

Amendment No. 336

Assembly Amendment to Assembly Bill No. 130 (BDR 13-524)

Proposed by: Assemblyman Yeager

Amendment Box: Consistent with Amendment No. 335.

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MNM/BAW



Date: 4/21/2017

A.B. No. 130—Revises various provisions relating to guardianships.
(BDR 13-524)



ASSEMBLY BILL NO. 130—ASSEMBLYMAN SPRINKLE

PREFILED FEBRUARY 10, 2017

Referred to Committee on Judiciary

SUMMARY—Revises various provisions relating to guardianships. (BDR 13-524)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to guardianships; authorizing a court to require a proposed guardian to file a proposed preliminary care plan and budget; establishing the process by which ~~{an attorney}~~ **a person** may obtain the approval of the court ~~{to receive compensation}~~ **for the payment of attorney's fees and costs** from the assets of a ward; ~~{for certain services;}~~ establishing the Office of the State Public Guardian; replacing the term "incompetent" with the term "incapacitated" for purposes of guardianships and revising the definition thereof; revising various provisions relating to notice given to certain persons; revising provisions concerning the sale of real and personal property of a ward; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines the term "incompetent" for purposes of the provisions of law governing guardianships. (NRS 159.019) **Section 7** of this bill replaces the term "incompetent" with the term "incapacitated" and revises the definition thereof. **Sections 5, 6, 11-17, 11, 12-17, 20, 22, and 35-43, 35 and 36-43** of this bill make conforming changes.

Existing law generally requires a petitioner in a guardianship proceeding to give notice of the time and place of the hearing on any petition filed in the guardianship proceeding to certain persons, including any minor ward who is 14 years of age or older. (NRS 159.034) **Section 8** of this bill revises this requirement and requires that notice be given to any ward who is 14 years of age or older, regardless of whether the ward is considered to have the capacity to understand or appreciate the contents of the petition.

Existing law provides that after the filing of a petition in a guardianship proceeding, the clerk is required to issue a citation setting forth a time and place for the hearing and directing certain persons to appear and show cause why a guardian should not be appointed for the proposed ward. (NRS 159.047) **Section 9** of this bill requires a copy of the petition to be served together with the citation on certain persons, including a proposed ward who is 14 years of age or older, regardless of whether the ward is considered to have the capacity to understand or appreciate the contents of the petition, and **section 10** of this bill requires that the proposed ward be served by personal service. **Section 9** also requires a person who serves notice upon the proposed ward to file with the court an affidavit stating that notice was served.

Existing law requires a guardian of the person to file with the court a written report on the condition of the ward and the exercise of authority and performance of duties by the guardian

at certain specified times. (NRS 159.081) **Section 18** of this bill requires that such a report be served on the ward.

Section 21 of this bill requires the guardian of the estate and the guardian of the person to be notified if the ward is a party to any criminal action. **Section 23** of this bill requires that notice be given to a ward upon the filing of certain petitions or any account.

Existing law establishes various provisions concerning transactions involving real and personal property of a ward, including the sale of such property. (NRS 159.127-159.175) **Sections 24-31** of this bill revise certain provisions concerning the sale of real property of a ward, and **section 44** of this bill repeals provisions of law relating to a public auction for the sale of real property. **Sections 32-34** of this bill revise provisions concerning the sale of personal property of a ward. **Section 33** of this bill requires that notice of such a sale be given to a ward who is 14 years of age or older and certain other persons before a guardian may sell the personal property of a ward.

Section 2 of this bill specifies that upon the filing of a petition for the appointment of a guardian, the court may require a proposed guardian to file a proposed preliminary care plan and budget, the format of which and the timing of the filing thereof must be specified by a court rule approved by the Supreme Court.

