

1 **PROPOSED SENATE AMENDMENT TO S.B. 1499**

2
3 **(Reference to printed bill)**

4 Strike everything after the enacting clause and insert:

5 Sec. 1. Title 14, chapter 1, article 1, Arizona Revised Statutes, is amended by
6 adding section 14-1101, to read:

7 **14-1101. TRAINING.**

8 **ANY JUDICIAL OFFICER PRESIDING OVER PROCEEDINGS**
9 **BROUGHT UNDER THIS TITLE SHALL PARTICIPATE IN TRAINING AS**
10 **PRESCRIBED BY THE SUPREME COURT.**

11 Sec. 2. Title 14, chapter 1, article 1, Arizona Revised Statutes, is amended by
12 adding section 14-1104, to read:

13 **14-1104. PRUDENT MANAGEMENT OF COSTS; COST VERSUS**
14 **BENEFIT**

15 **IN ANY PROCEEDING BROUGHT UNDER THIS TITLE:**

16 **A. THE FIDUCIARY SHALL PRUDENTLY MANAGE COSTS AND PROTECT**
17 **AGAINST INCURRING ANY COSTS THAT MAY EXCEED PROBABLE**
18 **BENEFITS TO THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE,**
19 **OR TRUST, EXCEPT AS OTHERWISE DIRECTED BY A GOVERNING**
20 **INSTRUMENT OR COURT ORDER. EVERY FIDUCIARY, FIDUCIARY'S**
21 **ATTORNEY, ATTORNEY FOR THE WARD, PROTECTED PERSON, OR**
22 **TRUST BENEFICIARY, AND ANY GUARDIAN AD LITEM HAS A DUTY TO:**

23 **1. ACT IN THE BEST INTEREST OF THE WARD, MINOR WARD,**
24 **TRUST BENEFICIARY, HEIRS, WARD OR PROTECTED PERSON AND SUCH**
25 **PERSON'S ESTATE;**

26 **2. AVOID ENGAGING IN EXCESSIVE OR UNPRODUCTIVE**
27 **ACTIVITIES;**

28 **3. PRESERVE THE ASSETS OF THE TRUST OR ESTATE; AND**

29 **4. AFFIRMATIVELY ASSESS THE FINANCIAL COST OF PURSING**
30 **ANY ACTION COMPARED TO THE REASONABLY EXPECTED BENEFIT TO**
31 **THE WARD, MINOR WARD, TRUST BENEFICIARY, HEIRS, WARD OR**
32 **PROTECTED PERSON AND SUCH PERSON'S ESTATE.**

33 **B. THE FIDUCIARY , FIDUCIARY'S ATTORNEY, ATTORNEY FOR**
34 **THE WARD, PROTECTED PERSON, OR TRUST BENEFICIARY, AND ANY**
35 **GUARDIAN AD LITEM SHALL TIMELY DISCLOSE TO THE COURT AND**
36 **ALL PERSONS ENTITLED TO NOTICE IF THE PERSON HAS A**
37 **REASONABLE BELIEF THAT PROJECTED COSTS OF COMPLYING WITH**
38 **A COURT ORDER MAY EXCEED THE PROBABLE BENEFITS TO THE**
39 **WARD, PROTECTED PERSON, DECEDENT'S ESTATE, OR TRUST. WHEN**
40 **APPROPRIATE, CONSISTENT WITH DUE PROCESS, THE COURT SHALL**
41 **ENTER OR MODIFY SUCH ORDERS AS MAY PROTECT OR FURTHER THE**
42 **BEST INTEREST OF THE WARD, PROTECTED PERSON, DECEDENT'S**
43 **ESTATE, OR TRUST AGAINST PROJECTED COSTS THAT EXCEED**
44 **PROBABLE BENEFITS.**

45 **C. MARKET RATES FOR GOODS AND SERVICES ARE A PROPER,**
46 **ONGOING CONSIDERATION FOR THE FIDUCIARY AND COURT, SUCH AS**

1 DURING THE INITIAL COURT-APPOINTMENT OF ANY FIDUCIARY OR
2 ATTORNEY, ANY HEARING ON A BUDGET OBJECTION, AND ANY
3 REQUEST TO SUBSTITUTE A COURT-APPOINTED FIDUCIARY OR
4 ATTORNEY. IN THE COURT'S DISCRETION, AT ANY STAGE OF THE
5 PROCEEDINGS, THE COURT MAY ORDER THAT COMPETITIVE BIDS FOR
6 GOODS OR SERVICES BE OBTAINED IN ADVANCE.

7 Sec. 3. Title 14, chapter 1, article 1, Arizona Revised Statutes, is amended by
8 adding section 14-1105, to read:

9 **14-1105. REMEDIES FOR UNREASONABLE OR ABUSIVE**
10 **CONDUCT**

11 **A. IF THE COURT FINDS THAT A DECEDENT'S ESTATE OR TRUST**
12 **HAS INCURRED PROFESSIONAL FEES OR EXPENSES AS A RESULT OF**
13 **UNREASONABLE CONDUCT, THE COURT SHALL ORDER THE PERSON**
14 **WHO ENGAGED IN SUCH CONDUCT, THE PERSON'S ATTORNEY, OR**
15 **BOTH, TO PAY THE DECEDENT'S ESTATE OR TRUST FOR SOME OR ALL**
16 **OF SUCH FEES AND EXPENSES AS THE COURT DEEMS JUST UNDER THE**
17 **CIRCUMSTANCES.**

18 **B. IN A GUARDIANSHIP OR CONSERVATORSHIP CASE, IF THE**
19 **COURT FINDS THAT A WARD OR PROTECTED PERSON HAS INCURRED**
20 **PROFESSIONAL FEES OR EXPENSES AS A RESULT OF UNREASONABLE**
21 **CONDUCT, THE COURT SHALL ORDER THE PERSON WHO ENGAGED IN**
22 **SUCH CONDUCT, THE PERSON'S ATTORNEY, OR BOTH, TO PAY THE**
23 **WARD OR PROTECTED PERSON FOR SOME OR ALL OF SUCH FEES AND**
24 **EXPENSES AS THE COURT DEEMS JUST UNDER THE CIRCUMSTANCES.**
25 **IN ADDITION, IF THE COURT FINDS THE PERSON ENGAGED IN**
26 **VEXATIOUS CONDUCT, THE COURT MAY DO EITHER OR BOTH OF THE**
27 **FOLLOWING:**

28 **1. ORDER THAT THE PERSON IS NO LONGER ENTITLED TO**
29 **NOTICE OF, AND MAY NOT PARTICIPATE AS A PARTY IN, ANY FUTURE**
30 **PROCEEDINGS CONCERNING THE WARD OR PROTECTED PERSON**
31 **BROUGHT UNDER THIS TITLE.**

32 **2. ORDER THAT THE WARD'S OR PROTECTED PERSON'S**
33 **FIDUCIARY, FIDUCIARY'S ATTORNEY, COURT-APPOINTED ATTORNEY,**
34 **OR REPRESENTATIVE HAS NO DUTY TO RESPOND TO FUTURE**
35 **REQUESTS MADE BY THE PERSON FOR INFORMATION CONCERNING**
36 **THE WARD OR PROTECTED PERSON AND TO FUTURE COURT FILINGS**
37 **MADE BY SUCH PERSON, UNLESS EXPLICITLY ORDERED BY THE**
38 **COURT.**

39 **C. BEFORE MAKING A REQUEST FOR A REMEDY UNDER THIS**
40 **SECTION, A PARTY SHALL NOTIFY THE OFFENDING PARTY IN WRITING**
41 **OF THE PARTY'S INTENT TO SEEK SUCH REMEDY IF THE OFFENDING**
42 **CONDUCT IS NOT TERMINATED WITHIN A REASONABLE TIME.**

43 **D. THE REMEDIES PERMITTED UNDER THIS SECTION ARE IN**
44 **ADDITION TO ANY OTHER CIVIL REMEDY OR ANY OTHER PROVISION**
45 **OF LAW. THE REMEDIES PERMITTED UNDER THIS SECTION SHOULD BE**
46 **MADE TO MITIGATE THE FINANCIAL BURDEN ON A WARD, PROTECTED**

1 PERSON, DECEDENT'S ESTATE, OR TRUST INCURRED AS A RESULT OF
2 UNJUSTIFIED COURT PROCEEDINGS OR UNREASONABLE OR
3 EXCESSIVE DEMANDS MADE UPON A FIDUCIARY, COURT- APPOINTED
4 ATTORNEY, OR REPRESENTATIVE.

5 E. FOR PURPOSES OF THIS SECTION:

6 1. "COURT-APPOINTED ATTORNEY" MEANS AN ATTORNEY
7 APPOINTED PURSUANT TO § 14-5303(C), § 14-5310(C), § 14-5401.01(C), OR §
8 14-5407(B).

9 2. "FIDUCIARY" MEANS AN AGENT UNDER A DURABLE POWER OF
10 ATTORNEY, AN AGENT UNDER A HEALTH CARE POWER OF ATTORNEY,
11 A GUARDIAN, A CONSERVATOR, A PERSONAL REPRESENTATIVE, A
12 TRUSTEE, A GUARDIAN AD LITEM, OR A REPRESENTATIVE APPOINTED
13 PURSUANT TO § 14-1408.

14 3. "PROFESSIONAL FEES AND EXPENSES" INCLUDES THE
15 FIDUCIARY'S ATTORNEY FEES AND EXPENSES, AS WELL AS THE FEES
16 OF ANY OTHER PROFESSIONALS HIRED BY THE FIDUCIARY.

17 4. "PERSON WHO ENGAGED IN SUCH CONDUCT" INCLUDES BUT
18 IS NOT LIMITED TO A FIDUCIARY, ATTORNEY OR REPRESENTATIVE.

19 5. "PROFESSIONAL" MEANS AN ACCOUNTANT, AN ATTORNEY, A
20 FIDUCIARY, A PHYSICIAN, A PSYCHOLOGIST, A REGISTERED NURSE, A
21 REPRESENTATIVE, OR AN EXPERT WITNESS.

