

ACT 161

H.B. NO. 2297

A Bill for an Act Relating to Guardianship and Protective Proceedings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Article V of chapter 560, Hawaii Revised Statutes, is amended by adding four new parts to read as follows:

“PART 1. GENERAL PROVISIONS

§560:5-101 Short title. Parts 1 through 4 of this article may be cited as the Uniform Guardianship and Protective Proceedings Act.

§560:5-102 Definitions. In parts 1 through 4 of this article:

“Conservator” means a person who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.

“Court” means either a circuit court in this State having jurisdiction in matters relating to the affairs of decedents or the family court, depending on which court has subject matter jurisdiction under section 560:5-106.

“Guardian” means a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent, spouse, reciprocal beneficiary, or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

“Incapacitated person” means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.

“Kokua kanawai” means an individual appointed by a court who has the role and authority granted under rule 113 of the Hawaii probate rules.

“Legal representative” includes an attorney, a representative payee, a guardian or conservator acting for a respondent in this State or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, and an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.

“Minor” means an unemancipated individual who has not attained eighteen years of age.

“Parent” means a parent whose parental rights have not been terminated.

“Protected person” means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

“Respondent” means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

“Ward” means an individual for whom a guardian has been appointed.

§560:5-103 RESERVED.

§560:5-104 Facility of transfer. (a) Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding \$10,000 a year, by transferring it to:

- (1) A person who has the care and custody of the minor and with whom the minor resides;

- (2) A guardian of the minor;
 - (3) A custodian under chapter 553A, the Uniform Transfers To Minors Act or custodial trustee under chapter 554B, the Uniform Custodial Trust Act; or
 - (4) A federally-insured financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor.
- (b) A person who transfers money or property in compliance with this section is not responsible for its proper application.
- (c) A guardian or other person who receives money or property for a minor under subsection (a)(1) or (2) shall only apply it to the support, care, education, health, and welfare of the minor, and may not derive a personal financial benefit except for reimbursement for necessary expenses. Any excess shall be preserved for the future support, care, education, health, and welfare of the minor, and any balance shall be transferred to the minor upon emancipation or attaining majority.

§560:5-105 Delegation of power by parent or guardian. A parent or guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person for a period not exceeding one year, which time limit shall be expressly stated in the document, any power regarding the care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.

§560:5-106 Subject matter jurisdiction. This article applies to, and the court has jurisdiction over, guardianship and related proceedings for individuals domiciled or present in this State, protective proceedings for individuals domiciled in or having property located in this State, and property coming into the control of a guardian or conservator who is subject to the laws of this State.

- (1) Circuit court jurisdiction. The circuit court shall have concurrent jurisdiction over guardianships and related proceedings concerning incapacitated adults. The circuit court shall not have jurisdiction over guardianships and related proceedings concerning minors. The circuit court shall have exclusive jurisdiction over conservatorship proceedings and those proceedings under part 4 of this article, for both adults and minors;
- (2) Family court jurisdiction. The family court shall have exclusive jurisdiction over guardianships and related proceedings concerning minors and concurrent jurisdiction over guardianship and related proceedings concerning incapacitated adults. The family court shall have exclusive jurisdiction over guardianship proceedings concerning minors, regardless of whether the proceeding is based upon the minor's age or the minor's status as an incapacitated person; and
- (3) Consolidation of proceedings regarding same person. Where protective and guardianship proceedings relating to the same person have been initiated, they may be consolidated in the court as the court in the exercise of its discretion shall determine.

§560:5-107 Transfer of jurisdiction. (a) After the appointment of a guardian or conservator or entry of any other protective order, the court making the appointment or entering the order may transfer the proceeding to a court in another circuit in this State or to another state if the court is satisfied that a transfer will serve the best interest of the ward or protected person.

(b) If a guardianship or protective proceeding is pending in another state or a foreign country and a petition for guardianship or protective proceeding is filed in a court in this State, the court in this State shall notify the original court and, after

consultation with the original court, assume or decline jurisdiction, whichever is in the best interest of the ward or protected person.

(c) A guardian, conservator, or like fiduciary appointed in another state may petition the court for appointment as a guardian or conservator in this State if venue in this State is or will be established. The appointment may be made upon proof of appointment in the other state and presentation of a certified copy of the portion of the court record in the other state specified by the court in this State. Notice of hearing on the petition, together with a copy of the petition, shall be given to the ward or protected person, if the ward or protected person has attained fourteen years of age, and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or conservator under this article were applicable. The court shall make the appointment in this State unless it concludes that the appointment would not be in the best interest of the ward or protected person. Upon the filing of an acceptance of office and any required bond, the court shall issue appropriate letters of guardianship or conservatorship. Within fourteen days after an appointment, the guardian or conservator shall send or deliver a copy of the order of appointment to the ward or protected person, if the ward or protected person has attained fourteen years of age, and to all persons given notice of the hearing on the petition.

§560:5-108 Venue. (a) Venue for a guardianship proceeding for a minor is in the circuit of this State in which the minor resides or is present at the time the proceeding is commenced.

(b) Venue for a guardianship proceeding for an incapacitated person:

(1) Is in the circuit of this State in which the respondent resides; or

(2) If the respondent has been admitted to an institution by order of a court of competent jurisdiction, is in the circuit in which the court is located.

Venue for the appointment of an emergency or a temporary substitute guardian of an incapacitated person is also in the circuit in which the respondent is present.

(c) Venue for a protective proceeding is in the circuit of this State in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in this State, in any circuit of this State in which property of the respondent is located.

(d) If a proceeding under this article is brought in more than one circuit in this State, the court of the circuit in which the proceeding is first brought shall have the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

§560:5-109 Practice in court. (a) Except as otherwise provided in this article:

(1) Guardianship proceedings under this article pending in the family court are governed by the Hawaii family court rules including the rules concerning appellate review; and

(2) Guardianship and protective proceedings under this article pending in the court are governed by the Hawaii probate rules, including rules concerning appellate review.

(b) If guardianship and protective proceedings as to the same individual are commenced or pending in the same circuit, the proceedings may be consolidated.

§560:5-110 Letters of office. Upon the guardian's filing of an acceptance of office, the court shall issue appropriate letters of guardianship. Upon the conservator's filing of an acceptance of office and any required bond, the court shall issue appropriate letters of conservatorship. Letters of guardianship shall indicate whether

the guardian was appointed by the court, a parent, or the spouse or reciprocal beneficiary. Any limitation on the powers of a guardian or conservator or of the assets subject to a conservatorship shall be endorsed on the guardian's or conservator's letters.

§560:5-111 Effect of acceptance of appointment. By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship. The petitioner shall send or deliver notice of any proceeding to the guardian or conservator at the guardian's or conservator's address shown in the court records and at any other address then known to the petitioner.

§560:5-112 Termination of or change in guardian's or conservator's appointment. (a) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the applicable court. An appointment by a parent, spouse, or reciprocal beneficiary as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected person.

(b) A ward, protected person, person interested in the welfare of a ward or protected person, or governmental agency may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward or protected person or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.

(c) The court may appoint an additional guardian or conservator at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian or conservator in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but not later than thirty days after the occurrence of the vacancy or other designated event. The additional or successor guardian or conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever last occurs. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.

(d) Notwithstanding section 560:1-401, the court, without a hearing, may remove or accept the resignation of a guardian and appoint the public guardian under chapter 551A as a temporary or successor guardian upon the filing of a petition with notice by regular mail to the last known address of those persons entitled to notice in section 560:5-309 and upon such instructions as the court deems necessary.

§560:5-113 Notice. (a) Except as otherwise ordered or waived by the court for good cause, if notice of a hearing on a petition is required, other than a notice for which specific requirements are otherwise provided, the petitioner shall give notice of the time and place of the hearing to the person to be notified. Notice shall be given in compliance with section 560:1-401, at least fourteen days before the hearing.

(b) Proof of notice shall be made before or at the hearing and filed in the proceeding.

§560:5-114 Waiver of notice. A person may waive notice, in writing, signed by the person or the person's attorney and filed in the proceeding. However, a respondent, ward, or protected person may not waive notice.

§560:5-115 Guardian ad litem. At any stage of a proceeding, the court or the family court may appoint a guardian ad litem if the court or the family court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. The court or the family court shall state on the record the duties of the guardian ad litem and its reasons for the appointment. Persons appointed by the court or the family court, as applicable, to serve as guardians ad litem or to perform any other duties that may be requested by the court in guardianship and protective proceedings shall be compensated in the amounts, if any, that the court deems appropriate and reasonable. Any such compensation shall be paid from the respondent's assets or other source under the jurisdiction of the court or the family court as it shall order.

§560:5-116 Request for notice; interested persons. An interested person not otherwise entitled to notice who desires to be notified before any order is made in a guardianship proceeding, including a proceeding after the appointment of a guardian, or in a protective proceeding, may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall send or deliver a copy of the request to the guardian and 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 address of that person or a lawyer to whom notice is to be given. The request is effective only as to proceedings conducted after its filing. A governmental agency paying or planning to pay benefits, or providing services, to the respondent or protected person is an interested person in a protective proceeding.

§560:5-117 Multiple appointments or nominations. If a respondent or other person makes more than one written appointment or nomination of a guardian or a conservator, the most recent controls.

PART 2. GUARDIANSHIP OF MINOR

§560:5-201 Appointment and status of guardian. A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

§560:5-202 Parental appointment of guardian. (a) A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment before confirmation by the court.

(b) Before the appointment becomes effective, the court may confirm the parent's selection of a guardian and terminate the rights of others to object upon:

- (1) Petition of an appointing parent;
- (2) A finding that the appointing parent will likely become unable to care for the child within two years; and
- (3) Notice as provided in section 560:5-205(a).

