

LEGISLATIVE BILL 466

Approved by the Governor April 15, 1997

Introduced by Bromm, 23; Matzke, 47; D. Pederson, 42

AN ACT relating to guardians and conservators; to amend sections 30-1601, 30-2201, 30-2220, 30-2601, 30-2619, 30-2620, 30-2625 to 30-2629, 30-2630.01, 30-2633, 30-2634, 30-2637, and 30-2639, Reissue Revised Statutes of Nebraska; to change provisions relating to appointment, powers, and duties of guardians and conservators and notice and procedures for guardianship and conservatorship proceedings; to change certain bond requirements; to state intent; to redefine a term; to change provisions relating to temporary guardianship and conservatorship proceedings, expedited hearings, the authority of the court pursuant to the creation of a will by a protected person or the creation or alteration of his or her estate plan, and limitations on proceedings against trustees; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 30-1601, Reissue Revised Statutes of Nebraska, is amended to read:

30-1601. (1) In all matters arising under the Nebraska Probate Code, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, or guardian ad litem, the appealing party shall, within thirty days after the rendition of the judgment or making of the final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) Except for appeals pursuant to sections 30-2601 to 30-2661, the appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested party or upon the court's own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order. no appeal shall operate as a supersedeas unless the appellant within thirty days after the rendition of the judgment deposits with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs.

Sec. 2. Section 30-2201, Reissue Revised Statutes of Nebraska, is amended to read:

30-2201. Sections 30-2201 to 30-2902 and section 4 of this act

shall be known and may be cited as the Nebraska Probate Code.

Sec. 3. Section 30-2220, Reissue Revised Statutes of Nebraska, is amended to read:

30-2220. (a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his or her attorney if he or she has appeared by attorney or requested that notice be sent to his or her attorney. Notice shall be given:

(1) If the identity and address of any person is known (i) by mailing a copy thereof at least fourteen days before the time set for the hearing by certified, registered, or ordinary first-class mail addressed to the person being notified at the post office address given in his or her demand for notice, if any, or at his or her office or place of residence, if known, or (ii) by delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing; and

(2) By publishing at least once a week for three consecutive weeks a copy thereof in a legal newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least three days before the time set for the hearing.

If the action pending on which notice is required is a guardianship or conservatorship action under sections 30-2601 to 30-2661, publication shall be required only if the identity or address of any person required to be served is not known, and cannot be ascertained with reasonable diligence.

(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Sec. 4. The Legislature recognizes the need for providing mechanisms for intervening in the lives of certain persons who are impaired by reason of disability. It is the intent of the Legislature to authorize the use of guardianships and conservatorships for such intervention. It is also the intent of the Legislature to encourage the least restrictive alternative possible on the impaired person's exercise of personal and civil rights consistent with the impaired person's need for services by encouraging judges to utilize limited guardianships if appropriate.

Sec. 5. Section 30-2601, Reissue Revised Statutes of Nebraska, is amended to read:

30-2601. Unless otherwise apparent from the context, in ~~this code~~ the Nebraska Probate Code:

(1) Incapacitated person means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that ~~he~~ the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning ~~his person~~ himself or herself;

(2) A protective proceeding is a proceeding under the provisions of section 30-2630 to determine that a person cannot effectively manage or apply his or her estate to necessary ends, either because ~~he~~ the person lacks the ability or is otherwise inconvenienced, or because ~~he~~ the person is a minor, and to secure administration of ~~his~~ the person's estate by a conservator or other appropriate relief;

(3) A protected person is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) A ward is a person for whom a guardian has been appointed. A minor ward is a minor for whom a guardian has been appointed solely because of minority;

(5) Full guardianship means the guardian has been granted all powers which may be conferred upon a guardian by law; and

(6) Limited guardianship means any guardianship which is not a full guardianship.

Sec. 6. Section 30-2619, Reissue Revised Statutes of Nebraska, is amended to read:

30-2619. (a) The person alleged to be incapacitated or any person interested in his or her welfare may petition for a finding of incapacity and appointment of a guardian. The petition shall be verified and shall contain specific allegations with regard to each of the areas as provided under section 30-2619.01 in which the petitioner claims that the person alleged to be incapacitated lacks sufficient understanding to make or communicate responsible decisions concerning his or her own person. The allegations shall include An interested person may file a motion to make more definite and certain requesting a specific description of the functional limitations and

physical and mental condition of the person alleged to be incapacitated with the specific reasons prompting the request for guardianship, ~~the steps taken to find less restrictive alternatives to guardianship, the specific guardianship powers being requested, and the qualifications of the individual being proposed to serve as guardian.~~

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the person alleged to be incapacitated has retained counsel of his or her own choice or has otherwise indicated a desire for an attorney of his or her own choice, the court may appoint an attorney to represent him or her in the proceeding. The court may appoint a guardian ad litem to advocate for the best interests of the person alleged to be incapacitated.

