## 4. PROTECTION OF PROPERTY OF PROTECTED PERSON [Details]

Section 15-17-103 provides that parts 1 to 4 of this article, as repealed and reenacted effective January 1, 2001, apply to any and all estates, trusts, or protective proceedings whether created or filed prior to or on or after January 1, 2001.

**Law reviews:** For article, "Statutory Custodianship Trusts", see 13 Colo. Law. 786 (1984); for article, "The Revocable Living Trust Revisited", see 18 Colo. Law. 225 (1989); for article, "Trust Protection of Personal Injury Recoveries from Public Creditors", see 19 Colo. Law. 2187 (1990); for article, "Personal Injury Settlements With Minors", see 21 Colo. Law. 1167 (1992); for article, "Avoiding Living Probate", see 27 Colo. Law. 5 (March 1998); for article, "Highlights of Colorado's New Guardianship and Conservatorship Laws", see 30 Colo. Law. 5 (Jan. 2001); for article, "Personal Injury and Workers' Compensation Settlements for Incapacitated Persons: Part I", see 30 Colo. Law. 43 (Jan. 2001); for article, "Personal Injury and Workers' Compensation Settlements for Incapacitated Persons: Part II", see 30 Colo. Law. 56 (Feb. 2001); for article, "Estate Planning Considerations when Distributing Assets from a Conservatorship Estate", see 32 Colo. Law. 55 (Aug. 2003); for article, "The Basics on Juveniles in Probate Court for Protective Proceedings", see 36 Colo. Law. 15 (Feb. 2007); for article, "Practical Solutions to Elder Financial Abuse and Fiduciary Theft", see 41 Colo. Law. 61 (Dec. 2012).

## § 15-14-401. Protective proceeding

(1) Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this part 4 in relation to the estate and affairs of:

(a) A minor, if the court determines that the minor owns money or property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be put at risk or prevented because of the minor's age, or that money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or

(b) Any individual, including a minor, if the court determines that, for reasons other than age:

(I) By clear and convincing evidence, the individual is unable to manage property and business affairs because the individual is unable to effectively receive or evaluate information or both or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance, or because the individual is missing, detained, or unable to return to the United States; and

(II) 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.

(L. 2000: Entire part R&RE, p. 1802, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former § 15-14-401 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Determination of Heirship by Special Proceedings and Temporary Conservationship", see 14 Colo. Law. 1781 (1985). For article, "Adult Guardianships: Protection of Constitutional Rights", see 15 Colo. Law. 820 (1986). For article, "Ethical Obligations of Petitioners' Counsel in Guardianship and Conservator Cases", see 24 Colo. Law. 2565 (1995). For article, "Legal Guidelines and Methods for Evaluating Capacity", see 32 Colo. Law. 65 (June 2003).

**Annotator's note.** Since § 15-14-401 is similar to § 15-14-401 as it existed prior to the 2000 repeal and reenactment of this part 4, relevant cases construing that provision have been included in the annotation to this section.

**The trial court has a broad discretion in all matters relating to protected persons,** which is exclusive. Sweeney v. Summers, 194 Colo. 149, 571 P.2d 1067 (1977).

**A conservator may be appointed for a person other than a minor** only if court makes specific factual finding that the ability to manage property is impaired. In re Estate of Hickle v. Carney, 748 P.2d 360 (Colo. App. 1987).

**The appointment of a conservator under this section does not include a finding of "incapacity."** In re Estate of Gallavan, 89 P.3d 521 (Colo. App. 2004).

**Statute does not require medical evidence** to make a proper determination of whether a person is impaired. A court can appoint a conservator without medical evidence of an impairment if the other requirements are met. Neher v. Neher, 2015 COA 103, 402 P.3d 1030.

**Applied** in Jenkins v. Mesa County Dist. Court, 620 P.2d 721 (Colo. 1980).

## § 15-14-402. Jurisdiction over business affairs of protected person

(1) After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(a) Exclusive jurisdiction to determine the need for a conservatorship or other protective order;

(b) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state must be managed, expended, or distributed to or for the use of the protected person, individuals who are in fact dependent upon the protected person, or other claimants; and

(c) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and questions of title concerning assets of the estate.

(L. 2000: Entire part R&RE, p. 1802, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former § 15-14-402 as it existed prior to 2001.

**ANNOTATION**

**Applied** in Jenkins v. Mesa County Dist. Court, 620 P.2d 721 (Colo. 1980) (decided prior to 2000 repeal and reenactment).

## § 15-14-403. Original petition for appointment or protective order

(1) The following may petition for the appointment of a conservator or for any other appropriate protective order:

(a) The person to be protected;

(b) An individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian; or

(c) A person who would be adversely affected by lack of effective management of the property and business affairs of the person to be protected.

(2) A petition under subsection (1) of this section must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

(a) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the respondent will reside if the appointment is made;

(b) If the petition alleges impairment in the respondent's ability to effectively receive and evaluate information, a brief description of the nature and extent of the respondent's alleged impairment;

(c) If the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts;

(d)

(I) The name and address of the respondent's:

(A) Spouse or, if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition; and

(B) Adult children and parents; or

(II) If the respondent has neither spouse, adult child, nor parent, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;

(e) The name and address of each person responsible for care or custody of the respondent, including the respondent's treating physician;

(f) The name and address of each legal representative of the respondent;

(g) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(h) The reason why a conservatorship or other protective order is in the best interest of the respondent.

(3) If a conservatorship is requested, the petition must also set forth to the extent known:

(a) The name and address of each proposed conservator and the reason why the proposed conservator should be selected;

(b) The name and address of each person nominated as conservator by the respondent if the respondent has attained twelve years of age; and

(c) The type of conservatorship requested and, if an unlimited conservatorship, the reason why limited conservatorship is inappropriate or, if a limited conservatorship, the property to be placed under the conservator's control and any limitation on the conservator's powers and duties.

(L. 2000: Entire part R&RE, p. 1803, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-404 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "Effect of Appointment of Conservator on Joint Tenancy Title", see 12 Colo. Law. 1237 (1983). For article, "The Self-Interested Fiduciary: Implications in Guardianship and Conservatorship Law", see 24 Colo. Law. 2181 (1995).

**Section 13-90-102 is inapplicable to a voluntary estate proceeding** under this section. Patterson v. Pitoniak, 173 Colo. 454, 480 P.2d 579 (1971)(case decided prior to the earliest source this section).

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## § 15-14-404. Notice

(1) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent, if the respondent has attained twelve years of age, but if the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection (1) is jurisdictional and thus precludes the court from granting the petition.

(2) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection (2) does not preclude the appointment of a conservator or the making of another protective order.

(3) Notice of the hearing on a petition for an order after appointment of a conservator or making of another protective order, together with a copy of the petition, must be given to the protected person, if the protected person has attained twelve years of age and is not missing, detained, or unable to return to the United States, any conservator of the protected person's estate, and any other person as ordered by the court.

(4) A conservator shall give notice of the filing of the conservator's inventory, report, or plan of conservatorship, together with a copy of the inventory, report, or plan of conservatorship to the protected person and any other person the court directs. The notice must be delivered or sent within ten days after the filing of the inventory, report, or plan of conservatorship.

(L. 2000: Entire part R&RE, p. 1804, § 1, effective January 1, 2001 (see §15-17-103). L. 2001: (1) amended, p. 889, § 8, effective June 1.)

This section is similar to former §15-14-405 as it existed prior to 2001.

## § 15-14-405. Original petition - minors - preliminaries to hearing

(1) Upon the filing of a petition to establish a conservatorship or for another protective order for the reason that the respondent is a minor, the court shall set a date for hearing. If the court determines at any stage of the proceeding that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained twelve years of age.

(2) 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 minor as may be required for the support of the minor or individuals who are in fact dependent upon the minor. The court may appoint a special conservator to assist in that task.

(L. 2000: Entire part R&RE, p. 1805, § 1, effective January 1, 2001 (see §15-17-103).)

## § 15-14-406. Original petition - persons under disability - preliminaries to hearing

(1) 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. The court shall appoint a visitor unless the petition does not request the appointment of a conservator and the respondent is represented by a lawyer. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be a person who has such training or experience as the court deems appropriate.

(2) The court shall appoint a lawyer to represent the respondent in the proceeding if:

(a) Requested by the respondent;

(b) Recommended by the visitor; or

(c) The court determines that the respondent needs representation.

(3) The visitor shall interview the respondent in person and, to the extent that the respondent is able to understand:

(a) Explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;

(b) 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;

(c) 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

(d) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate unless the court directs otherwise.

(4) In addition to the duties imposed by subsection (3) of this section, the visitor shall:

(a) Interview the petitioner and the proposed conservator, if any; and

(b) Make any other investigation the court directs.

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

(a) A recommendation as to whether a lawyer should be appointed to represent the respondent and whether a guardian ad litem should be appointed to represent the respondent's best interest;

(b) 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;

(c) A statement of the qualifications of the proposed conservator, together with a statement as to whether the respondent approves or disapproves of:

(I) The proposed conservator;

(II) The powers and duties proposed; and

(III) The scope of the conservatorship;

(d) A recommendation as to whether a professional evaluation or further evaluation is necessary; and

(e) Any other matters the court directs.

