

IC 29-3-9

Chapter 9. Matters Other Than Appointment

IC 29-3-9-1

Delegation of powers by executed power of attorney; limitations

Sec. 1. (a) As used in this section, "department" means the department of child services established by IC 31-25-1-1.

(b) As used in this section and except as otherwise provided in this section, "foster care" has the meaning set forth in IC 31-9-2-46.7.

(c) Except as provided in subsections (d) and (h), by a properly executed power of attorney, a parent of a minor or a guardian (other than a temporary guardian) of a protected person may delegate to another person for:

(1) any period during which the care and custody of the minor or protected person is entrusted to an institution furnishing care, custody, education, or training; or

(2) a period not exceeding twelve (12) months;

any powers regarding health care, support, custody, or property of the minor or protected person. A delegation described in this subsection is effective immediately unless otherwise stated in the power of attorney.

(d) A parent of a minor or a guardian of a protected person may not delegate under subsection (c) the power to:

(1) consent to the marriage or adoption of a protected person who is a minor; or

(2) petition the court to request the authority to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of a protected person as provided under section 12.2 of this chapter.

(e) A person having a power of attorney executed under subsection (c) has and shall exercise, for the period during which the power is effective, all other authority of the parent or guardian respecting the health care, support, custody, or property of the minor or protected person except any authority expressly excluded in the written instrument delegating the power. The parent or guardian remains responsible for any act or omission of the person having the power of attorney with respect to the affairs, property, and person of the minor or protected person as though the power of attorney had never been executed.

(f) A delegation of powers executed under subsection (c) does not, as a result of the execution of the power of attorney, subject any of the parties to any laws, rules, or regulations concerning the licensing or regulation of foster family homes, child placing agencies, or child caring institutions under IC 31-27.

(g) Any child who is the subject of a power of attorney executed under subsection (c) is not considered to be placed in foster care. The parties to a power of attorney executed under subsection (c), including a child, a protected person, a parent or guardian of a child

or protected person, or an attorney-in-fact, are not, as a result of the execution of the power of attorney, subject to any foster care requirements or foster care licensing regulations.

(h) A foster family home licensed under IC 31-27-4 may not provide overnight or regular and continuous care and supervision to a child who is the subject of a power of attorney executed under subsection (c) while providing care to a child placed in the home by the department or under a juvenile court order under a foster family home license. Upon request, the department may grant an exception to this subsection.

(i) A parent who:

(1) is a member in the:

(A) active or reserve component of the armed forces of the United States, including the Army, Navy, Air Force, Marine Corps, National Guard, or Coast Guard; or

(B) commissioned corps of the:

(i) National Oceanic and Atmospheric Administration; or

(ii) Public Health Service of the United States Department of Health and Human Services;

detailed by proper authority for duty with the Army or Navy of the United States; or

(2) is required to:

(A) enter or serve in the active military service of the United States under a call or order of the President of the United States; or

(B) serve on state active duty;

may delegate the powers designated in subsection (c) for a period longer than twelve (12) months if the parent is on active duty service. However, the term of delegation may not exceed the term of active duty service plus thirty (30) days. The power of attorney must indicate that the parent is required to enter or serve in the active military service of the United States and include the estimated beginning and ending dates of the active duty service.

(j) Except as otherwise stated in the power of attorney delegating powers under this section, a delegation of powers under this section may be revoked at any time by a written instrument of revocation that:

(1) identifies the power of attorney revoked; and

(2) is signed by the:

(A) parent of a minor; or

(B) guardian of a protected person;

who executed the power of attorney.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.75; P.L.101-2008, SEC.7; P.L.178-2011, SEC.6; P.L.83-2014, SEC.4; P.L.81-2015, SEC.18; P.L.74-2016, SEC.1.