(c) The person alleged to be incapacitated may be examined by a physician appointed by the court. The physician shall submit his or her report in writing to the court and may be interviewed by a visitor, if so appointed pursuant to sections 30-2619.01 and 30-2624, sent by the court.

(d) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see and hear all evidence bearing upon his or her condition. He or she is entitled to be present by counsel, to compel the attendance of witnesses, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor appointed by the court pursuant to sections 30-2619.01 and 30-2624, and to appeal any final orders or judgments. The issue may be determined at a closed hearing only if the person alleged to be incapacitated or his or her counsel so requests.

Sec. 7. Section 30-2620, Reissue Revised Statutes of Nebraska, is amended to read:

30-2620. The court may appoint a guardian for the specific areas as requested in the verified petition if it is satisfied by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as the least restrictive alternative available for providing continuing care or supervision of the person of the person alleged to be incapacitated, in each such area. If the court determines that a less restrictive alternative is available, the court shall not appoint a guardian and may dismiss the proceeding or enter any other appropriate order.

The guardian shall be delegated only those powers which the court finds necessary by clear and convincing evidence to compensate for the lack of capacity of the ward to manage for himself or herself, and the ward shall retain all other powers not specified in the court's order. ~~The If the court finds that a guardianship should be created, the guardianship shall be a limited guardianship unless the court finds by clear and convincing evidence that a full guardianship is necessary. If a limited guardianship is created, the court shall, at the time of appointment or later, specify the authorities and responsibilities which the guardian and ward, acting together or singly, shall have with regard to:~~

(1) Selecting the ward's place of abode within or without this state;

(2) Arranging for medical care for the ward;

(3) Protecting the personal effects of the ward;

(4) Giving necessary consent, approval, or releases on behalf of the ward;

(5) Arranging for training, education, or other habilitating services appropriate for the ward;

(6) Applying for private or governmental benefits to which the ward may be entitled;

(7) Instituting proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform such duty, if no conservator has been appointed;

(8) Entering into contractual arrangements on behalf of the ward, if no conservator has been appointed; and

(9) Receiving money and tangible property deliverable to the ward and applying such money and property to the ward's expenses for room and board, medical care, personal effects, training, education, and habilitating services, if no conservator has been appointed, or requesting the conservator to expend the ward's estate by payment to third persons to meet such expenses.

~~The specifications in a limited guardianship, the powers shall be endorsed upon the letters of appointment of the guardian and shall be treated as specific limitations upon the general powers, rights, and duties accorded by law to the guardian. In a full guardianship, the letters of appointment shall specify that the guardian is granted all powers conferred upon guardians by law. After appointment, the ward may retain ward. Notwithstanding such specifications, the ward shall be deemed competent for purposes of retaining~~

an attorney for the sole purpose of challenging the guardianship, the terms of the guardianship, or the actions of the guardian on behalf of the ward.

Sec. 8. Section 30-2625, Reissue Revised Statutes of Nebraska, is amended to read:

30-2625. (a) In a proceeding for the appointment of a guardian of for a person alleged to be incapacitated or the removal of a guardian of a ward other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(1) The ward or the person alleged to be incapacitated and his or her spouse, parents, and adult children;

(2) Any person who is serving as guardian or conservator of the ward or who has care and custody of a person alleged to be incapacitated; and

(3) If no other person is notified under subdivision (1) of this subsection, at least one of the closest adult relatives of the ward or person alleged to be incapacitated, if any can be found.

(b) Notice which is appropriate to the circumstances of the ward or person alleged to be incapacitated shall be served personally at least fourteen days prior to the hearing on the ward or person alleged to be incapacitated and his or her spouse and parents if they can be found within the state. The court may require the petitioner to serve notice in alternative formats or with appropriate auxiliary aids and services if necessary to ensure equally effective communication with the ward or person alleged to be incapacitated, including, but not limited to, the use of braille, sign language, large print, reading aloud, or other reasonable accommodation for the known disabilities of the individual based on the allegations specified in the petition. Appropriate notice shall include, but not be limited to, reading aloud, braille, sign language, large print, facilitated communication, or the use of other accommodations within reason to provide notice based on the allegations specified in the petition and any other known attributes of the ward or person alleged to be incapacitated. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the ward or person alleged to be incapacitated shall be given as provided in section 30-2220. Waiver of notice by the person alleged to be incapacitated shall not be effective unless he or she attends the hearing and the court determines that the waiver is appropriate. finds upon questioning the person alleged to be incapacitated that the waiver was made personally, intelligently, knowingly, understandingly, and voluntarily.

