

PROBATE CODE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Uniform Probate Code.

Highlighted Provisions:

This bill:

- ▶ clarifies the parent and child relationship related to adoption;
- ▶ amends language related to the electronic filings of wills in court;
- ▶ provides for an emergency guardian or court appointed temporary guardian until further order of the court;
- ▶ allows a guardian to compel production of a ward's estate documents and advance health care directives;
- ▶ allows for a temporary conservator until further order of the court;
- ▶ provides for a conservator to compel production of a protected person's estate documents and advanced health care directives; and
- ▶ makes technical and clarifying changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **75-2-114**, as last amended by Laws of Utah 2008, Chapter 3
- 29 **75-3-107**, as last amended by Laws of Utah 2013, Chapter 364
- 30 **75-3-301**, as last amended by Laws of Utah 2013, Chapter 364
- 31 **75-5-310**, as last amended by Laws of Utah 1979, Chapter 244
- 32 **75-5-312**, as last amended by Laws of Utah 2013, Chapter 364
- 33 **75-5-408**, as last amended by Laws of Utah 2012, Chapter 274
- 34 **75-5-415**, as last amended by Laws of Utah 2012, Chapter 274
- 35 **75-5-416**, as enacted by Laws of Utah 1975, Chapter 150
- 36 **75-5-424**, as last amended by Laws of Utah 2012, Chapter 274
- 37 **75-7-508**, as last amended by Laws of Utah 2009, Chapter 388



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **75-2-114** is amended to read:

41 **75-2-114. Parent and child relationship.**

42 (1) Except as provided in Subsections (2) and (3), for purposes of intestate succession
43 by, through, or from a person, an individual is the child of the individual's natural parents,
44 regardless of their marital status. The parent and child relationship may be established as
45 provided in Title 78B, Chapter 15, Utah Uniform Parentage Act.

46 (2) An adopted individual is the child of the adopting parent or parents and not of the
47 natural parents, but adoption of a child by the spouse of either natural parent has no effect on[
48 the relationship between the child and that natural parent.

49 [~~(a) the relationship between the child and that natural parent; or]~~

50 [~~(b) the right of the child or a descendant of the child to inherit from or through the
51 other natural parent.]~~

52 (3) Inheritance from or through a child by either natural parent or [~~his~~] the child's
53 kindred is precluded unless that natural parent has openly treated the child as [~~his~~] the natural
54 parent's, and has not refused to support the child.

55 Section 2. Section **75-3-107** is amended to read:

56 **75-3-107. Probate and testacy proceedings -- Ultimate time limit -- Presumption
57 and order of intestacy.**

58 (1) No informal probate proceeding or formal testacy proceeding, other than a

59 proceeding to probate a will previously probated at the testator's domicile [~~and appointment~~
 60 ~~proceedings relating to an estate in which there has been a prior appointment~~], may be
 61 commenced more than three years after the decedent's death, except:

62 (a) If a previous proceeding was dismissed because of doubt about the fact of the
 63 decedent's death, appropriate probate[~~, appointment,~~] or testacy proceedings may be maintained
 64 at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of
 65 the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the
 66 subsequent proceeding.

67 (b) Appropriate probate[~~, appointment,~~] or testacy proceedings may be maintained in
 68 relation to the estate of an absent, disappeared, or missing person for whose estate a
 69 conservator has been appointed, at any time within three years after the conservator becomes
 70 able to establish the death of the protected person.

71 (c) A proceeding to contest an informally probated will and to secure appointment of
 72 the person with legal priority for appointment in the event the contest is successful, may be
 73 commenced within the later of 12 months from the informal probate or three years from the
 74 decedent's death.

75 (2) The limitations provided in Subsection (1) do not apply to proceedings to construe
 76 probated wills or determine heirs of an intestate. In cases under Subsection (1)(a) or (b), the
 77 date on which a testacy [~~or appointment~~] proceeding is properly commenced shall be deemed
 78 to be the date of the decedent's death for purposes of other limitations provisions of this title
 79 which relate to the date of death.