22 6. "REPRESENTATIVE" MEANS A PERSON APPOINTED PURSUANT
23 TO §14- 1408 AND INCLUDES A GUARDIAN AD LITEM.

24 7. "VEXATIOUS CONDUCT" INCLUDES LITIGATION SOLELY OR
25 PRIMARILY FOR THE PURPOSE OF HARASSMENT; LITIGATION SOLELY
26 OR PRIMARILY TO FURTHER THE PERSON'S OWN INTERESTS RATHER
27 THAN THE INTERESTS OF THE WARD OR PROTECTED PERSON;
28 UNREASONABLY EXPANDING OR DELAYING COURT PROCEEDINGS;
29 COURT ACTIONS BROUGHT OR DEFENDED WITHOUT SUBSTANTIAL
30 JUSTIFICATION; ENGAGING IN ABUSE OF DISCOVERY; AND A PATTERN
31 OF MAKING UNREASONABLE OR EXCESSIVE REQUESTS FOR
32 INFORMATION FROM A WARD'S OR A PROTECTED PERSON'S
33 FIDUCIARY, COURT-APPOINTED ATTORNEY, OR REPRESENTATIVE.

34 "VEXATIOUS CONDUCT" DOES NOT INCLUDE ANY OF THE FOLLOWING:

35 a. A PROCEEDING BROUGHT BY OR ON BEHALF OF THE WARD
36 OR PROTECTED PERSON AGAINST ANOTHER PERSON WHEN SUCH
37 OTHER PERSON DEFENDS THE CLAIM IN GOOD FAITH.

38 b. A PROCEEDING BROUGHT IN GOOD FAITH BY A PERSON
39 AGAINST A WARD OR PROTECTED PERSON TO ESTABLISH A CLAIM
40 AGAINST THE WARD OR PROTECTED PERSON.

41 c. A PROCEEDING BROUGHT IN GOOD FAITH BY OR AGAINST THE
42 WARD'S OR THE PROTECTED PERSON'S FIDUCIARY OR COURT-
43 APPOINTED ATTORNEY, INCLUDING BUT NOT LIMITED TO A
44 PROCEEDING TO ESTABLISH THE FIDUCIARY'S OR THE COURT-
45 APPOINTED ATTORNEY'S LIABILITY TO THE WARD OR PROTECTED
46 PERSON OR ENTITLEMENT TO COMPENSATION.

1 Sec. 4. Title 14, chapter 1, article 1, Arizona Revised Statutes, is amended by
2 adding section 14-1109, to read:

3 **14-1109. ARBITRATION OF DISPUTES; ALTERNATIVE DISPUTE**
4 **RESOLUTION**

5 **IN ANY PROCEEDING UNDER THIS TITLE, FOLLOWING THE**
6 **INITIAL APPOINTMENT OF A FIDUCIARY, THE COURT MAY REQUIRE**
7 **ARBITRATION OF ANY DISPUTE, CONSISTENT WITH THE PROVISIONS**
8 **OF SUBSECTIONS (B) THROUGH (K) OF §12-133 OR ORDER ALTERNATIVE**
9 **DISPUTE RESOLUTION.**

10 Sec. 5. Section 14-1201, Arizona Revised Statutes, is amended to read:

11 **14-1201. Definitions**

12 In this title, unless the context otherwise requires:

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

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

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

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

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

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

1 7. "Community property" means that property of a husband and wife that is
2 acquired during the marriage and that is community property as prescribed in section 25-
3 211.

4 8. "Conservator" means a person who is appointed by a court to manage the estate
5 of a protected person.

6 9. "Court" means the superior court.

7 10. "Dependent child" means a minor child who the decedent was obligated to
8 support or an adult child who was in fact being supported by the decedent at the time of
9 the decedent's death.

10 11. "Descendant" means all of the decedent's descendants of all generations, with
11 the relationship of parent and child at each generation.

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

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

19 14. "Disability" means cause for a protective order as described in section 14-
20 5401.

21 **15. "DISCRETIONARY CARE" MEANS ALL DISCRETIONARY**
22 **PERSONAL CARE PROVIDED TO A WARD OR INCAPACITATED PERSON**
23 **OTHER THAN HOUSING, UTILITIES, PERSONAL HYGIENE OR CARE,**
24 **MEDICAL OR DENTAL TREATMENT, MEDICATION, FOOD, NOURISHMENT,**
25 **TRANSPORTATION, INSURANCE AND TAXES THAT IS NOT ESSENTIAL**
26 **FOR SURVIVAL BUT IS DESIGNED TO IMPROVE THE QUALITY OR**
27 **PROLONG THE ENJOYMENT OF LIFE OF THE WARD OR INCAPACITATED**
28 **PERSON.**

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

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

42 18. "Exempt property" means that property of a decedent's estate that is described
43 in section 14-2403.

44 19. "Fiduciary" includes a personal representative, guardian, conservator and
45 trustee.

1 20. "Foreign personal representative" means a personal representative appointed
2 by another jurisdiction.

3 21. "Formal proceedings" means proceedings conducted before a judge with
4 notice to interested persons.

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

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

13 **24. "GUARDIAN AD LITEM" INCLUDES BUT IS NOT LIMITED TO A**
14 **PERSON APPOINTED PURSUANT TO § 14-1408.**

15 ~~23-25~~. "Heirs", except as controlled by section 14-2711, means persons,
16 including the surviving spouse and the state, who are entitled under the statutes of
17 intestate succession to the property of a decedent.

18 ~~24-26~~. "Incapacitated person" has the same meaning prescribed
19 in section 14-5101.

20 ~~25-27~~. "Informal proceedings" means those proceedings conducted without
21 notice to interested persons by an officer of the court acting as a registrar for probate of a
22 will or appointment of a personal representative.

23 ~~26-28~~. "Interested person" includes any trustee, heir, devisee, child, spouse,
24 creditor, beneficiary, person holding a power of appointment and other person who has a
25 property right in or claim against a trust estate or the estate of a decedent, ward or
26 protected person. Interested person also includes a person who has priority for
27 appointment as personal representative and other fiduciaries representing interested
28 persons. Interested person, as the term relates to particular persons, may vary from time
29 to time and must be determined according to the particular purposes of, and matter
30 involved in, any proceeding.

31 ~~27-29~~. "Issue" of a person means descendant as defined in this section.

32 ~~28-30~~. "Joint tenants with the right of survivorship" and "community property
33 with the right of survivorship" includes co-owners of property held under circumstances
34 that entitle one or more to the whole of the property on the death of the other or others
35 but excludes forms of co-ownership registration in which the underlying ownership of
36 each party is in proportion to that party's contribution.

37 ~~29-31~~. "Lease" includes any oil, gas or other mineral lease.

38 ~~30-32~~. "Letters" includes letters testamentary, letters of guardianship, letters of
39 administration and letters of conservatorship.

40 **33. "MEDICAL COSTS" MEANS THE COSTS OF MEDICAL SERVICES**
41 **PROVIDED OR ORDERED BY MEDICAL CARE PRACTITIONERS, DENTAL**
42 **CARE PRACTITIONERS, AND MEDICAL AND DENTAL FACILITIES. IT**
43 **DOES NOT INCLUDE ANY COSTS FOR SERVICES OF A FIDUCIARY,**
44 **COMPANION, OR OTHERS NECESSITATED BY THE MEDICAL OR**
45 **DENTAL CONDITION OF THE WARD OR PROTECTED PERSON.**

46 ~~31-34~~. "Minor" means a person who is under eighteen years of age.

1 ~~32-35~~. "Mortgage" means any conveyance, agreement or arrangement in which
2 property is encumbered or used as security. Mortgage does not include leases or
3 easements.

4 ~~33-36~~. "Nonresident decedent" means a decedent who was domiciled in another
5 jurisdiction at the time of the decedent's death.

6 ~~34-37~~. "Organization" means a corporation, limited liability company, business
7 trust, estate, trust, partnership, joint venture, association, government or governmental
8 subdivision or agency or any other legal or commercial entity.

9 ~~35-38~~. "Parent" includes any person entitled to take, or who would be entitled to
10 take if the child died without a will, as a parent under this title by intestate succession
11 from the child whose relationship is in question and excludes any person who is only a
12 stepparent, foster parent or grandparent.

13 ~~36-39~~. "Payor" means a trustee, insurer, business entity, employer, government,
14 governmental agency or subdivision or any other person who is authorized or obligated
15 by law or a governing instrument to make payments.

16 ~~37-40~~. "Person" means an individual or an organization.

17 ~~38-41~~. "Personal representative" includes executor, administrator, successor
18 personal representative, special administrator and persons who perform substantially the
19 same function under the law governing their status. A general personal representative
20 excludes a special administrator.

21 ~~39-42~~. "Petition" means a written request to the court for an order after notice.

22 ~~40-43~~. "Proceeding" includes action at law and suit in equity.

23 ~~41-44~~. "Property" has the same meaning prescribed in section 14-10103.

24 ~~42-45~~. "Protected person" has the same meaning prescribed in section 14-5101.

25 ~~43-46~~. "Protective proceeding" has the same meaning prescribed in section 14-
26 5101.

27 ~~44-47~~. "Registrar" means the official of the court designated to perform the
28 functions of registrar as provided in section 14-1307.

29 ~~45-48~~. "Security" includes any note, stock, treasury stock, bond, debenture,
30 evidence of indebtedness, certificate of interest or participation in an oil, gas or mining
31 title or lease or in payments out of production under that title or lease, collateral trust
32 certificate, transferable share or voting trust certificate and, in general, includes any
33 interest or instrument commonly known as a security, or any certificate of interest or
34 participation, any temporary or interim certificate, receipt or certificate of deposit for, or
35 any warrant or right to subscribe to or purchase, any of these securities.

36 ~~46-49~~. "Separate property" means that property of a husband or wife that is the
37 spouse's separate property as defined in section 25-213.

38 ~~47-50~~. "Settlement", in reference to a decedent's estate, includes the full process
39 of administration, distribution and closing.

