

IC 29-3

ARTICLE 3. GUARDIANSHIPS AND PROTECTIVE PROCEEDINGS

IC 29-3-1

Chapter 1. Definitions

IC 29-3-1-1

Application of definitions

Sec. 1. The definitions in this chapter apply throughout and their application is limited to this article.

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

IC 29-3-1-2

Claim

Sec. 2. "Claim" means, with respect to an incapacitated person or a minor, any liability of the incapacitated person or minor, whether arising in contract, tort, or otherwise, and any liability against an incapacitated person's or a minor's property that arises before, at, or after the appointment of a guardian, including expenses of administration.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.56.

IC 29-3-1-3

Court

Sec. 3. "Court" means the court having probate jurisdiction and, where the context permits, the court having venue of the guardianship.

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

IC 29-3-1-4

Repealed

(Repealed by P.L.264-1989, SEC.14.)

IC 29-3-1-5

Durable power of attorney

Sec. 5. "Durable power of attorney" means a power of attorney that:

- (1) is executed by an incapacitated person before that person became an incapacitated person;
- (2) provides that the power survives the person's incompetence; and
- (3) is executed in accordance with the law in effect in the jurisdiction in which it was executed on the date it was executed.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.57.

IC 29-3-1-6

Guardian

Sec. 6. "Guardian" means a person who is a fiduciary and is appointed by a court to be a guardian or conservator responsible as the court may direct for the person or the property of an incapacitated person or a minor. The term includes a temporary guardian, a limited guardian, and a successor guardian but excludes one who is only a guardian ad litem. The terms guardian and conservator are interchangeable.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.58.

IC 29-3-1-7**Guardianship property**

Sec. 7. "Guardianship property" means the property of an incapacitated person or a minor for which a guardian is responsible.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.59.

IC 29-3-1-7.5**Incapacitated person**

Sec. 7.5. "Incapacitated person" means an individual who:

- (1) cannot be located upon reasonable inquiry;
- (2) is unable:
 - (A) to manage in whole or in part the individual's property;
 - (B) to provide self-care; or
 - (C) both;because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or
- (3) has a developmental disability (as defined in IC 12-7-2-61).

As added by P.L.33-1989, SEC.60. Amended by P.L.2-1992, SEC.790.

IC 29-3-1-8**Repealed**

(Repealed by P.L.264-1989, SEC.14.)

IC 29-3-1-9**Letters**

Sec. 9. "Letters" means letters of guardianship.

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

IC 29-3-1-10**Minor**

Sec. 10. "Minor" means an individual who is less than eighteen (18) years of age and who is not an emancipated minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.2.

IC 29-3-1-11

Parent

Sec. 11. "Parent" means a biological or adoptive parent. The term does not include a stepparent, foster parent, or grandparent.

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

IC 29-3-1-12

Person

Sec. 12. "Person" means an individual, an organization, an association, a nonprofit corporation, a corporation for profit, a limited liability company, a partnership, a financial institution, a trust, the division of family resources or other governmental entity, or other legal entity.

As added by P.L.169-1988, SEC.1. Amended by P.L.2-1992, SEC.791; P.L.8-1993, SEC.461; P.L.145-2006, SEC.168.

IC 29-3-1-13

Protected person

Sec. 13. "Protected person" means an individual for whom a guardian has been appointed or with respect to whom a protective order has been issued.

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

IC 29-3-1-14

Protective proceeding

Sec. 14. "Protective proceeding" means a proceeding for a protective order under IC 29-3-4.

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

IC 29-3-1-15

Support

Sec. 15. "Support" means care, maintenance, and education or training, if appropriate.

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

IC 29-3-1-15.5

Volunteer advocate for incapacitated adults

Sec. 15.5. "Volunteer advocate for incapacitated adults" means an individual who:

- (1) is a volunteer;
- (2) has completed a guardian training program approved by a court;
- (3) is supervised by a volunteer advocates for incapacitated adults program that is appointed by a court to serve as a guardian for an incapacitated person who is at least eighteen (18) years of age; and
- (4) provides reports and makes recommendations to a court.

As added by P.L.11-2006, SEC.1. Amended by P.L.72-2010, SEC.1.

IC 29-3-1-16

Volunteer advocate for seniors

Sec. 16. "Volunteer advocate for seniors" means an individual who:

- (1) is a volunteer;
- (2) has completed a guardian training program approved by a court;
- (3) is supervised by a volunteer advocates for seniors program that is appointed by a court to serve as a guardian for an incapacitated person who is at least fifty-five (55) years of age; and
- (4) provides reports and makes recommendations to a court.

As added by P.L.41-2004, SEC.1. Amended by P.L.72-2010, SEC.2.

IC 29-3-1-17**Volunteer advocates for incapacitated adults program**

Sec. 17. "Volunteer advocates for incapacitated adults program" means:

- (1) an Indiana nonprofit or municipal corporation;
- (2) a program of an Indiana nonprofit or municipal corporation;
- or
- (3) a program operated by a county or court;

that is appointed by a court to serve as a guardian for an incapacitated person who is at least eighteen (18) years of age and trains and supervises volunteers in a court approved guardian program for incapacitated adults.

As added by P.L.72-2010, SEC.3.

IC 29-3-1-18**Volunteer advocates for seniors program**

Sec. 18. "Volunteer advocates for seniors program" means:

- (1) an Indiana nonprofit or municipal corporation;
- (2) a program of an Indiana nonprofit or municipal corporation;
- or
- (3) a program operated by a county or court;

that is appointed by a court to serve as a guardian for an incapacitated person who is at least fifty-five (55) years of age and trains and supervises volunteers in a court approved guardian program for incapacitated persons who are at least fifty-five (55) years of age.

As added by P.L.72-2010, SEC.4.

IC 29-3-2

Chapter 2. General Provisions

IC 29-3-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to sections 3 and 4 of this chapter by P.L.118-1997 do not apply to an individual whose death occurs before July 1, 1997.

(2) The amendments made to section 1 of this chapter by P.L.217-2001 apply to all proceedings pending under IC 31-34 on July 1, 2001, and to all proceedings commenced under IC 31-34 after June 30, 2001.

As added by P.L.220-2011, SEC.480.

IC 29-3-2-0.2

Application of article; effect of amendments to certain other statutes

Sec. 0.2. (a) As used in this section, "affected statutes" refers to the following:

(1) IC 16-8-12-7 (repealed, now codified at IC 16-36-1-8).

(2) IC 29-1-7.5-2.

(3) IC 33-16-2-2 (repealed, now codified at IC 33-42-2-2).

(4) IC 33-19-3-2 (repealed, now codified at IC 33-37-3-2).

(5) IC 35-34-2-3.

(6) IC 35-37-1-5.

(b) This article and the amendments made by P.L.169-1988 to the affected statutes apply to guardianships in existence on June 30, 1989, except to the extent that application of this article and the amendments made by P.L.169-1988 to the affected statutes would contravene any vested or contractual rights in effect on June 30, 1989, in which case the law in effect before July 1, 1989, prevails.

As added by P.L.220-2011, SEC.481.

IC 29-3-2-1

Application of article; jurisdiction of courts

Sec. 1. (a) This article applies to the following:

(1) The business affairs, physical person, and property of every incapacitated person and minor residing in Indiana.

(2) Property located in Indiana of every incapacitated person and minor residing outside Indiana.

(3) Property of every incapacitated person or minor, regardless of where the property is located, coming into the control of a fiduciary who is subject to the laws of Indiana.

(b) Except as provided in subsections (c) through (e), the court has exclusive original jurisdiction with respect to an individual who is not an adult (as defined in IC 29-3.5-1-2(1)) over all matters concerning the following:

(1) Guardians.

(2) Protective proceedings under IC 29-3-4.

In the case of an adult (as defined in IC 29-3.5-1-2(1)), a court must establish jurisdiction concerning a guardianship or a protective proceeding in accordance with IC 29-3.5-2.

(c) A juvenile court has exclusive original jurisdiction over matters relating to the following:

(1) Minors described in IC 31-30-1-1.

(2) Matters related to guardians of the person and guardianships of the person described in IC 31-30-1-1(10).

(d) Except as provided in subsection (c), courts with child custody jurisdiction under:

(1) IC 31-14-10;

(2) IC 31-17-2-1; or

(3) IC 31-21-5 (or IC 31-17-3-3 before its repeal);

have original and continuing jurisdiction over custody matters relating to minors.

(e) A mental health division of a superior court under IC 33-33-49 has jurisdiction concurrent with the court in mental health proceedings under IC 12-26 relating to guardianship and protective orders.

(f) Jurisdiction under this section is not dependent on issuance or service of summons.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.61; P.L.1-1990, SEC.275; P.L.2-1992, SEC.792; P.L.16-1995, SEC.5; P.L.1-1997, SEC.118; P.L.217-2001, SEC.1; P.L.98-2004, SEC.100; P.L.138-2007, SEC.4; P.L.178-2011, SEC.1.

IC 29-3-2-2

Venue for appointment of guardian; stay of proceedings; transfer of proceedings

Sec. 2. (a) The venue for the appointment of a guardian or for protective proceedings is as follows:

(1) If the alleged incapacitated person or minor resides in Indiana, venue is:

(A) in the county where the alleged incapacitated person or minor resides; or

(B) if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, in the county where a facility is located that is providing or attempting to provide medical care to the alleged incapacitated person or minor.

(2) If the alleged incapacitated person or minor does not reside in Indiana, then venue is in any county where any property of the alleged incapacitated person or minor is located. However, if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, venue is in the county where the facility providing or attempting to provide medical care is located.

(3) If the alleged incapacitated person is an adult (as defined in

IC 29-3.5-1-2(1)), venue is determined under the laws of the state or country having jurisdiction under IC 29-3.5-2. However, if a court in Indiana has jurisdiction under IC 29-3.5-2, the rules for determining venue set forth in this section apply.

(b) If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the proper venue by the court in the county where first commenced. After proper venue has been determined, all proceedings in any county other than the county where jurisdiction has been finally determined to exist shall be dismissed. If the proper venue is finally determined to be in another county, the court shall transmit the original file to the proper county. The proceedings shall be commenced by the filing of a petition with the court, and the proceeding first commenced extends to all of the property of the minor or the incapacitated person unless otherwise ordered by the court.