(c) In addition to notifying him or her of the filing of the petition and the time and place of the hearing on the petition, the notice required to be served upon the person alleged to be incapacitated shall list the following rights of the person:

(1) The right to request the appointment of an attorney;

(2) The right to present evidence in his or her own behalf;

(3) The right to request that the power of the guardian, if appointed, be limited by the court;

(4) The right to be notified regarding how to contact the temporary guardian if a temporary guardian is appointed;

(5) The right to compel attendance of witnesses;

~~(4)~~ (6) The right to cross-examine witnesses, including the court-appointed physician;

~~(5)~~ (7) The right to appeal any final order; and

~~(6)~~ (8) The right to request a hearing closed to the public.

(d) If a temporary guardian has been appointed, the notice required in subsection (c) of this section shall include a notice of such appointment and of the right to request an expedited hearing pursuant section 30-2626.

The court may require that the notice contain such other matters as the court may deem appropriate.

Sec. 9. Section 30-2626, Reissue Revised Statutes of Nebraska, is amended to read:

30-2626. (a) If a person alleged to be incapacitated has no guardian and an emergency exists, the court may, pending notice and hearing, exercise the power of a guardian or enter an ex parte order appointing a temporary guardian to address the emergency. In the The order and letters of temporary guardianship, the court shall specify the powers and duties of the temporary guardian limiting the powers and duties to those necessary to address the emergency.

(b) When the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be incapacitated, or by any interested party, if the request is filed more than ten business days prior to the date set for the hearing on the petition for

appointment of the guardian. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, within ten days, excluding weekends and judicial holidays as defined in section 25-2221, of the signing of the court order exercising the powers of guardian or appointing a temporary guardian. At such hearing, the petitioner shall have the burden of showing by the a preponderance of the evidence that temporary guardianship continues to be necessary to address the emergency situation. Unless the person alleged to be incapacitated has counsel of his or her own choice, the court may appoint an attorney to represent the person alleged to be incapacitated at such the hearing as provided in section 30-2619.

(c) Notice of the expedited hearing. If an expedited hearing is requested, notice shall be served as provided in section 30-2625. The notice shall specify that a temporary guardian has been appointed and, except that the notice shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary guardian in the letters of temporary guardianship and shall be effective for a single ninety-day period. For good cause shown, the court may extend the temporary guardianship for successive another ninety-day period periods.

(e) The temporary guardianship shall terminate at the end of the ninety-day period in which the temporary guardianship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2619 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) If a person has been previously found to be incapacitated and an appointed guardian is not effectively performing his or her duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice pending notice and hearing in accordance with section 30-2220, appoint a temporary guardian for the incapacitated person for a specified period not to exceed ninety days. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods, at which time the court shall conduct a hearing pursuant to section 30-2619. A temporary guardian appointed pursuant to this subsection has only the powers and duties specified in the previously appointed guardian's letters of guardianship, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. The ward may request a review of the decision to replace the permanent guardian with the temporary guardian.

(i) A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of the Nebraska Probate Code concerning guardians apply to temporary guardians.

Sec. 10. Section 30-2627, Reissue Revised Statutes of Nebraska, is amended to read:

30-2627. (a) Any competent person or a suitable institution may be appointed guardian of a person alleged to be incapacitated, except that it shall be unlawful for any agency providing residential care in an institution or community-based program, or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, residential care facility, domiciliary facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed guardian of any such person residing, being under care, receiving treatment, or being housed in any such home or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person alleged to be incapacitated from being appointed guardian or prevent the guardian officer for one of the Nebraska veterans homes as provided in section 80-304.01 from being appointed guardian or conservator for the person alleged to be incapacitated. It shall be unlawful for any county attorney or deputy county attorney appointed as

guardian for a person alleged to be incapacitated to circumvent his or her duties or the rights of the ward pursuant to the Nebraska Mental Health Commitment Act by consenting to inpatient or outpatient psychiatric treatment over the objection of the ward.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as guardian in the following order:

(1) A person nominated most recently by either one of the following methods:

(i) A person nominated by the incapacitated person in a power of attorney or a durable power of attorney; or

(ii) A person acting under a power of attorney or durable power of attorney; or

(iii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the incapacitated person;

(2) The spouse of the incapacitated person;

(3) An adult child of the incapacitated person;

(4) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(5) Any relative of the incapacitated person with whom he or she has resided for more than six months prior to the filing of the petition;

(6) A person nominated by the person who is caring for him or her or paying benefits to him or her.