80 (3) If no will is probated within three years from death, the presumption of intestacy is
 81 final and the court shall upon filing a proper petition enter an order to that effect. [~~The court~~
 82 ~~also has continuing jurisdiction to:~~]

83 (4) Notwithstanding the time restriction in Subsection (1), the court has continuing
 84 jurisdiction to:

85 (a) determine what property was owned by the decedent at the time of death; and

86 (b) appoint, formally or informally, a personal representative or special administrator to
 87 administer the decedent's estate.

88 Section 3. Section **75-3-301** is amended to read:

89 **75-3-301. Informal probate or appointment proceedings -- Application --**

90 **Contents.**

91 (1) Applications for informal probate or informal appointment shall be directed to the
92 registrar, and verified by the applicant to be accurate and complete to the best of ~~[his]~~ the
93 applicant's knowledge and belief as to the appropriate information required under this section.

94 (2) Every application for informal probate of a will or for informal appointment of a
95 personal representative, other than a special or successor representative, shall contain the
96 following:

97 (a) a statement of the interest of the applicant;

98 (b) the name and date of death of the decedent, ~~[his]~~ the decedent's age, the county and
99 state of ~~[his]~~ the decedent's domicile at the time of death, and the names and addresses of the
100 spouse, children, heirs, and devisees and the ages of any who are minors so far as known or
101 ascertainable with reasonable diligence by the applicant;

102 (c) if the decedent was not domiciled in the state at the time of ~~[his]~~ the decedent's
103 death, a statement showing venue;

104 (d) a statement identifying and indicating the address of any personal representative of
105 the decedent appointed in this state or elsewhere whose appointment has not been terminated;
106 and

107 (e) a statement indicating whether the applicant has received a demand for notice or is
108 aware of any demand for notice of any probate or appointment proceeding concerning the
109 decedent that may have been filed in this state or elsewhere~~[-and].~~

110 ~~[(f) that the time limit for informal probate or appointment as provided in this chapter~~
111 ~~has not expired either because three years or less have passed since the decedent's death, or if~~
112 ~~more than three years from death have passed, that circumstances as described by Section~~
113 ~~75-3-107 authorizing tardy probate or appointment have occurred.]~~

114 (3) An application for informal probate of a will shall state the following in addition to
115 the statements required by Subsection (2):

116 (a) that the original of the decedent's last will ~~[is]~~:

117 (i) is in the possession of the court;

118 (ii) was ~~[presented to]~~ filed with the ~~[court for electronic storage and]~~ court's electronic
119 filing system and is now in the possession of the applicant or the applicant's attorney; or

120 (iii) ~~[accompanies the application, or that]~~ is an authenticated copy of a will probated

121 in another jurisdiction accompanies the application[;] or was filed with the court's electronic
122 filing system and the authenticated copy is now in the possession of the applicant or the
123 applicant's attorney;

124 (b) that the applicant, to the best of [his] the applicant's knowledge, believes the will to
125 have been validly executed; [~~and~~]

126 (c) that after the exercise of reasonable diligence, the applicant is unaware of any
127 instrument revoking the will, and that the applicant believes that the instrument which is the
128 subject of the application is the decedent's last will[-]; and

129 (d) that the time limit for informal probate as provided in this chapter has not expired
130 either because three years or less have passed since the decedent's death, or if more than three
131 years have passed since the decedent's death, circumstances as described by Section [75-3-107](#)
132 authorizing tardy probate have occurred.

133 (4) An application for informal appointment of a personal representative to administer
134 an estate under a will shall describe the will by date of execution and state the time and place of
135 probate or the pending application or petition for probate. The application for appointment
136 shall adopt the statements in the application or petition for probate, state the name, address and
137 priority for appointment of the person whose appointment is sought, state whether or not bond
138 is required, and, if required, unless specified by the will, state the estimated value of the
139 personal and real estate of the decedent and of the income expected from the personal and real
140 estate during the next year.

