

CHAPTER 190B UNIFORM PROBATE CODE
[Effective July 1, 2009.]
Guardianship of Minor Excerpts*

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Article I GENERAL PROVISIONS, DEFINITIONS, AND PROBATE JURISDICTION OF COURT

Part 4 NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

§ 1-401. Notice; Method and Timing of Giving.

(a) If notice on any matter is required by reference to this section and except for specific notice requirements as otherwise provided, the court shall fix a return date and issue a citation. The petitioner shall cause notice of the return day of any matter to be given to any interested person or attorney if the appearance is by attorney or the interested person requested that notice be sent to the attorney. Notice shall be given:

(1) by mailing a copy of the citation at least 14 days before the return date by certified, registered or ordinary first class mail addressed to all interested persons who have not assented in writing or their attorney if the appearance is by attorney or the interested person requested that notice be sent to the attorney at the person's office or place of residence, if known; or

(2) by delivering a copy of the citation to the person being notified personally at least fourteen days before the return date; or

(3) by publishing a copy of the citation once in a newspaper designated by the register of probate having general circulation in the county where the proceeding is pending, the publication of which is to be at least 7 days before the return date.

(b) The court for good cause shown may provide for a different method or time of giving notice for any return date. Notice of proceedings for guardianships of minors in the district court and the juvenile court shall be given in accordance with the rules of those courts.

(c) Proof of the giving of notice shall be made on or before the hearing or return day and filed in the proceeding.

(d) Any party to a formal proceeding who opposes the proceeding for any reason shall before 10:00 A.M. of the return date enter an appearance in writing giving the name of the proceeding, the objecting party's name and the objecting party's address or the name and address of the objecting party's attorney.

(e) The objecting party shall file a written affidavit of objections to the proceeding, stating the specific facts and grounds upon which the objection is based within 30 days after the return date.

(f) If an affidavit of objections fails to comply with the requirements of the foregoing section (e), such affidavit of objections and the appearance of the party filing such affidavit of objections may be struck on motion after notice at any time after filing of such affidavit of objections.

(g) If a proceeding is unopposed, after the time required for any notice has expired, upon proof of notice, the court or the magistrate may enter appropriate orders on the strength of

the pleadings if satisfied that all conditions are met, or the court may conduct a hearing and require proof of the matters necessary to support the order sought.

§ 1-404. Guardian Ad Litem and Next Friend.

(a) If, in a formal proceeding involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, or otherwise, a minor, a mentally retarded person, an autistic person, or person under disability, or a person not ascertained or not in being, may be or may become interested in any property, real or personal, or in the enforcement or defense of any legal rights, the court in which any action, petition or proceeding of any kind relative to or affecting any such estate or legal rights is pending may, upon the representation of any party thereto, or of any person interested, appoint a suitable person to appear and act therein as guardian ad litem or next friend of such minor, mentally retarded person, autistic person, or person under disability or not ascertained or not in being; and a judgment, order or decree in such proceedings, made after such appointment, should be conclusive upon all persons for whom such guardian ad litem or next friend was appointed.

(b) The reasonable expenses of such guardian ad litem or next friend, including compensation and counsel fees, shall be determined by the court and paid as it may order, either out of the estate or by the plaintiff, petitioner or the commonwealth. If such expenses are to be paid by the plaintiff or petitioner execution therefor may issue in the name of the guardian ad litem or next friend.

(c) Nothing in this code shall affect the power of a court to appoint a guardian or conservator to defend the interests of a minor impleaded in such court, or interested in a suit or matter there pending, nor the power of such court to appoint or allow a person, as next friend for a minor, to commence, prosecute or defend a suit in his behalf.

(d) If it appears in a probate or appointment proceeding that a spouse, heir at law or devisee is an incapacitated or protected person or a minor, notice of all proceedings shall be given to the incapacitated or protected person or minor and to his guardian or conservator. Unless the spouse, heir or devisee is represented by someone other than the petitioner or is under guardianship or conservatorship, the court shall appoint a guardian ad litem who shall receive notice of all proceedings.