40 ~~48-51~~. "Special administrator" means a personal representative as described by
41 sections 14-3614 through 14-3618.

42 ~~49-52~~. "State" has the same meaning prescribed in section 14-10103.

43 ~~50-53~~. "Successor personal representative" means a personal representative,
44 other than a special administrator, who is appointed to succeed a previously appointed
45 personal representative.

1 ~~51-54~~. "Successors" means persons, other than creditors, who are entitled to
2 property of a decedent under a will or this title.

3 ~~52-55~~. "Supervised administration" refers to the proceedings described in
4 chapter 3, article 5 of this title.

5 ~~53-56~~. "Survive" means that a person has neither predeceased an event, including
6 the death of another person, nor is deemed to have predeceased an event under section
7 14-2104 or 14-2702.

8 ~~54-57~~. "Testacy proceeding" means a proceeding to establish a will or determine
9 intestacy.

10 ~~55-58~~. "Testator" includes a person of either sex.

11 ~~56-59~~. "Trust" includes an express trust, private or charitable, with any additions,
12 wherever and however created. Trust also includes a trust created or determined by
13 judgment or decree under which the trust is to be administered in the manner of an
14 express trust. Trust excludes other constructive trusts and excludes resulting trusts,
15 conservatorship, personal representatives, trust accounts, custodial arrangements pursuant
16 to chapter 7, article 7 of this title, business trusts providing for certificates to be issued to
17 beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts
18 and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages,
19 profits, pensions or employee benefits of any kind, trusts created by a city or town for the
20 payment of medical insurance, health care benefits or expenses, long-term or short-term
21 disability, self insurance reserves and similar programs administered by a city or town,
22 legal defense trusts and any arrangement under which a person is nominee or escrowee
23 for another.

24 ~~57-60~~. "Trustee" includes an original, additional or successor trustee, whether or
25 not appointed or confirmed by court.

26 ~~58-61~~. "Ward" has the same meaning prescribed in section 14-5101.

27 ~~59-62~~. "Will" includes a codicil and any testamentary instrument that merely
28 appoints an executor, revokes or revises another will, nominates a guardian or expressly
29 excludes or limits the right of an individual or class to succeed to property of the
30 decedent passing by intestate succession.

31 Sec. 6. Title 14, chapter 3, article 1, Arizona Revised Statutes, is amended by
32 adding section 14-3111, to read:

33 **14-3111. DISCLOSURE OF COMPENSATION**
34 **WHEN ANY PERSONAL REPRESENTATIVE, ATTORNEY, OR**
35 **GUARDIAN AD LITEM WHO INTENDS TO SEEK COMPENSATION FROM**
36 **THE DECEDENT'S ESTATE FIRST APPEARS IN THE PROCEEDING, SUCH**
37 **PERSON SHALL GIVE WRITTEN NOTICE OF THE BASIS FOR**
38 **COMPENSATION BY FILING A STATEMENT WITH THE COURT AND**
39 **PROVIDING A COPY OF THE STATEMENT TO ALL PARTIES AND TO ALL**
40 **PERSONS WHO HAVE FILED A DEMAND FOR NOTICE. THE STATEMENT**
41 **NEED ONLY PROVIDE A GENERAL EXPLANATION OF THE**
42 **COMPENSATION ARRANGEMENT AND HOW THE COMPENSATION WILL**
43 **BE COMPUTED. IF, DURING THE PENDENCY OF THE ACTION, THE BASIS**
44 **FOR COMPENSATION IS CHANGED, NOTICE OF SUCH CHANGE SHALL**
45 **BE FILED WITH THE COURT AND PROVIDED TO ALL PERSONS**

1 ENTITLED TO NOTICE UNDER THIS SUBSECTION NOT LESS THAN 30
2 DAYS BEFORE THE CHANGE BECOMES EFFECTIVE.

3 Sec. 7. Title 14, chapter 5, article 1, Arizona Revised Statutes, is amended by
4 adding section 14-5109, to read:

5 **14-5109. DISCLOSURE OF COMPENSATION; REASONABLENESS OF**
6 **COMPENSATION**

7 **A. WHEN ANY GUARDIAN, CONSERVATOR, ATTORNEY, OR**
8 **GUARDIAN AD LITEM WHO INTENDS TO SEEK COMPENSATION FROM**
9 **THE ESTATE OF A WARD OR PROTECTED PERSON FIRST APPEARS IN**
10 **THE PROCEEDING, SUCH PERSON SHALL GIVE WRITTEN NOTICE OF**
11 **THE BASIS OF THE COMPENSATION BY FILING A STATEMENT WITH**
12 **THE COURT AND PROVIDING A COPY OF THE STATEMENT TO ALL**
13 **PERSONS ENTITLED TO NOTICE UNDER §14-5309. THE STATEMENT NEED**
14 **ONLY PROVIDE A GENERAL EXPLANATION OF THE COMPENSATION**
15 **ARRANGEMENT AND HOW THE COMPENSATION WILL BE COMPUTED.**
16 **IF, DURING THE PENDENCY OF THE ACTION, THE BASIS FOR**
17 **COMPENSATION IS CHANGED, NOTICE OF SUCH CHANGE SHALL BE**
18 **FILED WITH THE COURT AND PROVIDED TO ALL PERSONS ENTITLED**
19 **TO NOTICE UNDER THIS SUBSECTION NOT LESS THAN 30 DAYS BEFORE**
20 **THE CHANGE BECOMES EFFECTIVE.**

21 **B. ALL COMPENSATION PAID FROM AN ESTATE TO ANY PERSON**
22 **LISTED IN SECTION A MUST BE REASONABLE. IN DETERMINING THE**
23 **REASONABLENESS OF COMPENSATION, THE COURT SHALL CONSIDER**
24 **THE BEST INTEREST OF THE WARD OR PROTECTED PERSON, AND**
25 **SHALL CONSIDER THE FOLLOWING FACTORS TO THE EXTENT**
26 **APPLICABLE IN DETERMINING THE REASONABLENESS AND NECESSITY**
27 **OF COMPENSATION AND EXPENSES TO BE APPROVED:**

28 **1. WHETHER THE SERVICES PROVIDED ANY BENEFIT OR**
29 **ATTEMPTED TO ADVANCE THE BEST INTEREST OF THE WARD, MINOR**
30 **WARD, INCAPACITATED PERSON, PROTECTED PERSON OR ESTATE;**

31 **2. THE EXTENT THE SERVICES WERE NEEDED OR OF**
32 **CORRESPONDING VALUE TO THE WARD, MINOR WARD,**
33 **INCAPACITATED PERSON OR PROTECTED PERSON;**

34 **3. THE USUAL AND CUSTOMARY FEES CHARGED IN THE**
35 **RELEVANT PROFESSIONAL COMMUNITY FOR SUCH SERVICES;**

36 **4. THE RISKS AND RESPONSIBILITIES ASSOCIATED WITH THE**
37 **SERVICES;**

38 **5. THE SIZE AND COMPOSITION OF THE ESTATE;**

39 **6. THE CHARACTER OF THE WORK PERFORMED INCLUDING ITS**
40 **DIFFICULTY, INTRICACY, IMPORTANCE, AND RESPONSIBILITY**
41 **IMPOSED;**

42 **7. THE AMOUNT OF TIME REQUIRED;**

43 **8. THE SKILL AND EXPERTISE REQUIRED;**

44 **9. THE ABILITY, TRAINING, EDUCATION, EXPERIENCE,**
45 **PROFESSIONAL STANDING, AND SKILL OF THE PROVIDER OF THE**
46 **SERVICES;**

- 1 **10. THE SUCCESS, FAILURE AND RESULTS OF THE WORK**
- 2 **PERFORMED;**
- 3 **11. THE EXTENT THAT THE SERVICES WERE PROVIDED IN THE**
- 4 **MOST EFFICIENT AND COST-EFFECTIVE MANNER FEASIBLE;**
- 5 **12. WHETHER THERE WAS APPROPRIATE DELEGATION TO**
- 6 **PARAPROFESSIONALS;**
- 7 **13. THE FIDELITY OR DISLOYALTY DISPLAYED BY THE**
- 8 **FIDUCIARY, ATTORNEY OR PROFESSIONAL;**
- 9 **14. ANY ESTIMATE THE FIDUCIARY, ATTORNEY OR**
- 10 **PROFESSIONAL HAS GIVEN OF THE VALUE OF THE SERVICES; AND**
- 11 **15. ANY FEE GUIDELINES ADOPTED BY THE COURT.**

12 **C. THE ATTORNEY, FIDUCIARY OR PROFESSIONAL SEEKING**
13 **COMPENSATION HAS THE BURDEN OF PROVING THE**
14 **REASONABLENESS AND NECESSITY OF COMPENSATION AND EXPENSES**
15 **SOUGHT.**

16 Sec. 8. Title 14, chapter 5, article 1, Arizona Revised Statutes, is amended by
17 adding section 14-5110, to read:

18 **14-5110. CLAIM DEADLINE FOR COMPENSATION**
19 **IN ANY GUARDIANSHIP, CONSERVATORSHIP, OR PROTECTIVE**
20 **PROCEEDING, UNLESS A LATER CLAIM DEADLINE IS ESTABLISHED IN**
21 **ADVANCE BY THE COURT:**

22 **A. ANY CLAIM FOR COMPENSATION BY ATTORNEYS OR**
23 **GUARDIANS AD LITEM WHO INTEND TO BE PAID BY THE WARD OR**
24 **PROTECTED PERSON’S ESTATE IS WAIVED IF NOT SUBMITTED TO THE**
25 **FIDUCIARY IN WRITING WITHIN FOUR (4) MONTHS OF EITHER**
26 **RENDERING THE SERVICE, INCURRING THE COST, INITIAL**
27 **APPOINTMENT OF THE FIDUCIARY, OR EFFECTIVE DATE OF THIS**
28 **SECTION, WHICHEVER IS LATER. A CLAIM IS DEEMED SUBMITTED**
29 **UPON DELIVERY, MAILING OR ELECTRONIC TRANSMISSION TO THE**
30 **FIDUCIARY. ANY SUBSEQUENT APPOINTMENT OF A SUBSTITUTE**
31 **FIDUCIARY SHALL NOT RENEW THE CLAIM PERIOD.**

