

Maine Revised Statutes
Title 18-A: PROBATE CODE

Article :

§5-408. PERMISSIBLE COURT ORDERS

The court shall exercise the authority conferred in Parts 4 and 6 to encourage the development of maximum self reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure. [1985, c. 440, §§11, 13 (NEW).]

The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons; [1979, c. 540, §1 (NEW).]

(1). While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for the person's benefit or the benefit of the person's dependents, in accordance with the procedures set forth in section 5-408-A.

[1993, c. 652, §6 (AMD) .]

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

[1979, c. 540, §1 (NEW) .]

(3). After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

[1979, c. 540, §1 (NEW) .]

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

[1979, c. 540, §1 (NEW) .]

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

[1979, c. 540, §1 (NEW) .]

(6). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate if the court finds:

(a). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 60 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and [2011, c. 155, §1 (AMD) .]

(b). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 60 months. [2011, c. 155, §1 (AMD) .]

If the gift or other transfer is being made to the protected person's spouse or blind or disabled child or to a trust established pursuant to 42 United States Code, Section 1396p(d)(4), or is otherwise specifically allowed without a transfer penalty by law governing the federal Medicaid program under 42 United States Code, the court may authorize the gift or other transfer without making the findings under paragraphs (a) and (b).

[2011, c. 155, §1 (AMD) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1985, c. 440, §§11,13 (AMD). 1993, c. 652, §6 (AMD). 2005, c. 12, §DDD4 (AMD). 2005, c. 12, §DDD17 (AFF). 2011, c. 155, §1 (AMD).

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