

CHAPTER 524

UNIFORM PROBATE CODE

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524.1-304 PRACTICE IN COURT.

(a) Unless inconsistent with the provisions of this chapter or chapter 525, pleadings, practice, procedure and forms in all probate proceedings shall be governed insofar as practicable by Rules of Civil Procedure provided for in section 487.23 and adopted pursuant thereto.

(b) Notwithstanding paragraph (a), and in addition to its general powers, the court shall have power to correct, modify, vacate, or amend its records, orders, and decrees:

(1) at any time, for the correction of clerical error or pursuant to the provisions of section 524.3-413;

(2) within the time for taking an appeal, for the correction of judicial error;

(3) within two years after petitioner's discovery thereof, for fraud, whether intrinsic or extrinsic, or misrepresentation unless petitioner be a party to such fraud; or

(4) within two years after the date of filing of any record, order, or decree, for excusable neglect, inadvertence, or mistake.

In any case, the petitioner must proceed with due diligence and may be barred by laches or the court may deny relief where it appears that the granting thereof would be inequitable in view of all the facts and circumstances appearing.

History: 2009 c 117 art 1 s 1

524.2-1101 SHORT TITLE.

Sections 524.2-1101 to 524.2-1116 may be cited as the "Uniform Disclaimer of Property Interests Act."

History: 2009 c 67 s 1

524.2-1102 DEFINITIONS.

As used in sections 524.2-1101 to 524.2-1116:

(1) "benefactor" means the creator of the interest that is subject to a disclaimer;

(2) "beneficiary designation" means an instrument, other than an instrument creating or amending a trust, naming the beneficiary of:

(i) an annuity or insurance policy;

(ii) an account with a designation for payment on death;

(iii) a security registered in beneficiary form;

(iv) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(v) any other nonprobate transfer at death;

(3) "disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(4) "disclaimed interest" or "power" means the portion of the interest that would have passed to the disclaimant had the disclaimer not been made;

(5) "disclaimer" means the refusal to accept an interest in or power over property;

(6) "fiduciary" means a personal representative, trustee of a trust, agent acting under a power of attorney, conservator, or other person authorized to act as a fiduciary with respect to the property of another person;

(7) "future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation;

(8) "holder" means a person who has an interest in or power over property;

(9) "insolvent" means that the sum of a person's debts is greater than all of the person's assets at fair valuation. A person is presumed to be "insolvent" if the person is generally not paying debts as they become due. Assets do not include property that has been transferred, concealed, or removed, with intent to hinder, delay, or defraud creditors, or has been transferred in a manner making the transfer voidable. Debts do not include an obligation to the extent it is secured by a valid lien or property of the debtor not included as an asset;

(10) "jointly held property" means property held in the names of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property;

(11) "person" means an individual, living, deceased, or unborn, ascertained or unascertained, whether entitled to an interest by right of intestacy or otherwise, corporation, business trust, partnership, limited liability company, association, joint venture, government, government subdivision, agency or instrumentality, public corporation, or other commercial entity;

(12) "time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment;

(13) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory of insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state; and

(14) "trust" means:

(i) an express trust charitable or noncharitable, with additions thereto, whenever and however created; and

(ii) a trust created pursuant to a statute, judgment, or decree which requires the trust be administered in the manner of an express trust.

History: 2009 c 67 s 2

524.2-1103 SCOPE.

Sections 524.2-1101 to 524.2-1116 apply to disclaimers of any interest in or power over property, whenever created. Except as provided in section 524.2-1116, sections 524.2-1101 to 524.2-1116 are the exclusive means by which a disclaimer may be made under Minnesota law regardless of whether it is qualified under section 2518 of the Internal Revenue Code of 1986 in effect on January 1, 2010.

History: 2009 c 67 s 3

524.2-1104 TAX-QUALIFIED DISCLAIMER.

Notwithstanding any other provision of this chapter, other than section 524.2-1106, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated pursuant to the provisions of section 2518 of the Internal Revenue Code of 1986, as in effect on January 1, 2010, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under sections 524.2-1101 to 524.2-1116.

History: 2009 c 67 s 4

524.2-1105 WHEN DISCLAIMER IS PERMITTED.

A disclaimer may be made at any time unless it is barred under section 524.2-1106.

History: 2009 c 67 s 5

524.2-1106 WHEN DISCLAIMER IS BARRED OR LIMITED.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

- (1) the disclaimant accepts the portion of the interest sought to be disclaimed;
 - (2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the portion of the interest sought to be disclaimed or contracts to do so;
 - (3) the portion of the interest sought to be disclaimed is sold pursuant to a judicial sale;
- or
- (4) the disclaimant is insolvent when the disclaimer becomes irrevocable.

(c) A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer of an interest in, or a power over, property which is barred by this section is ineffective.

History: 2009 c 67 s 6

524.2-1107 POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE.

(a) A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) With court approval, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment when acting in a representative capacity. Without court approval, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, if and to the extent that the instrument creating the fiduciary relationship explicitly grants the fiduciary the right to disclaim. With court approval, a custodial parent may disclaim on behalf of a minor child for whom no conservator has been appointed, in whole or in part, any interest in or power over property, including a power of appointment, which the minor child is to receive.

(c) To be effective, a disclaimer must be in writing, declare the writing as a disclaimer, describe the interest or power disclaimed, and be signed by the person or fiduciary making the disclaimer and acknowledged in the manner provided for deeds of real estate to be recorded in this state. In addition, for a disclaimer to be effective, an original of the disclaimer must be delivered or filed in the manner provided in section 524.2-1114.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when the disclaimer is delivered or filed pursuant to section 524.2-1114 or it becomes effective as provided in sections 524.2-1108 to 524.2-1113, whichever occurs later.

(f) A disclaimer made under sections 524.2-1101 to 524.2-1116 is not a transfer, assignment, or release.

History: 2009 c 67 s 7

524.2-1108 DISCLAIMER OF INTEREST IN PROPERTY.

