and may be taken as evidence of the authority of the deputy. The appointment
18 and authority of a deputy may at any time be terminated by the public
19 administrator by notice of the termination filed in the court, and upon
20 termination the deputy shall surrender his or her certificate of appointment.

21 2. The compensation of a deputy appointed pursuant to the provisions of
22 this section shall be prescribed and paid by the public administrator out of the
23 fees to which he or she is legally entitled.

24 3. A deputy appointed pursuant to the provisions of this section shall be
25 authorized to perform such ministerial and nondiscretionary duties as may be
26 delegated to him or her by the public administrator, including:

27 (1) Assembling, taking into possession, and listing moneys, checks, notes,
28 stocks, bonds and other securities, and all other personal property of any and all
29 estates in the charge of the public administrator;

30 (2) Depositing all moneys, checks, and other instruments for the payment
31 of money in the bank accounts maintained by the public administrator for the
32 deposit of such funds;

33 (3) Signing or countersigning any and all checks and other instruments
34 for the payment of moneys out of such bank accounts, in pursuance of general
35 authorization by the public administrator to the bank in which the same are
36 deposited, as long as such authorization remains in effect;

37 (4) Entering the safe deposit box of any person or decedent whose estate
38 is in the charge of the public administrator and any safe deposit box maintained
39 by the public administrator for the safekeeping of assets in his or her charge, as
40 a deputy of the public administrator, pursuant to general authorization given by
41 the public administrator to the bank or safe deposit company in charge of any
42 such safe deposit box, as long as such authorization as a deputy remains in effect,
43 and withdrawing therefrom and depositing therein such assets as may be
44 determined by the public administrator. The bank or safe deposit company shall
45 not be charged with notice or knowledge or any limitation of authority of the
46 authorized deputy, unless specially notified in writing thereof by the public
47 administrator, and may allow the deputy access to the safe deposit box, in the
48 absence of notice, to the full extent allowable to the public administrator in

49 person.

50 4. The enumeration of the foregoing powers shall not operate as an
51 exclusion of any powers not specifically conferred. No authorized deputy shall
52 exercise any power, other than as prescribed in this section, which shall require
53 the exercise of a discretion enjoined by law to be exercised personally by the
54 executor, administrator, personal representative, guardian, or conservator in
55 charge of the estate to which the discretionary power refers.

56 5. Notwithstanding the provisions of subsections 3 and 4 of this section
57 to the contrary, a public administrator in a county which is not a county of the
58 first classification may delegate to any deputy appointed by the public
59 administrator any of the duties of the public administrator enumerated in section
60 473.743, and sections 475.120 [and], 475.130, **and 475.343**. Such public
61 administrator may also delegate to a deputy who is a licensed attorney the
62 authority to execute inventories, settlements, surety bonds, pleadings, and other
63 documents filed in any court in the name of the public administrator, and the
64 same shall have the force and effect as if executed by the public administrator.

475.010. When used in this chapter, unless otherwise apparent from the
2 context, the following terms mean:

3 (1) "Adult", a person who has reached the age of eighteen years;

4 (2) "Claims", liabilities of the protectee arising in contract, in tort or
5 otherwise, before or after the appointment of a conservator, and liabilities of the
6 estate which arise at or after the adjudication of disability or after the
7 appointment of a conservator of the estate, including expenses of the adjudication
8 and of administration. The term does not include demands or disputes regarding
9 title of the protectee to specific assets alleged to be included in the estate;

10 (3) "Conservator", one appointed by a court to have the care and custody
11 of the estate of a minor or a disabled person. A "limited conservator" is one
12 whose duties or powers are limited. The term "conservator", as used in this
13 chapter, includes limited conservator unless otherwise specified or apparent from
14 the context;

15 (4) **"Conservator ad litem", one appointed by the court in which**
16 **particular litigation is pending regarding the management of financial**
17 **resources on behalf of a minor, a disabled person, or an unborn person**
18 **in that particular proceeding or as otherwise specified in this chapter;**

19 (5) "Custodial parent", the parent of a minor who has been awarded sole
20 or joint physical custody of such minor, or the parent of an incapacitated person

21 who has been appointed as guardian of such person, by an order or judgment of
22 a court of this state or of another state or territory of the United States, or if
23 there is no such order or judgment, the parent with whom the minor or
24 incapacitated person primarily resides;

25 [(5)] **(6)** "Disabled" or "disabled person", one who is:

26 (a) Unable by reason of any physical [or], mental, **or cognitive** condition
27 to receive and evaluate information or to communicate decisions to such an extent
28 that the person lacks ability to manage [his] **the person's** financial resources;
29 or

30 (b) The term "disabled" or "disabled person", as used in this chapter
31 includes the terms partially disabled or partially disabled person unless
32 otherwise specified or apparent from the context;

33 [(6)] **(7)** "Eligible person" or "qualified person", a natural person, social
34 service agency, corporation or national or state banking organization qualified to
35 act as guardian of the person or conservator of the estate pursuant to the
36 provisions of section 475.055;

37 [(7)] **(8)** "Guardian", one appointed by a court to have the care and
38 custody of the person of a minor or of an incapacitated person. A "limited
39 guardian" is one whose duties or powers are limited. A "standby guardian" is one
40 approved by the court to temporarily assume the duties of guardian of a minor
41 or of an incapacitated person under section 475.046. The term "guardian", as
42 used in this chapter, includes limited guardian and standby guardian unless
43 otherwise specified or apparent from the context;

44 [(8)] **(9)** "Guardian ad litem", one appointed by a court, in which
45 particular litigation is pending[, to represent] **on behalf of** a minor, an
46 incapacitated person, a disabled person, or an unborn person in that particular
47 proceeding or as otherwise specified in this code;

48 [(9)] **(10)** "Habilitation", [instruction, training, guidance or treatment
49 designed to enable and encourage a intellectually disabled or developmentally
50 disabled person as defined in chapter 630 to acquire and maintain those life skills
51 needed to cope more effectively with the demands of his or her own person and
52 of his or her environment] **a process of treatment, training, care, or
53 specialized attention that seeks to enhance and maximize the ability of
54 a person with an intellectual disability or a developmental disability to
55 cope with the environment and to live as determined by the person as
56 much as possible, as is appropriate for the person considering his or**

57 **her physical and mental condition and financial means;**

58 [(10)] (11) "Incapacitated person", one who is unable by reason of any
59 physical [or], mental, **or cognitive** condition to receive and evaluate information
60 or to communicate decisions to such an extent that [he or she] **the person, even**
61 **with appropriate services and assistive technology**, lacks capacity to
62 [meet] **manage the person's** essential requirements for food, clothing, shelter,
63 safety or other care such that serious physical injury, illness, or disease is likely
64 to occur. The term "incapacitated person" as used in this chapter includes the
65 term partially incapacitated person unless otherwise specified or apparent from
66 the context;

67 (12) "Interested persons", spouses, children, parents, adult
68 members of a ward's or protectee's family, creditors or any others
69 having a property right or claim against the estate of a protectee being
70 administered, trustees of a trust of which the ward or protectee is a
71 beneficiary, agents of a durable power of attorney for a ward or
72 protectee, and children of a protectee who may have a property right
73 or claim against or an interest in the estate of a protectee. This
74 meaning may vary at different stages and different parts of a
75 proceeding and shall be determined according to the particular
76 purpose and matter involved;

77 [(11)] (13) "Least restrictive [environment] alternative", [that there
78 shall be imposed on the personal liberty of the ward only such restraint as is
79 necessary to prevent the ward from injuring himself or herself and others and to
80 provide the ward with such care, habilitation and treatment as are appropriate
81 for the ward considering his or her physical and mental condition and financial
82 means] **with respect to the guardianship order and the exercise of**
83 **power by the guardian, a course of action or an alternative that allows**
84 **the incapacitated person to live, learn, and work with minimum**
85 **restrictions on the person, as are appropriate for the person**
86 **considering his or her physical and mental condition and financial**
87 **means. "Least restrictive alternative" also means choosing the decision**
88 **or approach that:**

89 (a) **Places the least possible restriction on the person's personal**
90 **liberty and exercise of rights and that promotes the greatest possible**
91 **inclusion of the person into his or her community, as is appropriate for**
92 **the person considering his or her physical and mental condition and**

93 **financial means; and**

94 **(b) Is consistent with meeting the person's essential**
95 **requirements for health, safety, habilitation, treatment, and recovery**
96 **and protecting the person from abuse, neglect, and financial**
97 **exploitation;**

98 [(12)] **(14)** "Manage financial resources", either those actions necessary
99 to obtain, administer, and dispose of real and personal property, intangible
100 property, business property, benefits, income or any assets, or those actions
101 necessary to prevent waste, loss or dissipation of property, or those actions
102 necessary to provide for the care and support of such person or anyone legally
103 dependent upon such person by a person of ordinary skills and intelligence
104 commensurate with his or her training and education;

105 [(13)] **(15)** "Minor", any person who is under the age of eighteen years;

106 [(14)] **(16)** "Parent", the biological or adoptive mother or father of a child
107 whose parental rights have not been terminated under chapter 211, including:

108 (a) A person registered as the father of the child by reason of an
109 unrevoked notice of intent to claim paternity under section 192.016;

110 (b) A person who has acknowledged paternity of the child and has not
111 rescinded that acknowledgment under section 193.215; and

112 (c) A person presumed to be the natural father of the child under section
113 210.822;

114 [(15)] **(17)** "Partially disabled person", one who is unable by reason of
115 any physical [or], mental, **or cognitive** condition to receive and evaluate
116 information or to communicate decisions to such an extent that such person lacks
117 capacity to manage, in part, his or her financial resources;

118 [(16)] **(18)** "Partially incapacitated person", one who is unable by reason
119 of any physical [or], mental, **or cognitive** condition to receive and evaluate
120 information or to communicate decisions to the extent that such person lacks
121 capacity to meet, in part, essential requirements for food, clothing, shelter, safety,
122 or other care without court-ordered assistance;

123 [(17)] **(19)** "Protectee", a person for whose estate a conservator or limited
124 conservator has been appointed or with respect to whose estate a transaction has
125 been authorized by the court under section 475.092 without appointment of a
126 conservator or limited conservator;

127 [(18)] **(20)** "Seriously ill", a significant likelihood that a person will
128 become incapacitated or die within twelve months;

129 [(19)] (21) "Social service agency", a charitable organization organized
130 and incorporated as a not-for-profit corporation under the laws of this state and
131 which qualifies as an exempt organization within the meaning of Section
132 501(c)(3), or any successor provision thereto of the federal Internal Revenue Code;

133 [(20)] (22) "Standby guardian", one who is authorized to have the
134 temporary care and custody of the person of a minor or of an incapacitated person
135 under the provisions of section 475.046;

136 [(21)] (23) "Treatment", the prevention, amelioration or cure of a person's
137 physical and mental illnesses or incapacities;

138 [(22)] (24) "Ward", a minor or an incapacitated person for whom a
139 guardian, limited guardian, or standby guardian has been appointed.

