

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1499

Introduced by
Senators Driggs, Barto, Nelson: Crandall, McComish, Murphy

AN ACT

AMENDING SECTIONS 14-1201, 14-5303, 14-5304, 14-5307, 14-5308, 14-5311, 14-5312.01, 14-5314, 14-5404, 14-5407, 14-5410 AND 14-5419, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5109; AMENDING TITLE 14, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5316; AMENDING TITLE 14, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-5416.01; RELATING TO PROBATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 14-1201, Arizona Revised Statutes, is amended to
3 read:

4 14-1201. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Agent" includes an attorney-in-fact under a durable or nondurable
7 power of attorney, a person who is authorized to make decisions concerning
8 another person's health care and a person who is authorized to make decisions
9 for another person under a natural death act.

10 2. "Application" means a written request to the registrar for an order
11 of informal probate or appointment under chapter 3, article 3 of this title.

12 3. "Beneficiary", as it relates to a trust beneficiary, includes a
13 person who has any present or future interest, vested or contingent, and also
14 includes the owner of an interest by assignment or other transfer. As it
15 relates to a charitable trust, beneficiary includes any person entitled to
16 enforce the trust. As it relates to a beneficiary of a beneficiary
17 designation, beneficiary refers to a beneficiary of an insurance or annuity
18 policy, an account with pay on death designation, a security registered in
19 beneficiary form or a pension, profit sharing, retirement or similar benefit
20 plan, or any other nonprobate transfer at death. As it relates to a
21 beneficiary designated in a governing instrument, beneficiary includes a
22 grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a
23 beneficiary designation, a donee, appointee or taker in default of a power of
24 appointment and a person in whose favor a power of attorney or a power held
25 in any person, fiduciary or representative capacity is exercised.

26 4. "Beneficiary designation" refers to a governing instrument naming a
27 beneficiary of an insurance or annuity policy, of an account with pay on
28 death designation, of a security registered in beneficiary form or of a
29 pension, profit sharing, retirement or similar benefit plan, or any other
30 nonprobate transfer at death.

31 5. "Child" includes a person who is entitled to take as a child under
32 this title by intestate succession from the parent whose relationship is
33 involved. Child excludes a person who is only a stepchild, a foster child, a
34 grandchild or a more remote descendant.

35 6. "Claims", in respect to estates of decedents and protected persons,
36 includes liabilities of the decedent or the protected person, whether arising
37 in contract, in tort or otherwise, and liabilities of the estate that arise
38 at or after the death of the decedent or after the appointment of a
39 conservator, including funeral expenses and expenses of administration.
40 Claims do not include estate or inheritance taxes or demands or disputes
41 regarding title of a decedent or a protected person to specific assets
42 alleged to be included in the estate.

43 7. "COMFORT CARE" MEANS ALL DISCRETIONARY PERSONAL CARE THAT IS
44 PROVIDED TO A WARD OR INCAPACITATED PERSON OTHER THAN HOUSING, UTILITIES,
45 PERSONAL HYGIENE OR CARE, MEDICAL OR DENTAL TREATMENT, MEDICATION, FOOD,

1 NOURISHMENT, TRANSPORTATION, INSURANCE AND TAXES AND THAT IS NOT ESSENTIAL
2 FOR SURVIVAL BUT IS DESIGNED TO IMPROVE THE QUALITY OR PROLONG THE ENJOYMENT
3 OF LIFE OF THE WARD OR INCAPACITATED PERSON.

4 ~~7-~~ 8. "Community property" means that property of a husband and wife
5 that is acquired during the marriage and that is community property as
6 prescribed in section 25-211.

7 ~~8-~~ 9. "Conservator" means a person who is appointed by a court to
8 manage the estate of a protected person.

9 ~~9-~~ 10. "Court" means the superior court.

10 ~~10-~~ 11. "Dependent child" means a minor child ~~who~~ WHOM the decedent
11 was obligated to support or an adult child who was in fact being supported by
12 the decedent at the time of the decedent's death.

13 ~~11-~~ 12. "Descendant" means all of the decedent's descendants of all
14 generations, with the relationship of parent and child at each generation.

15 ~~12-~~ 13. "Devise", when used as a noun, means a testamentary
16 disposition of real or personal property and, when used as a verb, means to
17 dispose of real or personal property by will.

18 ~~13-~~ 14. "Devisee" means a person designated in a will to receive a
19 devise. For the purposes of chapter 3 of this title, in the case of a devise
20 to an existing trust or trustee, or to a trustee on trust described by will,
21 the trust or trustee is the devisee and the beneficiaries are not devisees.

22 ~~14-~~ 15. "Disability" means cause for a protective order as described
23 in section 14-5401.

24 ~~15-~~ 16. "Distributee" means any person who has received property of a
25 decedent from that person's personal representative other than as a creditor
26 or purchaser. Distributee includes a testamentary trustee only to the extent
27 of distributed assets or increment that remains in that person's hands. A
28 beneficiary of a testamentary trust to whom the trustee has distributed
29 property received from a personal representative is a distributee of the
30 personal representative. For the purposes of this paragraph, "testamentary
31 trustee" includes a trustee to whom assets are transferred by will, to the
32 extent of the devised assets.

33 ~~16-~~ 17. "Estate" includes the property of the decedent, trust or other
34 person whose affairs are subject to this title as originally constituted and
35 as it exists from time to time during administration. As it relates to a
36 spouse, the estate includes only the separate property and the share of the
37 community property belonging to the decedent or person whose affairs are
38 subject to this title.

39 ~~17-~~ 18. "Exempt property" means that property of a decedent's estate
40 that is described in section 14-2403.

41 ~~18-~~ 19. "Fiduciary" includes a personal representative, guardian,
42 conservator and trustee.

43 ~~19-~~ 20. "Foreign personal representative" means a personal
44 representative appointed by another jurisdiction.

~~20.~~ 21. "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

~~21.~~ 22. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, security registered in beneficiary form, pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney or a dispositive, appointive or nominative instrument of any similar type.

~~22.~~ 23. "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes a person who is merely a guardian ad litem.

~~23.~~ 24. "Heirs", except as controlled by section 14-2711, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

~~24.~~ 25. "Incapacitated person" has the same meaning prescribed in section 14-5101.

~~25.~~ 26. "Informal proceedings" means those proceedings conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

~~26.~~ 27. "Interested person" includes any trustee, heir, devisee, child, spouse, creditor, beneficiary, person holding a power of appointment and other person who has a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. Interested person also includes a person who has priority for appointment as personal representative and other fiduciaries representing interested persons. Interested person, as the term relates to particular persons, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

~~27.~~ 28. "Issue" of a person means descendant as defined in this section.

~~28.~~ 29. "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~29.~~ 30. "Lease" includes any oil, gas or other mineral lease.

~~30.~~ 31. "Letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship.

~~31.~~ 32. "Minor" means a person who is under eighteen years of age.

~~32.~~ 33. "Mortgage" means any conveyance, agreement or arrangement in which property is encumbered or used as security. Mortgage does not include leases or easements.

~~33.~~ 34. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of the decedent's death.

~~34.~~ 35. "Organization" means a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency or any other legal or commercial entity.

~~35.~~ 36. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent.

~~36.~~ 37. "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person who is authorized or obligated by law or a governing instrument to make payments.

~~37.~~ 38. "Person" means an individual or an organization.

~~38.~~ 39. "Personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. A general personal representative excludes a special administrator.

~~39.~~ 40. "Petition" means a written request to the court for an order after notice.

~~40.~~ 41. "Proceeding" includes action at law and suit in equity.

~~41.~~ 42. "Property" has the same meaning prescribed in section 14-10103.

~~42.~~ 43. "Protected person" has the same meaning prescribed in section 14-5101.

~~43.~~ 44. "Protective proceeding" has the same meaning prescribed in section 14-5101.

~~44.~~ 45. "Registrar" means the official of the court designated to perform the functions of registrar as provided in section 14-1307.

~~45.~~ 46. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under that title or lease, collateral trust certificate, transferable share or voting trust certificate and, in general, includes any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of these securities.

~~46.~~ 47. "Separate property" means that property of a husband or wife that is the spouse's separate property as defined in section 25-213.

~~47.~~ 48. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing.

~~48.~~ 49. "Special administrator" means a personal representative as described by sections 14-3614 through 14-3618.

~~49.~~ 50. "State" has the same meaning prescribed in section 14-10103.

~~50.~~ 51. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~51.~~ 52. "Successors" means persons, other than creditors, who are entitled to property of a decedent under a will or this title.

~~52.~~ 53. "Supervised administration" refers to the proceedings described in chapter 3, article 5 of this title.

~~53.~~ 54. "Survive" means that a person has neither predeceased an event, including the death of another person, nor is deemed to have predeceased an event under section 14-2104 or 14-2702.

~~54.~~ 55. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~55.~~ 56. "Testator" includes a person of either sex.

~~56.~~ 57. "Trust" includes an express trust, private or charitable, with any additions, wherever and however created. Trust also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts and excludes resulting trusts, conservatorship, personal representatives, trust accounts, custodial arrangements pursuant to chapter 7, article 7 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, trusts created by a city or town for the payment of medical insurance, health care benefits or expenses, long-term or short-term disability, self insurance reserves and similar programs administered by a city or town, legal defense trusts and any arrangement under which a person is nominee or escrowee for another.

~~57.~~ 58. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by THE court.

~~58.~~ 59. "Ward" has the same meaning prescribed in section 14-5101.