(a) Except for a disclaimer governed by section 524.2-1109 or 524.2-1110, the rules in paragraphs (b) to (d) apply to a disclaimer of an interest in property.

(b) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(c) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or as disclaimed interests in general.

(d) If the instrument does not contain a provision described in paragraph (c), the following rules apply:

(1) if the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the interest was created, unless under the governing instrument or other applicable law, the disclaimed interest is contingent on surviving to the time of distribution, in which case the disclaimed interest passes as if the disclaimant had died immediately before the time for distribution. However, if, by law or under the governing instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution. For purposes of this paragraph, a disclaimed interest is created at the death of the benefactor or such earlier time, if any, that the benefactor's transfer of the interest is a completed gift for federal gift tax purposes. Also for purposes of this paragraph, a disclaimed interest in an inter vivos trust and other will substitutes that do not lapse with certainty under state law shall pass as if the interest had been created under a will;

(2) if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist; and

(3) upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment as a result of the disclaimer.

History: 2009 c 67 s 8

524.2-1109 DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY HELD PROPERTY.

(a) Upon the death of a holder of jointly held property:

(1) if, during the deceased holder's lifetime, the deceased holder could have unilaterally regained a portion of the property attributable to the deceased holder's contributions without the consent of any other holder, another holder may disclaim, in whole or in part, a fractional share of that portion of the property attributable to the deceased holder's contributions determined by dividing the number one by the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates; and

(2) for all other jointly held property, another holder may disclaim, in whole or in part, a fraction of the whole of the property the numerator of which is one and the denominator of which is the product of the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates multiplied by the number of joint holders alive immediately after the death of the holder to whose death the disclaimer relates.

(b) A disclaimer under paragraph (a) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

History: 2009 c 67 s 9

524.2-1110 DISCLAIMER OF INTEREST BY TRUSTEE.

If a trustee having the power to disclaim under the instrument creating the fiduciary relationship or pursuant to court order disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

History: 2009 c 67 s 10

524.2-1111 DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN A FIDUCIARY CAPACITY.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) if the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable;

(2) if the holder has exercised the power, the disclaimer takes effect immediately after the last exercise of the power; and

(3) the instrument creating the power is construed as if the power expired when the disclaimer became effective.

History: 2009 c 67 s 11

524.2-1112 DISCLAIMER BY APPOINTEE, OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object, or taker in default of an exercise of a power of appointment, takes effect as of the time the instrument creating the power becomes irrevocable.

History: 2009 c 67 s 12

524.2-1113 DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if:

(1) the disclaimer so provides; and

(2) the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

History: 2009 c 67 s 13

524.2-1114 DELIVERY OR FILING.

(a) Subject to paragraphs (b) to (l), delivery of a disclaimer may be effective by personal delivery, first-class mail, or any other method that results in its receipt. A disclaimer sent by first-class mail is deemed to have been delivered on the date it is postmarked. Delivery by any other method is effective upon receipt by the person to whom the disclaimer is to be delivered under this section.

(b) In the case of a disclaimer of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) the disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with the clerk of the court in any county where venue of administration would be proper.

(c) In the case of a disclaimer of an interest in a testamentary trust:

(1) the disclaimer must be delivered to the trustee serving when the disclaimer is delivered or, if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with the clerk of the court in any county where venue of administration of the decedent's estate would be proper.

(d) In the case of a disclaimer of an interest in an inter vivos trust:

(1) the disclaimer must be delivered to the trustee serving when the disclaimer is delivered;

(2) if no trustee is then serving, it must be filed with the clerk of the court in any county where the filing of a notice of trust would be proper; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the person with the power to revoke the revocable trust or the transferor of the interest or to such person's legal representative.

(e) In the case of a disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation or to such person's legal representative.

(f) In the case of a disclaimer of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, the disclaimer must be delivered to the person obligated to distribute the interest.

(g) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes or, if such person cannot reasonably be located by the disclaimant, the disclaimer must be delivered as provided in paragraph (b).

(h) In the case of a disclaimer by an object, or taker in default of exercise, of a power of appointment at any time after the power was created, the disclaimer must be delivered to:

(1) the holder of the power; or

(2) the fiduciary acting under the instrument that created the power or, if no fiduciary is serving when the disclaimer is sought to be delivered, filed with a court having authority to appoint the fiduciary.

(i) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, the disclaimer must be delivered to:

(1) the holder of the power or the personal representative of the holder's estate; or

(2) the fiduciary under the instrument that created the power or, if no fiduciary is serving when the disclaimer is sought to be delivered, filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in paragraph (b), (c), or (d) as if the power disclaimed were an interest in property.

(k) In the case of a disclaimer of a power exercisable by an agent, other than a power exercisable by a fiduciary over a trust or estate, the disclaimer must be delivered to the principal or the principal's representative.

(l) Notwithstanding paragraph (a), delivery of a disclaimer of an interest in or relating to real estate shall be presumed upon the recording of the disclaimer in the office of the clerk of the court of the county or counties where the real estate is located.

(m) A fiduciary or other person having custody of the disclaimed interest is not liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer or, if the disclaimer is barred under section 524.2-1106, for any otherwise proper distribution or other disposition made in reliance on the disclaimer, if the distribution or disposition is made without actual knowledge of the facts constituting the bar of the right to disclaim.

History: 2009 c 67 s 14

524.2-1115 RECORDING OF DISCLAIMER RELATING TO REAL ESTATE.

(a) A disclaimer of an interest in or relating to real estate does not provide constructive notice to all persons unless the disclaimer contains a legal description of the real estate to which the disclaimer relates and unless the disclaimer is filed for recording in the office of the county recorder in the county or counties where the real estate is located.

(b) An effective disclaimer meeting the requirements of paragraph (a) constitutes constructive notice to all persons from the time of filing. Failure to record the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

History: 2009 c 67 s 15

524.2-1116 APPLICATION TO EXISTING RELATIONSHIPS.