141 (5) An application for informal appointment of an administrator in intestacy shall state
142 in addition to the statements required by Subsection (2):

143 (a) That after the exercise of reasonable diligence, the applicant is unaware of any
144 unrevoked testamentary instrument relating to property having a situs in this state under
145 Section [75-1-301](#), or, a statement why any such instrument of which he may be aware is not
146 being probated;

147 (b) The priority of the person whose appointment is sought and the names of any other
148 persons having a prior or equal right to the appointment under Section [75-3-203](#);

149 (c) If bond is required, the estimated value of the personal and real estate of the
150 decedent and of the income expected from the personal and real estate during the next year.

151 (6) An application for appointment of a personal representative to succeed a personal

152 representative appointed under a different testacy status shall refer to the order in the most
153 recent testacy proceeding, state the name and address of the person whose appointment is
154 sought and of the person whose appointment will be terminated if the application is granted,
155 and describe the priority of the applicant.

156 (7) An application for appointment of a personal representative to succeed a personal
157 representative who has tendered a resignation as provided in Subsection 75-3-610(3), or whose
158 appointment has been terminated by death or removal, shall adopt the statements in the
159 application or petition which led to the appointment of the person being succeeded, except as
160 specifically changed or corrected, state the name and address of the person who seeks
161 appointment as successor, and describe the priority of the applicant.

162 Section 4. Section 75-5-310 is amended to read:

163 **75-5-310. Emergency and temporary guardians.**

164 (1) If an incapacitated person has no guardian and an emergency exists or if an
165 appointed guardian is not effectively performing [~~his~~] the guardian's duties and the court
166 further finds that the welfare of the incapacitated person requires immediate action, it may,
167 without notice, appoint an [~~appropriate official as temporary~~] emergency guardian for the
168 person for a specified period not to exceed 30 days pending notice and hearing.

169 (2) The court shall, in all cases in which [~~a temporary~~] an emergency guardian is
170 appointed, hold a hearing within [~~five~~] 14 days pursuant to Section 75-5-303. [~~Unless the~~
171 ~~allegedly incapacitated person has already obtained counsel, the court may appoint an~~
172 ~~appropriate official or attorney to represent that person in the proceeding. Until the full hearing~~
173 ~~and order of the court, the temporary guardian shall be charged with the care and custody of the~~
174 ~~ward and shall not permit the ward to be removed from this state. The authority of any~~
175 ~~permanent guardian previously appointed by the court is suspended so long as a temporary~~
176 ~~guardian has authority. A temporary guardian may be removed at any time, and shall obey such~~
177 ~~orders and make such reports as the court requires.]~~

178 (3) If, after notice and hearing, the court finds good cause, the court may appoint a
179 temporary guardian until further order of the court.

180 (4) Unless the allegedly incapacitated person has already obtained counsel in this
181 proceeding or an attorney has been already appointed for the person, the court may appoint an
182 attorney to represent the person in the proceeding.

183 (5) Until the full hearing and order of the court, the temporary guardian shall be
184 charged with the care and custody of the ward and may not permit the ward to be removed
185 from the state. The authority of any permanent guardian previously appointed by the court is
186 suspended so long as a temporary guardian has authority. A temporary guardian may be
187 removed at any time, and shall obey such orders and make such reports as the court requires.

188 (6) A temporary guardian has all of the powers and duties of a permanent guardian as
189 set forth in Section [75-5-312](#).

190 Section 5. Section **75-5-312** is amended to read:

191 **75-5-312. General powers and duties of guardian -- Penalties.**

192 (1) A guardian of an incapacitated person has only the powers, rights, and duties
193 respecting the ward granted in the order of appointment under Section [75-5-304](#).

194 (2) Absent a specific limitation on the guardian's power in the order of appointment,
195 the guardian has the same powers, rights, and duties respecting the ward that a parent has
196 respecting the parent's unemancipated minor child except that a guardian is not liable to third
197 persons for acts of the ward solely by reason of the parental relationship. In particular, and
198 without qualifying the foregoing, a guardian has the following powers and duties, except as
199 modified by order of the court:

200 (a) To the extent that it is consistent with the terms of any order by a court of
201 competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled
202 to custody of the person of the ward and may establish the ward's place of abode within or
203 without this state.