(c) Subject to section 560:5-203, the appointment of a guardian becomes effective upon:

- (1) The appointing parent's death;

- (2) An adjudication that the parent is an incapacitated person; or
- (3) A written determination by a physician who has examined the parent that the parent is no longer able to care for the child,

whichever first occurs.

(d) The guardian becomes eligible to act upon the filing of an acceptance of appointment. An acceptance of appointment shall be filed within thirty days after the guardian's appointment becomes effective. The guardian shall:

- (1) File the acceptance of appointment and a copy of the will with the court of the circuit in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the circuit in which the minor resides or is present; and
- (2) Give written notice of the acceptance of appointment to the appointing parent, if living, the minor, if the minor has attained fourteen years of age, and a person other than the parent having care and custody of the minor.

(e) Unless the appointment was previously confirmed by the court, the notice given under subsection (d)(2) shall include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 560:5-203.

(f) Unless the appointment was previously confirmed by the court, within thirty days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in section 560:5-205(a).

(g) The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent which is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

(h) The powers of a guardian who timely complies with the requirements of subsections (d) and (f) relate back to give acts by the guardian, which are of benefit to the minor and occurred on or after the date the appointment became effective, the same effect as those that occurred after the filing of the acceptance of the appointment.

(i) The authority of a guardian appointed under this section terminates upon the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 560:5-203, whichever occurs first.

§560:5-203 Objection by minor or others to parental appointment. Until the court has confirmed an appointee under section 560:5-202, a minor who is the subject of an appointment by a parent and who has attained fourteen years of age, the other parent, or a person other than a parent or guardian having care or custody of the minor, may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn, and if withdrawn, is of no effect. The objection shall not preclude judicial appointment of the person selected by the parent. The court may treat the filing of an objection as a petition for the appointment of an emergency or a temporary guardian under section 560:5-204, and proceed accordingly.

§560:5-204 Judicial appointment of guardian; conditions for appointment. (a) A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

(b) The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and:

- (1) The parents consent;
- (2) All parental rights have been terminated; or
- (3) The parents are unwilling or unable to exercise their parental rights.

(c) If a guardian is appointed by a parent pursuant to section 560:5-202 and the appointment has not been prevented or terminated under section 560:5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 560:5-202 has failed to accept the appointment within thirty days after notice of the guardianship proceeding.

(d) If necessary and on petition or motion and whether or not the conditions of subsection (b) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in section 560:5-113 shall be given to the parents and to a minor who has attained fourteen years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship shall not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under section 560:5-205.

(e) If the court finds that following the procedures of this part will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act under the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed thirty days and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian shall be given to:

- (1) The minor, if the minor has attained fourteen years of age;
- (2) Each living parent of the minor; and
- (3) A person having care or custody of the minor, if other than a parent.

The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment shall be given within forty-eight hours after the appointment and a hearing on the appropriateness of the appointment held within five days after the appointment.

§560:5-205 Judicial appointment of guardian; procedure. (a) After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

- (1) The minor, if the minor has attained fourteen years of age and is not the petitioner;
- (2) Any person alleged to have had the primary care and custody of the minor during the sixty days before the filing of the petition;
- (3) Each living legal parent of the minor whose parental rights have not been terminated pursuant to chapter 571 or 587 or if one parent is deceased, the adult nearest in kinship to the deceased parent that can be found. If both parents are deceased, notice shall be given to each adult sibling of the minor who can be found or, if none, each adult nearest in kinship to each deceased parent that can be found. For good cause, the

court may waive notice to the nearest in kinship upon showing that all reasonable efforts have been made to ascertain the identity and address of the person or to effect notice, that the efforts were unsuccessful, and that further efforts should not be required because that person has not demonstrated a reasonable degree of interest in or concern about the minor;

- (4) Any person nominated as guardian by the minor if the minor has attained fourteen years of age;
- (5) Any appointee of a parent whose appointment has not been prevented or terminated under section 560:5-203; and
- (6) Any guardian or conservator currently acting for the minor in this State or elsewhere.

(b) The court, upon hearing, shall make the appointment if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of section 560:5-204(b) have been met, and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

(c) If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained fourteen years of age.

§560:5-206 Judicial appointment of guardian; priority of minor's nominee; limited guardianship. (a) The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained fourteen years of age, unless the court finds the appointment will be contrary to the best interest of the minor.

(b) In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor ward or other interested person, may limit the powers of a guardian otherwise granted by this part and thereby create a limited guardianship, except where a guardian was appointed subsequent to parental rights terminated under chapter 571 or 587. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

§560:5-207 Duties of guardian. (a) Except as otherwise limited by the court, a guardian of a minor ward has the duties and responsibilities of a parent regarding the ward's support, care, education, health, and welfare. A guardian shall act at all times in the ward's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian shall:

- (1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;
- (2) Take reasonable care of the ward's personal effects and bring a protective proceeding if necessary to protect other property of the ward;
- (3) Expend money of the ward that has been received by the guardian, for the ward's current needs for support, care, education, health, and welfare;
- (4) Conserve any excess money of the ward for the ward's future needs; provided that if a conservator has been appointed for the estate of the ward, the guardian shall pay the money at least quarterly to the conservator to be conserved for the ward's future needs;

- (5) Report the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the ward's welfare or as required by court rule; and
- (6) Inform the court of any change in the ward's custodial dwelling or address.

§560:5-208 Powers of guardian. (a) Except as otherwise limited by the court, a guardian of a minor ward has the powers of a parent regarding the ward's support, care, education, health, and welfare.

(b) A guardian may:

- (1) Apply for and receive money for the support of the ward otherwise payable to the ward's parent, guardian, or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;
- (2) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling; provided that a guardian may only establish or move the ward's custodial dwelling outside the State upon express authorization of the court;
- (3) If a conservator for the estate of a ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;
- (4) Consent to medical or other care, treatment, or service for the ward;
- (5) Consent to the marriage of the ward; and
- (6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(c) The court may specifically authorize the guardian to consent to the adoption of the ward.

§560:5-209 Rights and immunities of guardian. (a) A guardian shall be entitled to such reasonable compensation from the ward's estate for services as guardian and to reimbursement for room, board, and clothing provided by the guardian to the ward, but only as is approved by the court.

(b) A guardian is not:

- (1) Legally obligated to use the guardian's personal funds for the ward's expenses;
- (2) Unless otherwise provided in the contract, individually liable on a contract properly entered into in the guardian's representative capacity in the exercise of the duties and powers as guardian unless the guardian fails to reveal the guardian's capacity and the identity of the ward in the contract;
- (3) Personally liable to a third person for acts of the ward solely by reason of the guardianship; and
- (4) Personally liable for injury to the ward resulting from the negligence or act of a third person providing medical or other care, treatment, or service to the ward except to the extent that a parent would be liable under the circumstances.

§560:5-210 Termination of guardianship; other proceedings after appointment. (a) A guardianship of a minor terminates upon the minor's death, adoption, emancipation or attainment of majority, or as ordered by the court.

(b) A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained fourteen years of age and is not the petitioner, the guardian, and any other person as ordered by the court.

PART 3. GUARDIANSHIP OF INCAPACITATED PERSON

§560:5-301 Appointment and status of guardian. A person becomes a guardian of an incapacitated person by an appointment by a parent, spouse, or reciprocal beneficiary or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

§560:5-302 Appointment of guardian by will or other writing. (a) A parent, by will or other signed writing, may appoint a guardian for an unmarried child who the parent believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.

(b) An individual, by will or other signed writing, may appoint a guardian for the individual's spouse or reciprocal beneficiary who the appointing spouse or reciprocal beneficiary believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.

(c) The incapacitated person, the person having care or custody of the incapacitated person, if other than the appointing parent, spouse, or reciprocal beneficiary, or the adult nearest in kinship to the incapacitated person, may file a written objection to an appointment, unless the court has confirmed the appointment under subsection (d). The filing of the written objection terminates the appointment. An objection may be withdrawn and, if withdrawn, is of no effect. The objection shall not preclude judicial appointment of the person selected by the parent, spouse, or reciprocal beneficiary. Notice of the objection shall be given to the guardian and any other person entitled to notice of the acceptance of the appointment. The court may treat the filing of an objection as a petition for the appointment of an emergency guardian under section 560:5-312 or for the appointment of a limited or unlimited guardian under section 560:5-304 and proceed accordingly.

(d) Before the appointment becomes effective, that court may confirm the appointing parent's, spouse's, or reciprocal beneficiary's selection of a guardian and terminate the rights of others to object upon:

- (1) Petition of the appointing parent, spouse, or reciprocal beneficiary;
- (2) A finding that the appointing parent, spouse, or reciprocal beneficiary will likely become unable to care for the incapacitated person within two years; and
- (3) Notice as provided in this section.

§560:5-303 Appointment of guardian by will or other writing; effectiveness; acceptance; confirmation. (a) The appointment of a guardian under section 560:5-302 becomes effective upon:

- (1) The death of the appointing parent, spouse, or reciprocal beneficiary;
- (2) The adjudication of incapacity of the appointing parent, spouse, or reciprocal beneficiary; or
- (3) A written determination by a physician who has examined the appointing parent, spouse, or reciprocal beneficiary that the appointing parent, spouse, or reciprocal beneficiary is no longer able to care for the incapacitated person,

whichever first occurs.

(b) Unless a person having priority under section 560:5-310 has filed an acceptance of appointment, a guardian appointed under section 560:5-302 becomes eligible to act upon the filing of an acceptance of appointment, which shall be filed within thirty days after the guardian's appointment becomes effective. The guardian shall:

- (1) File the notice of acceptance of appointment and a copy of the will with the court of the circuit in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court in the circuit in which the incapacitated person resides or is present; and
- (2) Give written notice of the acceptance of appointment to the appointing parent, spouse, or reciprocal beneficiary if living, the incapacitated person, a person having care or custody of the incapacitated person other than the appointing parent, spouse, or reciprocal beneficiary, and the adult nearest in kinship.