475.016. 1. If there has been an adjudication of incompetency before
2 September 28, 1983, any person so adjudicated shall be deemed totally
3 incapacitated and totally disabled as defined in section 475.010, until such time
4 as the probate division of the circuit court of the county of proper venue, upon the
5 annual review proceeding prescribed by section 475.082 or otherwise, may review
6 the nature of the incapacity or disability of the person so adjudicated and alter
7 the nature of the adjudication if, as a consequence of the review, it appears to the
8 court that the person is not both totally incapacitated and totally disabled as
9 defined in section 475.010. A guardian of the person appointed before September
10 28, 1983, shall be deemed a guardian as defined in section 475.010. A guardian
11 of the estate appointed before September 28, 1983, shall be deemed a conservator
12 as defined in section 475.010.

13 **2. Existing guardians and conservators shall have one year after**
14 **August 28, 2018, to meet any annual and other reporting requirements**
15 **that are different from the former requirements of chapter 475 prior to**
16 **August 28, 2018.**

475.050. 1. Before appointing any other eligible person as guardian of an
2 incapacitated person, or conservator of a disabled person, the court shall consider
3 the suitability of appointing any of the following persons, **listed in the order**
4 **of priority**, who appear to be willing to serve:

5 (1) If the incapacitated or disabled person is, at the time of the hearing,
6 able to make and communicate a reasonable choice, any eligible person nominated
7 by the person;

8 (2) Any eligible person nominated in a durable power of attorney executed
9 by the incapacitated or disabled person, or in an instrument in writing signed by

10 the incapacitated or disabled person and by two witnesses who signed at the
11 incapacitated or disabled person's request, before the inception of the person's
12 incapacity or disability[, at a time within five years before the hearing when the
13 person was able to make and communicate a reasonable choice];

14 (3) The spouse, parents, adult children, adult brothers and sisters and
15 other close adult relatives of the incapacitated or disabled person;

16 (4) Any other eligible person or, with respect to the estate only, any
17 eligible organization or corporation, nominated in a duly probated will of such a
18 spouse or relative [executed within five years before the hearing].

19 **2. The court shall not appoint an unrelated third party as a**
20 **guardian or conservator unless there is no relative suitable and willing**
21 **to serve or if the appointment of a relative or nominee is otherwise**
22 **contrary to the best interests of the incapacitated or disabled person.**
23 **If the incapacitated or disabled person is a minor under the care of the**
24 **children's division and is entering adult guardianship or**
25 **conservatorship, it shall be a rebuttable presumption that he or she has**
26 **no relative suitable and willing to serve as guardian or conservator.**

27 **3.** Except for good cause shown, the court shall make its appointment in
28 accordance with the incapacitated or disabled person's most recent valid
29 nomination of an eligible person qualified to serve as guardian of the person or
30 conservator of the estate. [In the event there is not brought to the attention of
31 the court any such valid nomination executed within five years before the
32 hearing, then the court shall give consideration to the most recent valid
33 nomination brought to its attention, but the court shall not be required to follow
34 such nomination.]

35 **4. Except for those individuals specified in subdivisions (1) and**
36 **(2) of this subsection, the court shall require all guardians and**
37 **conservators who are seeking appointment and who have a fiduciary**
38 **responsibility to a ward, an incapacitated person, or a disabled person**
39 **to submit at their own expense to a background screening that shall**
40 **include the disqualification lists of the departments of mental health,**
41 **social services, and health and senior services; the abuse and neglect**
42 **registries for adults and children; a Missouri criminal record review;**
43 **and the sexual offender registry. Individuals seeking appointment as**
44 **a conservator shall also submit, at their own expense, to a credit**
45 **history investigation. The nominated guardian or conservator shall file**

46 the results of the reports with the court at least ten days prior to the
47 appointment hearing date unless waived or modified by the court for
48 good cause shown by an affidavit filed simultaneously with the petition
49 for appointment or in the event the protected person requests an
50 expedited hearing. The provisions of this subsection shall not apply to:

51 (1) Public administrators; or

52 (2) The ward's, incapacitated person's, or disabled person's
53 spouse, parents, children who have reached eighteen years of age, or
54 siblings who have reached eighteen years of age.

55 5. Guardians certified by a national accrediting organization
56 may file proof of certification in lieu of the requirements of subsections
57 4 and 6 of this section.

58 6. An order appointing a guardian or conservator shall not be
59 signed by the judge until such reports have been filed with the court
60 and reviewed by the judge, who shall consider the reports in
61 determining whether to appoint a guardian or conservator. Such
62 reports, or lack thereof, shall be certified either by an affidavit or by
63 obtaining a certified copy of the reports. No reports or national
64 criminal history record check shall be required by the court upon the
65 application of a petitioner for an emergency temporary guardianship
66 or emergency temporary conservatorship. The court may waive the
67 requirements of this subsection for good cause shown. If appointed, a
68 guardian or conservator may petition the court for reimbursement of
69 the reasonable expenses of the credit history investigation and
70 background screenings.

475.060. 1. Any person may file a petition for the appointment of himself
2 or herself or some other qualified person as guardian of a minor. Such petition
3 shall state:

4 (1) The name, age, domicile, actual place of residence and post office
5 address of the minor if known and if any of these facts is unknown, the efforts
6 made to ascertain that fact;

7 (2) The estimated value of the minor's real and personal property, and the
8 location and value of any real property owned by the minor outside of this state;

9 (3) If the minor has no domicile or place of residence in this state, the
10 county in which the property or major part thereof of the minor is located;

11 (4) The name and address of the parents of the minor and whether they
12 are living or dead;

13 (5) The name and address of the spouse, and the names, ages and
14 addresses of all living children of the minor;

15 (6) The name and address of the person having custody of the person of
16 the minor **or who claims to have custody of the person of the minor;**

17 (7) The name and address of any guardian of the person or conservator
18 of the estate of the minor appointed in this or any other state;

19 (8) If appointment is sought for a natural person, other than the public
20 administrator, the names and addresses of wards and disabled persons for whom
21 such person is already guardian or conservator;

22 (9) The name and address of the trustees and the purpose of any trust of
23 which the minor is a qualified beneficiary;

24 (10) The reasons why the appointment of a guardian is sought;

25 (11) A petition for the appointment of a guardian of a minor may be filed
26 for the sole and specific purpose of school registration or medical insurance
27 coverage. Such a petition shall clearly set out this limited request and shall not
28 be combined with a petition for conservatorship;

29 **(12) If the petitioner requests the appointment of co-guardians,**
30 **a statement of the reasons why such appointment is sought and**
31 **whether the petitioner requests that the co-guardians, if appointed,**
32 **may act independently or whether they may act only together or only**
33 **together with regard to specified matters;**

34 **(13) That written consent has been obtained from any person,**
35 **including a public administrator, who is to be appointed as a**
36 **co-guardian; and**

37 **(14) Whether the petitioner knows of any other court having**
38 **jurisdiction over the minor and the name of the court, if known.**

39 2. Any person may file a petition for the appointment of himself or herself
40 or some other qualified person as guardian **or limited guardian** of an
41 incapacitated person. Such petition shall state:

42 (1) If known, the name, age, domicile, actual place of residence, and post
43 office address of the alleged incapacitated person, and for the period of three
44 years before the filing of the petition, the most recent addresses, up to three, at
45 which the alleged incapacitated person lived prior to the most recent address, and
46 if any of these facts is unknown, the efforts made to ascertain that fact. In the
47 case of a petition filed by a public official in his or her official capacity, the
48 information required by this subdivision need only be supplied to the extent it is

49 reasonably available to the petitioner;

50 (2) The estimated value of the alleged incapacitated person's real and
51 personal property, and the location and value of any real property owned by the
52 alleged incapacitated person outside of this state;

53 (3) If the alleged incapacitated person has no domicile or place of
54 residence in this state, the county in which the property or major part thereof of
55 the alleged incapacitated person is located;

56 (4) The name and address of the parents of the alleged incapacitated
57 person and whether they are living or dead;

58 (5) The name and address of the spouse, the names, ages, and addresses
59 of all living children of the alleged incapacitated person, the names and addresses
60 of the alleged incapacitated person's closest known relatives, and the names and
61 relationship, if known, of any adults living with the alleged incapacitated person;
62 if no spouse, adult child, or parent is listed, the names and addresses of the
63 siblings and children of deceased siblings of the alleged incapacitated person; the
64 name and address of any agent appointed by the alleged incapacitated person in
65 any durable power of attorney, and of the presently acting trustees of any trust
66 of which the alleged incapacitated person is the grantor or is a qualified
67 beneficiary or is or was the trustee or cotrustee and the purpose of the power of
68 attorney or trust;

69 (6) The name and address of the person having custody of the person of
70 the alleged incapacitated person;

71 (7) The name and address of any guardian of the person or conservator
72 of the estate of the alleged incapacitated person appointed in this or any other
73 state;

74 (8) If appointment is sought for a natural person, other than the public
75 administrator, the names and addresses of wards and [disabled persons]
76 **protectees** for whom such person is already guardian or conservator;

77 (9) The [fact] **factual basis for the petitioner's conclusion** that the
78 person for whom guardianship is sought is **unable or partially unable** by
79 reason of some specified physical [or], mental, **or cognitive** condition to receive
80 and evaluate information or to communicate decisions to such an extent that the
81 person lacks capacity to meet essential requirements for food, clothing, shelter,
82 safety, or other care such that serious physical injury, illness, or disease is likely
83 to occur;

84 (10) The reasons, **incidents, and specific behaviors demonstrating**

85 why the appointment of a guardian **or limited guardian** is sought;

86 **(11) If the petitioner suggests the appointment of co-guardians,**
87 **a statement of the reasons why such appointment is sought and**
88 **whether the petitioner suggests that the co-guardians, if appointed,**
89 **may act independently or whether they may act only together or only**
90 **together with regard to specified matters; and**

91 **(12) Written consent has been obtained from any person,**
92 **including a public administrator, who is to be appointed as a**
93 **co-guardian.**

94 **3. If the person filing the petition seeks the appointment of an**
95 **emergency guardian, the petition shall include the same requirements**
96 **as provided in subsection 1 of this section and shall request the**
97 **appointment per the requirements provided in subsection 15 of section**
98 **475.075.**

475.061. 1. Any person may file a petition in the probate division of the
2 circuit court of the county of proper venue for the appointment of himself **or**
3 **herself** or some other qualified person as conservator of the estate of a minor or
4 disabled person. The petition shall contain the same allegations as are set forth
5 in subdivisions (1), (8), and (10) of subsection 2 of section 475.060 with respect to
6 the appointment of a guardian for an incapacitated person and, in addition
7 thereto, an allegation that the respondent is unable by reason of some specific
8 physical or **[mental] cognitive** condition to receive and evaluate information or
9 to communicate decisions to such an extent that the respondent lacks ability to
10 manage his financial resources or that the respondent is under the age of
11 eighteen years.