(c) When appointing a guardian, the court shall take into consideration the expressed wishes of the allegedly incapacitated person. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having lower priority or no priority. With respect to persons having equal priority, the court shall select the person it deems best qualified to serve.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as guardian to successfully complete within three months of such appointment a training program approved by the State Court Administrator. If the person appointed as guardian does not complete the training program, the court shall issue an order to show cause why such person should not be removed as guardian.

(e) The court may require a guardian to furnish a bond in an amount and conditioned in accordance with the provisions of sections 30-2640 and 30-2641.

Sec. 11. Section 30-2628, Reissue Revised Statutes of Nebraska, is amended to read:

30-2628. (a) Except as limited by an order entered pursuant to section 30-2620, a guardian of an incapacitated person has the same powers, rights, & a guardian of an incapacitated person has only the powers specified in the letters of guardianship based on the court's specific findings of incapacity. With regard to those specified powers, the guardian of an incapacitated person has the same rights and duties respecting his or her ward that a parent has respecting his or her unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has may be delegated the following powers and duties, except as may be modified specified by order of the court:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he or she is entitled to custody of the person of his or her ward and may establish the ward's place of abode within or without this state. When establishing the ward's place of abode, a guardian shall make every reasonable effort to ensure that the placement is the least restrictive alternative. A guardian shall authorize a placement to a more restrictive environment only after careful evaluation of the need for such placement. The guardian may obtain and, to the extent feasible, after a professional evaluation or assessment that such placement is in the best interest of the ward. All such placements shall be subject to judicial review upon the request of any interested party.

(2) If entitled to custody of his or her ward, he or she shall make provision for the care, comfort, and maintenance of his or her ward and, whenever appropriate, arrange for his or her training and education. Without regard to custodial rights of the ward's person, he or she shall take reasonable care of his or her ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his or her ward is in need of protection.

(3) A guardian may give any consents or approvals that may be

necessary to enable the ward to receive medical, psychiatric, psychological, or other professional care, counsel, treatment, or service. When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of wishes made by the ward expressed prior to incompetency to the extent allowable by law. Notwithstanding this provision or any other provision of the Nebraska Probate Code, the ward may authorize consent to the release of financial, medical, and other confidential records pursuant to sections 20-161 to 20-166.

(4) If no conservator for the estate of the ward has been appointed, he or she may:

(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his or her duty;

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he or she may not use funds from his or her ward's estate for room and board which he or she, his or her spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He or she must exercise care to conserve any excess for the ward's needs.

(5) A guardian is required to report the condition of his or her ward and of the estate which has been subject to his or her possession or control, at least every year and as required by the court or court rule. The court shall receive from any interested person, for a period of thirty days after the filing of the guardian's report, any comments with regard to the need for continued guardianship or amendment of the guardianship order. If the court has reason to believe that additional rights should be returned to the ward or assigned to the guardian, the court shall set a date for a hearing and may provide all protections as set forth for the original finding of incapacity and appointment of a guardian.

(6) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in the Nebraska Probate Code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his or her services and for room and board furnished to the ward as agreed upon between him or her and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(c) Nothing in subdivision (a)(3) of this section or in any other part of this section shall be construed to alter the decisionmaking authority of an attorney in fact designated and authorized under sections 30-3401 to 30-3432 to make health care decisions pursuant to a power of attorney for health care.

Sec. 12. Section 30-2629, Reissue Revised Statutes of Nebraska, is amended to read:

30-2629. (a) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting, and other proceedings relating to the guardianship.

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

(c) Any action or proposed action by a guardian may be challenged at any time by any interested person.

Sec. 13. Section 30-2630.01, Reissue Revised Statutes of Nebraska, is amended to read:

30-2630.01. (a) If a person alleged to be in need of protection under section 30-2630 has no conservator and an emergency exists, the court may, pending notice and hearing, exercise the power of a conservator or enter an emergency protective order appointing a temporary conservator to address the emergency. The court shall specify the powers and duties of the temporary conservator limiting the powers and duties to those necessary to address the emergency.