(c) Unless the appointment was previously confirmed by the court, the notice given under subsection (b)(2) shall include a statement of the right of those notified to terminate the appointment by filing a written objection as provided in section 560:5-302.

(d) An appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

(e) Unless the appointment was previously confirmed by the court, within thirty days after filing the notice and the appointing instrument, a guardian appointed under section 560:5-302 shall file a petition in the court for confirmation of the appointment. The petition shall include the information required under section 560:5-304 and detail the special circumstances of the appointment by a parent, spouse, or reciprocal beneficiary. Notice of the filing shall be given in the manner provided in section 560:5-309.

(f) The authority of a guardian appointed under section 560:5-302 terminates upon the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 560:5-302, whichever first occurs.

(g) The appointment of a guardian under this section is not a determination of incapacity.

(h) The powers of a guardian who timely complies with the requirements of subsections (b) and (e) relate back to give acts by the guardian, which are of benefit to the incapacitated person and occurred on or after the date the appointment became effective, the same effect as those that occurred after the filing of the acceptance of appointment.

§560:5-304 Judicial appointment of guardian; petition. (a) An individual or a person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the individual.

(b)¹ The petition shall set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

- (1) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;
- (2) The name and address of the respondent's:

- (A) Spouse or reciprocal beneficiary, or if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
- (B) Adult children or, if the respondent has none, the respondent's parents and adult siblings, or if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found;
- (3) The name and address of any person responsible for care or custody of the respondent;
- (4) The name and address of any legal representative of the respondent;
- (5) The name and address of any person nominated as guardian by the respondent;
- (6) The name and address of any agent appointed by the respondent under any medical directive or health care power of attorney, or, if none, any designated surrogate under section 327E-5(f);
- (7) The name and address of any proposed guardian and the reason why the proposed guardian should be selected;
- (8) The reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;
- (9) If an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and
- (10) 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.

§560:5-305 Judicial appointment of guardian; preliminaries to hearing.

(a) Upon receipt of a petition to establish a guardianship, the applicable court shall set a date and time for hearing the petition and may appoint a kokua kanawai. The duties and reporting requirements of the kokua kanawai shall be limited to the relief requested in the petition. The kokua kanawai shall be an individual having the training or experience that the court deems appropriate.

(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:

- (1) Requested by the respondent;
- (2) Recommended by the kokua kanawai; or
- (3) The court determines that the respondent needs representation.

(c) The kokua kanawai shall interview the respondent in person and, to the extent that the respondent is able to understand:

- (1) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian;
- (2) Determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship;
- (3) Inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and
- (4) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate.

(d) In addition to the duties imposed by subsection (c), the kokua kanawai shall:

- (1) Interview the petitioner and the proposed guardian;

- (2) Visit the respondent's present dwelling and any dwelling in which the respondent will live if the appointment is made;
- (3) Obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and
- (4) Make any other investigation the court directs.

(e) The kokua kanawai shall promptly file a report in writing with the court, which shall include:

- (1) A recommendation as to whether a lawyer should be appointed to represent the respondent;
- (2) A summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage;
- (3) Recommendations regarding the appropriateness of guardianship, including as to whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;
- (4) A statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship;
- (5) A statement as to whether the proposed dwelling meets the respondent's individual needs;
- (6) A recommendation as to whether a professional evaluation or further evaluation is necessary; and
- (7) Any other matters the court directs.

§560:5-306 Judicial appointment of guardian; professional evaluation.

At or before a hearing under this part, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent shall be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report shall contain:

- (1) A description of the nature, type, and extent of the respondent's specific cognitive and functional limitations;
- (2) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
- (3) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and
- (4) The date of any assessment or examination upon which the report is based.

§560:5-307 Confidentiality of records. The written report of a kokua kanawai and any professional evaluation are confidential and shall be sealed upon filing, but are available to:

- (1) The court;
- (2) The respondent without limitation as to use;
- (3) The petitioner, the kokua kanawai, and the petitioner's and respondent's lawyers, for purposes of the proceeding; and
- (4) Other persons for any purposes that the court may order for good cause.

§560:5-308 Judicial appointment of guardian; presence and rights at hearing. (a) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the kokua kanawai, and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

§560:5-309 Notice. (a) A copy of a petition for guardianship and notice of the hearing on the petition shall be served personally on the respondent. The notice shall include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection shall preclude the court from granting the petition.

(b) In a proceeding to establish a guardianship, notice of the hearing shall be given to the persons listed in the petition. For good cause, the court may waive notice to any person listed in the petition other than the respondent, upon a showing that all reasonable efforts have been made to ascertain the identity and address of the person or to effect notice, that the efforts were unsuccessful, and that further efforts should not be required because that person has not demonstrated a reasonable degree of interest in or concern about the respondent. Failure to give notice under this subsection shall not preclude the appointment of a guardian or the making of a protective order.

(c) Notice of the hearing on a petition for an order after appointment of a guardian, together with a copy of the petition, shall be given to the ward, the guardian, and any other person the court directs.

(d) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the court directs. The notice shall be delivered or sent within fourteen days after the filing of the report.

§560:5-310 Who may be guardian; priorities. (a) Subject to subsection (c), the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority:

- (1) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in this State or elsewhere;
- (2) A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if at the time of the nomination the respondent had sufficient capacity to express a preference;
- (3) An agent appointed by the respondent under any medical directive or health care power of attorney or, if none, any designated surrogate under section 327E-5(f);
- (4) The spouse or reciprocal beneficiary of the respondent or a person nominated by will or other signed writing of a deceased spouse or reciprocal beneficiary;
- (5) An adult child of the respondent;

- (6) A parent of the respondent, or an individual nominated by will or other signed writing of a parent; and
- (7) An adult with whom the respondent has resided for more than six months before the filing of the petition.

(b) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(c) An owner, operator, or employee of a long-term care institution or other care settings at which the respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption, or otherwise ordered by the court.

§560:5-311 Findings; order of appointment. (a) The court may:

- (1) Appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:
 - (A) The respondent is an incapacitated person; and
 - (B) The respondent's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance; or
- (2) With appropriate findings, treat the petition as one for a protective order under section 560:5-401, enter any other appropriate order, or dismiss the proceeding.

(b) The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

(c) Within fourteen days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

§560:5-312 Emergency guardian. (a) If the court finds that compliance with the procedures of this part will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed ninety days and who may exercise only the powers specified in the order. Immediately upon appointment of an emergency guardian, the court may appoint a lawyer to represent the respondent throughout the emergency guardianship. Except as otherwise provided in subsection (b), reasonable notice of the time and place of a hearing on the petition shall be given to the respondent and any other persons as the court directs.

(b) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from 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 to the respondent, the respondent shall be given notice of the appointment within forty-eight hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within ten days after the appointment unless extended by order of the court.

(c) Appointment of an emergency guardian, with or without notice, shall not be deemed a determination of the respondent's incapacity.

(d) The court may remove an emergency guardian or modify the powers granted at any time. An emergency guardian shall make any report the court requires. In other respects, the provisions of this article concerning guardians apply to an emergency guardian.

§560:5-313 Temporary substitute guardian. (a) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward or the affected guardian and other interested persons, then the temporary substitute guardian, within five days after the appointment, shall inform them of the appointment.

(b) The court may remove a temporary substitute guardian or modify the powers granted at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of this article concerning guardians apply to a temporary substitute guardian.

§560:5-314 Duties of guardian. (a) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian at all times shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian shall:

- (1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;
- (2) Take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;
- (3) Expend money of the ward that has been received by the guardian, for the ward's current needs for support, care, education, health, and welfare;
- (4) Conserve any excess money of the ward for the ward's future needs; provided that if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs;
- (5) Immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed; and
- (6) Inform the court of any change in the ward's custodial dwelling or address.

§560:5-315 Powers of guardian. (a) Except as otherwise limited by the court, a guardian may:

- (1) Apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

- (2) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling; provided that a guardian may only establish or move the ward's place of dwelling outside this State upon express authorization of the court;
 - (3) If a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;
 - (4) Consent to medical or other care, treatment, or service for the ward;
 - (5) Consent to the marriage or divorce of the ward; and
 - (6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well being.
- (b) The court may specifically authorize the guardian to consent to the adoption of the ward.

§560:5-316 Rights and immunities of guardian; limitations. (a) A guardian shall be entitled to such reasonable compensation from the ward's estate for services as guardian and to reimbursement for room, board, and clothing provided to the ward, as is approved by order of the court.

(b) A guardian is not:

- (1) Legally obligated to use the guardian's personal funds for the ward's expenses;
- (2) Unless otherwise provided in the contract, individually liable on a contract properly entered into in the guardian's representative capacity in the exercise of the duties and powers as guardian unless the guardian fails to reveal the guardian's capacity and the identity of the ward in the contract;
- (3) Personally liable to a third person for acts of the ward solely by reason of the relationship; and
- (4) Liable for injury to the ward resulting from the wrongful conduct of a third party that provides medical or other care, treatment, or service to the ward, if the guardian exercised reasonable care in choosing the third party.

(c) A guardian, without authorization of the court, may not revoke any health care directions set forth in any medical directive or health care power of attorney of which the ward is the principal. However, the appointment of a guardian automatically terminates the authority of any agent designated in the medical directive or health care power of attorney.

(d) A guardian shall not initiate the commitment of a ward to a mental health-care institution except in accordance with the State's procedure for involuntary civil commitment.

§560:5-317 Reports; monitoring of guardianship. (a) Within thirty days after appointment, a guardian shall report to the court in writing on the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control. A guardian shall report at least annually thereafter and whenever ordered by the court. The report shall state or contain:

- (1) The current mental, physical, and social condition of the ward;
- (2) The living arrangements for all addresses of the ward during the reporting period;
- (3) The medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;

- (4) A summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;
 - (5) If the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest;
 - (6) Plans for future care; and
 - (7) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.
- (b) The court may appoint a kokua kanawai to review a report, interview the ward or guardian, and make any other investigation the court directs.
- (c) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.