Article V Protection Of Persons Under Disability And Their Property

Part 1 GENERAL PROVISIONS AND DEFINITIONS

§ 5-101. Definitions and Inclusions.

As used in parts 1 to 4, inclusive, of this article:

(1) "Claims", in respect to a protected person, includes liabilities of the protected person, whether arising in contract, tort, or otherwise, and liabilities of the estate which arise at or after the appointment of a conservator, including expenses of administration.

(2) "Conservator", a person who is appointed by a court to manage the estate of a protected person and includes a limited conservator, temporary conservator and special conservator.

(3) "Court", the probate and family court department of the trial court and includes the district court and juvenile court departments of the trial court in proceedings relating to the appointment of guardians of minors when the subject of the proceeding is a minor and there is proceeding before such district or juvenile court.

(4) "Disability", cause for a protective order as described in section 5-401.

(5) "Estate", includes the property of the person whose affairs are subject to this article.

(6) "Guardian", a person who has qualified as a guardian of a minor or incapacitated person pursuant to court appointment and includes a limited guardian, special guardian and temporary guardian, but excludes one who is merely a guardian ad litem.

(7) "Guardian ad litem", a person or organization appointed under sections 1-404 and 5-106 of this code.

(8) "Health care proxy", a health care proxy executed pursuant to chapter 201D, a durable power of attorney for health care executed prior to the enactment of chapter 201D and similar instruments for appointment of health care agents executed in accordance with the laws of other jurisdictions.

(9) "Incapacitated person", an individual who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

(10) "Lease", includes an oil, gas, or other mineral lease.

(11) "Letters", includes certificate of guardianship and certificate of conservatorship.

(12) "Mentally retarded person", an individual who has a substantial limitation in present functioning beginning before age 18, manifested by significantly subaverage intellectual functioning existing concurrently with related limitations in 2 or more of the following applicable adaptive skills areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functioning academics, leisure, and work.

- (13)** "Minor", a person who is under 18 years of age.
- (14)** "Mortgage", any conveyance, agreement, or arrangement in which property is used as collateral.
- (15)** "Nursing facility", an institution or a distinct part of an institution which is primarily engaged in providing to residents:
- (A)** skilled nursing care and related services for residents who require medical or nursing care,
 - (B)** rehabilitation services for the rehabilitation of injured, disabled or sick persons, or
 - (C)** on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services above the level of room and board which can be made available to them only through institutional facilities, and is not primarily a mental health facility or mental retardation facility.
- (16)** "Organization", includes a corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.
- (17)** "Parent", a natural or adoptive parent other than a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender.
- (18)** "Person", an individual or an organization.
- (19)** "Petition", a written request to the court for an order after notice.
- (20)** "Proceeding", includes action at law and suit in equity.
- (21)** "Property", includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
- (22)** "Protected person", a minor or other person for whom a conservator has been appointed or other protective order has been made as provided in sections 5-407 and 5-408.
- (23)** "Protective proceeding", a proceeding under the provisions of part 4 of this article.
- (24)** "Security", includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing.
- (25)** "Ward", a person for whom a guardian has been appointed solely because of minority.

§ 5-102. Facility of Payment or Delivery.

(a) Any person under a duty to pay or deliver money or personal property to a minor may perform the duty, in amounts not exceeding \$5,000 a year, by paying or delivering the money or property to:

(1) the minor;

(2) any person having the care and custody of the minor with whom the minor resides;

(3) a guardian of the minor;

(4) a custodian under the uniform transfers to minors act or a custodial trustee under the uniform custodial trust act; or

(5) a financial institution as a deposit in a state or federally insured interest bearing account or certificate in the sole name of the minor with notice of the deposit to the minor.

(b) If the person making payment or delivery knows that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending, the person may make payment or delivery only to the conservator.

(c) Persons receiving money or property for a minor under subsection (a)(2) are obligated to apply the money to the support, care, education, health or welfare of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for necessary goods and services. Any excess sums shall be preserved for future support, care, education, health or welfare of the minor and any balance not so used and any property received for the minor shall be turned over to the minor when majority is attained.