(c) If it appears to the court at any time that:

- (1) the proceeding was commenced in the wrong county;
- (2) the residence of the incapacitated person or the minor has been changed to another county;
- (3) the proper venue is determined to be otherwise under the Indiana Rules of Trial Procedure; or
- (4) it would be in the best interest of the incapacitated person or the minor and the property of the minor or the incapacitated person;

the court may order the proceeding, together with all papers, files, and a certified copy of all orders, transferred to another court in Indiana. That court shall complete the proceeding as if originally commenced in that court. The court may in like manner transfer a guardianship or protective proceeding in Indiana to a court outside Indiana if the other court assumes jurisdiction to complete the proceeding as if originally commenced in that court. Before any transfer is made under this subsection, a hearing pursuant to notice shall be held in the same manner as provided with respect to the appointment of a guardian.

(d) Where a guardian has been appointed by a court that does not have probate jurisdiction, the matter shall be transferred in accordance with the proper venue to a court having probate jurisdiction for qualification of the guardian and for further proceedings in the guardianship.

(e) Nothing in this section shall be construed as a requirement of jurisdiction.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.62; P.L.178-2011, SEC.2.

IC 29-3-2-3

Guardian ad litem; appointment

Sec. 3. (a) Unless waived under subsection (b) or if section 4 of this chapter does not apply, the court shall appoint a guardian ad

litem to represent the interests of the alleged incapacitated person or minor if the court determines that the alleged incapacitated person or minor is not represented or is not adequately represented by counsel. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court as part of the record of the proceeding shall set out its reasons for appointing a guardian ad litem.

(b) If a minor has or is entitled to property for the preservation of which the appointment of a guardian is necessary, and the court makes written findings that:

- (1) the proposed guardian is capable of representing and managing the minor's property;
- (2) no other petition for the appointment of a guardian has been filed; and
- (3) the petition for the appointment of the proposed guardian is uncontested;

the court may waive the appointment of a guardian ad litem for the minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.63; P.L.154-1990, SEC.12; P.L.118-1997, SEC.25.

IC 29-3-2-4

Discretion of court; binding orders

Sec. 4. (a) All findings, orders, or other proceedings under this article shall be in the discretion of the court unless otherwise provided in this article.

(b) If there is not a conflict of interest between a guardian of an estate and the protected person or among persons represented, orders binding a guardian of an estate bind the protected person.

(c) Orders binding a guardian of the person bind the ward if a guardian of the ward's estate has not been appointed.

As added by P.L.169-1988, SEC.1. Amended by P.L.118-1997, SEC.26; P.L.252-2001, SEC.25.

IC 29-3-2-5

Residence; determination

Sec. 5. The residence of a person shall be determined by actual presence rather than technical domicile.

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

IC 29-3-2-6

Application of decedents' estates law to guardianships and protected persons

Sec. 6. (a) The applicable rules regarding decedents' estates in IC 29-1-7 through IC 29-1-17 apply to guardianships and protective proceedings under IC 29-3-4 when consistent with this article and IC 29-1-19.

(b) IC 29-1-1-6 through IC 29-1-1-7, IC 29-1-1-9 through IC 29-1-1-10, IC 29-1-1-12 through IC 29-1-1-14, IC 29-1-1-16 through IC 29-1-1-18, and IC 29-1-1-20 through IC 29-1-1-24 apply

to guardianships under this article and IC 29-1-19.

(c) This article extends to persons specifically provided for under IC 29-1-19. The provisions of this article are cumulative to the provisions of IC 29-1-19. A conflict arising between this article and IC 29-1-19 is resolved by giving effect to the law stated in IC 29-1-19 in cases to which it applies.

(d) The provisions of IC 29-1-15 concerning the sale of decedents' property apply to the sale of protected persons' property.

(e) The provisions of IC 29-1-16 concerning accounting in decedents' estates apply to accounting in protected persons' estates that are consistent with this article.

(f) The provisions of IC 29-1-14-2, IC 29-1-14-10, IC 29-1-14-11, IC 29-1-14-12, IC 29-1-14-13, and IC 29-1-14-17 concerning claims against decedents' estates apply to claims against protected persons' estates.

As added by P.L.264-1989, SEC.3.

IC 29-3-3

Chapter 3. Proceedings in Lieu of Guardianships

IC 29-3-3-1

Payment of debt owed to minor; delivery of minor's property in possession of another; use of payment or property

Sec. 1. (a) Any person indebted to a minor or having possession of property belonging to a minor in an amount not exceeding ten thousand dollars (\$10,000) may pay the debt or deliver the property without the appointment of a guardian, giving of bond, or other order of court directly to any person having the care and custody of the minor with whom the minor resides.

(b) Persons receiving property for a minor under this section are obligated to apply the property to the support, use, and benefit of the minor.

(c) This section does not apply if the person paying or delivering the property knows that a guardian has been appointed for the minor or that proceedings for appointment of a guardian for the minor are pending.

(d) A person who pays or delivers property in accordance with this section in good faith is not responsible for the proper application of that property.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.4; P.L.42-1998, SEC.3; P.L.252-2001, SEC.26.

IC 29-3-3-2

Property of incapacitated person not in excess of \$10,000; deposit, delivery, and disposition of property; compensation and expenses of receiver

Sec. 2. When the entire property of an incapacitated person does not exceed the value of ten thousand dollars (\$10,000), the court may, without the appointment of a guardian, giving of bond, or other order of court, authorize:

(1) the deposit of the property in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court; or

(2) if the property does not consist of money, the delivery of the property to a suitable person designated by the court.

The person receiving the property shall hold and dispose of the property in the manner the court directs and is entitled to reasonable compensation and to reimbursement for reasonable expenses incurred in good faith on behalf of the incapacitated person and approved by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.5; P.L.252-2001, SEC.27.

IC 29-3-3-3

Custody of minor by parents; consents, waivers, and powers of attorney provided by statute or Internal Revenue Code; consent to medical treatment

Sec. 3. Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or in some other proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married, the parents of the minor jointly (or the survivor if one (1) parent is deceased), if not an incapacitated person, have, without the appointment of a guardian, giving of bond, or order or confirmation of court, the right to custody of the person of the minor and the power to execute the following on behalf of the minor:

- (1) Consent to the application of subsection (c) of Section 2032A of the Internal Revenue Code, which imposes personal liability for payment of the tax under that Section.
- (2) Consent to the application of Section 6324A of the Internal Revenue Code, which attaches a lien to property to secure payment of taxes deferred under Section 6166 of the Internal Revenue Code.
- (3) Any other consents, waivers, or powers of attorney provided for under the Internal Revenue Code.
- (4) Waivers of notice permissible with reference to proceedings under IC 29-1.
- (5) Consents, waivers of notice, or powers of attorney under any statute, including the Indiana inheritance tax law (IC 6-4.1) and the Indiana adjusted gross income tax law (IC 6-3).
- (6) Consent to unsupervised administration as provided in IC 29-1-7.5.
- (7) Federal and state income tax returns.
- (8) Consent to medical or other professional care, treatment, or advice for the minor's health and welfare.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.64; P.L.155-1990, SEC.1; P.L.192-2002(ss), SEC.171.

IC 29-3-3-3.5

Custodians of individual retirement accounts

Sec. 3.5. (a) Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or another proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married:

- (1) the parents of the minor jointly or one (1) parent of the minor individually, if both parents are not incapacitated persons;
- (2) one (1) parent, if one (1) of the parents is an incapacitated person; or
- (3) the survivor, if one (1) parent is deceased and if the survivor is not an incapacitated person;

have the right, without the appointment of a guardian, giving of bond, or order or confirmation of court, to act as custodians of an individual retirement account established for the minor under 26 U.S.C. 408.

- (b) IC 30-2-8.5-27(b), IC 30-2-8.5-27(e), and IC 30-2-8.5-28 apply

to this section.

As added by P.L.264-1995, SEC.1.

IC 29-3-3-4

Temporary guardians; notice; suspension of guardian; powers and responsibilities

Sec. 4. (a) If:

- (1) a guardian has not been appointed for an incapacitated person or minor;
- (2) an emergency exists;
- (3) the welfare of the incapacitated person or minor requires immediate action; and
- (4) no other person appears to have authority to act in the circumstances;

the court, on petition by any person or on its own motion, may appoint a temporary guardian for the incapacitated person or minor for a specified period not to exceed ninety (90) days. No such appointment shall be made except after notice and hearing unless it is alleged and found by the court that immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person or minor may result before the alleged incapacitated person or minor can be heard in response to the petition. If a temporary guardian is appointed without advance notice and the alleged incapacitated person or minor files a petition that the guardianship be terminated or the court order modified, the court shall hear and determine the petition at the earliest possible time.

(b) If:

- (1) a petition is filed under this section for the appointment of a temporary guardian; and
- (2) each person required to receive notice under IC 29-3-6-1(a) has not:
 - (A) received a complete copy of the petition and notice required by IC 29-3-6-2 before the court considers and acts on the petition; or
 - (B) received actual notice of the filing of the petition and specifically waived in writing the necessity for service of the notice required under IC 29-3-6-2 before the court considers and acts on the petition;

the petitioner shall, on the earlier of the date the court enters an order scheduling a hearing on the petition or the date the court enters an order appointing a temporary guardian, serve complete copies of the petition, the court's order, and the notice required by IC 29-3-6-2 on every person entitled to receive notice under IC 29-3-6-1(a) and on each additional person to whom the court directs that notice be given. The requirements of this subsection are in addition to the petitioner's obligations under Rule 65 of the Indiana Rules of Trial Procedure to make a specific showing of the petitioner's efforts to provide advance notice to all interested persons or the reasons why advance notice cannot or should not be given.

(c) If the court finds that a previously appointed guardian is not

effectively performing fiduciary duties and that the welfare of the protected person requires immediate action, the court may suspend the authority of the previously appointed guardian and appoint a temporary guardian for the protected person for any period fixed by the court. The authority of the previously appointed guardian is suspended as long as a temporary guardian appointed under this subsection has authority to act.

