

Senate Engrossed

guardianship; conservatorship; policies; procedures

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

# SENATE BILL 1291

AN ACT

AMENDING SECTION 14-1401, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5111; AMENDING SECTIONS 14-5303, 14-5309, 14-5311, 14-5316, 14-5401, 14-5404, 14-5405 AND 14-5410, ARIZONA REVISED STATUTES; RELATING TO PROTECTION OF PERSONS UNDER DISABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-1401, Arizona Revised Statutes, is amended to  
3 read:

4 14-1401. Notice; method and time of giving

5 A. If notice of a hearing on any petition is required and except  
6 for specific notice requirements as otherwise provided, the petitioner  
7 shall cause notice of the time and place of hearing of any petition to be  
8 given to any interested person or his attorney if he has appeared by  
9 attorney or requested that notice be sent to his attorney. Notice shall  
10 be given either:

11 1. By mailing a copy ~~thereof~~ OF THE NOTICE at least fourteen days  
12 before the time set for the hearing by certified, ~~OR~~ registered ~~or~~  
13 ~~ordinary first class~~ mail addressed to the person being notified at the  
14 post office address given in his demand for notice, if any, or at his  
15 office or place of residence, if known.

16 2. By delivering a copy ~~thereof~~ OF THE NOTICE to the person being  
17 notified personally at least fourteen days before the time set for the  
18 hearing.

19 3. If the address or identity of any person is not known and cannot  
20 be ascertained with reasonable diligence, or when otherwise required under  
21 this title, by publishing at least three times ~~prior to~~ BEFORE the date  
22 set for the hearing a copy ~~thereof~~ OF THE NOTICE in a newspaper having  
23 general circulation in the county where the hearing is to be held, the  
24 first publication of which is to be at least fourteen days before the  
25 hearing.

26 B. The court for good cause shown may provide for a different  
27 method or time of giving notice for any hearing.

28 C. Proof of the giving of notice shall be made at or before the  
29 hearing and filed in the proceeding.

30 Sec. 2. Title 14, chapter 5, article 1, Arizona Revised Statutes,  
31 is amended by adding section 14-5111, to read:

32 14-5111. Powers and duties of counsel; alleged incapacitated  
33 persons

34 A. AN ALLEGED INCAPACITATED PERSON'S ATTORNEY SHALL FULFILL THE  
35 FOLLOWING MINIMAL DUTIES:

36 1. WITHIN TWENTY-FOUR HOURS AFTER APPOINTMENT, INTERVIEW THE  
37 ALLEGED INCAPACITATED PERSON.

38 2. PROVIDE IN WRITING TO THE ALLEGED INCAPACITATED PERSON, THE  
39 ALLEGED INCAPACITATED PERSON'S KNOWN FAMILY MEMBERS AND ANY PERSONS WHO  
40 HAVE FILED A DEMAND FOR NOTICE THEIR RIGHTS AND THE PROCESS TO TERMINATE  
41 THE CONSERVATORSHIP OR GUARDIANSHIP, INCLUDING ALL OF THE FOLLOWING  
42 INFORMATION:

43 (a) THE RIGHT TO A JURY TRIAL PURSUANT TO SECTION 14-1306.

44 (b) THE RIGHT TO SELECT AN ATTORNEY OF THE PERSON'S CHOOSING.

1 (c) THE RIGHT OF THE ALLEGED INCAPACITATED PERSON TO APPEAR IN  
2 COURT DURING PROCEEDINGS THAT WILL AFFECT THE ALLEGED INCAPACITATED  
3 PERSON'S ESTATE.

4 (d) A REVIEW OF THE COURT PROCESS, TIMELINES AND EXPECTED FUTURE  
5 PROCEEDINGS.

6 (e) A DETAILED LIST AND EXPLANATION OF THE DUTIES THE GUARDIAN OR  
7 CONSERVATOR WILL ASSUME FOR THE ALLEGED INCAPACITATED PERSON.

