

SECOND REGULAR SESSION

HOUSE BILL NO. 2488

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TERRY.

5014H.01I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 475.010, 475.040, 475.050, 475.060, 475.061, 475.075, 475.082, 475.115, 475.120, and 475.361, RSMo, and to enact in lieu thereof ten new sections relating to guardianships and conservatorships.

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

Section A. Sections 475.010, 475.040, 475.050, 475.060, 475.061, 475.075, 475.082, 475.115, 475.120, and 475.361, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 475.010, 475.040, 475.050, 475.060, 475.061, 475.075, 475.082, 475.115, 475.120, and 475.361, to read as follows:

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

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

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

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

(4) "Conservator ad litem", one appointed by the court in which particular litigation is pending regarding the management of financial resources on behalf of a minor, a disabled

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 person, or an unborn person in that particular proceeding or as otherwise specified in this
16 chapter;

17 (5) "Custodial parent", the parent of a minor who has been awarded sole or joint
18 physical custody of such minor, or the parent of an incapacitated person who has been
19 appointed as guardian of such person, by an order or judgment of a court of this state or of
20 another state or territory of the United States, or if there is no such order or judgment, the
21 parent with whom the minor or incapacitated person primarily resides;

22 (6) "Disabled" or "disabled person", one who is:

23 (a) Unable by reason of any physical, mental, or cognitive condition to receive and
24 evaluate information or to communicate decisions to such an extent that the person lacks
25 ability to manage the person's financial resources; or

26 (b) The term disabled or disabled person, as used in this chapter includes the terms
27 partially disabled or partially disabled person unless otherwise specified or apparent from the
28 context;

29 (7) "Eligible person" or "qualified person", a natural person, social service agency,
30 corporation or national or state banking organization qualified to act as guardian of the person
31 or conservator of the estate pursuant to the provisions of section 475.055;

32 (8) "Guardian", one appointed by a court to have the care and custody of the person of
33 a minor or of an incapacitated person. A "limited guardian" is one whose duties or powers are
34 limited. A "standby guardian" is one approved by the court to temporarily assume the duties
35 of guardian of a minor or of an incapacitated person under section 475.046. The term
36 guardian, as used in this chapter, includes limited guardian and standby guardian unless
37 otherwise specified or apparent from the context;

38 (9) "Guardian ad litem", one appointed by a court, in which particular litigation is
39 pending on behalf of a minor, an incapacitated person, a disabled person, or an unborn person
40 in that particular proceeding or as otherwise specified in this code;

41 (10) **"Guardianship classification", classifications of guardianship that include**
42 **the following:**

43 (a) **"General guardianship", a guardianship in which a guardian ad litem is**
44 **appointed to a person who is found by a court of competent jurisdiction to be disabled**
45 **or a guardian is appointed to a person who is found by a court of competent jurisdiction**
46 **to be totally or partially incapacitated because of a physical, cognitive, or mental**
47 **condition. With respect to the guardianship order and the exercise of power by the**
48 **guardian or guardian ad litem, the guardian or guardian ad litem appointed may**
49 **pursue a course of action or an alternative that allows the person to live, learn, and**
50 **work with minimum restrictions, as deemed appropriate based on the incapacitated or**
51 **disabled person's physical, cognitive, or mental condition and financial means;**

52 (b) "Specialized guardianship", a guardianship in which a guardian ad litem is
53 appointed to a person who is found by a court of competent jurisdiction to be disabled
54 or a guardian is appointed to a person who is found by a court of competent jurisdiction
55 to be totally or partially incapacitated because of a physical, cognitive, or mental
56 condition and a medical condition that requires specialized medical care, treatment,
57 support, supervision, habilitation, or maintenance and without which the person's life,
58 health, welfare, or safety is in imminent danger. A guardian or guardian ad litem
59 appointed under a specialized guardianship may pursue a course of action or an
60 alternative that allows the incapacitated or disabled person to live, learn, and work with
61 minimum restrictions considering the person's physical, cognitive, mental, medical, or
62 other health care-related condition and financial means;

63 (c) "Forensic guardianship", a guardianship in which a guardian ad litem is
64 appointed to a person who is found by a court of competent jurisdiction to be disabled
65 or a guardian is appointed to a person who is found by a court of competent jurisdiction
66 to be totally or partially incapacitated because of a physical, cognitive, or mental
67 condition, but also:

- 68 a. Has a substantial criminal history of serious offenses;
69 b. Is on supervised or unsupervised probation or parole;
70 c. Is currently under a court order requiring or prohibiting a specified act or
71 action;
72 d. Is required to register as a sex offender; or
73 e. Has demonstrated substantial cause to believe the person is a danger to
74 himself, herself, or others or is likely to commit an offense or violate any term or
75 condition of his or her probation or parole or any court order.

76
77 Under a forensic guardianship, the guardianship shall operate as set forth under section
78 475.120;

79 (11) "Habilitation", a process of treatment, training, care, or specialized attention that
80 seeks to enhance and maximize the ability of a person with an intellectual disability, a mental
81 illness, a cognitive disability, or a developmental disability to cope with the environment and
82 to live as determined by the person as much as possible, as is appropriate for the person
83 considering his or her physical, cognitive, and mental condition and financial means or as
84 otherwise necessary or required by a specialized guardianship or forensic guardianship;

85 ~~[(11)]~~ (12) "Incapacitated person", one who is unable by reason of any physical,
86 mental, or cognitive condition to receive and evaluate information or to communicate
87 decisions to such an extent that the person, even with appropriate services and assistive
88 technology, lacks capacity to manage the person's essential requirements for food, clothing,

89 shelter, safety or other care such that serious physical injury, illness, or disease is likely to
90 occur. The term incapacitated person as used in this chapter includes the term partially
91 incapacitated person unless otherwise specified or apparent from the context;

92 ~~[(12)]~~ (13) "Interested persons", spouses, children, parents, adult members of a ward's
93 or protectee's family, creditors or any others having a property right or claim against the estate
94 of a protectee being administered, trustees of a trust of which the ward or protectee is a
95 beneficiary, agents of a durable power of attorney for a ward or protectee, and children of a
96 protectee who may have a property right or claim against or an interest in the estate of a
97 protectee. This meaning may vary at different stages and different parts of a proceeding and
98 shall be determined according to the particular purpose and matter involved;