§560:5-318 Termination or modification of guardianship. (a) A guardianship terminates upon the death of the ward or upon order of the court.

(b) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

(c) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward that apply to a petition for guardianship. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination unless it is proven by clear and convincing evidence that continuation of the guardianship is in the best interest of the ward.

PART 4. PROTECTION OF PROPERTY OF PROTECTED PERSON

§560:5-401 Protective proceeding. Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this part in relation to the estate and affairs of:

- (1) A minor, if the court determines that:
 - (A) The minor owns money or property requiring management or protection that cannot otherwise be provided;
 - (B) The minor has, or may have, business affairs that may be put at risk or prevented because of the minor's age; or
 - (C) Money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or
- (2) Any individual, including a minor, if the court determines that, for reasons other than age:
 - (A) By clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance, or because the individual is missing, detained, or unable to return to the United States; and
 - (B) By a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and

welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.

§560:5-402 Jurisdiction over business affairs of protected person. After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has:

- (1) Exclusive jurisdiction to determine the need for a conservatorship or other protective order;
- (2) Exclusive jurisdiction to determine how the estate of the protected person, that is subject to the laws of this State, shall be managed, expended, or distributed to or for the use of the protected person, individuals who are in fact dependent upon the protected person, or other claimants; and
- (3) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and questions of title concerning assets of the estate.

§560:5-403 Original petition for appointment or protective order. (a) The following persons may petition for the appointment of a conservator or for any other appropriate protective order:

- (1) The person to be protected;
- (2) An individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian; or
- (3) A person who would be adversely affected by lack of effective management of the property and business affairs of the person to be protected.

(b) The petition under subsection (a) shall set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

- (1) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the respondent will reside if the appointment is made;
- (2) If the petition alleges impairment in the respondent's ability to receive and evaluate information, a brief description of the nature and extent of the respondent's alleged impairment;
- (3) If the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts;
- (4) The name and address of the respondent's:
 - (A) Spouse or reciprocal beneficiary or, if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
 - (B) Adult children or, if the respondent has none, the respondent's parents and adult siblings or, if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;
- (5) The name and address of the person responsible for care or custody of the respondent;
- (6) The name and address of any legal representative of the respondent;

- (7) 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 other anticipated income or receipts;
 - (8) The reason why a conservatorship or other protective order is in the best interest of the respondent; and
 - (9) A proposed itemized budget of income and expenditures.
- (c) If a conservatorship is requested, the petition shall also set forth to the extent known:
- (1) The name and address of any proposed conservator and the reason why the proposed conservator should be selected;
 - (2) The name and address of any person nominated as conservator by the respondent if the respondent has attained fourteen years of age; and
 - (3) The type of conservatorship requested and, if an unlimited conservatorship, the reason why limited conservatorship is inappropriate or, if a limited conservatorship, the property to be placed under the conservator's control and any limitation on the conservator's powers and duties.

§560:5-404 Notice. (a) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order shall be served personally on the respondent if the respondent has attained fourteen years of age, but if the respondent's whereabouts is unknown or personal service cannot be made, service on the respondent shall be made by certified or registered mail or by publication pursuant to section 560:1-401(a)(3). The notice shall include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.

(b) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing shall be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a conservator or the making of another protective order.

(c) Notice of the hearing on a petition for an order after appointment of a conservator or making of another protective order, together with a copy of the petition, shall be given to the protected person, if the protected person has attained fourteen years of age and is not missing, detained, or unable to return to the United States, any conservator of the protected person's estate, and any other person as ordered by the court.

(d) A conservator shall give notice of the filing of the conservator's inventory or report, together with a copy of the inventory or report to the protected person and any other person the court directs. The notice shall be delivered or sent within fourteen days after the filing of the inventory or report.

§560:5-405 Original petition; minors; preliminaries to hearing. (a) Upon the filing of a petition to establish a conservatorship or for another protective order for the reason that the respondent is a minor, the court shall set a date for hearing. If the court determines at any stage of the proceeding that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained fourteen years of age.

(b) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may make orders to preserve and apply the property of the minor as may be required

for the support of the minor or individuals who are in fact dependent upon the minor. The court may appoint a special conservator to assist in that task.

§560:5-406 Original petition; preliminaries to hearing. (a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing. The court may appoint a kokua kanawai. The duties and reporting requirements of the kokua kanawai shall be limited to the relief requested in the petition. The kokua kanawai shall be an individual having such training or experience that the court deems appropriate.

(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:

- (1) Requested by the respondent;
- (2) Recommended by the kokua kanawai; or
- (3) The court determines that the respondent needs representation.

(c) The kokua kanawai shall interview the respondent in person and, to the extent that the respondent is able to understand:

- (1) Explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;
- (2) If the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;
- (3) Inform the respondent of the respondent's rights, including the right to employ or request that the court appoint a lawyer to consult with a lawyer at the respondent's own expense; and
- (4) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate unless the court otherwise directs.

(d) In addition to the duties imposed by subsection (c), the kokua kanawai shall:

- (1) Interview the petitioner and the proposed conservator, if any; and
- (2) Make any other investigation the court directs.

(e) The kokua kanawai shall promptly file a report with the court, which shall include:

- (1) A recommendation as to whether a lawyer should be appointed to represent the respondent;
- (2) Recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;
- (3) A statement of the qualifications of the proposed conservator, together with a statement as to whether the respondent approves or disapproves of the proposed conservator, and a statement of the powers and duties proposed or the scope of the conservatorship;
- (4) A recommendation as to whether a professional evaluation or further evaluation is necessary; and
- (5) Any other matters the court directs.

(f) The court may also appoint a physician, psychologist, or other individual qualified to evaluate the alleged impairment to conduct an examination of the respondent.

(g) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent. The court may appoint a special conservator to assist in that task.

§560:5-407 Confidentiality of records. The written report of a kokua kanawai and any professional evaluation are confidential and shall be sealed upon filing, but shall be available to:

- (1) The court;
- (2) The respondent without limitation as to use;
- (3) The petitioner, the kokua kanawai, and the petitioner's and respondent's lawyers, for purposes of the proceeding; and
- (4) Other persons for any purposes that the court may order for good cause.

§560:5-408 Original petition; procedure at hearing. (a) Unless excused by the court for good cause, a proposed conservator shall attend the hearing. The respondent shall attend the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the kokua kanawai, and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

§560:5-409 Original petition; orders. (a) If a proceeding is brought for the reason that the respondent is a minor, after a hearing on the petition, upon finding that the appointment of a conservator or other protective order is in the best interest of the minor, the court shall make an appointment or other appropriate protective order.

(b) If a proceeding is brought for reasons other than that the respondent is a minor, after a hearing on the petition, upon finding that a basis exists for a conservatorship or other protective order, the court shall make the least restrictive order consistent with its findings. The court shall make orders necessitated by the protected person's limitations and demonstrated needs, including appointive and other orders that will encourage the development of maximum self-reliance and independence of the protected person.

(c) Within fourteen days after entry of the order of appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained fourteen years of age and is not missing, detained, or unable to return to the United States, and to all other persons given notice of the petition.

(d) The appointment of a conservator or the entry of another protective order shall not be deemed a determination of incapacity of the protected person under article 3.

§560:5-410 Powers of court. (a) After hearing and upon determining that a basis for a conservatorship or other protective order exists, the court shall have the following powers which may be exercised directly or through a conservator:

- (1) With respect to a minor for reasons of age, all the powers over the estate and business affairs of the minor which may be necessary for the best interest of the minor and members of the minor's immediate family; and
- (2) With respect to an adult, or to a minor for reasons other than age, for the benefit of the protected person and individuals who are in fact dependent on the protected person for support, all the powers over the estate and business affairs of the protected person that the person could exercise if the person were an adult, present, and not under conservatorship or other protective order.

(b) Subject to section 560:5-110 requiring endorsement of limitations on the letters of office, the court may limit at any time the powers of a conservator otherwise conferred and may remove or modify any limitation.

§560:5-411 Required court approval. (a) After notice to interested persons and upon express authorization of the court, a conservator may:

- (1) Make gifts, except as otherwise provided in section 560:5-427(b);
- (2) 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;
- (3) Exercise or release a power of appointment;
- (4) Create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;
- (5) Exercise rights to elect options and change beneficiaries under retirement plans, insurance policies and annuities, or surrender the policies and annuities for their cash value;
- (6) Exercise any right to an elective share in the estate of the protected person's deceased spouse or reciprocal beneficiary and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and
- (7) Make, amend, or revoke the protected person's will.

(b) A conservator, in making, amending, or revoking the protected person's will, shall comply with state laws for executing wills.

(c) The court, in exercising or in approving a conservator's exercise of the powers listed in subsection (a), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The court shall also consider:

- (1) The financial needs of the protected person and the needs of individuals who are in fact dependent on the protected person for support and the interest of creditors;
- (2) Possible reduction of income, estate, inheritance, or other tax liabilities;
- (3) Eligibility for governmental assistance;
- (4) The protected person's previous pattern of giving or level of support;
- (5) The existing estate plan;
- (6) The protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and
- (7) Any other factors the court considers relevant.

§560:5-412 Protective arrangements and single transactions. (a) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may:

- (1) Authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:
 - (A) Payment, delivery, deposit, or retention of funds or property;
 - (B) Sale, mortgage, lease, or other transfer of property;
 - (C) Purchase of an annuity;
 - (D) Making a contract for life care, deposit contract, or contract for training and education; or
 - (E) Addition to or establishment of a suitable trust, including a trust created under chapter 554B; and

- (2) Authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.

(b) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in section 560:5-411(c).

