

**CHAPTER 30.1-29**  
**PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS**

**30.1-29-01. (5-401) Protective proceedings - Burden of proof.**

Upon petition and after notice and hearing in accordance with the provisions of this chapter, the court may appoint a conservator or make other protective order for cause as follows:

1. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines by a preponderance of the evidence that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by the minor's minority, or that funds are needed for the minor's support and education and that protection is necessary or desirable to obtain or provide funds.
2. Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person, including a minor, if the court determines by clear and convincing evidence:
  - a. The person is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication;
  - b. The person is unable to manage the person's property and affairs effectively for reasons of confinement, detention by a foreign power, or disappearance; or
  - c. The person has property that will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds.

**30.1-29-02. (5-402) Protective proceedings - Jurisdiction of affairs of protected persons.**

Repealed by S.L. 2009, ch. 278, § 2.

**30.1-29-03. (5-403) Venue.**

Venue for proceedings under this chapter is:

1. In the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place.
2. If the person to be protected does not reside in this state, in any place where the person has property.

**30.1-29-04. (5-404) Original petition for appointment or protective order.**

1. The person to be protected, any person who is interested in the estate, affairs, or welfare of the person to be protected, including the protected person's parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of property and affairs of the person to be protected may petition for the appointment of a conservator or for other appropriate protective order.
2. The petition must state or include, to the extent known:
  - a. The interest of the petitioner;
  - b. The name, age, residence, and address of the person to be protected;
  - c. The name and address of the guardian of the person to be protected, if any;
  - d. The name and address of the nearest relative of the person to be protected known to the petitioner;
  - e. A general statement of property of the person to be protected with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which the person to be protected is entitled;
  - f. The extent of conservatorship authority sought;
  - g. The name and address of any person designated as an attorney in fact or agent in a power of attorney;

- h. The name and address of any representative payee for the person to be protected;
- i. That less intrusive alternatives to conservatorship have been considered;
- j. If the appointment of a conservator is requested under subdivision a of subsection 2 of section 30.1-29-01, an attached recent statement, if any, from an expert examiner which describes the physical, mental, and emotional limitations of the person to be protected;
- k. The reason why appointment of a conservator or other protective order is necessary; and
- l. If the appointment of a conservator is requested, the name and address of the person whose appointment is sought and the basis of the person's priority for appointment.

**30.1-29-05. (5-405) Notice.**

1. On a petition for appointment of a conservator or other protective order, the petitioning party shall cause notice of the proceeding to be served personally on the person to be protected and the spouse of the person to be protected or, if none, the parents of the person to be protected, or any guardian or conservator, at least fourteen days before the date of hearing. If none of these parties can be found, any government agency paying benefits to the person sought to be protected, if the person seeking the appointment has knowledge of the existence of these benefits, must be given notice in accordance with section 30.1-03-01.
2. Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 30.1-29-06 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsection 1, notice shall be given in accordance with section 30.1-03-01.

**30.1-29-06. (5-406) Protective proceedings - Request for notice - Interested person.**

Any interested person who desires to be notified before any order is made in a protective proceeding may file with the court a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the person's address, or that of the person's attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

**30.1-29-07. (5-407) Procedure concerning hearing and order on original petition.**

1. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to serve as guardian ad litem for the minor, giving consideration to the choice of the minor if fourteen years of age or older. The duties of a guardian ad litem include:
  - a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;
  - b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;