99 ~~[(13)]~~ (14) "Least restrictive alternative", with respect to the guardianship order and
100 the exercise of power by the guardian **and consistent with the guardianship classification**,
101 a course of action or an alternative that allows the incapacitated person to live, learn, and
102 work with minimum restrictions on the person, as are appropriate for the person considering
103 his or her physical, **cognitive, medical**, and mental condition and financial means. Least
104 restrictive alternative also means, **taking into consideration the guardianship classification**
105 **and appropriateness for the person**, choosing the decision or approach that:

106 (a) Places the least possible restriction on the person's personal liberty and exercise of
107 rights and that promotes the greatest possible inclusion of the person into his or her
108 community, as is appropriate for the person considering his or her physical, **cognitive**,
109 **medical**, and mental condition and financial means **and his or her guardianship**
110 **classification**; and

111 (b) Is consistent with meeting the person's essential requirements for health, safety,
112 habilitation, **welfare, life**, treatment, and recovery and protecting the person from abuse,
113 neglect, **unnatural death**, and financial exploitation;

114 ~~[(14)]~~ (15) "Manage financial resources", either those actions necessary to obtain,
115 administer, and dispose of real and personal property, intangible property, business property,
116 benefits, income or any assets, or those actions necessary to prevent waste, loss or dissipation
117 of property, or those actions necessary to provide for the care and support of such person or
118 anyone legally dependent upon such person by a person of ordinary skills and intelligence
119 commensurate with his or her training and education;

120 ~~[(15)]~~ (16) "Minor", any person who is under the age of eighteen years;

121 ~~[(16)]~~ (17) "Parent", the biological or adoptive mother or father of a child whose
122 parental rights have not been terminated under chapter 211, including:

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

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

127 (c) A person presumed to be the natural father of the child under section 210.822;
128 ~~[(17)]~~ (18) "Partially disabled person", one who is unable by reason of any physical,
129 mental, or cognitive condition to receive and evaluate information or to communicate
130 decisions to such an extent that such person lacks capacity to manage, in part, his or her
131 financial resources;

132 ~~[(18)]~~ (19) "Partially incapacitated person", one who is unable by reason of any
133 physical, mental, or cognitive condition to receive and evaluate information or to
134 communicate decisions to the extent that such person lacks capacity to meet, in part,
135 essential requirements for food, clothing, shelter, safety, or other care without court-ordered
136 assistance;

137 ~~[(19)]~~ (20) "Protectee", a person for whose estate a conservator or limited conservator
138 has been appointed or with respect to whose estate a transaction has been authorized by the
139 court under section 475.092 without appointment of a conservator or limited conservator;

140 ~~[(20)]~~ (21) "Seriously ill", a significant likelihood that a person will become
141 incapacitated or die within twelve months;

142 ~~[(21)]~~ (22) "Social service agency", a charitable organization organized and
143 incorporated as a not-for-profit corporation under the laws of this state and which qualifies as
144 an exempt organization within the meaning of Section 501(c)(3), or any successor provision
145 thereto of the federal Internal Revenue Code;

146 ~~[(22)]~~ (23) "Standby guardian", one who is authorized to have the temporary care and
147 custody of the person of a minor or of an incapacitated person under the provisions of section
148 475.046;

149 ~~[(23)]~~ (24) "Treatment", the prevention, amelioration or cure of a person's physical,
150 **medical, cognitive, intellectual, developmental**, and mental illnesses or incapacities;

151 ~~[(24)]~~ (25) "Ward", a minor or an incapacitated person for whom a guardian, limited
152 guardian, or standby guardian has been appointed.

475.040. If it appears to the court, acting on the petition of the guardian **as set forth**
2 **under section 475.120**, the conservator, the respondent or of a ward over the age of fourteen,
3 or on its own motion, at any time before the termination of the guardianship or
4 conservatorship, that the proceeding was commenced in the wrong county, or that the
5 domicile or residence of the ward or protectee has been changed to another county, or in case
6 of conservatorship of the estate that it would be for the best interest of the ward or disabled
7 person and his estate, the court may order the proceeding with all papers, files and a transcript
8 of the proceedings transferred to the probate division of the circuit court of another county.
9 The court to which the transfer is made shall take jurisdiction of the case, place the transcript

10 of record and proceed to the final settlement of the case as if the appointment originally had
11 been made by it.

475.050. 1. **Notwithstanding any provision of law**, before appointing any other
2 eligible person as guardian of an incapacitated person, or conservator of a disabled person, the
3 court shall ~~consider the suitability of appointing any of~~ **appoint** the following persons, listed
4 in the order of priority, who **are qualified under section 475.055, are suitable, and** appear
5 to be willing to serve:

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

8 (2) **Unless otherwise prohibited by law**, any eligible person nominated in a durable
9 power of attorney executed by the incapacitated or disabled person, or in an instrument in
10 writing signed by 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 incapacity or
12 disability;

13 (3) The spouse, parents, adult children, adult brothers and sisters and other close adult
14 relatives of the incapacitated or disabled person **or any person nominated by a previous**
15 **guardian, provided that the guardian is in good standing with the court;**

16 (4) Any other eligible person or, with respect to the estate only, any eligible
17 organization or corporation, nominated in a duly probated will of such a spouse or relative.

18 2. **Consistent with subsection 4 of section 475.120 or section 475.343, when**
19 **making its decision regarding whom to appoint as guardian of an incapacitated person,**
20 **the court shall not include the financial resources of the prospective guardian in**
21 **determining who is an eligible person under subsection 1 of this section.**

22 3. **If the incapacitated person is to reside with the prospective guardian and a**
23 **complaint is made against the prospective guardian claiming the guardian is unsuitable**
24 **because the guardian resides in substandard housing that presents a dangerous or**
25 **insanitary condition for the incapacitated person and such condition would jeopardize**
26 **the incapacitated person's health, safety, welfare, or life, the court shall not disqualify**
27 **the prospective guardian unless it is proved that the substandard housing exists and is**
28 **the result of the prospective guardian's willful negligence. The court shall cause the**
29 **department of health and senior services to investigate and file a report with the court**
30 **on its findings before the court makes a determination regarding whom to appoint as**
31 **guardian.**

32 4. **If an incapacitated person currently resides in or will reside in any dwelling**
33 **other than with the prospective guardian and a complaint is filed with the court that**
34 **either the current or the prospective dwelling is substandard and presents a dangerous**
35 **or insanitary condition that would jeopardize the incapacitated person's life, health,**

36 safety, or welfare, the court shall cause the department of health and senior services or
37 department of mental health to investigate and file a report with the court on its
38 findings, for which the court shall give weight when determining whom to appoint as
39 guardian.