12 2. A petition for appointment of a conservator or limited conservator of
13 the estate may be combined with a petition for appointment of a guardian or
14 limited guardian of the person. In such a combined petition allegations need not
15 be repeated.

475.062. 1. **[When a petition for appointment of a conservator of the**
2 **estate of an alleged disabled person is made by said person, or said person's**
3 **consent to the appointment sought is endorsed on the petition or filed with it, the**
4 **court, after appointment of counsel for the alleged disabled person, if satisfied,**
5 **by interview with the alleged disabled person or otherwise, that the alleged**
6 **disability does exist, that the disabled person wishes the appointment and has**
7 **capacity to understand the need for it and make a reasonable choice of**

8 conservator and that the person nominated as conservator is suitable, qualified
9 and has or will accept the appointment, may, without notice or hearing, appoint
10 as conservator of the estate, the person, organization or corporation designated
11 by the disabled person. If it appears that the alleged disabled person is a
12 codepositor or cotenant, the other codepositors and cotenants shall, in any event,
13 be given notice before the court acts.

14 2.] When a petition for appointment of a conservator of the estate of an
15 alleged disabled person is not made or consented to by said alleged disabled
16 person, the procedures as to notice, appointment of counsel, hearing and
17 adjudication of disability as prescribed by section 475.075 shall be followed.

18 **2. If a petition for appointment of a conservator is made by a**
19 **person on account of that person's alleged disability or is made by**
20 **another on behalf of that person with that person's consent endorsed**
21 **on the petition or filed therewith, the court shall first appoint an**
22 **attorney for that person. The court-appointed attorney shall advise the**
23 **respondent of the respondent's rights and of the consequences of the**
24 **appointment of the conservator.**

25 **3. If the court determines that the disability exists and the**
26 **respondent desires the appointment, understands its purpose, and**
27 **makes a reasonable choice of conservator, the court may, without**
28 **notice or hearing, appoint the person, organization, or corporation**
29 **designated by the respondent as conservator of the respondent's estate,**
30 **provided that the conservator is suitable and qualified and has**
31 **accepted or will accept the appointment.**

32 **4. If it appears that the respondent is a codepositor or cotenant,**
33 **the other codepositors and cotenants shall, in any event, be given**
34 **notice before the court acts.**

35 [3.] **5. If the whereabouts of a person alleged to be disappeared or**
36 **detained pursuant to section 475.081 is unknown or the place or nature of his**
37 **confinement or detention prevents personal service, service shall be made on him**
38 **by publication in accordance with the rules of civil procedure.**

475.070. 1. Before appointing a guardian or conservator for a minor,
2 notice of the petition therefor shall be served upon the following unless they have
3 signed such petition or have waived notice thereof:

- 4 (1) The minor, if over fourteen years of age;
- 5 (2) The parents of the minor;

6 (3) The spouse of the minor;

7 (4) **The person or entity nominated to serve as guardian or**
8 **conservator;**

9 (5) If directed by the court:

10 (a) Any person who has been appointed guardian or any person having
11 care and custody of the minor;

12 (b) Any department, bureau or agency of the United States or of this state
13 or any political subdivision thereof, which makes or awards compensation,
14 pension, insurance or other allowance for the benefit of the ward's estate;

15 (c) Any department, bureau or agency of this state or any political
16 subdivision thereof or any charitable organization of this state, which may be
17 charged with the supervision, control or custody of the minor.

18 2. If the minor is over fourteen years of age, there shall be personal
19 service upon him if personal service can be had. Service on others may be had
20 in accordance with section 472.100.

21 3. If a petition for the appointment of a guardian of a minor is filed for
22 the sole and specific purpose of school registration or medical insurance coverage,
23 upon the filing of an affidavit by the petitioner stating that, after due and
24 diligent effort to the best of his or her ability, the whereabouts or identity of
25 either or both parents of the minor remains unknown, the court may proceed with
26 the appointment of such a guardian without having obtained service upon the
27 parents of the minor.

475.075. 1. Except as otherwise provided in section 475.062, when a
2 petition for the appointment of a guardian ad litem, guardian, or conservator
3 [against] for any [person] **potential ward or protectee**, [hereinafter] **who is**
4 **then** referred to as the respondent, is filed **under this chapter** on grounds
5 other than minority, the court, if satisfied that there is good cause for the exercise
6 of its [jurisdiction] **authority**, shall promptly set the petition for hearing.

7 2. The respondent shall be served in person with the following: A copy
8 of the petition; a written notice stating the time and place the proceeding will be
9 heard by the court, the name and address of appointed counsel, and the names
10 and addresses of the witnesses who may be called to testify in support of the
11 petition; and with a copy of the respondent's rights as set forth in subsections [7
12 and 8] **9 and 10** of this section. The notice shall be signed by the judge or clerk
13 of the court and served in person on the respondent a reasonable time before the
14 date set for the hearing. [The petition shall state the names and addresses of

15 the] **A written notice stating the time and place for the petition to be**
16 **heard by the court, and the name and address of counsel appointed to**
17 **represent the respondent shall be served upon the** spouse, parents,
18 children who have reached **the age of** eighteen, any person serving as [his] **the**
19 **respondent's** guardian, conservator, limited guardian, or limited conservator,
20 **any person proposed to serve as guardian or conservator,** any person
21 having power to act in a fiduciary capacity with respect to any of the respondent's
22 financial resources, [and] any person having [his] **the respondent's** care and
23 custody known to the petitioner, **and any cotenants or codepositors with the**
24 **respondent.** Each person so listed shall be served [with like notice] in any
25 manner permitted by section 472.100. If no such spouse, parent, or child is
26 known, notice shall be given to at least one of [his] **the respondent's** closest
27 relatives who [has] **have** reached **eighteen years of age.**

28 **3. If the public administrator is nominated as guardian or**
29 **conservator or at any stage of the proceeding is being considered by**
30 **the court to be nominated as guardian or conservator, the public**
31 **administrator shall receive a copy of the petition from the petitioner**
32 **or the court and any accompanying documents, including exhibits and**
33 **medical opinions, receive written notice indicating the date and time**
34 **of the proceeding, and have an opportunity to attend and be heard.**

35 **4. Upon the filing of a petition under the provisions of subsection 1 of this**
36 **section or for the approval on behalf of the respondent of a transaction pursuant**
37 **to section 475.092 or for the rendition of emergency medical treatment under the**
38 **provisions of section 475.123, the court shall immediately appoint an attorney to**
39 **represent the respondent in the proceeding. The attorney shall visit [his client]**
40 **the respondent at least twenty-four hours prior to the hearing unless the**
41 **court finds good cause for waiving this requirement.** If the [client]
42 **attorney finds that the respondent** is capable of understanding the matter
43 in question or of contributing to the advancement of the [client's] **respondent's**
44 interest, the attorney shall obtain from the [client] **respondent** all possible aid.
45 If the [disability of a client compels the attorney to make decisions for the client,]
46 **attorney finds that the respondent is so impaired that the respondent**
47 **cannot communicate or participate in the proceedings,** the attorney shall
48 consider all circumstances then prevailing and act with care to safeguard and
49 advance the interests of the [client] **respondent.**

50 **5. If the court enters an order appointing an attorney for the**

51 **respondent, it shall specify that the attorney shall have the right to**
52 **obtain all medical and financial information of the respondent from**
53 **medical care providers and financial institutions, and no medical care**
54 **provider or financial institution shall be liable for damages or**
55 **otherwise for the release of this information to the attorney appointed**
56 **for the respondent.** The court shall allow a reasonable attorney's fee for the
57 services rendered, to be taxed as costs of the proceeding. **Upon entry of**
58 **appearance by private counsel on behalf of the respondent, the court**
59 **may permit** the court-appointed attorney [may be permitted] to withdraw [if the
60 respondent employs private counsel who enters an appearance on behalf of said
61 person] **only if after a hearing the court finds cause to permit the**
62 **withdrawal. The private counsel shall meet the requirements of the**
63 **court-appointed attorney in representing the respondent as provided**
64 **in subsection 4 of this section. The respondent's attorney shall not also**
65 **serve as guardian ad litem or conservator ad litem for the respondent**
66 **unless and until a judgment granting guardianship, conservatorship,**
67 **limited guardianship, or limited conservatorship has been entered by**
68 **the court. If the attorney for the respondent has filed or intends to file**
69 **an appeal of such judgment, the attorney for the respondent shall not**
70 **serve as guardian ad litem or conservator ad litem for the respondent**
71 **until all proceedings in connection with such appeal have been finally**
72 **resolved. The petitioner shall not nominate an attorney for the**
73 **respondent.**

74 [4.] **6.** The court may direct that the respondent be examined by a
75 physician [or], licensed psychologist, or other appropriate professional
76 [designated by the court, and may allow a reasonable fee for the services
77 rendered, to be taxed as costs in the proceeding] **if the other professional has**
78 **experience or training in the alleged mental, physical, or cognitive**
79 **impairment.** The court-appointed physician, licensed psychologist, or other
80 professional shall, prior to examination, explain to the respondent in simple
81 language, the following:

- 82 (1) [Incapacity or disability as defined in section 475.010;
83 (2)] That the purpose of the examination is to produce evidence which may
84 be used to determine whether the respondent is incapacitated, disabled [or],
85 partially incapacitated, or **partially** disabled;
86 [(3)] **(2)** That respondent has the right to remain silent;

87 [(4)] **(3)** That anything respondent says may be used at the court
88 hearing, and in making the determination of incapacity or disability.

89 [5.] **7.** The court-appointed physician, licensed psychologist, or other
90 professional shall submit [his] a report in writing to the court and to counsel for
91 all parties. **It shall not be a valid objection to the review of the report**
92 **by the court or the attorneys for the parties that the court will be**
93 **responsible for the ultimate determination of incapacity or partial**
94 **incapacity. If other objections to the report are made by any party, the**
95 **court may order a hearing for the limited purpose of determining**
96 **whether the court shall admit the report. The court may allow a**
97 **reasonable fee for the services rendered by the physician, licensed**
98 **psychologist, or other professional to be taxed as costs in the**
99 **proceeding.**

100 [6.] **8.** If prima facie proof of partial or complete incapacity or disability,
101 **with or without the court ordered evaluation as provided in**
102 **subsections 6 and 7 of this section, is made upon motion by any party or**
103 **the court on its own motion, a physician [or], licensed psychologist, or other**
104 **appropriate professional is competent and may be compelled by the court**
105 **to testify as to information acquired from the respondent, despite otherwise**
106 **applicable testimonial privileges. Evidence received under this subsection**
107 **[which] that would otherwise be privileged and confidential may not be used**
108 **in any other civil action or criminal proceeding without the consent of the holder**
109 **of the privilege. Any resulting report shall be shared with the respondent**
110 **and counsel for all parties but shall not be used in any other civil**
111 **action or criminal proceeding without the consent of the holder of the**
112 **privilege.**

113 [7.] **9.** The petitioner has the burden of proving incapacity, partial
114 incapacity, disability, or partial disability by clear and convincing evidence.