32 **B. ANY CLAIM FOR ACCRUED BUT UNPAID COMPENSATION**
33 **INCURRED DURING A REPORTING PERIOD BY THE GUARDIAN IS**
34 **WAIVED IF NOT DISCLOSED IN THE GUARDIAN’S REPORT, OR IN AN**
35 **AMENDED REPORT FILED WITHIN THREE (3) MONTHS OF THE DUE**
36 **DATE OF THE ANNUAL REPORT. AN AMENDMENT OF THE ANNUAL**
37 **REPORT SHALL NOT RENEW THE CLAIM PERIOD. ANY CLAIM FOR**
38 **ACCRUED BUT UNPAID COMPENSATION INCURRED PRIOR TO THE**
39 **EFFECTIVE DATE OF THIS STATUTE SHALL BE DISCLOSED NO LATER**
40 **THAN THE DUE DATE FOR THE NEXT GUARDIAN’S REPORT AFTER THE**
41 **EFFECTIVE DATE OF THIS STATUTE OR THE CLAIM IS WAIVED.**

42 **C. ANY CLAIM FOR ACCRUED BUT UNPAID COMPENSATION**
43 **INCURRED DURING AN ACCOUNTING PERIOD BY THE CONSERVATOR IS**
44 **WAIVED IF NOT DISCLOSED IN THE CONSERVATOR’S ACCOUNT, OR IN**
45 **AN AMENDED ACCOUNT FILED WITHIN THREE (3) MONTHS OF THE DUE**
46 **DATE OF THE ANNUAL ACCOUNT. AN AMENDMENT OF THE ANNUAL**

1 **ACCOUNT SHALL NOT RENEW THE CLAIM PERIOD. A FIDUCIARY WHO**
2 **IS BOTH A GUARDIAN AND CONSERVATOR SHALL REPORT ANY CLAIM**
3 **FOR COMPENSATION AS REQUIRED BY A CONSERVATOR. ANY CLAIM**
4 **FOR ACCRUED BUT UNPAID COMPENSATION INCURRED PRIOR TO THE**
5 **EFFECTIVE DATE OF THIS STATUTE SHALL BE DISCLOSED NO LATER**
6 **THAN THE DUE DATE FOR THE NEXT CONSERVATOR'S ACCOUNT**
7 **AFTER THE EFFECTIVE DATE OF THIS STATUTE OR THE CLAIM IS**
8 **WAIVED.**

9 **D. THIS SECTION SHALL NOT APPLY TO AN ATTORNEY SEEKING**
10 **COMPENSATION BASED ON A CONTINGENCY FEE AGREEMENT.**

11 **E. FOR PURPOSES OF THIS SECTION:**

12 **1. "COMPENSATION" INCLUDES BOTH FEES, COSTS, AND**
13 **REIMBURSABLE EXPENSES.**

14 **2. "ESTATE" INCLUDES ANY ESTATE UNDER TITLE 14 EXCEPT A**
15 **TRUST, UNLESS THE TRUST IS SUPERVISED BY THE COURT AND THE**
16 **WARD OR PROTECTED PERSON IS A BENEFICIARY.**

17 Sec. 9. Section 14-5303, Arizona Revised Statutes, is amended to read:

18 **14-5303. Procedure for court appointment of a guardian of an**
19 **alleged incapacitated person**

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

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

- 26 1. The interest of the petitioner.
- 27 2. The name, age, residence and address of the alleged incapacitated person.
- 28 3. The name, address and priority for appointment of the person whose
29 appointment is sought.
- 30 4. The name and address of the conservator, if any, of the alleged incapacitated
31 person.
- 32 5. The name and address of the nearest relative of the alleged incapacitated
33 person known to the petitioner.
- 34 6. A general statement of the property of the alleged incapacitated person, with
35 an estimate of its value and including any compensation, insurance, pension or allowance
36 to which the person is entitled.
- 37 7. The reason why appointment of a guardian or any other protective order is
38 necessary.
- 39 8. The type of guardianship requested. If a general guardianship is requested, the
40 petition must state that other alternatives have been explored and why a limited
41 guardianship is not appropriate. If a limited guardianship is requested, the petition also
42 must state what specific powers are requested.

43 **9. A GOOD FAITH ESTIMATE OF ALL PROJECTED MONTHLY**
44 **COSTS ASSOCIATED WITH THE GUARDIANSHIP, EXCEPT MEDICAL**
45 **COSTS, THAT WILL BE NECESSARY TO CARE FOR THE WARD UNTIL**
46 **THE FIRST GUARDIAN REPORT IS TIMELY FILED AND APPROVED. THE**

1 **PETITIONER IS REQUIRED ONLY TO ESTIMATE THESE COSTS BASED ON**
2 **THE INFORMATION REASONABLY KNOWN AT THE TIME THE PETITION**
3 **IS FILED, INCLUDING INFORMATION OBTAINED FROM ANY GUARDIAN**
4 **PROPOSED IN THE PETITION. THE PETITION SHOULD PROVIDE**
5 **ESTIMATES FOR THE FOLLOWING CATEGORIES OF COSTS:**

- 6 a. **THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF**
7 **THE WARD;**
- 8 b. **THE AVERAGE MONTHLY COST OF DISCRETIONARY CARE**
9 **SERVICES FOR THE WARD;**
- 10 c. **THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES**
11 **EXPECTED TO BE INCURRED BY THE GUARDIAN;**
- 12 d. **THE AMOUNT OF ATTORNEY FEES INCURRED AND**
13 **EXPECTED TO BE INCURRED BY ALL APPOINTED**
14 **ATTORNEYS THROUGH THE ISSUANCE OF A COURT ORDER**
15 **APPOINTING A GUARDIAN AS REQUESTED IN THE PETITION;**
- 16 e. **THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES**
17 **EXPECTED TO BE INCURRED BY ALL APPOINTED**
18 **ATTORNEYS UNTIL SUBMISSION OF THE FIRST GUARDIAN**
19 **REPORT; AND**
- 20 f. **THE AVERAGE MONTHLY COSTS OF ALL OTHER COSTS OR**
21 **EXPENSES NOT LISTED IN PARAGRAPHS A THROUGH E**
22 **ABOVE AND OVER WHICH THE PROPOSED GUARDIAN WILL**
23 **EXERCISE CONTROL WITH AN EXPLANATION OF THE**
24 **REQUESTED COST OR EXPENSE.**

25 **IF THE PETITION ALSO SEEKS A CONSERVORSHIP, THE PETITIONER**
26 **MUST MAKE ADDITIONAL ESTIMATES AS SET FORTH IN § 14-5404(8).**

27
28 Sec. 10. Section 14-5304, Arizona Revised Statutes, is amended to read:

29 **14-5304. Findings; order of appointment; limitations; filing**

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

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

- 35 1. The person for whom a guardian is sought is incapacitated.
- 36 2. The appointment is necessary to provide for the demonstrated needs of the
37 incapacitated person.
- 38 3. The person's needs cannot be met by less restrictive means, including the use
39 of appropriate technological assistance.

40 **4. APPOINTMENT OF A PARTICULAR GUARDIAN IS IN THE**
41 **WARD'S BEST INTEREST CONSIDERING THE WARD'S NEEDS AND**
42 **FINANCIAL RESOURCES.**

43 **C. UPON APPOINTMENT OF A GUARDIAN, THE COURT SHALL**
44 **ALSO ENTER AN ORDER CONCERNING THE GUARDIAN'S FINANCE-**
45 **RELATED OBLIGATIONS AS FOLLOWS:**

1 **1. REQUIRE THE GUARDIAN TO FILE A BUDGET THAT MEETS THE**
2 **CRITERIA SET FORTH IN § 14-5418.01; OR**

3 **2. PROHIBIT THE GUARDIAN FROM EXPENDING ANY AMOUNTS**
4 **FROM THE ESTATE OF THE WARD THAT EXCEED THE ESTIMATES SET**
5 **FORTH IN EACH CATEGORY OF THE PETITION REQUIRED BY § 14-**
6 **5303(9), OR OTHER AMOUNT SET BY THE COURT, WITHOUT PRIOR**
7 **COURT ORDER; OR**

8 **3. REQUIRE THE GUARDIAN TO PROCEED IN ANY OTHER**
9 **MANNER THE COURT FINDS IS IN THE WARD'S BEST INTEREST; AND**

10 **4. PROVIDE WHEN PAYMENT OF THE GUARDIAN'S FEES AND THE**
11 **FEES OF OTHER PERSONS APPOINTED PURSUANT TO THIS ARTICLE**
12 **MAY COMMENCE.**

13 **THE COURT SHALL ENTER AN ORDER PURSUANT TO SUBSECTION (C)(1)**
14 **IF THE GUARDIAN IS A LICENSED FIDUCIARY, EXCEPT A PUBLIC**
15 **FIDUCIARY, UNLESS THE COURT FINDS THAT THE BEST INTEREST OF**
16 **THE WARD WOULD NOT BE SERVED BY SUCH AN ORDER.**

17 **D. AFTER A WARD HAS BEEN APPOINTED, THE COURT MAY**
18 **DISCHARGE THE WARD'S ATTORNEY IF THE COURT FINDS THAT THE**
19 **COST OF THE CONTINUED REPRESENTATION EXCEEDS THE PROBABLE**
20 **BENEFIT TO THE WARD. UNTIL DISCHARGED, THE WARD'S ATTORNEY**
21 **SHALL HAVE A CONTINUING DUTY TO REVIEW ANY PROPOSED**
22 **BUDGETS AND ACCOUNTS OF THE GUARDIAN AND TO NOTIFY THE**
23 **COURT OF ANY OBJECTIONS OR CONCERNS THE ATTORNEY**
24 **IDENTIFIES WITH RESPECT TO THE GUARDIAN'S PROPOSED BUDGETS,**
25 **AND ACCOUNTS.**

