

SUBSTITUTE FOR
HOUSE BILL NO. 5919

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5306, 5313, 5314, 5417, and 5418 (MCL 700.5306, 700.5313, 700.5314, 700.5417, and 700.5418), sections 5313 and 5314 as amended by 2000 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5306. (1) The court may appoint a guardian if ~~it is~~
2 ~~satisfied~~ THE COURT FINDS by clear and convincing evidence BOTH
3 that the individual for whom a guardian is sought is an incapaci-
4 tated individual — and that the appointment is necessary as a
5 means of providing continuing care and supervision of the inca-
6 pacitated individual, WITH EACH FINDING SUPPORTED SEPARATELY ON
7 THE RECORD. THE FORM FOR RECORDING FINDINGS UNDER THIS
8 SUBSECTION SHALL REFLECT THE REQUIREMENT FOR SEPARATE FINDINGS ON

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1 THESE ISSUES. Alternately, the court may dismiss the proceeding
2 or enter another appropriate order.

3 (2) ~~A guardian shall be granted~~ THE COURT SHALL GRANT A
4 GUARDIAN only those powers and only for that period of time as is
5 necessary to provide for the demonstrated need of the incapacitated
6 individual. ~~, and the guardianship shall be designed~~ THE
7 COURT SHALL DESIGN THE GUARDIANSHIP to encourage the development
8 of maximum self-reliance and independence in the individual.
9 EXCEPT AS PROVIDED IN SUBSECTION (5), A COURT SHALL NOT GRANT A
10 GUARDIAN THE SAME POWERS THAT ARE HELD BY A PATIENT ADVOCATE
11 UNDER A DESIGNATION UNDER SECTION 5506. A court order establishing
12 a guardianship shall specify any limitations on the
13 guardian's powers and any time limits on the guardianship.
14 EXCEPT AS PROVIDED IN SECTION 5407 OR 5408, THE COURT SHALL NOT
15 AUTHORIZE A GUARDIAN TO, AND A GUARDIAN DOES NOT HAVE THE POWER
16 TO, SELL A WARD'S REAL PROPERTY.

17 (3) If ~~it is found~~ THE COURT FINDS by clear and convincing
18 evidence that ~~the~~ AN individual is incapacitated and lacks the
19 capacity to do some, but not all, of the tasks necessary to care
20 for himself or herself, the court may appoint a limited guardian
21 to provide guardianship services to the individual, but the court
22 shall not appoint a full guardian.

23 (4) If ~~it is found~~ THE COURT FINDS by clear and convincing
24 evidence that the individual is incapacitated and is totally
25 without capacity to care for himself or herself, the court shall
26 specify that finding of fact in an order and may appoint a full
27 guardian.

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1 (5) IF THE GUARDIAN'S WARD EXECUTES A PATIENT ADVOCATE
2 DESIGNATION IN COMPLIANCE WITH SECTION 5506 AND NAMES A PERSON
3 OTHER THAN THE GUARDIAN AS HIS OR HER PATIENT ADVOCATE, FOR THOSE
4 TIME PERIODS WHEN THE PATIENT ADVOCATE'S AUTHORITY, RIGHTS, AND
5 RESPONSIBILITIES ARE EFFECTIVE AS PROVIDED IN SECTIONS 5506 TO
6 5512, THE COURT SHALL NOT GRANT AND THE GUARDIAN SHALL NOT EXER-
7 CISE A POWER THAT THE DESIGNATION GIVES TO THE PATIENT ADVOCATE
8 REGARDING THE WARD'S CARE, CUSTODY, OR MEDICAL TREATMENT. IF,
9 HOWEVER, A PETITION FOR GUARDIANSHIP OR FOR MODIFICATION UNDER
10 SECTION 5310 ALLEGES AND THE COURT FINDS THAT THE PATIENT ADVO-
11 CATE DESIGNATION WAS NOT EXECUTED IN COMPLIANCE WITH SECTION
12 5506, THAT THE PATIENT ADVOCATE IS NOT COMPLYING WITH THE TERMS
13 OF THE DESIGNATION OR OF SECTIONS 5506 TO 5512, OR THAT THE
14 PATIENT ADVOCATE IS NOT ACTING CONSISTENT WITH THE WARD'S BEST
15 INTERESTS, THE COURT MAY MODIFY THE GUARDIANSHIP'S TERMS TO GRANT
16 THOSE POWERS TO THE GUARDIAN.

17 Sec. 5313. (1) ~~A~~ THE COURT MAY APPOINT A competent
18 person, including a nonprofit corporation described in section
19 5106, ~~may be appointed~~ AS guardian of a legally incapacitated
20 individual. The court shall not appoint as a guardian an agency,
21 public or private, that financially benefits from directly pro-
22 viding housing, medical, or social services to the legally inca-
23 pacitated individual. IF THE COURT DETERMINES THAT THE WARD'S
24 PROPERTY NEEDS PROTECTION, THE COURT SHALL ORDER THE GUARDIAN TO
25 FURNISH A BOND OR SHALL INCLUDE RESTRICTIONS IN THE LETTERS OF
26 GUARDIANSHIP AS NECESSARY TO PROTECT THE PROPERTY.