8 (f) THE RIGHT OF FAMILY MEMBERS AND PERSONS WITH A SIGNIFICANT  
9 RELATIONSHIP WITH THE ALLEGED INCAPACITATED PERSON TO HAVE REASONABLE  
10 ACCESS TO THE ALLEGED INCAPACITATED PERSON UNLESS THE GUARDIAN  
11 DEMONSTRATES WITH VERIFIABLE EVIDENCE PURSUANT TO SECTION 14-5316 THAT  
12 CONTACT WILL BE DETRIMENTAL TO THE ALLEGED INCAPACITATED PERSON'S HEALTH,  
13 SAFETY OR WELFARE.

14 B. WITHIN FIVE BUSINESS DAYS AFTER APPOINTMENT, THE ALLEGED  
15 INCAPACITATED PERSON'S ATTORNEY SHALL PROVIDE EVIDENCE OF HAVING FULFILLED  
16 THE REQUIREMENTS PRESCRIBED IN SUBSECTION A OF THIS SECTION.

17 C. THE COURT MAY FIND AN ATTORNEY WHO FAILS TO FULFILL THE DUTIES  
18 PRESCRIBED IN SUBSECTION A OF THIS SECTION IN CONTEMPT OF COURT.

19 Sec. 3. Section 14-5303, Arizona Revised Statutes, is amended to  
20 read:

21 14-5303. Procedure for court appointment of a guardian of an  
22 alleged incapacitated person

23 A. The alleged incapacitated person or any person interested in  
24 that person's affairs or welfare may petition for the appointment of a  
25 guardian or for any other appropriate protective order.

26 B. The petition shall contain a statement that the authority  
27 granted to the guardian may include the authority to withhold or withdraw  
28 life sustaining treatment, including artificial food and fluid, and shall  
29 state, at a minimum and to the extent known, all of the following:

30 1. The interest of the petitioner.

31 2. The name, age, residence and address of the alleged  
32 incapacitated person.

33 3. The name, address and priority for appointment of the person  
34 whose appointment is sought.

35 4. The name and address of the conservator, if any, of the alleged  
36 incapacitated person.

37 5. The name and address of the nearest relative of the alleged  
38 incapacitated person known to the petitioner.

39 6. A general statement of the property of the alleged incapacitated  
40 person, with an estimate of its value and including any compensation,  
41 insurance, pension or allowance to which the person is entitled.

42 7. The reason why appointment of a guardian or any other protective  
43 order is necessary.

1           8. The type of guardianship requested. If a general guardianship  
2 is requested, the petition must state that other alternatives have been  
3 explored and why a limited guardianship is not appropriate. If a limited  
4 guardianship is requested, the petition also must state what specific  
5 powers are requested.

6           9. If a legal decision-making, parenting time or visitation order  
7 was previously entered regarding an alleged incapacitated person in a  
8 marriage dissolution, legal separation or paternity action in this state  
9 or another jurisdiction and the petitioner or proposed guardian is a  
10 parent of the alleged incapacitated person or a nonparent who has been  
11 awarded legal decision-making as to the alleged incapacitated person, the  
12 court and case number for that action or proceeding and include a copy of  
13 the most recent court order regarding legal decision-making, parenting  
14 time and visitation.

15           10. If the appointment of a guardian is necessary due solely to the  
16 physical incapacity of the alleged incapacitated person.

17           11. IF THE ALLEGED INCAPACITATED PERSON HAS A CURRENT, VALIDLY  
18 EXECUTED HEALTH CARE POWER OF ATTORNEY, DURABLE POWER OF ATTORNEY,  
19 CERTIFICATION OF TRUST OR OTHER LEGAL DIRECTIVE, THE TYPE OF LEGAL  
20 DIRECTIVE AND INCLUDE A COPY OF THE LEGAL DIRECTIVE ATTACHED TO THE  
21 PETITION.