(d) A person who pays or delivers money or property in accordance with this section is not responsible for the proper application thereof.

§ 5-103. Delegation of Powers by Parent or Guardian.

(a) A parent or parents of a minor, other than a parent or parents whose parental rights have been terminated or a parent who has signed a voluntary surrender, or a guardian or guardians of a minor or incapacitated person may appoint a temporary agent for a period not exceeding 60 days, and may delegate to such agent any power that the parent or guardian has regarding the care, custody or property of the minor child, ward or incapacitated person, except the power to consent to marriage or adoption of a minor; provided, however, that no parent or guardian shall appoint a temporary agent when a court has ordered that the minor child be placed in the custody of a person other than the parent or guardian.

(b) Any delegation under this section shall be by a writing signed by, or at the direction of, the parent(s) or guardian(s) and attested by at least 2 witnesses 18 years of age or older, neither of whom is the temporary agent together with the written acceptance of the temporary agent.

(c) A parent or guardian may not appoint a temporary agent of a minor if the minor has another living parent whose whereabouts are known and who is willing and able to provide care and custody for the minor unless the nonappointing parent consents to the appointment in writing. A parent may not appoint a temporary agent if the appointing

parent's parental rights have been terminated or a parent who has signed a voluntary surrender.

(d) Any delegation under this section may be revoked or amended by the appointing parent(s) or guardian(s) and delivered to all interested persons. The authority of the temporary agent may be limited or altered by the court.

§ 5-104. [Reserved.]

§ 5-105. Venue.

(a) Provided that the court has jurisdiction:

(1) venue for a guardianship proceeding for a minor is in the court at the place where the minor resides at the time the proceedings are commenced, or, in the case of a nomination of a guardian by the will of a parent or guardian, in the court of the county in which the will was or could be probated except venue for a guardianship proceeding for a minor in district court or juvenile court shall be in the court where the underlying proceeding was filed;

(2) venue for a guardianship proceeding for an incapacitated person is in the court at the place where the incapacitated person resides at the time the proceedings are commenced, or, in the case of a nomination of by the will of a parent or spouse, in the court of the county in which the will was or could be probated. If the incapacitated person has been admitted to a facility referred to in chapter one hundred eleven, section 70E pursuant to an order of a court of competent jurisdiction, venue is also in the county in which that facility is located; and

(3) venue for a protective proceeding is in the court at the place where the person to be protected resides at the time the proceedings are commenced, whether or not a guardian has been appointed in another place or, if the person to be protected does not reside in the commonwealth, in the court at the place where property of the person is located.

(b) If a proceeding under this code is brought in more than one place in the commonwealth, the court at the place in which a proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

§ 5-106. Appointment of Counsel; Guardian ad Litem.

(a) After filing of a petition for appointment of a guardian, conservator or other protective order, if the ward, incapacitated person or person to be protected or someone on his behalf requests appointment of counsel; or if the court determines at any time in the proceeding that the interests of the ward, incapacitated person or person to be protected are or may be inadequately represented, the court shall appoint an attorney to represent the person, giving consideration to the choice of the person if 14 or more years of age. If the ward, incapacitated person or person to be protected has adequate resources, his counsel shall be compensated from the estate, unless the court shall order that such compensation be paid by the petitioner. Counsel for any indigent ward, incapacitated person or person to be protected shall be compensated by the commonwealth. This section shall not be interpreted to abridge or limit the right of any ward, incapacitated person or person to be protected to retain counsel of his own choice and to prosecute or defend a petition under this article.

(b) The court may appoint as guardian ad litem, an individual or any public or charitable

agency to investigate the condition of the ward, incapacitated person or person to be protected and make appropriate recommendations to the court.

(c) The incapacitated person or person to be protected is entitled to be present at any hearing in person. A ward, if 14 or more years of age, is entitled to be present at any hearing in person unless the court, upon written findings, determines that the best interest of the ward will not be served thereby. The person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including any physician or other qualified person and any guardian ad litem. The issue may be determined at a closed hearing if the person or counsel for the person so requests.