IC 29-3-9-2

Change in physical presence of protected person

Sec. 2. A guardian (other than a temporary guardian), a volunteer advocate for seniors, or a volunteer advocate for incapacitated adults appointed under IC 29-3-8.5 may, with the approval of and under such conditions as may be imposed by the court after notice and hearing, change the physical presence of the protected person to another place in Indiana or to another state if the court finds that such a change is in the best interests of the protected person. Upon such a change, the guardianship may be limited or terminated by the court. *As added by P.L.169-1988, SEC.1. Amended by P.L.41-2004, SEC.3; P.L.11-2006, SEC.11.*

IC 29-3-9-3

Compensation and reimbursement of guardian

Sec. 3. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for reasonable expenditures made in good faith on behalf of the protected person. *As added by P.L.169-1988, SEC.1.*

IC 29-3-9-4

Repealed

(As added by P.L.169-1988, SEC.1. Repealed by P.L.6-2010, SEC.40.)

IC 29-3-9-4.1

Guardian access to protected person's digital assets upon authorization of court

Sec. 4.1. (a) After notice to interested persons and upon authorization of a court, a guardian may access:

- (1) the content of an electronic communication;
- (2) a catalogue of electronic communications; or
- (3) any other digital asset;

of a protected person as provided in the order of the court. The court's authorization may apply generally or be restricted in scope.

(b) Before approving a guardian's exercise of the power to access an item described in subsection (a)(1) through (a)(3), the court shall consider primarily the decision that the protected person would have made, to the extent that the decision the protected person would have made can be ascertained.

As added by P.L.137-2016, SEC.7.

IC 29-3-9-4.5

Estate planning

Sec. 4.5. (a) After notice to interested persons and upon authorization of the court, a guardian may, if the protected person has been found by the court to lack testamentary capacity, do any of the following:

- (1) Make gifts.
- (2) Exercise any power with respect to transfer on death or

payable on death transfers that is described in IC 30-5-5-7.5.

(3) Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties.

(4) Exercise or release a power of appointment.

(5) Create a revocable or irrevocable trust of all or part of the property of the estate, including a trust that extends beyond the duration of the guardianship.

(6) Revoke or amend a trust that is revocable by the protected person.

(7) Exercise rights to elect options and change beneficiaries under insurance policies, retirement plans, and annuities.

(8) Surrender an insurance policy or annuity for its cash value.

(9) Exercise any right to an elective share in the estate of the protected person's deceased spouse.

(10) Renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos.

(b) Before approving a guardian's exercise of a power listed in subsection (a), the court shall consider primarily the decision that the protected person would have made, to the extent that the decision of the protected person can be ascertained. If the protected person has a will, the protected person's distribution of assets under the will is prima facie evidence of the protected person's intent. The court shall also consider:

(1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support;

(2) the interests of creditors;

(3) the possible reduction of income taxes, estate taxes, inheritance taxes, or other federal, state, or local tax liabilities;

(4) the eligibility of the protected person for governmental assistance;

(5) the protected person's previous pattern of giving or level of support;

(6) the protected person's existing estate plan, if any;

(7) the protected person's life expectancy and the probability that the guardianship will terminate before the protected person's death; and

(8) any other factor the court considers relevant.

(c) A guardian may examine and receive, at the expense of the guardian, copies of the following documents of the protected person:

(1) A will.

(2) A trust.

(3) A power of attorney.

(4) A health care appointment.

(5) Any other estate planning document.

As added by P.L.6-2010, SEC.12.

IC 29-3-9-5

Inventory of guardianship property

Sec. 5. (a) Within ninety (90) days after appointment, a guardian (other than a temporary guardian) shall file with the court a complete inventory of the property subject to the guardian's control together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. A temporary guardian shall file the inventory and oath or affirmation with the court within thirty (30) days after appointment. The inventory must conform to the requirements of IC 29-1-12-1. The guardian shall provide a copy of the inventory to the protected person if the protected person is at least fourteen (14) years of age. A copy also shall be provided to any guardian, parent, or person with whom the protected person resides and any other person ordered by the court. In addition, the guardian shall provide notice of the filing of the inventory to each person that was required to be notified of the hearing on the petition to establish the guardianship. The notice must be provided in the same manner as the notice of the hearing to establish a guardianship. The notice must include all of the following:

- (1) The cause number.
 - (2) A statement that Indiana law requires a guardian to file with the court a written verified account of the guardian's administration:
 - (A) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and
 - (B) not more than thirty (30) days after the termination of the appointment.
 - (3) A statement that the inventory and the written verified accounts may be inspected at the court's address.
- (b) The guardian shall keep suitable records of the guardian's administration and exhibit the records as ordered by the court.
- As added by P.L.169-1988, SEC.1. Amended by P.L.265-1995, SEC.1.*

IC 29-3-9-6

Account of administration; filing with court; notice of hearing on account; order of discharge; limitation of actions against sureties

Sec. 6. (a) Unless otherwise directed by the court, a guardian (other than a temporary guardian) shall file with the court:

- (1) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and
 - (2) not more than thirty (30) days after the termination of the appointment;
- a written verified account of the guardian's administration.

(b) A temporary guardian shall file with the court, within thirty (30) days after the termination of the temporary guardian's appointment, and otherwise as ordered by the court, a written

verified account of the temporary guardian's administration.

(c) A written verified account required under this section must include the incapacitated person's or minor's current residence and a description of the condition and circumstances of the incapacitated person or minor.

(d) The court shall conduct a hearing on each verified account filed under this section. The court shall give notice to each person entitled to receive notice that an accounting has been filed and will be acted upon by the court on the date set unless written objections are presented to the court on or before that date. The court shall give the notice required by this subsection, unless waived, to the following:

(1) The protected person, unless waived by the court. If notice to the protected person is waived, the court shall give notice to a person who is not the guardian of the protected person in the following priority:

(A) The protected person's spouse.

(B) An adult child of the protected person.

(C) A parent of the protected person.

(D) A guardian ad litem appointed by the court under subsection (e).

(2) In the case of a protected person who has died, the personal representative of the estate of the protected person, if any.

(3) Any other persons that the court directs.

(e) The court may appoint a guardian ad litem to review on behalf of a protected person an accounting filed under this section if:

(1) the protected person does not have a spouse, an adult child, or a parent; or

(2) the same individual:

(A) served as the protected person's guardian before the death of the protected person; and

(B) is the personal representative of the protected person's estate.

(f) When an account other than an account in final settlement is filed, the court may approve the same ex parte, but the account may be reviewed by the court at any subsequent time and does not become final until an account in final settlement is approved by the court after notice and hearing.

(g) When notice of hearing has been given under this section, the order of the court approving the intermediate account or the final account is binding upon all persons.

(h) When a guardian files with the court proper receipts or other evidence satisfactory to the court showing that the guardian has delivered to the appropriate persons all the property for which the guardian is accountable as guardian, the court shall enter an order of discharge. The order of discharge operates as a release from the duties of the guardian's office that have not yet terminated and operates as a bar to any suit against the guardian and the guardian's

sureties, unless the suit is commenced within one (1) year from the date of the discharge.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.76; P.L.99-2013, SEC.8.

IC 29-3-9-6.5

Accounting standards and procedures

Sec. 6.5. (a) This section applies to an accounting described under section 6 of this chapter that is filed:

- (1) in a court that requires an accounting; and
- (2) by a guardian for a protected person:
 - (A) whose:
 - (i) annual gross income is not more than one hundred eighty-five percent (185%) of the federal income poverty level as determined annually by the federal Office of Management and Budget under 42 U.S.C. 9902; and
 - (ii) total assets are worth fifteen thousand dollars (\$15,000) or less; or
 - (B) who has an annual gross income and total assets of any amount, if the guardian does not have powers concerning the estate of the protected person.

(b) The court shall establish standards for the type of information required to be reported in an accounting described in subsection (a).

(c) Except as provided in subsection (d), the accounting described in subsection (a) is not required to be filed by an attorney for the guardian.

(d) The court may order that the guardian hire an attorney to assist the guardian in filing the accounting described in subsection (a) if the court determines that an accounting filed by the guardian does not conform to the standards established by the court under this section.

As added by P.L.265-1995, SEC.2.