Section 3 of this bill provides that any person who retains an attorney ~~is entitled to receive just, reasonable and necessary compensation for services associated with the commencement and administration~~ for the purposes of representing a party in a guardianship. ~~but~~ proceeding is personally liable for any attorney's fees and costs incurred, but authorizes such a person to petition the court for an order authorizing the payment of such attorney's fees and costs from the estate of the ward. **Section 3** prohibits such ~~compensation~~ attorney's fees and costs from being paid from the ~~assets~~ estate of ~~the~~ the ward without court approval. ~~Section 3~~ and establishes the process by which ~~an attorney~~ a person is able to obtain the approval of the court. **Section 3** also authorizes an attorney who is appointed by the court to seek compensation for his or her services from the guardianship estate in accordance with the established process. **Section 3** additionally provides that if two or more parties in a guardianship proceeding file competing petitions for the appointment of a guardian or otherwise litigate any contested issue in the guardianship proceeding, only the prevailing party may petition the court for the payment of attorney's fees and costs. If the court determines that there is no prevailing party, the court may authorize a portion of each party's attorney's fees and costs to be paid.

Section 4 of this bill establishes the Office of the State Public Guardian. **Section 4** provides that the State Public Guardian is appointed by the Supreme Court and serves at the pleasure of the Court. **Section 4** also authorizes the State Public Guardian to hire two accountants and two investigators to provide auditing and investigative services to the district courts during the administration of guardian proceedings.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 159 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *Upon the filing of a petition for the appointment of a guardian, the court may require a proposed guardian to file a proposed preliminary care plan and budget. The format of such a proposed preliminary care plan and budget and the timing of the filing thereof must be specified by a rule approved by the Supreme Court.*

Sec. 3. *1. ~~Any~~ Any person, including, without limitation, a guardian or proposed guardian, who retains an attorney* ~~is entitled to just, reasonable and necessary compensation for services associated with the commencement and administration of~~ for the purposes of representing a party in a guardianship ~~and~~

~~Such compensation must~~ proceeding is personally liable for any attorney's fees and costs incurred as a result of such representation.

2. Notwithstanding the provisions of subsection 1 and except as otherwise provided in subsection 5 of NRS 159.183, a person who is personally liable for attorney's fees and costs may petition the court for an order authorizing such attorney's fees and costs to be paid from the estate of the ward in accordance with this section. Any such attorney's fees and costs must not be paid from the ~~assets of a ward~~ guardianship estate unless and until the court ~~allows~~ authorizes the payment ~~to occur~~ pursuant to this section.

~~2.3.~~ 3. When ~~an attorney~~ a person who intends to ~~seek compensation~~ petition the court for payment of attorney's fees and costs from the guardianship estate ~~of a ward~~ first appears in the guardianship proceeding, the ~~attorney shall give~~ person must file written notice of ~~the basis of the compensation by filing with the court a written agreement between the attorney and the ward.~~ his or her intent to seek payment of attorney's fees and costs from the guardianship estate. The ~~agreement~~ written notice:

(a) Must provide a general explanation of the compensation arrangement and how compensation will be computed;

(b) Must include the hourly billing rates of all timekeepers, including, without limitation, attorneys, law clerks and paralegals;

(c) Must provide a general explanation of the reasons why the services of the attorney are necessary to further the best interests of the ward;

(d) Must be served by the ~~attorney~~ person on all persons entitled to notice pursuant to NRS 159.034 and 159.047; and

~~(d)~~ (e) Is subject to approval by the court after a hearing.

~~3.~~ An attorney

4. If written notice was filed and approved by the court pursuant to subsection 3, a person may file with the court a petition requesting ~~compensation, which~~ payment of attorney's fees and costs from the guardianship estate. Such a petition must include the following information:

(a) A detailed statement as to the nature and extent of the services performed by the attorney;

(b) An itemization of each task performed by the attorney, with reference to the time spent on each task in an increment to the nearest one-tenth of an hour and with no minimum billing unit in excess of one-tenth of an hour;

(c) An indication of whether any time billed, including, without limitation, any time spent traveling or waiting, benefited any clients of the attorney other than the ward and, if so, how many other clients benefited from such time; and

(d) Any other information considered relevant to a determination of ~~entitlement to compensation.~~ whether attorney's fees are just, reasonable and necessary.