(6) 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 issue 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. The court may appoint a special conservator to assist in that task.

(7) Repealed.

(Amended by 2013 Ch. 190, §7, eff. 8/7/2013. L. 2000: Entire part R&RE, p. 1805, § 1, effective January 1, 2001 (see §15-17-103). L. 2013: (6) amended and (7) repealed, (SB 13-077), ch. 190, p. 771, § 7, effective August 7.)

## § 15-14-406.5. Professional evaluation

(1) At or before a hearing under this part 4, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless the court directs otherwise, the report must contain:

(a) A description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any;

(b) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(c) A prognosis for improvement and a recommendation as to the appropriate treatment of habilitation plan; and

(d) The date of any assessment or examination upon which the report is based.

(Added by 2013 Ch. 190, §8, eff. 8/7/2013. L. 2013: Entire section added, (SB 13-077), ch. 190, p. 771, § 8, effective August 7.)

## § 15-14-408. Original petition - procedure at hearing

(1) Unless excused by the court for good cause, a proposed conservator shall attend the hearing. The respondent shall attend the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the visitor, and otherwise participate in the hearing. The hearing may be held in a manner that reasonably accommodates the respondent and may be closed upon request of the respondent, or upon a showing of good cause; except that the hearing may not be closed over the objection of the respondent.

(2) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

(3) The petitioner shall make every reasonable effort to secure the respondent's attendance at the hearing.

(L. 2000: Entire part R&RE, p. 1807, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-407 as it existed prior to 2001.

**§ 15-14-409. Original petition - orders**

(1) If a proceeding is brought for the reason that the respondent is a minor, after a hearing on the petition, upon finding that the appointment of a conservator or other protective order is in the best interest of the minor, the court shall make an appointment or other appropriate protective order.

(2) If a proceeding is brought for reasons other than that the respondent is a minor, after a hearing on the petition, upon finding that a basis exists for a conservatorship or other protective order, the court shall make the least restrictive order consistent with its findings. The court shall make orders necessitated by the protected person's limitations and demonstrated needs, including appointive and other orders that will encourage the development of maximum self-reliance and independence of the protected person.

(3) Within thirty days after an appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained twelve years of age and is not missing, detained, or unable to return to the United States, and to all other persons given notice of the petition.

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

(L. 2000: Entire part R&RE, p. 1807, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-407 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "Effect of Appointment of Conservator on Joint Tenancy Title", see 12 Colo. Law. 1237 (1983). For article, "Determination of Heirship by Special Proceedings and Temporary Conservationship", see 14 Colo. Law. 1781 (1985). For article, "Appointment of Temporary Conservators: Their Ethical and Legal Imperatives", see 25 Colo. Law. 53 (Dec. 1996).

**Findings that warrant appointment of a conservator under this section do not equate to a determination of testamentary incapacity.** In re Estate of Gallavan, 89 P.3d 521 (Colo. App. 2004); In re Estate of Romero, 126 P.3d 228 (Colo. App. 2005).

**§ 15-14-410. Powers of court**

(1) After hearing and upon determining that a basis for a conservatorship or other protective order exists, the court has the following powers, which may be exercised directly or through a conservator:

(a) With respect to a minor for reasons of age, all the powers over the estate and business affairs of the minor that may be necessary for the best interest of the minor and members of the minor's immediate family; and

(b) With respect to an adult, or to a minor for reasons other than age, for the benefit of the protected person and individuals who are in fact dependent on the protected person for support, all the powers over the estate and business affairs of the protected person that the person could exercise if the person were an adult, present, and not under conservatorship or other protective order.

(2) Subject to section 15-14-110 requiring endorsement of limitations on the letters of office, the court may limit at any time the powers of a conservator otherwise conferred and may remove or modify any limitation.

(L. 2000: Entire part R&RE, p. 1808, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-408 as it existed prior to 2001.

**§ 15-14-411. Required court approval**

(1) After notice to interested persons and upon express authorization of the court, a conservator may:

(a) Make gifts, except as otherwise provided in section 15-14-427(2);

(b) Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(c) Exercise or release a power of appointment;

(d) Create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;

(e) Exercise rights to elect options and change beneficiaries under retirement plans, insurance policies, and annuities or surrender the plans, policies, and annuities for their cash value;

(f) Exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and

(g) Make, amend, or revoke the protected person's will.

(2) A conservator, in making, amending, or revoking the protected person's will, shall comply with section 15-11-502 or 15-11-507.

(3) The court, in exercising or in approving a conservator's exercise of the powers listed in subsection (1) of this section, shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. To the extent the decision cannot be ascertained, the court shall consider the best interest of the protected person. The court shall also consider:

(a) The financial needs of the protected person and the needs of individuals who are in fact dependent on the protected person for support and the interest of creditors;

(b) Possible reduction of income, estate, inheritance, or other tax liabilities;

(c) Eligibility for governmental assistance;

(d) The protected person's previous pattern of giving or level of support;

(e) The existing estate plan;

(f) The protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and

(g) Any other factors the court considers relevant, including the best interest of the protected person.

(L. 2000: Entire part R&RE, p. 1808, § 1, effective January 1, 2001 (see §15-17-103).)

**ANNOTATION**

**Law reviews.** For article, "Will Preparation for Individuals Lacking Testamentary Capacity", see 33 Colo. Law. 93 (Aug. 2004). For article, "Conservator-Created Wills: Issues in Litigation", see 44 Colo. Law. 53 (Aug. 2015).

## § 15-14-412. Protective arrangements and single transactions

(1) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may:

(a) Authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:

(I) Payment, delivery, deposit, or retention of funds or property;

(II) Sale, mortgage, lease, or other transfer of property;

(III) Purchase of an annuity;

(IV) Making a contract for life care, deposit contract, or contract for training and education; or

(V) Addition to or establishment of a suitable trust, including a trust created under the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; and

(b) Authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of, and distribution of settlement of, a claim, upon determining that it is in the best interest of the protected person.

(2) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in section 15-14-411(3).

(3)

(a) The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The special conservator has the authority conferred by the order and shall serve until discharged by order after report to the court.

(b) If the court appoints a special conservator without notice to the respondent, protected person, or any other person entitled to notice pursuant to section 15-14-404(2) and the person appointed is a professional without priority to serve pursuant to section 15-14-413 or a public administrator pursuant to section 15-12-622 , the court shall, upon entry of the order of appointment of special conservator, simultaneously appoint a

visitor to investigate and report to the court within fourteen days after the appointment as provided in section 15-14-113.5 .

(Amended by 2021 Ch. 423, §13, eff. 7/2/2021. Amended by 2020 Ch. 270, §4, eff. 9/1/2020. L. 2000: Entire part R&RE, p. 1809, § 1, effective January 1, 2001 (see §15-17-103).)

(1) This section is similar to former §15-14-409 as it existed prior to 2001.

(2) Section 6(2) of chapter 270 (SB 20-129), Session Laws of Colorado 2020, provides that the act changing this section applies to appointments made on or after September 1, 2020.

2020 Ch. 270, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

**ANNOTATION**

**Law reviews.** For article, "Determination of Heirship by Special Proceedings and Temporary Conservationship", see 14 Colo. Law. 1781 (1985). For article, "Colorado Guardianship and Conservatorship Law: A Status Report", see 16 Colo. Law. 421 (1987). For article, "Trust Protection of Personal Injury Recoveries from Public Creditors", see 19 Colo. Law. 2187 (1990).

**§ 15-14-412.5. Limited court-approved arrangements authorized for persons seeking medical assistance for nursing home care - applicable to trusts established before a certain date**

(1) The general assembly hereby finds, determines, and declares that:

(a) The state makes significant expenditures for nursing home care under the "Colorado Medical Assistance Act";

(b) A large number of persons do not have enough income to afford nursing home care, but have too much income to qualify for state medical assistance, a situation popularly referred to as the "Utah gap";

(c) Some persons in the Utah gap, through innovative court-approved trust arrangements, have become qualified for state medical assistance, thereby increasing state medical assistance expenditures;

(d) It is therefore appropriate to enact state laws that limit such court-approved trusts in a manner that is consistent with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396 et seq., as amended, and that provide that persons who qualify for assistance as a result of the creation of such trusts shall be treated the same as any other recipient of medical assistance for nursing home care;

(e) In enacting this section, the general assembly intends only to limit certain court-approved trusts and court-approved transfers of property. It is not the general assembly's intent to approve or disapprove of privately created trusts or private transfers of property made under the same or similar circumstances.

(2) The court shall not authorize, direct, or ratify any trust that either has the effect of qualifying or purports to qualify the trust beneficiary for medical assistance for nursing home care pursuant to the provisions of title 25.5, C.R.S., unless the circumstances surrounding the creation of the trust and the trust provisions meet the criteria set forth in section 25.5-6-102(3), C.R.S. This section shall apply to any court-approved trust that is funded with property owned by the beneficiary at the time the trust is created but shall not apply to any trust that is established and directly funded by a defendant or insurance company in settlement of an action or claim for personal injury brought by or on behalf of the trust beneficiary.