204 (b) If entitled to custody of the ward the guardian shall provide for the care, comfort,
205 and maintenance of the ward and, whenever appropriate, arrange for the ward's training and
206 education. Without regard to custodial rights of the ward's person, the guardian shall take
207 reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and
208 commence protective proceedings if other property of the ward is in need of protection.

209 (c) A guardian may give any consents or approvals that may be necessary to enable the
210 ward to receive medical or other professional care, counsel, treatment, or service.

211 (d) If no conservator for the estate of the ward has been appointed, the guardian may:

212 (i) institute proceedings to compel any person under a duty to support the ward or to
213 pay sums for the welfare of the ward to perform that duty; [or]

214 (ii) compel the production of the ward's estate documents, including the ward's will,
215 trust, power of attorney, and any advance health care directive; and

216 ~~[(ii)]~~ (iii) receive money and tangible property deliverable to the ward and apply the
217 money and property for support, care, and education of the ward; but the guardian may not use
218 funds from the ward's estate for room and board which the guardian, the guardian's spouse,
219 parent, or child have furnished the ward unless a charge for the service is approved by order of
220 the court made upon notice to at least one adult relative in the nearest degree of kinship to the
221 ward in which there is an adult. The guardian [~~must~~] shall exercise care to conserve any excess
222 for the ward's needs.

223 (e) (i) A guardian is required to report the condition of the ward and of the estate which
224 has been subject to the guardian's possession or control, as required by the court or court rule.

225 (ii) A guardian is required to immediately notify all interested persons if the guardian
226 reasonably believes that the ward's death is likely to occur within the next 30 days, based on:

227 (A) the guardian's own observations; or

228 (B) information from the ward's physician or other medical care providers.

229 (iii) A guardian is required to immediately notify all interested persons of the ward's
230 death.

231 (iv) Unless emergency conditions exist, a guardian is required to file with the court a
232 notice of the guardian's intent to move the ward and to serve the notice on all interested persons
233 at least 10 days before the move. The guardian shall take reasonable steps to notify all
234 interested persons and to file the notice with the court as soon as practicable following the
235 earlier of the move or the date when the guardian's intention to move the ward is made known
236 to the ward, the ward's care giver, or any other third party.

237 (v) The guardian shall, for all estates in excess of \$50,000, excluding the residence
238 owned by the ward, send a report with a full accounting to the court on an annual basis. For
239 estates less than \$50,000, excluding the residence owned by the ward, the guardian shall fill out
240 an informal annual report and mail the report to the court. The report shall include the
241 following: a statement of assets at the beginning and end of the reporting year, income received
242 during the year, disbursements for the support of the ward, and other expenses incurred by the
243 estate. The guardian shall also report the physical conditions of the ward, the place of
244 residence, and a list of others living in the same household. The court may require additional

245 information. The forms for both the informal report for estates under \$50,000, excluding the
246 residence owned by the ward, and the full accounting report for larger estates shall be approved
247 by the Judicial Council. This annual report shall be examined and approved by the court. If
248 the ward's income is limited to a federal or state program requiring an annual accounting
249 report, a copy of that report may be submitted to the court in lieu of the required annual report.

250 (vi) Corporate fiduciaries are not required to petition the court, but shall submit their
251 internal report annually to the court. The report shall be examined and approved by the court.

252 (vii) The guardian shall also render an annual accounting of the status of the person to
253 the court which shall be included in the petition or the informal annual report as required under
254 Subsection (2)(e). If a fee is paid for an accounting of an estate, no fee shall be charged for an
255 accounting of the status of a person.

256 (viii) If a guardian:

257 (A) makes a substantial misstatement on filings of annual reports;

258 (B) is guilty of gross impropriety in handling the property of the ward; or

259 (C) willfully fails to file the report required by this subsection, after receiving written
260 notice from the court of the failure to file and after a grace period of two months has elapsed,
261 the court may impose a penalty in an amount not to exceed \$5,000. The court may also order
262 restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the
263 guardian and may not be paid by the estate.