115 [8.] **10.** The respondent shall have the following rights in addition to
116 those elsewhere specified **and shall be advised of these rights by the**
117 **attorney for the respondent:**

118 (1) The right to be represented by an attorney;

119 (2) The right to have a jury trial;

120 (3) The right to present evidence in [his] **the respondent's** behalf;

121 (4) The right to cross-examine witnesses who testify against [him] **the**
122 **respondent;**

123 (5) The right to remain silent;

124 (6) The right to have the hearing opened or closed to the public as [he]
125 **the respondent** elects;

126 (7) The right to a hearing conducted in accordance with the rules of
127 evidence in civil proceedings, except as modified by this chapter;

128 (8) The right to be present at the hearing;

129 **(9) The right to appeal the court's decision.**

130 [9.] **11.** If the court finds that the respondent possesses capacity to [meet
131 his] **manage the respondent's** essential requirements for food, clothing,
132 shelter, safety, and other care or that [he] **the respondent** possesses the ability
133 to manage [his] **the respondent's** financial resources, [it] **the court** shall deny
134 the petition. On the other hand, if the court finds that the capacity of the
135 respondent to receive and evaluate information or to communicate decisions is
136 impaired to such an extent as to render [him] **the respondent** incapable of
137 [meeting] **managing** some or all of [his] **the respondent's** essential
138 requirements for food, clothing, shelter, safety or other care so that serious
139 physical injury, illness, or disease is likely to occur, or that the [ability] **capacity**
140 of the respondent to receive and evaluate information or to communicate decisions
141 is impaired to such an extent so as to render [him] **the respondent** unable to
142 manage some or all of [his] **the respondent's** financial resources, [it shall make
143 and recite in its order detailed findings of fact stating:

144 (1) The extent of his physical and mental incapacity to care for his person;

145 (2) The extent of his physical and mental disability to manage his
146 financial resources;

147 (3) Whether or not he requires placement in a supervised living situation
148 and, if so, the degree of supervision needed;

149 (4) Whether or not his financial resources require supervision and, if so,
150 the nature and extent of supervision needed] **the court shall appoint a**
151 **guardian or limited guardian, a conservator or limited conservator, or**
152 **both in combination.**

153 [10.] **12.** If the court finds the respondent to be in some degree
154 incapacitated or disabled, or both, the court, in determining the degree of
155 supervision necessary, shall apply the least restrictive [environment]
156 **alternative** principle as defined in this chapter and shall not restrict [his] **the**
157 **respondent's** personal liberty or [his] **the respondent's** freedom to manage
158 [his] **the respondent's** financial resources to any greater extent than is

159 necessary to protect [his] **the respondent's** person and [his] **the respondent's**
160 financial resources. [The court shall consider whether or not the respondent may
161 be fully protected by the rendition of temporary protective services provided by
162 a private or public agency or agencies; or by the appointment of a guardian or
163 conservator ad litem; or by the appointment of a limited guardian or conservator;
164 or, as a last resort, by the appointment of a guardian or conservator.] The
165 limitations imposed upon the authority of the guardian or conservator as set forth
166 in the findings of the court shall be stated in the letters of the guardian or
167 conservator and shall be set forth in the notice of first publication of letters of
168 conservatorship granted.

169 **13. Before appointing a guardian or conservator, the court shall**
170 **consider whether the respondent's needs may be met without the**
171 **necessity of the appointment of a guardian or conservator, or both, by**
172 **a less restrictive alternative including, but not limited to, the following:**

173 **(1) Evidence that the respondent has appointed an attorney-in-**
174 **fact in a durable power of attorney executed by the respondent before**
175 **the petition was filed;**

176 **(2) The management of the beneficial interests of the respondent**
177 **in a trust by a trustee;**

178 **(3) Evidence that a representative payee has been appointed to**
179 **manage the respondent's public benefits;**

180 **(4) Supported decision-making agreements or the provision of**
181 **protective or supportive services or arrangements provided by**
182 **individuals or public or private services or agencies;**

183 **(5) The use of appropriate services or assistive technology;**

184 **(6) The appointment of a temporary emergency guardian ad**
185 **litem or conservator ad litem under subsection 15 of this section; or**

186 **(7) The appointment of a limited guardian or conservator.**

187 **14. The court shall make and recite in its order detailed findings**
188 **of fact stating:**

189 **(1) The extent of the respondent's physical, mental, and cognitive**
190 **incapacity to manage essential requirements for food, clothing, shelter,**
191 **safety, or other care;**

192 **(2) The extent of the respondent's physical, mental, and cognitive**
193 **incapacity to manage the respondent's financial resources;**

194 **(3) Whether the respondent requires placement in a supervised**
195 **living situation and, if so, the degree of supervision needed;**

196 **(4) Whether the respondent's financial resources require**
197 **supervision and, if so, the nature and extent of supervision needed;**

198 **(5) Whether the respondent retains the right to vote;**

199 **(6) Whether the respondent is permitted to drive a motor vehicle**
200 **if the respondent can pass the required driving test; and**

201 **(7) Whether the respondent retains the right to marry.**

202 **[11.] 15. If it is alleged in a petition that** an alleged incapacitated or
203 **disabled [person] respondent** has no guardian or conservator and an emergency
204 **exists [which] that** presents a substantial risk that serious physical harm will
205 **occur to [his] the respondent's** person or irreparable damage will occur to [his]
206 **the respondent's** property because of [his] **the respondent's** failure or
207 **inability to provide for [his] the respondent's** essential human needs or to
208 **protect [his] the respondent's** property, the court may, with notice to such
209 **person's attorney, as provided in subsection [3] 4** of this section, and service of
210 **notice upon such person as provided in subsection 2** of this section, and, with or
211 **without notice to other persons interested in the proceeding, after hearing,**
212 **appoint [a] an emergency guardian ad litem** or conservator ad litem for a
213 **specified period not to exceed [thirty] ninety** days and for specified
214 **purposes. Except for good cause shown, the court shall hold a hearing**
215 **on petitions filed under this section within five business days of the**
216 **filing of the petition.** Orders appointing the guardian or conservator ad litem
217 **may be modified upon motion and hearing. Only after a hearing and a showing**
218 **of continuing emergency need, [orders appointing the] the court may order the**
219 **extension of the appointment of an emergency guardian ad litem** or
220 **conservator ad litem [may be extended] from time to time, not to exceed [thirty]**
221 **ninety** days each. A guardian ad litem or conservator ad litem may be removed
222 **at any time and shall make any report the court requires.** Proceedings under this
223 **subsection shall not be employed as alternative to proceedings for the involuntary**
224 **detention and treatment of a mentally ill person under the provisions of chapter**
225 **632. If no petition for guardianship, conservatorship, limited**
226 **guardianship, or limited conservatorship has been filed within the first**
227 **ninety days following the granting of emergency authority under this**
228 **section, the court may terminate the authority granted under the**
229 **emergency letters upon motion of the attorney for the respondent and**
230 **a finding that doing so would not be manifestly contrary to the**
231 **respondent's interest.**

475.078. 1. An adjudication of partial incapacity or partial disability does
2 not operate to impose upon the ward or protectee any legal disability provided by
3 law except to the extent specified in the order of adjudication, provided that the
4 court shall not impose upon the ward or protectee any legal disability other than
5 those which are consistent with the condition of the ward or protectee.

6 2. An adjudication of incapacity or disability does operate to impose upon
7 the ward or protectee all legal disabilities provided by law, except to the extent
8 specified in the order of adjudication **or otherwise in this chapter**, and
9 provided further that the court is without [jurisdiction] **authority** to impose any
10 legal disability upon a disabled person for whom a conservator has been
11 appointed by reason of [his] **the person's** disappearance, detention, or
12 confinement.

13 3. A person who has been adjudicated incapacitated or disabled or both
14 shall be presumed to be incompetent, **except as otherwise specified in this**
15 **chapter**. A person who has been adjudicated partially incapacitated or partially
16 disabled or both shall be presumed to be competent. The court at any time after
17 a hearing on the question may determine that an incapacitated, disabled, or
18 partially incapacitated or partially disabled person is incompetent for some
19 purposes and competent for other purposes.

20 4. **The court may expressly enter an order that the ward's or**
21 **protectee's right to vote shall be retained even though the ward or**
22 **protectee is otherwise totally incapacitated; that the ward or protectee**
23 **is permitted to drive a motor vehicle if the ward or protectee can pass**
24 **the required driving test; or that the ward or protectee retains the**
25 **right to marry.**

475.079. 1. If it appears to the court [that a guardian should be
2 appointed for a minor who is not incapacitated] or if it is found by the jury or the
3 court upon proof by clear and convincing evidence that the person for whom a
4 guardian is sought is incapacitated as defined in this law **and that the**
5 **respondent's identified needs cannot be met by a less restrictive**
6 **alternative**, the court may appoint a guardian of the person. [The appointment
7 of guardians of minors shall be made in accordance with section 475.045, except
8 that if a person entitled to appointment as a guardian or entitled to select a
9 guardian fails to appear after notice or to apply for such appointment or make
10 selection in accordance with the order of the court the court may appoint any
11 suitable person as guardian.]

12 2. If it is found that the person for whom a conservator of the estate is
13 sought is a minor or is disabled as defined in section 475.010 by a disability other
14 than or in addition to minority **and that the respondent's identified needs**
15 **cannot be met by a less restrictive alternative**, the court may appoint a
16 conservator of the estate, who may be the same person appointed guardian of the
17 person.

18 3. **The court shall not appoint the public administrator to serve**
19 **as guardian, limited guardian, conservator, limited conservator,**
20 **emergency guardian, emergency conservator, guardian ad litem, or**
21 **conservator ad litem unless notice is first given to the public**
22 **administrator as provided in subsection 3 of section 475.075 and the**
23 **public administrator has an opportunity to participate in any hearing**
24 **on such matter, including the right to cross-examine witnesses and to**
25 **offer witnesses and evidence. The public administrator may waive**
26 **notice and the opportunity to participate.**

 475.080. 1. If the court, after hearing, finds that a person is partially
2 incapacitated **and that the respondent's identified needs cannot be met**
3 **by a less restrictive alternative**, the court shall appoint a limited guardian
4 of the person of the ward. The order of appointment shall specify the powers and
5 duties of the limited guardian so as to permit the partially incapacitated ward to
6 [care for himself] **provide for self-care** commensurate with [his] **the ward's**
7 ability to do so and shall also specify the legal disabilities to which the ward is
8 subject. In establishing a limited guardianship, the court shall impose only such
9 legal disabilities and restraints on personal liberty as are necessary to promote
10 and protect the well-being of the individual and shall design the guardianship so
11 as to encourage the development of maximum self-reliance and independence in
12 the individual.