(3) Except as otherwise permitted by Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p, as amended, the court shall not authorize, direct, or ratify the transfer of any property owned by a protected person if the transfer either has the effect of qualifying or purports to qualify the

protected person for medical assistance for nursing home care pursuant to the provisions of title 25.5, C.R.S., unless the property is transferred into a trust established in accordance with subsection (2) of this section.

(4) This section shall take effect January 1, 1992, and shall apply to any court-approved trust established for or court-approved transfer of property made by or for a protected person applying for or receiving medical assistance for nursing home care pursuant to the provisions of title 25.5, C.R.S., on or after said date; except that such a trust created before said date that does not comply with this section shall be modified to comply with this section no later than July 1, 1992, before which time a court-approved trust or a court-approved transfer of property to a court-approved trust shall not render the protected person ineligible for medical assistance.

(5) The provisions of this section shall not apply if federal funds are not available for persons who would qualify for medical assistance as a result of a court-approved trust that meets the criteria set forth in section 25.5-6-102, C.R.S.

(6) This section applies to trusts established or transfers of property made prior to July 1, 1994. The provisions set forth in sections 15-14-412.6 to 15-14-412.9 and any rule adopted by the medical services board pursuant to section 25.5-6-103, C.R.S., apply to trusts established or property transferred on or after July 1, 1994.

(L. 2000: Entire part R&RE, p. 1810, § 1, effective January 1, 2001 (see §15-17-103). L. 2006: (2), (5), and (6) amended, p. 2002, § 50, effective July 1. L. 2007: (2), (3), and (4) amended, p. 2027, § 30, effective June 1.)

This section is similar to former § 15-14-409.5 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "Before the Miller Trust: Long-Term Care and HCBS Considerations", see 24 Colo. Law. 2721 (1995).

## § 15-14-412.6. Trust established by an individual - eligibility for certain public assistance programs - general provisions

(1) For purposes of this section and sections 15-14-412.7 to 15-14-412.9, unless the context otherwise requires the following definitions apply:

(a) "Asset" has the same meaning as set forth in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p(e), as amended.

(b) "Income" has the same meaning as set forth in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p(e), as amended.

(c) "Public assistance" means public assistance as provided by article 2 of title 26, C.R.S., and medical assistance as provided by articles 4, 5, and 6 of title 25.5, C.R.S.

(d) "Resources" has the same meaning as set forth in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p(e), as amended.

(e) "Trust established by an individual" has the same meaning as set forth in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p(d)(2), as amended.

(2) Notwithstanding any statutory provision to the contrary, a court shall not authorize, direct, or ratify any trust established by an individual that has the effect of qualifying or purports to qualify the trust beneficiary for public assistance unless the trust meets the criteria set forth in this section, sections 15-14-412.7 to 15-14-412.9, and any rule adopted by the medical services board pursuant to section 25.5-6-103, C.R.S.

(3) The court shall not authorize, direct, or ratify the transfer of any assets owned by a protected person if the transfer has the effect of qualifying or purports to qualify the protected person for public assistance unless the assets are transferred to a trust that meets the criteria set forth in this section, sections 15-14-412.7 to 15-14-412.9, and any rule adopted by the medical services board pursuant to section 25.5-6-103, C.R.S.

(L. 2000: Entire part R&RE, p. 1811, § 1, effective January 1, 2001 (see §15-17-103). L. 2006: (1)(c), (2), and (3) amended, p. 2002, § 51, effective July 1.)

This section is similar to former § 15-14-409.6 as it existed prior to 2001.

**ANNOTATION**

**The court erred in attempting to shield the assets of the trust for the purpose of determining Medicaid eligibility because** subsection (2) prohibits any trust that has been "established by an individual that has the effect of qualifying or purports to qualify the trust beneficiary for public assistance," and this section does not except from this prohibition elective-share trusts created pursuant to §15-11-206. In re Estate of Faller, 66 P.3d 114 (Colo. App. 2002).

**§ 15-14-412.7. Income trusts - limitations**

(1) An income trust within the meaning of this section is a trust established for the benefit of an individual that consists only of pension income, social security, and other monthly income to the individual and accumulated income in the trust and that is established for the purpose or with the effect of establishing or maintaining income eligibility for certain medical assistance.

(2) An income trust shall not be effective for establishing or maintaining income eligibility for any category of public assistance other than nursing home care or home- and community-based services.

(3) In order to establish or maintain income eligibility, an income trust shall meet all of the following criteria:

(a) The assets used to fund the trust are limited to any monthly unearned income received by the applicant, including any pension payment;

(b) The sole lifetime beneficiaries of the trust are the person for whom the trust is established and the state medical assistance program. After the death of the person for whom the trust is created or after the trust is terminated during the beneficiary's lifetime, whichever occurs sooner, no person is entitled to payment from the remainder of the trust until the state medical assistance agency has been fully reimbursed for the assistance rendered to the person for whom the trust was created.

(c) The entire corpus of the trust, or as much of the corpus as may be distributed each month without violating federal requirements for federal financial participation, is distributed each month for expenses related to nursing home care or home- and community-based services for the beneficiary that are approved under the state medical assistance program; except that an amount reasonably necessary to maintain the existence of the trust and to comply with federal requirements may be retained in the trust;

(d) The trust provides that deductions may be made from the monthly trust distribution to the same extent that deductions from the income of a nursing home resident or home- and community-based services client are allowed under the state medical assistance program, articles 4, 5, and 6 of title 25.5, C.R.S., for nursing home residents and home- and community-based services clients who are not trust beneficiaries. Allowable deductions include the following:

(I) A monthly personal needs allowance;

(II) With respect to nursing home residents only, payments to the beneficiary's community spouse or dependent family members as provided and in accordance with Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396r-5, as amended, and section 25.5-6-101, C.R.S.;

(III) Specified health insurance costs and special medical services provided under Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396a(r), as amended;

(IV) Any other deduction provided by rules of the medical services board, including rules concerning posteligibility treatment of income for home- and community-based services clients;

(e) The trust provides that, upon the death of the beneficiary or termination of the trust during the beneficiary's lifetime, whichever occurs sooner, the state agency administering the state medical assistance program receives all amounts remaining in the trust up to the total medical assistance paid on behalf of the individual;

(f) The applicant's monthly gross income from all sources, without reference to the trust, exceeds the income eligibility standard for medical assistance then in effect but is less than the average private pay rate for nursing home care for the geographic region in which the applicant lives.

(L. 2000: Entire part R&RE, p. 1812, § 1, effective January 1, 2001 (see §15-17-103). L. 2006: IP(3)(d) and (3)(d)(II) amended, p. 2003, § 52, effective July 1.)

This section is similar to former § 15-14-409.7 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "The Impacts of Trusts on Public Benefits for Disabled Persons", see 46 Colo. Law. 43 (Nov. 2017).

**§ 15-14-412.8. Disability trusts - limitations**

(1) A disability trust within the meaning of this section is a trust that is established for an individual under sixty-five years of age who is disabled, as such term is defined in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1382c(a)(3), as amended, consists of assets of the individual, and is established for the purpose or with the effect of establishing or maintaining the individual's resource eligibility for medical assistance.

(2) A disability trust is not valid for the purpose of establishing or maintaining a person's resource eligibility for medical assistance unless the trust meets all of the following criteria:

(a) The trust is funded by assets of an individual under age sixty-five who is disabled as defined in 42 U.S.C. sec. 1382c(a)(3), as amended, and which is established for the benefit of such individual by the individual, the individual's parent, the individual's grandparent, the individual's guardian, or by the court.

(b) The trust provides that, upon the death of the beneficiary or termination of the trust during the beneficiary's lifetime, whichever occurs sooner, the department of health care policy and financing receives any amount remaining in the trust up to the total medical assistance paid on behalf of the individual.

(c) The sole lifetime beneficiaries of the trust are the individual for whom the trust is established and the state medical assistance program. After the death of the person for whom the trust is created or after the trust is terminated during the beneficiary's lifetime, whichever occurs sooner, no person is entitled to payment from the remainder of the trust until the state medical assistance agency has been fully reimbursed for the assistance rendered to the person for whom the trust was created.

(3) A disability trust is not valid for the purpose of establishing or maintaining eligibility for any category of public assistance other than medical assistance.

(4) No disability trust shall be valid unless the department of health care policy and financing, or its designee, has reviewed the trust and determined that the trust conforms to the requirements of this section and any rules adopted by the medical services board pursuant to section 25.5-6-103, C.R.S.

(Amended by 2017 Ch. 230, §1, eff. 5/23/2017. L. 2000: Entire part R&RE, p. 1813, § 1, effective January 1, 2001 (see §15-17-103). L. 2006: (4)

amended, p. 2003, § 53, effective July 1. L. 2017: (2)(a) amended, (HB 17-1280), ch. 230, p. 894, § 1, effective May 23.)