~~59.~~ 60. "Will" includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Sec. 2. Title 14, chapter 5, article 1, Arizona Revised Statutes, is amended by adding section 14-5109, to read:

14-5109. Professional fees; reasonableness

A. A PETITION FOR THE APPOINTMENT OF A GUARDIAN FOR AN ALLEGED INCAPACITATED PERSON PURSUANT TO SECTION 14-5303 SHALL BE FILED WITH THE CLERK OF THE SUPERIOR COURT AND SHALL INCLUDE:

1. A STATEMENT THAT THE AUTHORITY GRANTED TO THE GUARDIAN MAY INCLUDE THE AUTHORITY TO WITHHOLD OR WITHDRAW LIFE SUSTAINING TREATMENT.

2. THE STATEMENTS REQUIRED BY SECTION 14-5303, SUBSECTION B.

3. A RELIABLE ESTIMATE OF ALL MONTHLY COSTS ASSOCIATED WITH THE GUARDIANSHIP THAT WILL BE NECESSARY TO CARE FOR THE WARD UNTIL THE FIRST OR NEXT ACCOUNTING IS TIMELY FILED AND APPROVED, WITH SEPARATE RELIABLE MONTHLY ESTIMATES FOR:

(a) THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF THE WARD.

(b) THE AVERAGE MONTHLY COST OF COMFORT CARE SERVICES FOR THE WARD.

(c) THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES EXPECTED TO BE INCURRED BY THE GUARDIAN.

(d) THE AMOUNT OF ATTORNEY FEES INCURRED AND EXPECTED TO BE INCURRED BY ALL APPOINTED ATTORNEYS THROUGH THE ISSUANCE OF A COURT ORDER APPOINTING A GUARDIAN AS REQUESTED IN THE PETITION.

(e) THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES EXPECTED TO BE INCURRED BY ALL APPOINTED ATTORNEYS UNTIL THE APPROVAL OF THE FIRST OR NEXT ACCOUNTING.

(f) THE AVERAGE MONTHLY ACCOUNTING FEES AND EXPENSES EXPECTED TO BE INCURRED BY ALL ACCOUNTANTS OR OTHER PROFESSIONALS PREPARING ACCOUNTINGS UNTIL APPROVAL OF THE FIRST OR NEXT ACCOUNTING.

(g) THE EXPECTED COST TO PREPARE THE INITIAL INVENTORY AND APPRAISEMENT REQUIRED PURSUANT TO SECTION 14-5418.

(h) THE AVERAGE MONTHLY COSTS OF ALL OTHER MISCELLANEOUS COSTS OR EXPENSES NOT LISTED IN SUBDIVISIONS (a) THROUGH (g) WITH A DETAILED EXPLANATION OF REQUESTED COST OR EXPENSE.

B. IF THE PETITIONER IS UNABLE TO PROVIDE RELIABLE ESTIMATES OF ANY OF THE AMOUNTS OR ESTIMATES LISTED IN SUBSECTION A, PARAGRAPH 3 OF THIS SECTION, THE PETITIONER SHALL STATE IN THE PETITION ALL DETAILED EFFORTS MADE BY THE PETITIONER TO OBTAIN THE ESTIMATES, AND SHALL THEREAFTER FILE AND PROVIDE A WRITTEN NOTICE CONTAINING SUCH RELIABLE ESTIMATES TO ALL PERSONS LISTED AND IN THE MANNER PRESCRIBED IN SECTION 14-5309 AT LEAST FIVE JUDICIAL DAYS BEFORE THE FIRST HEARING SCHEDULED TO CONSIDER THE APPOINTMENT OF A TEMPORARY OR PERMANENT GUARDIAN.

C. UNLESS THE PETITION SEEKS APPOINTMENT OF A GUARDIAN WHO IS THE SPOUSE OF THE INCAPACITATED PERSON, AN ADULT CHILD OF THE INCAPACITATED PERSON, A PARENT OF THE INCAPACITATED PERSON, INCLUDING A PERSON NOMINATED BY WILL OR OTHER WRITING SIGNED BY A DECEASED PARENT, A RELATIVE OF THE INCAPACITATED PERSON WITH WHOM THE INCAPACITATED PERSON HAS RESIDED FOR MORE THAN SIX MONTHS BEFORE THE FILING OF THE PETITION, THE PUBLIC FIDUCIARY OR A FIDUCIARY, GUARDIAN OR CONSERVATOR WHO WAS PREVIOUSLY APPOINTED FOR THAT PERSON, THE PETITIONER SHALL ALSO FILE WITH THE PETITION A COMPETITIVE BID SIGNED BY A PERSON OR ENTITY UNRELATED TO THE PERSON OR ENTITY FOR WHICH APPOINTMENT IS SOUGHT SPECIFYING THE AVERAGE MONTHLY COST THE PERSON OR ENTITY BIDDING WOULD CHARGE FOR THE HOUSING, CARE AND COMFORT SERVICES OF THE WARD, AND A SEPARATE COMPETITIVE BID SIGNED BY A PERSON OR ENTITY UNRELATED TO THE PERSON OR ENTITY FOR WHICH APPOINTMENT IS SOUGHT COVERING THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES THE PERSON OR ENTITY BIDDING WOULD CHARGE TO DISCHARGE THE DUTIES OF GUARDIAN.

1 D. IN THE ABSENCE OF GOOD CAUSE SHOWN, ANY ORDER ENTERED WITH RESPECT
2 TO AN ANNUAL OR OTHER ACCOUNT SHALL PROHIBIT THE CONSERVATOR FROM SPENDING
3 ANY AMOUNTS FROM THE ESTATE OF THE PROTECTED PERSON WITHOUT PRIOR COURT
4 APPROVAL EXCEPT FOR AVERAGE MONTHLY AMOUNTS APPROVED IN AN ORDER APPLICABLE
5 UNTIL THE NEXT ACCOUNT IS DUE, TAXES OWED BY THE WARD OR PROTECTED PERSON AND
6 REASONABLE AND NECESSARY MEDICAL AND DENTAL EXPENSES OF THE WARD OR PROTECTED
7 PERSON.

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

9 14-5303. Procedure for court appointment of a guardian of an
10 alleged incapacitated person

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

14 B. The petition shall contain a statement that the authority granted
15 to the guardian may include the authority to withhold or withdraw life
16 sustaining treatment, including artificial food and fluid, and shall state,
17 to the extent known:

18 1. The interest of the petitioner.

19 2. The name, age, residence and address of the alleged incapacitated
20 person.

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

23 4. The name and address of the conservator, if any, of the alleged
24 incapacitated person.

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

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

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

32 8. The type of guardianship requested. If a general guardianship is
33 requested, the petition must state that other alternatives have been explored
34 and why a limited guardianship is not appropriate. If a limited guardianship
35 is requested, the petition also must state what specific powers are
36 requested.

37 9. A RELIABLE ESTIMATE OF ALL MONTHLY COSTS ASSOCIATED WITH THE
38 GUARDIANSHIP THAT WILL BE NECESSARY TO CARE FOR THE WARD UNTIL THE FIRST OR
39 NEXT ACCOUNTING IS TIMELY FILED AND APPROVED, WITH SEPARATE RELIABLE MONTHLY
40 ESTIMATES FOR:

41 (a) THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF THE WARD.

42 (b) THE AVERAGE MONTHLY COST OF COMFORT CARE SERVICES FOR THE WARD.

43 (c) THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES EXPECTED TO BE
44 INCURRED BY THE GUARDIAN.

(d) THE AMOUNT OF ATTORNEY FEES INCURRED AND EXPECTED TO BE INCURRED BY ALL APPOINTED ATTORNEYS THROUGH THE ISSUANCE OF A COURT ORDER APPOINTING A GUARDIAN AS REQUESTED IN THE PETITION.

(e) THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES EXPECTED TO BE INCURRED BY ALL APPOINTED ATTORNEYS UNTIL THE APPROVAL OF THE FIRST OR NEXT ACCOUNTING.

(f) THE AVERAGE MONTHLY ACCOUNTING FEES AND EXPENSES EXPECTED TO BE INCURRED BY ALL ACCOUNTANTS OR OTHER PROFESSIONALS PREPARING ACCOUNTINGS UNTIL APPROVAL OF THE FIRST OR NEXT ACCOUNTING.

(g) THE EXPECTED COST TO PREPARE THE INITIAL INVENTORY AND APPRAISEMENT REQUIRED BY SECTION 14-5418.

(h) THE AVERAGE MONTHLY COSTS OF ALL OTHER MISCELLANEOUS COSTS OR EXPENSES NOT LISTED IN SUBDIVISIONS (a) THROUGH (g) WITH A DETAILED EXPLANATION OF REQUESTED COST OR EXPENSE.

C. IF THE PETITIONER IS UNABLE TO PROVIDE RELIABLE ESTIMATES OF ANY OF THE AMOUNTS PRESCRIBED IN SUBSECTION B OF THIS SECTION IN THE PETITION, THE PETITIONER SHALL STATE IN THE PETITION ALL DETAILED EFFORTS MADE BY THE PETITIONER TO OBTAIN THE ESTIMATES AND SHALL THEREAFTER FILE AND PROVIDE A WRITTEN NOTICE CONTAINING RELIABLE ESTIMATES TO ALL PERSONS LISTED AND IN THE MANNER PROVIDED IN SECTION 14-5309 AT LEAST FIVE JUDICIAL DAYS BEFORE THE FIRST HEARING SCHEDULED TO CONSIDER THE APPOINTMENT OF A TEMPORARY OR PERMANENT GUARDIAN.