(d) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court. The court shall order only the powers that are necessary to prevent immediate and substantial injury or loss to the person or property of the alleged incapacitated person or minor in an appointment made under this section.

(e) Proceedings under this section are not subject to the provisions of IC 29-3-4.

(f) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.65; P.L.154-1990, SEC.13; P.L.178-2011, SEC.3.

IC 29-3-3-5

Application for public assistance or transfer; authority of chief of social services at state institution

Sec. 5. The chief of social services (or a person designated by the chief of social services) at any institution under the control of the division of mental health and addiction or the division of disability and rehabilitative services may execute the necessary documents to make applications on behalf of a patient in the institution to receive public assistance or to transfer the patient to an alternate care facility without the appointment of a guardian or other order of court.

As added by P.L.169-1988, SEC.1. Amended by P.L.2-1992, SEC.793; P.L.1-1993, SEC.214; P.L.40-1994, SEC.74; P.L.215-2001, SEC.105; P.L.141-2006, SEC.110.

IC 29-3-3-6

Surviving parent; custody proceedings; temporary guardian or guardian ad litem; hearing

Sec. 6. (a) The surviving parent of a minor does not have the right to custody of the minor without a proceeding authorized by law if the parent was not granted custody of the minor in a dissolution of marriage decree and the conditions specified in this section exist.

(b) If:

- (1) the surviving parent, at the time of the custodial parent's death, had required supervision during parenting time privileges granted under a dissolution of marriage decree involving the minor; or
- (2) the surviving parent's parenting time privileges with the minor had been suspended at the time of the death of the custodial parent;

the court on petition by any person, including a temporary custodian

named under IC 31-17-2-11 (or IC 31-1-11.5-27 before its repeal), or on the court's own motion, may appoint a temporary guardian for the minor for a specified period not to exceed sixty (60) days.

(c) If a petition is filed under this section, a court shall appoint a guardian ad litem (as defined in IC 31-9-2-50) or a court appointed special advocate (as defined in IC 31-9-2-28) for the child. A guardian ad litem or court appointed special advocate appointed under this section serves until removed by the court.

(d) If a temporary guardian is appointed without notice and the minor files a petition that the guardianship be terminated or the court order modified, the court shall hold a hearing and make a determination on the petition at the earliest possible time.

(e) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court.

(f) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

(g) The court shall appoint a guardian under this article if the court finds that the surviving parent is not entitled to the right of custody of the minor.

As added by P.L.155-1990, SEC.2. Amended by P.L.1-1993, SEC.215; P.L.1-1997, SEC.119; P.L.68-2005, SEC.7.

IC 29-3-3-7

Declaration of standby guardians; required information; duration of the guardianship

Sec. 7. (a) Subject to subsection (e), a parent of a minor or the guardian of a protected person may designate a standby guardian by making a written declaration naming the individual designated to serve as a standby guardian. A declarant may name an alternate to the designated standby guardian if the designated standby guardian is unable to serve, refuses to serve, renounces the appointment, dies, or becomes incapacitated after the death of the declarant.

(b) A declaration under this section must contain the following information:

(1) The names of the declarant, the designated standby guardian, and the alternate standby guardian, if any.

(2) The following information concerning each minor child or protected person for whom a standby guardian is designated by the declaration:

(A) The person's full name as it appears on the birth certificate or as ordered by a court.

(B) The person's date of birth.

(C) The person's Social Security number, if any.

(3) A statement that the declaration becomes effective upon the death or incapacity of the declarant.

(4) A statement that the declaration terminates ninety (90) days after becoming effective unless the standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period.

(c) A declaration executed under this section must be signed by

the declarant in the presence of a notary public.

(d) A declaration executed under this section becomes effective upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent or guardian and terminates ninety (90) days after the declaration becomes effective. However, if the designated standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period, the declaration remains in effect until the court rules on the petition.

(e) A declaration executed under this section must be considered by, but is not binding upon, the department of child services, a probation department, or a juvenile court for purposes of determining the placement of a child who is the subject of:

- (1) an allegation of child abuse or neglect under IC 31-33;
- (2) an open child in need of services case under IC 31-34; or
- (3) an open delinquency case under IC 31-37.

As added by P.L.178-2011, SEC.4.

IC 29-3-4

Chapter 4. Protective Proceedings and Single Transactions

IC 29-3-4-1

Protective orders; notice and hearing; findings; protective arrangements

Sec. 1. (a) Upon petition by any person and after a hearing under IC 29-3-5, the court may issue, without the appointment of a guardian, any protective order for the benefit of a person who has been adjudicated an incapacitated person or is a minor.

(b) Notice of the filing of a petition under this chapter for the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) Incapacitated persons and minors have the same rights at the hearing on a petition filed under this chapter for the issuance of a protective order as they would have at a hearing for the appointment of a guardian.

(d) The court may issue a protective order concerning an incapacitated person if the court finds that:

(1) the incapacitated person:

(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the incapacitated person;

(2) the incapacitated person is unable to manage the incapacitated person's property and financial or business affairs effectively; and

(3) the protection sought is necessary.

The court shall make the orders that it considers proper and appropriate to protect the person, business affairs, and property of the incapacitated person.

(e) The court may issue a protective order concerning a minor if the court finds that:

(1) the minor:

(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the minor; and

(2) the protection sought is necessary.

The court shall make the orders it considers proper and appropriate to protect the person, business affairs, and property of the minor.

(f) If the court finds grounds for a protective order under subsection (d) or (e), it may, without appointing a guardian, declare the person to be a protected person and authorize or ratify any transaction necessary or desirable to meet the needs of the protected person. Protective arrangements include the following:

- (1) The payment, delivery, deposit, or retention of property.
- (2) The sale, mortgage, lease, or other transfer of property.
- (3) The entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and educating a person.
- (4) The addition to or establishment of a suitable trust.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.66; P.L.6-2010, SEC.9.

IC 29-3-4-2

Contracts, trusts or business transactions of incapacitated person or minor; ratification by court; exercise of parental powers in absence of guardian

Sec. 2. The court may, without appointment of a guardian, by protective order authorize or ratify:

- (1) any contract, trust, or other transaction relating to the property and financial or business affairs of the incapacitated person or minor if the court determines the transaction to be in the incapacitated person's or the minor's best interest; or
- (2) if no guardian is acting for an incapacitated person, the exercise of any power on the incapacitated person's behalf that is the same as that given to the parent of a minor under IC 29-3-3-3.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.67.

IC 29-3-4-3

Creditors and dependents to be considered by court before issuing protective order; appointment of limited guardian; authority conferred by order

Sec. 3. Before issuing a protective order under this chapter, the court shall consider the interest of creditors and dependents of the protected person and, in view of the disability or minority of the protected person, whether the protected person needs the protection of a guardian. The court may appoint a limited guardian to assist in the establishment of any protective arrangement or other transaction. All persons acting under a protective order have the authority conferred by the order and serve until discharged by the court after reporting to the court all matters conducted under the order.

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

IC 29-3-4-4

Compensation; persons whose services benefited protected person or his or her property

Sec. 4. If not otherwise compensated for services rendered, any guardian, attorney, physician, or other person whose services are provided in good faith and are beneficial to the protected person or the protected person's property is entitled to reasonable compensation and reimbursement for reasonable expenditures made on behalf of the protected person. These amounts may be paid from the property

of the protected person as ordered by the court.
As added by P.L.169-1988, SEC.1.

IC 29-3-5

Chapter 5. Proceedings for Appointment of Guardian or to Procure a Protective Order

IC 29-3-5-1

Petitions for appointment of a guardian or to have a protective order issued; requirements; notice and hearing; conduct of hearing; participation by department of child services

Sec. 1. (a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter or to have a protective order issued under IC 29-3-4. The petition must state the following:

- (1) The name, age, residence, and post office address of the alleged incapacitated person or minor for whom the guardian is sought to be appointed or the protective order issued.
- (2) The nature of the incapacity.
- (3) The approximate value and description of the property of the incapacitated person or minor, including any compensation, pension, insurance, or allowance to which the incapacitated person or minor may be entitled.
- (4) If a limited guardianship is sought, the particular limitations requested.
- (5) Whether a protective order has been issued or a guardian has been appointed or is acting for the incapacitated person or minor in any state.
- (6) The residence and post office address of the proposed guardian or person to carry out the protective order and the relationship to the alleged incapacitated person of:
 - (A) the proposed guardian; or
 - (B) the person proposed to carry out the protective order.
- (7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed or the protective order is issued.
- (8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed or the protective order is issued.
- (9) The names and addresses of any other incapacitated persons or minors for whom the proposed guardian or person to carry out the protective order is acting if the proposed guardian or person is an individual.
- (10) The reasons the appointment of a guardian or issuance of a protective order is sought and the interest of the petitioner in the appointment or issuance.
- (11) The name and business address of the attorney who is to represent the guardian or person to carry out the protective order.
- (12) Whether a child in need of services petition or a program of informal adjustment has been filed regarding the minor for whom a guardianship is being sought, and, if so, whether the

case regarding the minor is open at the time the guardianship petition is filed.

(b) Notice of a petition under this section for the appointment of a guardian or the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) After the filing of a petition, the court shall set a date for a hearing on the issues raised by the petition. Unless an alleged incapacitated person is already represented by counsel, the court may appoint an attorney to represent the incapacitated person.

(d) A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that:

(1) it is impossible or impractical for the alleged incapacitated person to be present due to the alleged incapacitated person's disappearance, absence from the state, or similar circumstance;

(2) it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;

(3) the incapacitated person has knowingly and voluntarily consented to the appointment of a guardian or the issuance of a protective order and at the time of such consent the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from knowingly and voluntarily consenting; or

(4) the incapacitated person has knowingly and voluntarily waived notice of the hearing and at the time of such waiver the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from making a knowing and voluntary waiver of notice.

(e) A person alleged to be an incapacitated person may present evidence and cross-examine witnesses at the hearing. The issues raised by the petition and any response to the petition shall be determined by a jury if a jury is requested no later than seventy-two (72) hours prior to the original date and time set for the hearing on the petition. However, in no event may a request for a jury trial be made after thirty (30) days have passed following the service of notice of a petition.