This section is similar to former § 15-14-409.8 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "Preserving the Disabled Plaintiff's Access to Public Benefits with the Special Needs Trust," see 25 Colo. Law. 49 (May 1996).

**This section does not violate the equal protection clause of the U.S. or Colorado Constitutions. Allowing specified funds to be used to fund a disability trust while other funds cannot be so used does not result in dissimilar treatment of similarly situated people. Because there is no dissimilar classification of individuals, no equal protection issue is presented. Colo. Dept. of Health Care Policy & Fin. v. Estate of Roberts, 18 P.3d 813 (Colo. App. 2000).**

**Federal law permits** a state, for the purposes of determining medicaid eligibility, to permit applicants to exclude their income from eligibility by establishing a trust. However, federal law does not prohibit the state from adopting additional trust requirements, as in this section, for these purposes. Colo. Dept. of Health Care Policy & Fin. v. Estate of Roberts, 18 P.3d 813 (Colo. App. 2000).

**Upon termination, a trustee may pay federal and state taxes due from the corpus of the trust before reimbursing the state for medical assistance it rendered to the beneficiary.** Stell v. Boulder County Dept. of Soc. Servs., 92 P.3d 910 (Colo. 2004).

**The qualification of the trust for exemption from the Medicaid calculation, as opposed to its eventual distribution, is determined by the criteria set forth in this section, not §15-12-805.** Stell v. Colo. Dept. of Health Care Policy & Fin., 78 P.3d 1142 (Colo. App. 2003), rev'd on other grounds, 92 P.3d 910 (Colo. 2004).

## § 15-14-412.9. Pooled trusts - limitations

(1) A pooled trust within the meaning of this section is a trust consisting of individual accounts established for individuals who are disabled and is established for the purpose or with the effect of establishing or maintaining a person's resource eligibility for medical assistance.

(2) A pooled trust is not valid for the purposes of establishing or maintaining eligibility for medical assistance unless the trust meets the following criteria:

(a) The trust is established and managed by a nonprofit association that is approved by the United States internal revenue service.

(b) A separate account is maintained for each beneficiary of the trust; except that the accounts are pooled for purposes of investment and management of funds.

(c) The sole lifetime beneficiaries of the trust are the individual for whom the trust is established and the state medical assistance program. After the death of the person for whom the trust is created or after the trust is terminated during the beneficiary's lifetime, whichever occurs sooner, no person is entitled to payment from the remainder of the trust until the state medical assistance agency has been fully reimbursed for the assistance rendered to the person for whom the trust was created.

(d) Accounts in the trust are established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. sec. 1382c(a)(3), as amended, and are established by the parent, grandparent, or legal guardian of such individual, by such individual, or by a court.

(e) The trust provides that, upon the death of the beneficiary or termination of the trust during the beneficiary's lifetime, whichever occurs sooner, to the extent that amounts remaining in the beneficiary's trust account are not retained by the trust, the state medical assistance program receives any amount remaining in that individual's trust account up to the total medical assistance paid on behalf of the individual.

(3) A pooled trust is not valid for the purpose of establishing or maintaining a person's eligibility for any category of public assistance other than medical assistance.

(4) No pooled trust shall be valid unless the department of health care policy and financing, or its designee, has reviewed the trust and determined that the trust conforms to the requirements of this section and any rules adopted by the medical services board pursuant to section 25.5-6-103, C.R.S.

(L. 2000: Entire part R&RE, p. 1814, § 1, effective January 1, 2001 (see §15-17-103). L. 2006: (4) amended, p. 2003, § 54, effective July 1.)

This section is similar to former § 15-14-409.9 as it existed prior to 2001.

## § 15-14-413. Who may be conservator - priorities - prohibition of dual roles

(1) Except as otherwise provided in subsection (4) of this section, the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:

(a) 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;

(b) A person nominated as conservator by the respondent, including the respondent's specific nomination of a conservator made in a durable power of attorney or given priority to be a conservator in a designated beneficiary agreement made pursuant to article 22 of this title, if the respondent has attained twelve years of age;

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

(d) The spouse of the respondent;

(d.5) The partner in a civil union of the respondent;

(e) An adult child of the respondent;

(f) A parent of the respondent; and

(g) An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.

(2) A respondent's nomination or appointment of a conservator shall create priority for the nominee or appointee only if, at the time of nomination or appointment, the respondent had sufficient capacity to express a preference.

(3) A person having priority under paragraph (a), (d), (d.5), (e), or (f) of subsection (1) of this section may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.

(4) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, for good cause, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(5) An owner, operator, or employee of a long-term care provider from which the respondent is receiving care may not be appointed as conservator unless related to the respondent by blood, marriage, or adoption.

(6)

(a) Unless the court makes specific findings for good cause shown or the person is a family caregiver as defined in section 25.5-10-202, C.R.S., the same professional may not act as an incapacitated person's or a protected person's:

(I) Guardian and conservator; or

(II) Guardian and direct service provider; or

(III) Conservator and direct service provider.

(b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person unless the person is a family caregiver as defined in section 25.5-10-202, C.R.S.

(Amended by 2013 Ch. 323, §27, eff. 3/1/2014. Amended by 2013 Ch. 49, §21, eff. 5/1/2013. L. 2000: Entire part R&RE, p. 1815, § 1, effective January 1, 2001 (see §15-17-103). L. 2009: (1) amended, (HB 09-1260), ch. 107, p. 445, §12, effective July 1. L. 2010: (1)(b) amended, (SB 10-199), ch. 374, p. 1753, §19, effective July 1. L. 2011: (6) amended, (SB 11-083), ch. 101, p. 308, §16, effective August 10. L. 2013: (1) and (3) amended, (SB 13-011), ch. 49, p. 166, § 21, effective May 1; IP(6)(a) and (6)(b) amended, (HB 13-1314), ch. 323, p. 1803, § 27, effective March 1, 2014.)

This section is similar to former §15-14-410 as it existed prior to 2001.

**COMMENT**

This section gives top priority for appointment to existing conservators appointed elsewhere, to the respondent's nominee for the position, and to the respondent's agent, in that order. Existing conservators are granted a first priority for two reasons. First, many of these cases will involve transfers of a conservatorship from another state. To assure a smooth transition, the currently appointed conservator appointed in this state or another should have the right to the appointment at the new location. Second, many cases may involve situations where a conservatorship appointment is sought despite the appointment in another place. Granting the existing conservator priority will deter such forum shopping. Should the existing conservator be inappropriate for some reason, subsection (c) permits the court to skip over

the existing conservator and appoint someone with lower priority or even no priority.

A conservator or individual nominated by the respondent or the agent named in the respondent's durable power of attorney has priority for appointment over the respondent's relatives. The nomination may include anyone nominated orally at the hearing, if the respondent has sufficient capacity at the time to express a preference. The nomination may also be made by separate document. While it is generally good practice for an individual to nominate as conservator the agent named in a durable power of attorney, the section grants such an agent a preference in the absence of a specific nomination. The agent is granted preference on the theory that the agent is the person the respondent would most likely prefer to act. The nomination of the agent will also make it more difficult for someone to use a conservatorship to thwart the agent's authority. To assure that the agent will be in a position to assert his priority, Section 5-404(b) requires that the agent receive notice of the proceeding. Also, until the court has acted to approve the revocation of that authority, Section 5-411(d) provides that the authority of an agent takes precedence over that of the conservator.

Subsection (a)(7) gives a seventh-level preference to a domestic partner or companion or an individual who has a close, personal relationship with the respondent. Note there is no requirement that the respondent have resided with the other person for more than six months immediately prior to the filing of the petition, just that the requisite residency have occurred at some point in time before the petition is filed. Courts should use a reasonableness standard in applying this subsection so that priority is given to someone with whom the respondent has had a close, enduring relationship. For factors to consider in making this determination, see the detailed comment to Section 5-304.

While this section substantially overlaps with Section 5-310, the comparable provision on selection of guardians, there are some differences. For example, Section 5-310 denies a priority to an emergency or temporary guardian, but this section does not expressly deny a priority for appointment to an emergency or temporary conservator appointed in another state. But the failure in subsection (a)(1) to expressly exclude these categories of conservator does not mean that they enjoy a priority for appointment. Unlike the case with guardians, emergency or temporary conservators are not included within the definition of "conservator" found in Section 5-102(1).

Subsection (d) prohibits anyone affiliated with a long-term care facility at which the respondent is receiving care from being appointed as conservator absent a blood, marital or adoptive arrangement. Strict application of this

subsection is crucial to avoid a conflict of interest and to protect the protected person from potential financial exploitation. Each state enacting Parts 1-4 of this article needs to insert the particular term or terms used in the state for facilities considered to be long-term care institutions.

National Probate Court Standards, Standard 3.4.11 "Qualifications and Appointments of Conservators" (1993), recognizes that the court should appoint as conservator one who is both willing and suitable to manage the respondent's finances and property, based on the nature of the respondent's estate and the respondent's incapacity. The standard provides a preference in appointment to one known by, related to, or requested by the respondent.