22           C. On the filing of a petition, the court shall set a hearing date  
23 on the issues of incapacity. Unless the alleged incapacitated person is  
24 represented by independent counsel, the court shall appoint an attorney to  
25 represent that person in the proceeding. The alleged incapacitated person  
26 shall be interviewed by an investigator appointed by the court and shall  
27 be examined by a physician, psychologist or registered nurse appointed by  
28 the court. If the alleged incapacitated person has an established  
29 relationship with a physician, psychologist or registered nurse who is  
30 determined by the court to be qualified to evaluate the capacity of the  
31 alleged incapacitated person, the court may appoint the alleged  
32 incapacitated person's physician, psychologist or registered nurse  
33 pursuant to this subsection. The investigator and the person conducting  
34 the examination shall submit their reports in writing to the court. In  
35 addition to information required under subsection D OF THIS SECTION, the  
36 court may direct that either report include other information the court  
37 deems appropriate. The investigator also shall interview the person  
38 seeking appointment as guardian, visit the present place of abode of the  
39 alleged incapacitated person and the place where it is proposed that the  
40 person will be detained or reside if the requested appointment is made and  
41 submit a report in writing to the court. The alleged incapacitated person  
42 is entitled to be present at the hearing and to see or hear all evidence  
43 bearing on that person's condition. The alleged incapacitated person is  
44 entitled to be represented by counsel, to present evidence, to  
45 cross-examine witnesses, including the court-appointed examiner and

1 investigator, and to trial by jury. The court may determine the issue at  
2 a closed hearing if the alleged incapacitated person or that person's  
3 counsel so requests.

4 D. A report filed pursuant to this section by a physician,  
5 psychologist or registered nurse acting within that person's scope of  
6 practice shall include the following information:

7 1. A specific description of the physical, psychiatric or  
8 psychological diagnosis of the person.

9 2. A comprehensive assessment listing any functional impairments of  
10 the alleged incapacitated person and an explanation of how and to what  
11 extent these functional impairments may prevent that person from receiving  
12 or evaluating information in making decisions or in communicating informed  
13 decisions regarding that person.

14 3. An analysis of the tasks of daily living the alleged  
15 incapacitated person is capable of performing without direction or with  
16 minimal direction.

17 4. A list of all medications the alleged incapacitated person is  
18 receiving, the dosage of the medications and a description of the effects  
19 each medication has on the person's behavior to the best of the  
20 declarant's knowledge.

21 5. A prognosis for improvement in the alleged incapacitated  
22 person's condition and a recommendation for the most appropriate  
23 rehabilitation plan or care plan.

24 6. Other information the physician, psychologist or registered  
25 nurse deems appropriate.

26 Sec. 4. Section 14-5309, Arizona Revised Statutes, is amended to  
27 read:

28 14-5309. Notices in guardianship proceedings

29 A. In a proceeding for a contact order or modification of a contact  
30 order pursuant to section 14-5316 or for the appointment or substitution  
31 of a guardian of a ward or an alleged incapacitated person other than the  
32 appointment of a temporary guardian or temporary suspension of a guardian,  
33 notice of a hearing shall be given to each of the following:

34 1. The ward or the alleged incapacitated person and that person's  
35 spouse, parents and adult children.

36 2. Any person who is serving as guardian or conservator or who has  
37 the care and custody of the ward or the alleged incapacitated person.

38 3. In case no other person is notified under paragraph 1 of this  
39 subsection, at least one of that person's closest adult relatives, if any  
40 can be found.

41 4. Any person who has filed a demand for notice.

42 B. At least fourteen days before the hearing notice shall be served  
43 personally on ~~the ward or the alleged incapacitated person and that~~  
44 ~~person's spouse and parents if they can be found within the state. Notice~~  
45 ~~to the spouse and parents, if they cannot be found within the state, and~~

1 ~~to all other persons except the ward or the alleged incapacitated person~~  
2 ~~shall be given as provided in section 14-1401~~ ALL PERSONS LISTED IN  
3 SUBSECTION A OF THIS SECTION. Waiver of notice by the ward or the alleged  
4 incapacitated person is not effective unless that person attends the  
5 hearing.

6 Sec. 5. Section 14-5311, Arizona Revised Statutes, is amended to  
7 read:

8 14-5311. Who may be guardian; priorities

9 A. Any qualified person may be appointed guardian of an  
10 incapacitated person, subject to the requirements of section 14-5106.