- c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
  - d. Interviewing the person seeking appointment as conservator;
  - e. Obtaining any other relevant information;
  - f. Submitting a written report to the court containing the guardian ad litem's response to the petition and an assessment of the protected person's ability to attend the hearing either in person or by remote means; and
  - g. Attending the hearing unless excused by the court for good cause.
2. Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. The proposed conservator, if any, shall attend the hearing unless excused by the court for good cause. If, at any time in the proceeding, the court determines that the interests of the person to be protected are or may be inadequately represented, the court shall appoint an attorney to serve as guardian ad litem for the person to be protected. The duties of a guardian ad litem include:
- a. Meeting, interviewing, and consulting with the person to be protected regarding the conservatorship proceeding, including explaining the purpose for the interview in the language, mode of communication, and terms the person is most likely to understand, the nature and possible consequences of the proceeding, the rights to which the person is entitled, and the legal options available, including the right to retain an attorney to represent the person;
  - b. Advocating for the best interests of the person to be protected. The appointed attorney serving as guardian ad litem may not represent the person in a legal capacity;
  - c. Ascertaining the views of the person to be protected concerning the proposed conservator, the powers and duties of the proposed conservator, the proposed conservatorship, and the scope and duration of the conservatorship;
  - d. Interviewing the person seeking appointment as conservator;
  - e. Obtaining any other relevant information;
  - f. Submitting a written report to the court containing the guardian ad litem's response to the petition and an assessment of the protected person's ability to attend the hearing either in person or by remote means; and
  - g. Attending the hearing unless excused by the court for good cause.
3. If the petition seeks appointment of a conservator or other protective order for reasons other than minority and the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court shall direct the person to be protected be examined by an expert examiner designated by the court. The expert examiner preferably should be someone who is not connected with any institution in which the person is a patient or is detained.
- a. An expert examiner appointed under this subsection shall examine the person to be protected and submit a written report to the court. The report must contain:
    - (1) A description of the nature and degree of any current disability, including the medical or psychological history, if reasonably available;
    - (2) A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current disability;
    - (3) A statement about how or in what manner any underlying condition of physical or mental health affects the ability of the person to be protected to provide for personal needs; and
    - (4) A statement about whether any current medication or physical or mental conditions affect the demeanor of the person to be protected or the ability of the person to attend and participate fully in any court proceeding or in any other procedure required by the court or by court rule.
  - b. The court, guardian ad litem, petitioner, or person to be protected may subpoena the expert examiner who prepared and submitted the report to appear, testify, and be cross-examined.

4. The person to be protected must be present at the hearing in person or by remote means, unless good cause is shown for the absence. Good cause does not consist of the physical difficulty of the person to be protected to attend the hearing. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. The court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the person to be protected.
5. In determining whether appointment of a conservator is appropriate, the court shall consider the reports ordered by the court under this section from a guardian ad litem and an expert examiner. In any case in which the veterans' administration is or may be an interested party, a certificate of an authorized official of the veterans' administration that the person to be protected has been found incapable of handling their benefits payable on examination in accordance with the laws and regulations governing the veterans' administration is prima facie evidence of the necessity for a conservator or other protective order.
6. After hearing, upon finding that the appointment of a conservator or other protective order is appropriate, the court shall make an appointment or other appropriate protective order. After the hearing, the guardian ad litem must be discharged of the duties as guardian ad litem.
7. If the court approves a conservator, that person may receive reasonable compensation and reimbursement from the protected person's estate if the compensation and reimbursement will not unreasonably jeopardize the protected person's well-being and estate. The court shall consider the following factors when determining what constitutes reasonable compensation and reimbursement:
  - a. The size and nature of the protected person's estate;
  - b. The benefit to the protected person, or the protected person's estate, of the conservator's services;
  - c. The necessity for the services performed;
  - d. The protected person's anticipated future needs and income;
  - e. The time spent by the conservator in the performance of the services;
  - f. Whether the services were routine or required more than ordinary skill or judgment;
  - g. Any unusual skill, expertise, or experience brought to the performance of the services;
  - h. The conservator's estimate of the value of the services performed;
  - i. The fee customarily charged in the community for similar services;
  - j. The nature and length of the relationship with the protected person;
  - k. The experience, reputation, diligence, and ability of the person performing the service;
  - l. Any conflict of interest the conservator may have; and
  - m. Whether the appointment as conservator precluded the conservator from other employment.
8. The court may determine the weight to be given to each factor under subsection 7, if any, and to any other factor the court considers relevant. A separate finding is not required for each factor, but the court's findings must contain sufficient specificity to show the factual basis for the court's determination.
9. The court shall approve compensation and reimbursement before payment to the conservator is made.