(c) The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The special conservator shall have the authority conferred by the order and shall serve until discharged by order after reporting to the court.

§560:5-413 Who may be conservator; priorities. (a) Except as otherwise provided in subsection (d), the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:

- (1) A conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides;
- (2) A person nominated as conservator by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if the respondent has attained fourteen years of age and at the time of the nomination had sufficient capacity to express a preference;
- (3) An agent appointed by the respondent to manage the respondent's property under a durable power of attorney;
- (4) The spouse or reciprocal beneficiary of the respondent;
- (5) An adult child of the respondent;
- (6) A parent of the respondent; and
- (7) An adult with whom the respondent has resided for more than six months before the filing of the petition.

(b) A person having priority under subsection (a)(1), (4), (5), or (6) may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.

(c) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the protected person, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(d) An owner, operator, or employee of a long-term care institution at which the respondent is receiving care shall not be appointed as conservator unless related to the respondent by blood, marriage, adoption, or otherwise ordered by the court.

§560:5-414 Petition for order subsequent to appointment. (a) A protected person or a person interested in the welfare of a protected person may file a petition in the appointing court for an order:

- (1) Requiring bond or collateral or additional bond or collateral, or reducing bond or collateral;
 - (2) Requiring an accounting for the administration of the protected person's estate;
 - (3) Directing distribution;
 - (4) Removing the conservator and appointing a temporary or successor conservator;
 - (5) Modifying the type of appointment or powers granted to the conservator if the extent of protection or management previously granted is currently excessive or insufficient or the protected person's ability to manage the estate and business affairs has so changed as to warrant the action; or
 - (6) Granting other appropriate relief.
- (b) A conservator may petition the appointing court for instructions concerning fiduciary responsibility.
- (c) Upon notice and hearing the petition, the court may give appropriate instructions and make any appropriate order.

§560:5-415 Bond. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties as it may specify. Unless otherwise directed by the court, the cost of the bond shall be charged to the protected person's estate and 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, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. The court, in place of sureties on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

§560:5-416 Terms and requirements of bond. (a) The following rules apply to any bond required:

- (1) Sureties and the conservator are jointly and severally liable;
 - (2) By executing the bond of a conservator, a surety submits to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator in which the surety is named as a party. Notice of any proceeding shall be sent or delivered to the surety at the address shown in the court records at the place where the bond is filed and to any other address then known to the petitioner;
 - (3) On petition of a successor conservator or any interested person, a proceeding may be brought against a surety for breach of the obligation of the bond of the conservator; and
 - (4) The bond of the conservator may be proceeded against until liability under the bond is exhausted.
- (b) A proceeding may not be brought against a surety on any matter as to which an action or proceeding against the primary obligor is barred.

§560:5-417 Compensation and expenses. If not otherwise compensated for services rendered, a guardian, conservator, physician, lawyer for the respondent, lawyer whose services resulted in a protective order or in an order beneficial to a protected person's estate, or any person appointed by the court is entitled to reasonable compensation from the estate, even if no guardian or conservator is appointed. Compensation may be paid and expenses reimbursed without court order.

If the court or the family court determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount shall be repaid to the estate.

§560:5-418 General duties of conservator. (a) A conservator, in relation to powers conferred by this article or implicit in the title acquired by virtue of the proceeding, shall be a fiduciary and shall observe the standards of care applicable to a trustee.

(b) A conservator may exercise authority only as necessitated by the limitations of the protected person, and to the extent possible, shall encourage the person to participate in decisions, act in the person's own behalf, and develop or regain the ability to manage the person's estate and business affairs.

(c) In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the person.

§560:5-419 Inventory; records. (a) Within sixty days after entry of the order of appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(b) A conservator shall keep records of the administration of the estate and make them available for examination and copying on reasonable request of an interested person.

§560:5-420 Reports; appointment of kokua kanawai. (a) A conservator shall file a petition for approval of accounts and report to the court for administration of the estate annually unless the court otherwise directs, upon resignation or removal, upon termination of the conservatorship, and at other times as the court directs. An order allowing an intermediate report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the accounting. An order allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship, and, subject to appeal and subject to vacation, is final as to all persons with respect to all issues concerning the estate that the court considered or might have considered.

(b) A report shall include:

- (1) A list of the assets of the estate under the conservator's control and a list of the receipts, disbursements, and distributions during the period for which the report is made;
- (2) A list of the services provided to the protected person; and
- (3) Any recommended changes in the budget for the conservatorship as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.

(c) The court may appoint a kokua kanawai to review a report or budget, interview the protected person or conservator, and make any other investigation the court directs. In connection with a report, the court may order a conservator to submit the assets of the estate to an appropriate examination to be made in a manner the court directs.

§560:5-421 Title by appointment. (a) The appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to

the part thereof specified in the order, held at the time of appointment or thereafter acquired, including title to any property held for the protected person by custodians or attorneys-in-fact. An order vesting title in the conservator to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order.

(b) Letters of conservatorship are evidence of vesting title of the protected person's assets in the conservator. An order terminating a conservatorship transfers title to assets remaining subject to the conservatorship, including any described in the order, to the formerly protected person or the person's successors.

(c) Subject to the requirements of other laws 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 notice of title as between the conservator and the protected person.

(d) Except as limited in the appointing order, a conservator has the authority to continue, modify, or revoke any financial power of attorney previously created by the protected person.

(e) Upon notice of the appointment of a conservator, all agents acting under a previously created power of attorney by the protected person shall:

- (1) Take no further actions without the direct written authorization of the conservator;
- (2) Promptly report to the conservator as to any action taken under the power of attorney; and
- (3) Promptly account to the conservator for all actions taken under the power of attorney.

(f) Nothing in this section shall be construed to affect previously created medical decision-making authority. Any agent violating this section shall be liable to the protected person's estate for all costs incurred in attempting to obtain compliance, including, but not limited to reasonable conservator and attorney fees and costs.

§560:5-422 Protected person's interest inalienable. (a) Except as otherwise provided in subsections (c) and (d), the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages which, subject to presentation and allowance, may be satisfied as provided in section 560:5-429.

(b) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed under section 560:5-429.

(c) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession, is protected as if the protected person or transferee had valid title.

(d) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided in other law.

§560:5-423 Sale, encumbrance, or other transaction involving conflict of interest. Any transaction involving the conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involv-

ing the conservatorship estate entered into by the conservator, the spouse or reciprocal beneficiary, descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

§560:5-424 Protection of person dealing with conservator. (a) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order under section 560:5-410 or 560:5-411 is protected as though the conservator properly exercised the power. 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 the exercise, but restrictions on powers of conservators that are endorsed on letters as provided in section 560:5-110 are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their proper application.

(b) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

§560:5-425 Powers of conservator in administration. (a) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters, a conservator has all of the powers granted in this section and any additional powers granted by law to a trustee in this State.

(b) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without further court authorization or confirmation, may:

- (1) Collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;
- (2) Receive additions to the estate;
- (3) Continue or participate in the operation of any business or other enterprise;
- (4) Acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest;
- (5) Invest assets of the estate as though the conservator were a trustee;
- (6) Deposit money of the estate in a financial institution, including one operated by the conservator;
- (7) Acquire or dispose of an asset of the estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate; provided that any sale of real property in the State shall be subject to confirmation pursuant to section 531-29;
- (8) 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;
- (9) Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;
- (10) 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;

- (11) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (12) Grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset;
- (13) Vote a security, in person or by general or limited proxy;
- (14) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (15) Sell or exercise stock subscription or conversion rights;
- (16) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (17) 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;
- (18) Insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;
- (19) Borrow money, with or without security, to be repaid from the estate or otherwise and 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 assets, for which the conservator has a lien on the estate as against the protected person for advances so made;
- (20) Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;
- (21) Pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (22) Allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;
- (23) Pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:
 - (A) To the guardian of the distributee;
 - (B) To a distributee's custodian under chapter 553A or custodial trustee under chapter 554B; or
 - (C) If there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;
- (24) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties; and
- (25) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

(c) In investing the estate, and in selecting assets of the estate for distribution under section 560:5-427, in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, and in exercising any other power vested in them, the conservator and the court shall 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.

§560:5-426 Delegation. (a) A conservator shall not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the performance of functions that a prudent trustee of comparable skills may delegate under similar circumstances.

- (b) The conservator shall exercise reasonable care, skill, and caution in:
- (1) Selecting an agent;
 - (2) Establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;
 - (3) Periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and
 - (4) Redressing an action or decision of an agent that would constitute a breach of trust if performed by the conservator.

(c) A conservator who complies with subsections (a) and (b) is not liable to the protected person or to the estate or to the protected person's successors for the decisions or actions of the agent to whom a function was delegated.

(d) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.

(e) By accepting a delegation from a conservator subject to the laws of this State, an agent submits to the jurisdiction of the courts of this State.

§560:5-427 Principles of distribution by conservator. (a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child or spousal support, in accordance with the following rules:

- (1) A conservator shall consider recommendations relating to the appropriate standard of support, care, education, health, and welfare for the protected person or an individual who is in fact dependent on the protected person made by a guardian, if any, and, if the protected person is a minor, the conservator shall consider recommendations made by a parent;
- (2) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefit to a protected person, or an individual who is in fact dependent on the protected person, in accordance with the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person;
- (3) In making distributions under this subsection, the conservator shall consider:
 - (A) The size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage the protected person's own business affairs and the estate;

- (B) The accustomed standard of living of the protected person and individuals who are in fact dependent on the protected person; and
 - (C) Other money or sources used for the support of the protected person; and
- (4) Money expended under this subsection may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator may have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.
- (b) If an estate is ample to provide for the distributions authorized by subsection (a), a conservator for a protected person other than a minor may make gifts that the protected person may have been expected to make, in amounts that do not exceed, in the aggregate, for any calendar year twenty per cent of the income of the estate in that year.