(f) Any person may apply for permission to participate in the proceeding, and the court may grant the request with or without hearing upon determining that the best interest of the alleged incapacitated person or minor will be served by permitting the applicant's participation. The court may attach appropriate conditions to the permission to participate.

(g) A court shall notify the department of child services of a hearing regarding the guardianship of a minor under this section if a:

(1) child in need of services petition has been filed regarding the minor; or

(2) program of informal adjustment involving the minor is pending.

The department of child services may participate in a hearing

regarding the guardianship of a minor described in this subsection.
As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.68; P.L.6-2010, SEC.10; P.L.162-2011, SEC.2.

IC 29-3-5-2

Appointment of guardian before adjudication of incapacity or minority

Sec. 2. A guardian may not be appointed for an incapacitated person or a minor under this chapter until the incapacity or minority has been adjudicated.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.6.

IC 29-3-5-3

Findings; appointment of guardian; limited guardianship; protective orders

Sec. 3. (a) Except under subsection (c), if it is alleged and the court finds that:

- (1) the individual for whom the guardian is sought is an incapacitated person or a minor; and
- (2) the appointment of a guardian is necessary as a means of providing care and supervision of the physical person or property of the incapacitated person or minor;

the court shall appoint a guardian under this chapter.

(b) If it is alleged and the court finds that the welfare of an incapacitated person would be best served by limiting the scope of the guardianship, the court shall make the appointive or other orders under this chapter to:

- (1) encourage development of the incapacitated person's self-improvement, self-reliance, and independence; and
- (2) contribute to the incapacitated person's living as normal a life as that person's condition and circumstances permit without psychological or physical harm to the incapacitated person.

(c) If the court finds that it is not in the best interests of the incapacitated person or minor to appoint a guardian, the court may:

- (1) treat the petition as one for a protective order and proceed accordingly;
- (2) enter any other appropriate order; or
- (3) dismiss the proceedings.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.69.

IC 29-3-5-4

Considerations for appointment of guardian

Sec. 4. The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:

- (1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a).

- (2) Any request contained in a will or other written instrument.
- (3) Any request made by a minor who is at least fourteen (14) years of age.
- (4) Any request made by the spouse of the alleged incapacitated person.
- (5) The relationship of the proposed guardian to the individual for whom guardianship is sought.
- (6) Any person acting for the incapacitated person under a durable power of attorney.
- (7) The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.7; P.L.149-1991, SEC.3.

IC 29-3-5-5

Consideration for appointment of guardian; order of consideration; priorities

Sec. 5. (a) The following are entitled to consideration for appointment as a guardian under section 4 of this chapter in the order listed:

- (1) A person designated in a durable power of attorney.
- (2) The spouse of an incapacitated person.
- (3) An adult child of an incapacitated person.
- (4) A parent of an incapacitated person, or a person nominated by will of a deceased parent of an incapacitated person or by any writing signed by a parent of an incapacitated person and attested to by at least two (2) witnesses.
- (5) Any person related to an incapacitated person by blood or marriage with whom the incapacitated person has resided for more than six (6) months before the filing of the petition.
- (6) A person nominated by the incapacitated person who is caring for or paying for the care of the incapacitated person.

(b) With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person or minor, may pass over a person having priority and appoint a person having a lower priority or no priority under this section.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.70.

IC 29-3-5-6

Two or more minors or incapacitated persons; petition for appointment of guardian; separate accounting

Sec. 6. When a petition is filed for the appointment of a guardian for two (2) or more minors or incapacitated persons who are children of a common parent, parent and child, or husband and wife, a separate petition need not be filed for each minor or incapacitated person, and appointment of a guardian for all may be considered in one (1) proceeding. A separate accounting is required for each minor or incapacitated person, but an actual segregation of assets is not

required except as required by the court.

*As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989,
SEC.71.*

IC 29-3-6

Chapter 6. Notice of Hearings

IC 29-3-6-1

Notice of petition and hearing; persons to whom notice must be given; waiver of notice

Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by first class postage prepaid mail as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.

(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4.

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be

given to the following persons, unless they appear or waive notice:

- (1) The guardian.
- (2) Any other persons that the court directs, including the following:
 - (A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.
 - (B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.8; P.L.95-2007, SEC.13; P.L.143-2009, SEC.15; P.L.178-2011, SEC.5.

IC 29-3-6-2

Notice; form and contents; copy of petition to be attached

Sec. 2. A copy of the petition shall be attached to the notice, and the notice must be in substantially the following form:

NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), Indiana, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed or a protective order should be issued for (name of alleged incapacitated person or minor). A copy of the petition requesting appointment of a guardian or for the issuance of a protective order is attached to this notice.

At the hearing the court will determine whether (name of alleged incapacitated person or minor) is an incapacitated person or minor under Indiana law. This proceeding may substantially affect the rights of (name of alleged incapacitated person or minor).

If the court finds that (name of alleged incapacitated person or minor) is an incapacitated person or minor, the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person or minor). The court may, in its discretion, appoint some other qualified person as guardian. The court may also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person or minor) to retain control over certain property and activities. The court may also determine whether a protective order should be entered on behalf of (name of alleged incapacitated person or minor).

(Name of alleged incapacitated person) may attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged incapacitated person) is not required. If (name of alleged incapacitated person) attends the hearing, opposes the petition, and is not represented by an attorney, the court may appoint an attorney to represent (name of alleged incapacitated person). The court may,

where required, appoint a guardian ad litem to represent (name of alleged incapacitated person or minor) at the hearing.

The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.

(signature of clerk of the court)

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.9; P.L.77-1992, SEC.6; P.L.6-2010, SEC.11.

IC 29-3-6-3

Request for written notice of proceedings and pleadings; determination of interest; failure to comply with request

Sec. 3. (a) At any time after the appointment of a guardian or the issuance of a protective order, any person may, in person or by the person's attorney, serve upon the guardian or the guardian's attorney, and file with the clerk of the court where the proceedings are pending, a written request together with a written admission or proof of service stating that the person desires written notice of all hearings and copies of all pleadings or other papers in connection with:

- (1) the settlement of accounts;
- (2) the sale, mortgage, lease, or exchange of any property of the protected person;
- (3) allowances of any nature payable from the protected person's property;
- (4) the investment of funds of the protected person;
- (5) the removal, suspension, or discharge of the guardian;
- (6) the final termination of the guardianship; or
- (7) any other notice or matter as specified in the request.

The applicant requesting special notice must include in the written request the applicant's post office address or that of the applicant's attorney. The court may determine that any person requesting notice under this section has no interest in the proceeding, either generally or with respect to a particular matter, and is not entitled to the notice requested. Unless the court otherwise directs, upon filing the request, the guardian or the guardian's attorney shall comply with the request.

(b) Failure to comply with a request for notice under this section does not affect the validity of the proceeding.

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

IC 29-3-7

Chapter 7. Qualification and Bonding Requirements for Guardians

IC 29-3-7-1

Guardian's bond; amount; collateral in lieu of sureties on bond; reduced bonds

Sec. 1. (a) Unless the court finds that a bond is unnecessary and enters an order to that effect, or unless the appointed guardian is a bank or trust company (as defined in IC 28-1-1-3), a guardian must execute and file a bond relating to the duties of the guardian's office. Unless otherwise directed by the court, the bond must be in an amount that is not less than the amount determined under STEP THREE of the following STEPS:

STEP ONE: Enter the aggregate value of the guardianship property.

STEP TWO: Add to the amount entered under STEP ONE one (1) year's estimated income.

STEP THREE: From the sum determined under STEP TWO subtract the value of any property that the guardian, by express limitation of power, lacks the power to sell, convey, or encumber without a court order.

(b) The court, instead of sureties on a bond, may accept other collateral for the performance of the bond, including a pledge of securities or a mortgage of the land.

(c) The court may fix the bond at an amount less than that provided under subsection (a), but the amount fixed must, in the court's opinion, provide adequate protection to the property of the protected person. In fixing a reduced bond, the court may do any of the following:

(1) Direct the guardian to invest all, or a part of, the property subject to the guardian's control in:

(A) stocks, bonds, or other securities of any corporation, public or private, which are listed or admitted to trading on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or any other exchange regulated by the Securities and Exchange Commission; or

(B) securities that are obligations issued or guaranteed by the United States.

(2) Direct the guardian to place all, or a part of, the property subject to the guardian's control in a savings account. However, the court may require property to be held in a manner that requires either the joint authorization of the guardian and the guardian's surety or an order of the court to remove the funds from the account.

(3) Direct the guardian to transfer all, or a part of, the property subject to the guardian's control to a bank or trust company organized under the laws of Indiana or of the United States and operating a bank or trust company located within Indiana to administer the estate as an agent for the guardian.

- (4) Direct the guardian to:
 - (A) transfer any or all stocks, bonds, and securities subject to the guardian's control only after obtaining an order of the court directing the transfer; and
 - (B) require that notice of this restriction on the transfer of such stocks, bonds, and securities be placed upon the certificates evidencing those stocks, bonds, and securities.
- (5) Direct the guardian to comply with all, part, or any combination of the requisites specified in subdivisions (1) through (4).
- (6) Direct the guardian to take any other action that the court determines necessary to provide adequate protection to the property of the protected person.

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

IC 29-3-7-2

Bond requirements; liability; consent to jurisdiction; proceedings against sureties

Sec. 2. (a) The following requirements apply to all bonds on which the guardian is primary obligor:

- (1) Unless otherwise provided by the terms of the bond, sureties are jointly and severally liable with the primary obligor and with each other.
- (2) By executing the bond, the surety consents to the jurisdiction of the court that issued letters in any proceeding pertaining to the fiduciary duties of the primary obligor and naming the surety as a party respondent. Notice of any proceeding under this article must be delivered to the surety or mailed by registered or certified mail to the address listed with the court at the place where the bond is filed and to the address as then known to the petitioner.
- (3) On petition of a successor to the primary obligor or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the primary obligor.
- (4) The bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

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

IC 29-3-7-3

Letters of guardianship

Sec. 3. (a) Letters of guardianship, temporary or otherwise, shall be issued to the person entitled to receive them when:

- (1) the guardian, if an individual, has filed bond if required and taken and subscribed before the clerk or any other officer authorized to administer oaths, an oath or affirmation that the

guardian will faithfully discharge the duties of the guardian's trust according to law; or

(2) the guardian, if other than an individual, has filed bond if required and has:

(A) taken and subscribed before the clerk or any other officer authorized to administer oaths an oath or affirmation that it will faithfully discharge the duties of its trust according to law; and

(B) filed an acceptance of the appointment, duly executed and acknowledged by one (1) of its officers.