40 **5. Substandard housing includes, but is not limited to, any existing or**
41 **prospective circumstance or situation that places the incapacitated person in jeopardy**
42 **of being physically, sexually, or emotionally abused or neglected or killed because of the**
43 **willful negligence to prevent or correct the circumstance or situation by the eligible**
44 **person under subsection 1 of this section.**

45 **6. The court shall not deny a petition for guardianship because:**

46 **(1) The petitioner resides in a low-income dwelling or low-income housing**
47 **district or area;**

48 **(2) The petitioner's financial income is the result of any disability that qualifies**
49 **him or her for any type of Social Security income;**

50 **(3) Of the petitioner's employment wages; or**

51 **(4) The petitioner is unemployed at the time of petitioning the court for**
52 **guardianship.**

53 **7. Consistent with the rights given to wards under subdivision (5) of subsection 1**
54 **of section 475.361, the court shall consider the wishes of the incapacitated person as to**
55 **whom the incapacitated person wishes to reside with and where the incapacitated**
56 **person wishes to reside when determining the eligible person under subsection 1 of this**
57 **section, provided that the court finds the wishes of the incapacitated person are in his or**
58 **her best interests in accordance with this section.**

59 **8. The court shall not appoint an unrelated third party as a guardian or conservator**
60 **unless there is no relative suitable and willing to serve or if the appointment of a relative or**
61 **nominee is otherwise contrary to the best interests of the incapacitated or disabled person. If**
62 **the incapacitated or disabled person is a minor under the care of the children's division and is**
63 **entering adult guardianship or conservatorship, it shall be a rebuttable presumption that he or**
64 **she has no relative suitable and willing to serve as guardian or conservator.**

65 ~~[3-]~~ **9. Except for good cause shown, the court shall make its appointment in**
66 **accordance with the incapacitated or disabled person's most recent valid nomination of an**
67 **eligible person qualified to serve as guardian of the person or conservator of the estate or the**
68 **nomination made by a previous guardian or conservator who is in good standing with**
69 **the court if the incapacitated or disabled person is not capable of making his own or her**
70 **own decisions.**

71 ~~[4-]~~ **10. Except for those individuals specified in subdivisions (1) and (2) of this**
72 **subsection, the court shall require all guardians and conservators who are seeking**

73 appointment and who have a fiduciary responsibility to a ward, an incapacitated person, or a
74 disabled person to submit at their own expense to a background screening that shall include
75 the disqualification lists of the departments of mental health, social services, and health and
76 senior services; the abuse and neglect registries for adults and children; a Missouri criminal
77 record review; and the sexual offender registry. Individuals seeking appointment as a
78 conservator shall also submit, at their own expense, to a credit history investigation. The
79 nominated guardian or conservator shall file the results of the reports with the court at least
80 ten days prior to the appointment hearing date unless waived or modified by the court for
81 good cause shown by an affidavit filed simultaneously with the petition for appointment or in
82 the event the protected person requests an expedited hearing. The provisions of this
83 subsection shall not apply to[:

84 ~~(1)] public administrators;[or~~

85 ~~(2) The ward's, incapacitated person's, or disabled person's spouse, parents, children~~
86 ~~who have reached eighteen years of age, or siblings who have reached eighteen years of age]~~
87 **except that, the public administrator shall comply with the provisions of this subsection**
88 **by maintaining a copy of his or her criminal history record check and disqualification**
89 **list and credit check records with the county commission for the court's inspection as**
90 **the court deems necessary. Credit check records shall not be public records.**

91 ~~[5. Guardians certified by a national accrediting organization may file proof of~~
92 ~~certification in lieu of the requirements of subsections 4 and 6 of this section.]~~ **11. At any**
93 **time the court may, upon its own motion or upon receiving a notice or complaint from**
94 **another person or entity, order the guardian, guardian ad litem, or conservator to**
95 **submit to a criminal background check, fingerprint check, sex offender registry check,**
96 **or disqualification list check from the department of mental health, department of social**
97 **services, or department of health and senior services. The guardian, guardian ad litem,**
98 **or conservator shall be given:**

99 **(1) Notice of the order;**

100 **(2) The reason or reasons for the order;**

101 **(3) If a notice or complaint was filed with the court, the identity of the person or**
102 **entity filing the notice or complaint and a copy of the specific notice or complaint given**
103 **to the court; and**

104 **(4) A hearing with good cause shown. Regardless of whether legal counsel is**
105 **retained, the guardian, guardian ad litem, or conservator may file a motion with the**
106 **court to receive an order from the court for reimbursement of all financial costs**
107 **associated with a notice or complaint filed under this subsection, and the court shall**
108 **grant the motion if the court determines after the hearing that the notice or complaint**
109 **was knowingly and intentionally false, with malice, in bad faith, or with the purpose to**

110 **obstruct or prevent the guardian, guardian ad litem, or conservator from discharging**
111 **his or her duties and exercising his or her authority in his or her guardian, guardian ad**
112 **litem, or conservator capacity.**

113 ~~[6-]~~ 12. An order appointing a guardian or conservator shall not be signed by the
114 judge until such reports have been filed with the court and reviewed by the judge, who shall
115 consider the reports in determining whether to appoint a guardian or conservator. Such
116 reports, or lack thereof, shall be certified either by an affidavit or by obtaining a certified copy
117 of the reports. No reports or national criminal history record check shall be required by the
118 court upon the application of a petitioner for an emergency temporary guardianship or
119 emergency temporary conservatorship. The court may waive the requirements of this
120 subsection for good cause shown. If appointed, a guardian or conservator may petition the
121 court for reimbursement of the reasonable expenses of the credit history investigation and
122 background screenings.