§560:5-428 Death of protected person. If a protected person dies, the conservator, with reasonable promptness shall deliver any will of the protected person that may have come into the conservator's possession to a person able to secure its probate or, if none is known, deposit the will with an appropriate court. The conservator shall inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it. A person who knowingly and wilfully fails to so deliver or deposit a will is liable to any person aggrieved for any damages that may be sustained by the failure, and the court may award treble damages. A person who wilfully refuses to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court. Proceedings under this section shall be brought in the probate proceeding relating to the will.

§560:5-429 Presentation and allowance of claims. (a) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in subsection (d). A claimant may present a claim by:

- (1) Sending or delivering to the conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or
- (2) Filing a written statement of the claim, in a form acceptable to the court, with the clerk of court and sending or delivering a copy of the statement to the conservator.

(b) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court, whichever first occurs. A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within sixty days after its presentation. The conservator, before payment, may change an allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until thirty days after its disallowance.

(c) 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 a statute of limitations and, upon due proof, procure an order for its allowance, payment, or security by encumbering assets of 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 shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.

(d) If it appears that the estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

- (1) Costs and expenses of administration;
- (2) Claims of the federal or state government having priority under other law;
- (3) Claims incurred by the conservator for support, care, education, health, and welfare previously provided to the protected person or individuals who are in fact dependent on the protected person;
- (4) Claims arising before the conservatorship; and
- (5) All other claims.

(e) Preference shall not be given in the payment of a claim over any other claim of the same class, and a claim due and payable shall not be preferred over a claim not due.

(f) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to grant a security interest in the conservatorship estate for the payment of any or all claims at a future date.

(g) Nothing in this section affects or prevents:

- (1) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or
- (2) To the limits of the insurance protection only, any proceeding to establish liability of the protected person for which the protected person is protected by liability insurance.

§560:5-430 Personal liability of conservator. (a) Unless otherwise provided in the contract, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.

(b) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if personally at fault.

(c) Claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

(d) A question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or in another appropriate proceeding or action.

(e) A conservator is not personally liable for any environmental condition on or injury resulting from any environmental condition on land solely by reason of an acquisition of title under section 560:5-421.

§560:5-431 Termination of proceedings. (a) A conservatorship terminates upon the death of the protected person or upon order of the court. Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains majority or is emancipated.

(b) Within sixty days of the death of the protected person, the attainment of majority by a minor, or upon order of the court, the conservator shall file a final report and petition for discharge.

(c) On petition of a protected person, a conservator, or another person interested in a protected person's welfare, the court may terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator. Termination of the conservatorship does not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.

(d) Except as otherwise ordered by the court for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for conservatorship. Upon the establishment of a prima facie case for termination, the court shall order termination unless it is proved that continuation of the conservatorship is in the best interest of the protected person.

(e) Upon termination of a conservatorship and whether or not formally distributed by the conservator, title to assets of the estate passes to the formerly protected person or the person's successors. The order of termination shall provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer of title or confirm a distribution previously made and to file a final report and a petition for discharge upon approval of the final report.

(f) The court shall enter a final order of discharge upon the approval of the final report and satisfaction by the conservator of any other conditions placed by the court on the conservator's discharge.

§560:5-432 Payment of debt and delivery of property to foreign conservator without local proceeding. (a) A person who is indebted to, or has the possession of tangible or intangible property of a protected person, may pay the debt or deliver the property to a foreign conservator, guardian of the estate, or other court-appointed fiduciary of the state of residence of the protected person. Payment or delivery shall be made only upon proof of appointment and presentation of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding relating to the protected person is not pending in this State and the foreign fiduciary is entitled to payment or to receive delivery.

(b) Payment or delivery in accordance with subsection (a) discharges the debtor or possessor, absent knowledge of any protective proceeding pending in this State.

§560:5-433 Foreign conservator; proof of authority; bond; powers. If a conservator has not been appointed in this State and a petition in a protective proceeding is not pending in this State, a conservator appointed in the state in which the protected person resides may file in a court of this State, in a circuit in which property belonging to the protected person is located, authenticated copies of letters of appointment and of any bond. Thereafter, the conservator may exercise all powers of a conservator appointed in this State as to property in this State and may maintain actions and proceedings in this State subject to any conditions otherwise imposed upon nonresident parties."

SECTION 2. Section 128-23, Hawaii Revised Statutes, is amended to read as follows:

"§128-23 Determination of compensation. Whenever the governor requisitions and takes over any property or the temporary use thereof, the owner, or other

person entitled thereto, shall be paid as compensation for the property or use, such sum as the governor determines to be fair and just, within twenty days after it has been requisitioned and taken; provided that the compensation for temporary use may be paid in monthly or lesser installments. If any person is unwilling to accept, as full and complete compensation for the property or use, the sum determined by the governor, the person shall be paid seventy-five per cent of the sum determined by the governor, and shall be entitled to sue the State for such additional sum as, when added to the sum already received by the person, the person may consider fair and just compensation for such property or use, in the manner provided by chapter 661; provided that the suit is instituted within two years after the requisition in the case of the taking of real property in fee simple, or within one year after the requisition in all other cases, subject, to sections 657-13 to 657-15 which are hereby made applicable to such a suit; except that no more than six months shall be allowed for the bringing of a suit after the appointment of a [~~guardian of the property~~] conservator of the person under disability, or the removal of the disability, or after the appointment of personal representatives; provided further that recovery shall be confined to the fair market value of the property or its fair rental value, as the case may be, without any allowance for prospective profits, punitive or other damages. Whenever the owner of property, or other person entitled to compensation on account of the requisitioning of property or the use thereof, is under a disability, or has died, and no [~~guardian;~~] conservator or personal representative has been appointed, the State acting through the attorney general, may apply for the appointment of a [~~guardian of the property of the person;~~] conservator, or for the appointment of a personal representative.”

SECTION 3. Section 327E-2, Hawaii Revised Statutes, is amended by amending the definition of “guardian” to read as follows:

““Guardian” means a judicially appointed guardian [~~or conservator~~] having authority to make a health-care decision for an individual.”

SECTION 4. Section 327E-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Absent a court order to the contrary, a health-care decision [~~of an agent takes precedence over that~~] of a guardian[-] appointed pursuant to chapter 560 takes precedence over that of an agent.”

SECTION 5. Section 333F-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any law to the contrary, the family court may appoint the director as guardian of any person if the court finds that:

- (1) The person is an incapacitated person as defined in section [~~560:5-101(2);~~] 560:5-102;
- (2) The person is developmentally disabled or mentally retarded;
- (3) The person may reasonably be expected to need treatment or care at [~~Waimano training school and hospital or~~] any residential facility; and
- (4) There is no other suitable guardian including the public guardian as designated in chapter 551A able or willing to serve as guardian [~~of the person~~].”

SECTION 6. Section 333F-13, Hawaii Revised Statutes, is amended to read as follows:

“**§333F-13 Payments for care and treatment of persons receiving services; liability.** A parent, [~~guardian of the property;~~] conservator, or other person liable for the support of any person receiving services under this chapter shall be

required to pay for the care and treatment of the person. The parent or [~~guardian of the property~~] conservator of a minor receiving services under this chapter shall be liable for the care and treatment until the person has reached the age of majority. The liability of a [~~guardian of the property~~] conservator of a person under this section shall be limited to the estate of the ward and shall not be recoverable out of the individual assets of the [~~guardian~~] conservator. Every person receiving services under this chapter and any property of the person's estate not exempt from execution shall be liable for the expense of the person's care and treatment. The attorney general, whenever requested by the director, shall take any steps that may be appropriate, by civil action if necessary, to enforce any liability established by this section. The attorney general may designate any appropriate county attorney to act in the attorney general's behalf in any enforcement proceeding.

The department, with the approval of the governor and from the funds appropriated to the department for the care and treatment of persons with developmental disabilities or mental retardation, may transfer from time to time to the department of human services any amounts that may be requested by the department of human services to match federal funds available under Title XIX of the Social Security Act to assist any indigent or medically indigent persons to pay for the care and treatment of any person receiving services under this chapter. The department may expend federal funds so received for the purposes of this chapter."

SECTION 7. Section 334-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"“Conservator” shall have the meaning provided in section 560:5-102.”

2. By amending the definitions of “guardian”, “incapacitated person”, and “protected person” to read:

““Guardian” [means a guardian of person or of property as provided in Article V of chapter 560.] shall have the meaning provided in section 560:5-102.

“Incapacitated person” [is as provided in Article V of chapter 560.] shall have the meaning provided in section 560:5-102.

“Protected person” [is as described in Article V of chapter 560.] shall have the meaning provided in section 560:5-102.”

SECTION 8. Section 334-60.5, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) The court may find that the subject of the petition is an incapacitated or protected person, or both, under [Article] article V of chapter 560, and may appoint a guardian [~~of the person,~~] or [~~property,~~] conservator, or both, for the subject under the terms and conditions as the court shall determine.”

SECTION 9. Section 346-235, Hawaii Revised Statutes, is amended to read as follows:

“[H]§346-235[H] Consolidation with guardianship proceedings. A proceeding for the appointment of a guardian [~~of the person]~~ or [~~of the property]~~ conservator under article V of chapter 560 may be consolidated with the proceedings under this part as the applicable circuit court and the family court, in the exercise of their discretion, shall permit.”

SECTION 10. Section 346-237, Hawaii Revised Statutes, is amended to read as follows:

ACT 161

“~~[(§346-237)]~~ **Notice of proceedings.** After a petition has been filed, the matter shall be set for hearing and a notice of hearing shall be issued to all parties to the proceeding. The parties to the proceeding shall include:

- (1) The dependent adult;
- (2) Any caregiver or facility in which the dependent adult resides or is a patient;
- (3) The spouse and adult children of the dependent adult;
- (4) The parents of the dependent adult, unless waived by the court for good cause;
- (5) Any guardian ~~[of the person]~~ or ~~[property]~~ conservator who may have been appointed; and
- (6) Any other person or entity affected by the order for immediate protection.