13 2. If the court, after hearing, finds that a person is partially disabled **and**
14 **that the respondent's identified needs cannot be met by a less**
15 **restrictive alternative**, the court shall appoint a limited conservator of the
16 estate. The order of appointment shall specify the powers and duties of the
17 limited conservator so as to permit the partially disabled person to manage [his]
18 **the person's** financial resources commensurate with [his] **the person's** ability
19 to do so.

 475.082. 1. At least annually, the court shall inquire into the status of
2 every **adult** ward and protectee under its jurisdiction for the purpose of

3 determining whether the incapacity or disability may have ceased **or changed**
4 and to insure that the guardian or conservator is discharging [his] **the**
5 **guardian's or conservator's** responsibilities and duties in accordance with this
6 chapter.

7 2. In order to implement the court review prescribed by this section, the
8 guardian or limited guardian shall file annually on the anniversary date of [his]
9 **the guardian's or limited guardian's** letters[,] a report concerning the
10 personal status of the **adult ward and plans by the guardian or limited**
11 **guardian for future care**. Such report may be combined with the settlement
12 of accounts if the guardian is also conservator of the estate of the ward. The
13 report shall be in the form prescribed by the court and shall include the following
14 information:

15 (1) The present address of the ward;

16 (2) The present address of the guardian;

17 (3) **Unless the report specifies that the ward is living with the**
18 **guardian**, the number of times the guardian has had contact with the ward, and
19 the nature of such contacts including the date the ward was last seen by the
20 guardian;

21 (4) **A summary of the guardian's visits with the ward and**
22 **activities on the ward's behalf and the extent to which the ward has**
23 **participated in decision-making;**

24 (5) If the ward is institutionalized, whether the guardian has received a
25 copy of the treatment or habilitation plan **and, if so, the date of such plan,**
26 and whether the guardian agrees with its provision;

27 [(5)] (6) The date the ward was last seen by a physician **or other**
28 **professional** and the purpose;

29 [(6) Any major changes in the physical or mental condition of the ward
30 observed by the guardian] (7) **The current mental and physical condition**
31 **of the ward and any major changes in the ward's condition since the**
32 **last report;**

33 [(7)] (8) The opinion of the guardian as to the need for the continuation
34 of the guardianship and whether it is necessary to increase or decrease the
35 powers of the guardian; **and**

36 [(8) The opinion of the guardian as to the adequacy of the present care of
37 the ward] (9) **A summarized plan for the coming year. If an individual**
38 **support plan, treatment plan, or plan of care is in place, such plan may**

39 **be submitted in lieu of the requirements of this subdivision.**

40 3. The court may as part of its review, in its discretion, order the
41 performance of a mental status evaluation of [an incapacitated] **the** ward and
42 may require any hospital, physician, or custodial facility to submit copies of their
43 records relating to the treatment, habilitation, or care of the ward. **The court,**
44 **as part of its review and in its discretion, may also contact the**
45 **department of health and senior services or other appropriate agencies**
46 **to investigate the conduct of the guardian and report its findings to the**
47 **court.**

48 4. If there is an indication that the incapacity or disability of the ward or
49 protectee has ceased, the court shall appoint an attorney to file on behalf of the
50 ward or protectee a petition for termination of the guardianship or
51 conservatorship or for restoration.

52 5. If it appears to the court as part of its review or at any time upon
53 motion of any interested person, including the ward or protectee or some person
54 on [his] behalf **of the ward or protectee**, that the guardian or conservator is
55 not discharging [his] **the guardian's or conservator's** responsibilities and
56 duties as required by this chapter or has not acted in the best interests of [his]
57 **the** ward or protectee, the court may order that a hearing be held and direct that
58 the guardian or conservator appear before the court. In the event that such a
59 hearing is ordered and the ward or protectee is not represented by an attorney,
60 the court shall appoint an attorney to represent the ward or protectee in the
61 proceedings. At the conclusion of the hearing, if the court finds that the guardian
62 or conservator is not discharging his **or her** duties and responsibilities as
63 required by this code[,] or is not acting in the best interests of the ward or
64 protectee, the court shall enter such orders as it deems appropriate under the
65 circumstances. Such orders may include the removal of the guardian or
66 conservator and the appointment of a successor guardian or conservator or
67 termination of the guardianship or conservatorship on finding that the ward has
68 recovered [his] capacity or the protectee is no longer disabled. The court, in
69 framing its orders and findings, shall give due consideration to the exercise by
70 the guardian or conservator of any discretion vested in [him] **the guardian or**
71 **conservator** by law.

475.083. 1. The authority of a guardian or conservator terminates:

- 2 (1) When a minor ward becomes eighteen years of age;
- 3 (2) Upon an adjudication that an incapacitated or disabled person has

4 been restored to [his] capacity or ability;

5 (3) Upon revocation of the letters of the guardian or conservator;

6 (4) Upon the acceptance by the court of the resignation of the guardian
7 or conservator;

8 (5) Upon the death of the ward or protectee except that if there is no
9 person other than the estate of the ward or protectee liable for the funeral and
10 burial expenses of the ward or protectee the guardian or conservator may, with
11 the approval of the court, contract for the funeral and burial of the deceased ward
12 or protectee;

13 (6) Upon the expiration of an order appointing a guardian or conservator
14 ad litem unless the court orders extension of the appointment;

15 (7) Upon an order of court terminating the guardianship or
16 conservatorship.

17 2. A guardianship or conservatorship may be terminated by court order
18 after such notice as the court may require:

19 (1) If the conservatorship estate is exhausted;

20 (2) If the conservatorship is no longer necessary for any other reason;

21 (3) If the court finds that a parent is fit, suitable and able to assume the
22 duties of guardianship and it is in the best interest of the minor that the
23 guardianship be terminated; **or**

24 (4) **If the court determines that the guardian is unable to provide**
25 **the services of a guardian due to the ward's absence from the state or**
26 **other particular circumstances of the ward.**

27 3. Notwithstanding the termination of the authority of a conservator, [he]
28 **the conservator** shall continue to have such authority as may be necessary to
29 wind up [his] administration.

30 4. At any time the guardian, conservator, or any person on behalf of the
31 ward or protectee may, individually or jointly with the ward or protectee, or the
32 ward or protectee individually may petition the court to restore the ward or
33 protectee, [or] to decrease the powers of the guardian or conservator, **or to**
34 **return rights to the ward or protectee;** except that, if the court determines
35 that the petition is frivolous, the court may summarily dismiss the petition
36 without hearing. **The petition from the ward or protectee or on behalf of**
37 **the ward or protectee may be an informal letter to the court. Anyone**
38 **who interferes with the transmission of the ward's or protectee's letter**
39 **or petition may be cited by the court for contempt after notice and**

40 **hearing. If at any time the court, on its own motion, has reason to**
41 **believe that the guardian's or conservator's powers should be increased**
42 **or decreased or additional rights should be returned to the ward or**
43 **protectee, the court shall set the matter for a hearing.**

44 5. Upon the filing of a joint petition by the guardian or conservator and
45 the ward or protectee, the court, if it finds restoration or modification to be in the
46 best interests of the ward or protectee, may summarily order restoration [or
47 modification of the] **or a decrease in** powers of the guardian or conservator **or**
48 **return rights to the ward or protectee** without the necessity of notice and
49 hearing.

50 6. Upon the filing of a petition without the joinder of the guardian or
51 conservator **or if the court requires a hearing for a petition filed with the**
52 **joinder of a guardian or conservator**, the court shall cause the petition to
53 be set for hearing with notice to the guardian or conservator **and to such other**
54 **persons as the court directs. The hearing shall be conducted in**
55 **accordance with the provisions of section 475.075.** If the ward or protectee
56 is not represented by an attorney, the court shall appoint an attorney to represent
57 the ward or protectee in such proceeding. The burden of proof by a
58 preponderance of the evidence shall be upon the petitioner. Such a petition may
59 not be filed more than once every one hundred eighty days.

60 7. At any time the guardian [or], **limited guardian**, conservator, **or**
61 **limited conservator** may petition the court to increase [his] **the guardian's**
62 **or conservator's** powers **or to remove rights from the ward or**
63 **protectee.** Proceedings on the petition shall be in accordance with the
64 provisions of section 475.075.

65 8. **In deciding whether to terminate or modify a guardianship or**
66 **conservatorship, the court may require a report by and consider the**
67 **recommendations in the report of a physician, licensed psychologist, or**
68 **other appropriate qualified professional who has experience or training**
69 **in the alleged mental, physical, or cognitive impairment of the ward or**
70 **protectee.**

475.084. If a guardian has been appointed for a minor under the
2 **provisions of subdivision (2) of subsection 4 of section 475.030, then a**
3 **parent of the minor may petition the court for periods of**
4 **visitation. The court may order visitation if visitation is in the best**
5 **interest of the child.**

475.094. [If the court determines and enters a finding that a permanently
2 totally mentally disabled protectee's estate would be substantially depleted upon
3 his death by the payment of federal estate taxes, the court is hereby empowered:
4 to exercise or release powers of appointment, to change the beneficiaries and elect
5 options under insurance and annuity policies, to make gifts to the natural objects
6 of the protectee's bounty, to convey or release his contingent and expectant
7 interests in property including marital property rights and any right of
8 survivorship incident to joint tenancy or tenancy by the entirety, to surrender
9 insurance or annuity policies for their cash values, to exercise his right to an
10 elective share in the estate of his deceased spouse, and to renounce any interest
11 by testate or intestate succession or by inter vivos transfer, if such act or acts will
12 not deplete the protectee's estate so as to impair the ability to provide for the
13 protectee's foreseeable lifetime needs, and if such act will cause financial benefits
14 to inure solely to the natural objects of the protectee's bounty. Such act shall be
15 undertaken by the court only to the extent that it will result in a substantial
16 saving of federal estate tax for the estate of the disabled protectee upon his
17 death.]

