

**TITLE 18-C
PROBATE CODE**

**ARTICLE 5
MAINE UNIFORM GUARDIANSHIP, CONSERVATORSHIP AND PROTECTIVE
PROCEEDINGS**

**PART 1
GENERAL PROVISIONS**

§5-101. Short title

Parts 1, 2, 3, 4 and 5 of this Article may be known and cited as "the Maine Uniform Guardianship, Conservatorship and Protective Proceedings Act."

§5-102. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. Adult. "Adult" means an individual at least 18 years of age or an emancipated individual under 18 years of age.

3. Adult subject to guardianship. "Adult subject to guardianship" means an adult for whom a guardian has been appointed under this Act.

9. Full guardianship. "Full guardianship" means a guardianship that grants the guardian all powers available under this Act.

10. Guardian. "Guardian" means a person appointed by a court to make decisions with respect to the personal affairs of an individual. "Guardian" includes a coguardian but does not include a guardian ad litem.

11. Guardian ad litem. "Guardian ad litem" means a person appointed to inform the court about, and to represent, the needs and best interest of an individual.

13. Individual subject to guardianship. "Individual subject to guardianship" means an adult or minor for whom a guardian has been appointed.

14. Less restrictive alternative. "Less restrictive alternative" means an approach to meeting an individual's needs that restricts fewer rights than would the appointment of a guardian or conservator. "Less restrictive alternative" includes supported decision making, appropriate technological assistance, appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances, or appointment of a representative payee.

17. Limited guardianship. "Limited guardianship" means a guardianship that grants the guardian less than all powers available under this Act or otherwise restricts the powers of the guardian.

25. Protective arrangement instead of guardianship. "Protective arrangement instead of guardianship" means a court order entered under section 5-502.

26. Protective arrangement instead of guardianship or conservatorship. "Protective arrangement instead of guardianship or conservatorship" means a court order entered under Part 5, including an order authorizing a single transaction or more than one related transaction.

27. Record. "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

28. Respondent. "Respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

29. Sign. "Sign" means, with present intent to authenticate or adopt a record:

- A. To execute or adopt a tangible symbol; or
- B. To attach to or logically associate with the record an electronic symbol, sound or process.

32. Supported decision making. "Supported decision making" means assistance from one or more persons of an individual's choosing:

- A. In understanding the nature and consequences of potential personal and financial decisions that enables the individual to make the decisions; and
- B. When consistent with the individual's wishes, in communicating a decision once it is made.

PART 3

GUARDIANSHIP OF ADULT

§5-301. Basis for appointment of guardian for adult

1. Appointment. On petition and after notice and hearing, the court may:

A. Appoint a guardian for a respondent who is an adult if it finds by clear and convincing evidence that the respondent lacks the ability to meet essential requirements for physical health, safety or self-care because:

- (1) The respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provides adequate protection for the respondent;
- (2) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives that provide adequate protection for the respondent; and
- (3) The appointment is necessary or desirable as a means of enabling the respondent to meet essential requirements for physical health, safety or self-care; or

B. With appropriate findings, and additional notice to persons the court determines are entitled to notice, treat the petition as one for a conservatorship under Part 4 or a protective

arrangement instead of guardianship or conservatorship under Part 5, enter any other appropriate order or dismiss the proceeding.

In making a determination on a petition under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.

2. Powers. The court shall grant to a guardian appointed under subsection 1 only those powers necessitated by the limitations and demonstrated needs of the respondent and enter orders that will encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship or other less restrictive alternatives would meet the needs of and provide adequate protection for the respondent.

§5-302. Petition for appointment of guardian for adult

1. Petition for appointment. A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for the appointment of a guardian for the adult.

2. Contents of petition. A petition under subsection 1 must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the appointment and state or contain the following to the extent known:

- A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;
- B. The name and address of the respondent's:
 - (1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;
 - (2) Adult children or, if the respondent has none, each parent and adult sibling of the respondent or, if the respondent has none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and
 - (3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;
- C. The name and current address of each of the following, if applicable:
 - (1) A person responsible for care or custody of the respondent;
 - (2) Any attorney currently representing the respondent;
 - (3) The representative payee appointed by the United States Social Security Administration for the respondent;
 - (4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

- (5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;
- (6) The United States Department of Veterans Affairs fiduciary for the respondent;
- (7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;
- (8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;
- (9) A person nominated as guardian by the respondent;
- (10) A person nominated as guardian by the respondent's parent, spouse or domestic partner in a will or other signed record;
- (11) A proposed guardian and the reason the proposed guardian should be selected; and
- (12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

D. The reason a guardianship is necessary, including a brief description of:

- (1) The nature and extent of the respondent's alleged need;
- (2) Any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented;
- (3) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and
- (4) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's alleged need;

E. Whether the petitioner seeks a limited guardianship or full guardianship;

F. If the petitioner seeks a full guardianship, the reason limited guardianship or a protective arrangement instead of guardianship is inappropriate;

G. If a limited guardianship is requested, the powers to be granted to the guardian;

H. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

I. If the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and

J. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings.