26
27 Sec. 11. Section 14-5307, Arizona Revised Statutes, is amended to read:

28 14-5307. ~~Removal~~ **SUBSTITUTION** ~~or resignation of guardian;~~
29 ~~termination of incapacity~~

30 A. On petition of the ward or any person interested in ~~his~~ **THE WARD'S**
31 **welfare, OR ON THE COURT'S OWN INITIATIVE,** the court may ~~remove~~
32 **SUBSTITUTE** a guardian and appoint a successor if it is in the best interest**s** of the
33 ward. **THE COURT NEED NOT FIND THAT THE GUARDIAN ACTED**
34 **INAPPROPRIATELY TO FIND THAT THE SUBSTITUTION IS IN THE**
35 **WARD'S BEST INTEREST.** On petition of the guardian, the court may accept a
36 resignation and make any other order which may be appropriate. **THE GUARDIAN**
37 **SHALL NOT BE COMPENSATED FROM THE WARD'S ESTATE FOR**
38 **DEFENDING AGAINST A PETITION FOR SUBSTITUTION UNLESS**
39 **AUTHORIZED BY THE COURT ORDER.**

40 ~~B. An order adjudicating incapacity may specify a minimum~~
41 ~~period, not exceeding one year, during which no petition for an~~
42 ~~adjudication that the ward is no longer incapacitated may be filed~~
43 ~~without special leave. Subject to this restriction, the ward or any~~
44 ~~person interested in his welfare may petition the court for an order~~
45 ~~that the ward is no longer incapacitated and for the removal or~~
46 ~~resignation of the guardian. A request for this order may be made by~~

1 ~~informal letter to the court or judge. Any person who knowingly~~
2 ~~interferes with the transmission of this request may be found in~~
3 ~~contempt of court.~~

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

24 **C. AN INTERESTED PERSON SHALL NOT FILE A PETITION FOR**
25 **ADJUDICATION THAT THE WARD IS NO LONGER INCAPACITATED**
26 **EARLIER THAN ONE YEAR AFTER THE ORDER ADJUDICATING**
27 **INCAPACITY WAS ENTERED, UNLESS THE COURT PERMITS IT TO BE**
28 **MADE ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO**
29 **BELIEVE THAT THE WARD IS NO LONGER INCAPACITATED.**

30 **D. AN INTERESTED PERSON SHALL NOT FILE A PETITION TO**
31 **SUBSTITUTE A GUARDIAN EARLIER THAN ONE YEAR AFTER THE**
32 **ORDER ADJUDICATING INCAPACITY WAS ENTERED, UNLESS THE**
33 **COURT PERMITS IT TO BE MADE ON THE BASIS OF AFFIDAVITS THAT**
34 **THERE IS REASON TO BELIEVE THAT THE CURRENT GUARDIAN WILL**
35 **ENDANGER THE WARD'S PHYSICAL, MENTAL, OR EMOTIONAL HEALTH**
36 **IF NOT REMOVED.**

37 **E. TO MODIFY ANY TYPE OF GUARDIANSHIP ORDER, AN**
38 **INTERESTED PERSON SHALL SUBMIT AN AFFIDAVIT OR VERIFIED**
39 **PETITION SETTING FORTH DETAILED FACTS SUPPORTING THE**
40 **REQUESTED MODIFICATION AND SHALL GIVE NOTICE, TOGETHER**
41 **WITH A COPY OF THE AFFIDAVIT OR VERIFIED PETITION, TO OTHER**
42 **PARTIES TO THE PROCEEDING, WHO MAY FILE OPPOSING AFFIDAVITS.**
43 **THE COURT SHALL DENY THE PETITION UNLESS IT FINDS THAT**
44 **ADEQUATE CAUSE FOR HEARING THE PETITION IS ESTABLISHED BY**
45 **THE FILED DOCUMENTS, IN WHICH CASE IT SHALL SET A DATE FOR**

1 **HEARING ON WHY THE REQUESTED MODIFICATION SHOULD NOT BE**
2 **GRANTED.**

3 **CF.** Before removing a guardian, accepting the resignation of a guardian or
4 ordering that a ward's incapacity has terminated, the court, following the same procedures
5 to safeguard the rights of the ward as apply to a petition for appointment of a guardian,
6 may send an investigator to the residence of the present guardian and to the place where
7 the ward resides or is detained to observe conditions and report in writing to the court.

8 Sec. 12. Section 14-5308, Arizona Revised Statutes, is amended to
9 read: **14-5308. Court appointed investigators; qualifications; duties**

10 A. An investigator appointed by the court under sections 14-5303 and
11 14-5407 shall have a background in law, nursing or social work and shall
12 have no personal interest in the proceedings.

13 B. The investigator shall conduct an investigation before the court
14 appoints a guardian or a conservator to allow the court to determine the
15 appropriateness of that appointment. As directed by the court, the
16 investigator shall conduct additional investigations to determine if it is
17 necessary to continue the appointment.

18 C. In conducting investigations the investigator shall:

19 1. Interview the alleged incapacitated person or the protected person
20 and the proposed guardian or conservator.

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

23 3. Interview nursing home or care home care givers and the home's
24 manager or administrator.

25 4. Transport the alleged incapacitated person or the protected person
26 as directed by the court.

27 D. In conducting interviews under this section the investigator may
28 examine any court record, medical record or financial record that relates to
29 the investigation.

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

40 **F. AN INVESTIGATOR APPOINTED BY THE COURT PURSUANT TO**
41 **SECTIONS 14-5303 AND 14-5407 OR ANY PERSON OR ENTITY CLOSELY**
42 **RELATED TO THE INVESTIGATOR SHALL NOT RECEIVE ADDITIONAL**
43 **COMPENSATION OR BE APPOINTED AS A FIDUCIARY, ATTORNEY OR**
44 **PROFESSIONAL IN THE SAME CASE OR FOR THE SAME PERSON WHO**
45 **WAS THE SUBJECT OF THE PRIOR INVESTIGATION. FOR THE**
46 **PURPOSES OF THIS SUBSECTION, "CLOSELY RELATED" INCLUDES A**
47 **SPOUSE, CHILD, PARENT, SIBLING, GRANDPARENT, AUNT, UNCLE OR**

1 **COUSIN OF THE INVESTIGATOR AND ANY BUSINESS, PARTNERSHIP,**
2 **CORPORATION, LIMITED LIABILITY COMPANY, TRUST OR OTHER ENTITY**
3 **IN WHICH THE INVESTIGATOR OR ANY CLOSELY RELATED PERSON HAS**
4 **ANY FINANCIAL INTEREST, IS EMPLOYED OR RECEIVES ANY**
5 **COMPENSATION OR FINANCIAL BENEFIT. THIS SUBSECTION DOES NOT**
6 **APPLY TO A PUBLIC FIDUCIARY.**

7 Sec. 13. Section 14-5311, Arizona Revised Statutes, is amended to read:

8 **14-5311 Who may be guardian; priorities**

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

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

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

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

18 3. The person nominated in the incapacitated person's most recent durable power
19 of attorney.

20 4. The spouse of the incapacitated person.

21 5. An adult child of the incapacitated person.

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

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

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

28 9. If the incapacitated person is a veteran, the spouse of a veteran or the minor
29 child of a veteran, the department of veterans' services.

30 10. A fiduciary, **INCLUDING A PUBLIC FIDUCIARY**, guardian, ~~or~~
31 conservator, **OR OTHER APPROPRIATE PERSON.**

32 C. A person listed in subsection B, paragraph 4, 5, 6, 7 or 8 may nominate in
33 writing a person to serve in that person's place. With respect to persons who have equal
34 priority, the court shall select the one the court determines is best qualified to serve.

35 D. For good cause the court may pass over a person who has priority and appoint
36 a person who has a lower priority or no priority. **GOOD CAUSE INCLUDES THE**
37 **ESTIMATED COST OF THE FIDUCIARY'S FEE AND THE ABILITY OF THE**
38 **WARD TO PAY THE FEE WITHOUT ADVERSELY AFFECTING THE**
39 **WARD'S FINANCIAL ABILITY TO PROVIDE FOR THE WARD'S**
40 **REASONABLE AND NECESSARY LIVING EXPENSES.**

41 Sec. 14. Section 14-5410, Arizona Revised Statutes, is amended to
42 read:

43 **14-5410. Who may be appointed conservator; priorities**

44 A. The court may appoint an individual or a corporation, with general
45 power to serve as trustee, as conservator of the estate of a protected person

1 subject to the requirements of section 14-5106. The following are entitled to
2 consideration for appointment in the order listed:

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

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

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

11 4. The spouse of the protected person.

12 5. An adult child of the protected person.

13 6. A parent of the protected person, or a person nominated by the will of a
14 deceased parent.

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

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

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

21 10. A fiduciary, **INCLUDING A PUBLIC FIDUCIARY**, guardian, ~~or~~
22 conservator, **OR OTHER APPROPRIATE PERSON**.