Where the name or whereabouts of a potential party is unknown, the court may require the petitioner to set forth the reasonable efforts the petitioner made to ascertain the party's name or whereabouts and why the petitioner has been unable to determine those facts.”

SECTION 11. Section 353-24, Hawaii Revised Statutes, is amended to read as follows:

“**§353-24 [Guardians] Conservators of committed persons, appointed when.** Whenever a person is sentenced to imprisonment for any felony for a term exceeding one year, any judge having probate powers, upon application, may appoint a ~~[guardian]~~ conservator to have the care and management of the committed person's estate, real and personal, during the term of imprisonment or until the committed person is finally discharged from the sentence. The letters of ~~[guardianship]~~ conservatorship shall be revoked by the pardon or final discharge of the committed person, but the revocation shall not invalidate legal acts done by the ~~[guardian.]~~ conservator.”

SECTION 12. Section 353-25, Hawaii Revised Statutes, is amended to read as follows:

“**§353-25 Powers and duties of guardian.** Every ~~[guardian]~~ conservator appointed for any committed person shall pay all the just debts due from the committed person out of the committed person's personal estate, if sufficient, and if not, out of the committed person's real estate, upon obtaining an order for the sale thereof from the judge. The ~~[guardian]~~ conservator shall also settle all accounts of the committed person, and demand, sue for, and receive all debts due to the committed person, and, with the approbation of the judge, may compound for the same and give a discharge to the debtor. The ~~[guardian]~~ conservator shall appear for and represent the ward in all legal suits and proceedings, except when another person is appointed for that purpose.

The ~~[guardian]~~ conservator shall have all the rights and duties, as well as the responsibilities, respecting the management and disposal of the committed person's estate, as appertain to the guardian or conservator of a minor or insane person. The ~~[guardian]~~ conservator shall manage the estate without waste, and the profits thereof, so far as may be necessary, for the comfortable and suitable maintenance of the committed person's family, if there be any, and if the profits are insufficient for that purpose, may sell the real estate and apply the proceeds thereto, upon obtaining the license of the judge.”

SECTION 13. Section 353-26, Hawaii Revised Statutes, is amended to read as follows:

“§353-26 Removal of guardian conservator. The guardian conservator may be removed, and another guardian conservator appointed in the former guardian’s place, whenever the judge thinks there is just cause for removal.”

SECTION 14. Section 353-27, Hawaii Revised Statutes, is amended to read as follows:

“§353-27 Compensation; expenses. Every [~~such guardian~~] conservator shall [~~have such compensation~~] be compensated for the [~~guardian-s~~] conservator’s services [~~as~~] in an amount the judge before whom the ward’s accounts are settled considers just and proper. The [~~guardian~~] conservator shall also be allowed the amount of reasonable expenses.”

SECTION 15. Section 353-28, Hawaii Revised Statutes, is amended to read as follows:

“§353-28 Property given to committed persons. All property given or in any manner whatsoever accruing to a committed person, shall vest in the committed person’s [~~guardian,~~] conservator, if the committed person is sentenced for a term of years, to be disposed of in [~~like~~] the same manner [~~with~~] as the committed person’s other property; or if the committed person is sentenced for life, shall vest in the committed person’s heirs or legatees; provided that any funds accumulated by the committed person and placed into an account as provided under section 353-20 shall be under the control and management of the director.”

SECTION 16. Section 551-1, Hawaii Revised Statutes, is amended to read as follows:

“§551-1 Jurisdiction. Family courts shall have exclusive jurisdiction to appoint guardians [~~of the persons,~~] for minors, and circuit courts shall have exclusive jurisdiction to appoint [~~guardians of the property-~~] conservators for both adults and minors. The family and circuit courts shall have concurrent jurisdiction over guardianships for incapacitated adults. Either a guardian [~~of the person~~] or [~~the property~~] conservator, or both, may be appointed.”

SECTION 17. Section 551-21, Hawaii Revised Statutes, is amended to read as follows:

“§551-21 Small estates; clerk of the court to act when. Whenever so requested as provided in section [~~560:5-404,~~] 560:5-403, the court may appoint the clerk of the court of that circuit as [~~guardian of the property~~] conservator of the protected person whose estate is of a value of less than \$10,000 who shall serve in such capacity, with the full powers of and under like obligations as other [~~guardians~~] conservators appointed under this chapter and chapter 560, except that the clerk shall not be required to give any bond; nor shall the clerk be entitled to any commission or compensation except for expenses necessarily and actually incurred, nor shall the clerk or the protected person or the estate of the protected person be liable for any court costs arising out of the guardianship, except the actual cost of any advertising found necessary. The right of the clerk to act as the [~~guardian of the property~~] conservator shall not be affected by reason of any increase of the estate to an amount in excess of \$10,000 as the result of any accumulations of income accruing from the

ACT 161

original principal of the estate or by the increase in value of the principal; provided that if the estate reaches in value the sum of \$16,250, a [~~guardian of the property~~] conservator shall then be appointed under the preceding sections of this chapter or the court [~~may~~], in its discretion, may allow the [~~guardian~~] conservator appointed under this section to continue to act even though the total assets exceed \$16,250.”

SECTION 18. Section 551-22, Hawaii Revised Statutes, is amended to read as follows:

“**§551-22 Estates less than \$100.** When the whole estate of a person over the age of eighteen for whom a [~~guardian of the property~~] conservator could be appointed does not exceed the value of \$100, the court [~~may~~], in its discretion, without the appointment of a [~~guardian~~] conservator or the giving of bond, may authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court, or if the assets do not consist of money, authorize the delivery thereof to a suitable person designated by the court. The person receiving such money or other assets shall hold and dispose of the same in such manner as the court shall direct.”

SECTION 19. Section 551-35, Hawaii Revised Statutes, is amended to read as follows:

“**§551-35 Natural guardian and conservator of person alleged to be incapacitated or in need of protective proceedings.** The father and mother of an incapacitated or protected person are jointly and severally the person's natural guardians [~~of his person~~] and [~~property-~~] conservators. They shall have equal powers and duties with respect to [~~him~~] the person and neither shall have any right superior to that of the other concerning [~~his~~] the person's custody or control or any other matter affecting [~~him;~~] the person; provided that if either parent dies or abandons the family or is incapable for any reason to act as guardian[;] or conservator, or both, the guardianship or conservatorship, or both, devolves or devolve upon the other parent, and that when the parents live apart, the court may award the guardianship or conservatorship to either of them, having special regard to the interests of the incompetent adult person.”

SECTION 20. Section 551A-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The public guardian shall serve as guardian, limited guardian, testamentary guardian, or temporary guardian [~~of the person~~] of an incapacitated person when so appointed by the family court or by the circuit court under chapter 560. The public guardian may file a petition for the public guardian's own appointment. Petitions for public guardianship may also be filed by any person, agency, or facility responsible for the support or care of individuals who:

- (1) Are not able to understand or adequately participate in decisions concerning their care; and
- (2) Have no relatives or friends willing and able to act as a guardian.”

SECTION 21. Section 551D-3, Hawaii Revised Statutes, is amended to read as follows:

“[H]§551D-3[~~] Relation of attorney-in-fact to court-appointed fiduciary.~~
(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a [~~guardian of the property;~~] conservator or other fiduciary charged with the management of all of the principal's property or all of the

principal's property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. The fiduciary has the power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney, the ~~[guardian of the]~~ principal's ~~[property,]~~ conservator or guardian ~~[of the principal's person]~~ for consideration by the court if protective proceedings for the principal's ~~[person or]~~ property or person are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification."

SECTION 22. Section 554B-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"'Conservator' means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions."

2. By amending the definition of "legal representative" to read:

"'Legal representative' means a personal representative or [~~'guardian of the property'-~~] conservator."

3. By repealing the definition of "guardian of the property".

~~["'Guardian of the property' means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions."]~~

SECTION 23. Section 554B-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

"(b) A custodial trustee who has accepted the custodial trust property may resign by:

(1) Delivering written notice to the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's ~~[guardian of the property,]~~ conservator, if any, and to the successor custodial trustee, if any[;]; and

(2) Transferring, recording, or registering the custodial trust property in the name of and delivering the records to the successor custodial trustee identified under subsection (c).

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 554B-2 or 554B-3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within ninety days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's ~~[guardian of the property]~~ conservator becomes successor custodial trustee; and, if the beneficiary does not have a ~~[guardian of the property]~~ conservator or the ~~[guardian of the property]~~ conservator declines to act, the resigning custodial trustee may designate a successor custodial trustee."

2. By amending subsection (f) to read:

"(f) A beneficiary, the beneficiary's ~~[guardian of the property,]~~ conservator, an adult member of the beneficiary's family, [~~a guardian of the person of]~~ the ~~[beneficiary,]~~ beneficiary's guardian, a person interested in the custodial trust property or as appropriate, or another person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to give bond, or for other appropriate relief."

ACT 161

SECTION 24. Chapter 560, Hawaii Revised Statutes, is amended by amending the title of article V to read as follows:

**“ARTICLE V
~~[PROTECTION OF PERSONS UNDER DISABILITY
AND THEIR PROPERTY]~~
GUARDIANSHIP AND PROTECTIVE PROCEEDINGS”**

SECTION 25. Section 560:1-201, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of “conservator”, “guardian”, “incapacitated person”, “minor”, “protected person”, “protective proceeding”, and “ward” to read:

““Conservator” [means a person who is appointed by a court to manage the estate of a protected person, including a guardian of the property.] shall have the meaning provided in section 560:5-102.

“Guardian” [means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.] shall have the meaning provided in section 560:5-102.

“Incapacitated person” [means an individual described in section 560:5-101.] shall have the meaning provided in section 560:5-102.