**30.1-29-08. (5-408) Permissible court orders.**

1. The court shall exercise the authority conferred in this chapter consistent with the 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.

2. The court has the following powers which may be exercised directly or through a conservator, subject to section 30.1-29-22, in respect to the estate and affairs of protected persons:
  - a. While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without prior 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 benefit of the person to be protected or the benefit of the dependents of the person to be protected.
  - b. After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor, 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, the minor's family, and members of the minor's household.
  - c. After hearing and upon determining that appointment of a conservator or other protective order is appropriate with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of the person's household, all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will. These powers include power to make gifts, to convey or release the person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy, to exercise or release the person's 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 the person's disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise the person's rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise the person's right to an elective share in the estate of the person's deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.
  - d. 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 twenty percent 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 the protected person either is incapable of consenting or has consented to the proposed exercise of power.
  - e. An order made pursuant to this section determining that appointment of a conservator or other protective order is appropriate has no effect on the capacity of the protected person.
3. Unless terminated earlier by the court, an order appointing or reappointing a conservator under this section is effective for up to five years. At least ninety days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the conservator, the protected person, the protected person's attorney, if any, and any interested persons regarding whether the need for a conservator continues to exist. If it is recommended the conservatorship continue, the court may appoint a guardian ad litem in accordance with section 30.1-29-07. The court shall hold a hearing on whether the conservatorship should continue. Following the hearing and consideration of submitted information, the court may reappoint the conservator for up to another five years, allow the existing order to expire, or appoint a new conservator in accordance with this section. The supreme court, by rule or order, shall provide for regular review of conservatorships in existence on August 1, 2017.

**30.1-29-09. (5-409) Protective arrangements and single transactions authorized.**

1. If it is established in a proper proceeding that a basis exists, as described in section 30.1-29-01, for affecting the property and affairs of a person, the court, without

appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include payment, delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust. The sale of real property is subject to section 30.1-29-22.

2. When it has been established in a proper proceeding that a basis exists, as described in section 30.1-29-01, for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving the protected person's estate if the court determines that the transaction is in the best interests of the protected person.
3. Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of the protected person's disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order, after report to the court of all matters done pursuant to the order of appointment.
4. This section does not apply to a guardian or conservator.

**30.1-29-10. (5-410) Who may be appointed conservator - Priorities.**

1. The court may appoint an individual, limited liability company, association, corporation, or other entity with general power to serve as trustee, as conservator of the estate of a protected person.
2. Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a conservator in accordance with the protected person's most recent nomination in a durable power of attorney.
3. Except as provided in subsection 2, persons who are not disqualified have priority for appointment as conservator in the following order:
  - a. A conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides.
  - b. An individual or corporation nominated by the protected person by other means than provided for in subsection 2 if the protected person is fourteen or more years of age and, in the opinion of the court, has sufficient mental capacity to make an intelligent choice.
  - c. The spouse of the protected person.
  - d. An adult child of the protected person.
  - e. A parent of the protected person, or a person nominated by the will of a deceased parent.
  - f. Any relative of the protected person with whom the protected person has resided for more than six months prior to the filing of the petition.
  - g. A person nominated by the person who is caring for or paying benefits to the protected person.
4. A person denominated in subdivision a, c, d, e, or f of subsection 3 may nominate, in writing, a substitute to serve instead and thereby transfer the priority to the substitute. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having higher priority and appoint a person having lower priority or no priority.

**30.1-29-11. (5-411) Bond.**

Except as provided herein, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it

shall specify. Unless reduced or waived by the court for good cause, the bond shall be in the amount of the aggregate capital value of the property of the estate in the conservator's control plus one year's estimated income, including veterans' administration benefits received during that year, minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. In lieu of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

**30.1-29-12. (5-412) Terms and requirements of bonds.**

1. The following requirements and provisions apply to any bond required under section 30.1-29-11:
  - a. Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.
  - b. By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to the surety by registered or certified mail at the surety's address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner.
  - c. On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator.
  - d. The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.
2. No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

**30.1-29-13. (5-413) Acceptance of appointment - Consent to jurisdiction.**

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding, relating to the estate, that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to the conservator by registered or certified mail at the conservator's address as listed in the petition for appointment or as thereafter reported to the court and to the conservator's address as then known to the petitioner.