264 (ix) These provisions and penalties governing annual reports do not apply if the
265 guardian is the parent of the ward.

266 (x) For the purposes of Subsections (2)(e)(i), (ii), (iii), and (iv), "interested persons"
267 means those persons required to receive notice in guardianship proceedings as set forth in
268 Section [75-5-309](#).

269 (f) If a conservator has been appointed, all of the ward's estate received by the guardian
270 in excess of those funds expended to meet current expenses for support, care, and education of
271 the ward shall be paid to the conservator for management as provided in this code; and the
272 guardian shall account to the conservator for funds expended.

273 (3) Any guardian of one for whom a conservator also has been appointed shall control
274 the custody and care of the ward and is entitled to receive reasonable sums for services and for
275 room and board furnished to the ward as agreed upon between the guardian and the

276 conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian
277 may request the conservator to expend the ward's estate by payment to third persons or
278 institutions for the ward's care and maintenance.

279 Section 6. Section **75-5-408** is amended to read:

280 **75-5-408. Permissible court orders.**

281 (1) The court has the following powers which may be exercised directly or through a
282 conservator in respect to the estate and affairs of protected persons:

283 (a) While a petition for appointment of a conservator or other protective order is
284 pending and after preliminary hearing and without notice to others, the court has power to
285 preserve and apply the property of the person to be protected as may be required for the
286 person's benefit or the benefit of the person's dependents.

287 (b) After hearing and upon determining that a basis for an appointment or other
288 protective order exists with respect to a minor without other disability, the court has all those
289 powers over the estate and affairs of the minor which are or might be necessary for the best
290 interests of the minor, the minor's family, and the members of the minor's household.

291 (c) After hearing and upon determining that a basis for an appointment or other
292 protective order exists with respect to a person for reasons other than minority, the court has,
293 for the benefit of the person and members of the person's household, all the powers over the
294 person's estate and affairs that the person could exercise if present and not under disability,
295 except the power to make a will. These powers include the power to:

296 (i) make gifts;

297 (ii) convey or release the person's contingent and expectant interests in property
298 including marital property rights and any right of survivorship incident to joint tenancy or
299 tenancy by the entirety;

300 (iii) exercise or release the person's powers as personal representative, custodian for
301 minors, conservator, or donee of a power of appointment;

302 (iv) enter into contracts;

303 (v) create revocable or irrevocable trusts of property of the estate that may extend
304 beyond the person's disability or life;

305 (vi) exercise options of the person with a disability to purchase securities or other
306 property;

307 (vii) exercise the person's rights to elect options and change beneficiaries under
308 insurance and annuity policies and to surrender the policies for their cash value;

309 (viii) exercise the person's right to an elective share in the estate of the person's
310 deceased spouse; and

311 (ix) renounce any interest by testate or intestate succession or by inter vivos transfer.

312 (d) The court may exercise, or direct the exercise of, its authority to exercise or release
313 powers of appointment of which the protected person is donee, to renounce interests, to make
314 gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change
315 beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing,
316 that it is in the best interests of the protected person, and that the person either is incapable of
317 consenting or has consented to the proposed exercise of power.

318 (2) An order made pursuant to this section determining that a basis for appointment of
319 a conservator or other protective order exists has no effect on the capacity of the protected
320 person.

321 (3) If the court elects to appoint a conservator under Subsection (1), the court may
322 appoint a temporary conservator to serve until further order of the court. A temporary
323 conservator, if appointed, has all of the powers and duties of a conservator as set forth in
324 Sections [75-5-417](#), [75-5-418](#), [75-5-419](#), and [75-5-424](#).

325 Section 7. Section **75-5-415** is amended to read:

326 **75-5-415. Death, resignation, or removal of conservator.**

327 (1) The court may remove a conservator for good cause, upon notice and hearing, or
328 accept the resignation of a conservator. After the death, resignation, or removal of a
329 conservator, the court may appoint another conservator. A conservator so appointed succeeds
330 to the title and powers of the preceding conservator.