~~C.~~ D. On the filing of a petition, the court shall set a hearing date on the issues of incapacity. Unless the alleged incapacitated person is represented by independent counsel, the court shall appoint an attorney to represent that person in the proceeding. The alleged incapacitated person shall be interviewed by an investigator appointed by the court and shall be examined by a physician, psychologist or registered nurse appointed by the court. The investigator and the person conducting the examination shall submit their reports in writing to the court. In addition to information required under subsection ~~D~~ E OF THIS SECTION, the court may direct that either report include other information the court deems appropriate. The investigator also shall interview the person seeking appointment as guardian, visit the present place of abode of the alleged incapacitated person and the place where it is proposed that the person will be detained or reside if the requested appointment is made and submit a report in writing to the court. The alleged incapacitated person is entitled to be present at the hearing and to see or hear all evidence bearing on that person's condition. The alleged incapacitated person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed examiner and investigator, and to trial by jury. The court may determine the issue at a closed hearing if the alleged incapacitated person or that person's counsel so requests.

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

4 1. A specific description of the physical, psychiatric or
5 psychological diagnosis of the person.

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

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

13 4. A list of all medications the alleged incapacitated person is
14 receiving, the dosage of the medications and a description of the effects
15 each medication has on the person's behavior to the best of the declarant's
16 knowledge.

17 5. A prognosis for improvement in the alleged incapacitated person's
18 condition and a recommendation for the most appropriate rehabilitation plan
19 or care plan.

20 6. Other information the physician, psychologist or registered nurse
21 deems appropriate.

22 Sec. 4. Section 14-5304, Arizona Revised Statutes, is amended to read:
23 14-5304. Findings; order of appointment; limitations; filing

24 A. In exercising its appointment authority pursuant to this chapter,
25 the court shall encourage the development of maximum self-reliance and
26 independence of the incapacitated person.

27 B. The court may appoint a general or limited guardian as requested if
28 it is satisfied by clear and convincing evidence that:

29 1. The person for whom a guardian is sought is incapacitated.

30 2. The appointment is necessary to provide for the demonstrated needs
31 of the incapacitated person.

32 3. The person's needs cannot be met by less restrictive means,
33 including the use of appropriate technological assistance.

34 C. In conformity with the evidence regarding the extent of the ward's
35 incapacity, the court may appoint a limited guardian and specify time limits
36 on the guardianship and limitations on the guardian's powers.

37 D. The guardian shall file an acceptance of appointment with the
38 appointing court.

39 E. IN THE ABSENCE OF GOOD CAUSE SHOWN, AN ORDER APPOINTING A GUARDIAN
40 SHALL PROHIBIT THE GUARDIAN FROM EXPENDING ANY AMOUNTS FROM THE ESTATE OF THE
41 WARD WITHOUT PRIOR COURT ORDER EXCEPT FOR MONTHLY AMOUNTS SPECIFICALLY
42 APPROVED IN THE ORDER OF APPOINTMENT FOR:

43 1. THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF THE WARD.

44 2. THE AVERAGE MONTHLY COST OF COMFORT CARE SERVICES FOR THE WARD.

1 3. THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES EXPECTED TO BE
2 INCURRED BY THE GUARDIAN.

3 4. THE AMOUNT OF ATTORNEY FEES INCURRED AND EXPECTED TO BE INCURRED BY
4 ALL APPOINTED ATTORNEYS THROUGH THE ISSUANCE OF A COURT ORDER APPOINTING A
5 GUARDIAN AS REQUESTED IN THE PETITION.

6 5. THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES EXPECTED TO BE
7 INCURRED BY ALL APPOINTED ATTORNEYS UNTIL THE APPROVAL OF THE FIRST OR NEXT
8 ACCOUNTING.

9 6. THE AVERAGE MONTHLY ACCOUNTING FEES AND EXPENSES EXPECTED TO BE
10 INCURRED BY ALL ACCOUNTANTS OR OTHER PROFESSIONALS PREPARING ACCOUNTINGS
11 UNTIL APPROVAL OF THE FIRST OR NEXT ACCOUNTING.

12 7. THE EXPECTED COST TO PREPARE THE INITIAL INVENTORY AND APPRAISEMENT
13 REQUIRED PURSUANT TO SECTION 14-5418.

14 8. THE AVERAGE MONTHLY COSTS OF ALL OTHER MISCELLANEOUS COSTS OR
15 EXPENSES NOT LISTED IN PARAGRAPHS 1 THROUGH 7 OF THIS SUBSECTION WITH A
16 DETAILED ORDER AUTHORIZING THE MAXIMUM COSTS OR EXPENSES APPROVED BY THE
17 COURT.

18 F. THE GUARDIAN SHALL NOT SPEND ANY SUMS FROM THE ESTATE IN EXCESS OF
19 REASONABLE AMOUNTS WITHIN THE AUTHORIZATION ORDERED PURSUANT TO SUBSECTION E
20 OF THIS SECTION WITHOUT PRIOR COURT APPROVAL EXCEPT FOR TAXES OWED BY THE
21 WARD OR PROTECTED PERSON AND REASONABLE AND NECESSARY MEDICAL AND DENTAL
22 EXPENSES OF THE WARD OR PROTECTED PERSON. THE COURT SHALL DETERMINE THE
23 REASONABLENESS OF ALL EXPENDITURES BY THE GUARDIAN ON THE FILING OF REQUIRED
24 ACCOUNTS. FOR GOOD CAUSE SHOWN THE COURT MAY APPROVE EXPENDITURES MADE IN
25 EXCESS OF THOSE AUTHORIZED PURSUANT TO SUBSECTION E OF THIS SECTION BUT SHALL
26 NOT APPROVE AN EXPENDITURE AS REASONABLE IF THE EXPENDITURE DOES NOT BENEFIT
27 THE WARD OR THE WARD'S ESTATE EVEN IF THE EXPENDITURE IS WITHIN THE LIMITS
28 PREVIOUSLY AUTHORIZED.

29 Sec. 5. Section 14-5307, Arizona Revised Statutes, is amended to read:

30 14-5307. Removal or resignation of guardian: termination of
31 incapacity

32 A. On petition of the ward or any person interested in ~~his~~ THE WARD'S
33 welfare, the court may remove a guardian and appoint a successor if it is in
34 the best interests of the ward. On petition of the guardian, the court may
35 accept a resignation and make any other order which may be appropriate.

36 ~~B. An order adjudicating incapacity may specify a minimum period, not~~
37 ~~exceeding one year, during which no petition for an adjudication that the~~
38 ~~ward is no longer incapacitated may be filed without special leave. Subject~~
39 ~~to this restriction, the ward or any person interested in his welfare may~~
40 ~~petition the court for an order that the ward is no longer incapacitated and~~
41 ~~for the removal or resignation of the guardian. A request for this order may~~
42 ~~be made by informal letter to the court or judge. Any person who knowingly~~
43 ~~interferes with the transmission of this request may be found in contempt of~~
44 ~~court.~~

1 B. ON ENTERING AN ORDER ADJUDICATING INCAPACITY, AND AFTER
2 CONSIDERING THE REASONABLENESS OF THE POSITIONS TAKEN BY THE LITIGANTS, THE
3 STRENGTH OF THE EVIDENCE PRESENTED INCLUDING THE PROBABILITY THAT THE WARD'S
4 INCAPACITY MAY BE REMOVED IN THE FUTURE, THE BENEFITS TO AND BEST INTERESTS
5 OF THE WARD, THE EXPECTED COST TO THE WARD'S ESTATE AND SUCH OTHER RELEVANT
6 FACTORS DETERMINED BY THE COURT, AN ORDER ADJUDICATING INCAPACITY OR A
7 SEPARATE ORDER MAY SPECIFY A MINIMUM PERIOD, NOT EXCEEDING ONE YEAR, DURING
8 WHICH A PETITION FOR AN ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED
9 OR FOR REMOVAL OF A GUARDIAN MAY NOT BE FILED BY ANY PERSON OTHER THAN THE
10 WARD WITHOUT SPECIAL LEAVE OF THE COURT. THE WARD MAY PETITION THE COURT FOR
11 AN ORDER THAT THE WARD IS NO LONGER INCAPACITATED AND FOR THE REMOVAL OR
12 RESIGNATION OF THE GUARDIAN AT ANY TIME. A REQUEST FOR THIS ORDER MAY BE
13 MADE BY INFORMAL LETTER TO THE COURT OR JUDGE. THE COURT OR JUDGE MAY FIND
14 ANY PERSON WHO KNOWINGLY INTERFERES WITH THE TRANSMISSION OF THIS REQUEST IN
15 CONTEMPT OF COURT.

16 C. AN INTERESTED PERSON SHALL NOT FILE A PETITION FOR ADJUDICATION
17 THAT THE WARD IS NO LONGER INCAPACITATED EARLIER THAN ONE YEAR AFTER THE
18 ORDER ADJUDICATING INCAPACITY WAS ENTERED UNLESS THE COURT PERMITS IT TO BE
19 MADE ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT THE WARD
20 IS NO LONGER INCAPACITATED.

21 D. AN INTERESTED PERSON SHALL NOT FILE A PETITION TO REMOVE A GUARDIAN
22 EARLIER THAN ONE YEAR AFTER THE ORDER ADJUDICATING INCAPACITY WAS ENTERED
23 UNLESS THE COURT PERMITS IT TO BE MADE ON THE BASIS OF AFFIDAVITS THAT THERE
24 IS REASON TO BELIEVE THAT THE CURRENT GUARDIAN WILL ENDANGER THE WARD'S
25 PHYSICAL, MENTAL OR EMOTIONAL HEALTH IF NOT REMOVED. THE COURT MAY REMOVE
26 THE GUARDIAN ONLY ON FINDING THAT THE REMOVAL IS IN THE WARD'S BEST INTEREST.