(b) The oath, and if other than an individual also the acceptance, shall be filed and recorded as a part of the proceedings of the guardianship.

(c) If the court limits or restricts the authority of the guardian or creates a limited guardianship, the letters must so state under IC 29-3-8.

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

IC 29-3-7-4

Acceptance of appointment as submission to personal jurisdiction

Sec. 4. By accepting appointment, a guardian and the guardian's attorney submit personally to the jurisdiction of the court in any proceeding relating to the guardianship.

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

IC 29-3-7-5

Guardianship property; possession by guardian; transfer of property interest; process against property

Sec. 5. (a) A guardian shall take possession of the guardianship property, title to which shall remain in the protected person subject to the right of the guardian to possess and dispose of the property as provided by law.

(b) The interest of the protected person in guardianship property is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, though ineffective to affect property rights, may generate a claim under IC 29-3-10.

(c) The property referred to in subsections (a) through (b) is not subject to levy, garnishment, or similar process other than an order issued in a proceeding on a claim under IC 29-3-10.

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

IC 29-3-7-6

Evidence of possessory and disposition rights in guardianship property; real property of guardianship; filing of letters of appointment or termination orders

Sec. 6. (a) Letters are evidence that the guardian has all, and the protected person does not have any, rights to possess and dispose of the guardianship property. An order terminating a guardianship is evidence that the protected person has all, and the guardian does not

have any, rights to possess and dispose of the guardianship property.

(b) Subject to the requirements of general statutes governing the filing or recordation of documents of title to real estate, letters, and orders terminating the same may be filed or recorded in the county where the real estate in question is located to give record notice of rights of possession and disposal as between the guardian and the protected person.

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

IC 29-3-7-7

Persons prohibited from being appointed or from serving as a guardian

Sec. 7. A court may not appoint a person to serve as the guardian or permit a person to continue to serve as a guardian if the person:

(1) is a sexually violent predator (as described in IC 35-38-1-7.5);

(2) was at least eighteen (18) years of age at the time of the offense and was convicted of child molesting (IC 35-42-4-3) or sexual misconduct with a minor (IC 35-42-4-9) against a child less than sixteen (16) years of age:

(A) by using or threatening the use of deadly force;

(B) while armed with a deadly weapon; or

(C) that resulted in serious bodily injury; or

(3) was less than eighteen (18) years of age at the time of the offense and was convicted as an adult of:

(A) an offense described in:

(i) IC 35-42-4-1;

(ii) IC 35-42-4-2;

(iii) IC 35-42-4-3 as a Class A or Class B felony;

(iv) IC 35-42-4-5(a)(1);

(v) IC 35-42-4-5(a)(2);

(vi) IC 35-42-4-5(a)(3);

(vii) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

(viii) IC 35-42-4-5(b)(2); or

(ix) IC 35-42-4-5(b)(3) as a Class A or Class B felony;

(B) an attempt or conspiracy to commit a crime listed in clause (A); or

(C) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) and (B).

As added by P.L.131-2009, SEC.5.

IC 29-3-8

Chapter 8. Responsibilities and Powers of Guardian

IC 29-3-8-1

Enumerated responsibilities of guardian

Sec. 1. (a) The guardian of a minor (other than a temporary guardian) has all of the responsibilities and authority of a parent and, unless otherwise ordered by the court, is responsible for the preservation of all the minor's property regardless of where the property is located. In addition and without limitation, the guardian:

- (1) must be or shall become sufficiently acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capabilities, disabilities, limitations, needs, opportunities, and physical and mental health;
- (2) shall, upon termination of the guardianship, comply with the applicable provisions of IC 29-3-12;
- (3) to the extent the available parental income and property are insufficient to fulfill the parental obligation of support to the minor, shall apply the guardianship income and, to the extent the guardianship income is insufficient, the principal of the guardianship property to the minor's current needs for support, and protect and conserve that portion of the minor's property that is in excess of the minor's current needs;
- (4) shall report the physical and mental condition of the minor to the court as ordered by the court; and
- (5) has any other responsibilities that the court may order.

(b) The guardian (other than a temporary guardian) of an incapacitated person is responsible for the incapacitated person's care and custody and for the preservation of the incapacitated person's property to the extent ordered by the court. In addition and without limitation, the guardian of an incapacitated person:

- (1) has, with respect to the incapacitated person, the same responsibilities as those of a guardian of a minor enumerated in subsection (a)(1), (a)(3), and (a)(4);
- (2) shall, upon termination of the guardianship, comply with the applicable provisions of IC 29-3-12; and
- (3) has any other responsibilities that the court may order.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.10.

IC 29-3-8-2

Powers which guardian may exercise

Sec. 2. (a) The guardian of a minor may exercise all of the powers required to perform the guardian's responsibilities, including the following:

- (1) The power to receive property payable to the minor or the minor's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or private contract, devise, trust, or custodianship.
- (2) The power to take custody of the person of the minor and

establish the minor's place of abode within or without Indiana if in accordance with IC 29-3-9-2.

(3) The power to institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the minor or to pay for the minor's education, health, or welfare.

(4) The power to consent to medical or other professional care and treatment for the minor's health and welfare.

(5) The power to consent to the marriage or adoption of the minor.

(6) If reasonable, the power to delegate to the minor certain responsibilities for decisions affecting the minor's business affairs and well-being.

(7) The power to purchase a home for the minor or the minor's dependents, to protect the minor's existing home, or to protect the minor's interest in any real estate in which the minor may have an interest, contractual or otherwise, or to purchase any other interest in real property where the court finds the purchase to be in the minor's best interest.

(8) The powers with respect to the guardianship property as are granted to a guardian under section 4 of this chapter with respect to guardianship property.

(9) The power to bind all or any part of the guardianship property in a transaction for the benefit of the minor unless the third party dealing with the guardian is acting in bad faith.

(10) If the minor has no living parent, other than a parent who is an incapacitated person, the powers granted to the parent of a minor under IC 29-3-3-3(1) through IC 29-3-3-3(8).

(b) The guardian (other than a temporary guardian) of an incapacitated person has all of the powers to perform the guardian's responsibilities, including the powers with respect to the incapacitated person and the incapacitated person's property regardless of where the property is located, that are granted to the guardian of a minor enumerated in subsection (a)(1) through (a)(9). *As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.11.*

IC 29-3-8-3

Mandatory responsibilities of guardian

Sec. 3. A guardian (other than a temporary guardian) shall do the following:

(1) Act as a guardian with respect to the guardianship property and observe the standards of care and conduct applicable to trustees.

(2) Protect and preserve the property of the protected person subject to guardianship and secure the protective orders or other orders that are required to protect any other property of the protected person.

(3) Conserve any property of the protected person in excess of the protected person's current needs.

(4) Encourage self-reliance and independence of the protected person.

(5) Consider recommendations relating to the appropriate standard of support, care, education, and training for the protected person or the protected person's dependent made by the protected person's parent.

As added by P.L.169-1988, SEC.1. Amended by P.L.108-1996, SEC.6.

IC 29-3-8-4

Exercise of powers to perform responsibilities; enumeration

Sec. 4. A guardian (other than a temporary guardian) may exercise all of the powers required to perform the guardian's responsibilities, including the following:

(1) To receive and issue a receipt for property payable to the protected person or the protected person's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or any private contract, devise, trust, guardianship, or custodianship.

(2) If reasonable, to delegate to the protected person certain responsibilities for decisions affecting the protected person's business affairs and well-being.

(3) To invest and reinvest the property of the protected person in accordance with powers vested in, and according to the standards imposed upon, trustees under IC 30-4-3-3(c).

(4) To secure the appointment of a guardian or co-guardian in any other state, when needed, with respect to any part or all of the guardianship property located in another state, to confer upon the appointed guardian any or all of the guardian's powers as guardian with respect to the property.

(5) To continue any business of the protected person, whether in corporate, partnership, or proprietorship form, according to the rules for continuing the business of a decedent specified in IC 29-1-13-11.

(6) To pay to the person, guardian, department, bureau, or agency having care and custody of the protected person, or to the protected person if at least fourteen (14) years of age, a reasonable amount to be expended for the support of the protected person and the protected person's dependents, with due regard to the following:

(A) The size of the guardianship property, the probable duration of the guardianship, and the extent to which the protected person in the future may be self-sufficient and able to manage the protected person's financial affairs and property.

(B) The accustomed standard of living of the protected person and the protected person's dependents.

(C) Other funds or sources used for the support of the protected person and the protected person's dependents.

(7) To distribute income and discretionary amounts of principal

in one (1) or more of the following ways as the guardian believes to be in the best interests of the protected person:

- (A) Directly to the protected person.
- (B) To a guardian of the protected person appointed in another state.
- (C) To a custodian for the protected person under IC 30-2-8.5.
- (D) To an adult relative of the protected person.
- (E) By expending the money or using the property directly for the benefit of the protected person.
- (8) To apply the guardianship property to or for the benefit of any person, including the protected person, in reimbursement for reasonable expenditures made in good faith on behalf of the protected person that the guardian might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect that the services will be performed and advance payments are reasonably necessary under the circumstances.
- (9) To bind all or any part of the guardianship property in a transaction for the benefit of the protected person, unless the third party dealing with the guardian is acting in bad faith.
- (10) Except as provided in IC 29-3-2-6(d), powers conferred upon trustees and personal representatives respectively by IC 30-4-3-3 and IC 29-1-7.5-3. However, if there is a conflict, the broader power controls.
- (11) To exercise on behalf of the protected person powers that are the same as those granted to the parent of a minor under IC 29-3-3-3.

As added by P.L.169-1988, SEC.1. Amended by P.L.267-1989, SEC.1; P.L.77-1992, SEC.7.