This section is based on UGPPA (1982) Section 2-309 (UPC Section 5-409 (1982)).

**ANNOTATION**

**Law reviews.** For article, "Determination of Heirship by Special Proceedings and Temporary Conservationship", see 14 Colo. Law. 1781 (1985). For article, "Divorce Considerations Relevant to an Estate Planning Practice", see 29 Colo. Law. 53 (Feb. 2000). For article, "The Durable Power of Attorney: Defining the Agent's Duties", see 41 Colo. Law. 49 (May 2012).

**In the initial selection of a conservator the wishes of the ward should be given consideration,** premised upon the mental ability of the ward to exercise a "sensible opinion" on the matter. The instant record demonstrates that the ward is unable to exercise such a sensible opinion as to who should serve as the conservator of his estate. No authority requires the probate court to substitute conservators because the ward prefers a different conservator. In re Estate of Alencoy v. Wysowatcky, 170 Colo. 385, 461 P.2d 210 (1969) (decided under repealed § 153-9-1, C.R.S. 1963).

**Trial court failed to make findings regarding whether the respondent had sufficient capacity to nominate a guardian or conservator.** Although a trial court, upon a showing of good cause, has the authority to appoint a respondent's preferred guardian and conservator, the court must make findings relative to good cause. In re Estate of Runyon, 2014 COA 181, 343 P.3d 1072.

For provisions relating to the time of taking effect or the provisions for transition of this code, see §15-17-101.

## § 15-14-414. Petition for order subsequent to appointment

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

(a) Requiring bond or collateral or additional bond or collateral, or reducing bond or collateral;

(b) Requiring an accounting for the administration of the protected person's estate;

(c) Directing distribution;

(d) Removing the conservator pursuant to section 15-10-503 and appointing a special or successor conservator;

(e) 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

(f) Granting other appropriate relief.

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

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

(4) At the conclusion of the hearings authorized by this section, the court may review the motions and petitions filed by a party under this section to determine if they were substantially warranted and brought in good faith. If, after the hearing, the court determines that the motions and petitions filed under this section were not substantially warranted or were brought in bad faith, the court may award fees and costs against the movant or petitioner including, but not limited to, the attorney fees and costs incurred by the conservatorship, or the affected parties, in responding to the motions and petitions.

(L. 2000: Entire part R&RE, p. 1816, § 1, effective January 1, 2001 (see §15-17-103). L. 2008: (1)(d) amended, p. 485, § 12, effective July 1.)

This section is similar to former §15-14-416 as it existed prior to 2001.

**ANNOTATION**

**An evidentiary hearing** is necessary to consider the factual circumstances to determine whether a petitioner is a person interested in the welfare of the incapacitated person. In re Estate of Edwards, 794 P.2d 1092 (Colo. App. 1990) (decided prior to 2000 repeal and reenactment).

**Award of attorney fees under subsection (4) upheld.** "Bad faith" involves conduct that is arbitrary, vexatious, abusive, stubbornly litigious, aimed at unwarranted delay, or disrespectful of trust and accuracy. Similarly, a motion or petition is "not substantially warranted" if it is not supported by any rational argument or credible evidence. In re Estate of Becker, 68 P.3d 567 (Colo. App. 2003).

## § 15-14-415. Bond

Unless the court makes specific findings as to the reasons a bond is not required in the present case, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties as it may specify. In the alternative, the court may impose restrictions upon the conservator's access to, or transfer of, the assets of the conservatorship estate. Unless otherwise directed by the court, the cost of the bond shall be charged to the protected person's estate and the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. The court, in place of sureties on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

(L. 2000: Entire part R&RE, p. 1817, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-411 as it existed prior to 2001.

## § 15-14-416. Terms and requirements of bond

(1) The following rules apply to any bond required:

(a) Except as otherwise provided by the terms of the bond, sureties and the conservator are jointly and severally liable.

(b) By executing the bond of a conservator, a surety submits to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator in which the surety is named as a party. Notice of any proceeding must be sent or delivered to the surety at the address shown in the court records at the place where the bond is filed and to any other address then known to the petitioner.

(c) On petition of a successor conservator or any interested person, a proceeding may be brought against a surety for breach of the obligation of the bond of the conservator.

(d) The bond of the conservator may be proceeded against until liability under the bond is exhausted.

(e) Unless otherwise directed by the court, the cost of the bond shall be paid from the protected person's estate.

(2) A proceeding may not be brought against a surety on any matter as to which an action or proceeding against the primary obligor is barred.

(3) If there is a request for the waiver or reduction of a surety upon a bond, the court may require the conservator to supply the court with a credit report, a statement of the conservator's assets, liabilities, income, and expenses, and a statement about any interests the conservator may have in or liability to the conservatorship estate, or any other information the court may wish to consider.

(L. 2000: Entire part R&RE, p. 1817, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-412 as it existed prior to 2001.

## § 15-14-417. Compensation, fees, costs, and expenses of administration - expenses. (Repealed)

(L. 2000: Entire part R&RE, p. 1818, § 1, effective January 1, 2001 (see §15-17-103). L. 2001: (1) amended, p. 889, § 9, effective June 1. L. 2011: Entire section repealed, (SB 11-083), ch. 101, p. 317, §27, effective August 10.)

This section was similar to former §15-14-414 as it existed prior to 2001.

**ANNOTATION**

**Because this section does not specify the amount of compensation to be granted a conservator,** the determination of such amount is within the sound discretion of the probate court. Such determination will not be overturned except upon a showing of abuse of discretion. Estate of Binford v. Gibson, 839 P.2d 508 (Colo. App. 1992) (decided prior to 2000 repeal and reenactment).

**Section impliedly supports a "reasonably and in good faith" standard** that conforms to the common law. A conservator can reasonably and in good faith oppose a protected person's motion to terminate the conservatorship. In re Estate of Keenan, 252 P.3d 539 (Colo. App. 2011) (decided prior to 2011 repeal).

**Section implicitly authorizes actions that trigger payment** by specifying when payment to the conservator from the protected person's estate is appropriate. In re Estate of Keenan, 252 P.3d 539 (Colo. App. 2011) (decided prior to 2011 repeal).

## § 15-14-418. General duties of conservator - financial plan

(1) A conservator, in relation to powers conferred by this part 4 or implicit in the title acquired by virtue of the proceeding, is a fiduciary and shall observe the standards of care applicable to a trustee.

(2) A conservator shall take into account the limitations of the protected person, and to the extent possible, as directed by the order of appointment or the financial plan, encourage the person to participate in decisions, act in the person's own behalf, and develop or regain the ability to manage the person's estate and business affairs.

(3) Within a time set by the court, but no later than ninety days after appointment, a conservator shall file for approval with the appointing court a financial plan for protecting, managing, expending, and distributing the income and assets of the protected person's estate. The financial plan shall be based upon a comparison of the projected income and expenses of the protected person and shall set forth a plan to address the needs of the person and how the assets and income of the protected person shall be managed to meet those needs. The financial plan must be based on the actual needs of the person and take into consideration the best interest of the person. The conservator shall include in the financial plan steps to the extent possible to develop or restore the person's ability to manage the person's property, an estimate of the duration of the conservatorship, and projections of expenses and resources.

(4) In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the person known to the conservator. The conservator may examine the will and any other donative, nominative, or other appointive instrument of the person.

(5) A conservator shall file an amended financial plan whenever there is a change in circumstances that requires a substantial deviation from the existing financial plan.

(L. 2000: Entire part R&RE, p. 1819, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-417 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "Effect of Appointment of Conservator on Joint Tenancy Title", see 12 Colo. Law. 1237 (1983). For article, "Suggested

Modifications to the Durable Power of Attorney Form", see 17 Colo. Law. 2135 (1988).

**§ 15-14-419. Inventory**

(1) Within a time set by the court, but no later than ninety days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(2) If any property not included in the original inventory comes to the knowledge of a conservator or if the conservator learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he or she shall prepare an amended inventory and file it with the court and provide copies to interested parties as directed by prior court orders.

(L. 2000: Entire part R&RE, p. 1820, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-418 as it existed prior to 2001.

**§ 15-14-420. Reports - appointment of monitor - monitoring - records - court access to records**

(1) A conservator shall report to the court about the administration of the estate annually unless the court otherwise directs. Upon filing a petition or motion and after notice, a conservator shall be entitled to a hearing to settle all matters covered in an intermediate or final report. An order, after notice and hearing, allowing an intermediate report of a conservator adjudicates all of the conservator's, his or her other counsel's, and his or her other agent's liabilities concerning all matters adequately disclosed in the report. An order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities of the conservator, his or her counsel, and that of his or her agents relating to the conservatorship, the protected person, or the protected person's successors.

(2) Unless the court orders otherwise, a report must:

(a) Contain a list of the assets of the estate under the conservator's control and a list of the receipts, disbursements, and distributions during the period for which the report is made;

(b) Reflect the services provided to the protected person; and

(c) State any recommended changes in the plan for the conservatorship as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.