“Minor” [means a person who is under eighteen years of age.] shall have the meaning provided in section 560:5-102.

“Protected person” [is as defined in section 560:5-101.] shall have the meaning provided in section 560:5-102.

“Protective proceeding” means a proceeding [described in section 560:5-101.] held pursuant to part 4 of article V.

“Ward” [means an individual described in section 560:5-101.] shall have the meaning provided in section 560:5-102.”

2. By repealing the definition of “disability”.
[““Disability” means cause for a protective order as described in section 560:5-401.”]

SECTION 26. Section 560:3-915, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Unless contrary to an express provision in the will, the personal representative may discharge the obligation to distribute to a minor or person under other disability as authorized by section [560:5-101] 560:5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.”

SECTION 27. Section 560:3-1214, Hawaii Revised Statutes, is amended to read as follows:

“**§560:3-1214 Annual audit of accounts of clerk.** Any other law to the contrary notwithstanding, the comptroller of the State shall audit not less frequently than annually the accounts and transactions of the clerks of the courts in their official capacity as [guardians of the property of protected persons] conservators or as personal representatives of small estates, and report the results of the audit to the judges of the respective courts.”

SECTION 28. Section 560:5-601, Hawaii Revised Statutes, is amended by amending the definition of “incapacitated person” to read as follows:

““Incapacitated person” means a person as defined in section [560:5-101(2)-] 560:5-102.”

SECTION 29. Section 571-2, Hawaii Revised Statutes, is amended by amending the definition of “guardianship of the person of a minor” to read as follows:

““Guardianship of [~~the person of~~] a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about the minor’s general welfare. It includes, but shall not necessarily be limited, in either number or kind to:

- (1) The authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance;
- (2) The authority and duty of reasonable visitation, except to the extent that the right of visitation has been limited by court order;
- (3) The rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency, or institution; and
- (4) The authority to consent to the adoption of the minor and to make any other decision concerning the minor [~~which~~] that the minor’s parents could make, when the rights of the minor’s parents, or only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of the minor’s legal parents are deceased.”

SECTION 30. Section 571-14, Hawaii Revised Statutes, is amended to read as follows:

“**§571-14 Jurisdiction; adults.** (a) Except as provided in sections 603-21.5 and 604-8, the court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child’s parent or guardian or by any other person having the child’s legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or 302A-1135, whether or not included in other provisions of this paragraph or paragraph (2)[-];
- (2) To try any adult charged with:
 - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
 - (B) An offense, other than a felony, against the person of the defendant’s husband or wife;
 - (C) Any violation of an order issued pursuant to chapter 586; or
 - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged[-];

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584[-];
- (4) In proceedings under chapter 575, the Uniform Desertion and Non-support Act, and under chapter 576B, the Uniform Interstate Family Support Act[-];

ACT 161

- (5) For commitment of an adult alleged to be mentally defective or mentally ill[-];
- (6) In all proceedings for support between parent and child or between husband and wife[-];
- (7) In all proceedings for pre-trial detention or waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-13 or 571-22[-];
- (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders[-];
- ~~(9) In all proceedings to appoint a guardian of the person of an adult.]; and~~
[(10)] (9) For the protection of dependent adults under chapter 346, part X. In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E.

(b) The court shall have concurrent jurisdiction with the district court over violations of sections 707-712, 707-717, 707-722, 708-822, 708-823, 710-1010.5, 711-1106, and 711-1106.5 when multiple offenses are charged through complaint or indictment and at least one offense is a violation of an order issued pursuant to chapter 586 or a violation of section 709-906.

(c) The court shall have concurrent jurisdiction with the circuit court in all proceedings to appoint a guardian of an adult.”

SECTION 31. Section 586-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A petition for relief under this chapter may be made by:

- (1) Any family or household member on the member’s own behalf or on behalf of a family or household member who is a minor or who is an incapacitated person as defined in section [560:5-101(2)] 560:5-102 or who is physically unable to go to the appropriate place to complete or file the petition; or
- (2) Any state agency on behalf of a person who is a minor or who is an incapacitated person as defined in section [560:5-101(2)] 560:5-102 or a person who is physically unable to go to the appropriate place to complete or file the petition on behalf of that person.”

SECTION 32. Section 586-10.5, Hawaii Revised Statutes, is amended to read as follows:

“**§586-10.5 Reports by the department of human services.** In cases where there are allegations of domestic abuse involving a family or household member who is a minor or an incapacitated person as defined in section [560:5-101(2),] 560:5-102, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, as required under chapters 350 and 587, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. The department of human services shall provide the family court with an oral or written report of the investigation’s progress on or before the hearing date.”

SECTION 33. Section 603-21.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The several circuit courts shall have concurrent jurisdiction with the family court over:

- (1) Any felony under section 571-14, violation of an order issued pursuant to chapter 586, or a violation of section 709-906 when multiple

- offenses are charged through complaint or indictment and at least one other offense is a criminal offense under subsection (a)(1); ~~and~~
- (2) Any felony under section 571-14 when multiple offenses are charged through complaint or indictment and at least one other offense is a violation of an order issued pursuant to chapter 586, a violation of section 709-906, or a misdemeanor under the jurisdiction of section 604-8[-]; ~~and~~
 - (3) Guardianships and related proceedings concerning incapacitated adults pursuant to article V of chapter 560.

SECTION 34. Section 603-21.6, Hawaii Revised Statutes, is amended to read as follows:

- “**§603-21.6 Probate.** The several circuit courts shall have power to ~~grant~~:
- (1) Grant probate of wills~~[- to appoint]~~;
 - (2) Appoint personal representatives~~[- to determine]~~;
 - (3) Determine the heirs at law or devisees of deceased persons and to decree the distribution of decedents’ estates~~[- to appoint]~~;
 - (4) Appoint guardians ~~[of the property, to compel]~~ for incapacitated adults;
 - (5) Appoint conservators;
 - (6) Compel personal representatives and such guardians and conservators to perform their respective trusts and to account in all respects for the discharge of their official duties~~[- to remove]~~;
 - (7) Remove any personal representative or any such guardian or conservator; ~~and [to do]~~
 - (8) Do all other things as provided in chapter 560.”

SECTION 35. Section 607-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) **PART I**

Action or proceeding, general:

- (1) Civil action or special proceeding, unless another item in part I applies \$200
- (2) Appeal to a circuit court \$100
- (3) Transfer of action to circuit court from district court, in addition to district court fees \$125

Trusts:

- (4) Proceeding for (A) appointment of trustee; (B) appointment of successor; (C) resignation of trustee; (D) instructions; (E) approval of investment; (F) approval of sale, mortgage, lease, or other disposition of property; (G) approval of compromise of claim, for each such matter \$100
- (5) Proceeding for (A) removal of trustee; (B) order requiring accounting; (C) invalidation of action taken by trustee; (D) termination of trust, for each such matter \$100
- (6) Accounting, this fee to be paid for each account filed and to include the settlement of the account \$10
- (7) Vesting order no charge under part I
- (8) Allowance of fees of trustees, attorneys, or other fees for services incurred in a proceeding for which a fee has been paid under this section no charge under part I
- (8a) Registration of a trust, or release of registration, under chapter 560 \$3
- (9) Any other proceeding relating to a trust \$15

ACT 161

[Guardianship of estate or conservatorship:] Conservatorship:

- (10) Proceeding for (A) appointment; (B) appointment of successor; (C) resignation; (D) instructions, unless included in one of the foregoing proceedings; (E), (F), (G) approval of any matter listed in (E), (F), or (G) of item (4) in relation to a trust, for each such matter \$100
- (11) Proceeding of the nature listed in (A), (B), (C), or (D) of item (5) in relation to a trust, for each such matter \$15
- (12) Accounting, same as provided by item (6) in relation to a trust \$10
- (13) Any other proceeding relating to [~~guardianship of an estate, or~~] a conservatorship no charge under part I

Guardianship:

- (13a) Guardianship, including all matters of the nature listed in items (4) to (9), whether in family or circuit court \$100

Probate (decedents' estates). These fees include all matters of the nature listed in items (4) to (9), without additional charge:

- (14) Probate, administration, domiciliary foreign personal representative, or ancillary administration, this fee to be paid once only for each decedent's estate \$100

Family court cases:

- (15) Matrimonial action (annulment, divorce, separation, or separate maintenance) \$100
- (16) Adoption \$100
- (17) Guardianship [~~of the person~~], including all matters of the nature listed in items (4) to (9) [~~\$100~~]
As provided in item 13(a)
- (18) Termination of parental rights no charge under part I
- (19) Any other family court proceeding, except motions or other pleadings in matrimonial, adoption, and guardianship actions, but including without limitation custody proceedings even if in the form of an habeas corpus proceeding \$15''

SECTION 36. Sections 327-3, 327E-3, 327E-16, 334-60.4, 346-45, 346-237, 352-8, 412:8-201, 553A-18, 553A-19, 554B-2, 554B-5, 554B-16, 554B-17, 571-11, 571-63, and 574-5, Hawaii Revised Statutes, are amended, by substituting the word "guardian" wherever the term "guardian of the person", or like term, appears, as the context requires; by substituting the word "guardianship" wherever the term "guardianship of the person", or like term, appears, as the context requires; by substituting the word "conservator" wherever the term "guardian of the property", or like term, appears, as the context requires; and by substituting the word "conservatorship" wherever the term "guardianship of the property", or like term, appears, as the context requires.

SECTION 37. Parts 1, 2, 3, and 4 of article V of chapter 560, Hawaii Revised Statutes, are repealed.

SECTION 38. This Act shall not affect any action commenced, proceeding brought, or right accrued prior to its effective date.

SECTION 39. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 40. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 41. This Act shall take effect on January 1, 2005.
(Approved July 2, 2004.)

Note

1. This subsection is superseded by section 4 of Act 224.