(d) Any person may apply for permission to provide information in the proceeding and the court may grant the request, with or without hearing, upon determining that the best interest of the person to be protected will be served thereby. The court may attach appropriate conditions to the permission.

§ 5-107. Protection of Minors

The court shall not appoint as guardian any person petitioning for guardianship who: (i) is currently being investigated or has charges pending for committing an assault and battery that resulted in serious bodily injury to the minor, incapacitated or ill person; or (ii) is currently being investigated or has charges pending for neglect of the minor, incapacitated or ill person. The court shall terminate a guardianship appointed under this section if, upon petition, it is established that the guardian is: (i) currently being investigated or has charges pending for committing an assault and battery that resulted in serious bodily injury to the minor, incapacitated or ill person; or (ii) is currently being investigated or has charges pending for neglect of the minor, incapacitated or ill person.

Part 2 GUARDIANS OF MINORS

§ 5-201. Appointment and Status of Guardian of Minor.

A person may become a guardian of a minor by appointment by parent or guardian or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward. The district or juvenile court may appoint guardians of minors if the person who is the subject of the petition is a minor and there is a proceeding before such district or juvenile court and shall have continuing jurisdiction over resignation, removal, reporting, and other proceedings related to the guardianship.

§ 5-202. Parental or Guardian Appointment of Guardian for Minor.

(a) A parent, by will or other writing signed by the parent and attested by at least 2 witnesses, may appoint a guardian for any minor child the parent has or may have in the future, may revoke or amend the appointment, and may specify any desired limitations on the powers to be granted to the guardian.

(b) A guardian, by will or other writing signed by the guardian and attested by at least 2 witnesses, may appoint a guardian for any minor child for whom the guardian serves, may revoke or amend the appointment, and may specify any desired limitations on the powers to be granted to the guardian.

(c) Upon petition of an appointing parent or guardian, upon finding that the appointing parent or guardian will likely become unable to care for the minor within 2 years or less, and after notice as provided in section 5-206(b), the court, before the appointment becomes effective, may confirm the parent's or guardian's selection of a guardian and terminate the rights of others under section 5-203.

(d) Subject to section 5-203, the appointment of a guardian becomes effective on the first to occur of the appointing parent's or guardian's death, an adjudication that the parent or guardian is an incapacitated person, or a written determination by a physician who has examined the parent or guardian that the parent or guardian is no longer able to care for the minor unless the minor is in the care or custody of a person other than a parent pursuant to [sections 24, 25, 26 and 39G of chapter 119](#), chapter 201; or [section 3 of chapter 210](#).

(e) Within 30 days after the appointment becomes effective, a guardian shall:

(1) file a notice of acceptance of appointment and a copy of the will or other nominating instrument with the court of the county in which the will was or could be probated or, in the case of another nominating instrument, with the court of the county in which the minor resides; and

(2) unless the appointment was previously confirmed by the court, petition the court for confirmation of the appointment, giving notice in the manner provided in section 5-206(b).

(f) The parental appointment of a guardian shall not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who dies or was adjudged incapacitated has priority.

(g) The powers of a guardian who timely complies with the requirements of subsection (e) relate back to give acts by the guardian which are of benefit to the minor and which occurred on or after the date the guardian was eligible to file an acceptance of office the same effect as those which occurred after the filing.

(h) The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court, the revocation of the appointment by the appointing parent or guardian, or the filing of an objection pursuant to section 5-203.

§ 5-203. Objection by Minor Fourteen or Older to Parental Appointment.

Except where the court has previously confirmed a nominee under section 5-202(c),

(i) a minor 14 or more years of age who is the subject of a parental appointment,

(ii) the other parent, if that parent's parental rights have not been terminated, or

(iii) a person other than a parent having care or custody of the minor or with whom the minor has resided during the 60 preceding days, excluding a foster parent may prevent the appointment or cause it to terminate by filing in the court in which the appointing instrument is filed a written objection to the appointment before it is accepted or within 30 days after receiving notice of its acceptance. An objection may be withdrawn. An objection shall not preclude appointment of the nominee by the court in a proper proceeding of the

parental nominee or any other suitable person. The court may treat the filing of an objection as a petition for the appointment of a temporary guardian, and proceed accordingly.