27 E. TO MODIFY ANY TYPE OF GUARDIANSHIP ORDER, AN INTERESTED PERSON
28 SHALL SUBMIT AN AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS
29 SUPPORTING THE REQUESTED MODIFICATION AND SHALL GIVE NOTICE, TOGETHER WITH A
30 COPY OF THE AFFIDAVIT OR VERIFIED PETITION, TO OTHER PARTIES TO THE
31 PROCEEDING, WHO MAY FILE OPPOSING AFFIDAVITS. THE COURT SHALL DENY THE
32 PETITION UNLESS IT FINDS THAT ADEQUATE CAUSE FOR HEARING THE PETITION IS
33 ESTABLISHED BY THE PLEADINGS, IN WHICH CASE IT SHALL SET A DATE FOR A HEARING
34 ON WHY THE REQUESTED MODIFICATION SHOULD NOT BE GRANTED.

35 F. THE COURT SHALL ASSESS ATTORNEY FEES AND COSTS AGAINST A PARTY
36 SEEKING MODIFICATION IF THE COURT FINDS THAT THE MODIFICATION ACTION IS
37 VEXATIOUS AND CONSTITUTES HARASSMENT.

38 ~~C.~~ G. Before removing a guardian, accepting the resignation of a
39 guardian or ordering that a ward's incapacity has terminated, the court,
40 following the same procedures to safeguard the rights of the ward as apply to
41 a petition for appointment of a guardian, may send an investigator to the
42 residence of the present guardian and to the place where the ward resides or
43 is detained to observe conditions and report in writing to the court.

1 Sec. 6. Section 14-5308, Arizona Revised Statutes, is amended to read:
2 14-5308. Court appointed investigators; qualifications; duties

3 A. An investigator appointed by the court under sections 14-5303 and
4 14-5407 shall have a background in law, nursing or social work and shall have
5 no personal interest in the proceedings.

6 B. The investigator shall conduct an investigation before the court
7 appoints a guardian or a conservator to allow the court to determine the
8 appropriateness of that appointment. As directed by the court, the
9 investigator shall conduct additional investigations to determine if it is
10 necessary to continue the appointment.

11 C. In conducting investigations the investigator shall:

12 1. Interview the alleged incapacitated person or the protected person
13 and the proposed guardian or conservator.

14 2. Visit the alleged incapacitated person's or the protected person's
15 current or proposed place of residence.

16 3. Interview nursing home or care home care givers and the home's
17 manager or administrator.

18 4. Transport the alleged incapacitated person or the protected person
19 as directed by the court.

20 D. In conducting interviews under this section the investigator may
21 examine any court record, medical record or financial record that relates to
22 the investigation.

23 E. As a condition of appointment as an investigator the court shall
24 require the applicant to furnish a full set of fingerprints to enable the
25 court to conduct a criminal background investigation to determine the
26 applicant's suitability. The court shall submit the completed fingerprint
27 card to the department of public safety. The department shall provide the
28 applicant's criminal history record information to the court pursuant to
29 section 41-1750. The department of public safety shall conduct criminal
30 history records checks pursuant to section 41-1750 and applicable federal
31 law. The department of public safety is authorized to submit fingerprint
32 card information to the federal bureau of investigation for a national
33 criminal history records check.

34 F. AN INVESTIGATOR APPOINTED BY THE COURT PURSUANT TO SECTIONS 14-5303
35 AND 14-5407 OR ANY PERSON OR ENTITY CLOSELY RELATED TO THE INVESTIGATOR SHALL
36 NOT RECEIVE ADDITIONAL COMPENSATION OR BE APPOINTED AS A FIDUCIARY, ATTORNEY
37 OR PROFESSIONAL IN THE SAME CASE OR FOR THE SAME PERSON WHO WAS THE SUBJECT
38 OF THE PRIOR INVESTIGATION. FOR THE PURPOSES OF THIS SUBSECTION, "CLOSELY
39 RELATED" INCLUDES A SPOUSE, CHILD, PARENT, SIBLING, GRANDPARENT, AUNT, UNCLE
40 OR COUSIN OF THE INVESTIGATOR AND ANY BUSINESS, PARTNERSHIP, CORPORATION,
41 LIMITED LIABILITY COMPANY, TRUST OR OTHER ENTITY IN WHICH THE INVESTIGATOR OR
42 ANY CLOSELY RELATED PERSON HAS ANY FINANCIAL INTEREST, IS EMPLOYED OR
43 RECEIVES ANY COMPENSATION OR FINANCIAL BENEFIT.

1 Sec. 7. Section 14-5311, Arizona Revised Statutes, is amended to read:
2 14-5311. Who may be guardian; priorities
3 A. Any qualified person may be appointed guardian of an incapacitated
4 person, subject to the requirements of section 14-5106.
5 B. The court may consider the following persons for appointment as
6 guardian in the following order:
7 1. A guardian or conservator of the person or a fiduciary appointed or
8 recognized by the appropriate court of any jurisdiction in which the
9 incapacitated person resides.
10 2. An individual or corporation nominated by the incapacitated person
11 if the person has, in the opinion of the court, sufficient mental capacity to
12 make an intelligent choice.
13 3. The person nominated in the incapacitated person's most recent
14 durable power of attorney.
15 4. The spouse of the incapacitated person.
16 5. An adult child of the incapacitated person.
17 6. A parent of the incapacitated person, including a person nominated
18 by will or other writing signed by a deceased parent.
19 7. Any relative of the incapacitated person with whom the
20 incapacitated person has resided for more than six months before the filing
21 of the petition.
22 8. The nominee of a person who is caring for or paying benefits to the
23 incapacitated person.
24 9. If the incapacitated person is a veteran, the spouse of a veteran
25 or the minor child of a veteran, the department of veterans' services.
26 10. A NONPROFIT ORGANIZATION OR ENTITY THAT IS AUTHORIZED TO PROVIDE
27 FIDUCIARY SERVICES.
28 11. THE PUBLIC FIDUCIARY.
29 ~~10.~~ 12. A fiduciary, guardian or conservator.
30 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 OF THIS
31 SECTION may nominate in writing a person to serve in that person's place.
32 With respect to persons who have equal priority, the court shall select the
33 one the court determines is best qualified to serve.
34 D. For good cause the court may pass over a person who has priority
35 and appoint a person who has a lower priority or no priority. FOR THE
36 PURPOSES OF THIS SUBSECTION, "GOOD CAUSE" INCLUDES THE ESTIMATED COST OF THE
37 FIDUCIARY'S FEE AND THE ABILITY OF THE WARD TO PAY THE FEE WITHOUT ADVERSELY
38 AFFECTING THE WARD'S FINANCIAL ABILITY TO PROVIDE FOR THE WARD'S REASONABLE
39 AND NECESSARY LIVING EXPENSES.
40 E. IF A PERSON LISTED IN SUBSECTION B, PARAGRAPH 4, 5, 6, 7 OR 8 OF
41 THIS SECTION IS UNAVAILABLE TO SERVE AS GUARDIAN, THE COURT MAY APPOINT THE
42 PUBLIC FIDUCIARY.

1 Sec. 8. Section 14-5312.01, Arizona Revised Statutes, is amended to
2 read:

3 14-5312.01. Inpatient treatment; rights and duties of ward and
4 guardian

5 A. Except as provided in subsection B of this section, a guardian of
6 an incapacitated person may consent to psychiatric and psychological care and
7 treatment, including the administration of psychotropic medications, if the
8 care and treatment take place outside a level one behavioral health facility
9 licensed by the department of health services.

10 B. On clear and convincing evidence that the ward is incapacitated as
11 a result of a mental disorder as defined in section 36-501, and is currently
12 in need of inpatient mental health care and treatment, the court may
13 authorize a guardian appointed pursuant to this title to give consent for the
14 ward to receive inpatient mental health care and treatment, including
15 placement in a level one behavioral health facility licensed by the
16 department of health services and medical, psychiatric and psychological
17 treatment associated with that placement. The evidence shall be supported by
18 the opinion of a mental health expert who is either a physician licensed
19 pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry
20 or a psychologist who is licensed pursuant to title 32, chapter 19.1.

21 C. In making its decision to grant authority to a guardian pursuant to
22 subsection B of this section, the court shall consider the cause of the
23 ward's disability and the ward's foreseeable clinical needs. The court shall
24 limit the guardian's authority to what is reasonably necessary to obtain the
25 care required for the ward in the least restrictive treatment alternative.
26 The court may limit the duration of the guardian's authority to consent to
27 inpatient mental health care and treatment and include other orders the court
28 determines necessary to protect the ward's best interests.

29 D. Within forty-eight hours after placement of the ward pursuant to
30 this section, the guardian shall give notice of this action to the ward's
31 attorney. When the attorney receives this notice the attorney shall assess
32 the appropriateness of the placement pursuant to section 36-537, subsection B
33 and section 36-546, subsection H. If requested by the attorney, the court
34 shall hold a hearing on the appropriateness of the placement within three
35 days after receiving that request.

36 E. The behavioral health treatment facility shall assess the
37 appropriateness of the ward's placement every thirty days and shall provide a
38 copy of the assessment report to the ward's attorney. The ward's attorney
39 may attend the ward's evaluation, staffing, treatment team and case
40 management meetings.

41 F. When the ward is admitted to a level one behavioral health
42 treatment facility pursuant to this section, the guardian shall provide the
43 facility with the name, address and telephone number of the ward's attorney.
44 The facility shall include this information in the ward's treatment record.

1 G. Within twenty-four hours after the facility receives any writing in
2 which the ward requests release from the facility, any change in placement or
3 a change in the type or duration of treatment, the facility shall forward
4 this information to the ward's attorney.