(b) When the court takes action to exercise the powers of a conservator or to appoint a temporary conservator under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be in need of protection, or by any interested party, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the conservator. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, within ten days, excluding weekends and judicial holidays as defined in section 25-2221, of the signing of the emergency protective order exercising the powers of conservator or appointing a temporary conservator. At such hearing, the petitioner shall have the burden of showing by the a preponderance of the evidence that temporary conservatorship continues to be necessary to address the emergency situation. Unless the person alleged to be in need of protection has counsel of his or her own choice, the court shall may appoint an attorney to represent the person at such the hearing as provided in section 30-2636.

(c) Notice of the expedited hearing If an expedited hearing is requested, notice shall be served as provided in section 30-2634. The notice shall specify that a temporary conservator has been appointed and 7 except that the notice shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary conservatorship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary conservator in the letters of temporary conservatorship and shall be effective for a ninety-day period, no longer than a single ninety-day period. For good cause shown, the court may extend the temporary conservatorship for successive another ninety-day period periods.

(e) The temporary conservatorship shall terminate at the end of the ninety-day period in which the temporary conservatorship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary conservatorship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2636 which has been held during the ninety-day period.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary conservatorship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) A temporary conservator may be removed at any time. A temporary conservator shall make any report the court requires. In other respects the provisions of the Nebraska Probate Code concerning conservators apply to temporary conservators.

Sec. 14. Section 30-2633, Reissue Revised Statutes of Nebraska, is amended to read:

30-2633. (a) The person to be protected, any person who is interested in his or her estate, property affairs, or welfare including his or her parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his or her property and property affairs may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition shall set forth, to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of his or her guardian, if any; the name and address of his or her nearest relative known to the petitioner; a general statement of his or her property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which he or she is entitled; and specific allegations regarding the necessity of the appointment of a conservator or other protective order. The allegations shall include a specific description of the functional limitations and physical and mental condition of the person to be protected, the specific reasons prompting the request for conservatorship or a protective order, the steps taken to find less restrictive alternatives to conservatorship or a protective order, the specific powers being requested for the conservatorship or protective order, and, if the appointment of a conservator is requested, the petition shall also set forth the name and address of the person whose appointment is sought, and the basis of his or her priority for appointment. An interested person may file a motion to make more definite and certain requesting a specific description of the functional limitations and physical and mental condition of the person sought to be protected with the specific reasons prompting the

request for conservatorship, and his or her qualifications to serve as conservator.

Sec. 15. Section 30-2634, Reissue Revised Statutes of Nebraska, is amended to read:

30-2634. (a) In a proceeding for appointment of a conservator or other protective order, notice of hearing shall be given to each of the following:

(1) The person to be protected and his or her spouse, parents, and adult children;

(2) Any person who is serving as guardian or conservator or who has care and custody of the person to be protected; and

(3) If no other person is notified under subdivision (1) of this subsection, at least one of the closest adult relatives of the person to be protected, if any can be found.

(b) Notice which is appropriate to the circumstances of the person to be protected shall be served personally at least fourteen days before the date of prior to the hearing on the person to be protected and his or her spouse and parents if they can be found within the state. The court may require the petitioner to serve notice in alternative formats or with appropriate auxiliary aids and services if necessary to ensure equally effective communication with the protected person or person in need of protection, including, but not limited to, the use of braille, sign language, large print, reading aloud, or other reasonable accommodation for the known disabilities of the individual based on the allegations specified in the petition, or if the spouse and parents cannot be found within the state, they must be given notice in accordance with section 30-2220. Appropriate notice shall include, but not be limited to, reading aloud, braille, sign language, large print, facilitated communication, or the use of other accommodations within reason to provide notice based on the allegations specified in the petition and any other known attributes of the person to be protected.

(c) If petitioners are the natural parents or if petitioner is a surviving natural parent or a parent who has been given sole and exclusive custody of the minor in a legal proceeding, petitioners or petitioner may waive notice to parents and may also waive notice to the minor, if the minor is under the age of fourteen years. Waiver of notice by the person to be protected shall not be effective unless he or she attends the hearing and the court determines that the waiver is appropriate. finds upon questioning the person to be protected that the waiver was made personally, intelligently, knowingly, understandingly, and voluntarily. The court may, in its discretion, direct that notice be given as provided in section 30-2220 or in any other manner and to any other persons as the court may determine.