3. Attorney for petitioner. A petition under subsection 1 must state the name, address, telephone number and bar registration number of an attorney representing the petitioner, if any.

§5-309. Who may be guardian of adult; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a guardian for an adult shall consider persons otherwise qualified in the following order of priority:

- A. A guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction;
- B. A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;
- C. An agent appointed by the respondent under a power of attorney for health care or an advance health care directive;
- D. A spouse or domestic partner of the respondent;
- E.
- F. An adult child of the respondent;
- G. A parent of the respondent, including a person nominated by will or other writing signed by a deceased parent;
- H. Any relative of the respondent with whom the respondent resided for more than 6 months within the 12 months prior to the filing of the petition under section 5-302; and
- I. A family member or other individual who has exhibited special care and concern for the respondent.

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential guardian's relationship with the respondent, the potential guardian's skills, the expressed wishes of the respondent, the extent to which the potential guardian and the respondent have similar values and preferences and the likelihood the potential guardian will be able to satisfy the duties of a guardian successfully.

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection 1 and appoint a person having a lower priority or no priority. In its determination, the court may evaluate whatever factors the court determines appropriate, including comparing the following factors for the person having priority and the potential guardian who has a lower or no priority: relationships with the respondent, the higher priority person's and the potential guardian's skills, the expressed wishes of the respondent and the extent to which the person with higher priority and the potential guardian with lower or no priority have similar values and preferences as the respondent and the likelihood that the potential guardian will be able to satisfy the duties of a guardian successfully.

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

- A. The individual is related to the respondent by blood, marriage or adoption; or
- B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

5. Long-term care institution; exceptions. An owner, operator or employee of a long-term care institution at which the respondent is receiving care may not be appointed as guardian unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

§5-312. Emergency guardian

1. Basis for emergency guardianship. On petition by a person interested in an adult's welfare or on its own after a petition has been filed under section 5-302, the court may appoint an emergency guardian for the adult if the court finds:

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A. Appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety or welfare;

B. No other person appears to have authority and willingness to act in the circumstances; and

C. There is reason to believe that a basis for appointment of a guardian under section 5-301 may exist.

2. Limited time and powers. The duration of authority of an emergency guardian for an adult may not exceed 60 days and the emergency guardian may exercise only the powers specified in the order. The emergency guardian's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency guardian in subsection 1 continue.

3. Notice before petition. Prior to filing a petition under this section, notice must be provided as follows.

A. The petitioner shall provide notice orally or in writing to the following:

(1) The respondent and the respondent's spouse, parents, adult children and any domestic partner known to the court;

(2) Any person who is serving as guardian or conservator or who has care and custody of the respondent; and

(3) In case no other person is notified under subparagraph (1), at least one of the closest adult relatives of the respondent or, if there are none, an adult friend, if any can be found.

B. Notice under paragraph A must include the following information:

(1) The temporary authority that the petitioner is requesting;

(2) The location and telephone number of the court in which the petition is being filed; and

(3) The name of the petitioner and the intended date of filing.

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the petitioner complied with the notice requirements of this subsection. The requirements of section 5-303 do not apply to this section.

D. Notice is not required under this subsection in the following circumstances:

(1) Giving notice would place the respondent at substantial risk of abuse, neglect or exploitation;

(2) Notice, if provided, would not be effective; or

(3) The court determines that there is good cause not to provide notice.

E. If, prior to filing the petition, the petitioner does not provide notice as required under this subsection, the petitioner must state in the affidavit under paragraph C the reasons for

not providing notice. If notice has not been provided, the court shall make a determination as to the sufficiency of the reason for not providing notice before issuing a temporary order.

4. Appointment without notice and hearing. The court may appoint an emergency guardian for an adult without notice and a hearing only if the court finds from an affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice and a hearing, the court shall, not later than 48 hours after the appointment, notify the respondent, the respondent's attorney and any other person as the court determines of the appointment. If the respondent objects to the appointment, the court shall hold a hearing within 14 days of the appointment.

4-A. Appointment without professional evaluation. A professional evaluation under section 5-306 is not required before the appointment of an emergency guardian if the court finds from the affidavit or testimony that the basis for an emergency has been met and the petitioner has good cause for not submitting a professional evaluation before the emergency order.

5. Not a determination. Appointment of an emergency guardian under this section is not a determination that the conditions required for appointment of a guardian under section 5-301 have been satisfied.

6. Removal; report; application. The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires. In other respects, the provisions of this Act concerning guardians apply to an emergency guardian appointed under this section.