↪ Absent approval from all ~~interested persons~~ parties who have appeared in the proceeding, any supplemental requests for the payment of attorney's fees ~~by the attorney~~ and costs cannot be augmented in open court and must be properly noticed in the same manner as the underlying petition requesting ~~compensation.~~

~~4.~~ payment.

5. In determining whether ~~compensation is~~ attorney's fees are just, reasonable and necessary, the court may consider all the following factors:

(a) The written ~~agreement~~ notice approved by the court ~~between the attorney and the ward which sets forth the manner in which compensation is to be calculated.~~ pursuant to subsection 3.

(b) Whether the services ~~actually advanced~~ conferred any actual benefit upon the ward or attempted to advance the best interests of the ward.

(c) The qualities of the attorney, including, without limitation, his or her ability, training, education, experience, professional standing and skill.

(d) The character of the work ~~to be done,~~ performed, including, without limitation, the difficulty, intricacy and importance of the work, the time and skill required to complete the work, the responsibility imposed and the nature of the proceedings.

(e) The work actually performed by the attorney, including, without limitation, the skill, time and attention given to the work.

(f) The result of the work, including, without limitation, whether the attorney was successful and any benefits that were derived.

(g) The usual and customary fees charged in the relevant professional communities for each task performed, regardless of who actually performed the task. ~~For an attorney.~~ The court may ~~be awarded,~~ only award:

(1) Compensation at an attorney rate for time spent performing services that require an attorney;

(2) Compensation at a paralegal rate for time spent performing paralegal services;

(3) Compensation at a fiduciary rate for time spent performing fiduciary services; and

(4) No compensation for time spent performing secretarial or clerical services.

(h) The appropriate apportionment among multiple clients of any billed time that benefited multiple clients of the attorney.

(i) The extent to which the services were provided in a reasonable, efficient and cost-effective manner, including, without limitation, whether there was appropriate and prudent delegation of services to others.

(j) The ability of the estate of the ward to pay, including, without limitation:

(1) The value of the estate; ~~under guardianship;~~

(2) The nature, extent and liquidity of the assets of the ~~ward's~~ estate;

(3) The disposable net income of the ~~ward's~~ estate;

(4) The anticipated future needs ~~and income~~ of the ward; and

(5) Any other foreseeable expenses; ~~it and~~

~~(6) Any other factors that are relevant to the duties of the guardian pursuant to NRS 159.079 or 159.083.~~

(k) The efforts made by the person and attorney to reduce and minimize any issues.

(l) Any actions by the person or attorney that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.

(m) Whether any actions taken by the person or attorney were taken for the purpose of advancing or protecting the interests of the person as opposed to the interests of the ward.

(n) Any other factor that is relevant in determining whether ~~compensation is~~ attorney's fees are just, reasonable and necessary ~~it~~

~~is,~~ including, without limitation, any other factor that is relevant in determining whether the person was acting in good faith and was actually pursuing the best interests of the ward.

6. The court shall not approve compensation for an attorney for:

(a) Time spent on internal business activities of the attorney, including, without limitation, clerical or secretarial support; or

(b) Time reported as a total amount of time spent on multiple tasks, rather than an itemization of the time spent on each task.

~~6.7~~ 7. Any fees paid by a third party, including, without limitation, a trust of which the estate is a beneficiary, must be disclosed to and approved by the court.

~~6.7~~ 8. In addition to ~~the compensation for ordinary~~ any payment provided to a person pursuant to this section for the services of an attorney ~~that are set forth in this section, an attorney is entitled to~~, a person may receive ~~compensation~~ payment for ordinary costs and expenses incurred in the scope of ~~this or her~~ the attorney's representation ~~of the ward.~~

9. If two or more parties in a guardianship proceeding file competing petitions for the appointment of a guardian or otherwise litigate any contested issue in the guardianship proceeding, only the prevailing party may petition the court for payment of attorney's fees and costs from the guardianship estate pursuant to this section. If the court determines that there is no prevailing party, the court may authorize a portion of each party's attorney's fees and costs to be paid from the guardianship estate if the court determines that such fees and costs are just, reasonable and necessary given the nature of any issues in dispute.