**30.1-29-14. (5-414) Compensation and expense.**

1. When the estate is derived, in whole or in part, from money paid or being paid by the veterans' administration to the conservator or the conservator's predecessor for the benefit of the protected person, the compensation allowed from such money to the conservator shall be limited to five percent of the amount of money received from the agency during the period covered by the account, except that the court may allow a minimum compensation of not to exceed fifty dollars per year. No commission or compensation will be allowed for receipt of moneys or other assets received from a prior fiduciary nor upon the amount received from liquidation of loans or other investments.
2. If not otherwise compensated for services rendered, any lawyer, expert examiner, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

**30.1-29-15. (5-415) Death, resignation, or removal of conservator.**

The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After a conservator's death, resignation, or removal, the court

may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

**30.1-29-16. (5-416) Petitions for orders subsequent to appointment.**

1. Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:
  - a. Requiring bond or security or additional bond or security, or reducing bond;
  - b. Requiring an accounting for the administration of the trust;
  - c. Directing distribution;
  - d. Removing the conservator and appointing a temporary or successor conservator;  
or
  - e. Granting other appropriate relief.
2. A conservator may petition the appointing court for instructions concerning the conservator's fiduciary responsibility.
3. Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

**30.1-29-17. (5-417) General duty of conservator.**

In the exercise of conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees.

**30.1-29-18. (5-418) Inventory and records.**

Within ninety days after appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with the conservator's oath or affirmation that it is complete and accurate so far as the conservator is informed. The conservator shall provide a copy thereof to the protected person if the protected person can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any guardian, spouse, or parent, if the protected person is a minor, and to any interested persons designated by the court in its order. The conservator shall keep suitable records of the conservator's administration and exhibit the same on request of any interested person.

**30.1-29-19. (5-419) Annual reports and accounts.**

1. At least once annually and at other times as the court may direct, a conservator shall file a report and account with the court regarding the exercise of powers and duties specified in the court's order of appointment. The report must describe any expenditure and income affecting the protected person, any sale or transfer of property affecting the protected person, and any exercise of authority by the conservator affecting the protected person.
2. On termination of the protected person's minority, or on termination by a court with jurisdiction, a conservator shall file a final report and accounting and provide a copy of the report or accounting to the protected person and other parties as indicated in section 30.1-29-18. The report or accounting must be filed with the clerk of district court. The filing of the report or accounting does not constitute the court's approval of the report or accounting. The court may approve a report and settle and allow an accounting only upon notice to the protected person and other interested persons who have made an appearance or requested notice of proceedings. An order, after notice and hearing, allowing an intermediate account of a conservator, adjudicates liabilities concerning the matters considered in connection therewith, adequately disclosed in the accounting. An order, after notice and hearing, allowing a final account, adjudicates all previously unsettled liabilities relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify. The office of the state court administrator shall provide printed forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state



court administrator's form. The forms must be available in the office of clerk of district court or obtainable through the supreme court's internet website.

3. Copies of the conservator's annual report to the court and of any other reports required by the court must be mailed by the conservator to the protected person and other parties as required under section 30.1-29-18. The protected person's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the protected person's right to seek alteration, limitation, or termination of the conservatorship at any time.