5 H. All health care providers, treatment facilities and regional
6 behavioral health authorities shall allow the ward's attorney access to all
7 of the ward's medical, psychiatric, psychological and other treatment
8 records.

9 I. The ward's guardian shall place the ward in a least restrictive
10 treatment alternative within ten days after the guardian is notified by the
11 medical director of the inpatient facility that the ward no longer needs
12 inpatient care. The ward, a representative of the inpatient treatment
13 facility, the ward's attorney, the ward's physician or any other interested
14 person may petition the court to order the facility to discharge the ward to
15 a least restrictive treatment alternative if the guardian does not act
16 promptly to do so.

17 J. If the ward is in a behavioral health treatment facility at the
18 time of the initial hearing on the petition for appointment of a guardian,
19 the court investigator and the ward's attorney shall advise the court of the
20 appropriateness of the placement.

21 K. An attorney appointed pursuant to section 14-5303, subsection ~~C~~ D
22 remains the attorney of record until the attorney is discharged by the court.
23 The court shall ensure that a ward whose guardian has been granted mental
24 health treatment authority is represented by an attorney at all times the
25 guardian has that authority. Unless the court finds that the ward has
26 insufficient assets to meet the ward's reasonable and necessary care and
27 living expenses, the ward shall pay the attorney's reasonable fees.

28 L. If deemed necessary to adequately assess a request for mental
29 health treatment authority or to review the ward's placement in a behavioral
30 health treatment facility, the court may order an independent evaluation by
31 either a physician who is licensed pursuant to title 32, chapter 13 or 17 and
32 who is a specialist in psychiatry or a psychologist who is licensed pursuant
33 to title 32, chapter 19.1. If the ward has insufficient funds to pay the
34 total cost of this evaluation, the court may deem all or any part of the
35 evaluator's fee to be a county expense after determining the reasonableness
36 of that fee.

37 M. Instead of ordering an independent evaluation pursuant to
38 subsection L of this section, the court may accept a report conducted on
39 behalf of the behavioral health treatment facility if the court finds that
40 the report meets the requirements of an independent evaluation.

41 N. The court may decide that the ward's right to retain or obtain a
42 driver license and any other civil right that may be suspended by operation
43 of law is not affected by the appointment of a guardian.

44 O. If the court grants the guardian the authority to consent to
45 inpatient mental health care and treatment pursuant to this section, the

1 medical director of a level one behavioral health facility licensed by the
2 department of health services may admit the ward at the guardian's request.

3 P. A guardian who is authorized by the court to consent to inpatient
4 mental health care and treatment pursuant to this section shall file with the
5 annual report of the guardian required pursuant to section 14-5315 an
6 evaluation report by a physician or a psychologist who meets the requirements
7 of subsection B of this section. The evaluation report shall indicate if the
8 ward currently needs inpatient mental health care and treatment. If the
9 guardian does not file the evaluation report or if the report indicates that
10 the ward does not need inpatient mental health care and treatment, the
11 guardian's authority to consent to this treatment ceases. If the report
12 indicates that the ward currently needs this treatment, the guardian's
13 authority to consent to this treatment continues. If the report supports the
14 continuation of the guardian's authority to consent to this treatment, the
15 ward's attorney shall review the report with the ward. The ward may contest
16 the continuation of the guardian's authority by filing a request for a court
17 hearing within ten business days after the report is filed. The court shall
18 hold this hearing within thirty calendar days after it receives the request.
19 The guardian's authority continues pending the court's ruling on the issue.
20 At the hearing the guardian has the burden of proving by clear and convincing
21 evidence that the ward is currently in need of inpatient mental health care
22 and treatment.

23 Q. The court may discharge an attorney who was appointed pursuant to
24 section 14-5303, subsection ~~C~~ D subsequent to the appointment of a guardian
25 if it clearly appears from specific facts presented by affidavit or verified
26 petition that continued representation of the ward is no longer necessary or
27 desirable. The factual basis must include, at a minimum, consideration of
28 the following:

- 29 1. The nature and history of the ward's illness.
- 30 2. The ward's history of hospitalization.
- 31 3. The ward's current and anticipated living arrangements.
- 32 4. Whether the ward's inpatient treatment is anticipated to be a
33 one-time hospitalization for the purpose of stabilizing the ward's condition
34 and further hospitalizations are not likely to be necessary.
- 35 5. Whether the ward's current and anticipated living arrangements are
36 the least restrictive alternatives possible.

37 Sec. 9. Section 14-5314, Arizona Revised Statutes, is amended to read:
38 14-5314. Compensation of appointees; definitions

39 A. If not otherwise compensated for services rendered, an
40 investigator, accountant, lawyer, physician, registered nurse, psychologist
41 or guardian who is appointed pursuant to this article, ~~including an~~
42 ~~independent lawyer representing the alleged incapacitated person pursuant to~~
43 ~~section 14-5303, subsection C,~~ is entitled to reasonable compensation from
44 the estate of the ward if the petition is granted, or from the petitioner if
45 the petition is denied. **IN DETERMINING REASONABLE COMPENSATION, THE COURT,**

1 AMONG OTHER FACTORS, SHALL CONSIDER THE ABILITY OF THE WARD TO PAY THE
2 COMPENSATION, ANY APPLICABLE FEE GUIDELINES AND ANY CONTRACT THAT THE
3 PROVIDER MAY HAVE WITH THE COUNTY.

4 B. IF NOT OTHERWISE COMPENSATED FOR SERVICES RENDERED, A LAWYER
5 APPOINTED BY THE COURT TO REPRESENT THE ALLEGED INCAPACITATED PERSON,
6 INCLUDING AN INDEPENDENT LAWYER REPRESENTING THE ALLEGED INCAPACITATED PERSON
7 PURSUANT TO SECTION 14-5303, SUBSECTION D, MAY BE AWARDED REASONABLE
8 COMPENSATION FROM THE ESTATE OF THE WARD IF THE PETITION IS GRANTED, OR FROM
9 THE PETITIONER IF THE PETITION IS DENIED. IN DETERMINING REASONABLE
10 COMPENSATION, THE COURT, AMONG OTHER FACTORS, SHALL CONSIDER THE ABILITY OF
11 THE WARD TO PAY THE COMPENSATION, ANY APPLICABLE FEE GUIDELINES AND WHETHER
12 THE LAWYER CAN BE REASONABLY COMPENSATED PURSUANT TO A CONTRACT WITH THE
13 COUNTY.

14 ~~B.~~ C. If the petitioner withdraws the petition or if the petition is
15 dismissed because of the petitioner's failure to prosecute, the court may
16 order that the compensation of the investigator, accountant, lawyer,
17 physician, registered nurse, psychologist or guardian appointed pursuant to
18 this article, including an independent lawyer representing the alleged
19 incapacitated person pursuant to section 14-5303, subsection ~~C~~ D, be paid
20 either from the ward's estate or by the petitioner, OR BE APPORTIONED BETWEEN
21 THE WARD'S ESTATE AND THE PETITIONER, depending on the facts and
22 circumstances. In making this determination, the court may consider any
23 evidence it deems appropriate INCLUDING THE ABILITY OF THE WARD TO PAY THE
24 COMPENSATION, THE BENEFIT DERIVED BY THE WARD FROM THE REPRESENTATION, ANY
25 APPLICABLE FEE GUIDELINES AND THE PROVISIONS OF SECTION 14-5316.

26 ~~C.~~ D. A lawyer who is employed by the guardian to represent the
27 guardian in the guardian's appointment or duties as guardian ~~is entitled to~~
28 MAY BE AWARDED reasonable compensation from the ward's estate if the petition
29 is granted. ~~If the petitioner withdraws the petition or if the court~~
30 ~~dismisses the petition because of the petitioner's failure to prosecute, the~~
31 ~~court may order that the compensation of the proposed guardian's lawyer be~~
32 ~~paid either from the ward's estate or by the petitioner, depending on the~~
33 ~~facts and circumstances. In making these determinations, the court may~~
34 ~~consider any evidence it deems appropriate.~~ THE COURT MAY ORDER THAT THE
35 AMOUNT DETERMINED TO BE REASONABLE BE PAID EITHER WHOLLY FROM THE WARD'S
36 ESTATE OR BY THE PETITIONER, OR APPORTIONED BETWEEN THE WARD'S ESTATE AND THE
37 PETITIONER, DEPENDING ON THE FACTS AND CIRCUMSTANCES. IN MAKING THIS
38 DETERMINATION, THE COURT MAY CONSIDER ANY EVIDENCE IT DEEMS APPROPRIATE
39 INCLUDING THE ABILITY OF THE WARD TO PAY THE COMPENSATION, ANY APPLICABLE FEE
40 GUIDELINES AND THE PROVISIONS OF SECTION 14-5316.

41 ~~D. A lawyer who is employed by the petitioner to represent the~~
42 ~~petitioner in seeking the appointment of a guardian is entitled to reasonable~~
43 ~~compensation from the ward's estate if the petition is granted.~~

1 E. If the court compensates the provider of a service, the court may
2 charge the estate for the reasonable cost of the service and shall deposit
3 these monies in the probate fund pursuant to section 14-5433.

4 F. If compensation by the ward or the petitioner is not feasible the
5 court shall determine and pay reasonable compensation for services rendered
6 by an investigator, accountant, lawyer, physician, registered nurse,
7 psychologist or guardian appointed in a guardianship proceeding.

8 G. FEES AND COSTS SHALL NOT BE AWARDED TO ANY PARTY WHO FILES A
9 PETITION THAT THE COURT FINDS RAISES AN ISSUE PREVIOUSLY ADJUDICATED IF THERE
10 HAS BEEN NO MATERIAL CHANGE OF CIRCUMSTANCES JUSTIFYING RECONSIDERATION OF
11 THE PRIOR RULING. THE COURT MAY ORDER THE PETITIONER TO PAY THE ATTORNEY
12 FEES AND COSTS OF ANY PARTY OPPOSING A REPETITIVE PETITION.