11 B. The court may consider the following persons for appointment as  
12 guardian in the following order:

13 1. A guardian or conservator of the person or a fiduciary appointed  
14 or recognized by the appropriate court of any jurisdiction in which the  
15 incapacitated person resides.

16 2. An individual or corporation nominated by the incapacitated  
17 person if the person has, in the opinion of the court, sufficient mental  
18 capacity to make an intelligent choice.

19 3. The person nominated to serve as guardian in the incapacitated  
20 person's most recent durable power of attorney, CERTIFICATION OF TRUST or  
21 health care power of attorney.

22 4. The spouse of the incapacitated person.

23 5. An adult child of the incapacitated person.

24 6. A parent of the incapacitated person, including a person  
25 nominated by will or other writing signed by a deceased parent.

26 7. Any relative of the incapacitated person with whom the  
27 incapacitated person has resided for more than six months before the  
28 filing of the petition.

29 8. The nominee of a person who is caring for or paying benefits to  
30 the incapacitated person.

31 9. If the incapacitated person is a veteran, the spouse of a  
32 veteran or the minor child of a veteran, the department of veterans'  
33 services.

34 10. A fiduciary who is licensed pursuant to section 14-5651, other  
35 than a public fiduciary.

36 11. A public fiduciary who is licensed pursuant to section 14-5651.

37 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 of  
38 this section may nominate in writing a person to serve in that person's  
39 place. With respect to persons who have equal priority, the court shall  
40 select the ~~one~~ PERSON the court determines is best qualified to serve.

41 D. Notwithstanding the priorities set forth in subsection B of this  
42 section, if the petition for appointment of a guardian for the  
43 incapacitated person is filed pursuant to section 14-5301.03 or within two  
44 years after the incapacitated person's eighteenth birthday, unless the

1 court finds the appointment to be contrary to the incapacitated person's  
2 best interest:

3 1. The court shall appoint as the incapacitated person's guardian  
4 any person who, by court order, had sole legal decision-making of the  
5 incapacitated person when the incapacitated person attained eighteen years  
6 of age.

7 2. If two persons had joint legal decision-making of the  
8 incapacitated person when the incapacitated person attained eighteen years  
9 of age, the court shall appoint both persons as the incapacitated person's  
10 ~~co-guardians~~ COGUARDIANS.

11 E. The court may appoint more than one person as the incapacitated  
12 person's ~~co-guardians~~ COGUARDIANS if the appointment is required by  
13 subsection D of this section or the court finds that the appointment is in  
14 the incapacitated person's best interest. If the court appoints  
15 ~~co-guardians~~ COGUARDIANS, the ~~co-guardians~~ COGUARDIANS shall share  
16 decision-making for the incapacitated person and neither ~~co-guardian's~~  
17 COGUARDIAN'S rights or responsibilities are superior except as otherwise  
18 ordered by the court.

19 F. For good cause the court may pass over a person who has priority  
20 and appoint a person who has a lower priority or no priority. For the  
21 purposes of this subsection, "good cause" includes a determination that:

22 1. The incapacitated person's durable power of attorney or health  
23 care power of attorney is invalid.

24 2. Honoring the incapacitated person's durable power of attorney or  
25 health care power of attorney would not be in the physical, emotional or  
26 financial best interest of the incapacitated person.

27 3. The estimated cost of the fiduciary and associated professional  
28 fees would adversely affect the ability of the incapacitated person's  
29 estate to provide for the incapacitated person's reasonable and necessary  
30 living expenses.

31 G. On a request by a person who was passed over by the court  
32 pursuant to subsection F of this section, the court shall make a specific  
33 finding regarding the court's determination of good cause and why the  
34 person was not appointed. The request must be made within ten days after  
35 the entry of the order.

36 Sec. 6. Section 14-5316, Arizona Revised Statutes, is amended to  
37 read:

38 14-5316. Maintaining ward's relationships; contact orders;  
39 definitions

40 A. A guardian shall encourage and allow contact between the ward  
41 and other persons who have a significant relationship with the ward.