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1 (2) In appointing a guardian under this section, the court
2 shall appoint a person, if suitable and willing to serve,
3 designated by the individual who is the subject of the petition,
4 including a designation made in a durable power of attorney. If
5 a specific designation is not made or a person designated is not
6 suitable or willing to serve, the court may appoint as a guardian
7 a person named as ~~attorney in fact~~ ATTORNEY-IN-FACT through a
8 durable power of attorney.

9 (3) If a person is not designated under subsection (2) or a
10 person designated under subsection (2) is not suitable or willing
11 to serve, the court may appoint as a guardian an individual who
12 is related to the subject of the petition in the following order
13 of preference:

14 (a) The legally incapacitated individual's spouse. This
15 subdivision shall be considered to include a person nominated by
16 will or other writing signed by a deceased spouse.

17 (b) An adult child of the legally incapacitated individual.

18 (c) A parent of the legally incapacitated individual. This
19 subdivision shall be considered to include a person nominated by
20 will or other writing signed by a deceased parent.

21 (d) A relative of the legally incapacitated individual with
22 whom the individual has resided for more than 6 months before the
23 filing of the petition.

24 (e) A person nominated by the person who is caring for the
25 individual or paying benefits to the individual.

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1 (4) If none of the persons listed in subsection (3) is
2 suitable or willing to serve, the court may appoint any competent
3 person who is suitable and willing to serve.

4 Sec. 5314. (1) Whenever meaningful communication is possi-
5 ble, a legally incapacitated individual's guardian should consult
6 with the legally incapacitated individual before making a major
7 decision affecting the legally incapacitated individual. Except
8 as limited under section 5306, a legally incapacitated
9 individual's guardian is responsible for the ward's care, custo-
10 dy, and control, but is not liable to third persons by reason of
11 that responsibility for the ward's acts. In particular and with-
12 out qualifying the ~~foregoing~~ PREVIOUS SENTENCES, a guardian has
13 all of the following powers and duties, except as modified by
14 court order:

15 (a) To the extent that it is consistent with the terms of an
16 order by a court of competent jurisdiction relating to THE WARD'S
17 detention or commitment, ~~of the ward,~~ the guardian is entitled
18 to custody of the person of the guardian's ward and may establish
19 the ward's place of residence within or without this state. The
20 guardian ~~must~~ SHALL notify the court within 14 days ~~of~~ AFTER
21 a change in the ward's place of residence.

22 (b) If entitled to custody of the ward, the guardian ~~must~~
23 ~~make provision~~ SHALL PROVIDE for the ward's care, comfort, and
24 maintenance and, when appropriate, arrange for the ward's train-
25 ing and education. The guardian has the responsibility of secur-
26 ing services to restore the ward to the best possible state of
27 mental and physical well-being so that the ward can return to

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1 self-management at the earliest possible time. Without regard to
2 custodial rights of the ward's person, the guardian ~~must~~ SHALL
3 take reasonable care of the ward's clothing, furniture, vehicles,
4 and other personal effects and commence a protective proceeding
5 if the ward's other property ~~is in need of~~ NEEDS protection.

6 (c) A guardian may give the consent or approval that may be
7 necessary to enable the ward to receive medical or other profes-
8 sional care, counsel, treatment, or service.

9 (d) If a conservator for the ward's estate is not appointed,
10 a guardian may:

11 (i) Institute a proceeding to compel a person under a duty
12 to support the ward or to pay ~~sums~~ MONEY for the ward's welfare
13 to perform that duty.

14 (ii) Receive money and tangible property deliverable to the
15 ward and apply the money and property for the ward's support,
16 care, and education. The guardian shall not use money from the
17 ward's estate for room and board that the guardian or the
18 guardian's spouse, parent, or child have furnished the ward
19 unless a charge for the service is approved by court order made
20 upon notice to at least 1 of the ward's next of kin, if notice is
21 possible. The guardian shall exercise care to conserve any
22 excess for the ward's needs.

23 (e) The guardian shall report the WARD'S condition ~~of the~~
24 ~~ward and the ward's estate that is subject to the guardian's pos-~~
25 ~~session or control,~~ as required by the court, but not less often
26 than annually. A report under this subdivision ~~must~~ SHALL
27 contain all of the following:

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1 (i) The ward's current mental, physical, and social
2 condition.

3 (ii) Any improvement or deterioration in the ward's mental,
4 physical, and social condition that occurred during the past
5 year.

6 (iii) The ward's present living arrangement and ~~any~~
7 changes in his or her living arrangement that occurred during the
8 past year.

9 (iv) Whether the guardian recommends a more suitable living
10 arrangement for the ward.