IC 29-3-8-5

Sale or encumbrance of guardianship property; conflicts of interest

Sec. 5. (a) Any:

- (1) sale or encumbrance of any part of the property of a protected person to a guardian or guardian's spouse, agent, attorney, or any corporation, trust, or other organization in which the guardian has a substantial beneficial interest; or
- (2) other transaction involving the property that is affected by a substantial conflict between the interest of the protected person and the guardian's personal interest;

is void unless approved by the court.

(b) Every contract, sale, or conveyance executed by a protected person is void unless the protected person is a minor, in which event the contract, sale, or conveyance is voidable.

As added by P.L.169-1988, SEC.1. Amended by P.L.238-2005, SEC.15.

IC 29-3-8-6

Sale or transfer of guardianship property contrary to terms of

protected person's will; election of devisee

Sec. 6. If:

- (1) a guardian sells or transfers during a protected person's lifetime property belonging to the protected person that is specifically devised to another in a will executed by the protected person;
- (2) the protected person subsequently dies; and
- (3) the devised property is consequently not contained in the protected person's estate following the death of the protected person;

the devisee may, at the devisee's option, elect to receive the value of the devised property, as valued at the time of death of the protected person, as a general devise or the proceeds of the sale or transfer as a specific devise.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.72; P.L.252-2001, SEC.28.

IC 29-3-8-6.5

Severance of property jointly owned with rights of survivorship or use of the assets of a multiple party account

Sec. 6.5. (a) If:

- (1) a guardian takes possession of property that is:
 - (A) jointly owned by or titled in the names of the protected person and another person with rights of survivorship; or
 - (B) owned as a multiple party account with another person as joint owner or beneficiary;
- (2) the guardian:
 - (A) severs the joint ownership of the property; or
 - (B) uses the assets of the multiple party account; and
- (3) the protected person subsequently dies while the other person is living;

the other person may elect to receive from the protected person's estate property in an amount determined under subsection (b).

(b) The amount of property the other person described in subsection (a) may elect to receive is determined in STEP THREE of the following formula:

STEP ONE: Subtract:

- (A) the value of the severed or used property retained by the other person at the time ownership was severed or used, if any; from
- (B) the value of the joint property or multiple party account at the time ownership was severed or the assets were used.

STEP TWO: Divide:

- (A) the remainder determined under STEP ONE; by
- (B) the value of the protected person's property, including the jointly held property or multiple party account, at the time ownership was severed or the assets were used.

STEP THREE: Multiply:

- (A) the quotient determined under STEP TWO; by
- (B) the value of the deceased protected person's net estate.

(c) As used in this section, "multiple party account" refers to both multiple party accounts described by IC 32-17-11 and transfer on death transfers completed under IC 32-17-14.

As added by P.L.33-1989, SEC.73. Amended by P.L.143-2009, SEC.16.

IC 29-3-8-7

Sale, division, or disposition of property; contracts entered into before incapacity; performance by guardian

Sec. 7. If the court finds that:

- (1) an incapacitated person who is a protected person did, before the person became an incapacitated person, enter into a written contract, including a contract for the sale, division, or other disposition of property;
- (2) the obligations of the contract have not been fully carried out; and
- (3) the contract was a good and binding contract at the time of the making of the contract;

the court shall authorize the guardian of the protected person to perform the contract without notice or hearing unless otherwise ordered by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.74.

IC 29-3-8-8

Limitations on guardian powers

Sec. 8. (a) The court, at the time of appointment or later, on its own motion or on petition of the protected person or other person approved by the court, may:

- (1) confer upon the guardian any additional responsibilities and powers;
- (2) increase or decrease the bond of the guardian to satisfy the requirements of IC 29-3-7-1; or
- (3) limit the responsibilities and powers of the guardian otherwise conferred by this article and create a limited guardianship.

(b) However, all limitations must be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate revised letters issued.

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

IC 29-3-8-9

Requirements, terms, and conditions included in order creating guardianship; requirements for modifying or terminating guardianship; notify and refer to department of child services; conduct of hearing

Sec. 9. (a) A probate or juvenile court may include in its order creating a guardianship of a minor the following:

- (1) A requirement that the minor must reside with the guardian until the guardianship is terminated or modified.

(2) Any terms and conditions that a parent must meet in order to seek modification or termination of the guardianship.

(b) Except as provided in IC 29-3-12, if an order creating a guardianship contains terms and conditions described in subsection (a)(2), the court may modify or terminate the guardianship only if the parent:

- (1) complies with the terms and conditions; and
- (2) proves the parent's current fitness to assume all parental obligations by a preponderance of the evidence.

(c) If:

(1) a petition is filed for modification, resignation, or removal of the guardian or termination of the guardianship before the parent complies with the court ordered terms and conditions described in subsection (a)(2); and

(2) the minor:

(A) was the subject of a petition alleging the child to be a child in need of services; or

(B) is participating in a program of informal adjustment;

the court shall refer the petition to the department of child services for the department of child services to determine the placement of the child in accordance with the best interests of the child.

(d) A court shall notify the department of child services:

(1) if:

(A) the court appoints a guardian for a minor who:

(i) was the subject of a petition alleging the minor to be a child in need of services; or

(ii) is participating in a program of informal adjustment; and

(B) a petition to modify or terminate the guardianship of the minor or a petition regarding the death, resignation, or removal of the guardian is filed; and

(2) of any hearings related to the petitions described under subdivision (1)(B).

(e) If a minor was the subject of a petition alleging the minor to be a child in need of services or is participating in a program of informal adjustment, the court shall do the following at a hearing regarding a petition filed under this section:

(1) Consider the position of the department of child services.

(2) If requested by the department of child services, allow the department of child services to present evidence regarding:

(A) whether the guardianship should be modified or terminated;

(B) the fitness of the parent to provide for the care and supervision of the minor at the time of the hearing;

(C) the appropriate care and placement of the child; and

(D) the best interests of the child.

As added by P.L.162-2011, SEC.3.

IC 29-3-8.5

Chapter 8.5. Volunteer Advocates for Seniors or Incapacitated Adults

IC 29-3-8.5-1

Appointment

Sec. 1. A court in a proceeding under this article may appoint a volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.2; P.L.72-2010, SEC.5.

IC 29-3-8.5-2

Progress reports; final report

Sec. 2. A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program shall submit to the court:

- (1) a progress report thirty (30) days after the date of appointment describing:
 - (A) the matters required by the court; and
 - (B) the:
 - (i) current physical and mental condition;
 - (ii) residential placement; and
 - (iii) property, and any property related issues;of the senior or the incapacitated adult;
- (2) a progress report sixty (60) days after the date of appointment:
 - (A) describing the matters required by the court; and
 - (B) that includes a verified inventory describing the property, and any property related issues, of the incapacitated adult or senior;
- (3) a progress report or final report ninety (90) days after the date of appointment:
 - (A) describing the matters required by the court; and
 - (B) making recommendations to the court as to whether the need continues to exist for the appointment of a guardian of the incapacitated adult or senior;
- (4) an annual progress report on the anniversary date of the appointment if the appointment of the volunteer advocate is continued by the court for more than one (1) year:
 - (A) describing the matters required by the court;
 - (B) describing the:
 - (i) current physical and mental condition;
 - (ii) residential placement; and
 - (iii) property, and any property related issues;of the senior or the incapacitated adult; and
 - (C) making recommendations to the court as to whether the need continues to exist for the appointment of a guardian of the incapacitated adult or senior; and
- (5) upon the death of the incapacitated person, a final report and financial accounting:

- (A) describing the incapacitated person's:
 - (i) final physical and mental condition;
 - (ii) cause of death;
 - (iii) last residential placement; and
 - (iv) final burial arrangements;
- (B) stating the actions taken by the program regarding the:
 - (i) person's care and custody; and
 - (ii) preservation of the person's property;
- (C) making recommendations to the court to close the guardianship of the person; and
- (D) containing all other matters required by the court.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.3; P.L.72-2010, SEC.6.

IC 29-3-8.5-3

Duties

Sec. 3. (a) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program shall:

- (1) serve as a guardian to represent and protect the best interests of an incapacitated person or senior including the person's property;
- (2) investigate and gather information regarding the health, welfare, and financial circumstances of the incapacitated person or senior, as directed by a court;
- (3) facilitate and authorize health care, social welfare, and residential placement services as needed by the incapacitated person or senior;
- (4) advocate for the rights of the incapacitated person or senior;
- (5) facilitate legal representation for the incapacitated person or senior;
- (6) provide the court with the required reports under section 2 of this chapter; and
- (7) perform any other responsibilities required by the court.

(b) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program has the duties of the guardian of a minor listed in IC 29-3-8-1 and IC 29-3-8-3.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.4; P.L.72-2010, SEC.7.

IC 29-3-8.5-4

Actions a volunteer advocate for seniors or a volunteer advocate for incapacitated adults may take

Sec. 4. (a) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program may:

- (1) consent to medical and other professional care and treatment for the incapacitated person's or senior's health and welfare;
- (2) secure the appointment of a guardian or coguardian in another state;
- (3) take custody of the incapacitated person or senior and establish the incapacitated person's or senior's residence within

Indiana or another state in accordance with IC 29-3-9-2;

(4) institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the incapacitated person's or senior's health or welfare;

(5) protect and preserve the property of the incapacitated person or senior and preserve any property in excess of the incapacitated person's or senior's current needs; and

(6) delegate to the incapacitated person or senior certain responsibilities for decisions affecting the incapacitated person's or senior's business affairs and well-being.

(b) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program may exercise the powers of a guardian of a minor listed in IC 29-3-8-2 and IC 29-3-8-4.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.5; P.L.72-2010, SEC.8.

IC 29-3-8.5-5

Term of appointment

Sec. 5. (a) If a court appoints a volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program, the initial appointment shall be for a period of ninety (90) days.

(b) After the initial ninety (90) day period, the court may, upon petition by the volunteer advocates for seniors program or volunteer advocates for incapacitated adults program or upon the court's own motion, extend the appointment for a period as determined by the court to be necessary to protect the best interests and property of the incapacitated person or senior.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.6; P.L.72-2010, SEC.9.