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

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

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

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

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

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

13 (6) The name and address of the person having custody of the person of the minor or
14 who claims to have custody of the person of the minor;

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

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

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

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

23 (11) A petition for the appointment of a guardian of a minor may be filed for the sole
24 and specific purpose of school registration or medical insurance coverage. Such a petition

25 shall clearly set out this limited request and shall not be combined with a petition for
26 conservatorship;

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

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

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

35 2. Any person may file a petition for the appointment of himself or herself or some
36 other qualified person as guardian or limited guardian of an incapacitated person. Such
37 petition shall state:

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

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

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

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

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

62 (6) The name and address of the person having custody of the person of the alleged
63 incapacitated person;

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

66 (8) If appointment is sought for a natural person, other than the public administrator,
67 the names and addresses of wards and protectees for whom such person is already guardian or
68 conservator;

69 (9) The factual basis for the petitioner's conclusion that the person for whom
70 guardianship is sought is unable or partially unable by reason of some specified physical,
71 mental, or cognitive condition to receive and evaluate information or to communicate
72 decisions to such an extent that the person lacks capacity to meet essential requirements for
73 food, clothing, shelter, safety, or other care such that serious physical injury, illness, or disease
74 is likely to occur;

75 (10) **The specific guardianship classification that is being requested to create a**
76 **baseline for the guardianship classification, but at any time thereafter, the guardianship**
77 **classification may be changed without obtaining a court order;**

78 (11) The reasons, incidents, and specific behaviors demonstrating why the
79 appointment of a guardian or limited guardian is sought;

80 ~~[(11)]~~ (12) If the petitioner suggests the appointment of co-guardians, a statement of
81 the reasons why such appointment is sought and whether the petitioner suggests that the co-
82 guardians, if appointed, may act independently or whether they may act only together or only
83 together with regard to specified matters; and

84 ~~[(12)]~~ (13) Written consent has been obtained from any person, including a public
85 administrator, who is to be appointed as a co-guardian.

86 3. If the person filing the petition seeks the appointment of an emergency guardian,
87 the petition shall include the same requirements as provided in subsection 1 of this section
88 and shall request the appointment per the requirements provided in subsection 15 of section
89 475.075.

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

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

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

6 2. The respondent shall be served in person with the following: A copy of the
7 petition; a written notice stating the time and place the proceeding will be heard by the court,
8 the name and address of appointed counsel, and the names and addresses of the witnesses
9 who may be called to testify in support of the petition; and with a copy of the respondent's
10 rights as set forth in subsections 9 and 10 of this section. The notice shall be signed by the
11 judge or clerk of the court and served in person on the respondent a reasonable time before
12 the date set for the hearing. A written notice stating the time and place for the petition to be
13 heard by the court, and the name and address of counsel appointed to represent the respondent
14 shall be served upon the spouse, parents, children who have reached the age of eighteen, any
15 person serving as the respondent's guardian, conservator, limited guardian, or limited
16 conservator, any person proposed to serve as guardian or conservator, any person having
17 power to act in a fiduciary capacity with respect to any of the respondent's financial resources,
18 any person having the respondent's care and custody known to the petitioner, and any co-
19 tenants or co-depositors with the respondent. Each person so listed shall be served in any
20 manner permitted by section 472.100. If no such spouse, parent, or child is known, notice
21 shall be given to at least one of the respondent's closest relatives who have reached eighteen
22 years of age.

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

29 4. Upon the filing of a petition under the provisions of subsection 1 of this section or
30 for the approval on behalf of the respondent of a transaction pursuant to section 475.092 or
31 for the rendition of emergency medical treatment under the provisions of section 475.123, the
32 court shall immediately appoint an attorney to represent the respondent in the proceeding.
33 The attorney shall visit the respondent at least twenty-four hours prior to the hearing unless
34 the court finds good cause for waiving this requirement. If the attorney finds that the

35 respondent is capable of understanding the matter in question or of contributing to the
36 advancement of the respondent's interest, the attorney shall obtain from the respondent all
37 possible aid. If the attorney finds that the respondent is so impaired that the respondent
38 cannot communicate or participate in the proceedings, the attorney shall consider all
39 circumstances then prevailing and act with care to safeguard and advance the interests of the
40 respondent.

41 5. If the court enters an order appointing an attorney for the respondent, it shall
42 specify that the attorney shall have the right to obtain all medical and financial information of
43 the respondent from medical care providers and financial institutions, and no medical care
44 provider or financial institution shall be liable for damages or otherwise for the release of this
45 information to the attorney appointed for the respondent. The court shall allow a reasonable
46 attorney's fee for the services rendered, to be taxed as costs of the proceeding. Upon entry of
47 appearance by private counsel on behalf of the respondent, the court may permit the court-
48 appointed attorney to withdraw only if after a hearing the court finds cause to permit the
49 withdrawal. The private counsel shall meet the requirements of the court-appointed attorney
50 in representing the respondent as provided in subsection 4 of this section. The respondent's
51 attorney shall not also serve as guardian ad litem or conservator ad litem for the respondent
52 unless and until a judgment granting guardianship, conservatorship, limited guardianship, or
53 limited conservatorship has been entered by the court. If the attorney for the respondent has
54 filed or intends to file an appeal of such judgment, the attorney for the respondent shall not
55 serve as guardian ad litem or conservator ad litem for the respondent until all proceedings in
56 connection with such appeal have been finally resolved. The petitioner shall not nominate an
57 attorney for the respondent.

58 6. The court may direct that the respondent be examined by a physician, licensed
59 psychologist, or other appropriate professional if the other professional has experience or
60 training in the alleged mental, physical, or cognitive impairment. The court-appointed
61 physician, licensed psychologist, or other professional shall, prior to examination, explain to
62 the respondent in simple language, the following:

63 (1) That the purpose of the examination is to produce evidence which may be used to
64 determine whether the respondent is incapacitated, disabled, partially incapacitated, or
65 partially disabled;

66 (2) That respondent has the right to remain silent;

67 (3) That anything respondent says may be used at the court hearing, and in making
68 the determination of incapacity or disability.

69 7. The court-appointed physician, licensed psychologist, or other professional shall
70 submit a report in writing to the court and to counsel for all parties. It shall not be a valid
71 objection to the review of the report by the court or the attorneys for the parties that the court

72 will be responsible for the ultimate determination of incapacity or partial incapacity. If other
73 objections to the report are made by any party, the court may order a hearing for the limited
74 purpose of determining whether the court shall admit the report. The court may allow a
75 reasonable fee for the services rendered by the physician, licensed psychologist, or other
76 professional to be taxed as costs in the proceeding.