Except as otherwise provided in section 524.2-1106, an interest in or power over property existing on January 1, 2010, as to which the time for delivering or filing a disclaimer under laws superseded by sections 524.2-1101 to 524.2-1116 has not expired, may be disclaimed after January 1, 2010.

History: 2009 c 67 s 16

524.3-303 INFORMAL PROBATE; PROOF AND FINDINGS REQUIRED.

(a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in section 524.1-201, clause (24);

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed and apparently unrevoked will is in the registrar's possession;

(6) any notice required by section 524.3-204 has been given; and

(7) it appears from the application that the time limit for original probate has not expired.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in subsection (d), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 524.2-502 or 524.2-506 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or the registrar may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a), may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

History: 2009 c 86 art 1 s 77

524.3-308 INFORMAL APPOINTMENT PROCEEDINGS; PROOF AND FINDINGS REQUIRED.

(a) In informal appointment proceedings, the registrar must determine whether:

- (1) the application for informal appointment of a personal representative is complete;
- (2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;
- (3) the applicant appears from the application to be an interested person as defined in section 524.1-201, clause (24);
- (4) on the basis of the statements in the application, venue is proper;
- (5) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;
- (6) any notice required by section 524.3-204 has been given;
- (7) from the statements in the application, the person whose appointment is sought has a priority entitlement to the appointment.

(b) Unless section 524.3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 524.3-610(c) has been appointed in this or another county of this state, that, unless the applicant is the domiciliary personal representative or the representative's nominee, the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

History: 2009 c 86 art 1 s 78

524.3-413 FORMAL TESTACY PROCEEDINGS; VACATION OF ORDER FOR OTHER CAUSE AND MODIFICATION OF ORDERS, JUDGMENTS, AND DECREES.

For good cause shown, an order, judgment or decree in a formal proceeding may be modified or vacated within the time limits and upon the grounds stated in section 524.1-304,

except that the same may be modified to include omitted property or to correct a description at any time, as hereinafter provided.

Whenever real or personal property or any interest therein has been omitted from probate proceedings, from a deed or transfer of distribution, a decree of distribution, or an order for distribution, or has been incorrectly described therein, any person interested in the estate or claiming an interest in such property may petition the probate court of the county in which such proceedings were had for a decree to determine its descent and to assign it to the persons entitled thereto, or to amend the deed or transfer of distribution, decree of distribution, or order of distribution to include such omitted property, or to correct the description, with or without notice. No order or decree of omitted property shall be entered under this section until any inheritance taxes due are paid or the court finds there are no taxes due.

History: 2009 c 117 art 1 s 2

524.3-1201 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.

(a) Thirty days after the death of a decedent, (i) any person indebted to the decedent, (ii) any person having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent, or (iii) any safe deposit company, as defined in section 55.01, controlling the right of access to decedent's safe deposit box shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action or deliver the entire contents of the safe deposit box to a person claiming to be the successor of the decedent, or a state or county agency with a claim authorized by section 256B.15, upon being presented a certified death record of the decedent and an affidavit made by or on behalf of the successor stating that:

(1) the value of the entire probate estate, determined as of the date of death, wherever located, including specifically any contents of a safe deposit box, less liens and encumbrances, does not exceed \$50,000;

(2) 30 days have elapsed since the death of the decedent or, in the event the property to be delivered is the contents of a safe deposit box, 30 days have elapsed since the filing of an inventory of the contents of the box pursuant to section 55.10, paragraph (h);

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) if presented, by a state or county agency with a claim authorized by section 256B.15, to a financial institution with a multiple-party account in which the decedent had an interest at the time of death, the amount of the affiant's claim and a good faith estimate of the extent to which the decedent was the source of funds or beneficial owner of the account; and

(5) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) The claiming successor or state or county agency shall disburse the proceeds collected under this section to any person with a superior claim under section 524.2-403 or 524.3-805.

(d) A motor vehicle registrar shall issue a new certificate of title in the name of the successor upon the presentation of an affidavit as provided in subsection (a).

(e) The person controlling access to decedent's safe deposit box need not open the box or deliver the contents of the box if:

- (1) the person has received notice of a written or oral objection from any person or has reason to believe that there would be an objection; or
- (2) the lessee's key or combination is not available.

History: 2009 c 117 art 1 s 3

524.3-1203 SUMMARY PROCEEDINGS.

[For text of subds 1 to 4, see M.S.2008]

Subd. 5. **Exhaustion of estate.** In any summary, special, or other administration in which it appears that the estate will not be exhausted in payment of the priority items enumerated in subdivisions 1 to 4, the estate may nevertheless be summarily closed without further notice, and the property assigned to the proper persons, if the gross probate estate, exclusive of any exempt homestead as defined in section 524.2-402, and any exempt property as defined in section 524.2-403, does not exceed the value of \$100,000. If the closing and distribution of assets is made pursuant to the terms of a will, no decree shall issue until a hearing has been held for formal probate of the will as provided in sections 524.3-401 to 524.3-413.

No summary closing of an estate shall be made to any distributee under this subdivision, unless a showing is made by the personal representative or the petitioner, that all property selected by and allowances to the spouse and children as provided in section 524.2-403 and the expenses and claims provided in section 524.3-805 have been paid, and provided, further, that a bond shall be filed by the personal representative or the petitioner, conditioned upon the fact that all such obligations have been paid and that all the facts shown on the petition are true, with sufficient surety approved by the court in an amount as may be fixed by the court to cover potential improper distributions. If a personal representative is appointed, the representative's bond shall be sufficient for such purpose unless an additional bond is ordered, and the sureties on the bond shall have the same obligations and liabilities as provided for sureties on a distribution bond.

In the event that an improper distribution or disbursement is made in a summary closing, in that not all of said obligations have been paid or that other facts as shown by the personal representative or the petitioner, are not true, resulting in damage to any party, the court may vacate its summary decree or closing order, and the petitioner or the personal representative, together with the surety, shall be liable for damages to any party determined to be injured thereby as herein provided. The personal representative, petitioner, or the surety, may seek reimbursement for damages so paid or incurred from any distributee or recipient of assets under summary decree or order, who shall be required to make a contribution to cover such damages upon a pro rata basis or as may be equitable to the extent of assets so received. The court is hereby granted complete and plenary jurisdiction of any and all such proceedings and may enter such orders and judgments as may be required to effectuate the purposes of this subdivision.

