WEST VIRGINIA CODE CHAPTER 44A ARTICLE 4

WV Legislature

§44A-4-1. Termination of appointment of guardian or conservator.

(a) The appointment of a guardian or conservator shall terminate upon the death, resignation or removal of the guardian or conservator.

(b) The appointment further terminates upon the death of the protected person. The guardian or conservator shall file the certified death certificate of the protected person with the circuit clerk with a final report or accounting.

(c) A guardianship or conservatorship shall terminate whenever jurisdiction is transferred to another state or if ordered by the court following a hearing on the petition of any interested person.

(d) In the case of a missing person, a conservatorship shall terminate when the missing person is located or when the person's death is established by the production of a certified death certificate, or the person is presumed dead pursuant to the provisions of article nine, chapter forty-four of this code.

(e) The court or the mental hygiene commissioner shall prepare a termination order dismissing the guardianship or conservatorship case and discharging any bond posted by the guardian or conservator.

(f) A termination of an appointment does not affect the liability of a guardian or conservator for prior acts or the responsibility of a conservator to account for the estate of the protected person.

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§44A-4-2. Appointment of successor guardian or conservator.

The court may appoint a successor guardian or conservator prior to or at the time of a termination. A successor guardian appointed prior to a termination shall be immediately empowered to assume the duties of office but shall be required to file the requisite oath, post any required bond, and complete mandatory education, if required by the court, within thirty days of the termination of the predecessor. A successor guardian or conservator shall succeed to the powers and duties of the predecessor unless otherwise ordered by the court.

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§44A-4-3. Resignation of guardian or conservator.

A guardian or conservator shall petition the court for permission to resign at least sixty days prior to the effective date of resignation. The court shall grant the permission to resign, except for good cause, and, pursuant to the provisions of section two of this article, shall appoint a suitable successor who is willing to serve.

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§44A-4-4. Removal of guardian or conservator.

Upon the petition of any interested person or upon the motion of the court, the court may remove a guardian or conservator or order other appropriate relief if the guardian or conservator:

(1) Is acting under an order entered pursuant to material misrepresentation or mistake, whether fraudulent or innocent;

(2) Has an incapacity or illness, including substance abuse, which affects his or her fitness to perform or is adjudged to be a protected person in this or in any other jurisdiction;

(3) Is convicted of a crime which reflects upon his or her fitness to perform;

(4) Wastes or mismanages the estate, unreasonably withholds distributions or makes distributions in a negligent or reckless manner or otherwise abuses powers or fails to discharge duties;

(5) Neglects the care and custody of the protected person or legal dependents;

(6) Has an interest adverse to the faithful performance of duties such that there is a substantial risk that the guardian or conservator will fail to properly perform those duties;

(7) Fails to file reports or accountings when required, or fails to comply with any court order;

(8) Fails to file sufficient bond after being ordered by the court to do so;

(9) Avoids service of process or notice;

(10) Becomes incapable of performing duties; or

(11) Is not acting in the best interests of the protected person or of the estate, with or without fault. The court may appoint a temporary guardian pending a determination on a petition for removal of a guardian or conservator.

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§44A-4-5. Duty of guardian or conservator subsequent to death of protected person.

In the absence of an advanced directive, such as a will, living will or power of attorney, or preneed burial or cremation contract, after the death of the protected person, a guardian or a conservator, if there is no guardian, shall continue to have authority to make decisions regarding the body of the deceased protected person for the purposes of authorizing an autopsy and making funeral arrangements. The guardian's or conservator's authority shall continue until an executor or executrix or an administrator or administratrix has been appointed.

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§44A-4-6. Petition for termination, revocation or modification; standards.

(a) Upon a petition filed pursuant to this section, or upon a petition for a writ of habeas corpus, duly filed, the court may terminate the appointment of a guardian or conservator.

(b) Upon petition by the protected person, by the guardian or conservator, by any other interested person, or upon the motion of the court, the court may terminate a guardianship, conservatorship, or both, or modify the type of appointment or the areas of protection, management or assistance previously granted. Such termination, revocation or modification may be ordered if:

(1) The protected person is no longer in need of the assistance or protection of a guardian or conservator;

(2) The extent of protection, management or assistance previously granted is either excessive or insufficient considering the current need therefor;

(3) The protected person's understanding or capacity to manage the estate and financial affairs or to provide for his or her health, care or safety has so changed as to warrant such action;

(4) No suitable guardian or conservator can be secured who is willing to exercise the assigned duties; or

(5) It is otherwise in the best interest of the protected person.

(c) In making a determination under this section, the court shall appoint legal counsel for the protected person and may appoint such other persons whom it deems qualified to make such evaluations as it shall determine appropriate.

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§44A-4-7. Hearing on petition to terminate, revoke or modify.

A hearing on a petition to terminate, revoke or modify shall be conducted with the same notice and in the same manner and the protected person shall have the same rights as the protected person would obtain at a hearing on a petition for the appointment of a guardian or conservator. The protected person and the guardian or conservator shall attend the hearing except for good cause shown.

WV Legislature