13 ~~G.~~ H. For the purposes of this section:

14 1. "Guardian" includes both a guardian and a temporary guardian.

15 2. "Petition" means a petition filed pursuant to section 14-5303,
16 subsection A or section 14-5310, subsection A.

17 3. "Ward" includes an alleged incapacitated person.

18 Sec. 10. Title 14, chapter 5, article 3, Arizona Revised Statutes, is
19 amended by adding section 14-5316, to read:

20 ~~14-5316.~~ Expenses; definitions

21 A. AFTER CONSIDERING THE FINANCIAL RESOURCES OF THE PARTIES AND THE
22 REASONABLENESS OF THE POSITIONS EACH PARTY HAS TAKEN THROUGHOUT THE
23 PROCEEDINGS, THE COURT FROM TIME TO TIME MAY ORDER A PARTY TO PAY A
24 REASONABLE AMOUNT TO ANOTHER PARTY FOR THE EXPENSES OF MAINTAINING OR
25 DEFENDING ANY PROCEEDING UNDER THIS TITLE. ON REQUEST OF A PARTY, THE COURT
26 SHALL MAKE SPECIFIC FINDINGS CONCERNING THE PORTIONS OF ANY AWARD OF EXPENSES
27 THAT ARE BASED ON CONSIDERATION OF FINANCIAL RESOURCES AND REASONABLENESS OF
28 POSITIONS. THE COURT MAY MAKE THESE FINDINGS BEFORE, DURING OR AFTER THE
29 ISSUANCE OF AN AWARD OF EXPENSES.

30 B. IF THE COURT DETERMINES THAT A PARTY FILED A PETITION OR ASSERTED A
31 DEFENSE UNDER ONE OF THE FOLLOWING CIRCUMSTANCES, THE COURT SHALL AWARD
32 EXPENSES TO THE OTHER PARTY:

33 1. THE PETITION OR DEFENSE WAS NOT FILED IN GOOD FAITH.

34 2. THE PETITION OR DEFENSE WAS NOT GROUNDED IN FACT OR BASED ON LAW.

35 3. THE PETITION OR DEFENSE WAS FILED FOR AN IMPROPER PURPOSE, SUCH AS
36 TO HARASS THE OTHER PARTY, TO CAUSE AN UNNECESSARY DELAY OR TO INCREASE THE
37 COST OF LITIGATION TO THE OTHER PARTY.

38 C. FOR THE PURPOSES OF THIS SECTION:

39 1. "EXPENSES" MEANS ATTORNEY FEES, DEPOSITION COSTS, FEES PAID TO A
40 SERVICE PROVIDER PURSUANT TO SECTION 14-5314 AND OTHER REASONABLE EXPENSES AS
41 THE COURT FINDS NECESSARY TO THE FULL AND PROPER PRESENTATION OF THE ACTION,
42 INCLUDING ANY APPEAL.

43 2. "PARTY" INCLUDES THE WARD, ALLEGED INCAPACITATED PERSON, GUARDIAN
44 OR OTHER INTERESTED PERSON OR ENTITY WHO HAS FILED A NOTICE OF APPEARANCE, A
45 PETITION OR AN OBJECTION IN THE PROCEEDING.

1 3. "PETITION" INCLUDES ANY WRITTEN REQUEST TO THE COURT FOR RELIEF
2 PURSUANT TO THIS TITLE.

3 Sec. 11. Section 14-5404, Arizona Revised Statutes, is amended to
4 read:

5 14-5404. Original petition for appointment or protective order

6 A. The person allegedly in need of protection, any person who is
7 interested in that person's estate or affairs, including that person's
8 parent, guardian or custodian, or any person who would be adversely affected
9 by lack of effective management of that person's estate and affairs may
10 petition for the appointment of a conservator or for any other appropriate
11 protective order.

12 B. The petition shall set forth, to the extent known:

13 1. The interest of the petitioner.

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

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

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

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

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

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

27 8. A RELIABLE ESTIMATE OF ALL MONTHLY COSTS ASSOCIATED WITH THE
28 CONSERVATORSHIP THAT WILL BE NECESSARY TO CARE FOR THE PROTECTED PERSON UNTIL
29 THE FIRST OR NEXT ACCOUNTING IS TIMELY FILED AND APPROVED, WITH SEPARATE
30 RELIABLE MONTHLY ESTIMATES FOR:

31 (a) THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF THE PROTECTED
32 PERSON.

33 (b) THE AVERAGE MONTHLY COST OF COMFORT CARE SERVICES FOR THE
34 PROTECTED PERSON.

35 (c) THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES EXPECTED TO BE
36 INCURRED BY THE CONSERVATOR.

37 (d) THE AMOUNT OF ATTORNEY FEES INCURRED AND EXPECTED TO BE INCURRED
38 BY ALL APPOINTED ATTORNEYS THROUGH THE ISSUANCE OF A COURT ORDER APPOINTING A
39 CONSERVATOR AS REQUESTED IN THE PETITION.

40 (e) THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES EXPECTED TO BE
41 INCURRED BY ALL APPOINTED ATTORNEYS UNTIL THE APPROVAL OF THE FIRST OR NEXT
42 ACCOUNTING.

43 (f) THE AVERAGE MONTHLY ACCOUNTING FEES AND EXPENSES EXPECTED TO BE
44 INCURRED BY ALL ACCOUNTANTS OR OTHER PROFESSIONALS PREPARING ACCOUNTINGS
45 UNTIL APPROVAL OF THE FIRST OR NEXT ACCOUNTING.

1 (g) THE EXPECTED COST TO PREPARE THE INITIAL INVENTORY AND
2 APPRAISEMENT REQUIRED PURSUANT TO SECTION 14-5418.

3 (h) THE AVERAGE MONTHLY COSTS OF ALL OTHER MISCELLANEOUS COSTS OR
4 EXPENSES NOT LISTED IN SUBDIVISIONS (a) THROUGH (g) WITH A DETAILED
5 EXPLANATION OF REQUESTED COST OR EXPENSE.

6 C. IF THE PETITIONER IS UNABLE TO PROVIDE RELIABLE ESTIMATES OF ANY OF
7 THE AMOUNTS PRESCRIBED IN SUBSECTION B OF THIS SECTION IN THE PETITION, THE
8 PETITIONER SHALL STATE IN THE PETITION ALL DETAILED EFFORTS MADE BY THE
9 PETITIONER TO OBTAIN THE ESTIMATES AND SHALL THEREAFTER PROVIDE A WRITTEN
10 NOTICE CONTAINING SUCH RELIABLE ESTIMATES TO ALL PERSONS LISTED AND IN THE
11 MANNER PRESCRIBED IN SECTION 14-5405 AT LEAST FIVE JUDICIAL DAYS BEFORE THE
12 FIRST HEARING SCHEDULED TO CONSIDER THE APPOINTMENT OF A TEMPORARY OR
13 PERMANENT CONSERVATOR.

14 D. EXCEPT AS PRESCRIBED PURSUANT TO SUBSECTION E OF THIS SECTION, THE
15 PETITIONER SHALL SUBMIT WITH THE PETITION A COMPETITIVE BID SIGNED BY A
16 PERSON OR ENTITY UNRELATED TO THE PERSON OR ENTITY FOR WHICH APPOINTMENT IS
17 SOUGHT SPECIFYING THE AVERAGE MONTHLY COST THE PERSON OR ENTITY BIDDING WOULD
18 CHARGE FOR THE HOUSING, CARE AND COMFORT SERVICES OF THE PROTECTED PERSON AND
19 A SEPARATE COMPETITIVE BID SIGNED BY A PERSON OR ENTITY UNRELATED TO THE
20 PERSON OR ENTITY FOR WHICH APPOINTMENT IS SOUGHT COVERING THE AVERAGE MONTHLY
21 FIDUCIARY FEES AND EXPENSES THE PERSON OR ENTITY BIDDING WOULD CHARGE TO
22 DISCHARGE THE DUTIES OF CONSERVATOR.

23 E. A COMPETITIVE BID IS NOT REQUIRED PURSUANT TO SUBSECTION D OF THIS
24 SECTION FOR THE APPOINTMENT AS CONSERVATOR OF ANY OF THE FOLLOWING:

- 25 1. THE SPOUSE OF THE PROTECTED PERSON.
- 26 2. AN ADULT CHILD OF THE PROTECTED PERSON.
- 27 3. A PARENT OF THE PROTECTED PERSON, INCLUDING A PERSON NOMINATED BY
28 WILL OR OTHER WRITING SIGNED BY A DECEASED PARENT OF THE PROTECTED PERSON.
- 29 4. A RELATIVE OF THE PROTECTED PERSON WITH WHOM THE PROTECTED PERSON
30 HAS RESIDED FOR MORE THAN SIX MONTHS BEFORE THE FILING OF THE PETITION.
- 31 5. THE PUBLIC FIDUCIARY.
- 32 6. A FIDUCIARY, GUARDIAN OR CONSERVATOR WHO WAS PREVIOUSLY APPOINTED
33 FOR THE PROTECTED PERSON.

34 Sec. 12. Section 14-5407, Arizona Revised Statutes, is amended to
35 read:

36 14-5407. Procedure concerning hearing and order on original
37 petition

38 A. On the filing of a petition for appointment of a conservator or any
39 other protective order because of minority, the court shall set a hearing
40 date on the matters alleged in the petition. If, at any time in the
41 proceeding, the court determines that the interests of the minor are or may
42 be inadequately represented, it shall appoint an attorney to represent the
43 minor. If the minor is at least fourteen years of age the court shall
44 consider the choice of the minor.