(3) The court may appoint a visitor or other suitable person 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.

(4) The court shall establish a system for monitoring conservatorships, including the filing and review of conservators' reports and plans.

(5) A conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of an interested person within thirty days unless the court otherwise directs.

(6)

(a) Whenever a conservator fails to file a report or fails to respond to an order of the court to show cause why the conservator should not be held in contempt of court, the clerk of the court or his or her designee may research the whereabouts and contact information of the conservator and the

protected person. To facilitate this research, the clerk of the court or his or her designee shall have access to data maintained by other state agencies, including but not limited to vital statistics information maintained by the department of public health and environment, wage and employment data maintained by the department of labor and employment, lists of licensed drivers and income tax data maintained by the department of revenue and provided pursuant to section 13-71-107, C.R.S., and voter registration information obtained annually by the state court administrator pursuant to section 13-71-107, C.R.S. The court may access the data only to obtain contact information for the conservator or the ward. Notwithstanding any provision of law to the contrary, the judicial department and the other state agencies listed in this paragraph (a) may enter into agreements for the sharing of this data. The judicial department and the courts shall not access data maintained pursuant to the "Address Confidentiality Program Act", part 21 of article 30 of title 24, C.R.S.

(b) The court shall preserve the confidentiality of the data obtained from the other state agencies and use the data only for the purposes set forth in this subsection (6). Notwithstanding the provisions of article 72 of title 24, C.R.S., documents and information obtained by the court pursuant to this subsection (6) are not public records and shall be open to public inspection only upon an order of the court based on a finding of good cause, except to the extent they would otherwise be open to inspection from the providing state agency.

(c) For purposes of this subsection (6), "contact information" means name, residential address, business address, date of birth, date of death, phone number, e-mail address, or other identifying information as directed by the court.

(L. 2000: Entire part R&RE, p. 1820, § 1, effective January 1, 2001 (see §15-17-103). L. 2011: IP(2) and (5) amended, (SB 11-083), ch. 101, pp. 309, 306, §§ 17, 12, effective August 10. L. 2012: Entire section amended, (HB 12-1074), ch. 46, p. 167, § 2, effective March 22.)

**ANNOTATION**

**Legitimate expenses of conservator.** Where the conservator attends to his ward's property in good faith and preserves it, expenses for that purpose are legitimate and constitute a proper accounting for such of ward's money as came into the conservator's hands. Hunt v. Hunt, 83 Colo. 282, 264 P. 662 (1928)(case decided prior to the earliest source of this section).

## § 15-14-421. Title by appointment

(1) Except as limited in the appointing order, the appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to the part thereof specified in the order, held at the time of appointment or thereafter acquired, including title to any property held for the protected person by custodians or attorneys-in-fact. An order vesting title in the conservator to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order. Notwithstanding the language vesting title in the conservator in this section, this vesting of title shall not be construed to sever any joint tenancies.

(2) Letters of conservatorship are evidence of vesting title of the protected person's assets in the conservator. An order terminating a conservatorship transfers title to assets remaining subject to the conservatorship, including any described in the order, to the formerly protected person or the person's successors.

(3) Subject to the requirements of other statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give notice of title as between the conservator and the protected person.

(4) Neither the appointment of a conservator nor the establishment of a trust in accordance with sections 15-14-412.5 to 15-14-412.9 is a transfer or an alienation within the meaning of the general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument imposing restrictions upon or penalties for the transfer or alienation by the protected person of his or her rights or interest, but this section does not restrict the ability of a person to make specific provisions by contract or dispositive instrument relating to a conservator.

(5) Except as limited in the appointing order, a conservator has the authority to continue, modify, or revoke any financial power of attorney previously created by the protected person.

(6)

(a) Upon notice of the appointment of a conservator, all agents acting under a previously created power of attorney by the protected person:

(I) Shall take no further actions without the direct written authorization of the conservator;

(II) Shall promptly report to the conservator as to any action taken under the power of attorney; and

(III) Shall promptly account to the conservator for all actions taken under the power of attorney.

(b) Nothing in this section shall be construed to affect previously created medical decision-making authority. Any agent violating this section shall be liable to the protected person's estate for all costs incurred in attempting to obtain compliance, including but not limited to reasonable conservator and attorney fees and costs.

(L. 2000: Entire part R&RE, p. 1821, § 1, effective January 1, 2001 (see §15-17-103). L. 2009: IP(6)(a) and (6)(a)(I) amended, (SB 09-292), ch. 369, p. 1947, §26, effective August 5.)

This section is similar to former §15-14-420 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "Effect of Appointment of Conservator on Joint Tenancy Title", see 12 Colo. Law. 1237 (1983).

**Even if appointment of a conservator prevents a protected person from creating an inter vivos trust, it does not prevent a protected person who has testamentary capacity from creating a testamentary trust.** In re Estate of Gallavan, 89 P.3d 521 (Colo. App. 2004).

## § 15-14-422. Protected person's interest inalienable

(1) Except as otherwise provided in subsections (3) and (4) of this section, the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages that, subject to presentation and allowance, may be satisfied as provided in section 15-14-429.

(2) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed under section 15-14-429.

(3) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession, is protected as if the protected person or transferee had valid title.

(4) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided in other law.

(L. 2000: Entire part R&RE, p. 1822, § 1, effective January 1, 2001 (see §15-17-103).)

**ANNOTATION**

**Even if appointment of a conservator prevents a protected person from creating an inter vivos trust, it does not prevent a protected person who has testamentary capacity from creating a testamentary trust.** In re Estate of Gallavan, 89 P.3d 521 (Colo. App. 2004).

## § 15-14-423. Sale, encumbrance, or other transaction involving conflict of interest

Any transaction involving the conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, the spouse, descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

(L. 2000: Entire part R&RE, p. 1823, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-422 as it existed prior to 2001.

**ANNOTATION**

**Disclosure of a conflicted transaction is not enough to immunize a conservator** from a breach of fiduciary duty claim. In addition, the fiduciary has an obligation, independent of this section, to establish that the conflicted transaction is fair and reasonable and not adverse to the interests of the protected person. In Interest of Black, 2018 COA 7, 422 P.3d 592.

## § 15-14-424. Protection of person dealing with conservator

(1) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order under section 15-14-410 or 15-14-411 is protected as though the conservator properly exercised the power. That a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators that are endorsed on letters as provided in section 15-14-110 are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their proper application.

(2) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

(3) Any recorded instrument evidencing a transaction described in this section on which a state documentary fee is noted pursuant to section 39-13-103, C.R.S., shall be prima facie evidence that such transaction was made for value.

(L. 2000: Entire part R&RE, p. 1824, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-423 as it existed prior to 2001.

**ANNOTATION**

**Third parties knowingly dealing with a conservator** are not required to make inquiry into the existence or propriety of the conservator's power, except that restrictions on powers of conservators which are endorsed on letters provided in this section are effective as to third persons. In re Conservatorship of Roth, 804 P.2d 265 (Colo. App. 1990) (decided prior to 2000 repeal and reenactment).

## § 15-14-425. Powers of conservator in administration

(1) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters, a conservator has all of the powers granted in this section and any additional powers granted by law to a trustee in this state.

(2) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without further court authorization or confirmation, may:

(a) Collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;

(b) Receive additions to the estate;

(c) Continue or participate in the operation of any business or other enterprise;

(d) Acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest;

(e) Invest assets of the estate as though the conservator were a trustee;

(f) Deposit money of the estate in a financial institution, including one operated by the conservator;

(g) Acquire or dispose of an asset of the estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate;

(h) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(i) Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;

(j) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(k) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) Grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset;

(m) Vote a security, in person or by general or limited proxy;

(n) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) Sell or exercise stock subscription or conversion rights;

(p) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(q) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(r) Insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;

(s) Borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;

(t) Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;

(u) Pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;

(v) Allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;

(w) Pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:

(I) To the guardian of the distributee;

(II) To a distributee's custodian under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., or custodial trustee under the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; or

(III) If there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;

(x) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties; and

(y) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

(3) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters, a conservator may exercise any of the powers enumerated in the "Colorado Fiduciaries' Powers Act", part 8 of article 1 of this title.

(4) The court may confer on a conservator at the time of appointment or later, in addition to the powers conferred by sections 15-14-425, 15-14-426, and 15-14-427, any power that the court itself could exercise under section 15-14-410. The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 15-14-425, 15-14-426, and 15-14-427, or previously conferred by the court, and may at any time relieve the conservator of any limitation. If the court limits any power conferred on the conservator by section 15-14-425, 15-14-426, or 15-14-427 or specifies, as provided in section 15-14-421(1) that title to some but not all assets of the protected person vest in the conservator, the limitation shall be endorsed upon the conservator's letters of appointment.

(5) In investing the estate, and in selecting assets of the estate for distribution under section 15-14-427, in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, and in exercising any other powers vested in them, the conservator and the court should take into account any known estate plan of the protected person, including his or her will, any revocable trust of which he or she is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits

or interests at his or her death to another or others which he or she may have originated. The conservator may examine the will of the protected person.