10. If an attorney is appointed by the court in a guardianship proceeding, he or she may petition the court for compensation for his or her services from the guardianship estate in accordance with the procedure set forth in this section.

Sec. 4. 1. The Office of the State Public Guardian is hereby created.

2. The State Public Guardian is:

(a) Appointed by the Supreme Court and serves at the pleasure of the Court; and

(b) Entitled to receive an annual salary set by the Supreme Court within the limits of legislative appropriations.

3. The State Public Guardian may hire two accountants and two investigators to provide auditing and investigative services to the district courts during the administration of guardianship proceedings.

Sec. 5. NRS 159.014 is hereby amended to read as follows:

159.014 "Care provider" includes any public or private institution located within or outside this state which provides facilities for the care or maintenance of ~~incompetents,~~ persons who are incapacitated, persons of limited capacity or minors.

Sec. 6. NRS 159.015 is hereby amended to read as follows:

159.015 "Court" means any court or judge having jurisdiction of the persons and estates of minors, ~~incompetent~~ persons ~~to~~ who are incapacitated or persons of limited capacity.

Sec. 7. NRS 159.019 is hereby amended to read as follows:

159.019 ~~["Incompetent" means an adult] A person [who, by reason of mental illness, mental deficiency, disease, weakness of mind or any other cause,] is "incapacitated" if he or she, for reasons other than being a minor, is unable to, without assistance, properly to manage and take care of himself or herself or his or her property, or both. The term includes a person who is mentally incapacitated.] to receive and evaluate information or make or communicate decisions to such an extent that the person lacks the ability to meet essential requirements for physical health, safety or self-care without appropriate assistance.~~

Sec. 8. NRS 159.034 is hereby amended to read as follows:

159.034 1. Except as otherwise provided in this section, by specific statute or as ordered by the court, a petitioner in a guardianship proceeding shall give notice of the time and place of the hearing on any petition filed in the guardianship proceeding to:

(a) Any ~~minor~~ ward who is 14 years of age or older ~~+~~, *regardless of whether the ward is considered to have the capacity to understand or appreciate the contents of the petition.*

(b) The parent or legal guardian of any minor ward who is less than 14 years of age.

(c) The spouse of the ward and all other known relatives of the ward who are within the second degree of consanguinity.

(d) Any other interested person or the person's attorney who has filed a request for notice in the guardianship proceedings and has served a copy of the request upon the guardian. The request for notice must state the interest of the person filing the request and the person's name and address, or that of his or her attorney.

(e) The guardian, if the petitioner is not the guardian.

(f) Any person or care provider who is providing care for the ward, except that if the person or care provider is not related to the ward, such person or care provider must not receive copies of any inventory or accounting.

(g) Any office of the Department of Veterans Affairs in this State if the ward is receiving any payments or benefits through the Department of Veterans Affairs.

(h) The Director of the Department of Health and Human Services if the ward has received or is receiving benefits from Medicaid.

(i) Those persons entitled to notice if a proceeding were brought in the ward's home state.

2. The petitioner shall give notice not later than 10 days before the date set for the hearing:

(a) By mailing a copy of the notice by certified, registered or ordinary first-class mail to the residence, office or post office address of each person required to be notified pursuant to this section;

(b) By personal service; or

(c) In any other manner ordered by the court, upon a showing of good cause.

3. Except as otherwise provided in this subsection, if none of the persons entitled to notice of a hearing on a petition pursuant to this section can, after due diligence, be served by certified mail or personal service and this fact is proven by affidavit to the satisfaction of the court, service of the notice must be made by publication in the manner provided by N.R.C.P. 4(e). In all such cases, the notice must be published not later than 10 days before the date set for the hearing. If, after the appointment of a guardian, a search for relatives of the ward listed in paragraph (c) of subsection 1 fails to find any such relative, the court may waive the notice by publication required by this subsection.