§ 5-204. Court Appointment of Guardian of Minor; Conditions for Appointment; Temporary Guardian.

(a) The court may appoint a guardian for a minor if (i) the minor's parents are deceased or incapacitated, (ii) the parents consent, (iii) the parents' parental rights have been terminated, (iv) the parents have signed a voluntary surrender, or (v) the court finds the parents, jointly, or the surviving parent, to be unavailable or unfit to have custody. A guardian appointed pursuant to section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court, but the court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

(b) While a petition for appointment of a guardian is pending, if a minor has no guardian, and the court finds that following the procedures of this article will likely result in substantial harm to the health, safety or welfare of the minor occurring prior to the return date, and no other person appears to have authority to act in the circumstances, on appropriate motion, the court may appoint a temporary guardian who may exercise those powers granted in the order. A motion for appointment of a temporary guardian shall state the nature of the circumstances requiring appointment, the particular harm sought to be avoided, and the actions which will be necessary by the temporary guardian to avoid the occurrence of the harm. Such motion shall be accompanied by an affidavit containing facts supporting the statements and requests in the motion. The appointment of a temporary guardian for a minor may occur even though the conditions described in subsection (a) have not been established. The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order, the court may order an appointment for a longer period to a date certain. The court may for good cause shown extend the appointment for additional 90 day periods.

(c) If an appointed guardian is not effectively performing duties and the court further finds that the welfare of the minor requires immediate action, it may appoint, with or without notice, a special guardian for the minor having the powers of a general guardian, except as limited in the letters of appointment. The authority of any guardian previously appointed is suspended as long as a special guardian has authority. The appointment may be for a period of up to 90 days except that upon a finding of extraordinary circumstances set forth in its order the court may order an appointment for a longer period to a date certain. The court may for good cause shown extend the appointment for additional 90 day periods.

(d) The petitioner shall give written notice 7 days prior to any hearing for the appointment of a temporary guardian in hand to the minor if over the age of 14 years and by delivery or by mail to all persons named in the petition for appointment of guardian. A certificate that such notice has been given, setting forth the names and addresses of those to whom notice has been given, shall be prima facie evidence thereof.

(e) If the court determines that an immediate emergency situation exists which requires the immediate appointment of a temporary guardian, it may shorten or waive the notice requirements in whole or in part and grant the motion, provided, however, that prior notice shall be given to the minor, if the minor is 14 or more years of age, as the court may order and post-appointment notice of any appointment is given to the minor and those named in the petition for appointment of guardian stating further that any such person may move to

vacate the order of the court or request that the court take any other appropriate action on the matter, and on said motion to vacate. The court shall hear said motion as a de novo matter, as expeditiously as possible. A certificate stating that such notice has been given shall be filed with the court within 7 days following the appointment. Upon failure to file such certificate the court may on its own motion vacate said order.

(f) In the event that any person to whom notice is required is of parts unknown, such notice shall be delivered or mailed to that person's last known address, and the fact of such delivery or mailing shall be recited in the certificate of notice.

§ 5-205. [Reserved.]

§ 5-206. Procedure for Court Appointment of Guardian of Minor

(a) A minor or any person interested in the welfare of the minor may petition for appointment of a guardian.

(b) After the filing of a petition, notice shall be given in the manner prescribed by section 1-401 by the petitioner to:

(1) the minor, if the minor is 14 or more years of age and is not the petitioner;

(2) any person who has been awarded care or custody of the minor by a court of competent jurisdiction, whom is alleged to have had the principal care or custody of the minor or with whom the minor has resided during the 60 days preceding the filing of the petition, excluding foster parents;

(3) any living parent of the minor, excluding a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender, or, if none, brothers and sisters, or, if none, heirs apparent or presumptive;

(4) the spouse if the minor is married;

(5) any person nominated as guardian by the minor if the minor has attained 14 years of age;

(6) any parental or guardian appointee whose appointment has not been prevented or terminated under section 5-203;

(7) any guardian or conservator currently acting for the minor in the commonwealth or elsewhere; and

(8) the United States veterans administration or its successor if the minor is entitled to any benefit, estate or income paid or payable by or through said administration or its successors.