Any judgment rendered for damages or the recovery of assets in such proceedings shall be upon petition and only after hearing held thereon on 14 days' notice of hearing and a copy of petition served personally upon the personal representative and the surety and upon any distributee or recipient of assets where applicable. Any action for the recovery of money or damages under this subdivision is subject to the time and other limitations imposed by section 524.1-304.

History: 2009 c 117 art 1 s 4

524.5-102 DEFINITIONS.

[For text of subds 1 to 6, see M.S.2008]

Subd. 7. **Interested person.** "Interested person" includes:

- (i) the ward, protected person, or respondent;

- (ii) a nominated guardian or conservator, or the duly appointed guardian or conservator;
- (iii) legal representative;
- (iv) the spouse, parent, adult children and siblings, or if none of such persons is living or can be located, the next of kin of the ward, protected person, or respondent;
- (v) an adult person who has lived with a ward, protected person, or respondent for a period of more than six months;
- (vi) an attorney for the ward or protected person;
- (vii) a governmental agency paying or to which an application has been made for benefits for the respondent, ward, or protected person, including the county social services agency for the person's county of residence and the county where the proceeding is venued;
- (viii) a representative of a state ombudsman's office or a federal protection and advocacy program that has notified the court that it has a matter regarding the ward, protected person, or respondent;
- (ix) a health care agent or proxy appointed pursuant to a health care directive as defined in section 145C.01, a living will under chapter 145B, or other similar document executed in another state and enforceable under the laws of this state; and
- (x) any other person designated by the court.

[For text of subs 8 to 13, see M.S.2008]

Subd. 13a. **Professional guardian or professional conservator.** "Professional guardian" or "professional conservator" means a person acting as guardian or conservator for three or more individuals not related by blood, adoption, or marriage.

[For text of subs 14 to 17, see M.S.2008]

History: 2009 c 150 s 2,3

524.5-107 TRANSFER OF JURISDICTION.

(a) Following the appointment of a guardian or conservator or entry of another protective order, the court making the appointment or entering the order may transfer the proceeding to a court or another county in this state or in the case of a minor to another state if the court is satisfied that a transfer will serve the best interest of the ward or protected person.

(b) A guardian of a minor, conservator of a minor, or like fiduciary for a minor appointed in another state may petition the court for appointment as a guardian or conservator in this state if the state has jurisdiction. The appointment may be made upon proof of appointment in the other state and presentation of a certified copy of the portion of the court record in the other state specified by the court in this state. Notice of hearing on the petition, together with a copy of the petition, must be given to the ward or protected person, if the ward or protected person has attained 14 years of age, and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or conservator under this article were applicable. The court shall make the appointment in this state unless it concludes that the appointment would not be in the best interest of the ward or protected person. Upon the filing of an acceptance of office and any required bond, the court shall issue appropriate letters of guardianship or conservatorship. Within 14 days after an appointment, the guardian or conservator shall send or deliver a copy of the order of appointment to the ward or protected person, if the ward or protected person has attained 14 years of age, and to all persons given notice of the hearing on the petition.

History: 2009 c 46 s 1

524.5-118 BACKGROUND STUDY.

[For text of subd 1, see M.S.2008]

Subd. 2. **Procedure; criminal history and maltreatment records background check.** (a) The court shall request the commissioner of human services to complete a background study under section 245C.32. The request must be accompanied by the applicable fee and the signed consent of the subject of the study authorizing the release of the data obtained to the court. If the court is requesting a search of the National Criminal Records Repository, the request must be accompanied by a set of classifiable fingerprints of the subject of the study. The fingerprints must be recorded on a fingerprint card provided by the commissioner of human services.

(b) The commissioner of human services shall provide the court with criminal history data as defined in section 13.87 from the Bureau of Criminal Apprehension in the Department of Public Safety, other criminal history data held by the commissioner of human services, and data regarding substantiated maltreatment of vulnerable adults under section 626.557 and substantiated maltreatment of minors under section 626.556 within 15 working days of receipt of a request. If the subject of the study has been the perpetrator of substantiated maltreatment of a vulnerable adult or minor, the response must include a copy of the public portion of the investigation memorandum under section 626.557, subdivision 12b, or the public portion of the investigation memorandum under section 626.556, subdivision 10f. If the court did not request a search of the National Criminal Records Repository and information from the Bureau of Criminal Apprehension indicates that the subject is a multistate offender or that multistate offender status is undetermined, the response must include this information. The commissioner shall provide the court with information from the National Criminal Records Repository within three working days of the commissioner's receipt of the data.

(c) Notwithstanding section 626.557, subdivision 12b, or 626.556, subdivision 10f, if the commissioner of human services or a county lead agency has information that a person on whom a background study was previously done under this section has been determined to be a perpetrator of maltreatment of a vulnerable adult or minor, the commissioner or the county may provide this information to the court that requested the background study. The commissioner may also provide the court with additional criminal history or substantiated maltreatment information that becomes available after the background study is done.

[For text of subs 3 and 4, see M.S.2008]

History: 2009 c 59 art 6 s 22

524.5-119 CENTRAL REGISTRATION OF GUARDIANS AND CONSERVATORS; APPROPRIATION.

(a) By July 1, 2013, the Supreme Court shall establish a statewide registration system under which guardians and conservators appointed under sections 524.5-101 to 524.5-502 must register with the state court administrator. Registration information must include the name of the guardian or conservator, whether the person is a professional guardian or conservator, date and county of appointment, and other information required by the Supreme Court. Registration data that the Supreme Court determines are accessible to the public must be accessible online or through other means implemented by the Supreme Court.