23 B. A person listed in subsection A, paragraph 4, 5, 6, 7 or 8 of this section
24 may nominate in writing a person to serve in that person's place. With respect to
25 persons having equal priority, the court shall select the one it determines is best
26 qualified to serve. The court, for good cause, may pass over a person having
27 priority and appoint a person having a lower priority or no priority. **GOOD CAUSE**
28 **INCLUDES, BUT IS NOT LIMITED TO, THE ESTIMATED COST OF THE**
29 **FIDUCIARY AND OTHER PROFESSIONAL FEES AND THE ABILITY OF**
30 **THE PROTECTED PERSON TO PAY THE FEE WITHOUT ADVERSELY**
31 **AFFECTING THE PROTECTED PERSON'S FINANCIAL ABILITY TO**
32 **PROVIDE FOR THE PROTECTED PERSON'S REASONABLE AND**
33 **NECESSARY LIVING EXPENSES.**

34 Sec. 15. Section 14-5314, Arizona Revised Statutes, is amended to read:

35 **14-5314. Compensation of appointees; definitions**

36 A. If not otherwise compensated for services rendered, an investigator,
37 accountant, lawyer, physician, registered nurse, psychologist or guardian who is
38 appointed pursuant to this article, including an independent lawyer representing the
39 alleged incapacitated person pursuant to section 14-5303, subsection C, is entitled to
40 reasonable compensation from the estate of the ward if the petition is granted, **AS A**
41 **CLAIM AGAINST THE ESTATE**, or from the petitioner if the petition is denied. **NO**
42 **PAYMENTS FROM THE ESTATE SHALL BE MADE TO THESE PERSONS**
43 **UNTIL THE COURT ENTERS A FINANCIAL ORDER AUTHORIZING**
44 **PAYMENT PURSUANT TO § 14-5304(C)(4).**

45 B. If the petitioner withdraws the petition or if the petition is dismissed because of
46 the petitioner's failure to prosecute, the court may order that the compensation of the

1 investigator, accountant, lawyer, physician, registered nurse, psychologist or guardian
2 appointed pursuant to this article, including an independent lawyer representing the
3 alleged incapacitated person pursuant to section 14-5303, subsection C, be paid either
4 from the ward's estate or by the petitioner, depending on the facts and circumstances. In
5 making this determination, the court may consider any evidence it deems appropriate.

6 C. A lawyer who is employed by the guardian to represent the guardian in the
7 guardian's appointment or duties as guardian is entitled to reasonable compensation from
8 the ward's estate if the petition is granted. If the petitioner withdraws the petition or if the
9 court dismisses the petition because of the petitioner's failure to prosecute, the court may
10 order that the compensation of the proposed guardian's lawyer be paid either from the
11 ward's estate or by the petitioner, depending on the facts and circumstances. In making
12 these determinations, the court may consider any evidence it deems appropriate.

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

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

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

23 G. For the purposes of this section:

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

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

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

28 Sec. 16. Section 14-5404, Arizona Revised Statutes, is amended to read:

29 **14-5404. Original petition for appointment or protective order**

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

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

36 1. The interest of the petitioner.

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

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

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

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

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

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

6 **8. A GOOD FAITH ESTIMATE OF ALL PROJECTED MONTHLY
7 COSTS ASSOCIATED WITH THE CONSERVATORSHIP, EXCEPT MEDICAL
8 COSTS, THAT WILL BE NECESSARY TO CARE FOR THE WARD UNTIL
9 THE FIRST ACCOUNTING IS TIMELY FILED. THE PETITIONER IS
10 REQUIRED ONLY TO ESTIMATE THESE COSTS BASED ON THE
11 INFORMATION REASONABLY KNOWN AT THE TIME THE PETITION IS
12 FILED, INCLUDING INFORMATION OBTAINED FROM ANY
13 CONSERVATOR PROPOSED IN THE PETITION. THE PETITION SHOULD
14 PROVIDE ESTIMATES FOR THE FOLLOWING CATEGORIES OF COSTS:**

- 15 **a. THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF
16 THE WARD;**
- 17 **b. THE AVERAGE MONTHLY COST OF DISCRETIONARY CARE
18 SERVICES FOR THE WARD;**
- 19 **c. THE AVERAGE MONTHLY FIDUCIARY FEES AND EXPENSES
20 EXPECTED TO BE INCURRED BY THE CONSERVATOR;**
- 21 **d. THE AMOUNT OF ATTORNEY FEES INCURRED AND
22 EXPECTED TO BE INCURRED BY ALL APPOINTED
23 ATTORNEYS THROUGH THE ISSUANCE OF A COURT ORDER
24 APPOINTING A CONSERVATOR AS REQUESTED IN THE
25 PETITION;**
- 26 **e. THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES
27 EXPECTED TO BE INCURRED BY ALL APPOINTED
28 ATTORNEYS UNTIL THE APPROVAL OF THE FIRST
29 ACCOUNTING;**
- 30 **f. THE AVERAGE MONTHLY ACCOUNTING FEES AND
31 EXPENSES EXPECTED TO BE INCURRED BY ALL
32 ACCOUNTANTS OR OTHER PROFESSIONALS PREPARING
33 ACCOUNTINGS UNTIL APPROVAL OF THE FIRST
34 ACCOUNTING;**
- 35 **g. THE EXPECTED COST TO PREPARE THE INITIAL INVENTORY
36 AND APPRAISEMENT REQUIRED BY §14-5418; AND**
- 37 **h. THE AVERAGE MONTHLY COSTS OF ALL OTHER
38 MISCELLANEOUS COSTS OR EXPENSES NOT LISTED IN
39 PARAGRAPHS A THROUGH G ABOVE WITH AN
40 EXPLANATION OF THE REQUESTED COST OR EXPENSE.**

41 **IF THE PETITION ALSO SEEKS A GUARDIANSHIP, THE PETITIONER
42 MUST MAKE ADDITIONAL ESTIMATES AS SET FORTH IN § 14-5303(9).**

43
44
45 Sec. 17. Section 14-`, Arizona Revised Statutes, is amended to read:

1 14-5407. Procedure concerning hearing and order on original
2 petition

3 A. On the filing of a petition for appointment of a conservator or any other
4 protective order because of minority, the court shall set a hearing date on the matters
5 alleged in the petition. If, at any time in the proceeding, the court determines that the
6 interests of the minor are or may be inadequately represented, it shall appaoint an
7 attorney to represent the minor. If the minor is at least fourteen years of age the court
8 shall consider the choice of the minor.

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

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

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

29 E. After the hearing, upon findings that a basis for the appointment of a
30 conservator or any other protective order has been established, **AND THAT**
31 **APPOINTMENT OF A PARTICULAR CONSERVATOR IS IN THE BEST**
32 **INTEREST OF THE PROTECTED PERSON CONSIDERING THAT PERSON'S**
33 **NEEDS AND FINANCIAL RESOURCES**, the court shall make an appointment or
34 other appropriate protective order **AND ENTER AN ORDER CONCERNING THE**
35 **OBLIGATIONS OF THE APPOINTED CONSERVATOR AS FOLLOWS:**

36 **1. REQUIRE THE CONSERVATOR TO FILE A BUDGET IN**
37 **COMPLIANCE WITH § 14-5418.01; OR**

38 **2. PROHIBIT THE CONSERVATOR FROM EXPENDING ANY**
39 **AMOUNTS FROM THE ESTATE OF THE PROTECTED PERSON THAT**
40 **EXCEED THE ESTIMATES SET FORTH IN EACH CATEGORY OF THE**
41 **PETITION REQUIRED BY § 14-5404(8), OR OTHER AMOUNT SET BY THE**
42 **COURT, WITHOUT PRIOR COURT ORDER; OR**

43 **3. REQUIRE THE CONSERVATOR TO PROCEED IN ANY OTHER**
44 **MANNER THE COURT FINDS IS IN THE PROTECTED PERSON'S BEST**
45 **INTEREST; AND**

1 **4. PROVIDE WHEN PAYMENT OF THE CONSERVATOR’S FEES AND**
2 **THE FEES OF OTHER PERSONS APPOINTED PURSUANT TO THIS**
3 **ARTICLE MAY COMMENCE.**

4 **THE COURT SHALL ENTER AN ORDER PURSUANT TO SUBSECTION (E)(1)**
5 **IF THE CONSERVATOR IS A LICENSED FIDUCIARY, EXCEPT A PUBLIC**
6 **FIDUCIARY, OR, BASED ON THE INFORMATION REASONABLY KNOWN**
7 **AT THE TIME OF APPOINTMENT, THE FAIR MARKET VALUE OF ESTATE**
8 **ASSETS LESS ESTATE OBLIGATIONS EXCEEDS \$1,000,000 , UNLESS THE**
9 **COURT FINDS THAT THE BEST INTEREST OF THE PROTECTED PERSON**
10 **WOULD NOT BE SERVED BY SUCH AN ORDER.**

11 **F. AFTER A CONSERVATOR HAS BEEN APPOINTED, THE COURT**
12 **MAY DISCHARGE THE PROTECTED PERSON’S ATTORNEY IF THE**
13 **COURT FINDS THAT THE COST OF THE CONTINUED REPRESENTATION**
14 **EXCEEDS THE PROBABLE BENEFIT TO THE PROTECTED PERSON.**
15 **UNTIL DISCHARGED, THE PROTECTED PERSON’S ATTORNEY SHALL**
16 **HAVE A CONTINUING DUTY TO REVIEW THE CONSERVATOR’S**
17 **INVENTORY, PROPOSED BUDGETS, AND ACCOUNTS AND TO NOTIFY**
18 **THE COURT OF ANY OBJECTIONS OR CONCERNS THE ATTORNEY**
19 **IDENTIFIES WITH RESPECT TO THE CONSERVATOR’S INVENTORY,**
20 **PROPOSED BUDGETS, AND ACCOUNTS.**

21 Sec. 18. Section 14-5414, Arizona Revised Statutes, is amended
22 to read:

23 **14-5414. Compensation and expenses; definitions**

24 A. If not otherwise compensated for services rendered, any investigator,
25 accountant, lawyer, physician, registered nurse, psychologist or conservator who is
26 appointed in a protective proceeding, including ~~a~~ **AN INDEPENDENT** lawyer
27 **REPRESENTING** ~~of~~ the person alleged to be in need of protection pursuant to section
28 14-5407, subsection B, is entitled to reasonable compensation from the estate of the
29 protected person if the petition is granted, **AS A CLAIM AGAINST THE ESTATE**, or
30 from the petitioner if the petition is denied. **IF THE COURT ORDERS A BUDGET**
31 **PURSUANT TO 14-5418.01, NO PAYMENTS FROM THE ESTATE SHALL BE**
32 **MADE TO THESE PERSONS UNTIL THE COURT INFORMALLY APPROVES**
33 **OR FORMALLY APPROVES, DISAPPROVES, OR MODIFIES THE INITIAL**
34 **OPERATING BUDGET.**

35 B. If the petitioner withdraws the petition or if the court dismisses the petition
36 because of the petitioner's failure to prosecute, the court may order that the compensation
37 of the investigator, accountant, lawyer, physician, registered nurse, psychologist or
38 conservator who is appointed pursuant to this article, including a lawyer of the person
39 alleged to be in need of protection pursuant to section 14-5407, subsection B, be paid
40 either from the protected person's estate or by the petitioner, depending on the facts and
41 circumstances. In making these determinations, the court may consider any evidence it
42 deems appropriate.