42 B. Notwithstanding subsection A of this section, a guardian may NOT  
43 limit, restrict or prohibit contact between the ward and any person ~~if the~~  
44 ~~guardian reasonably believes~~ WHO HAS A SIGNIFICANT RELATIONSHIP WITH THE

1 **WARD WITHOUT VERIFIABLE EVIDENCE** that the contact will be detrimental to  
2 the ward's health, safety or welfare.

3 C. In exercising the guardian's powers pursuant to subsections A  
4 and B of this section, the guardian shall consider the wishes of the ward,  
5 if the ward has sufficient mental capacity to make an intelligent choice.

6 D. A person who has a significant relationship to the ward may  
7 petition the court for an order compelling the guardian to allow the  
8 person to have contact with the ward. The petition shall describe the  
9 nature of the relationship between the person and the ward and the type  
10 and frequency of contact being requested. The person has the burden of  
11 proving that the person has a significant relationship with the ward and  
12 that the requested contact is in the ward's best interest.

13 E. A ward may petition the court for an order compelling the  
14 guardian to allow the ward to have contact with a person who has a  
15 significant relationship to the ward. The petition shall describe the  
16 nature of the relationship between the person and the ward and the type  
17 and frequency of contact being requested. The ward has the burden of  
18 proving that the person has a significant relationship with the ward and  
19 that the requested contact is in the ward's best interest.

20 F. In determining what, if any, contact between the person and the  
21 ward is in the ward's best interest, the court shall consider all factors  
22 that are relevant to the ward's physical and emotional well-being,  
23 including the following:

24 1. The past and present relationship between the ward and the  
25 person with whom the contact is requested.

26 2. The wishes of the ward if the ward has sufficient mental  
27 capacity to make an intelligent choice.

28 3. The mental and physical health of the ward and the person with  
29 whom the contact is requested.

30 4. Whether the person with whom the contact is requested has  
31 committed any act involving domestic violence as defined in section  
32 13-3601, child abuse or abuse, neglect or exploitation of a vulnerable  
33 adult.

34 5. Whether the person with whom the contact is requested has abused  
35 drugs or alcohol or has been convicted of any drug offense listed in title  
36 13, chapter 34 or a violation of title 28, chapter 4, article 3.

37 6. Whether the person with whom the contact is requested is listed  
38 in the elder abuse central registry pursuant to section 46-457 or is  
39 required to register pursuant to section 13-3821.

40 7. Whether the person with whom the contact is requested has been  
41 convicted of a violation of section 13-2907.02 or 13-2907.04.

42 G. If the petition for contact is filed pursuant to section  
43 14-5301.03 or within two years after the ward's eighteenth birthday, any  
44 contact with the ward authorized in the most recent parenting time or  
45 visitation order shall be presumed to be in the ward's best interests, but



1 the presumption may be rebutted by evidence showing that the contact  
2 authorized in the most recent parenting time or visitation order is no  
3 longer in the ward's best interests.

4 H. A court-appointed fiduciary for the ward or a person who has a  
5 significant relationship to the ward may petition the court to modify a  
6 contact order, if a material change in circumstances affecting the ward's  
7 health, safety or welfare has occurred since the last contact order was  
8 made. The petition shall be supported by an affidavit alleging the change  
9 of circumstances that has occurred since the entry of the last contact  
10 order. The court shall deny the petition unless the court finds that the  
11 petition establishes good cause for hearing, in which case the court shall  
12 set a hearing on the petition. The petition and notice of the hearing on  
13 the petition shall be served on all persons to whom notice is required  
14 pursuant to section 14-5309 and on any court-appointed fiduciary for the  
15 ward.

