

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 172

Introduced by Coash, 27; Wightman, 36.

Read first time January 14, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to guardianships and conservatorships; to amend
2 sections 30-2628 and 30-2647, Revised Statutes Cumulative
3 Supplement, 2012; to change and provide for court filings
4 as prescribed; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2628, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 30-2628 (a) Except as limited by section 30-2620, a
4 guardian of an incapacitated person has the same powers, rights, and
5 duties respecting the guardian's ward that a parent has respecting
6 the parent's unemancipated minor child, except that a guardian is not
7 liable to third persons for acts of the ward solely by reason of the
8 parental relationship. In particular, and without qualifying the
9 foregoing, a guardian has the following powers and duties, except as
10 may be specified by order of the court:

11 (1) To the extent that it is consistent with the terms of
12 any order by a court of competent jurisdiction relating to detention
13 or commitment of the ward, a guardian is entitled to custody of the
14 person of his or her ward and may establish the ward's place of abode
15 within this state or, with court permission, outside of this state.
16 When establishing the ward's place of abode, a guardian shall make
17 every reasonable effort to ensure that the placement is the least
18 restrictive alternative. A guardian shall authorize a placement to a
19 more restrictive environment only after careful evaluation of the
20 need for such placement. The guardian may obtain a professional
21 evaluation or assessment that such placement is in the best interest
22 of the ward.

23 (2) If entitled to custody of his or her ward, a guardian
24 shall make provision for the care, comfort, and maintenance of his or
25 her ward and, whenever appropriate, arrange for the ward's training

1 and education. Without regard to custodial rights of the ward's
2 person, a guardian shall take reasonable care of his or her ward's
3 clothing, furniture, vehicles, and other personal effects and
4 commence protective proceedings if other property of his or her ward
5 is in need of protection.

6 (3) A guardian may give any consents or approvals that
7 may be necessary to enable the ward to receive medical, psychiatric,
8 psychological, or other professional care, counsel, treatment, or
9 service. When making such medical or psychiatric decisions, the
10 guardian shall consider and carry out the intent of the ward
11 expressed prior to incompetency to the extent allowable by law.
12 Notwithstanding this provision or any other provision of the Nebraska
13 Probate Code, the ward may authorize the release of financial,
14 medical, and other confidential records pursuant to sections 20-161
15 to 20-166.

16 (4) If no conservator for the estate of the ward has been
17 appointed, a guardian shall, within thirty days after appointment,
18 prepare and file with the appointing court a complete inventory of
19 the ward's estate together with the guardian's oath or affirmation
20 that the inventory is complete and accurate so far as the guardian is
21 informed. The guardian shall mail a copy thereof by first-class mail
22 to the ward, if the ward can be located and has attained the age of
23 fourteen years, and to all other interested persons as defined in
24 section 30-2601. The guardian shall file with the court an affidavit
25 of mailing showing that copies were sent to all interested persons by

1 first-class mail along with a form to send back to the court that
2 indicates if such person wants to continue receiving notifications
3 about the proceedings. The guardian shall keep suitable records of
4 the guardian's administration and exhibit the same on request of any
5 interested person. To the extent a guardian, who has not been named a
6 conservator, has possession or control of the ward's estate, the
7 guardian shall file with the court an updated inventory every year
8 along with an affidavit of mailing showing that copies were sent to
9 all interested persons and, if a bond has been required, to the
10 bonding company by first-class mail. ~~along with a form to send back~~
11 ~~to the court that indicates if such person wants to continue~~
12 ~~receiving notifications about the proceedings.~~

13 (5) If no conservator for the estate of the ward has been
14 appointed, a guardian may:

15 (i) Institute proceedings to compel any person under a
16 duty to support the ward or to pay sums for the welfare of the ward
17 to perform such person's duty;

18 (ii) Receive money and tangible property deliverable to
19 the ward and apply the money and property for support, care, and
20 education of the ward; but a guardian may not use funds from his or
21 her ward's estate for room and board which the guardian or the
22 guardian's spouse, parent, or child has furnished the ward unless a
23 charge for the service is approved by order of the court made upon
24 notice to at least one of the next of kin of the ward, if notice is
25 possible. A guardian must exercise care to conserve any excess for

1 the ward's needs; and

2 (iii) Exercise a settlor's powers with respect to
3 revocation, amendment, or distribution of trust property when
4 authorized by a court acting under the authority of subsection (f) of
5 section 30-3854. In acting under the authority of subsection (f) of
6 section 30-3854, the court shall proceed in the same manner as
7 provided under subdivision (3) of section 30-2637.

8 (6) A guardian is required to report the condition of his
9 or her ward and of the estate which has been subject to the
10 guardian's possession or control, at least every year and as required
11 by the court or court rule. The court shall receive from any
12 interested person, for a period of thirty days after the filing of
13 the guardian's report, any comments with regard to the need for
14 continued guardianship or amendment of the guardianship order. If the
15 court has reason to believe that additional rights should be returned
16 to the ward or assigned to the guardian, the court shall set a date
17 for a hearing and may provide all protections as set forth for the
18 original finding of incapacity and appointment of a guardian.

19 (7) If a conservator has been appointed, all of the
20 ward's estate received by the guardian in excess of those funds
21 expended to meet current expenses for support, care, and education of
22 the ward must be paid to the conservator for management as provided
23 in the Nebraska Probate Code, and the guardian must account to the
24 conservator for funds expended.

25 (b) Any guardian of one for whom a conservator also has

1 been appointed shall control the custody and care of the ward and is
2 entitled to receive reasonable sums for the guardian's services and
3 for room and board furnished to the ward as agreed upon between the
4 guardian and the conservator if the amounts agreed upon are
5 reasonable under the circumstances. The guardian may request the
6 conservator to expend the ward's estate by payment to third persons
7 or institutions for the ward's care and maintenance.

8 (c) Nothing in subdivision (a)(3) of this section or in
9 any other part of this section shall be construed to alter the
10 decisionmaking authority of an attorney in fact designated and
11 authorized under sections 30-3401 to 30-3432 to make health care
12 decisions pursuant to a power of attorney for health care.

13 Sec. 2. Section 30-2647, Revised Statutes Cumulative
14 Supplement, 2012, is amended to read:

15 30-2647 Within thirty days after appointment, every
16 conservator shall prepare and file with the appointing court a
17 complete inventory of the estate of the protected person together
18 with the conservator's oath or affirmation that the inventory is
19 complete and accurate so far as he or she is informed. The
20 conservator shall mail a copy thereof by first-class mail to the
21 protected person, if the protected person can be located and has
22 attained the age of fourteen years, and to all other interested
23 persons as defined in section 30-2601. The conservator shall file
24 with the court an affidavit of mailing showing that copies were sent
25 to all interested persons by first-class mail along with a form to

1 send back to the court that indicates if such person wants to
2 continue receiving notifications about the proceedings. Every
3 conservator shall file an updated inventory with the annual
4 accounting required under section 30-2648. The conservator shall keep
5 suitable records of his or her administration and exhibit the same on
6 request of any interested person.

7 Sec. 3. Original sections 30-2628 and 30-2647, Revised
8 Statutes Cumulative Supplement, 2012, are repealed.