**1. After notice to interested persons and upon express
18 authorization of the court, a conservator may:**

19 **(1) Make gifts that the protectee might have been expected to**
20 **make including, but not limited to, gifts to qualify for government**
21 **benefits or to reduce federal estate taxes;**

22 **(2) Convey, release, or disclaim contingent and expectant**
23 **interests in property, including marital property rights and any right**
24 **of survivorship incident to joint tenancy or tenancy by the entireties;**

25 **(3) Exercise or release a power of appointment;**

26 **(4) Create a revocable or irrevocable trust of property of the**
27 **estate, whether the trust extends beyond the duration of the**
28 **conservatorship, or revoke or amend a trust revocable by the protected**
29 **person;**

30 **(5) Exercise rights to elect options and change beneficiaries**
31 **under insurance policies and annuities or surrender the policies and**
32 **annuities for cash value;**

33 **(6) Exercise any right to an elective share in the estate of the**
34 **protectee's deceased spouse and to renounce or disclaim any interest**
35 **by testate or intestate succession or by transfer during lifetime.**

36 **2. The court, in exercising or in approving a conservator's**

37 **exercise of the powers listed under subsection 1 of this section, shall**
38 **consider primarily the decision that the protectee would have made, to**
39 **the extent that the decision can be ascertained. The court shall also**
40 **consider:**

41 **(1) The financial needs of the protectee and the needs of**
42 **individuals who are in fact dependent on the protectee for support and**
43 **the interest of creditors;**

44 **(2) Possible reduction of income, estate, inheritance, or other tax**
45 **liabilities;**

46 **(3) Eligibility for government assistance;**

47 **(4) The protectee's previous pattern of giving or level of support;**

48 **(5) The existing estate plan;**

49 **(6) The protectee's life expectancy and the probability that the**
50 **conservatorship will terminate before the protectee's death; and**

51 **(7) Any other factors the court considers relevant.**

52 **3. Without authorization of the court, a conservator shall not**
53 **revoke or amend a durable power of attorney of which the protectee is**
54 **the principal.**

475.120. 1. The guardian of the person of a minor shall be entitled to the
2 custody and control of the ward and shall provide for the ward's education,
3 support, and maintenance.

4 2. A guardian or limited guardian of an incapacitated person shall act in
5 the best interest of the ward. A limited guardian of an incapacitated person shall
6 have the powers and duties enumerated by the court in the adjudication order or
7 any later modifying order.

8 3. The general powers and duties of a guardian of an incapacitated person
9 shall be to take charge of the person of the ward and to provide for the ward's
10 care, treatment, habilitation, education, support and maintenance; and the
11 powers and duties shall include, but not be limited to, the following:

12 (1) Assure that the ward resides in the best and least restrictive setting
13 reasonably available;

14 (2) Assure that the ward receives medical care and other services that are
15 needed;

16 (3) Promote and protect the care, comfort, safety, health, and welfare of
17 the ward;

18 (4) Provide required consents on behalf of the ward;

19 (5) To exercise all powers and discharge all duties necessary or proper to
20 implement the provisions of this section.

21 4. A guardian of an adult or minor ward is not obligated by virtue of such
22 guardian's appointment to use the guardian's own financial resources for the
23 support of the ward. If the ward's estate and available public benefits are
24 inadequate for the proper care of the ward, the guardian or conservator may
25 apply to the county commission pursuant to section 475.370.

26 5. No guardian of the person shall have authority to seek admission of the
27 guardian's ward to a mental health or intellectual disability facility for more than
28 thirty days for any purpose without court order except as otherwise provided by
29 law.

30 6. Only the director or chief administrative officer of a social service
31 agency serving as guardian of an incapacitated person, or such person's designee,
32 is legally authorized to act on behalf of the ward.

33 7. A social service agency serving as guardian of an incapacitated person
34 shall notify the court within fifteen days after any change in the identity of the
35 professional individual who has primary responsibility for providing guardianship
36 services to the incapacitated person.

37 8. Any social service agency serving as guardian may not provide other
38 services to the ward.

39 9. In the absence of any written direction from the ward to the contrary,
40 a guardian may execute a preneed contract for the ward's funeral services,
41 including cremation, or an irrevocable life insurance policy to pay for the ward's
42 funeral services, including cremation, and authorize the payment of such services
43 from the ward's resources. Nothing in this section shall interfere with the rights
44 of next-of-kin to direct the disposition of the body of the ward upon death under
45 section 194.119. If a preneed arrangement such as that authorized by this
46 subsection is in place and no next-of-kin exercises the right of sepulcher within
47 ten days of the death of the ward, the guardian may sign consents for the
48 disposition of the body, including cremation, without any liability therefor. A
49 guardian who exercises the authority granted in this subsection shall not be
50 personally financially responsible for the payment of services.

51 **10. Except as otherwise limited by the court, a guardian shall**
52 **make decisions regarding the adult ward's support, care, education,**
53 **health, and welfare. A guardian shall exercise authority only as**
54 **necessitated by the adult ward's limitations and, to the extent possible,**

55 **shall encourage the adult ward to participate in decisions, act on the**
56 **adult ward's own behalf, and develop or regain the capacity to manage**
57 **the adult ward's personal affairs.**

475.125. 1. The court may make orders for the management of the estate
2 of the protectee for the care, education, treatment, habilitation, respite, support
3 and maintenance of the protectee and for the **support and** maintenance of [his
4 or her] **the protectee's** family and education of [his or her] **the protectee's**
5 **spouse and** children, according to [his or her] **the protectee's** means and
6 obligation, if any, out of the proceeds of [his or her] **the protectee's** estate, and
7 may direct that payments for such purposes shall be made weekly, monthly,
8 quarterly, semiannually or annually. The payments ordered under this section
9 may be decreased or increased from time to time as ordered by the court.

10 **2. In setting the amount of the support allowance for the**
11 **protectee or any other persons entitled to such support, the court shall**
12 **consider the previous standard of living of the spouse or other family**
13 **members, the composition of the estate, the income and other assets**
14 **available to the protectee and the other persons, and the expenses of**
15 **the protectee or the other persons entitled to support.**

16 **3.** Appropriations for any such purposes, expenses of administration and
17 allowed claims shall be paid from the property or income of the estate. The court
18 may authorize the conservator to borrow money and obligate the estate for the
19 payment thereof if the court finds that funds of the estate for the payment of such
20 obligation will be available within a reasonable time and that the loan is
21 necessary. If payments are made to another under the order of the court, the
22 conservator of the estate is not bound to see to the application thereof.

23 **[3.] 4.** In acting under this section the court shall take into account any
24 duty imposed by law or contract upon a parent or spouse of the protectee, a
25 government agency, a trustee, or other person or corporation, to make payments
26 for the benefit of or provide support, education, care, treatment, habilitation,
27 respite, maintenance or safekeeping of the protectee and [his or her] **the**
28 **protectee's** dependents. The guardian of the person and the conservator of the
29 estate shall endeavor to enforce any such duty.

475.130. 1. The conservator of the estate of a minor or disabled person
2 shall, under supervision of the court, protect, preserve, and manage the estate,
3 apply it as provided in this code, account for it faithfully, perform all other duties
4 required of the conservator by law, and at the termination of the conservatorship

5 deliver the assets of the protectee to the persons entitled thereto. In protecting,
6 preserving, and managing the estate, the conservator of the estate is under a duty
7 to use the degree of care, skill, and prudence [which] **that** an ordinarily prudent
8 person uses in managing the property of, and conducting transactions on behalf
9 of, others. If a conservator of the estate has special skills or is appointed on the
10 basis of representations of special skills or expertise, the conservator is under a
11 duty to use those skills in the conduct of the protectee's affairs. A conservator of
12 the estate is under a duty to act in the interest of the protectee and to avoid
13 conflicts of interest which impair the conservator's ability so to act.

14 2. The conservator of the estate shall take possession of all of the
15 protectee's real and personal property, and of rents, income, issue, and profits
16 therefrom, whether accruing before or after the conservator's appointment, and
17 of the proceeds arising from the sale, mortgage, lease, or exchange
18 thereof. Subject to such possession, the title to all such estate, and to the
19 increment and proceeds thereof, is in the protectee and not in the
20 conservator. Upon a showing that funds available or payable for the benefit of
21 the protectee by any federal agency are being applied for the benefit of the
22 protectee, or that such federal agency has refused to recognize the authority of
23 the conservator to administer such funds, the court may waive, by order, the duty
24 of the conservator to account therefor.

25 **3. In managing, investing, and distributing the estate of a**
26 **protectee, the conservator shall use reasonable efforts to:**

27 **(1) Ascertain the income, assets, and liabilities of the protectee;**

28 **(2) Ascertain the needs and preferences of the protectee;**

29 **(3) Coordinate with the guardian and consult with others close**
30 **to the protectee;**

31 **(4) Prepare a plan for the management of the protectee's income**
32 **and assets; and**

33 **(5) Provide oversight to any income and assets of the protectee**
34 **under the control of the protectee.**

35 4. The court has full authority under the rules of civil procedure to enjoin
36 any person from interfering with the right of the conservator to possession of the
37 assets of the protectee, including benefits payable from any source.

38 [4.] **5.** The conservator of the estate shall prosecute and defend all
39 actions instituted in behalf of or against the protectee[;], collect all debts due or
40 becoming due to the protectee, and give acquittances and discharges therefor, and

41 adjust, settle, and pay all claims due or becoming due from the protectee so far
42 as [his or her] **the protectee's** estate and effects will extend, except as provided
43 in sections 507.150 and 507.188.

44 [5.] **6.** A conservator of the estate has power, without authorization or
45 approval of the court, to:

46 (1) Settle or compromise a claim against the protectee or the estate
47 agreeing to pay or paying not more than [one] **five** thousand dollars;

48 (2) Settle, abandon, or compromise a claim in favor of the estate [which]
49 **that** does not exceed [one] **five** thousand dollars;

50 (3) **Receive additions to the estate;**

51 (4) Sell, or agree to sell, chattels and choses in action reasonably worth
52 not more than [one] **five** thousand dollars for cash or upon terms involving a
53 reasonable extension of credit;

54 [(4)] (5) Exchange, or agree to exchange, chattels and choses in action for
55 other such property of equivalent value, not in excess of [one] **five** thousand
56 dollars;

57 [(5)] (6) Insure or contract for insurance of property of the estate against
58 fire, theft and other hazards;

59 [(6)] (7) Insure or contract for insurance protecting the protectee against
60 any liability likely to be incurred, including medical and hospital expenses, and
61 protecting the conservator against liability to third parties arising from acts or
62 omissions connected with possession or management of the estate;

63 [(7)] (8) Contract for needed repairs and maintenance of property of the
64 estate;

65 [(8)] (9) Lease land and buildings for terms not exceeding one year,
66 reserving reasonable rent, and renew any such lease for a like term;

67 [(9)] (10) Vote corporate stock in person or by general or limited proxy;

68 [(10)] (11) Contract for the provision of board, lodging, education,
69 medical care, or necessities of the protectee for periods not exceeding one year,
70 and renew any such contract for a like period;

71 (12) **Deposit funds in a bank;**

72 (13) **Pay taxes, assessments, and other expenses incurred in the**
73 **collection, care, administration, and protection of the estate;**

74 (14) **Prosecute or defend actions, claims, or proceedings in any**
75 **jurisdiction for the protection of estate assets;**

76 (15) **Execute and deliver all instruments that will accomplish or**

77 **facilitate the exercise of the powers vested in the conservator; and**

78 ~~[(11)]~~ **(16)** On or after August 28, 2009, invest the estate in accordance
79 with the provisions of section 475.190.