4. For good cause shown, the court may waive the requirement of giving notice.

5. A person entitled to notice pursuant to this section may waive such notice. Such a waiver must be in writing and filed with the court.

6. On or before the date set for the hearing, the petitioner shall file with the court proof of giving notice to each person entitled to notice pursuant to this section.

Sec. 9. NRS 159.047 is hereby amended to read as follows:

159.047 1. Except as otherwise provided in NRS 159.0475 and 159.049 to 159.0525, inclusive, upon the filing of a petition under NRS 159.044, the clerk shall issue a citation setting forth a time and place for the hearing and directing the persons or care provider referred to in subsection 2 to appear and show cause why a guardian should not be appointed for the proposed ward.

2. A citation issued under subsection 1, *together with a copy of the petition filed under NRS 159.044*, must be served upon:

(a) A proposed ward who is 14 years of age or older ~~is~~, *regardless of whether the proposed ward is considered to have the capacity to understand or appreciate the contents of the citation and petition;*

(b) The spouse of the proposed ward and all other known relatives of the proposed ward who are:

(1) Fourteen years of age or older; and

(2) Within the second degree of consanguinity;

(c) The parents and custodian of the proposed ward;

(d) Any person or officer of a care provider having the care, custody or control of the proposed ward;

(e) The proposed guardian, if the petitioner is not the proposed guardian;

(f) Any office of the Department of Veterans Affairs in this State if the proposed ward is receiving any payments or benefits through the Department of Veterans Affairs; and

(g) The Director of the Department of Health and Human Services if the proposed ward has received or is receiving any benefits from Medicaid.

3. A person who serves notice upon a proposed ward pursuant to paragraph (a) of subsection 2 shall file with the court an affidavit stating that he or she served notice upon the proposed ward in accordance with the provisions of NRS 159.0475.

Sec. 10. NRS 159.0475 is hereby amended to read as follows:

159.0475 1. A copy of the citation issued pursuant to NRS 159.047 , *together with a copy of the petition filed under NRS 159.044*, must be served : ~~by~~

(a) *Except as otherwise ordered by the court, on a proposed ward who is 14 years of age or older by personal service in the manner provided pursuant to N.R.C.P. 4(d) at least 10 days before the date set for the hearing; and*

(b) *On each person required to be served pursuant to NRS 159.047 other than a proposed ward by:*

(1) Certified mail, with a return receipt requested, ~~on each person required to be served pursuant to NRS 159.047~~ at least 20 days before the hearing; or

~~(b)~~ (2) Personal service in the manner provided pursuant to N.R.C.P. 4(d) at least 10 days before the date set for the hearing . ~~on each person required to be served pursuant to NRS 159.047.~~

2. If none of the persons on whom the citation *and petition* is to be served can, after due diligence, be served by certified mail or personal service , *as applicable*, and this fact is proven ~~is~~ by affidavit ~~is~~ to the satisfaction of the court, service of the citation *and petition* must be made by publication in the manner provided by N.R.C.P. 4(e). In all such cases, the citation *and petition* must be published at least 20 days before the date set for the hearing.

3. A citation *and petition* need not be served on a person or an officer of the care provider who has signed the petition or a written waiver of service of *the citation and petition* or who makes a general appearance.

4. The court may find that notice is sufficient if:

(a) *The citation and petition have been served by personal service on the proposed ward and an affidavit of such service has been filed with the court pursuant to subsection 3 of NRS 159.047;*

(b) The citation ~~has~~ *and petition have* been served by certified mail, with a return receipt requested, or by personal service on the ~~proposed ward,~~ care provider or public guardian required to be served pursuant to NRS 159.047; and

~~(b)~~ (c) At least one relative of the proposed ward who is required to be served pursuant to NRS 159.047 has been served, as evidenced by the return receipt or the certificate of service. If the court finds that at least one relative of the

1 proposed ward has not received notice that is sufficient, the court will require the
2 citation *and petition* to be published pursuant to subsection 2.