IC 29-3-9-7

Compromise of claim; petition to court; settlement

Sec. 7. (a) Whenever it is proposed to compromise any claim by or against a protected person or the protected person's property, the court, on petition of the guardian, may enter an order authorizing the compromise to be made if satisfied that the compromise will be in the best interest of the protected person.

(b) Whenever a minor has a disputed claim against another person, whether arising in contract, tort, or otherwise, and a guardian for the minor and the minor's property has not been appointed, the parents of the minor may compromise the claim. However, before the compromise is valid, it must be approved by the court upon filing of a petition requesting the court's approval. If the court approves the compromise, it may direct that the settlement be paid in accordance with IC 29-3-3-1. If IC 29-3-3-1 is not applicable, the court shall require that a guardian be appointed and that the settlement be

delivered to the guardian upon the terms that the court directs.
As added by P.L.169-1988, SEC.1.

IC 29-3-9-8

Supplementary orders

Sec. 8. At any time after the appointment or issuance of a protective order, the court on its own motion or on the petition of the protected person or other person approved by the court, in addition to its authority under IC 29-3-8-8, may give the instructions and make the amendatory and supplementary orders that the court finds appropriate.

As added by P.L.169-1988, SEC.1.

IC 29-3-9-9

Expenses of proceedings

Sec. 9. (a) Whenever a guardian is appointed for an incapacitated person or minor, the guardian shall pay all expenses of the proceeding, including reasonable medical, professional, and attorney's fees, out of the property of the protected person.

(b) The expenses of any other proceeding under this article that results in benefit to the protected person or the protected person's property shall be paid from the protected person's property as approved by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.77.

IC 29-3-9-10

Attorney of record for guardian

Sec. 10. The attorney of record for a guardian continues as such until the termination of the guardianship or the attorney's withdrawal, whichever occurs first, as approved by the court.

As added by P.L.169-1988, SEC.1.

IC 29-3-9-11

Investigation and report concerning minor or protected person

Sec. 11. The office of the secretary of family and social services shall investigate and report to the court concerning the conditions and circumstances of a minor or an alleged incapacitated adult or protected person who is an adult and the fitness and conduct of the guardian or the proposed guardian whenever ordered to do so by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.78; P.L.2-1992, SEC.794; P.L.4-1993, SEC.261; P.L.5-1993, SEC.274; P.L.145-2006, SEC.169; P.L.146-2008, SEC.531; P.L.128-2012, SEC.20.

IC 29-3-9-12

Guardianship of property of minor or incapacitated adult;

compliance with demand or instruction; enforcement proceedings; awards

Sec. 12. (a) This section applies only to a guardianship of the property of a minor or an incapacitated adult.

(b) If a third party fails to comply with a guardian's written demand or instruction that:

- (1) was issued within the scope of the guardian's authority; and
- (2) is consistent with this article;

the guardian may bring an enforcement proceeding to compel compliance in the court having jurisdiction over the guardianship.

(c) A court may award attorney's fees and costs to the guardian in an enforcement proceeding under subsection (b), if the person indebted to the guardianship estate or holding property of the guardianship estate:

- (1) acted in bad faith in failing to comply with the guardian's written demand or instruction; or
- (2) refused to respond within thirty (30) business days after receiving the guardian's written demand or instruction, if the demand or instruction is consistent with this article.

(d) A court may, upon notice and hearing, award attorney's fees and costs to an estate bringing an enforcement proceeding under subsection (a) against an insurer regulated under IC 27 if:

- (1) the insurer failed to respond under IC 27 after receiving a written demand or instruction from the personal guardian; and
- (2) the written demand or instruction is consistent with this article.

As added by P.L.51-2014, SEC.7. Amended by P.L.83-2014, SEC.5.

IC 29-3-9-12.2

Petition for authority to petition for dissolution, legal separation, or annulment; granting petition; considerations; petition not required for certain actions

Sec. 12.2. (a) If a guardian of an incapacitated person determines that:

- (1) a dissolution of the incapacitated person's marriage;
- (2) a legal separation of the incapacitated person and the incapacitated person's spouse; or
- (3) an annulment of the incapacitated person's marriage;

is in the best interests of the incapacitated person, the guardian shall petition the court to request the authority to petition for a dissolution of marriage, a legal separation, or an annulment of marriage on behalf of the incapacitated person.