(b) The state court administrator shall establish registration fees or identify another source of funds to support the costs of developing and administering the registration system. The state court administrator shall determine whether guardians and conservators should pay a registration fee and the amount of the fee, and shall take into consideration whether the guardian or conservator is a professional guardian or conservator, whether the guardian or conservator represents clients in forma pauperis, and the number of wards or protected persons the guardian or conservator represents. The state court administrator shall report

to the legislature on the fees or other source of funds to support the costs of developing and administering the registration system by January 1, 2012. The state court administrator shall begin collecting fees under this paragraph on July 1, 2012. Fees collected by the state court administrator under this section are appropriated to the Supreme Court.

History: 2009 c 150 s 4

524.5-120 BILL OF RIGHTS FOR WARDS AND PROTECTED PERSONS.

The ward or protected person retains all rights not restricted by court order and these rights must be enforced by the court. These rights include the right to:

- (1) treatment with dignity and respect;
- (2) due consideration of current and previously stated personal desires, medical treatment preferences, religious beliefs, and other preferences and opinions in decisions made by the guardian or conservator;
- (3) receive timely and appropriate health care and medical treatment that does not violate known conscientious, religious, or moral beliefs of the ward or protected person;
- (4) exercise control of all aspects of life not delegated specifically by court order to the guardian or conservator;
- (5) guardianship or conservatorship services individually suited to the ward's or protected person's conditions and needs;
- (6) petition the court to prevent or initiate a change in abode;
- (7) care, comfort, social and recreational needs, training, education, habilitation, and rehabilitation care and services, within available resources;
- (8) be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of the ward's or protected person's clothing, furniture, vehicles, and other personal effects, to object to the disposition of personal property and effects, and to petition the court for a review of the guardian's or conservator's proposed disposition;
- (9) personal privacy;
- (10) communication and visitation with persons of the ward's or protected person's choice, provided that if the guardian has found that certain communication or visitation may result in harm to the ward's or protected person's health, safety, or well-being, that communication or visitation may be restricted but only to the extent necessary to prevent the harm;
- (11) marry and procreate, unless court approval is required, and to consent or object to sterilization as provided in section 524.5-313, paragraph (c), clause (4), item (iv);
- (12) petition the court for termination or modification of the guardianship or conservatorship or for other appropriate relief;
- (13) be represented by an attorney in any proceeding or for the purpose of petitioning the court; and
- (14) vote, unless restricted by the court.

History: 2009 c 150 s 5

524.5-304 JUDICIAL APPOINTMENT OF GUARDIAN: PRELIMINARIES TO HEARING.

(a) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and may appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition.

(b) A proposed ward has the right to be represented by counsel at any proceeding under this article. The court shall appoint counsel to represent the proposed ward for the initial proceeding held pursuant to section 524.5-307 if neither the proposed ward nor others provide counsel unless in a meeting with a visitor the proposed ward makes an informed decision in writing to specifically waive the right to counsel. Before appointment, and at any time during the course of the representation when a risk of a conflict of interest may arise, the proposed or appointed counsel shall disclose to the court, the proposed ward or ward, and interested persons whether there are concurrent proceedings in which the counsel is the attorney for the proposed guardian or guardian and whether there is a risk of a conflict of interest under Rule 1.7 of the Rules of Professional Conduct so that the representation of the proposed ward or ward will be materially limited by counsel's concurrent responsibilities to the proposed guardian or guardian. If there is a risk of a conflict of interest, the counsel must not be appointed or new counsel must be appointed, unless:

(1) the court determines that the proposed ward or ward is able to give informed consent to the representation and, if the proposed ward or ward consents, the consent is confirmed in writing pursuant to Rule 1.7; or

(2) the court determines that there is not a risk of a conflict of interest under Rule 1.7 requiring the appointment of different counsel.

Counsel must be appointed immediately after any petition under this article is served under section 524.5-308. Counsel has the full right of subpoena. In all proceedings under this article, counsel shall:

(1) consult with the proposed ward before any hearing;

(2) be given adequate time to prepare for all hearings; and

(3) continue to represent the person throughout any proceedings under section 524.5-307, provided that such appointment shall expire upon the expiration of the appeal time for the order appointing guardian or the order dismissing a petition, or upon such other time or event as the court may direct.

The court need not appoint counsel to represent the proposed ward on a voluntary petition, and the court may remove a court-appointed attorney at any time if the court finds that the proposed ward has made a knowing and intelligent waiver of the right to counsel or has obtained private counsel.

(c) The visitor shall personally serve the notice and petition upon the respondent and shall offer to read the notice and petition to the respondent, and if so requested the visitor shall read the notice and petition to such person. The visitor shall also interview the respondent in person, and to the extent that the respondent is able to understand:

(1) explain to the respondent the substance of the petition; the nature, purpose, and effect of the proceeding; the respondent's rights at the hearing; and the general powers and duties of a guardian;

(2) determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship;

(3) inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorneys fees, will be paid from the respondent's estate.

(d) In addition to the duties in paragraph (c), the visitor shall make any other investigation the court directs.

(e) The visitor shall promptly file a report in writing with the court, which must include:

(1) recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;

(2) a statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship; and

(3) any other matters the court directs.

(f) The county social service agency may create a screening committee to review a petition involving an indigent person. The screening committee must consist of individuals selected by the agency with knowledge of alternatives that are less restrictive than guardianship. If the agency has created a screening committee, the court shall make its decision after the screening committee has reviewed the petition. For an indigent person, the court may appoint a guardian under contract with the county to provide these services.

(g) Before the initial appointment, and annually within 30 days after the anniversary date of the appointment, the proposed guardian or guardian shall file an informational statement with the court. The statement must be a sworn affidavit containing the following information:

(1) the person's educational background and relevant work and other experience;

(2) an address and telephone number where the guardian can be contacted;

(3) whether the person has ever been removed for cause from serving as a guardian or conservator and if so, the case number and court location;

(4) any changes occurring that would affect the accuracy of information contained in the most recent criminal background study conducted pursuant to section 524.5-118; and

(5) if applicable, the amount of reimbursement for services rendered to the ward that the person has received during the previous year.