77 8. If prima facie proof of partial or complete incapacity or disability, with or without
78 the court-ordered evaluation as provided in subsections 6 and 7 of this section, is made upon
79 motion by any party or the court on its own motion, a physician, licensed psychologist, or
80 other appropriate professional is competent and may be compelled by the court to testify as to
81 information acquired from the respondent, despite otherwise applicable testimonial
82 privileges. Evidence received under this subsection that would otherwise be privileged
83 and confidential may not be used in any other civil action or criminal proceeding without the
84 consent of the holder of the privilege. Any resulting report shall be shared with the
85 respondent and counsel for all parties but shall not be used in any other civil action or
86 criminal proceeding without the consent of the holder of the privilege.

87 9. The petitioner has the burden of proving incapacity, partial incapacity, disability, or
88 partial disability by clear and convincing evidence.

89 10. The respondent shall have the following rights in addition to those elsewhere
90 specified and shall be advised of these rights by the attorney for the respondent:

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

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

93 (3) The right to present evidence in the respondent's behalf;

94 (4) The right to cross-examine witnesses who testify against the respondent;

95 (5) The right to remain silent;

96 (6) The right to have the hearing opened or closed to the public as the respondent
97 elects;

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

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

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

102 11. If the court finds that the respondent possesses capacity to manage the
103 respondent's essential requirements for food, clothing, shelter, safety, and other care or that
104 the respondent possesses the ability to manage the respondent's financial resources, the court
105 shall deny the petition. On the other hand, if the court finds that the capacity of the
106 respondent to receive and evaluate information or to communicate decisions is impaired to
107 such an extent as to render the respondent incapable of managing some or all of the
108 respondent's essential requirements for food, clothing, shelter, safety or other care so that

serious physical injury, illness, or disease is likely to occur, or that the capacity of the respondent to receive and evaluate information or to communicate decisions is impaired to such an extent so as to render the respondent unable to manage some or all of the respondent's financial resources, the court shall appoint a guardian or limited guardian, a conservator or limited conservator, or both in combination.

12. If the court finds the respondent to be in some degree incapacitated or disabled, or both, the court, in determining the degree of supervision necessary, shall apply the least restrictive alternative principle as defined in this chapter and shall not restrict the respondent's personal liberty or the respondent's freedom to manage the respondent's financial resources to any greater extent than is necessary to protect the respondent's person and the respondent's financial resources. The limitations imposed upon the authority of the guardian or conservator as set forth in the findings of the court shall be stated in the letters of the guardian or conservator and shall be set forth in the notice of first publication of letters of conservatorship granted.

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

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

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

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

(4) Supported decision-making agreements or the provision of protective or supportive services or arrangements provided by individuals or public or private services or agencies **unless prohibited by any state or federal law, rule, or regulation or a financial or other conflict of interest would exist;**

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

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

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

14. **Excluding a court order, judgment, or adjudication made before August 28, 2022,** the court shall make and recite in its order detailed findings of fact stating:

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

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

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

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

151 (5) Whether the respondent retains the right to vote;

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

154 (7) Whether the respondent retains the right to marry.

155 15. If it is alleged in a petition that an alleged incapacitated or disabled respondent
156 has no guardian or conservator and an emergency exists that presents a substantial risk that
157 serious physical harm will occur to the respondent's person or irreparable damage will occur
158 to the respondent's property because of the respondent's failure or inability to provide for the
159 respondent's essential human needs or to protect the respondent's property, the court may,
160 with notice to such person's attorney, as provided in subsection 4 of this section, and service
161 of notice upon such person as provided in subsection 2 of this section, and, with or without
162 notice to other persons interested in the proceeding, after hearing, appoint an emergency
163 guardian ad litem or conservator ad litem for a specified period not to exceed ninety days and
164 for specified purposes. Except for good cause shown, the court shall hold a hearing on
165 petitions filed under this section within five business days of the filing of the petition. Orders
166 appointing the guardian or conservator ad litem may be modified upon motion and hearing.
167 Only after a hearing and a showing of continuing emergency need, the court may order the
168 extension of the appointment of an emergency guardian ad litem or conservator ad litem from
169 time to time, not to exceed ninety days each. A guardian ad litem or conservator ad litem may
170 be removed at any time and shall make any report the court requires. Proceedings under this
171 subsection shall not be employed as alternative to proceedings for the involuntary detention
172 and treatment of a mentally ill person under the provisions of chapter 632. If no petition for
173 guardianship, conservatorship, limited guardianship, or limited conservatorship has been filed
174 within the first ninety days following the granting of emergency authority under this section,
175 the court may terminate the authority granted under the emergency letters upon motion of the
176 attorney for the respondent and a finding that doing so would not be manifestly contrary to
177 the respondent's interest.

 475.082. 1. At least annually, the court shall inquire into the status of every adult
2 ward and protectee under its jurisdiction for the purpose of determining whether the
3 incapacity or disability may have ceased or changed and to insure that the guardian or

4 conservator is discharging the guardian's or conservator's responsibilities and duties in
5 accordance with this chapter.

6 2. In order to implement the court review prescribed by this section, the guardian or
7 limited guardian shall file annually on the anniversary date of the guardian's or limited
8 guardian's letters a report concerning the personal status of the adult ward and plans by the
9 guardian or limited guardian for future care. **Taking into consideration the ward's**
10 **physical, mental, and cognitive condition, the guardian, limited guardian, guardian ad**
11 **litem, or limited guardian ad litem shall also attach to the guardian's, limited**
12 **guardian's, guardian's ad litem, or limited guardian's ad litem annual guardianship**
13 **report a statement or affidavit of the ward, which is signed by the ward, providing an**
14 **annual review of the guardian's, limited guardian's, guardian's ad litem, or limited**
15 **guardian's ad litem performance; whether the ward requests the court to change or**
16 **terminate the guardianship; whether the ward feels safe in his or her housing, work, and**
17 **education environment; how the ward is being treated by his or her guardian, limited**
18 **guardian, guardian ad litem, or limited guardian ad litem and any caregiver or other**
19 **similarly situated person; and any specific concerns the ward wants the court to know**
20 **and consider. The court shall take such statement or affidavit into consideration when**
21 **reviewing the guardian's, limited guardian's, guardian's ad litem, or limited guardian's**
22 **ad litem annual status report and when determining whether to continue, to reduce, or**
23 **to terminate the guardianship.** Such report may be combined with the settlement of
24 accounts if the guardian is also conservator of the estate of the ward. The report shall be in
25 the form prescribed by the court and shall include the following information:

26 (1) The present address of the ward;

27 (2) The present address of the guardian;

28 (3) Unless the report specifies that the ward is living with the guardian, the number of
29 times the guardian has had contact with the ward, and the nature of such contacts including
30 the date the ward was last seen by the guardian;