3 **Sec. 11.** NRS 159.048 is hereby amended to read as follows:

4 159.048 The citation issued pursuant to NRS 159.047 must state that the:

5 1. Proposed ward may be adjudged to be ~~incompetent~~ *incapacitated* or of
6 limited capacity and a guardian may be appointed for the proposed ward;

7 2. Proposed ward's rights may be affected as specified in the petition;

8 3. Proposed ward has the right to appear at the hearing and to oppose the
9 petition; and

10 4. Proposed ward has the right to be represented by an attorney, who may be
11 appointed for the proposed ward by the court if the proposed ward is unable to
12 retain one.

13 **Sec. 11.5.** NRS 159.0485 is hereby amended to read as follows:

14 159.0485 1. At the first hearing for the appointment of a guardian for a
15 proposed adult ward, the court shall advise the proposed adult ward who is in
16 attendance at the hearing or who is appearing by videoconference at the hearing of
17 his or her right to counsel and determine whether the proposed adult ward wishes to
18 be represented by counsel in the guardianship proceeding. If the proposed adult
19 ward is not in attendance at the hearing because the proposed adult ward has been
20 excused pursuant to NRS 159.0535 and is not appearing by videoconference at the
21 hearing, the proposed adult ward must be advised of his or her right to counsel
22 pursuant to subsection 2 of NRS 159.0535.

23 2. If an adult ward or proposed adult ward is unable to retain legal counsel
24 and requests the appointment of counsel at any stage in a guardianship proceeding
25 and whether or not the adult ward or proposed adult ward lacks or appears to lack
26 capacity, the court shall, at or before the time of the next hearing, appoint an
27 attorney who works for legal aid services, if available, or a private attorney to
28 represent the adult ward or proposed adult ward. The appointed attorney shall
29 represent the adult ward or proposed adult ward until relieved of the duty by court
30 order.

31 3. Subject to the discretion and approval of the court, the attorney for the
32 adult ward or proposed adult ward is entitled to reasonable compensation and
33 expenses. Unless the court determines that the adult ward or proposed adult ward
34 does not have the ability to pay such compensation and expenses or the court shifts
35 the responsibility of payment to a third party, the compensation and expenses must
36 be paid from the estate of the adult ward or proposed adult ward, unless the
37 compensation and expenses are provided for or paid by another person or entity. If
38 the court finds that a person has unnecessarily or unreasonably caused the
39 appointment of an attorney, the court may order the person to pay to the estate of
40 the adult ward or proposed adult ward all or part of the expenses associated with the
41 appointment of the attorney. Any attorney who intends to seek compensation from
42 the estate of the adult ward or proposed adult ward must follow the procedure
43 established in section 3 of this act.

44 **Sec. 12.** NRS 159.0487 is hereby amended to read as follows:

45 159.0487 Any court of competent jurisdiction may appoint:

46 1. Guardians of the person, of the estate, or of the person and estate for
47 ~~incompetents~~ *persons who are incapacitated* or minors whose home state is this
48 State.

49 2. Guardians of the person or of the person and estate for ~~incompetents~~
50 *persons who are incapacitated* or minors who, although not residents of this State,
51 are physically present in this State and whose welfare requires such an
52 appointment.

3. Guardians of the estate for nonresident ~~incompetents~~ *persons who are incapacitated* or nonresident minors who have property within this State.

4. Special guardians.

5. Guardians ad litem.

Sec. 13. NRS 159.054 is hereby amended to read as follows:

159.054 1. If the court finds *that* the proposed ward ~~incompetent~~ *is not incapacitated* and *is* not in need of a guardian, the court shall dismiss the petition.

2. If the court finds *that* the proposed ward ~~to be~~ *is* of limited capacity and *is* in need of a special guardian, the court shall enter an order accordingly and specify the powers and duties of the special guardian.

3. If the court finds that appointment of a general guardian is required, the court shall appoint a general guardian of the ward's person, estate, or person and estate.