(d) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 30-2635 and to interested persons and other persons as the court may direct. Except as otherwise provided in subsections (a) and (b) of this section, notice shall be given in accordance with section 30-2220.

(e) In addition to notifying him or her of the filing of the petition and the time and place of the hearing on the petition, the notice required to be served upon the person to be protected shall list the following rights of the person:

(1) The right to request the appointment of an attorney;

(2) The right to present evidence in his or her own behalf;

(3) The right to be notified regarding how to contact the temporary conservator if a temporary conservator is appointed;

(4) The right to compel attendance of witnesses;

~~(4)~~ (5) The right to cross-examine witnesses, including the court-appointed physician;

~~(5)~~ (6) The right to appeal any final order; and

~~(6)~~ (7) The right to request a hearing closed to the public.

(f) If a temporary conservator has been appointed, the notice required in subsection (e) of this section shall include a notice of such appointment and the right to request an expedited hearing pursuant to section 30-2630.01.

The court may require that the notice contain such other matters as the court may deem appropriate.

Sec. 16. Section 30-2637, Reissue Revised Statutes of Nebraska, is amended to read:

30-2637. The court has the following powers which may be exercised directly or through a conservator with respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his or her benefit or the benefit of his or her dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.

(3) After hearing and upon determining by clear and convincing evidence that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his or her household, all the powers over his or her estate and affairs which he or she could exercise if present and not under disability except the power to make or alter an estate plan a will. These powers include, but are not limited to, power to make gifts, to convey or release his or her contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his or her powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his or her disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his or her rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his or her right to an elective share in the estate of his or her deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he or she either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section determining by clear and convincing evidence that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person to make a will, or alter an estate plan, to retain an attorney for purposes of challenging the conservatorship, the terms of the conservatorship, or the actions of the conservator, or for any other purpose.

Sec. 17. Section 30-2639, Reissue Revised Statutes of Nebraska, is amended to read:

30-2639. (a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person, except that it shall be unlawful for any agency providing residential care in an institution or community-based program or any owner, part owner, manager, administrator, employee, or spouse of an owner, part owner, manager, administrator, or employee of any nursing home, room and board home, residential care facility, domiciliary facility, or institution engaged in the care, treatment, or housing of any person physically or mentally handicapped, infirm, or aged to be appointed conservator of any such person residing, being under care, receiving treatment, or being housed in any such home or institution within the State of Nebraska. Nothing in this subsection shall prevent the spouse, adult child, parent, or other relative of the person in need of protection from being appointed conservator.

(b) Persons who are not disqualified under subsection (a) of this section and who exhibit the ability to exercise the powers to be assigned by the court have priority for appointment as conservator in the following order:

(1) A person nominated most recently by either one of the following methods:

(i) A person nominated by the protected person in a power of attorney or durable power of attorney; or

(ii) A person acting under a power of attorney or durable power of attorney; or

(iii) A person nominated by an attorney in fact who is given power to nominate in a power of attorney or a durable power of attorney executed by the protected person;

(2) A conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in

which the protected person resides;

(3) An individual or corporation nominated by the protected person if he or she is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.

(4) The spouse of the protected person;

(5) ~~(3)~~ An adult child of the protected person;

(6) ~~(4)~~ A parent of the protected person or a person nominated by the will of a deceased parent;

(7) ~~(5)~~ Any relative of the protected person with whom he or she has resided for more than six months prior to the filing of the petition;

(8) ~~(6)~~ A person nominated by the person who is caring for him or her or paying benefits to him or her.

(c) When appointing a conservator, the court shall take into consideration the expressed wishes of the person to be protected. A person having priority listed in subdivision (2), (4), (5), (6), or (7) ~~(3)~~, ~~(4)~~, or ~~(5)~~ of subsection (b) of this section may nominate in writing a person to serve in his or her stead. With respect to persons having equal priority, the court shall select the person it deems best qualified of those willing to serve. The court, acting in the best interest of the protected person, may pass over a person having priority and appoint a person having lower priority or no priority.

(d) In its order of appointment, unless waived by the court, the court shall require any person appointed as conservator to successfully complete within three months of such appointment a training program approved by the State Court Administrator. If the person appointed as conservator does not complete the training program, the court shall issue an order to show cause why such person should not be removed as conservator.

Sec. 18. Original sections 30-1601, 30-2201, 30-2220, 30-2601, 30-2619, 30-2620, 30-2625 to 30-2629, 30-2630.01, 30-2633, 30-2634, 30-2637, and 30-2639, Reissue Revised Statutes of Nebraska, are repealed.