### **30.1-29-20. (5-420) Conservators - Title by appointment.**

The appointment of a conservator vests in the conservator title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact, or to the part thereof specified in the order. An order specifying that only a part of the property of the protected person vests in the conservator creates a limited conservatorship. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of the protected person's rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

#### **30.1-29-20.1. Emergency conservator.**

1. On petition by a person interested in the estate of the person to be protected, the court may appoint an emergency conservator if the court finds that compliance with the procedures in this chapter likely will result in substantial harm to the estate of the person to be protected, and that no other person appears to have authority and willingness to act in the circumstances. The court may appoint the conservator for a specified period of time, not to exceed ninety days. Immediately upon receipt of the petition for an emergency conservator, the court shall appoint a guardian ad litem to advocate for the best interests of the estate of the person to be protected in the proceeding and any subsequent proceeding. Except as otherwise provided in subsection 2, reasonable notice of the time and place of a hearing on the petition must be given to the person whose estate is to be protected, the person's spouse, if any, and any other persons as the court directs.
2. An emergency conservator may be appointed without notice only if the court finds from affidavit or other sworn testimony that the estate of the person to be protected will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice, the person whose estate is to be protected and the person's spouse, if any, must be given notice of the appointment within forty-eight hours. The court shall hold a hearing on the appropriateness of the appointment within ten days after the appointment.
3. Appointment of an emergency conservator, with or without notice, is not a determination of the person or the estate of the person's need for protection.
4. The court may remove an emergency conservator at any time. An emergency conservator shall make any report the court requires. In all other respects, the provisions of this chapter concerning conservators apply to an emergency conservator.

#### **30.1-29-21. (5-421) Recording of conservator's letters.**

Letters of conservatorship are evidence of transfer of all assets, or the part thereof specified in the letters, of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate subjected to the conservatorship from the conservator to the protected person or the protected person's successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be

filed or recorded to give record notice of title as between the conservator and the protected person.

**30.1-29-22. (5-422) Authorization of single transaction to sell real property of the protected person.**

1. Any sale or encumbrance to a conservator, the conservator's spouse, agent, or attorney, or any corporation, limited liability company, or trust in which the conservator has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court, after notice to interested persons and others as directed by the court.
2. A conservator shall move the court for authorization to sell real property of the person to be protected, upon such terms as the court may order, for the purpose of paying the protected person's debts; providing for the care, maintenance, rehabilitation, training, or education of the person to be protected or the dependents of the person to be protected; or for any other purpose in the best interests of the person to be protected.
  - a. The motion must contain:
    - (1) A description of the property;
    - (2) The details of the sale;
    - (3) The reason for the transaction;
    - (4) The current fair market value of the property, including an appraisal unless good cause is shown;
    - (5) An explanation of why the transaction is in the best interest of the person to be protected; and
    - (6) A notice that any person interested in the real property of the person to be protected must file an objection to the transaction within ten days of the notice and demand a hearing.
  - b. The motion must be served upon the protected person, the spouse of the person to be protected, and all interested persons.
  - c. Consent of the spouse of the person to be protected or interested persons must be filed with the motion. If the motion is unopposed, the court may authorize the transaction without a hearing or may conduct a hearing and require proof of the matters necessary to support the authorization of the transaction.
  - d. The court's order must include specific findings regarding whether the transaction is in the best interests of the person to be protected.

**30.1-29-23. (5-423) Persons dealing with conservators - Protection.**

A person who in good faith either assists a conservator or deals with the conservator for value in any transaction other than those requiring a court order as provided in section 30.1-29-08 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 30.1-29-26 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

**30.1-29-24. (5-424) Powers of conservator in administration.**

1. A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state.
2. A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

3. A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, except as provided in section 30.1-29-22, may act without court authorization or confirmation, to:
  - a. Collect, hold, and retain assets of the estate, including land in another state, until, in the conservator's judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested.
  - b. Receive additions to the estate.
  - c. Continue or participate in the operation of any business or other enterprise.
  - d. Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest.
  - e. Invest and reinvest estate assets in accordance with subsection 2.
  - f. Deposit estate funds in a bank, including a bank operated by the conservator.
  - g. Acquire or dispose of an estate asset, including land in another state for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset.
  - h. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings.
  - i. Subdivide, develop, or dedicate land to public use, to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or to partition by giving or receiving considerations, and to dedicate easements to public use without consideration.
  - j. Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.
  - k. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.
  - l. Grant an option involving disposition of an estate asset, except the sale of real property, to take an option for the acquisition of any asset.
  - m. Vote a security, in person or by general or limited proxy.
  - n. Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.
  - o. Sell or exercise stock or membership interest, subscription or conversion rights, to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation, limited liability company, or other business enterprise.
  - p. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held.
  - q. Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons.
  - r. Borrow money to be repaid from estate assets or otherwise, to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the conservator has a lien on the estate as against the protected person for advances so made.
  - s. Pay or contest any claim, to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.
  - t. Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate.