80 ~~[6.]~~ **7.** If, in exercising any power conferred by subsection ~~[5]~~ **6** of this
81 section, a conservator breaches any of the duties enumerated in subsection 1 of
82 this section, the conservator may be surcharged for losses to the estate caused by
83 the breach but persons who dealt with the conservator in good faith, without
84 knowledge of or reason to suspect the breach of duty, may enforce and retain the
85 benefits of any transaction with the conservator which the conservator has power
86 under subsection ~~[5]~~ **6** of this section to conduct.

475.145. When a conservator of the estate has been appointed, an
2 inventory and appraisal of the estate of the protectee shall be made in the
3 same manner and within the same time and subject to the same requirements as
4 are provided in sections 473.233 to 473.243 for the inventory and appraisal
5 of a decedent's estate. The inventory shall include property as to which the
6 protectee is a joint tenant or tenant by the entirety and all policies of life
7 insurance owned by the protectee, whether or not payable to a named beneficiary,
8 together with a statement of all income and benefits to which the protectee is or
9 will be entitled to receive. **The inventory shall also disclose any**
10 **nonprobate transferees designated to receive nonprobate transfers**
11 **after the protectee's death.**

475.230. **1.** Sales of real estate of protectees shall be conducted in the
2 same manner and the same proceedings shall be had with reference thereto as in
3 cases of sale of real estate of decedents for payment of claims[, except that there
4 shall be no notice to parties in interest before the making of the order].

5 **2. Unless waived by the court for cause, the protectee shall have**
6 **ten days' prior notice of a required court hearing on the petition for**
7 **the sale of the protectee's real or tangible personal property. The**
8 **protectee is not entitled to notice of a hearing on the petition for the**
9 **sale of the protectee's intangible personal property.**

475.270. **1.** Every conservator shall file with the court **annually, or**
2 **more often if required by the court,** a settlement of ~~[his]~~ **the conservator's**
3 accounts ~~[once a year or oftener]~~ if required by the court **detailing the current**
4 **status of the estate under conservatorship.** The annual settlement shall be
5 made at a time fixed by the court within ~~[thirty]~~ **sixty** days after the anniversary
6 of the appointment of such conservator ~~[and on the corresponding date of each~~

7 year thereafter until the final settlement].

8 2. Each settlement of a conservator shall conform to the requirements of
9 section 473.543 as to settlements in decedents' estates.

10 3. If the conservatorship estate meets the indigency standards prescribed
11 by chapter 208, **is under the control of another fiduciary, including a**
12 **Social Security representative payee or Veterans Affairs fiduciary,** or
13 if the assets of a protectee have been placed in restricted custody, the court may
14 waive the requirements [of subsection 2 of this] **that the settlement comply**
15 **with the requirements of section 473.543** and require the conservator to
16 report, in a form prescribed by the court, the following information:

17 (1) A statement of any money or property received during the preceding
18 year including the date, source and amount or value;

19 (2) A statement of disbursements made and the purpose thereof;

20 (3) The total amount of money or property on hand;

21 (4) The name and address of any depository where estate funds are
22 deposited and the amounts thereof.

23 4. **Except when a public administrator is serving as conservator,**
24 **in addition to the information required under subsection 3 of this**
25 **section, the settlement shall include:**

26 (1) **The present address of the protectee;**

27 (2) **The present address of the conservator;**

28 (3) **The services being provided to the protected person;**

29 (4) **The significant actions taken by the conservator during the**
30 **reporting period;**

31 (5) **An opinion of the conservator as to the continued need for**
32 **conservatorship and any recommended changes in the scope of the**
33 **conservatorship;**

34 (6) **The compensation requested and the reasonable and**
35 **necessary expenses incurred by the conservator;**

36 (7) **A plan for the coming year; and**

37 (8) **Any other information requested by the court or useful in the**
38 **opinion of the conservator.**

475.276. 1. If the assets of the protectee are under the control of
2 another fiduciary, including a Social Security representative payee or
3 Veterans Affairs fiduciary, or if the value of the assets of the estate of a
4 protectee does not exceed the value prescribed by chapter 208 for [welfare]

5 **public benefit** eligibility and whether or not such protectee receives other [old
6 age, disability or dependency] **public** benefits from the federal government or the
7 state of Missouri, the court may, upon satisfactory proof that adequate provision
8 has been made for the care and maintenance of the protectee, waive or modify the
9 requirements of sections 475.270 and 475.275.

10 2. If the estate of a protectee consists solely of cash or its equivalent
11 which has been placed in restricted custody so that no withdrawals may be made
12 except on order of the court as prescribed by section 473.160, the court may waive
13 or modify the requirements of sections 475.270 and 475.275.

14 3. Any order entered pursuant to subsection 1 or 2 of this section shall
15 specify the events or circumstances which shall cause the same to terminate. The
16 order may also provide that the estate shall not be liable for court costs or other
17 expenses of administration so long as the order remains in effect and may direct
18 any state agency or require the conservator of the estate to request a federal
19 agency to pay benefits directly to the custodial facility in which the protectee
20 resides.

475.290. 1. Conservators shall make final settlement of their
2 conservatorship at a time fixed by the court, either by rule or otherwise, within
3 [sixty] **ninety** days after termination of their authority, **except for those cases**
4 **where the court has ordered that no letters of administration be**
5 **granted under section 475.320.** For the purpose of settlement, the conservator
6 shall make a just and true exhibit of the account between himself **or herself** and
7 [his] **the** protectee, and file the same in the court having jurisdiction thereof, and
8 cause a copy of the account, together with a written notice stating the day on
9 which and the court in which [he] **the conservator** will make settlement, to be
10 delivered to [his] **the** protectee or, in case of revocation or resignation, to the
11 succeeding conservator or in case of death of [his] **the** protectee to [his] **the**
12 executor or administrator **of the protectee's estate** or other person designated
13 by the court, at least twenty days before the date set for settlement.

14 2. If, for any cause, a copy of the account and written notice cannot be
15 delivered to the protectee or other person entitled thereto, the court may order
16 notice of the filing of the account, and of the time and place at which final
17 settlement is to be made, to be given by publication once a week for four weeks
18 next before the date set for settlement in accordance with section 472.100.

19 3. At the time specified in the notice, the court, upon satisfactory proof of
20 the delivery of a copy of the account and written notice of the settlement to the

21 protectee or person entitled thereto, or [his] **the protectee's** written waiver
22 thereof, or in case the court has ordered notice to be given by publication, then
23 upon proof of compliance with such order, shall proceed to examine the accounts
24 of the conservator, correct all errors therein, if any there be, and make a final
25 settlement with the conservator; or the court may, for good cause, continue the
26 settlement and proceed therein at any time agreed upon by the parties or fixed
27 by the court.

475.320. 1. Except in cases mentioned in subsection 2, the court, upon the
2 death of any protectee, may order that no letters of administration shall be
3 granted upon his estate, but the funeral and burial expenses and estate taxes for
4 which the estate of the deceased protectee is liable, and obligations of the
5 protectee incurred by the conservator, as well as expenses of administration, may
6 be paid out of the estate by the conservator on order of the court and after the
7 final settlement of the conservator is approved, and upon a showing that all
8 obligations of the estate which have been authorized by the court have been paid,
9 the court shall order the conservator to make distribution to the heirs in the same
10 manner and with the same effect as in the case of an administrator. In such case
11 the conservator is subject in all respects and to the same extent to the liabilities
12 of an administrator and liability on the conservator's bond continues and applies
13 to the complete administration of the estate of the deceased protectee, **including**
14 **settlements as required by section 473.540.**

15 2. Whenever a protectee dies leaving debts, other than those payable by
16 the conservator under subsection 1 hereof, for which his estate would be liable in
17 an action, or whenever a protectee dies, leaving a will valid under the law
18 respecting wills, letters testamentary or of administration shall be granted on the
19 estate of the deceased protectee, in the manner provided by law, as in case of
20 other testators or intestates.

475.341. 1. **Except when a public administrator is serving as**
2 **conservator, a sale, encumbrance, or other transaction involving the**
3 **management of the conservatorship entered into by the conservator for**
4 **the conservator's own personal gain or which is otherwise affected by**
5 **a conflict between the conservator's fiduciary and personal interests is**
6 **voidable unless the transaction:**

- 7 (1) **Was approved by the court;**
8 (2) **Involves a contract entered into or claim acquired by the**
9 **conservator before the person became or contemplated becoming**

10 conservator;

11 (3) Involves a deposit of estate moneys to a bank operated by the
12 conservator; or

13 (4) Involves an advance by the conservator of moneys for the
14 protection of the estate.

15 2. When a public administrator is serving as conservator, the
16 public administrator shall not enter into a transaction for his or her
17 own personal gain.

475.342. The conservator shall:

2 (1) Keep estate property separate from the conservator's own
3 property; and

4 (2) Cause the estate's property to be designated so that any
5 ownership interest of the estate, to the extent feasible, appears in
6 records maintained by a financial institution or party other than the
7 conservator or protectee.

475.343. 1. A guardian of an adult or minor ward is not obligated
2 by virtue of such guardian's appointment to use the guardian's own
3 financial resources for the support of the ward. If the ward's estate
4 and available public benefits are inadequate for the proper care of the
5 ward, the guardian or conservator may apply to the county commission
6 under section 475.370.

7 2. No guardian shall have authority to seek admission of the
8 guardian's ward to a mental health facility or an intellectual disability
9 facility for more than thirty days for any purpose without court order
10 except as otherwise provided by law.

11 3. Only the director or chief administrative officer of a social
12 service agency serving as guardian of an incapacitated person, or such
13 person's designee, is legally authorized to act on behalf of such person.

14 4. A social service agency serving as guardian of an
15 incapacitated person shall notify the court within fifteen days after any
16 change in the identity of the professional individual who has primary
17 responsibility for providing guardianship services to the incapacitated
18 person.

19 5. Any social service agency serving as guardian shall not
20 provide other services to the ward.

475.355. 1. If, upon the filing of a petition for the adjudication of
2 incapacity or disability it appears that the respondent, by reason of a mental

3 disorder or intellectual disability or developmental disability, presents a
4 likelihood of serious physical harm to [himself] **the respondent** or others, [he]
5 **the respondent** may be detained in accordance with the provisions of chapter
6 632 if suffering from a mental disorder, or chapter 633 if the [person]
7 **respondent** has an intellectual or developmental disability, pending a hearing
8 on the petition for adjudication.

9 2. As used in this section, the terms "mental disorder" and "intellectual
10 disability" or "**developmental disability**" shall be as defined in chapter 630
11 and the term "likelihood of serious physical harm to [himself] **the respondent**
12 or others" shall be as the term "likelihood of serious harm" is defined in chapter
13 632.

14 3. The procedure for obtaining an order of temporary emergency detention
15 shall be as prescribed by chapter 632, relating to prehearing detention of
16 mentally disordered persons.