331 (2) Before removing a conservator, accepting the resignation of a conservator, or
332 ordering that a protected person's incapacity has terminated, the court shall follow the same
333 procedures to safeguard the rights of the protected person as apply to a petition for appointment
334 of a conservator as provided in Section [75-5-407](#). The court is not required to appoint an
335 attorney to represent the ward if the case is uncontested and the protected person's capacity is
336 not at issue.

337 Section 8. Section **75-5-416** is amended to read:

338 **75-5-416. Petitions for orders subsequent to appointment.**339 (1) Any person interested in the welfare of a person for whom a conservator has been
340 appointed may file a petition in the appointing court for an order:

- 341 (a) requiring bond or security or additional bond or security, or reducing bond;
- 342 (b) requiring an accounting for the administration of the ~~[trust]~~ conservatorship estate;
- 343 (c) directing distribution;
- 344 (d) removing the conservator and appointing a temporary or successor conservator; or
- 345 (e) granting other appropriate relief, including any relief available under Title 75,
346 Chapter 7, Utah Uniform Trust Code, if the protected person is a grantor, settlor, trustor, or
347 beneficiary of a trust.

348 (2) A conservator may petition the appointing court for instructions concerning ~~[his]~~
349 the conservator's fiduciary responsibility.350 (3) Upon notice and hearing the court may give appropriate instructions or make any
351 appropriate order.352 Section 9. Section **75-5-424** is amended to read:353 **75-5-424. Powers of conservator in administration.**

354 (1) A conservator has all of the powers conferred in this chapter and any additional
355 powers conferred by law on trustees in this state. In addition, a conservator of the estate of an
356 unmarried minor as to whom no one has parental rights, has the duties and powers of a
357 guardian of a minor described in Section **75-5-209** until the minor attains majority or marries,
358 but the parental rights so conferred on a conservator do not preclude appointment of a guardian
359 as provided by Part 2 of this chapter.

360 (2) A conservator has the power to compel the production of the protected person's
361 estate documents, including the protected person's will, trust, power of attorney, and any
362 advance health care directives.

363 ~~[(2)]~~ (3) A conservator has power without court authorization or confirmation to invest
364 and reinvest funds of the estate as would a trustee.

365 ~~[(3)]~~ (4) A conservator, acting reasonably in efforts to accomplish the purpose for
366 which the conservator was appointed, may act without court authorization or confirmation, to:

- 367 (a) collect, hold, and retain assets of the estate, including land in another state, until, in
368 his judgment, disposition of the assets should be made, and the assets may be retained even

- 369 though they include an asset in which he is personally interested;
- 370 (b) receive additions to the estate;
- 371 (c) continue or participate in the operation of any business or other enterprise;
- 372 (d) acquire an undivided interest in an estate asset in which the conservator, in any
373 fiduciary capacity, holds an undivided interest;
- 374 (e) invest and reinvest estate assets in accordance with Subsection (2);
- 375 (f) deposit estate funds in a bank including a bank operated by the conservator;
- 376 (g) acquire or dispose of an estate asset, including land in another state, for cash or on
377 credit, at public or private sale; and to manage, develop, improve, exchange, partition, change
378 the character of, or abandon an estate asset;
- 379 (h) make ordinary or extraordinary repairs or alterations in buildings or other
380 structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- 381 (i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of
382 plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving
383 or receiving considerations; and dedicate easements to public use without consideration;
- 384 (j) enter for any purpose into a lease as lessor or lessee with or without option to
385 purchase or renew for a term within or extending beyond the term of the conservatorship;
- 386 (k) enter into a lease or arrangement for exploration and removal of minerals or other
387 natural resources or enter into a pooling or unitization agreement;
- 388 (l) grant an option involving disposition of an estate asset or take an option for the
389 acquisition of any asset;
- 390 (m) vote a security, in person or by general or limited proxy;
- 391 (n) pay calls, assessments, and any other sums chargeable or accruing against or on
392 account of securities;
- 393 (o) sell or exercise stock subscription or conversion rights; consent, directly or through
394 a committee or other agent, to the reorganization, consolidation, merger, dissolution, or
395 liquidation of a corporation or other business enterprise;
- 396 (p) hold a security in the name of a nominee or in other form without disclosure of the
397 conservatorship so that title to the security may pass by delivery, but the conservator is liable
398 for any act of the nominee in connection with the stock so held;
- 399 (q) insure the assets of the estate against damage or loss and the conservator against