- u. Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties.
- v. Pay any sum distributable to a protected person or the protected person's dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the distributee's guardian or, if none, to a relative or other person with custody of the distributee's person.
- w. Employ persons, including attorneys, auditors, investment advisers, or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of the conservator's administrative duties, to act upon their recommendation without independent investigation, and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.
- x. Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of the conservator's duties.
- y. Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

**30.1-29-25. (5-425) Distributive duties and powers of conservator.**

1. A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and the protected person's dependents in accordance with the following principles:
  - a. The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.
  - b. The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to:
    - (1) The size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage the protected person's affairs and the estate which has been conserved for the protected person.
    - (2) The accustomed standard of living of the protected person and members of the protected person's household.
    - (3) Other funds or sources used for the support of the protected person.
  - c. The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household, who are unable to support themselves, and who are in need of support.
  - d. Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and advance payments are customary or reasonably necessary under the circumstances.
2. If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsection, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might

- have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate.
3. When a minor who has not been adjudged disabled under subsection 2 of section 30.1-29-01 attains majority, the minor's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible. A final report must be filed as provided in section 30.1-29-19.
  4. When the court has determined the conservatorship is no longer needed, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible. A final report must be filed as provided in section 30.1-29-19.
  5. If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the executor or a beneficiary named therein that the conservator has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 30.1-13-04 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section has the effect of an order of appointment of a personal representative as provided in section 30.1-14-08 and chapters 30.1-17 through 30.1-21, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

**30.1-29-26. (5-426) Enlargement or limitation of powers of conservator.**

Subject to the restrictions in subdivision d of subsection 2 of section 30.1-29-08, the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on the conservator by sections 30.1-29-24 and 30.1-29-25, any power which the court itself could exercise under subdivisions b and c of subsection 2 of section 30.1-29-08. The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 30.1-29-24 and 30.1-29-25, or previously conferred by the court, and may at any time relieve the conservator of any limitation. If the court limits any power conferred on the conservator by sections 30.1-29-24 and 30.1-29-25, the limitation shall be endorsed upon the conservator's letters of appointment.

**30.1-29-27. (5-427) Preservation of estate plan.**

In investing the estate, and in selecting assets of the estate for distribution under subsections 1 and 2 of section 30.1-29-25, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including the protected person's will, any revocable trust of which the protected person is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the protected person's death to another or others which the protected person may have originated. The conservator may examine the will of the protected person.

### **30.1-29-28. (5-428) Claims against protected person - Enforcement.**

1. A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:
  - a. The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.
  - b. The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

A claim is deemed presented on the first to occur of either receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within sixty days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

2. A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.
3. If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or the protected person's dependents and existing claims for expenses of administration.

### **30.1-29-29. (5-429) Individual liability of conservator.**

1. Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in the conservator's fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal the conservator's representative capacity and identify the estate in the contract.
2. The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if the conservator is personally at fault.
3. Claims based on contracts entered into by a conservator in the conservator's fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in the conservator's fiduciary capacity, whether or not the conservator is individually liable therefor.
4. Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

### **30.1-29-30. (5-430) Termination of proceeding.**

The protected person, the protected person's personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining, after notice and hearing, that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to the protected person's successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected person or the former protected person's successors to evidence the transfer.

**30.1-29-31. (5-431) Payment of debt and delivery of property to foreign conservator without local proceedings.**

Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of the appointment and an affidavit made by the fiduciary or on the fiduciary's behalf stating:

1. That no protective proceeding relating to the protected person is pending in this state.
2. That the foreign conservator is entitled to payment or to receive delivery.

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

**30.1-29-32. (5-432) Delivery to foreign conservator.**

Repealed by S.L. 2009, ch. 278, § 2.