IC 29-3-8.5-6

Officer of the court

Sec. 6. A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program is considered an officer of the court for the purpose of representing the interests of an incapacitated person or senior.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.7; P.L.72-2010, SEC.10.

IC 29-3-8.5-7

Attorney appointment

Sec. 7. The court may appoint an attorney to represent a volunteer advocate for seniors or a volunteer advocate for incapacitated adults.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.8.

IC 29-3-8.5-8

Civil immunity

Sec. 8. Except for gross misconduct:

(1) a volunteer advocate for seniors program or a volunteer advocate for incapacitated adults program that;

(2) an employee of a volunteer advocates for seniors program or a volunteer advocate for incapacitated adults program who;
or
(3) a volunteer for a volunteer advocates for seniors program or a volunteer advocate for incapacitated adults program who;
performs duties in good faith is immune from any civil liability resulting from the program's, employee's, or volunteer's performance.
As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.9.

IC 29-3-8.5-9

Authorization to consent to or refuse health care

Sec. 9. A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program under this chapter is not authorized to consent to or refuse health care (as defined in IC 16-36-1-1) for an individual if:

- (1) a spouse, a parent, an adult child, or an adult sibling of the individual or the individual's religious superior, if the individual is a member of a religious order, is available, capable, and suitable to consent to or refuse the health care on behalf of the individual; or
- (2) the individual has previously:
 - (A) appointed a health care representative under IC 16-36-1;
 - (B) authorized health care under IC 16-36-1.5, IC 16-36-4, or IC 16-36-5;
 - (C) executed a power of attorney under IC 30-5-4; or
 - (D) had a guardian appointed by the court under IC 29-3.

As added by P.L.41-2004, SEC.2. Amended by P.L.11-2006, SEC.10; P.L.72-2010, SEC.11.

IC 29-3-8.5-9.5

Application of responsibilities and powers of guardians

Sec. 9.5. IC 29-3-8-5 through IC 29-3-8-8 apply to a volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program under this chapter.

As added by P.L.72-2010, SEC.12.

IC 29-3-8.5-10

Petitions for reasonable compensation

Sec. 10. (a) A volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program may petition the court for reasonable compensation for services provided or for expenditures made in good faith on behalf of the incapacitated adult or senior.

(b) A court may grant reasonable compensation or expenditure reimbursement to a volunteer advocates for seniors program or a volunteer advocates for incapacitated adults program upon the court's own motion.

As added by P.L.72-2010, SEC.13.

IC 29-3-8.5-11

Joint or multiple county programs

Sec. 11. (a) Courts with probate jurisdiction that are located in adjacent counties may establish joint or multiple county volunteer advocates for seniors programs or volunteer advocates for incapacitated adults programs.

(b) Courts with probate jurisdiction may contract with an Indiana nonprofit or municipal corporation to provide volunteer advocates for seniors programs or volunteer advocates for incapacitated adults programs.

As added by P.L.72-2010, SEC.14.

IC 29-3-8.5-12**Programs of nonprofit corporations**

Sec. 12. (a) A volunteer advocates for seniors program or volunteer advocates for incapacitated adults program that is a program of an Indiana nonprofit corporation must establish policies and procedures to avoid a conflict of interest if the nonprofit corporation is also a provider of other necessary services to the incapacitated individual.

(b) A volunteer advocates for seniors program or volunteer advocates for incapacitated adults program to which subsection (a) applies shall advise the court of the policies and procedures established to avoid a conflict of interest in the petition to the court for guardianship of the incapacitated individual.

As added by P.L.72-2010, SEC.15.

IC 29-3-9

Chapter 9. Matters Other Than Appointment

IC 29-3-9-1

Delegation of powers; exercise of powers under power of attorney

Sec. 1. (a) By a properly executed power of attorney, a parent of a minor or a guardian (other than a temporary guardian) of a protected person may delegate to another person for:

- (1) any period during which the care and custody of the minor or protected person is entrusted to an institution furnishing care, custody, education, or training; or
- (2) a period not exceeding twelve (12) months;

any powers regarding support, custody, or property of the minor or protected person, except the power to consent to the marriage or adoption of a protected person who is a minor. A delegation described in this subsection is effective immediately unless otherwise stated in the power of attorney.

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

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

- (1) identifies the power of attorney revoked; and
- (2) is signed by the:
 - (A) parent of a minor; or
 - (B) guardian of a protected person;who executed the power of attorney.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.75; P.L.101-2008, SEC.7; P.L.178-2011, SEC.6.

IC 29-3-9-2

Change in physical presence of protected person

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

IC 29-3-9-3

Compensation and reimbursement of guardian

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

IC 29-3-9-4

Repealed

(Repealed by P.L.6-2010, SEC.40.)

IC 29-3-9-4.5

Estate planning

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

- (1) Make gifts.
- (2) Exercise any power with respect to transfer on death or payable on death transfers that is described in IC 30-5-5-7.5.
- (3) Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties.
- (4) Exercise or release a power of appointment.
- (5) Create a revocable or irrevocable trust of all or part of the property of the estate, including a trust that extends beyond the duration of the guardianship.
- (6) Revoke or amend a trust that is revocable by the protected person.
- (7) Exercise rights to elect options and change beneficiaries under insurance policies, retirement plans, and annuities.
- (8) Surrender an insurance policy or annuity for its cash value.
- (9) Exercise any right to an elective share in the estate of the protected person's deceased spouse.
- (10) Renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos.

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

- (1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support;
- (2) the interests of creditors;
- (3) the possible reduction of income taxes, estate taxes, inheritance taxes, or other federal, state, or local tax liabilities;

- (4) the eligibility of the protected person for governmental assistance;
- (5) the protected person's previous pattern of giving or level of support;
- (6) the protected person's existing estate plan, if any;
- (7) the protected person's life expectancy and the probability that the guardianship will terminate before the protected person's death; and
- (8) any other factor the court considers relevant.

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

- (1) A will.
- (2) A trust.
- (3) A power of attorney.
- (4) A health care appointment.
- (5) Any other estate planning document.

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

IC 29-3-9-5

Inventory of guardianship property

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

- (1) The cause number.
- (2) A statement that Indiana law requires a guardian to file with the court a written verified account of the guardian's administration:
 - (A) at least biennially, not more than thirty (30) days after the anniversary date of the guardian's appointment; and
 - (B) not more than thirty (30) days after the termination of the appointment.
- (3) A statement that the inventory and the written verified accounts may be inspected at the court's address.

(b) The guardian shall keep suitable records of the guardian's administration and exhibit the records as ordered by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.265-1995, SEC.1.

IC 29-3-9-6

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

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

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

a written verified account of the guardian's administration.

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

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

(d) Notice of the hearing of each account of a guardianship shall be given, unless waived, to the following:

- (1) The protected person.
- (2) In the case of a protected person who has died, the personal representative of the estate of the protected person, if any.
- (3) Any other persons that the court directs.

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

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

(g) When a guardian files with the court proper receipts or other evidence satisfactory to the court showing that the guardian has delivered to the appropriate persons all the property for which the guardian is accountable as guardian, the court shall enter an order of discharge. The order of discharge operates as a release from the duties of the guardian's office that have not yet terminated and operates as a bar to any suit against the guardian and the guardian's sureties, unless the suit is commenced within one (1) year from the date of the discharge.

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

IC 29-3-9-6.5

Accounting standards and procedures

Sec. 6.5. (a) This section applies to an accounting described under

section 6 of this chapter that is filed:

(1) in a court that requires an accounting; and

(2) by a guardian for a protected person:

(A) whose:

(i) annual gross income is not more than one hundred eighty-five percent (185%) of the federal income poverty level as determined annually by the federal Office of Management and Budget under 42 U.S.C. 9902; and

(ii) total assets are worth fifteen thousand dollars (\$15,000) or less; or

(B) who has an annual gross income and total assets of any amount, if the guardian does not have powers concerning the estate of the protected person.

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

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

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

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

IC 29-3-9-7

Compromise of claim; petition to court; settlement

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

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

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

IC 29-3-9-8

Supplementary orders

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

appropriate.

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

IC 29-3-9-9

Expenses of proceedings

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

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

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

IC 29-3-9-10

Attorney of record for guardian

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

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

IC 29-3-9-11

Investigation and report concerning minor or protected person

Sec. 11. (a) The department of child services shall investigate and report to the court concerning the conditions and circumstances of a minor and the fitness and conduct of the guardian or the proposed guardian whenever ordered to do so by the court.

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

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

IC 29-3-10

Chapter 10. Claims Against Protected Persons

IC 29-3-10-1

Payment of debts incurred on behalf of protected person; payment of claims; actions against guardian; filing of claims

Sec. 1. (a) Without prior order of the court, a guardian shall pay from the guardianship property all indebtedness that the guardian has reasonably incurred in good faith on behalf of the protected person.

(b) Upon order of the court, a guardian shall pay from the protected person's property for which the guardian is responsible any claim against the protected person or the protected person's property, that the court determines has merit.

(c) Claims based on:

- (1) contracts entered into by a guardian in the guardian's official capacity;
- (2) obligations arising from ownership or control of the property for which the guardian is responsible; or
- (3) acts or omissions in the course of administration of the guardianship;

may be asserted against the guardianship by proceeding against the guardian in the guardian's official capacity, whether or not the guardian is personally liable.

(d) Any person having a claim against the protected person or the protected person's property or against the guardian as such may file the claim with the court at any time before the claim is barred by the statute of limitations and, upon proof of the claim, procure an order for its allowance and payment from the guardianship property. However, if a claim is filed within sixty (60) days before the date that a protected person attains the age of majority or regains capacity:

- (1) the claim shall be stayed until the sixty (60) day period has elapsed;
- (2) the protected person shall be substituted as a party; and
- (3) the guardian shall prepare and file the guardian's account without regard to the claim.

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

IC 29-3-11

Chapter 11. Liability of Guardians and Persons Acting Under Protective Orders

IC 29-3-11-1

Protection for persons dealing in good faith with guardian or person acting under protective order; scope of protection

Sec. 1. (a) A person who in good faith deals with a guardian or person acting under a protective order is:

- (1) protected as if the guardian or person acting under a protective order properly exercised the power; and
- (2) not required to inquire into the existence of the power or the propriety of its exercise except as to restrictions endorsed on the letters.