B. On the filing of a petition for appointment of a conservator or any other protective order for reasons other than minority, the court shall set a hearing date. Unless the person to be protected has counsel of his own choice, the court shall appoint an attorney to represent him. If the alleged disability is mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, ~~or~~ or chronic intoxication, the court shall appoint an investigator to interview the person to be protected. On petition by an interested person or on the court's own motion, the court may direct that an appropriate medical or psychological evaluation of the person be conducted. The investigator and the person conducting the medical or psychological evaluation shall submit written reports to the court before the hearing date.

C. In any case where the veterans administration is or may be an interested party, a certificate of an authorized official of the veterans administration that the person allegedly in need of protection has been found incapable of handling the benefits payable, on examination in accordance with the laws and regulations governing the veterans administration, is prima facie evidence of the necessity for appointment of a conservator.

D. The person allegedly in need of protection is entitled to be present at the hearing, to be represented by counsel, to present evidence and to cross-examine witnesses, including any court appointed examiner and investigator. The issue may be determined at a closed hearing if the person allegedly in need of protection or that person's counsel so requests.

E. After the hearing, ~~upon~~ ON a finding that a basis for the appointment of a conservator or any other protective order has been established, the court shall make an appointment or other appropriate protective order.

F. IN THE ABSENCE OF GOOD CAUSE SHOWN, AN ORDER APPOINTING A CONSERVATOR SHALL PROHIBIT THE CONSERVATOR FROM SPENDING ANY AMOUNTS FROM THE ESTATE OF THE PROTECTED PERSON WITHOUT PRIOR COURT ORDER EXCEPT FOR TAXES OWED BY THE WARD OR PROTECTED PERSON, REASONABLE AND NECESSARY MEDICAL AND DENTAL EXPENSES OF THE WARD OR PROTECTED PERSON AND MONTHLY AMOUNTS SPECIFICALLY APPROVED IN THE ORDER OF APPOINTMENT FOR:

1. THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF THE PROTECTED PERSON.

2. THE AVERAGE MONTHLY COST OF COMFORT CARE SERVICES FOR THE PROTECTED PERSON.

3. THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES EXPECTED TO BE INCURRED BY THE CONSERVATOR.

4. THE AMOUNT OF ATTORNEY FEES INCURRED AND EXPECTED TO BE INCURRED BY ALL APPOINTED ATTORNEYS THROUGH THE ISSUANCE OF A COURT ORDER APPOINTING A CONSERVATOR AS REQUESTED IN THE PETITION.

5. THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES EXPECTED TO BE INCURRED BY ALL APPOINTED ATTORNEYS UNTIL THE APPROVAL OF THE FIRST OR NEXT ACCOUNTING.

1 6. THE AVERAGE MONTHLY ACCOUNTING FEES AND EXPENSES EXPECTED TO BE
2 INCURRED BY ALL ACCOUNTANTS OR OTHER PROFESSIONALS PREPARING ACCOUNTINGS
3 UNTIL APPROVAL OF THE FIRST OR NEXT ACCOUNTING.

4 7. THE EXPECTED COST TO PREPARE THE INITIAL INVENTORY AND APPRAISEMENT
5 REQUIRED PURSUANT TO SECTION 14-5418.

6 8. THE AVERAGE MONTHLY COSTS OF ALL OTHER MISCELLANEOUS COSTS OR
7 EXPENSES NOT LISTED IN PARAGRAPHS 1 THROUGH 7 WITH A DETAILED ORDER
8 AUTHORIZING THE MAXIMUM COSTS OR EXPENSES APPROVED BY THE COURT.

9 G. THE CONSERVATOR SHALL NOT EXPEND ANY SUMS FROM THE ESTATE IN EXCESS
10 OF REASONABLE AMOUNTS WITHIN THE AUTHORIZATION ORDERED PURSUANT TO SUBSECTION
11 F OF THIS SECTION WITHOUT PRIOR COURT APPROVAL EXCEPT FOR TAXES OWED BY THE
12 WARD OR PROTECTED PERSON AND REASONABLE AND NECESSARY MEDICAL AND DENTAL
13 EXPENSES OF THE WARD OR PROTECTED PERSON. THE COURT SHALL DETERMINE THE
14 REASONABLENESS OF ALL EXPENDITURES BY THE CONSERVATOR ON THE FILING OF
15 REQUIRED ACCOUNTS. FOR GOOD CAUSE SHOWN THE COURT MAY APPROVE EXPENDITURES
16 MADE IN EXCESS OF THOSE AUTHORIZED PURSUANT TO SUBSECTION F OF THIS SECTION
17 BUT SHALL NOT APPROVE AN EXPENDITURE AS REASONABLE IF THE EXPENDITURE DOES
18 NOT BENEFIT THE PROTECTED PERSON OR THE ESTATE OF THE PROTECTED PERSON EVEN
19 IF THE EXPENDITURE IS WITHIN THE LIMITS PREVIOUSLY AUTHORIZED.

20 Sec. 13. Section 14-5410, Arizona Revised Statutes, is amended to
21 read:

22 14-5410. Who may be appointed conservator; priorities

23 A. The court may appoint an individual or a corporation, with general
24 power to serve as trustee, as conservator of the estate of a protected person
25 subject to the requirements of section 14-5106. The following are entitled
26 to consideration for appointment in the order listed:

27 1. A conservator, guardian of property or other like fiduciary
28 appointed or recognized by the appropriate court of any other jurisdiction in
29 which the protected person resides.

30 2. An individual or corporation nominated by the protected person if
31 the protected person is at least fourteen years of age and has, in the
32 opinion of the court, sufficient mental capacity to make an intelligent
33 choice.

34 3. The person nominated in the protected person's most recent durable
35 power of attorney.

36 4. The spouse of the protected person.

37 5. An adult child of the protected person.

38 6. A parent of the protected person, or a person nominated by the will
39 of a deceased parent.

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

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

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

10. A NONPROFIT ORGANIZATION OR ENTITY THAT IS AUTHORIZED TO PROVIDE FIDUCIARY SERVICES.

11. THE PUBLIC FIDUCIARY.

~~10-~~ 12. A fiduciary, guardian or conservator.

B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this section may nominate in writing a person to serve in that person's place. With respect to persons having equal priority, the court shall select the one it determines is best qualified to serve. The court, for good cause, may pass over a person having priority and appoint a person having a lower priority or no priority. FOR THE PURPOSES OF THIS SUBSECTION, "GOOD CAUSE" INCLUDES THE ESTIMATED COST OF THE CONSERVATOR'S FEE AND THE ABILITY OF THE WARD TO PAY THE FEE WITHOUT ADVERSELY AFFECTING THE WARD'S FINANCIAL ABILITY TO PROVIDE FOR THE WARD'S REASONABLE AND NECESSARY LIVING EXPENSES.

C. IF A PERSON LISTED IN SUBSECTION A, PARAGRAPH 4, 5, 6, 7 OR 8 OF THIS SECTION IS UNAVAILABLE TO SERVE AS CONSERVATOR, THE COURT MAY APPOINT THE PUBLIC FIDUCIARY.

D. IF THE APPOINTMENT OF A GUARDIAN OTHER THAN THOSE LISTED IN SECTION 14-5311, SUBSECTION B, PARAGRAPH 4, 5, 6, 7, 11 OR 12 IS SOUGHT, THE PETITIONER SHALL SUBMIT WITH THE PETITION A COMPETITIVE BID SIGNED BY A PERSON OR ENTITY UNRELATED TO THE PERSON OR ENTITY FOR WHICH APPOINTMENT IS SOUGHT COVERING THE AVERAGE MONTHLY COST THE PERSON OR ENTITY BIDDING WOULD CHARGE FOR THE HOUSING, CARE AND COMFORT SERVICES OF THE WARD, AND A SEPARATE COMPETITIVE BID SIGNED BY A PERSON OR ENTITY UNRELATED TO THE PERSON OR ENTITY FOR WHICH APPOINTMENT IS SOUGHT COVERING THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES THE PERSON OR ENTITY BIDDING WOULD CHARGE TO DISCHARGE THE DUTIES OF GUARDIAN.

Sec. 14. Title 14, chapter 5, article 4, Arizona Revised Statutes, is amended by adding section 14-5416.01, to read:

14-5416.01. Removal or resignation of conservator; termination of incapacity

A. ON PETITION OF THE PROTECTED PERSON OR ANY PERSON INTERESTED IN THE PROTECTED PERSON'S WELFARE, THE COURT MAY REMOVE A CONSERVATOR AND APPOINT A SUCCESSOR IF IT IS IN THE BEST INTERESTS OF THE PROTECTED PERSON. ON PETITION OF THE CONSERVATOR, THE COURT MAY ACCEPT A RESIGNATION AND MAKE ANY OTHER ORDER THAT MAY BE APPROPRIATE.