16 I. A court-appointed fiduciary for the ward or a person who has a  
17 significant relationship to the ward may file a motion asking the court to  
18 temporarily modify or suspend a contact order, if a material change in  
19 circumstances affecting the ward's health, safety or welfare has occurred  
20 since the last contact order was made. The motion shall be supported by  
21 an affidavit alleging the change of circumstances that has occurred since  
22 the entry of the last contact order. The motion shall be filed  
23 contemporaneously with or after the filing of a petition to modify the  
24 prior contact order. The motion shall state whether the petitioner  
25 requests that the prior contact order be modified or suspended with or  
26 without notice to affected persons.

27 J. The court may temporarily modify or suspend a contact order  
28 without notice only if both of the following conditions are met:

29 1. It clearly appears from specific facts shown in the motion or  
30 affidavit that immediate and irreparable injury, loss or damage likely  
31 will result if the order is not issued before the affected persons can be  
32 heard in opposition.

33 2. The moving party or the party's attorney certifies to the court  
34 in writing the efforts, if any, that the moving party or the party's  
35 attorney has made to give the notice or the reasons supporting the claim  
36 that notice should not be required.

37 K. If the court grants a motion to temporarily modify or suspend a  
38 contact order without notice, the court shall set a hearing on the motion.

39 L. An order temporarily modifying or suspending a contact order  
40 that is granted without notice shall state the injury, loss or damage that  
41 would have been likely to occur if the order were not issued before giving  
42 the affected persons the opportunity to be heard in opposition. The  
43 temporary order shall expire at the date and time set for the hearing on  
44 the motion unless the temporary order is extended by the court for good  
45 cause.

1 M. The moving party shall personally serve the person whose contact  
2 with the ward has been modified or suspended with a copy of the order and  
3 notice of the hearing. The moving party shall have served a copy of the  
4 order on any court-appointed fiduciary for the ward and all persons  
5 affected by the order as soon as practicable after issuance of the order  
6 in the manner prescribed in section 14-5309 or as otherwise ordered by the  
7 court.

8 N. For the purposes of this section:

9 1. "Abuse" in relation to a vulnerable adult has the same meaning  
10 prescribed in section 46-451.

11 2. "Child abuse" means abuse as defined in section 8-201 of an  
12 individual who is under eighteen years of age.

13 3. "Exploitation" has the same meaning prescribed in section  
14 46-451.

15 4. "Neglect" has the same meaning prescribed in section 46-451.

16 5. "Vulnerable adult" has the same meaning prescribed in section  
17 46-451.

18 Sec. 7. Section 14-5401, Arizona Revised Statutes, is amended to  
19 read:

20 14-5401. Protective proceedings; fingerprinting

21 A. On petition and after notice and a hearing pursuant to this  
22 article, the court may appoint a conservator or make another protective  
23 order for cause as follows:

24 1. Appointment of a conservator or other protective order may be  
25 made in relation to the estate and affairs of a minor if the court  
26 determines that a minor owns money or property that requires management or  
27 protection that cannot otherwise be provided or has or may have affairs  
28 that may be jeopardized or prevented by minority or that funds are needed  
29 for the minor's support and education and that protection is necessary or  
30 desirable to obtain or provide funds.

31 2. Appointment of a conservator or other protective order may be  
32 made in relation to the estate and affairs of a person if the court  
33 specifically finds **BY CLEAR AND CONVINCING EVIDENCE** on the record both of  
34 the following:

35 (a) The person is unable to manage the person's estate and affairs  
36 effectively for reasons such as mental illness, mental deficiency, mental  
37 disorder, physical illness or disability, chronic use of drugs, chronic  
38 intoxication, confinement, detention by a foreign power or disappearance.

39 (b) The person has property that will be wasted or dissipated  
40 unless proper management is provided, or that funds are needed for the  
41 support, care and welfare of the person or those entitled to be supported  
42 by the person and that protection is necessary or desirable to obtain or  
43 provide funds.

44 B. On petition and after notice and a hearing pursuant to this  
45 article, the court may continue a conservatorship or other protective

1 order entered pursuant to subsection A, paragraph 1 of this section beyond  
2 the minor's eighteenth birthday if the court determines that the order is  
3 appropriate pursuant to subsection A, paragraph 2 of this section. The  
4 petition shall comply with the requirements of section 14-5404, subsection  
5 B and must be filed after the minor's seventeenth birthday and before  
6 termination of the conservatorship by court order.