(b) The petition to request authority described in subsection (a) must set forth the following:

- (1) The purpose for petitioning for dissolution of marriage, legal separation, or annulment of marriage.
- (2) The names and addresses of all the following:
 - (A) The incapacitated person's spouse.

(B) If the incapacitated person has adult children, any adult children of the incapacitated person who are not guardians of the incapacitated person.

(C) If the incapacitated person is a minor, a parent of the incapacitated person whose parental rights have not been terminated.

(c) A guardian that petitions the court to request authority as described in subsection (a) shall provide a copy of the petition, on or before the date the petition is filed, to all the following:

(1) The individuals listed in subsection (b)(2).

(2) Any other interested person as ordered by the court.

(d) The court shall:

(1) set a date for a hearing on the petition to request authority described in subsection (a);

(2) notify:

(A) all the parties; and

(B) any other individual listed in subsection (c);

of the hearing at least thirty (30) days before the hearing; and

(3) hold a hearing on the petition to request authority described in subsection (a).

(e) If the court determines by clear and convincing evidence that petitioning for:

(1) a dissolution of the incapacitated person's marriage;

(2) a legal separation of the incapacitated person and the incapacitated person's spouse; or

(3) an annulment of the incapacitated person's marriage;

is in the best interests of the incapacitated person, considering the totality of the circumstances, including the desire and interests of the spouse in remaining married, the court shall grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.

(f) In making a determination under subsection (e), the court shall consider the risk of harm to the incapacitated person's physical or mental health, safety, or property if the court does not grant the petition and authorize the guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of the incapacitated person.

(g) In making a determination under subsection (e), the court shall also give appropriate weight to evidence of:

(1) the incapacitated person's intent or preferences; or

(2) a prior decision of the incapacitated person;

for or against a dissolution of marriage, a legal separation, or an annulment of marriage. The court may reduce the weight given to evidence of the intent, preferences, or prior decisions of the incapacitated person if the court concludes, from all of the relevant facts and circumstances, that the passage of time, the relevant circumstances at the time of a prior statement or action by the

incapacitated person, or changed circumstances after a prior statement or action make the prior statement or action less reliable evidence of the incapacitated person's best interests and current preferences. The court may give no weight to evidence considered under this subsection that the court concludes is unreliable evidence of the incapacitated person's best interests and current preferences.

(h) This section does not require a guardian of an incapacitated person to file a petition under this section in order to:

(1) defend the incapacitated person against a petition for dissolution, legal separation, or annulment of marriage that was filed before or after the filing of the petition for guardianship;

or

(2) finalize:

(A) a dissolution of the incapacitated person's marriage;

(B) a legal separation between the incapacitated person and the incapacitated person's spouse; or

(C) an annulment of the incapacitated person's marriage;

if the petition for dissolution of marriage, legal separation, or annulment of marriage was filed by the incapacitated person or the incapacitated person's spouse before the appointment of the guardian.

As added by P.L.83-2014, SEC.6.

IC 29-3-9-13

Filing petition for dissolution, legal separation, or annulment in guardian's county of residence

Sec. 13. (a) This section applies if a court has authorized a guardian to petition for dissolution of marriage, legal separation, or annulment of marriage on behalf of an incapacitated person under section 12.2 of this chapter.

(b) A guardian may file a petition for dissolution on behalf of an incapacitated person under IC 31-15-2 in the county where the guardian resides in accordance with IC 31-15-2-6.

(c) A guardian may file a petition for legal separation on behalf of an incapacitated person under IC 31-15-3-4 in the county where the guardian resides in accordance with IC 31-15-3-6.

(d) A guardian may file an action to annul a marriage under IC 31-11-10 in the county where the guardian resides in accordance with IC 31-11-10-4.

As added by P.L.83-2014, SEC.7.