

## CHAPTER 524

## UNIFORM PROBATE CODE

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**524.2-114 MEANING OF CHILD AND RELATED TERMS.**

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the birth parents except that adoption of a child by the spouse of a birth parent has no effect on the relationship between the child and that birth parent. If a parent dies and a child is subsequently adopted by a stepparent who is the spouse of a surviving parent, any rights of inheritance of the child or the child's descendant from or through the deceased parent of the child which exist at the time of the death of that parent shall not be affected by the adoption.

(2) In cases not covered by clause (1), a person is the child of the person's parents regardless of the marital status of the parents and the parent and child relationship may be established under the Parentage Act, sections 257.51 to 257.74.

*History:* 2005 c 10 art 1 s 75

**524.2-302 OMITTED CHILDREN.**

(a) Except as provided in paragraph (b), if a testator's will fails to provide for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(1) If the testator had no child living when the will was executed, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(2) If the testator had one or more children living when the will was executed, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subclause (i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(b) Neither paragraph (a), clause (1) or (2), nor paragraph (c), applies if:

(1) it appears from the will that the omission was intentional; or

(2) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(c) If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead, the child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the child the testator believes to be dead and the other parent survives the testator and is entitled to take under the will.

(d) If a deceased omitted child would have been entitled to a share under this section if the omitted child had not predeceased the testator and the deceased omitted child leaves issue who survive the testator, the issue who represent the deceased omitted child are entitled to take the deceased omitted child's share.

(e) In satisfying a share provided by paragraph (a), clause (1), or (c), devises made by the will abate under section 524.3-902.

**History:** 2005 c 26 s 6

#### **524.5-310 FINDINGS; ORDER OF APPOINTMENT.**

(a) The court may appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

(1) the respondent is an incapacitated person; and

(2) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate technological assistance.

(b) Alternatively, the court, with appropriate findings, may treat the petition as one for a protective order under section 524.5-401, enter any other appropriate order, or dismiss the proceeding.

(c) The court shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and, whenever feasible, make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence. Any power not specifically granted to the guardian, following a written finding by the court of a demonstrated need for that power, is retained by the ward.

(d) Within 14 days after an appointment, a guardian shall send or deliver to the ward, and counsel if represented at the hearing, a copy of the order of appointment accompanied by a notice which advises the ward of the right to appeal the guardianship appointment in the time and manner provided by the Rules of Appellate Procedure.

(e) Each year, within 30 days after the anniversary date of an appointment, a guardian shall send or deliver to the ward a notice of the right to request termination or modification of the guardianship and notice of the status of the ward's right to vote.

**History:** 2005 c 156 art 6 s 67

#### **524.5-417 GENERAL POWERS AND DUTIES OF CONSERVATOR.**

(a) A conservator shall be subject to the control and direction of the court at all times and in all things.

(b) The court shall grant to a conservator only those powers necessary to provide for the demonstrated needs of the protected person.

(c) The court may appoint a conservator if it determines that all the powers and duties listed in this section are needed to provide for the needs of the protected person. The court may also appoint a conservator if it determines that a conservator is necessary to provide for the needs of the protected person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a conservator include, but are not limited to:

(1) the duty to pay the reasonable charges for the support, maintenance, and education of the protected person in a manner suitable to the protected person's station in life and the value of the estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the conservator should meet these requirements through governmental benefits or services to which the protected person is entitled, rather than from the protected person's estate. Failure to satisfy the needs and requirements of this section shall be grounds for removal, but the conservator shall have no personal or monetary liability;

(2) the duty to pay out of the protected person's estate all lawful debts of the protected person and the reasonable charges incurred for the support, maintenance, and education of the protected person's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the protected person;

(3) the duty to possess and manage the estate, collect all debts and claims in favor of the protected person, or, with the approval of the court, compromise them, institute suit on behalf of the protected person and represent the protected person in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48A.07, subdivision 6, 501B.151, and 524.5-423, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a conservator. A conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) where a protected person has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the protected person, may authorize an exchange or sale of the protected person's interest or a purchase by the protected person of any interest other heirs may have in the real estate, subject to the procedures and notice requirements of section 524.5-418;

(5) the power to approve or withhold approval of any contract, except for necessities, which the protected person may make or wish to make; and

(6) the power to apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.

(d) The conservator shall have the power to revoke, suspend, or terminate all or any part of a durable power of attorney of which the protected person is the principal with the same power the principal would have if the principal were not incapacitated. If a durable power of attorney is in effect, a decision of the conservator takes precedence over that of an attorney-in-fact.

(e) Transaction set aside. If a protected person has made a financial transaction or gift or entered into a contract during the two-year period before establishment of the conservatorship, the conservator may petition for court review of the transaction, gift, or contract. If the court finds that the protected person was incapacitated or subject to duress, coercion, or undue influence when the transaction, gift, or contract was made, the court may declare the transaction, gift, or contract void except as against a bona fide transferee for value and order reimbursement or other appropriate relief. This paragraph does not affect any other right or remedy that may be available to the protected person with respect to the transaction, gift, or contract.

(f) After the filing of the petition, a certificate of the district court certified to that fact may be filed for record with the Minnesota secretary of state in the same manner as provided in section 336.9-501. The certificate shall state that a petition is pending and the name and address of the person for whom a conservator is sought. If a conservator is appointed on the petition, and if the conservatorship order removes or restricts the right of the protected person to transfer property or to contract, then all contracts except for necessities, and all transfers of personal property, tangible or intangible, including, but not limited to, cash or securities transfers at banks, brokerage

houses, or other financial institutions, or transfers of cash or securities, made by the protected person after the filing and before the termination of the conservatorship shall be voidable.

**History:** 2005 c 91 s 1

**524.5-423 SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING CONFLICT OF INTEREST.**

Any transaction involving the conservatorship estate which is affected by a conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, the spouse, descendant, agent, or lawyer of a conservator, or corporation or other enterprise in which the conservator has a beneficial interest. Notwithstanding a conflict between the conservator's fiduciary and personal interests, if the protected person is a parent, child, or sibling of the conservator, the court has discretion to allow a transaction of beneficial interest to the conservator, as long as the conservator can prove that this transaction is primarily in the best interest of the protected person.

**History:** 2005 c 91 s 2