7 C. The court may require each person who seeks appointment as a  
8 conservator to furnish a full set of fingerprints to enable the court to  
9 conduct a criminal background investigation. The court shall submit the  
10 person's completed fingerprint card to the department of public safety.  
11 The person shall bear the cost of obtaining the person's criminal history  
12 record information. The cost shall not exceed the actual cost of  
13 obtaining the person's criminal history record information. Criminal  
14 history records checks shall be conducted pursuant to section 41-1750 and  
15 Public Law 92-544. The department of public safety may exchange this  
16 fingerprint data with the federal bureau of investigation. This  
17 subsection does not apply to a fiduciary who is licensed pursuant to  
18 section 14-5651 or an employee of a financial institution.

19 D. IF THE COURT FINDS THAT THE PETITION IS NOT SUPPORTED BY CLEAR  
20 AND CONVINCING EVIDENCE OR IS VEXATIOUS, THE COURT MAY AWARD SANCTIONS AND  
21 DAMAGES.

22 Sec. 8. Section 14-5404, Arizona Revised Statutes, is amended to  
23 read:

24 14-5404. Original petition for appointment or protective  
25 order

26 A. The person allegedly in need of protection, any person who is  
27 interested in that person's estate or affairs, including that person's  
28 parent, guardian or custodian, or any person who would be adversely  
29 affected by lack of effective management of that person's estate and  
30 affairs may petition for the appointment of a conservator or for any other  
31 appropriate protective order.

32 B. The petition shall set forth, at a minimum and to the extent  
33 known, all of the following:

34 1. The interest of the petitioner.

35 2. The name, age, residence and address of the person allegedly in  
36 need of protection.

37 3. The name, address and priority for appointment of the person  
38 whose appointment is sought.

39 4. The name and address of the guardian, if any, of the person  
40 allegedly in need of protection.

41 5. The name and address of the nearest relative of the person  
42 allegedly in need of protection known to the petitioner.

43 6. A general statement of the estate of the person allegedly in  
44 need of protection with an estimate of its value, including any  
45 compensation, insurance, pension or allowance to which the person is

1 entitled AND WHETHER THE PERSON ALLEGEDLY IN NEED OF PROTECTION IS A  
2 BENEFICIARY OF A TRUST.

3 7. The reason why appointment of a conservator or any other  
4 protective order is necessary.

5 8. BY CLEAR AND CONVINCING EVIDENCE THAT THE PERSON ALLEGEDLY IN  
6 NEED OF PROTECTION IS IN NEED OF A CONSERVATOR OR ANY OTHER PROTECTIVE  
7 ORDER.

8 9. ANY REASON WHY THE PETITIONER SHOULD NOT BE APPOINTED.

9 10. IF THE PERSON ALLEGEDLY IN NEED OF PROTECTION HAS A VALIDLY  
10 EXECUTED DURABLE POWER OF ATTORNEY, HEALTH CARE POWER OF ATTORNEY,  
11 CERTIFICATION OF TRUST OR OTHER DIRECTIVE, THE TYPE OF LEGAL DIRECTIVE AND  
12 INCLUDE A COPY OF THE LEGAL DIRECTIVE ATTACHED TO THE PETITION.

13 Sec. 9. Section 14-5405, Arizona Revised Statutes, is amended to  
14 read:

15 14-5405. Notice in conservatorship proceedings

16 A. In a proceeding for the appointment or substitution of a  
17 conservator of a protected person or person allegedly in need of  
18 protection, other than the appointment of a temporary conservator or  
19 temporary suspension of a conservator, and in a proceeding to continue a  
20 conservatorship or other protective order pursuant to section 14-5401,  
21 subsection B, notice of the hearing shall be given to each of the  
22 following:

23 1. The protected person or the person allegedly in need of  
24 protection if that person is fourteen years of age or older.