31 (4) A summary of the guardian's visits with the ward and activities on the ward's
32 behalf and the extent to which the ward has participated in decisionmaking;

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

36 (6) The date the ward was last seen by a physician or other professional and the
37 purpose;

38 (7) The current mental and physical condition of the ward and any major changes in
39 the ward's condition since the last report;

40 (8) The opinion of the guardian as to the need for the continuation of the guardianship
41 and whether it is necessary to increase or decrease the powers of the guardian; ~~and~~

42 (9) A summarized plan for the coming year. If an individual support plan, treatment
43 plan, or plan of care is in place, such plan may be submitted in lieu of the requirements of this
44 subdivision;

45 (10) The guardianship classification; and

46 (11) Whether the ward is in compliance with any court order requiring or
47 prohibiting a specified act or action, term or condition of probation or parole, work
48 release program, sex offender registry, or housing requirement. If the ward is
49 noncompliant with any provision under this subdivision, the report shall state the
50 reasons for not being compliant and steps the guardian, limited guardian, guardian ad
51 litem, or limited guardian ad litem is taking to bring the ward into compliance.

52 3. The court shall seal any information that discusses, reveals, or provides
53 information regarding the ward's medical, psychological, psychiatric, mental health, or
54 other health care treatment, habilitation, support, or supervision plan provided by the
55 guardian, limited guardian, guardian ad litem, or limited guardian ad litem on a court
56 form or as an attachment. Any person, official, or entity wanting such information shall
57 file a petition with the probate court requesting the information and providing clear and
58 convincing evidence why the information is necessary or vital to a government
59 operation, need, right, or interest; that the person, official, or entity requires such
60 information for his or her petition to take over guardianship or conservatorship; or in
61 furtherance of any statutory duty, right, or authority. The person, official, or entity
62 shall provide a copy of the petition to the existing guardian or guardian ad litem, or
63 both, and ward and the notice of hearing on the petition. The court may, at its
64 discretion, conduct the hearing in person, by electronic means, or by telephone, but the
65 court shall take into consideration the financial means, undue harms the guardian or
66 guardian ad litem, or both, or ward would suffer, and any other lack of capabilities of
67 the guardian or guardian ad litem, or both, and ward in making its decision on the type
68 of hearing to conduct on the petition.

69 4. The court may as part of its review, in its discretion, order the performance of a
70 mental status evaluation of the ward and may require any hospital, physician, or custodial
71 facility to submit copies of their records relating to the treatment, habilitation, or care of the
72 ward. The court, as part of its review and in its discretion, may also contact the department of
73 health and senior services or other appropriate agencies to investigate the conduct of the
74 guardian and report its findings to the court.

75 5. All records, reports, and evaluations provided to the court in the mental status
76 review shall be sealed by the court, and any person wanting any report, record, or

77 evaluation of the mental status review that was conducted shall comply with subsection
78 3 of this section. The guardian or guardian ad litem, or both, and ward shall not be
79 required to provide the requesting person, official, or entity a copy of any record,
80 report, or evaluation except by court order.

81 6. The court shall not act upon any notice or complaint filed with the court
82 directly or indirectly requesting the court to order a mental status evaluation of the
83 ward without the notice or complaint being signed and notarized under oath by the
84 filing person, official, or entity and upon the court receiving the signed and notarized
85 notice or complaint. Upon the court receiving the signed notarized notice or complaint,
86 the court shall provide the guardian or guardian ad litem, or both, a copy of the notice
87 or complaint and provide the guardian or guardian ad litem, or both, an opportunity to
88 be heard before the court decides whether to order the mental status evaluation. If it
89 becomes apparent to the court that the notice or complaint:

90 (1) Was filed with malice;

91 (2) Was filed to harass either the guardian or guardian ad litem, or both, or
92 ward;

93 (3) Was filed to inflict financial damages on the guardian or guardian ad litem,
94 or both, or ward;

95 (4) Contained an allegation that was made in bad faith;

96 (5) Contained a knowingly false allegation; or

97 (6) Was filed to obstruct or prevent the guardian or guardian ad litem, or both,
98 from discharging any duty or exercising any authority,

99

100 the court may order the filing person, official, or entity to pay the guardian or guardian
101 ad litem, or both, or ward all actual financial damages sustained by the guardian or
102 guardian ad litem, or both, or ward. If egregious conduct exists, the court may order
103 the person, official, or entity filing the notice or complaint to pay the guardian or ward
104 reasonable punitive damages.

105 [4.] 7. If there is an indication that the incapacity or disability of the ward or protectee
106 has ceased, the court shall appoint an attorney to file on behalf of the ward or protectee a
107 petition for termination of the guardianship or conservatorship or for restoration.

108 [5.] 8. If it appears to the court as part of its review or at any time upon motion of any
109 interested person, including the ward or protectee or some person on behalf of the ward or
110 protectee, that the guardian or conservator is not discharging the guardian's or conservator's
111 responsibilities and duties as required by this chapter or has not acted in the best interests of
112 the ward or protectee, the court may order that a hearing be held and direct that the guardian
113 or conservator appear before the court. In the event that such a hearing is ordered and the

114 ward or protectee is not represented by an attorney, the court shall appoint an attorney to
115 represent the ward or protectee in the proceedings. At the conclusion of the hearing, if the
116 court finds that the guardian or conservator is not discharging his or her duties and
117 responsibilities as required by this code or is not acting in the best interests of the ward or
118 protectee, the court shall enter such orders as it deems appropriate under the circumstances.
119 Such orders may include the removal of the guardian or conservator and the appointment of a
120 successor guardian or conservator or termination of the guardianship or conservatorship on
121 finding that the ward has recovered capacity or the protectee is no longer disabled. The court,
122 in framing its orders and findings, shall give due consideration to the exercise by the guardian
123 or conservator of any discretion vested in the guardian or conservator by law.

475.115. 1. When a guardian or conservator dies, is removed by order of the court, or
2 resigns and his or her resignation is accepted by the court, the court shall have the same
3 authority as it has in like cases over personal representatives and their sureties and may
4 appoint another guardian or conservator in the same manner and subject to the same
5 requirements as are herein provided for an original appointment of a guardian or conservator.