(c) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of section 5-204(a) have been met, and the welfare and best interest of the minor will be served by the requested appointment, it shall make the appointment and issue letters. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interest of the minor.

§ 5-207. Court Appointment of Guardian of Minor; Qualifications; Priority of Minor's Nominee.

(a) The court may appoint as guardian any person whose appointment would be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 or more years of age, unless the court finds the appointment contrary to the best interest of the minor.

(b) In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor ward or other interested person, may limit the powers of a guardian otherwise granted by this article and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of a minor shall be endorsed on the guardian's letters or, in the case of a guardian by parental appointment, shall be reflected in letters that are issued at the time any limitation is imposed. Following the same procedure, additional powers may be granted or existing powers may be withdrawn.

§ 5-208. Bond; Consent to Service by Acceptance of Appointment; Notice.

(a) Prior to receiving letters, a guardian shall accept appointment by filing a bond conditioned upon faithful discharge of all duties of the trust according to law and containing a statement of acceptance of the duties of the office. By accepting a parental or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. The petitioner shall cause notice of any proceeding to be delivered or mailed to the guardian at the guardian's address listed in the court records and to the address then known to the petitioner.

(b) A surety shall be required on the bond of a guardian of a minor unless the court determines that it is in the best interest of the minor to waive the surety or to require additional sureties.

(c) The requirements and provisions of section 5-411 apply to guardians appointed under this part.

§ 5-209. Powers, Duties, Rights and Immunities of Guardian of Minor; Limitations.

(a) A guardian of a ward has the powers and responsibilities of a parent regarding the ward's support, care, education, health and welfare. A guardian shall act at all times in the ward's best interest and exercise reasonable care, diligence and prudence.

(b) In particular and without qualifying the foregoing, a guardian of a ward or incapacitated person shall:

(1) if consistent with the terms of any order by a court of competent jurisdiction take custody of the person of the ward or incapacitated person and establish his place of abode within or without the commonwealth;

(2) become or remain personally acquainted with the ward or incapacitated person and maintain sufficient contact with the person to know of his capacities, limitations, needs, opportunities, and physical and mental health;

(3) take reasonable care of the personal effects and commence protective proceedings if necessary to protect other property of the ward or incapacitated person;

(4) apply any available money of the ward or incapacitated person to his current needs for support, care, education health and welfare; provided that if any person has a legal duty to support a minor and has sufficient funds, the minor's funds are not to be used to discharge the legal obligation of support without prior order of the court unless the court determines that the minor's funds may be used for support;

(5) conserve any excess money of the person for his future needs, but if a conservator has been appointed for the estate of the ward or incapacitated person, the guardian, at least quarterly, shall pay to the conservator money of the ward or incapacitated person to be conserved for his future needs; and

(6) report the condition of the ward or protected person and of his estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the respondent's welfare or as required by court rule, but not less than annually.

(c) A guardian of a ward or incapacitated person may:

(1) apply for and receive money for the support of the ward or incapacitated person otherwise payable to his parent, guardian, or custodian for his support under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship;

(2) if no conservator for the estate of the ward or incapacitated person has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or incapacitated person or to pay sums for his benefit;

(3) if consistent with the terms of any order by a court of competent jurisdiction and sections 5-306A and 5-309, consent to medical or other professional care, treatment, or advice for the ward or incapacitated person without liability by reason of the consent for injury to the ward or incapacitated person resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

(4) consent or refuse to consent to the marriage, divorce or adoption of the ward or incapacitated person;

(5) if reasonable under all of the circumstances, delegate to the ward or incapacitated person certain responsibilities for decisions affecting his well-being; and

(6) utilize the services of agencies and individuals to provide necessary and desirable social and protective services of different types appropriate to such person including, but not limited to, counseling services, advocacy services, legal services, and other aid as the guardian deems to be in the interest of such person.