History: 2009 c 150 s 6

524.5-309 WHO MAY BE GUARDIAN: PRIORITIES.

(a) Subject to paragraph (c), the court, in appointing a guardian, shall consider persons otherwise qualified in the following order of priority:

(1) a guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere;

(2) an agent appointed by the respondent under a health care directive pursuant to chapter 145C;

(3) the spouse of the respondent or a person nominated by will or other signed writing executed in the same manner as a health care directive pursuant to chapter 145C of a deceased spouse;

(4) an adult child of the respondent;

(5) a parent of the respondent, or an individual nominated by will or other signed writing executed in the same manner as a health care directive pursuant to chapter 145C of a deceased parent;

(6) an adult with whom the respondent has resided for more than six months before the filing of the petition;

(7) an adult who is related to the respondent by blood, adoption, or marriage; and

(8) any other adult or a professional guardian.

(b) The court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority. With

respect to persons having equal priority, the court shall select the one it considers best qualified.

(c) Any individual or agency which provides residence, custodial care, medical care, employment training or other care or services for which they receive a fee may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption.

History: 2009 c 150 s 7

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 and to interested persons of record with the court a notice of the right to request termination or modification of the guardianship or to request an order that is in the best interests of the ward or for other appropriate relief, and notice of the status of the ward's right to vote.

History: 2009 c 150 s 8

524.5-315 RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.

(a) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for expenditures made on behalf of the ward, in a manner consistent with section 524.5-502.

(b) A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the wrongful conduct of the third person.

(c) A guardian may not revoke the health care directive of a ward or protected person absent a court order. A guardian may revoke the appointment of an agent of a health care directive for which the ward is the principal only under the following circumstances:

(1) the agent was appointed in the previous 60 days;

(2) multiple agents have been appointed; or

(3) when a court has determined that the ward lacks capacity to appoint an agent of a health care directive and the court has expressly granted the guardian the power to give necessary consent to enable the ward to receive medical care, treatment, or service.

In all other circumstances, the guardian may not revoke the appointment of an agent of a health care directive for which the ward is principal absent a court order. Unless the appointment of a health care directive is revoked in accordance with this section, a health care decision of the agent takes precedence over that of the guardian.

(d) A guardian may not initiate the commitment of a ward to an institution except in accordance with section 524.5-313.

History: 2009 c 150 s 9

524.5-316 REPORTS; MONITORING OF GUARDIANSHIP; COURT ORDERS.

(a) A guardian shall report to the court in writing on the condition of the ward at least annually and whenever ordered by the court. A copy of the report must be provided to the ward and to interested persons of record with the court. A report must state or contain:

- (1) the current mental, physical, and social condition of the ward;
- (2) the living arrangements for all addresses of the ward during the reporting period;
- (3) any restrictions placed on the ward's right to communication and visitation with persons of the ward's choice and the factual bases for those restrictions;
- (4) the medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care; and
- (5) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

(b) A ward or interested person of record with the court may submit to the court a written statement disputing statements or conclusions regarding the condition of the ward that are contained in the report and may petition the court for an order that is in the best interests of the ward or for other appropriate relief.

(c) The court may appoint a visitor to review a report, interview the ward or guardian, and make any other investigation the court directs.

(d) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports. If an annual report is not filed within 60 days of the required date, the court shall issue an order to show cause.

History: 2009 c 150 s 10

524.5-317 TERMINATION OR MODIFICATION OF GUARDIANSHIP; COURT ORDERS.

(a) A guardianship terminates upon the death of the ward or upon order of the court.

(b) On petition of any person interested in the ward's welfare the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action. The court may make any other order that is in the best interests of the ward or may grant other appropriate relief.

(c) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination and discharge the guardian unless it is proven that continuation of the guardianship is in the best interest of the ward.

History: 2009 c 150 s 11

**524.5-406 ORIGINAL PETITION: PERSONS UNDER DISABILITY;
PRELIMINARIES TO HEARING.**

(a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing and the court may appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition.

(b) A respondent has the right to be represented by counsel at any proceeding under this article. The court shall appoint counsel to represent the respondent for the initial proceeding held pursuant to section 524.5-408 if neither the respondent nor others provide counsel, unless in a meeting with a visitor, the proposed respondent makes an informed decision in writing to specifically waive the right to counsel. Before appointment, and at any time during the course of the representation when a risk of a conflict of interest may arise, the proposed or appointed counsel shall disclose to the court, the proposed protected person or protected person, and interested persons whether there are concurrent proceedings in which the counsel is the attorney for the proposed conservator or conservator and whether there is a risk of a conflict of interest under Rule 1.7 of the Rules of Professional Conduct so that the representation of the proposed protected person or protected person will be materially limited by counsel's concurrent responsibilities to the proposed conservator or conservator. If there is a risk of a conflict of interest, the counsel must not be appointed, unless:

(1) the court determines that the proposed protected person or protected person is able to give informed consent to the representation and, if the proposed protected person or protected person consents, the consent is confirmed in writing pursuant to Rule 1.7; or

(2) the court determines that there is not a risk of a conflict of interest under Rule 1.7 requiring the appointment of different counsel.

Counsel must be appointed immediately after any petition under this part is served pursuant to section 524.5-404. Counsel has the full right of subpoena. In all proceedings under this part, counsel shall:

(1) consult with the respondent before any hearing;

(2) be given adequate time to prepare for all hearings; and

(3) continue to represent the respondent throughout any proceedings under section 524.5-408, provided that such appointment shall expire upon the expiration of the appeal time for the order appointing conservator or the order dismissing a petition, or upon such other time or event as the court may direct.

The court need not appoint counsel to represent the respondent on a voluntary petition, and the court may remove a court-appointed attorney at any time if the court finds that the respondent has made a knowing and intelligent waiver of the right to counsel or has obtained private counsel.