25 2. The spouse, parents and adult children of the protected person  
26 or person allegedly in need of protection, or if no spouse, parents or  
27 adult children can be located, at least one adult relative of the  
28 protected person or the person allegedly in need of protection, if such a  
29 relative can be found.

30 3. Any person who is serving as guardian or conservator or who has  
31 the care and custody of the protected person or person allegedly in need  
32 of protection.

33 4. Any person who has filed a demand for notice.

34 B. At least fourteen days before the hearing notice shall be served  
35 personally on ~~the protected person or the person allegedly in need of~~  
36 ~~protection and that person's spouse and parents if they can be found~~  
37 ~~within the state. Notice to the spouse and parents, if they cannot be~~  
38 ~~found within the state, and to all other persons except the protected~~  
39 ~~person or the person allegedly in need of protection shall be given in~~  
40 ~~accordance with section 14-1401~~ ALL PERSONS LISTED IN SUBSECTION A OF THIS  
41 SECTION. Waiver of notice by the protected person or the person allegedly  
42 in need of protection is not effective unless the protected person or the  
43 person allegedly in need of protection attends the hearing.

1           Sec. 10. Section 14-5410, Arizona Revised Statutes, is amended to  
2 read:

3           14-5410. Who may be appointed conservator; priorities

4           A. The court may appoint an individual or a corporation, with  
5 general power to serve as trustee, as conservator of the estate of a  
6 protected person subject to the requirements of section 14-5106. The  
7 following ~~are entitled to~~ ORDER SHALL BE USED IN consideration for  
8 appointment ~~in the order listed~~:

9           1. THE PERSON NOMINATED TO SERVE AS CONSERVATOR IN THE PROTECTED  
10 PERSON'S MOST RECENT DURABLE POWER OF ATTORNEY, CERTIFICATION OF TRUST OR  
11 TRUST.

12           2. THE SPOUSE OF THE PROTECTED PERSON.

13           ~~3.~~ 3. A conservator, guardian of property or other like fiduciary  
14 appointed or recognized by the appropriate court of any other jurisdiction  
15 in which the protected person resides.

16           ~~4.~~ 4. An individual or corporation nominated by the protected  
17 person if the protected person is at least fourteen years of age and has,  
18 in the opinion of the court, sufficient mental capacity to make an  
19 intelligent choice.

20           ~~5. The person nominated to serve as conservator in the protected~~  
21 ~~person's most recent durable power of attorney.~~

22           ~~4. The spouse of the protected person.~~

23           5. An adult child of the protected person.

24           6. A parent of the protected person, or a person nominated by the  
25 will of a deceased parent.

26           7. Any relative of the protected person with whom the protected  
27 person has resided for more than six months before the filing of the  
28 petition.

29           8. The nominee of a person who is caring for or paying benefits to  
30 the protected person.

31           9. If the protected person is a veteran, the spouse of a veteran or  
32 the minor child of a veteran, the department of veterans' services.

33           10. A fiduciary who is licensed pursuant to section 14-5651, other  
34 than a public fiduciary.

35           11. A public fiduciary who is licensed pursuant to section 14-5651.

36           B. A person listed in subsection A, paragraph ~~4~~ 2, 5, 6, 7 or 8 of  
37 this section may nominate in writing a person to serve in that person's  
38 place. With respect to persons having equal priority, the court shall  
39 select the one it determines is best qualified to serve. The court, for  
40 good cause, may pass over a person having priority and appoint a person  
41 having a lower priority or no priority. For the purposes of this  
42 subsection, "good cause" includes a determination that:

43           1. The protected person's durable power of attorney is invalid.

1           2. Honoring the protected person's durable power of attorney would  
2 not be in the physical, emotional or financial best interest of the  
3 protected person.

4           3. The estimated cost of the fiduciary and associated professional  
5 fees would adversely affect the ability of the person's estate to provide  
6 for the protected person's reasonable and necessary living expenses.

7           C. On the request of a person who was passed over by the court  
8 pursuant to subsection B of this section, the court shall make a specific  
9 finding regarding the court's determination of good cause and why the  
10 person was not appointed. The request must be made within ten days after  
11 the entry of the order.