6 **2. When determining whether to appoint a successor guardian or conservator, or**
7 **both, the court shall consider as evidence that the incapacitated or disabled person was**
8 **already appointed a guardian or conservator, or both. A person petitioning the court to**
9 **be a successor guardian or conservator, or both, shall not be required to reestablish**
10 **incapacity or a disability, or both, unless an oral or written objection is made by the**
11 **person who is being appointed a successor guardian or conservator, or both, because of**
12 **a substantial change in his or her capacity or disability indicating that the person no**
13 **longer requires a guardian or conservator, or both. The oral or written objection**
14 **providing that the person no longer requires a guardian or conservator, or both, because**
15 **of a substantial change in capacity or disability shall be confirmed by a physician who**
16 **shall be subject to direct and cross examination.**

17 **3. If the court receives from one or more interested parties a simple request for**
18 **temporary appointment of guardianship or conservatorship, or both, to ensure the ward**
19 **has a guardian or conservator, or both, until a court can hear and rule on a formal**
20 **petition, the court shall review the request for temporary guardianship or**
21 **conservatorship, or both, and upon the court selecting the best-suited appointment**
22 **based on the request and any exhibits provided, the court shall immediately appoint a**
23 **temporary guardian or conservator, or both, until such time as the court gives for the**
24 **parties to file a formal petition with the court. The appointment of a temporary**
25 **guardian or conservator, or both, shall have the same force and effect as any other**
26 **appointment for guardianship or conservator, or both.**

27 4. A public administrator may request transfer of any case to the jurisdiction of
28 another county by filing a petition for transfer. If the public administrator of the receiving
29 county consents to the transfer, the court shall transfer the case. The court with jurisdiction
30 over the receiving county shall, without the necessity of any hearing as required by section
31 475.075, appoint the public administrator of the receiving county as successor guardian and/
32 or successor conservator and issue letters therein. In the case of a conservatorship, the final
33 settlement of the public administrator's conservatorship shall be filed within thirty days of the
34 court's transfer of the case, in the court with jurisdiction over the original conservatorship, and
35 forwarded to the receiving county upon audit and approval.

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

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

6 3. ~~[Except as otherwise limited by the court, a guardian shall make decisions~~
7 ~~regarding the adult ward's support, care, education, health, and welfare. A guardian shall~~
8 ~~exercise authority only as necessitated by the adult ward's limitations and, to the extent~~
9 ~~possible, shall encourage the adult ward to participate in decisions, act on the adult ward's~~
10 ~~own behalf, and develop or regain the capacity to manage the adult ward's personal affairs.]~~
11 The general powers and duties of a guardian of an incapacitated person shall **be to take**
12 **charge of the ward and provide for the ward's care, treatment, habilitation, education,**
13 **support, and maintenance. However, the guardian or guardian ad litem, or both, shall**
14 **not be financially liable for the ward's care, treatment, habilitation, education, support,**
15 **and maintenance. The powers and duties of guardians and guardians ad litem,**
16 **consistent with the ward's guardianship classification, shall include, but shall not be**
17 limited to, the following:

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

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

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

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

23 (5) **Exercise authority and discharge duties necessary based on the ward's state**
24 **of incapacity or disability and the ward's guardianship classification;**

25 (6) **To the extent possible and practicable considering the ward's physical,**
26 **mental, and cognitive conditions and abilities, assist the ward in obtaining the lowest**
27 **guardianship classification level for the ward and encourage the ward to participate in**
28 **decision-making processes;**

29 (7) To the extent possible and practicable considering the ward's physical,
30 mental, and cognitive conditions and abilities as the guardian or guardian ad litem, or
31 both, reasonably believes such conditions to be, assist the ward to act on the ward's own
32 behalf and develop or regain the capacity to manage the ward's personal affairs;

33 (8) Ensure the ward receives the proper level of structure, supervision, and
34 support needed and in accordance with the guardianship classification;

35 (9) Assist the ward, as the guardian or guardian ad litem, or both, deems
36 appropriate for the ward, to comply with any and all terms and conditions of any court
37 order; any supervised or unsupervised probation, parole, work release program; any
38 care, treatment, or habilitation program or service; and any sex offender or other
39 registration or housing restriction requirement;

40 (10) To exercise all powers and discharge all duties necessary or proper to implement
41 the provisions of this section.

42 4. **Consistent with subsection 3 of this section and section 475.343**, a guardian of
43 an adult or minor ward ~~[is]~~ **shall not be** obligated by virtue of such guardian's appointment to
44 use the guardian's own financial resources for the support, **care, treatment, housing,**
45 **transportation, debt, fees, supervision, habilitation, maintenance, or other financial**
46 **costs** of the ward. If the ward's estate and available public benefits are inadequate for the
47 proper care of the ward, the guardian or conservator may apply to the county commission
48 pursuant to section 475.370.

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

52 6. **The ward shall not be committed or incarcerated in any government or**
53 **privately operated institution, facility, jail, prison, program, housing, or mental health**
54 **or psychiatric unit solely on the basis of being in a forensic guardianship, and the ward**
55 **shall not be denied participation in and the benefits from any government or privately**
56 **operated institution, facility, program, housing, or unit solely on the basis of being in a**
57 **forensic guardianship unless otherwise prohibited by a clearly established state or**
58 **federal law, rule, or regulation or any term or condition of a court order, probation,**
59 **parole, or any jail or prison work-release program rule or regulation.**

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

63 ~~[7-]~~ 8. A social service agency serving as guardian of an incapacitated person shall
64 notify the court within fifteen days after any change in the identity of the professional

65 individual who has primary responsibility for providing guardianship services to the
66 incapacitated person.

67 ~~[8:]~~ **9.** Any social service agency serving as guardian may not provide other services
68 to the ward.

69 ~~[9:]~~ **10.** In the absence of any written direction from the ward to the contrary, a
70 guardian may execute a preneed contract for the ward's funeral services, including cremation,
71 or an irrevocable life insurance policy to pay for the ward's funeral services, including
72 cremation, and authorize the payment of such services from the ward's resources. Nothing in
73 this section shall interfere with the rights of next-of-kin to direct the disposition of the body of
74 the ward upon death under section 194.119. If a preneed arrangement such as that authorized
75 by this subsection is in place and no next-of-kin exercises the right of sepulcher within ten
76 days of the death of the ward, the guardian may sign consents for the disposition of the body,
77 including cremation, without any liability therefor. A guardian who exercises the authority
78 granted in this subsection shall not be personally financially responsible for the payment of
79 services.