(L. 2000: Entire part R&RE, p. 1823, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-424 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "Conservator-Created Wills: Issues in Litigation", see 44 Colo. Law. 53 (Aug. 2015).

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**One of the prime purposes of an action for annulment is the protection of the property of the ward.** Cox v. Armstrong, 122 Colo. 227, 221 P.2d 371 (1950); Young v. Brofman, 139 Colo. 296, 338 P.2d 286 (1959).

**An annulment suit may be instituted by a conservator on behalf of a ward.** Young v. Brofman, 139 Colo. 296, 338 P.2d 286 (1959).

**A nonlawyer conservator or guardian in this state is a statutory legal representative only** and is therefore prohibited from practicing law and serving as legal counsel in court. The powers granted to conservators under this section and to guardians under §§15-14-315 and 15-14-315.5 do not establish an exception to § 12-5-101 regarding the practice of law. In re Kanefsky, 260 P.3d 327 (Colo. App. 2010) (decided prior to 2017 amendments relocating article 5 of title 12 to article 93 of title 13).

**Applied** in Vallentine v. Taylor Inv. Co., 305 F. Supp. 1104 (D. Colo. 1969).

## § 15-14-425.5. Authority to petition for dissolution of marriage or legal separation

(1) The conservator may petition the court for authority to commence and maintain an action for dissolution of marriage or legal separation on behalf of the protected person. The court may grant such authority only if satisfied, after notice and hearing, that:

(a) It is in the best interests of the protected person based on evidence of abandonment, abuse, exploitation, or other compelling circumstances, and the protected person either is incapable of consenting; or

(b) The protected person has consented to the proposed dissolution of marriage or legal separation.

(2) Nothing in this section shall be construed as modifying the statutory grounds for dissolution of marriage and legal separation as set forth in section 14-10-106, C.R.S.

(L. 2000: Entire part R&RE, p. 1826, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former § 15-14-425.5 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017).

**A nonlawyer conservator or guardian in Colorado is a statutory legal representative only** and is therefore prohibited from practicing law and serving as legal counsel in court. The powers granted to conservators under §15-14-425 and to guardians under §§15-14-315 and 15-14-315.5 do not establish an exception to § 12-5-101 regarding the practice of law. In re Kanefsky, 260 P.3d 327 (Colo. App. 2010) (decided prior to 2017 amendments relocating article 5 of title 12 to article 93 of title 13).

**§ 15-14-426. Delegation**

(1) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the performance of functions that a prudent trustee of comparable skills may delegate under similar circumstances.

(2) The conservator shall exercise reasonable care, skill, and caution in:

(a) Selecting an agent;

(b) Establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;

(c) Periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and

(d) Redressing an action or decision of an agent that would constitute a breach of trust if performed by the conservator.

(3) A conservator who complies with subsections (1) and (2) of this section is not liable to the protected person or to the estate or to the protected person's successors for the decisions or actions of the agent to whom a function was delegated.

(4) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.

(5) By accepting a delegation from a conservator subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.

(L. 2000: Entire part R&RE, p. 1827, § 1, effective January 1, 2001 (see §15-17-103).)

## § 15-14-427. Principles of distribution by conservator

(1) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment or contrary to the financial plan filed pursuant to section 15-14-418, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child support or spousal maintenance, in accordance with the following rules:

(a) A conservator shall consider recommendations relating to the appropriate standard of support, care, education, health, and welfare for the protected person or an individual who is in fact dependent on the protected person made by a guardian, if any, and, if the protected person is a minor, the conservator shall consider recommendations made by a parent.

(b) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefit to a protected person, or an individual who is in fact dependent on the protected person, in accordance with the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.

(c) In making distributions under this paragraph (c), the conservator shall consider:

(I) The size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage his or her business affairs and the estate;

(II) The accustomed standard of living of the protected person and individuals who are in fact dependent on the protected person; and

(III) Other money or sources used for the support of the protected person.

(d) Money expended under this paragraph (d) may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(2) If an estate is ample to provide for the distributions authorized by subsection (1) of this section, a conservator for a protected person other than a minor may make gifts that the protected person might have been expected to make, in amounts that do not exceed in the aggregate for any calendar year twenty percent of the income of the estate in that year.

(L. 2000: Entire part R&RE, p. 1827, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-425 as it existed prior to 2001.

**ANNOTATION**

**Law reviews.** For article, "Colorado Guardianship and Conservatorship Law: A Status Report", see 16 Colo. Law. 421 (1987). For article, "Suggested Modifications to the Durable Power of Attorney Form", see 17 Colo. Law. 2135 (1988).

## § 15-14-428. Death of protected person

(1) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the protected person that is in the conservator's possession or control, inform the personal representative or devisees named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it.

(2) After the death of the protected person, the conservator shall make no expenditures of conservatorship funds except with court authorization other than necessary to preserve the assets of the estate. However, the conservator may release funds for the funeral or final disposition of the deceased protected person if necessary to do so under the circumstances.

(3) When a protected person dies, all fees, costs, and expenses of administration of the conservatorship, including any unpaid conservator fees and costs and those of his or her counsel, may be submitted to the court for approval in conjunction with the termination of the conservatorship. Thereafter, all court-approved fees, costs, and expenses of administration arising from the conservatorship shall be paid as court-approved claims for costs and expenses of administration in the decedent's estate. In the event that there are insufficient moneys to pay all claims in the decedent's estate in full, the fees, costs, and expenses of administration arising from the conservatorship shall retain their classification as "costs and expenses of administration" in the decedent's estate and shall be paid pursuant to section 15-12-805.

(Amended by 2021 Ch. 123, §16, eff. 9/7/2021. L. 2000: Entire part R&RE, p. 1828, § 1, effective January 1, 2001 (see §15-17-103). L. 2011: (3) added, (SB 11-083), ch. 101, p. 309, §18, effective August 10.)

2021 Ch. 123, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

## § 15-14-429. Presentation and allowance of claims

(1) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in subsection (4) of this section. A claimant may present a claim by:

(a) Delivering or mailing to the court-appointed conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(b) Filing a written statement of the claim with the clerk of the court, in the form approved by the supreme court, and delivering or mailing a copy of the statement to the conservator.

(2) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court, whichever first occurs. A presented claim is deemed allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within sixty-three days after its presentation. The conservator before payment may change an allowance or deemed allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until thirty-five days after its disallowance. If a claim is not yet due, the claim shall state the date when it will become due. If a claim is contingent or unliquidated, the claim shall state the nature of the uncertainty or the anticipated due date of the claim.

(3) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon due proof, procure an order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.

(4) If it appears that the estate is likely to be exhausted before all existing claims are paid:

(a) The conservator may, without a court order, distribute the estate in money or in kind in payment of claims in the following order:

(I) Costs and expenses of administration;

(II) Claims of the federal or state government having priority under other law;

(III) Claims incurred by the conservator for support, care, education, health, and welfare provided to the protected person or individuals who are in fact dependent on the protected person;

(IV) Claims arising before the conservatorship; and

(V) All other claims.

(b)

(I) At any time during the administration, if the payment of claims as set forth in paragraph (a) of this subsection (4) would substantially deplete the conservatorship estate and leave the conservatorship estate with insufficient funds to pay for the protected person's basic living and health care expenses, the conservator may file a motion with the court seeking permission to withhold payment of allowed claims, both those existing and incurred after the date of the motion, and pay only the expenses, claims, and amounts requested by the conservator regardless of the priority of the claim, as set forth in said paragraph (a).

(II) If the conservator files a motion as described in subparagraph (I) of this paragraph (b), the factors to be considered by the court include, but are not limited to:

(A) The current and future projected care costs of the protected person;

(B) The current and projected assets of the protected person, including the assets of the conservatorship estate;

(C) The life expectancy of the protected person;

(D) The current and projected income of the protected person and the conservatorship estate;

(E) The protected person's eligibility for benefits to cover living and health care expenses; and

(F) Whether there are individuals who are in fact dependent on the protected person.

(III) Notice of a motion filed under this section shall be provided to all interested persons and to all creditors whose claims are affected.

(IV) If any order is entered restricting payments on any creditor's claims, the conservator shall provide information in the annual report regarding whether the order restricting payment of the creditor's claims should be modified.

(c) to (e) (Deleted by amendment, L. 2013.)

(5) Unless the court orders otherwise, allowed claims within the same class shall be paid pro rata. Preference may not be given in the payment of a claim over any other claim of the same class, and a claim due and payable may not be preferred over a claim not due.

(6) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to grant a security interest in the conservatorship estate for the payment of any or all claims at a future date.

(7) Nothing in this section affects or prevents:

(a) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) To the limits of the insurance protection only, any proceeding to establish liability of the protected person for which he or she is protected by liability insurance.