11 (v) Medical treatment received by the ward.

12 (vi) Services received by the ward.

13 (vii) A list of the guardian's visits with, and activities
14 on behalf of, the ward.

15 (viii) A recommendation as to the need for continued
16 guardianship.

17 (f) If a conservator is appointed, the guardian shall pay to
18 the conservator, for management as provided in this act, the
19 amount of the ward's estate received by the guardian in excess of
20 the amount the guardian expends for the ward's current support,
21 care, and education. The guardian shall account to the conserva-
22 tor for the amount expended.

23 (G) IF A CONSERVATOR IS NOT APPOINTED FOR THE WARD, THE
24 GUARDIAN IS NOT AN INDIVIDUAL RELATED TO THE WARD OR A TAX EXEMPT
25 ENTITY, AND THE GUARDIAN HAS CONTROL OF ANY OF THE WARD'S ESTATE,
26 WITHIN 63 DAYS AFTER APPOINTMENT, THE GUARDIAN SHALL PREPARE AND

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1 FILE WITH THE APPOINTING COURT A COMPLETE INVENTORY OF THE ESTATE
2 THAT IS SUBJECT TO THE GUARDIANSHIP.

3 (H) IF A CONSERVATOR IS NOT APPOINTED FOR THE WARD AND THE
4 GUARDIAN IS NOT AN INDIVIDUAL RELATED TO THE WARD OR A TAX EXEMPT
5 ENTITY, THE GUARDIAN SHALL FILE AN ACCOUNT WITH THE COURT OF ALL
6 INCOME AND ASSETS IN THE GUARDIAN'S CONTROL. THE GUARDIAN SHALL
7 FILE THE ACCOUNT AS REQUIRED BY THE COURT, BUT NOT LESS THAN
8 ANNUALLY. THE COURT, OR STAFF ASSIGNED BY THE COURT, SHALL
9 REVIEW THE ACCOUNTING.

10 (2) IF A GUARDIAN IS NOT OTHERWISE REQUIRED TO FILE AN
11 INVENTORY OR ACCOUNT, THE COURT MAY ORDER A GUARDIAN TO PREPARE
12 AND FILE AN INVENTORY OR ACCOUNT AT THE DISCRETION OF THE COURT.

13 Sec. 5417. (1) Within 63 days after appointment or within
14 another time period specified by court rule, a conservator ~~must~~
15 SHALL prepare and file with the appointing court a complete
16 inventory of the estate subject to the conservatorship together
17 with an oath or affirmation that the inventory is believed to be
18 complete and accurate so far as information permits. The conser-
19 vator ~~must~~ SHALL provide a copy of the inventory to the pro-
20 tected individual if the ~~individual~~ INDIVIDUAL can be located
21 and ~~if the individual~~ is 14 years of age or older, ~~and has~~
22 ~~sufficient mental capacity to understand the arrangement.~~ A copy
23 ~~must also be provided~~ TO THE INTERESTED PERSONS THAT WERE LISTED
24 ON THE ORIGINAL OR AN AMENDED PETITION FOR THE CONSERVATOR'S
25 APPOINTMENT, AND to a parent or guardian with whom the protected
26 individual resides.

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1 (2) The conservator must keep suitable records of the
2 administration and exhibit those records on the request of an
3 interested person.

4 Sec. 5418. (1) A conservator shall account to the court for
5 administration of the trust not less than annually unless the
6 court directs otherwise, upon resignation or removal, and at
7 other times as the court directs. On termination of the pro-
8 tected individual's minority or disability, a conservator shall
9 account to the court or to the formerly protected individual or
10 that individual's successors. Subject to appeal or vacation
11 within the time permitted, an order, after notice and hearing,
12 allowing an intermediate account of a conservator adjudicates as
13 to liabilities concerning the matters considered in connection
14 with the accounts, and an order, after notice and hearing, allow-
15 ing a final account adjudicates as to all previously unsettled
16 liabilities of the conservator to the protected individual or the
17 protected individual's successors relating to the
18 conservatorship. In connection with any account, the court may
19 require a conservator to submit to a physical check of the estate
20 to be made in any manner the court specifies.

21 (2) THE COURT, OR STAFF ASSIGNED BY THE COURT, SHALL REVIEW
22 AN ACCOUNT. THE CONSERVATOR SHALL PROVIDE A COPY OF AN ACCOUNT
23 TO THE PROTECTED INDIVIDUAL IF THE INDIVIDUAL CAN BE LOCATED AND
24 IS 14 YEARS OF AGE OR OLDER, TO THE INTERESTED PERSONS THAT WERE
25 LISTED ON THE ORIGINAL OR AN AMENDED PETITION FOR THE
26 CONSERVATOR'S APPOINTMENT, AND TO A PARENT OR GUARDIAN WITH WHOM
27 THE PROTECTED INDIVIDUAL RESIDES.

[Enacting section 1. This amendatory act takes effect January
1, 2001.]