43 C. A lawyer who is employed by the conservator to represent the conservator in
44 the conservator's appointment or duties as conservator is entitled to reasonable
45 compensation from the estate if the petition is granted. If the petitioner withdraws the
46 petition or if the petition is dismissed because of the petitioner's failure to prosecute, the

1 court may order that the compensation of the proposed conservator's lawyer be paid
2 either from the protected person's estate or by the petitioner, depending on the facts and
3 circumstances. In determining which party shall pay, the court may consider any
4 evidence it deems appropriate.

5 D. A lawyer who is employed by the petitioner to represent the petitioner in
6 seeking the appointment of a conservator is entitled to reasonable compensation from the
7 protected person's estate if the petition is granted.

8 E. If the court pays for any of these services it may charge the estate for
9 reasonable compensation. The clerk shall deposit monies it collects in the probate fund
10 pursuant to section 14-5433.

11 F. Compensation payable to the department of veterans' services, when acting as a
12 conservator of the estate of a veteran or a veteran's surviving spouse or minor child or the
13 incapacitated spouse of a protected veteran, shall not be more than five per cent of the
14 amount of monies received during the period covered by the conservatorship. A copy of
15 the petition and notice of hearing shall be given to the proper officer of the veterans
16 administration in the manner provided in the case of any hearing on a guardian's account
17 or any other pleading. A commission or compensation is not allowed on the monies or
18 other assets received from a prior conservator or on the amount received from liquidation
19 of loans or other investments.

20 G. For the purposes of this section:

21 1. "Conservator" includes a conservator, temporary conservator or special
22 conservator.

23 2. "Petition" means a petition filed pursuant to section 14-5401.01, subsection A
24 or section 14-5404, subsection A.

25 3. "Protected person" includes a person who is alleged to be in need of protection.

26 Sec. 19. Section 14-5415, Arizona Revised Statutes, is amended
27 to read:

28 ~~14-5415. Death, Resignation or removal~~ **SUBSTITUTION** of conservator
29 ~~The court may remove a conservator for good cause, upon notice and hearing, or accept~~
30 ~~the resignation of a conservator. After his death, resignation or removal the court may~~
31 ~~appoint another conservator. A conservator so appointed succeeds to the title and powers~~
32 ~~of his predecessor.~~

33 **A. ON PETITION OF THE PROTECTED PERSON OR ANY PERSON**
34 **INTERESTED IN THE PROTECTED PERSON'S WELFARE, OR ON THE**
35 **COURT'S OWN INITIATIVE, THE COURT MAY SUBSTITUTE A**
36 **CONSERVATOR AND APPOINT A SUCCESSOR IF IT IS IN THE BEST**
37 **INTEREST OF THE PROTECTED PERSON. THE COURT NEED NOT FIND**
38 **THAT THE CONSERVATOR ACTED INAPPROPRIATELY TO FIND THAT**
39 **THE SUBSTITUTION IS IN THE PROTECTED PERSON'S BEST INTEREST.**
40 **ON PETITION OF THE CONSERVATOR, THE COURT MAY ACCEPT A**
41 **RESIGNATION AND MAKE ANY OTHER ORDER WHICH MAY BE**
42 **APPROPRIATE. THE CONSERVATOR SHALL NOT BE COMPENSATED**
43 **FROM THE PROTECTED PERSON'S ESTATE FOR DEFENDING AGAINST A**
44 **PETITION FOR SUBSTITUTION UNLESS AUTHORIZED BY COURT.**

45 **B. UPON ENTERING A PROTECTIVE ORDER, AND AFTER**
46 **CONSIDERING THE REASONABLENESS OF THE POSITIONS TAKEN BY**

1 THE LITIGANTS, THE STRENGTH OF THE EVIDENCE PRESENTED,
2 INCLUDING THE PROBABILITY THAT THE NEED FOR PROTECTION OF
3 THE PROTECTED PERSON MAY BE REMOVED IN THE FUTURE, THE
4 BENEFITS TO AND BEST INTEREST OF THE PROTECTED PERSON, THE
5 EXPECTED COST TO THE PROTECTED PERSON'S ESTATE, AND SUCH
6 OTHER RELEVANT FACTORS DETERMINED BY THE COURT, A
7 PROTECTIVE ORDER, OR SEPARATE ORDER, MAY SPECIFY A MINIMUM
8 PERIOD, NOT EXCEEDING ONE YEAR, DURING WHICH NO PETITION
9 FOR AN ADJUDICATION THAT THE PROTECTED PERSON IS NO LONGER
10 IN NEED OF PROTECTION OR FOR SUBSTITUTION OF A CONSERVATOR
11 MAY BE FILED BY ANY PERSON OTHER THAN THE PROTECTED PERSON
12 WITHOUT SPECIAL LEAVE OF THE COURT. THE PROTECTED PERSON
13 MAY PETITION THE COURT FOR AN ORDER THAT THE PROTECTED
14 PERSON IS NO LONGER IN NEED OF PROTECTION AND FOR THE
15 REMOVAL OF THE CONSERVATOR OR PETITION FOR SUBSTITUTION OF
16 THE CONSERVATOR AT ANY TIME. A REQUEST FOR THIS ORDER MAY
17 BE MADE BY INFORMAL LETTER TO THE COURT OR JUDGE. ANY
18 PERSON WHO KNOWINGLY INTERFERES WITH THE TRANSMISSION OF
19 THIS REQUEST MAY BE FOUND IN CONTEMPT OF COURT.

20 C. AN INTERESTED PERSON SHALL NOT FILE A PETITION FOR
21 ADJUDICATION THAT THE PROTECTED PERSON IS NO LONGER IN NEED
22 OF PROTECTION EARLIER THAN ONE YEAR AFTER THE ENTRY OF A
23 PROTECTIVE ORDER, UNLESS THE COURT PERMITS IT TO BE MADE ON
24 THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO BELIEVE THAT
25 THE PROTECTED PERSON IS NO LONGER IN NEED OF PROTECTION.

26 D. AN INTERESTED PERSON SHALL NOT FILE A PETITION TO
27 SUBSTITUTE A CONSERVATOR EARLIER THAN ONE YEAR AFTER THE
28 ENTRY OF A PROTECTIVE ORDER, UNLESS THE COURT PERMITS IT TO
29 BE MADE ON THE BASIS OF AFFIDAVITS THAT THERE IS REASON TO
30 BELIEVE THAT THE CURRENT CONSERVATOR WILL ENDANGER THE
31 PROTECTED PERSON'S ESTATE IF NOT SUBSTITUTED.

32 E. TO MODIFY ANY TYPE OF CONSERVATORSHIP ORDER, AN
33 INTERESTED PERSON SHALL SUBMIT AN AFFIDAVIT OR VERIFIED
34 PETITION SETTING FORTH DETAILED FACTS SUPPORTING THE
35 REQUESTED MODIFICATION AND SHALL GIVE NOTICE, TOGETHER
36 WITH A COPY OF THE AFFIDAVIT OR VERIFIED PETITION, TO OTHER
37 PARTIES TO THE PROCEEDING, WHO MAY FILE OPPOSING AFFIDAVITS.
38 THE COURT SHALL DENY THE PETITION UNLESS IT FINDS THAT
39 ADEQUATE CAUSE FOR HEARING THE PETITION IS ESTABLISHED BY
40 THE FILED DOCUMENTS, IN WHICH CASE IT SHALL SET A DATE FOR
41 HEARING ON WHY THE REQUESTED MODIFICATION SHOULD NOT BE
42 GRANTED.

43 F. BEFORE ORDERING THAT NEED FOR PROTECTION NO
44 LONGER EXISTS, SUBSTITUTING A CONSERVATOR, OR ACCEPTING THE
45 RESIGNATION OF A CONSERVATOR, THE COURT, FOLLOWING THE
46 SAME PROCEDURES TO SAFEGUARD THE RIGHTS OF THE PROTECTED

1 **PERSON AS APPLY TO A PETITION FOR APPOINTMENT OF A**
2 **CONSERVATOR, MAY REQUIRE APPROPRIATE ACCOUNTS AND ENTER**
3 **APPROPRIATE ORDERS TO PRESERVE AND PROTECT THE ASSETS OF**
4 **THE ESTATE, TO REQUIRE REIMBURSEMENT OR PAYMENT AS NEEDED,**
5 **AND TO TRANSFER ASSETS OR TITLE THERETO TO APPROPRIATE**
6 **SUCCESSORS.**

7 Sec. 20. Section 14-5418, Arizona Revised Statutes, is amended
8 to read:

9 **14-5418. Inventory and records**

10 A. Within ~~ninety~~ **SIXTY** days after appointment, a conservator shall prepare and
11 file with the court an inventory of the **ASSETS AND LIABILITIES OF estate**
12 ~~owned by~~ the protected person on the date of the conservator's appointment, listing it
13 with reasonable detail and indicating the fair market value **OF EACH ASSET AND**
14 **AMOUNT OF EACH LIABILITY** as of the date of appointment ~~of each item~~
15 ~~listed~~.

16 B. The conservator shall provide a copy of the inventory to the protected person if
17 the protected person can be located, has attained the age of fourteen years, and has
18 sufficient mental capacity to understand these matters, and to any parent or guardian with
19 whom the protected person resides. The conservator shall keep suitable records of the
20 conservator's administration and exhibit the records on request of any interested person.