(d) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing personally provided to the ward or incapacitated person, but only as approved by order of the court and only from the person's estate. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the person, reasonable compensation and

reimbursement to the guardian may be approved and paid by the conservator without order of the court controlling the guardian.

(e) A guardian need not use the guardian's personal funds for the ward or incapacitated person's expenses. A guardian is not liable to a third person for acts of the respondent solely by reason of the relationship.

§ 5-210. Termination of Appointment of Guardian; General.

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination shall not affect the guardian's liability for prior acts or the obligation to account for funds and assets of the ward. Resignation of a guardian shall not terminate the guardianship until it has been approved by the court. A parental appointment under an informally probated will is voided if the will is later denied probate in a formal proceeding.

§ 5-211. [Reserved.]

§ 5-212. Resignation, Removal, and Other Post appointment Proceedings.

(a) Any person interested in the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward or for any other order that is in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) Notice of hearing on a petition for an order subsequent to appointment of a guardian shall be given to the ward, the guardian, the parents of the ward, provided that the parental rights have not been terminated or a voluntary surrender has not been signed, and any other person as ordered by the court.

(c) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate, including appointment of a successor guardian.

Part 3 GUARDIANS OF INCAPACITATED PERSONS

§ 5-306A. Substituted Judgment.

(a) No guardian, temporary guardian or special guardian of a minor or an incapacitated person shall have the authority to consent to treatment for which substituted judgment determination may be required, provided that the court shall authorize such treatment when it (i) specifically finds using the substituted judgment standard that the person, if not incapacitated, would consent to such treatment and (ii) specifically approves and authorizes a treatment plan and endorses said plan in its order or decree. The court shall not authorize such treatment plan except after a hearing for the purpose of which counsel shall be provided for any indigent minor or incapacitated person. Said hearing shall be held as soon as is practicable; provided, however, that if the petitioner requests a temporary order on the grounds that the welfare of the minor or person alleged to be incapacitated requires an immediate authorization of treatment, the court shall act on such request in accordance with the procedures set forth in section 5-308.

(b) The court may delegate to a guardian the authority to monitor the treatment process to ensure that a treatment plan is followed, provided a guardian is readily available for such purpose. Approval of a treatment plan shall not be withheld, however, because a guardian is not available to serve as monitor. In such circumstances, the court shall appoint a suitable person to monitor the treatment process to ensure that the treatment plan is followed. Reasonable expense incurred in such monitoring may be paid out of the estate of such person, by the petitioner, or, subject to appropriation, by the commonwealth, as may be determined by the court.

(c) Each order authorizing a treatment plan pursuant to this section shall provide for periodic review at least annually to determine whether the incapacitated person's condition and circumstances have substantially changed such that, if competent, the incapacitated person would no longer consent to the treatment authorized therein. Each such order shall further provide for an expiration date beyond which the authority to provide treatment thereunder shall, if not extended by the court, terminate.

(d) An incapacitated person is required to attend any hearing relative to authority to consent to treatment for which a substituted judgment determination is required, unless the court finds that there exist extraordinary circumstances requiring the absence of the incapacitated person in which event the attendance of his counsel shall suffice; provided that the court may base its findings exclusively upon affidavits and other documentary evidence if it (1) determines after careful inquiry and upon representations of counsel, that there are no contested issues of fact and (2) includes in its findings the reason that oral testimony was not required.

(e) Any privilege established by [section 135A of chapter 112](#) or by [section 20B of chapter 233](#) relating to confidential communications shall not prohibit the filing of reports or affidavits, or the giving of testimony, pursuant to this part, for the purposes of obtaining treatment of a person alleged to be incapacitated; provided, however, that such person has been informed prior to making such communication that they may be used for such purpose and has waived the privilege.