400 liability with respect to third persons;

401 (r) borrow money to be repaid from estate assets or otherwise; and advance money for
402 the protection of the estate or the protected person, and for all expenses, losses, and liabilities
403 sustained in the administration of the estate or because of the holding or ownership of any
404 estate assets, and the conservator has a lien on the estate as against the protected person for
405 advances so made;

406 (s) pay or contest any claim; settle a claim by or against the estate or the protected
407 person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim
408 belonging to the estate to the extent that the claim is uncollectible;

409 (t) pay taxes, assessments, compensation of the conservator, and other expenses
410 incurred in the collection, care, administration, and protection of the estate;

411 (u) allocate items of income or expense to either estate income or principal, as
412 provided by law, including creation of reserves out of income for depreciation, obsolescence,
413 or amortization, or for depletion in mineral or timber properties;

414 (v) pay any sum distributable to a protected person or dependent without liability to the
415 conservator, by paying the sum to the distributee or by paying the sum for the use of the
416 distributee either to the distributee's guardian, or if none, to a relative or other person with
417 custody of the person;

418 (w) employ persons, including attorneys, auditors, investment advisors, or agents, even
419 though they are associated with the conservator, to advise or assist in the performance of
420 administrative duties; act upon their recommendation without independent investigation; and
421 instead of acting personally, employ one or more agents to perform any act of administration,
422 whether or not discretionary;

423 (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the
424 protection of estate assets and of the conservator in the performance of the conservator's duties;

425 (y) act as a qualified beneficiary of any trust in which the protected person is a
426 qualified beneficiary; and

427 (z) execute and deliver all instruments which will accomplish or facilitate the exercise
428 of the powers vested in the conservator.

429 Section 10. Section **75-7-508** is amended to read:

430 **75-7-508. Notice to creditors.**

431 (1) (a) A trustee for an inter vivos revocable trust, upon the death of the settlor, may
432 publish a notice to creditors:

433 (i) once a week for three successive weeks in a newspaper of general circulation in the
434 county where the settlor resided at the time of death; and

435 (ii) in accordance with Section 45-1-101 for three weeks.

436 (b) The notice required by Subsection (1)(a) [~~must~~] shall:

437 (i) provide the trustee's name and address; and

438 (ii) notify creditors:

439 (A) of the deceased settlor; and

440 (B) to present their claims within three months after the date of the first publication of
441 the notice or be forever barred from presenting the claim.

442 (2) A trustee shall give written notice by mail or other delivery to any known creditor
443 of the deceased settlor, notifying the creditor to present his claim within 90 days from the
444 published notice if given as provided in Subsection (1) or within 60 days from the mailing or
445 other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the
446 notice described in Subsection (1) or a similar notice.

447 (3) (a) If the deceased settlor received medical assistance, as defined in Section
448 26-19-2, at any time after the age of 55, the trustee for an inter vivos revocable trust, upon the
449 death of the settlor, shall mail or deliver written notice to the Director of the Office of
450 Recovery Services, on behalf of the Department of Health, to present any claim under Section
451 26-19-13.5 within 60 days from the mailing or other delivery of notice, whichever is later, or
452 be forever barred.

453 (b) If the trustee does not mail notice to the director of the Office of Recovery Services
454 on behalf of the department in accordance with Subsection (3)(a), the department shall have
455 one year from the death of the settlor to present its claim.

456 (4) The trustee [~~shall~~] is not [~~be~~] liable to any creditor or to any successor of the
457 deceased settlor for giving or failing to give notice under this section.

458 (5) The notice to creditors shall be valid against any creditor of the trust and also
459 against any creditor of the estate of the deceased settlor.

Legislative Review Note
as of 1-13-14 3:16 PM

Office of Legislative Research and General Counsel