21 **C. UNLESS OTHERWISE ORDERED BY THE COURT, A PERSON**
22 **ENTITLED TO NOTICE OF THE CONSERVATOR'S ANNUAL ACCOUNT**
23 **UNDER § 14-5419(C) MAY REQUEST IN WRITING THAT THE**
24 **CONSERVATOR:**

25 **1. ALLOW THE PERSON TO VIEW THE PROTECTED PERSON'S**
26 **FINANCIAL RECORDS, THE CONSERVATOR'S BILLING STATEMENTS,**
27 **THE BILLING STATEMENTS OF THE CONSERVATOR'S ATTORNEY, OR**
28 **OTHER RECORDS RELATED TO THE PROTECTED PERSON UNDER THE**
29 **CONSERVATOR'S CONTROL, OR;**

30 **2. PROVIDE THE REQUESTING PERSON WITH COPIES OF THESE**
31 **DOCUMENTS. UNLESS OTHERWISE ORDERED BY THE COURT, THE**
32 **CONSERVATOR SHALL ALLOW VIEWING OR PROVIDE COPIES OF THE**
33 **REQUESTED DOCUMENTS AS SOON AS PRACTICABLE BUT NO LATER**
34 **THAN WITHIN 30 DAYS OF RECEIVING SUCH REQUEST. THE PARTY**
35 **REQUESTING COPIES SHALL PAY THE REASONABLE COPYING COSTS.**

36 Sec. 21. Title 14, chapter 5, article 4, Arizona Revised Statutes, is amended by
37 adding section 14-5418.01, to read:

38 **14-5418.01. Annual Operating Budgets**

39 **A. IF ORDERED BY THE COURT, THE CONSERVATOR SHALL**
40 **PREPARE AND FILE A PROPOSED ANNUAL OPERATING BUDGET FOR**
41 **THE ADMINISTRATION OF THE CONSERVATORSHIP ESTATE NO LATER**
42 **THAN SIXTY DAYS AFTER THE CONSERVATOR'S APPOINTMENT, AND**
43 **ANNUALLY ON THE ANNIVERSARY OF THE CONSERVATOR'S**
44 **APPOINTMENT, ~~THE CONSERVATOR,~~ AFTER CONSULTING WITH THE**
45 **PROTECTED PERSON'S ATTORNEY AND ANY GUARDIAN AD LITEM FOR**
46 **THE PROTECTED PERSON, ~~SHALL PREPARE AND FILE WITH THE~~**

1 | ~~COURT A PROPOSED ANNUAL OPERATING BUDGET FOR THE~~
2 | ~~ADMINISTRATION OF THE CONSERVATORSHIP ESTATE. THE FIRST~~
3 | ANNUAL OPERATING BUDGET SHALL COVER THE DATE OF THE
4 | CONSERVATOR'S INITIAL APPOINTMENT THROUGH AND INCLUDING
5 | THE END DATE OF THE CONSERVATOR'S FIRST ACCOUNTING PERIOD.

6 | **B. THE PROPOSED ANNUAL OPERATING BUDGET REQUIRED BY**
7 | **THIS SECTION SHALL BE FILED IN A FORMAT PRESCRIBED BY THE**
8 | **SUPREME COURT AND SHALL, AT A MINIMUM, CONTAIN CATEGORIES**
9 | **FOR FIDUCIARY FEES AND ATTORNEY FEES.**

10 | **C. AT THE TIME THE CONSERVATOR FILES THE ANNUAL**
11 | **OPERATING BUDGET WITH THE COURT, THE CONSERVATOR SHALL**
12 | **SIMULTANEOUSLY PROVIDE A COPY OF THE PROPOSED ANNUAL**
13 | **OPERATING BUDGET TO ALL PERSONS ENTITLED TO NOTICE OF THE**
14 | **CONSERVATOR'S ACCOUNTS PURSUANT TO §14-5419, SUBSECTION C.**

15 | **D. THE CONSERVATOR SHALL FILE A PROPOSED AMENDMENT**
16 | **TO THE OPERATING BUDGET WITH THE COURT AND SHALL PROVIDE A**
17 | **COPY OF SUCH PROPOSED AMENDMENT TO ALL PERSONS ENTITLED**
18 | **TO A COPY OF THE PROPOSED ANNUAL OPERATING BUDGET WITHIN**
19 | **THIRTY DAYS OF THE CONSERVATOR REASONABLY PROJECTING**
20 | **THAT THE EXPENDITURES FOR ANY SPECIFIC CATEGORY WILL**
21 | **EXCEED THE APPROVED BUDGET BY MORE THAN TEN PERCENT OR**
22 | **TWO THOUSAND DOLLARS, WHICHEVER IS GREATER, UNLESS A**
23 | **DIFFERENT THRESHOLD FOR AMENDMENT IS SET BY THE COURT.**

24 | **E. UNLESS OTHERWISE ORDERED BY THE COURT, A PROPOSED**
25 | **ANNUAL OPERATING BUDGET, INCLUDING A PROPOSED AMENDMENT,**
26 | **SHALL BE DEEMED INFORMALLY APPROVED AS FILED UNLESS WITHIN**
27 | **FOURTEEN DAYS OF THE FILING DATE THE COURT SETS THE**
28 | **PROPOSED BUDGET OR PROPOSED AMENDMENT FOR HEARING, OR AN**
29 | **INTERESTED PERSON FILES WITH THE COURT A WRITTEN OBJECTION**
30 | **SPECIFYING THE CATEGORIES THAT ARE BEING CHALLENGED AND**
31 | **THE BASIS OF SUCH CHALLENGE. UPON THE FILING OF A WRITTEN**
32 | **OBJECTION, THE COURT MAY OVERRULE ALL OR PART OF THE**
33 | **OBJECTION, ORDER A REPLY BY THE CONSERVATOR, OR SET A**
34 | **HEARING ON THE REMAINING OBJECTION. FOLLOWING A REPLY OR**
35 | **HEARING, THE COURT MAY FORMALLY APPROVE, DISAPPROVE OR**
36 | **MODIFY THE PROPOSED BUDGET OR PROPOSED AMENDMENT AS THE**
37 | **COURT DEEMS IN THE PROTECTED PERSON'S BEST INTEREST. AT**
38 | **HEARING, THE CONSERVATOR SHALL HAVE THE BURDEN TO PROVE**
39 | **THAT THE CONTESTED BUDGET ITEM IS REASONABLE, NECESSARY,**
40 | **AND IN THE BEST INTEREST OF THE PROTECTED PERSON.**

41 | **F. IF THE COURT FINDS IT IS IN THE BEST INTEREST OF THE**
42 | **PROTECTED PERSON, THE COURT MAY IMPOSE RESTRICTIONS ON THE**
43 | **POWERS, DUTIES, AND EXPENDITURES OF THE CONSERVATOR DURING**
44 | **ANY PERIOD BEFORE A BUDGET IS FORMALLY OR INFORMALLY**
45 | **APPROVED.**

1 Sec. 22. Section 14-5419, Arizona Revised Statutes, is amended
2 to read:

3 **14-5419. Accounts; definition**

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

10 **B. IF, DURING THE PERIOD COVERED BY THE CONSERVATOR'S**
11 **ACCOUNT, THE EXPENDITURES IN A CATEGORY EXCEED THE**
12 **APPROVED BUDGET FOR THAT CATEGORY BY MORE THAN THE**
13 **THRESHOLD FOR AMENDMENT, THE EXPENDITURES IN EXCESS OF THE**
14 **THRESHOLD FOR AMENDMENT ARE PRESUMED NOT REASONABLE OR**
15 **NECESSARY. IF THE EXPENDITURES IN A CATEGORY DO NOT EXCEED**
16 **THE APPROVED BUDGET FOR THAT CATEGORY BY MORE THAN THE**
17 **THRESHOLD FOR AMENDMENT, THE EXPENDITURES FOR THAT**
18 **CATEGORY ARE PRESUMED REASONABLE AND NECESSARY. THE**
19 **PRESUMPTION SET FORTH IN THIS SUBSECTION MAY BE REBUTTED BY**
20 **A PREPONDERANCE OF THE EVIDENCE. FOR PURPOSES OF THIS**
21 **SUBSECTION, "THRESHOLD FOR AMENDMENT" MEANS TEN PERCENT**
22 **OF THE EXPENDITURE CATEGORY OR TWO THOUSAND DOLLARS,**
23 **WHICHEVER IS GREATER, UNLESS A DIFFERENT THRESHOLD IS SET BY**
24 **THE COURT.**

25 ~~B.C.~~ The court may take any appropriate action on filing of annual or other
26 accounts. In connection with any account, the court may require a conservator to submit
27 to a physical check of the estate in the conservator's control, to be made in any manner
28 the court may specify.

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

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

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

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

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

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

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

18 3. The conservator has delivered a copy of a closing statement to the protected
19 person's successors. The conservator shall attach a copy of the closing statement to the
20 statement.

21 **G.H.** The closing statement that is to be delivered to the protected person's
22 successors shall be a verified statement stating the following:

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

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

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

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

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

35 6. The conservator, by the closing statement, shall inform the protected person's
36 successors that if they waive court review of the conservator's final account, the
37 conservatorship will be terminated, the conservator will be discharged from all liabilities
38 relating to the conservatorship, the bond or other security posted by the conservator will
39 be exonerated and any restrictions previously imposed on the assets of the
40 conservatorship will be lifted.

41 **H.I.** The conservator shall file an affidavit with the court that states that the
42 closing statement was sent or delivered to the protected person's successors on a date
43 before the date that the protected person's successors signed the written waiver.

44 **I.J.** Unless proceedings are pending against the conservator, on the filing of the
45 statement described in subsection F of this section and the affidavit described in
46 subsection H of this section, the court shall enter an order terminating the

1 conservatorship, discharging the conservator from all liabilities relating to the
2 conservatorship, exonerating and releasing any bond or other security posted by the
3 conservator and releasing any restrictions previously imposed on the assets of the
4 conservatorship.

5 ~~J~~K. For the purposes of this section, "protected person's successors" means:

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

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

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

14 Renumber to conform

15 Amend title to conform
16
17
18