Sec. 14. NRS 159.0593 is hereby amended to read as follows:

159.0593 1. If the court orders a general guardian appointed for a proposed ward, the court shall determine, by clear and convincing evidence, whether the proposed ward is a person with a mental defect who is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(d)(4) or (g)(4). If a court makes a finding pursuant to this section that the proposed ward is a person with a mental defect, the court shall include the finding in the order appointing the guardian and cause, within 5 business days after issuing the order, a record of the order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

2. As used in this section:

(a) "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

(b) "Person with a mental defect" means a person who, as a result of marked subnormal intelligence, mental illness, ~~incompetence,~~ *incapacitation*, condition or disease, is:

(1) A danger to himself or herself or others; or

(2) Lacks the capacity to contract or manage his or her own affairs.

Sec. 15. NRS 159.0613 is hereby amended to read as follows:

159.0613 1. Except as otherwise provided in subsection 3, in a proceeding to appoint a guardian for an adult, the court shall give preference to a nominated person or relative, in that order of preference:

(a) Whether or not the nominated person or relative is a resident of this State; and

(b) If the court determines that the nominated person or relative is qualified and suitable to be appointed as guardian for the adult.

2. In determining whether any nominated person, relative or other person listed in subsection 4 is qualified and suitable to be appointed as guardian for an adult, the court shall consider, if applicable and without limitation:

(a) The ability of the nominated person, relative or other person to provide for the basic needs of the adult, including, without limitation, food, shelter, clothing and medical care;

(b) Whether the nominated person, relative or other person has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of chapter 453A of NRS;

(c) Whether the nominated person, relative or other person has been judicially determined to have committed abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult,

1 unless the court finds that it is in the best interests of the ward to appoint the person
2 as guardian for the adult;

3 (d) Whether the nominated person, relative or other person is ~~incompetent~~
4 *incapacitated* or has a disability; and

5 (e) Whether the nominated person, relative or other person has been convicted
6 in this State or any other jurisdiction of a felony, unless the court determines that
7 any such conviction should not disqualify the person from serving as guardian for
8 the adult.

9 3. If the court finds that two or more nominated persons are qualified and
10 suitable to be appointed as guardian for an adult, the court may appoint two or more
11 nominated persons as co-guardians or shall give preference among them in the
12 following order of preference:

13 (a) A person whom the adult nominated for the appointment as guardian for the
14 adult in a will, trust or other written instrument that is part of the adult's established
15 estate plan and was executed by the adult while ~~incompetent~~ *he or she was not*
16 *incapacitated*.

17 (b) A person whom the adult requested for the appointment as guardian for the
18 adult in a written instrument that is not part of the adult's established estate plan
19 and was executed by the adult while ~~incompetent~~ *he or she was not incapacitated*.

20 4. Subject to the preferences set forth in subsections 1 and 3, the court shall
21 appoint as guardian the qualified person who is most suitable and is willing to
22 serve. In determining which qualified person is most suitable, the court shall, in
23 addition to considering any applicable factors set forth in subsection 2, give
24 consideration, among other factors, to:

25 (a) Any nomination or request for the appointment as guardian by the adult.

26 (b) Any nomination or request for the appointment as guardian by a relative.

27 (c) The relationship by blood, adoption, marriage or domestic partnership of
28 the proposed guardian to the adult. In considering preferences of appointment, the
29 court may consider relatives of the half blood equally with those of the whole
30 blood. The court may consider any relative in the following order of preference:

31 (1) A spouse or domestic partner.

32 (2) A child.

33 (3) A parent.

34 (4) Any relative with whom the adult has resided for more than 6 months
35 before the filing of the petition or any relative who has a power of attorney
36 executed by the adult while ~~incompetent~~ *he or she was not incapacitated*.

37 (5) Any relative currently acting as agent.

38 (6) A sibling.

39 (7) A grandparent or grandchild.

40 (8) An uncle, aunt, niece, nephew or cousin.

41 (9) Any other person recognized to be in a familial relationship with the
42 adult.

43 (d) Any recommendation made by a master of the court or special master
44 pursuant to NRS 159.0615.

45 (e) Any request for the appointment of any other interested person that the
46 court deems appropriate, including, without limitation, a person who is not a
47 relative and who has a power of attorney executed by the adult while ~~incompetent~~
48 *he or she was not incapacitated*.