80 **11.** To ensure a statutory pathway exists for a ward to have equal access to the
81 courts and equal protection of law and due process if there is only a guardian and no
82 conservator appointed but the guardian is the payee of the ward, the guardian shall
83 institute all suits and prosecutions, with or without retaining legal counsel, that may be
84 necessary to recover property, debts, civil damages, punitive awards, papers, or other
85 estates of the ward. The guardian shall be substituted for the ward and institute and
86 prosecute the suit in the guardian's own name, as a real party in interest, in his or her
87 capacity as guardian and to prosecute the action, with or without retaining legal
88 counsel, as the guardian chooses citing this subsection in the petition or motion filed
89 with the court unless otherwise determined by a ruling of the Missouri supreme court.

90 **12.** To ensure a statutory pathway exists for a guardian to have equal access to
91 the courts and equal protection of law and due process if the guardian has suffered
92 economic or noneconomic damages by a person other than the ward or is obstructed or
93 prevented from discharging his or her duties or authority provided under this section,
94 the guardian shall have a cause of action independent of the ward to enforce his or her
95 duties and authority by court order and to remedy any economic or noneconomic
96 damages sustained as a real party in interest in the guardian's own name and capacity
97 as guardian and to prosecute the action with or without retaining legal counsel as the
98 guardian chooses. The guardian shall cite this subsection in the petition or motion filed
99 unless otherwise determined by a ruling of the Missouri supreme court.

100 **13.** A guardian or guardian ad litem, or both, shall receive notice and a copy of
101 any grievance, complaint, notice, petition, or motion filed against the guardian or

guardian ad litem, or both, under any section of this chapter or any other state or federal law, rule, or regulation that alleges any breach of any guardianship fiduciary duty or guardianship power or any violation of any other state or federal law, rule, or regulation without any redaction being made to the grievance, complaint, notice, petition, or motion. The guardian or guardian ad litem, or both, shall have an opportunity to be heard by the court through responsive pleadings, motions, and court hearings, with or without the guardian or guardian ad litem, or both, retaining legal counsel, and to proffer any and all evidence in his or her defense for the court to consider. The guardian shall have the right to confront his or her accuser and witnesses by direct and cross examination. If the court finds any part of the grievance, complaint, notice, petition, or motion filed against the guardian or guardian ad litem, or both:

(1) Contains knowingly false or malicious allegations or is filed in bad faith or with purpose to harass the guardian or guardian ad litem, or both, or to obstruct or prevent the guardian or guardian ad litem, or both, from discharging his or her guardianship duties or powers;

(2) Defames the character or reputation of the guardian or guardian ad litem, or both; or

(3) Causes the guardian to suffer damages,

upon a motion filed by the guardian or guardian ad litem, or both, the court shall order the party or parties filing the grievance, complaint, notice, petition, or motion to pay the guardian or guardian ad litem, or both, actual damages. If the court finds that the grievance, complaint, notice, petition, or motion filed is egregious, the court shall also grant the guardian or guardian ad litem, or both, a reasonable monetary punitive award and enter any and all other orders as the court deems just and proper.

475.361. 1. The provisions of section 475.078 notwithstanding to the contrary and consistent with the ward's guardianship classification and the requirements, needs, rights, and liberties arising from the guardianship classification, in every guardianship, the ward has the right to:

(1) A guardian who acts in the best interests of the ward;

(2) A guardian who is reasonably accessible to the ward;

(3) Communicate freely and privately with family, friends, and other persons other than the guardian; except that, such right may be limited by the guardian for good cause but only as necessary to ensure the ward's condition, safety, habilitation, or sound therapeutic treatment or such right may be restricted by a court order; any term or condition of probation or parole; a work release program; or a state or federal statute, rule, or regulation;

13 (4) **Consult with his or her guardian or guardian ad litem, or both, in private if**
14 **the ward is being held in custody so that the guardian or guardian ad litem, or both,**
15 **may determine if the guardian or guardian ad litem, or both, shall invoke the ward's**
16 **rights against giving self-incriminating statements or to give any consent on behalf of**
17 **the ward to give statements;**

18 (5) Individually or through the ward's representative, **guardian or guardian ad**
19 **litem, or both,** or legal counsel, bring an action relating to the guardianship, including the
20 right to file a petition alleging that the ward is being unjustly denied a right or privilege
21 granted by this chapter, including the right to bring an action to modify or terminate the
22 guardianship under the provisions of section 475.083;

23 ~~[(5)]~~ (6) The least restrictive form of guardianship assistance, taking into
24 consideration the ward's functional limitations, personal needs, and preferences, **and any**
25 **legal or medical requirements imposed on the ward;**

26 ~~[(6)]~~ (7) Be restored to capacity at the earliest possible time **and, in accordance with**
27 **the ward's mental, physical, cognitive, and medical condition, be in the lowest**
28 **guardianship classification possible and practicable considering the ward's mental,**
29 **physical, cognitive, and medical condition and available treatment;**

30 ~~[(7)]~~ (8) Receive information from the court that describes the ward's rights,
31 including rights the ward may seek by petitioning the court; and

32 ~~[(8)]~~ (9) Participate in any health care decision-making process.

33 2. **Consistent with section 475.120,** an adult ward may petition the court to grant the
34 ward the right to:

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

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

37 (3) Consent to medical treatment;

38 (4) Establish a residence or dwelling place;

39 (5) Change domicile;

40 (6) Bring or defend any action at law or equity, **in accordance with section 475.120,**
41 except an action relating to the guardianship; or

42 (7) Drive a motor vehicle if the ward can pass the required driving test. **The**
43 **provisions of this subdivision shall be subject to the court's review and any**
44 **determinations made by the court based on the ward's past motor vehicle driving**
45 **records and any driver's license suspensions or revocations in each state the ward has**
46 **resided in while able to legally drive.**

47 3. The appointment of a guardian shall revoke the powers of an agent who was
48 previously appointed by the ward to act as an agent under a durable power of attorney for
49 health care~~[, unless the court so orders]~~. **If a guardian is appointed in addition to the**

50 **agent, the court shall grant only a limited guardianship that excludes the duties, powers,**
51 **and authority conferred upon the agent in a durable power of attorney.**

52 4. The appointment of a guardian is not a determination that the ward lacks
53 testamentary capacity, **but the ward's capacity shall be reviewable and determined by a**
54 **court of competent jurisdiction if the ward's capacity is disputed.**

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