**475.357. The probate divisions of the courts of this state have
2 jurisdiction over issues of the adjudication of incapacity, partial
3 incapacity, disability, or partial disability and the appointment of a
4 guardian, limited guardian, conservator, or limited conservator of an
5 adult eighteen years of age or older whose parents have a pending
6 matter under chapter 210 or chapter 452 for child custody or visitation
7 of that child. The court that has jurisdiction under chapter 210 or
8 chapter 452 shall have the authority to enter orders only as to child
9 support after such adjudication and appointment of a guardian by the
10 probate division.**

**475.361. 1. The provisions of section 475.078 notwithstanding to
2 the contrary, in every guardianship, the ward has the right to:**

3 **(1) A guardian who acts in the best interests of the ward;**
4 **(2) A guardian who is reasonably accessible to the ward;**
5 **(3) Communicate freely and privately with family, friends, and
6 other persons other than the guardian; except that, such right may be
7 limited by the guardian for good cause but only as necessary to ensure
8 the ward's condition, safety, habilitation, or sound therapeutic
9 treatment;**

10 **(4) Individually or through the ward's representative or legal
11 counsel, bring an action relating to the guardianship, including the
12 right to file a petition alleging that the ward is being unjustly denied**

13 a right or privilege granted by this chapter, including the right to bring
14 an action to modify or terminate the guardianship under the provisions
15 of section 475.083;

16 (5) The least restrictive form of guardianship assistance, taking
17 into consideration the ward's functional limitations, personal needs,
18 and preferences;

19 (6) Be restored to capacity at the earliest possible time;

20 (7) Receive information from the court that describes the ward's
21 rights, including rights the ward may seek by petitioning the court; and

22 (8) Participate in any health care decision-making process.

23 2. An adult ward may petition the court to grant the ward the
24 right to:

25 (1) Contract to marry or to petition for dissolution of marriage;

26 (2) Make, modify, or terminate other contracts or ratify contracts
27 made by the ward;

28 (3) Consent to medical treatment;

29 (4) Establish a residence or dwelling place;

30 (5) Change domicile;

31 (6) Bring or defend any action at law or equity, except an action
32 relating to the guardianship; or

33 (7) Drive a motor vehicle if the ward can pass the required
34 driving test.

35 3. The appointment of a guardian shall revoke the powers of an
36 agent who was previously appointed by the ward to act as an agent
37 under a durable power of attorney for health care, unless the court so
38 orders.

39 4. The appointment of a guardian is not a determination that the
40 ward lacks testamentary capacity.

630.005. As used in this chapter and chapters 631, 632, and 633, unless
2 the context clearly requires otherwise, the following terms shall mean:

3 (1) "Administrative entity", a provider of specialized services other than
4 transportation to clients of the department on behalf of a division of the
5 department;

6 (2) "Alcohol abuse", the use of any alcoholic beverage, which use results
7 in intoxication or in a psychological or physiological dependency from continued
8 use, which dependency induces a mental, emotional or physical impairment and
9 which causes socially dysfunctional behavior;

10 (3) "Chemical restraint", medication administered with the primary intent
11 of restraining a patient who presents a likelihood of serious physical injury to
12 himself or others, and not prescribed to treat a person's medical condition;

13 (4) "Client", any person who is placed by the department in a facility or
14 program licensed and funded by the department or who is a recipient of services
15 from a regional center, as defined in section 633.005;

16 (5) "Commission", the state mental health commission;

17 (6) "Consumer", a person:

18 (a) Who qualifies to receive department services; or

19 (b) Who is a parent, child or sibling of a person who receives department
20 services; or

21 (c) Who has a personal interest in services provided by the department.
22 A person who provides services to persons affected by intellectual disabilities,
23 developmental disabilities, mental disorders, mental illness, or alcohol or drug
24 abuse shall not be considered a consumer;

25 (7) "Day program", a place conducted or maintained by any person who
26 advertises or holds himself out as providing prevention, evaluation, treatment,
27 habilitation or rehabilitation for persons affected by mental disorders, mental
28 illness, intellectual disabilities, developmental disabilities or alcohol or drug
29 abuse for less than the full twenty-four hours comprising each daily period;

30 (8) "Department", the department of mental health of the state of
31 Missouri;

32 (9) "Developmental disability", a disability:

33 (a) Which is attributable to:

34 a. Intellectual disability, cerebral palsy, epilepsy, head injury or autism,
35 or a learning disability related to a brain dysfunction; or

36 b. Any other mental or physical impairment or combination of mental or
37 physical impairments; and

38 (b) Is manifested before the person attains age twenty-two; and

39 (c) Is likely to continue indefinitely; and

40 (d) Results in substantial functional limitations in two or more of the
41 following areas of major life activities:

42 a. Self-care;

43 b. Receptive and expressive language development and use;

44 c. Learning;

45 d. Self-direction;

46 e. Capacity for independent living or economic self-sufficiency;

47 f. Mobility; and

48 (e) Reflects the person's need for a combination and sequence of special,
49 interdisciplinary, or generic care, habilitation or other services which may be of
50 lifelong or extended duration and are individually planned and coordinated;

51 (10) "Director", the director of the department of mental health, or his
52 designee;

53 (11) "Domiciled in Missouri", a permanent connection between an
54 individual and the state of Missouri, which is more than mere residence in the
55 state; it may be established by the individual being physically present in Missouri
56 with the intention to abandon his previous domicile and to remain in Missouri
57 permanently or indefinitely;

58 (12) "Drug abuse", the use of any drug without compelling medical reason,
59 which use results in a temporary mental, emotional or physical impairment and
60 causes socially dysfunctional behavior, or in psychological or physiological
61 dependency resulting from continued use, which dependency induces a mental,
62 emotional or physical impairment and causes socially dysfunctional behavior;

63 (13) "Habilitation", a process of treatment, training, care or specialized
64 attention [which] **that** seeks to enhance and maximize a person with an
65 intellectual disability or a developmental disability to cope with the environment
66 and to live as [normally] **determined by the person as much as possible, as**
67 **is appropriate for the person considering his or her physical and**
68 **mental condition and financial means;**

69 (14) "Habilitation center", a residential facility operated by the
70 department and serving only persons who are developmentally disabled;

71 (15) "Head of the facility", the chief administrative officer, or his designee,
72 of any residential facility;

73 (16) "Head of the program", the chief administrative officer, or his
74 designee, of any day program;

75 (17) "Individualized habilitation plan", a document which sets forth
76 habilitation goals and objectives for residents and clients with an intellectual
77 disability or a developmental disability, and which details the habilitation
78 program as required by law, rules and funding sources;

79 (18) "Individualized rehabilitation plan", a document which sets forth the
80 care, treatment and rehabilitation goals and objectives for patients and clients
81 affected by alcohol or drug abuse, and which details the rehabilitation program

82 as required by law, rules and funding sources;

83 (19) "Individualized treatment plan", a document which sets forth the
84 care, treatment and rehabilitation goals and objectives for patients and clients
85 with mental disorders or mental illness, and which details the treatment program
86 as required by law, rules and funding sources;

87 (20) "Intellectual disability", significantly subaverage general intellectual
88 functioning which:

89 (a) Originates before age eighteen; and

90 (b) Is associated with a significant impairment in adaptive behavior;

91 (21) "Investigator", an employee or contract agent of the department of
92 mental health who is performing an investigation regarding an allegation of
93 abuse or neglect or an investigation at the request of the director of the
94 department of mental health or his designee;

95 (22) "Least restrictive environment", a reasonably available setting or
96 mental health program where care, treatment, habilitation or rehabilitation is
97 particularly suited to the level and quality of services necessary to implement a
98 person's individualized treatment, habilitation or rehabilitation plan and to
99 enable the person to maximize his or her functioning potential to participate as
100 freely as feasible in normal living activities, giving due consideration to
101 potentially harmful effects on the person and the safety of other facility or
102 program clients and public safety. For some persons with mental disorders,
103 intellectual disabilities, or developmental disabilities, the least restrictive
104 environment may be a facility operated by the department, a private facility, a
105 supported community living situation, or an alternative community program
106 designed for persons who are civilly detained for outpatient treatment or who are
107 conditionally released pursuant to chapter 632;

108 (23) "Mental disorder", any organic, mental or emotional impairment
109 which has substantial adverse effects on a person's cognitive, volitional or
110 emotional function and which constitutes a substantial impairment in a person's
111 ability to participate in activities of normal living;

112 (24) "Mental illness", a state of impaired mental processes, which
113 impairment results in a distortion of a person's capacity to recognize reality due
114 to hallucinations, delusions, faulty perceptions or alterations of mood, and
115 interferes with an individual's ability to reason, understand or exercise conscious
116 control over his actions. The term "mental illness" does not include the following
117 conditions unless they are accompanied by a mental illness as otherwise defined

118 in this subdivision:

119 (a) Intellectual disability, developmental disability or narcolepsy;

120 (b) Simple intoxication caused by substances such as alcohol or drugs;

121 (c) Dependence upon or addiction to any substances such as alcohol or
122 drugs;

123 (d) Any other disorders such as senility, which are not of an actively
124 psychotic nature;

125 (25) "Minor", any person under the age of eighteen years;

126 (26) "Patient", an individual under observation, care, treatment or
127 rehabilitation by any hospital or other mental health facility or mental health
128 program pursuant to the provisions of chapter 632;

129 (27) "Psychosurgery":

130 (a) Surgery on the normal brain tissue of an individual not suffering from
131 physical disease for the purpose of changing or controlling behavior; or

132 (b) Surgery on diseased brain tissue of an individual if the sole object of
133 the surgery is to control, change or affect behavioral disturbances, except seizure
134 disorders;

135 (28) "Rehabilitation", a process of restoration of a person's ability to attain
136 or maintain normal or optimum health or constructive activity through care,
137 treatment, training, counseling or specialized attention;

138 (29) "Residence", the place where the patient has last generally lodged
139 prior to admission or, in case of a minor, where his family has so lodged; except,
140 that admission or detention in any facility of the department shall not be deemed
141 an absence from the place of residence and shall not constitute a change in
142 residence;

143 (30) "Resident", a person receiving residential services from a facility,
144 other than mental health facility, operated, funded or licensed by the department;

145 (31) "Residential facility", any premises where residential prevention,
146 evaluation, care, treatment, habilitation or rehabilitation is provided for persons
147 affected by mental disorders, mental illness, intellectual disability, developmental
148 disabilities or alcohol or drug abuse; except the person's dwelling;

149 (32) "Specialized service", an entity which provides prevention, evaluation,
150 transportation, care, treatment, habilitation or rehabilitation services to persons
151 affected by mental disorders, mental illness, intellectual disabilities,
152 developmental disabilities or alcohol or drug abuse;

153 (33) "Vendor", a person or entity under contract with the department,

154 other than as a department employee, who provides services to patients, residents
155 or clients;

156 (34) "Vulnerable person", any person in the custody, care, or control of the
157 department that is receiving services from an operated, funded, licensed, or
158 certified program.

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