(c) The visitor shall personally serve the notice and petition upon the respondent and shall offer to read the notice and petition to the respondent, and if so requested, the visitor shall read the notice and petition to such person. The visitor shall also interview the respondent in person, and to the extent that the respondent is able to understand:

(1) explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;

(2) if the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;

(3) inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense, and the right to request a court-appointed lawyer; and

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate.

(d) In addition to the duties set out in paragraph (c), the visitor shall make any other investigations the court directs.

(e) The visitor shall promptly file a report with the court which must include:

(1) recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;

(2) a statement as to whether the respondent approves or disapproves of the proposed conservator, and the powers and duties proposed or the scope of the conservatorship; and

(3) any other matters the court directs.

(f) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may make orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent, and may appoint an agent to assist in that task.

(g) Before the initial appointment, and annually within 30 days after the anniversary date of the appointment, the proposed conservator or conservator shall file an informational statement with the court. The statement must be a sworn affidavit containing the following information:

(1) the person's educational background and relevant work and other experience;

(2) an address and telephone number where the conservator can be contacted;

(3) whether the person has ever been removed for cause from serving as a guardian or conservator and if so, the case number and court location;

(4) any changes occurring that would affect the accuracy of information contained in the most recent criminal background study conducted pursuant to section 524.5-118; and

(5) if applicable, the amount of reimbursement for services rendered to the protected person that the person has received during the previous year.

History: 2009 c 150 s 12

524.5-409 FINDINGS; ORDER OF APPOINTMENT.

(a) The court may appoint a limited or unlimited conservator for a respondent only if it finds that:

(1) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance, or because the individual is missing, detained, or unable to return to the United States;

(2) by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money; and

(3) 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 enter any other appropriate order, or dismiss the proceeding.

(c) The court, whenever feasible, shall grant to a conservator only those powers necessitated by the protected person's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the protected person's maximum self-reliance and independence.

(d) Within 14 days after an appointment, the conservator shall send or deliver to the protected person, if the protected person has attained 14 years of age and is not missing, detained, or unable to return to the United States, and counsel if represented at the hearing, a copy of the order of appointment accompanied by a notice which advises the protected person of the right to appeal the conservatorship 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 conservator shall send or deliver to the protected person and to interested persons of record with the court a notice of the right to request termination or modification of the conservatorship or for any order that is in the best interests of the protected person or for other appropriate relief.

(f) The appointment of a conservator or the entry of another protective order is not a determination of incapacity of the protected person.

History: 2009 c 150 s 13

524.5-413 WHO MAY BE CONSERVATOR; PRIORITIES.

(a) Except as otherwise provided in paragraph (d), the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:

(1) a conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides;

(2) a person nominated as conservator by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if the respondent has attained 14 years of age and at the time of the nomination had sufficient capacity to express a preference;

(3) an agent appointed by the respondent to manage the respondent's property under a durable power of attorney;

(4) the spouse of the respondent;

(5) an adult child of the respondent;

(6) a parent of the respondent;

(7) an adult with whom the respondent has resided for more than six months before the filing of the petition;

(8) an adult who is related to the respondent by blood, adoption, or marriage; and

(9) any other adult or a professional conservator.

(b) A person having priority under paragraph (a), clause (1), (4), (5), or (6), may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.

(c) The court, acting in the best interest of the protected person, may decline to appoint a person having priority and appoint a person having a lower priority or no priority. With

respect to persons having equal priority, the court shall select the one it considers best qualified.

(d) In any proceeding where the value of the personal property of the estate of the proposed protected person in the initial inventory of the estate filed by the conservator under section 524.5-419 is expected to be at least \$10,000, the court shall require the conservator to post a bond. The bond requirement under this paragraph does not apply to conservators appointed before August 1, 2009, but shall apply as current conservatorships are reviewed by the court after August 1, 2009.

(e) Any individual or agency which provides residence, custodial care, medical care, employment training, or other care or services for which they receive a fee may not be appointed as conservator unless related to the respondent by blood, marriage, or adoption.

History: 2009 c 150 s 14

524.5-414 PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.

(a) A protected person or an interested person may file a petition in the appointing court for an order:

- (1) requiring bond or collateral or additional bond or collateral, or reducing bond;
- (2) requiring an accounting for the administration of the protected person's estate;
- (3) directing distribution;
- (4) removing the conservator and appointing a temporary or successor conservator;

(5) modifying the type of appointment or powers granted to the conservator if the extent of protection or management previously granted is currently excessive or insufficient or the protected person's ability to manage the estate and business affairs has so changed as to warrant the action; or

(6) acting in the protected person's best interests or granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning fiduciary responsibility.

(c) On notice and hearing the petition, the court may give appropriate instructions and make any appropriate order.

(d) The court may, at its own discretion, waive the notice or hearing requirements for the relief requested in a petition filed under this section.

History: 2009 c 150 s 15

524.5-420 REPORTS; APPOINTMENT OF VISITOR; MONITORING; COURT ORDERS.

(a) A conservator shall report to the court for administration of the estate annually unless the court otherwise directs, upon resignation or removal, upon termination of the conservatorship, and at other times as the court directs. An order, after notice and hearing, allowing an intermediate report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the accounting. An order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship.

(b) A report must state or contain a listing of the assets of the estate under the conservator's control and a listing of the receipts, disbursements, and distributions during the reporting period.

(c) A protected person or an interested person of record with the court may submit to the court a written statement disputing account statements regarding the administration of the estate that are contained in the report and may petition the court for any order that is in the best interests of the protected person and the estate or for other appropriate relief.

(d) The court may appoint a visitor to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs. In connection with a report, the court may order a conservator to submit the assets of the estate to an appropriate examination to be made in a manner the court directs.

(e) The court shall establish a system for monitoring of conservatorships, including the filing and review of conservators' reports and plans. If an annual report is not filed within 60 days of the required date, the court shall issue an order to show cause.

History: 2009 c 150 s 16

524.5-601 SHORT TITLE.