(b) A person who deals with a guardian or person acting under a protective order in good faith is not bound to see to the proper application of amounts paid or property delivered to the guardian or person.

(c) The protection expressed in this section:

- (1) extends to any procedural irregularity or jurisdictional defect occurring in proceedings under this article; and
- (2) is not a substitution for but is in addition to any other applicable law, including the laws relating to commercial transactions and to simplifying transfers of securities by fiduciaries.

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

IC 29-3-11-2

Contracts entered into in good faith; personal liability of guardian; liability for acts or omissions; proceeding to determine liability

Sec. 2. (a) Unless otherwise provided in the contract, a guardian or person acting under a protective order is not personally liable on a contract entered into in good faith under the order, unless that person fails to reveal that person's representative capacity and identify that person's capacity in the contract.

(b) Subject to subsection (a), a guardian or person acting under a protective order is not personally liable to the protected person or others for any act or omission in good faith or for any act or omission of the protected person or others acting on behalf of the protected person.

(c) The guardian or person acting under a protective order is personally liable to the protected person for acts or omissions in the course of the administration of the trust of the guardian or person acting under a protective order only for a breach of duty to the protected person.

(d) Any question of liability of the guardian or person acting under a protective order personally to the protected person may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

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

IC 29-3-11-3

Actions between third party and protected person; service of process; suits against guardian or person acting under protective order; substitution of parties

Sec. 3. (a) If a guardian has been appointed, all actions between third persons and the protected person seeking to charge or benefit the protected person or the protected person's property shall be prosecuted by or against the guardian or person acting under a protective order to represent the interests of the protected person in the action. All process relating to that action shall be served on the guardian.

(b) In the case of a claim against the guardian or person acting under a protective order personally, the guardian or person acting under the protective order may be sued both as guardian or person acting under the protective order and in the personal capacity of the guardian or person acting under the protective order in the same action.

(c) If an action was commenced by or against the protected person before the appointment of a guardian for the protected person, the guardian upon appointment shall be substituted as a party for the protected person. If the appointment of the guardian is terminated, the guardian's successor shall be substituted as a party to the action. If the protected person dies, the protected person's personal representative shall be substituted. If the protected person is no longer a minor or incapacitated person, the protected person shall be substituted.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.79.

IC 29-3-11-4

Civil immunity of a guardian

Sec. 4. Except as provided in section 2 of this chapter and except for gross misconduct, a guardian appointed under this article is immune from any civil liability resulting from the guardian's performance.

As added by P.L.41-2004, SEC.4.

IC 29-3-12

Chapter 12. Termination of Guardianships and Protective Orders

IC 29-3-12-1

Conditions for termination of guardianship; effect of termination on guardianship powers

Sec. 1. (a) Unless the protected person has been adjudicated an incapacitated person, the court shall terminate the guardianship of a minor upon:

- (1) the minor's attaining eighteen (18) years of age; or
- (2) the minor's death.

The court may terminate the guardianship of a minor upon the minor's adoption or marriage.

(b) The court shall terminate the guardianship of an incapacitated person upon:

- (1) adjudication by the court that the protected person is no longer an incapacitated person; or
- (2) the death of the protected person.

(c) The court may terminate any guardianship if:

- (1) the guardianship property does not exceed the value of three thousand five hundred dollars (\$3,500);
- (2) the guardianship property is reduced to three thousand five hundred dollars (\$3,500);
- (3) the domicile or physical presence of the protected person is changed to another state and a guardian has been appointed for the protected person and the protected person's property in that state; or
- (4) the guardianship is no longer necessary for any other reason.

(d) When a guardianship terminates otherwise than by the death of the protected person, the powers of the guardian cease, except that the guardian may pay the claims and expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust, including payment and delivery of the remaining property for which the guardian is responsible to:

- (1) the protected person;
- (2) in the case of an unmarried minor, to a person having care and custody of the minor with whom the minor resides;
- (3) a trust approved by the court, including a trust created by the guardian, in which:
 - (A) the protected person is the sole beneficiary of the trust; and
 - (B) the terms of the trust satisfy the requirements of Section 2503(c) of the Internal Revenue Code and the regulations under that Section;
- (4) a custodian under the Uniform Transfers to Minors Act (IC 30-2-8.5); or
- (5) another responsible person as the court orders.

(e) When a guardianship terminates by reason of the death of the protected person, the powers of the guardian cease, except that the

guardian may pay the expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust and may deliver the remaining property for which the guardian is responsible to the protected person's personal representative or to a person who presents the guardian with an affidavit under IC 29-1-8-1 or IC 29-2-1-2. If approved by the court, the guardian may pay directly the following:

- (1) Reasonable funeral and burial expenses of the protected person.
- (2) Reasonable expenses of the protected person's last illness.
- (3) The protected person's federal and state taxes.
- (4) Any statutory allowances payable to the protected person's surviving spouse or surviving children.
- (5) Any other obligations of the protected person.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.12; P.L.95-2007, SEC.14.

IC 29-3-12-2

Mandatory termination of protective order

Sec. 2. The court shall terminate a protective order if:

- (1) the protective order has expired by its terms; or
- (2) the protective order is no longer necessary for any other reason.

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

IC 29-3-12-3

Minimum period to maintain incapacitated person status; petition to terminate guardianship or protective order; penalty

Sec. 3. An order adjudicating a person as an incapacitated person may specify a minimum period, not exceeding one (1) year, during which a petition for an adjudication that the protected person is no longer an incapacitated person may not be filed without court approval. Subject to that restriction, the protected person or any other person may petition for an order that the protected person is no longer an incapacitated person and for termination of the guardianship or protective order. A request for an order may also be made informally to the court. Any person who knowingly interferes with transmission of the request is guilty of contempt of court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.80.

IC 29-3-12-4

Removal, resignation, or death of guardian; final accounting; appointment of successor; effect of removal on validity of guardian's acts

Sec. 4. (a) The court may remove a guardian on its own motion or on petition of the protected person or any person interested in the guardianship, after notice and hearing, on the same grounds and in the same manner as is provided under IC 29-1-10-6 for the removal of a personal representative. The court may accept the resignation of

a guardian. Upon the death of the guardian, the guardian's personal representative shall submit a final account of guardianship to the court in accordance with IC 29-3-9-6. Upon the resignation or removal of the guardian, the guardian shall give a final accounting to the court.

(b) If the appointment of a successor guardian is required, the court shall appoint a qualified successor guardian to succeed to the title, powers, and duties of the predecessor guardian unless otherwise ordered by the court.

(c) The removal or resignation of a guardian after letters are duly issued to the guardian does not by itself invalidate the guardian's acts and omissions prior to removal. A final order under IC 29-3-9-6 protects the successor guardian and the successor guardian's surety to the same extent that it protects the successor guardian's predecessor and surety.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.13.

IC 29-3-12-5

Termination of authority and responsibility of guardian; effect on liability of guardian; court approval

Sec. 5. The authority and responsibility of a guardian terminate at the time that the court designates or upon the death, resignation, or removal of the guardian or upon the termination of the guardianship. The termination for any reason of the authority and responsibility of the guardian does not affect the liability of the guardian for prior acts or the obligation to account for the guardian's conduct of the guardian's trust. Resignation of a guardian does not terminate the appointment of the guardian until the guardian's resignation and final account have been approved by the court.

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

IC 29-3-13

Chapter 13. Foreign Guardians

IC 29-3-13-1

Payment of debt or delivery of property to foreign guardian

Sec. 1. (a) Any person indebted to an incapacitated person or minor, or having possession of property belonging to a minor or incapacitated person, may pay the debt or deliver the property to a foreign guardian appointed by a court of the state in which the incapacitated person or minor resides upon being presented with proof of the foreign guardian's appointment and an affidavit made by the foreign guardian stating the following:

- (1) That the foreign guardian does not know of any other guardianship proceeding, relating to the incapacitated person or minor, pending in Indiana.
- (2) That the letters of the foreign guardian were duly issued.
- (3) In the case of an incapacitated person who is an adult (as defined in IC 29-3.5-1-2(1)), that the foreign guardian does not know of a court in a jurisdiction other than Indiana that has exercised jurisdiction regarding the incapacitated person under a law similar to IC 29-3.5-2.
- (4) That the foreign guardian is entitled to receive the payment or delivery.

(b) If the person to whom the affidavit is presented does not know of any other guardianship proceeding pending in Indiana, payment or delivery in response to the demand and affidavit discharges the debtor or possessor from any further liability.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.81; P.L.178-2011, SEC.7.

IC 29-3-13-2

Filings concerning a foreign guardianship of the property of a minor; registration of the letters of office of a foreign guardian for an adult

Sec. 2. (a) This subsection applies to a guardianship of the property of a minor. If no guardian has been appointed, and no petition in a guardianship proceeding is pending in Indiana, a guardian appointed by a court of another state in which the minor is domiciled may file, with an Indiana court in a county in which property belonging to the minor is located, an authenticated copy of the guardian's appointment and a bond that meets the requirements of IC 29-3-7-1 with respect to that part of the property of the minor that is located in that county. After filing the copy and bond, the foreign guardian may exercise as to the property of the minor in that county in Indiana all powers of a guardian in Indiana and may maintain actions and proceedings in Indiana.

(b) In the case of an incapacitated person who is an adult (as defined in IC 29-3.5-1-2(1)), a foreign guardian for that adult may register certified copies of the guardian's letters of office and order of appointment under IC 29-3.5-4.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.82; P.L.178-2011, SEC.8.

IC 29-3-13-3

Acts by which foreign guardian submits to personal jurisdiction

Sec. 3. A foreign guardian submits personally to the jurisdiction of Indiana courts in any proceeding relating to the property for which the guardian is responsible by:

- (1) complying with section 2 of this chapter;
- (2) receiving payment of money or taking delivery of property belonging to a minor in Indiana; or
- (3) doing any act as a guardian in Indiana that would give Indiana jurisdiction over the guardian as an individual.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.83; P.L.178-2011, SEC.9.