(8) Unless otherwise provided in any judgment in another court entered against the protected person or the protected person's estate, an allowed claim bears interest at the legal rate for the period commencing sixty-three days after the time the claim was originally filed with the court or delivered to the conservator, unless based on a contract making a provision for interest, in which case, such claim bears interest in accordance with that contract's provisions.

(9) Each written statement of a claim shall include:

(a) A request or demand for payment from the protected person or the conservatorship estate; and

(b) Sufficient information to allow the conservator to investigate and respond to the claim, including its basis, the name and address of the claimant, and the amount claimed.

(Amended by 2013 Ch. 190, §9, eff. 8/7/2013. L. 2000: Entire part R&RE, p. 1829, § 1, effective January 1, 2001 (see §15-17-103). L. 2006: (1) and (2) amended and (9) added, p. 376, § 5, effective July 1. L. 2012: (2) and (8)

amended, (SB 12-175), ch. 208, p. 840, § 53, effective July 1. L. 2013: (4) and (5) amended, (SB 13-077), ch. 190, p. 772, § 9, effective August 7.)

This section is similar to former §15-14-428 as it existed prior to 2001.

## § 15-14-430. Personal liability of conservator

(1) Except as otherwise provided in the contract, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.

(2) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if personally at fault.

(3) Claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

(4) A question of liability between the estate and the conservator personally may be determined:

(a) In a proceeding pursuant to section 15-10-504;

(b) In a proceeding for accounting, surcharge, indemnification, sanctions, or removal; or

(c) In another appropriate proceeding or action.

(5) A conservator is not personally liable for any environmental condition on or injury resulting from any environmental condition on land solely by reason of an acquisition of title under section 15-14-421.

(L. 2000: Entire part R&RE, p. 1830, § 1, effective January 1, 2001 (see §15-17-103). L. 2008: (4) amended, p. 485, § 13, effective July 1.)

This section is similar to former §15-14-429 as it existed prior to 2001.

## § 15-14-431. Termination of proceedings

(1) A conservatorship terminates upon the death of the protected person or upon order of the court determining that a conservatorship is no longer necessary or needed to protect the assets of the protected person. Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains the age of twenty-one years. Upon learning of the protected person's death, the conservator shall promptly give notice of death to the court and all other persons designated to receive notice of subsequent actions in the order appointing the conservator.

(2) Upon receiving an order terminating the conservatorship or upon receiving notice of the death of a protected person, the conservator shall conclude the administration of the estate by filing a final report and a petition for discharge within sixty-three days after distribution unless otherwise directed by the court.

(3) On petition of a protected person, a conservator, or another person interested in a protected person's welfare, the court may terminate the conservatorship if the protected person no longer meets the statutory requirements for the creation of a conservatorship. Termination of the conservatorship without a decree of discharge does not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.

(4) Except as otherwise ordered by the court for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for conservatorship. The court shall order termination unless it is proved by clear and convincing evidence that continuation of the conservatorship is still statutorily warranted and is still in the best interest of the protected person.

(4.5) The following provisions apply in a termination proceeding that is initiated by the protected person:

(a) The conservator may file a written report to the court regarding any matter relevant to the termination proceeding, and the conservator may file a motion for instructions concerning any relevant matter including, but not limited to, the following:

(I) Whether an attorney, guardian ad litem, or visitor should be appointed for the protected person;

(II) Whether any further investigation or professional evaluation of the protected person should be conducted, the scope of the investigation or professional evaluation, and when the investigation or professional evaluation should be completed; and

(III) Whether the conservator is to be involved in the termination proceedings, and if so, to what extent.

(b) If the conservator elects to file a written report or a motion for instructions, the conservator shall file such initial pleadings within twenty-one days after the petition to terminate has been filed. Any interested person shall then have fourteen days to file a response. If a response is filed, the conservator shall have seven days to file a reply. If a motion for instructions is filed by the conservator as his or her initial pleading, the court shall rule on that motion before the petition for termination of the conservatorship is set for hearing. Unless a hearing on the motion for instructions is requested by the court, the court may rule on the pleadings without a hearing after the time period for the filing of the last responsive pleading has expired. After the filing of the conservator's initial motion for instructions, the conservator may file subsequent motions for instruction as appropriate.

(c) Except for the actions authorized in paragraphs (a), (b), and (e) of this subsection (4.5) or as otherwise ordered by the court, the conservator may not take any action to oppose or interfere in the termination proceeding. The filing of the initial or subsequent motion for instructions by the conservator shall not, in and of itself, be deemed opposition or interference.

(d) Unless ordered by the court, the conservator shall have no duty to participate in the termination proceeding, and the conservator shall incur no liability for filing the report or motion for instruction or for failing to participate in the proceeding.

(e) Nothing in this subsection (4.5) shall prevent:

(I) The court, on its own motion and regardless of whether the conservator has filed a report or request for instructions, from ordering the conservator to take any action that the court deems appropriate, or from appointing an attorney, guardian ad litem, visitor, or professional evaluator;

(II) The court from ordering the conservator to appear at the termination proceeding and give testimony; or

(III) Any interested person from calling the conservator as a witness in the termination proceeding.

(f) Any individual who has been appointed as a conservator, is an interested person in his or her individual capacity, and wants to participate in the termination proceeding in his or her individual capacity and not in his or her fiduciary capacity may do so without restriction or limitation. The payment of any fees and costs to the individual that are related to his or her decision to participate in the termination proceeding shall be governed by section 15-10-602(7) and not section 15-10-602(1).

(5) Upon termination of a conservatorship and whether or not formally distributed by the conservator, title to assets of the estate passes to the formerly protected person, the former protected person's successors, or as ordered by the court. The order of termination must provide for the payment of all fees, costs, and expenses of administration and direct the conservator to file appropriate instruments to evidence the transfer of title or confirm the ordered distribution pursuant to the schedule of distribution prior to receiving the decree of discharge.

(6) The court shall enter a decree of discharge upon being fully satisfied that the conservator has met all conditions required by the court for the conservator's discharge.

(L. 2000: Entire part R&RE, p. 1831, § 1, effective January 1, 2001 (see §15-17-103). L. 2011: (4.5) added, (SB 11-083), ch. 101, p. 309, §19, effective August 10. L. 2012: (2) and (4.5)(b) amended, (SB 12-175), ch. 208, p. 841, § 54, effective July 1.)

This section is similar to former §15-14-430 as it existed prior to 2001.

## § 15-14-432. Payment of debt and delivery of property to foreign conservator without local proceeding

(1) A person who is indebted to or has the possession of tangible or intangible property of a protected person may pay the debt or deliver the property to a foreign conservator, guardian of the estate, or other court-appointed fiduciary of the state of residence of the protected person. Payment or delivery may be made only upon proof of appointment and presentation of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding relating to the protected person is not pending in this state and the foreign fiduciary is entitled to payment or to receive delivery.

(2) Payment or delivery in accordance with subsection (1) of this section discharges the debtor or possessor, absent knowledge of any protective proceeding pending in this state.

(L. 2000: Entire part R&RE, p. 1832, § 1, effective January 1, 2001 (see §15-17-103).)

This section is similar to former §15-14-431 as it existed prior to 2001.

## § 15-14-433. Foreign conservator - proof of authority - bond - powers

If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed in the state in which the protected person resides may file in a district or probate court of this state, in a county in which property belonging to the protected person is located, authenticated copies of the conservator's appointment documents and of any bond. Thereafter, the conservator may exercise all powers of a conservator appointed in this state as to property in this state and may maintain actions and proceedings in this state subject to any conditions otherwise imposed upon nonresident parties.

(L. 2000: Entire part R&RE, p. 1832, § 1, effective January 1, 2001 (see §15-17-103). L. 2006: Entire section amended, p. 392, § 26, effective July 1.)

This section is similar to former §15-14-432 as it existed prior to 2001.

## § 15-14-434. Right to a lawyer post-adjudication

(1) An adult protected person has the right post-adjudication to be represented by a lawyer of the protected person's choosing at the expense of the protected person's estate unless the court finds by clear and convincing evidence that the protected person lacks sufficient capacity to provide informed consent for representation by a lawyer. Upon such a finding, the court shall appoint a guardian ad litem, and the adult protected person retains the right to a lawyer of the adult protected person's choosing for the limited purpose of interlocutory appeal of the court's decision as to the right to a lawyer.

(2) The right to a lawyer described in subsection (1) of this section applies to a protected person participating in proceedings or seeking any remedy under parts 1 to 4 of this article, including change or termination of a guardianship, judicial review of fiduciary conduct, appellate relief, and any other petition for relief from the court.

(3) Subject to subsection (1) of this section, the court shall appoint a lawyer to represent any adult protected person in any proceedings pursuant to parts 1 to 4 of this article if the protected person is not represented by a lawyer and the court determines the protected person needs such representation.

(4) A lawyer for the protected person, on presentation of proof of representation, must be given access to all information pertinent to proceedings under this title, including immediate access to medical records and information.

(Added by 2016 Ch. 286, §4, eff. 8/10/2016. L. 2016: Entire section added, (SB 16-131), ch. 286, p. 1166, § 4, effective August 10.)