Sections 524.5-601 to 524.5-903 may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

History: 2009 c 46 s 2

524.5-602 DEFINITIONS.

(a) The definitions in this section apply to sections 524.5-602 to 524.5-903.

(b) "Adult" means an individual who has attained 18 years of age.

(c) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under sections 524.5-101 to 524.5-502.

(d) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under sections 524.5-101 to 524.5-502.

(e) "Guardianship order" means an order appointing a guardian.

(f) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(g) "Incapacitated person" means an adult for whom a guardian has been appointed.

(h) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(i) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(j) "Protected person" means an adult for whom a protective order has been issued.

(k) "Protective order" means an order appointing a conservator or any other order related to management of an adult's property.

(l) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(o) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

History: 2009 c 46 s 3

524.5-603 INTERNATIONAL APPLICATION.

A court of this state may treat a foreign country as if it were a state for the purpose of applying sections 524.5-601 to 524.5-903.

History: 2009 c 46 s 4

524.5-604 COMMUNICATION BETWEEN COURTS.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under sections 524.5-601 to 524.5-903. The court may allow the parties to participate in the communication. Except as otherwise provided in paragraph (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

History: 2009 c 46 s 5

524.5-605 COOPERATION BETWEEN COURTS.

(a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any one or more of the following:

(1) hold an evidentiary hearing;

(2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) order that an evaluation or assessment be made of the respondent;

(4) order any appropriate investigation of a person involved in a proceeding;

(5) forward to the court of this state a certified copy of the transcript or other record of a hearing under clause (1) or any other proceeding, any evidence otherwise produced under clause (2), and any evaluation or assessment prepared in compliance with an order under clause (3) or (4);

(6) issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; and

(7) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in Code of Federal Regulations, title 45, section 164.504.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in paragraph (a), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

History: 2009 c 46 s 6

524.5-606 TAKING TESTIMONY IN ANOTHER STATE.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other

electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

History: 2009 c 46 s 7

524.5-701 DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.

(a) In sections 524.5-701 to 524.5-709:

(1) "emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(2) "home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition; and

(3) "significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under sections 534.5-703 and 524.5-801, paragraph (e), whether a respondent has a significant connection with a particular state, the court shall consider:

(1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent's property; and

(4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

History: 2009 c 46 s 8

524.5-702 EXCLUSIVE BASIS.

Sections 524.5-701 to 524.5-709 provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

History: 2009 c 46 s 9

524.5-703 JURISDICTION.

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant-connection state and:

(i) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(ii) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(A) a petition for an appointment or order is not filed in the respondent's home state;

(B) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(C) the court in this state concludes that it is an appropriate forum under the factors set forth in section 524.5-706;

(3) this state does not have jurisdiction under either clause (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under section 524.5-704 are met.

History: 2009 c 46 s 10

524.5-704 SPECIAL JURISDICTION.

(a) A court of this state lacking jurisdiction under section 524.5-703 has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this state;

(2) issue a protective order with respect to real or tangible personal property located in this state; and

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 524.5-801.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

History: 2009 c 46 s 11

524.5-705 EXCLUSIVE AND CONTINUING JURISDICTION.

Except as otherwise provided in section 524.5-704, a court that has appointed a guardian or issued a protective order consistent with sections 524.5-601 to 524.5-903 has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

History: 2009 c 46 s 12

524.5-706 APPROPRIATE FORUM.

(a) A court of this state having jurisdiction under section 524.5-703 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under paragraph (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (1) any expressed preference of the respondent;
- (2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (3) the length of time the respondent was physically present in or was a legal resident of this or another state;
- (4) the distance of the respondent from the court in each state;
- (5) the financial circumstances of the respondent's estate;
- (6) the nature and location of the evidence;
- (7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (8) the familiarity of the court of each state with the facts and issues in the proceeding; and
- (9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

History: 2009 c 46 s 13

524.5-707 JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (1) decline to exercise jurisdiction;
- (2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
- (3) continue to exercise jurisdiction after considering:
 - (i) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
 - (ii) whether it is a more appropriate forum than the court of any other state under the factors set forth in section 524.5-706, paragraph (c); and
 - (iii) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 524.5-703.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than sections 524.5-601 to 524.5-903.

History: 2009 c 46 s 14

524.5-708 NOTICE OF PROCEEDING.

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the

petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

History: 2009 c 46 s 15

524.5-709 PROCEEDINGS IN MORE THAN ONE STATE.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under section 524.5-704, paragraph (a), clause (1) or (2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section 524.5-703, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 524.5-703 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under section 524.5-703, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

History: 2009 c 46 s 16

524.5-801 TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE.

(a) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under paragraph (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to paragraph (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 524.5-701, paragraph (b);

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 524.5-802; and

(2) the documents required to terminate a guardianship or conservatorship in this state.

History: 2009 c 46 s 17

524.5-802 ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 524.5-801, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under paragraph (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to paragraph (a).

(d) The court shall issue an order provisionally granting a petition filed under paragraph (a) unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 524.5-801 transferring the proceeding to this state.

(f) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under sections 524.5-101 to 524.5-502 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

History: 2009 c 46 s 18

524.5-901 REGISTRATION OF GUARDIANSHIP ORDERS.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

History: 2009 c 46 s 19

524.5-902 REGISTRATION OF PROTECTIVE ORDERS.

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

History: 2009 c 46 s 20

524.5-903 EFFECT OF REGISTRATION.

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant relief available under sections 524.5-601 to 524.5-903 and other law of this state to enforce a registered order.

History: 2009 c 46 s 21

524.8-103 EARLY EFFECTIVE DATE.

Notwithstanding section 524.8-101, the provisions of Laws 1974, chapter 442 relating to bonds found at sections 524.3-603 to 524.3-606 and Laws 1974, chapter 442, article 9, and that portion of Laws 1974, chapter 442, article 8, section 524.8-102, which repeals Minnesota Statutes 1971, sections 525.32 to 525.324, are effective August 1, 1974.

History: 2009 c 86 art 1 s 79