B. ON ENTERING A PROTECTIVE ORDER, AND AFTER CONSIDERING THE REASONABLENESS OF THE POSITIONS TAKEN BY THE LITIGANTS, THE STRENGTH OF THE EVIDENCE PRESENTED INCLUDING THE PROBABILITY THAT THE NEED FOR PROTECTION OF THE PROTECTED PERSON MAY BE REMOVED IN THE FUTURE, THE BENEFITS TO AND BEST INTERESTS OF THE PROTECTED PERSON, THE EXPECTED COST TO THE PROTECTED PERSON'S ESTATE AND OTHER RELEVANT FACTORS DETERMINED BY THE COURT, A PROTECTIVE ORDER OR A SEPARATE ORDER MAY SPECIFY A MINIMUM PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH A PETITION FOR AN ADJUDICATION THAT THE PROTECTED PERSON IS NO LONGER IN NEED OF PROTECTION OR FOR REMOVAL OF A CONSERVATOR MAY NOT BE FILED BY ANY PERSON OTHER THAN THE PROTECTED PERSON

1 WITHOUT SPECIAL LEAVE OF THE COURT. THE PROTECTED PERSON MAY PETITION THE
2 COURT FOR AN ORDER THAT THE PROTECTED PERSON IS NO LONGER IN NEED OF
3 PROTECTION AND FOR THE REMOVAL OR RESIGNATION OF THE CONSERVATOR AT ANY TIME.
4 A REQUEST FOR THIS ORDER MAY BE MADE BY INFORMAL LETTER TO THE COURT OR
5 JUDGE. THE COURT OR JUDGE MAY FIND ANY PERSON WHO KNOWINGLY INTERFERES WITH
6 THE TRANSMISSION OF THIS REQUEST IN CONTEMPT OF COURT.

7 C. AN INTERESTED PERSON SHALL NOT FILE A PETITION FOR ADJUDICATION
8 THAT THE PROTECTED PERSON IS NO LONGER IN NEED OF PROTECTION EARLIER THAN ONE
9 YEAR AFTER THE PROTECTIVE ORDER WAS ENTERED UNLESS THE COURT PERMITS IT TO BE
10 MADE ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT THE
11 PROTECTED PERSON IS NO LONGER IN NEED OF PROTECTION.

12 D. AN INTERESTED PERSON SHALL NOT FILE A PETITION TO REMOVE A
13 CONSERVATOR EARLIER THAN ONE YEAR AFTER THE PROTECTIVE ORDER WAS ENTERED
14 UNLESS THE COURT PERMITS IT TO BE MADE ON THE BASIS OF AFFIDAVITS THAT THERE
15 IS REASON TO BELIEVE THAT THE CURRENT CONSERVATOR WILL ENDANGER THE PROTECTED
16 PERSON'S ESTATE IF NOT REMOVED. THE COURT MAY REMOVE THE CONSERVATOR ONLY ON
17 FINDING THAT THE REMOVAL IS IN THE PROTECTED PERSON'S BEST INTEREST.

18 E. TO MODIFY ANY TYPE OF CONSERVATORSHIP ORDER, AN INTERESTED PERSON
19 SHALL SUBMIT AN AFFIDAVIT OR VERIFIED PETITION SETTING FORTH DETAILED FACTS
20 SUPPORTING THE REQUESTED MODIFICATION AND SHALL GIVE NOTICE, TOGETHER WITH A
21 COPY OF THE AFFIDAVIT OR VERIFIED PETITION, TO OTHER PARTIES TO THE
22 PROCEEDING, WHO MAY FILE OPPOSING AFFIDAVITS. THE COURT SHALL DENY THE
23 PETITION UNLESS IT FINDS THAT ADEQUATE CAUSE FOR HEARING THE PETITION IS
24 ESTABLISHED BY THE PLEADINGS, IN WHICH CASE IT SHALL SET A DATE FOR A HEARING
25 ON WHY THE REQUESTED MODIFICATION SHOULD NOT BE GRANTED.

26 F. THE COURT SHALL ASSESS ATTORNEY FEES AND COSTS AGAINST A PARTY
27 SEEKING MODIFICATION IF THE COURT FINDS THAT THE MODIFICATION ACTION IS
28 VEXATIOUS AND CONSTITUTES HARASSMENT.

29 G. BEFORE REMOVING A CONSERVATOR, ACCEPTING THE RESIGNATION OF A
30 CONSERVATOR OR ORDERING THAT THE NEED FOR PROTECTION NO LONGER EXISTS, THE
31 COURT, FOLLOWING THE SAME PROCEDURES TO SAFEGUARD THE RIGHTS OF THE WARD AS
32 APPLY TO A PETITION FOR APPOINTMENT OF A CONSERVATOR, MAY REQUIRE APPROPRIATE
33 ACCOUNTS AND ENTER APPROPRIATE ORDERS TO PRESERVE AND PROTECT THE ASSETS OF
34 THE ESTATE, TO REQUIRE REIMBURSEMENT OR PAYMENT, AS NEEDED, AND TO TRANSFER
35 ASSETS OR TITLE TO THOSE ASSETS TO APPROPRIATE SUCCESSORS.

36 Sec. 15. Section 14-5419, Arizona Revised Statutes, is amended to
37 read:

38 14-5419. Accounts; definition

39 A. Except as provided pursuant to subsection F of this section, every
40 conservator must account to the court for the administration of the estate
41 not less than annually on the anniversary date of qualifying as conservator
42 and also on resignation or removal, and on termination of the protected
43 person's minority or disability, except that for good cause shown on the
44 application of an interested person, the court may relieve the conservator of
45 filing annual or other accounts by an order entered in the minutes.

B. The court may take any appropriate action on filing of annual or other accounts. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify. **IN THE ABSENCE OF GOOD CAUSE SHOWN, ANY ORDER ENTERED WITH RESPECT TO AN ANNUAL OR OTHER ACCOUNT SHALL PROHIBIT THE CONSERVATOR FROM SPENDING ANY AMOUNTS FROM THE ESTATE OF THE PROTECTED PERSON WITHOUT PRIOR COURT APPROVAL EXCEPT FOR AVERAGE MONTHLY AMOUNTS APPROVED IN AN ORDER APPLICABLE UNTIL THE NEXT ACCOUNT IS DUE, TAXES OWED BY THE WARD OR PROTECTED PERSON AND REASONABLE AND NECESSARY MEDICAL AND DENTAL EXPENSES OF THE WARD OR PROTECTED PERSON.**

C. An adjudication allowing an intermediate or final account can be made only on petition, notice and a hearing. Notice must be given to:

1. The protected person.
2. A guardian of the protected person if one has been appointed, unless the same person is serving as both guardian and conservator.
3. If no guardian has been appointed or the same person is serving as both guardian and conservator, a spouse or, if the spouse is the conservator, there is no spouse or the spouse is incapacitated, a parent or an adult child who is not serving as a conservator.
4. A representative appointed for the protected person, if the court determines in accordance with section 14-1408 that representation of the interest of the protected person would otherwise be inadequate.

D. An order, made on notice and a hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith. An order, made on notice and a hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.

E. In any case in which the estate consists, in whole or in part, of benefits paid by the veterans administration to the conservator or the conservator's predecessor for the benefit of the protected person, the veterans administration office that has jurisdiction over the area is entitled to a copy of any account filed under ~~chapter 5, article 4 of this title~~ **ARTICLE**. Each year in which an account is not filed with the court, the conservator, if requested, shall submit an account to the appropriate veterans administration office. If an account is not submitted as requested, or if it is found unsatisfactory by the veterans administration, the court on receipt of notice of the deficiency shall require the conservator to immediately file an account with the court promptly.

F. Unless prohibited by order of the court, the conservator may file with the court, in lieu of a final account, a verified statement stating that:

1. The protected person has died. The conservator shall attach a certified copy of the protected person's death certificate to the statement.

1 2. The protected person's successors have all waived in writing their
2 right to have the conservator submit to the court a final account of the
3 conservator's administration of the protected person's estate. The
4 conservator shall attach the originals of the written waivers to the
5 statement.

6 3. The conservator has delivered a copy of a closing statement to the
7 protected person's successors. The conservator shall attach a copy of the
8 closing statement to the statement.

9 G. The closing statement that is to be delivered to the protected
10 person's successors shall be a verified statement stating the following:

11 1. The protected person has died and the date of the person's death.

12 2. The persons receiving the closing statement have a right to have
13 the conservator submit to the court a final account of the conservator's
14 administration of the protected person's estate.

15 3. If the person wishes to have the final accounting reviewed by the
16 court, the person should not sign a waiver that waives this right.

17 4. If all persons receiving the closing statement choose to waive the
18 right to have the conservator submit to the court a final account, the final
19 account will not be reviewed by the court.

20 5. A list of the property owned by the protected person, as of the
21 date of the protected person's death, is attached to the closing statement
22 and that the list states the fair market value of the property as of the date
23 of the protected person's death.

24 6. The conservator, by the closing statement, shall inform the
25 protected person's successors that if they waive court review of the
26 conservator's final account, the conservatorship will be terminated, the
27 conservator will be discharged from all liabilities relating to the
28 conservatorship, the bond or other security posted by the conservator will be
29 exonerated and any restrictions previously imposed on the assets of the
30 conservatorship will be lifted.

31 H. The conservator shall file an affidavit with the court that states
32 that the closing statement was sent or delivered to the protected person's
33 successors on a date before the date that the protected person's successors
34 signed the written waiver.

35 I. Unless proceedings are pending against the conservator, on the
36 filing of the statement described in subsection F of this section and the
37 affidavit described in subsection H of this section, the court shall enter an
38 order terminating the conservatorship, discharging the conservator from all
39 liabilities relating to the conservatorship, exonerating and releasing any
40 bond or other security posted by the conservator and releasing any
41 restrictions previously imposed on the assets of the conservatorship.

42 J. For the purposes of this section, "protected person's successors"
43 means:

44 1. The personal representative of the protected person's estate if the
45 personal representative and the conservator are not the same person.

1 2. If the conservator and the personal representative of the protected
2 person's estate are the same person and if the protected person died
3 intestate, the protected person's heirs.

4 3. If the conservator and the personal representative of the protected
5 person's estate are the same person and if the protected person died testate,
6 the devisees under the protected person's will that has been admitted to
7 probate.