49 5. The court may appoint as guardian any nominated person, relative or other
50 person listed in subsection 4 who is not a resident of this State. The court shall not
51 give preference to a resident of this State over a nonresident if the court determines
52 that:

53 (a) The nonresident is more qualified and suitable to serve as guardian; and

(b) The distance from the proposed guardian's place of residence and the adult's place of residence will not affect the quality of the guardianship or the ability of the proposed guardian to make decisions and respond quickly to the needs of the adult because:

(1) A person or care provider in this State is providing continuing care and supervision for the adult;

(2) The adult is in a secured residential long-term care facility in this State; or

(3) Within 30 days after the appointment of the proposed guardian, the proposed guardian will move to this State or the adult will move to the proposed guardian's state of residence.

6. If the court appoints a nonresident as guardian for the adult:

(a) The jurisdictional requirements of NRS 159.1991 to 159.2029, inclusive, must be met;

(b) The court shall order the guardian to designate a registered agent in this State in the same manner as a represented entity pursuant to chapter 77 of NRS; and

(c) The court may require the guardian to complete any available training concerning guardianships pursuant to NRS 159.0592, in this State or in the state of residence of the guardian, regarding:

(1) The legal duties and responsibilities of the guardian pursuant to this chapter;

(2) The preparation of records and the filing of annual reports regarding the finances and well-being of the adult required pursuant to NRS 159.073;

(3) The rights of the adult;

(4) The availability of local resources to aid the adult; and

(5) Any other matter the court deems necessary or prudent.

7. If the court finds that there is not any suitable nominated person, relative or other person listed in subsection 4 to appoint as guardian, the court may appoint as guardian:

(a) The public guardian of the county where the adult resides if:

(1) There is a public guardian in the county where the adult resides; and

(2) The adult qualifies for a public guardian pursuant to chapter 253 of NRS;

(b) A private fiduciary who may obtain a bond in this State and who is a resident of this State, if the court finds that the interests of the adult will be served appropriately by the appointment of a private fiduciary; or

(c) A private professional guardian who meets the requirements of NRS 159.0595.

8. A person is not qualified to be appointed as guardian for an adult if the person has been suspended for misconduct or disbarred from any of the professions listed in this subsection, but the disqualification applies only during the period of the suspension or disbarment. This subsection applies to:

(a) The practice of law;

(b) The practice of accounting; or

(c) Any other profession that:

(1) Involves or may involve the management or sale of money, investments, securities or real property; and

(2) Requires licensure in this State or any other state in which the person practices his or her profession.

9. As used in this section:

(a) "Adult" means a person who is a ward or a proposed ward and who is not a minor.

(b) "Domestic partner" means a person in a domestic partnership.

(c) "Domestic partnership" means:

(1) A domestic partnership as defined in NRS 122A.040; or
(2) A domestic partnership which was validly formed in another jurisdiction and which is substantially equivalent to a domestic partnership as defined in NRS 122A.040, regardless of whether it bears the name of a domestic partnership or is registered in this State.

(d) "Nominated person" means a person, whether or not a relative, whom an adult:

(1) Nominates for the appointment as guardian for the adult in a will, trust or other written instrument that is part of the adult's established estate plan and was executed by the adult while ~~incompetent~~ *he or she was not incapacitated*.

(2) Requests for the appointment as guardian for the adult in a written instrument that is not part of the adult's established estate plan and was executed by the adult while ~~incompetent~~ *he or she was not incapacitated*.

(e) "Relative" means a person who is 18 years of age or older and who is related to the adult by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity.

Sec. 16. NRS 159.062 is hereby amended to read as follows:

159.062 A parent or spouse of ~~an incompetent~~ *a minor, person who is incapacitated* or person of limited capacity may by will nominate a guardian. The person nominated must file a petition and obtain an appointment from the court before exercising the powers of a guardian.

Sec. 17. NRS 159.078 is hereby amended to read as follows:

159.078 1. Before taking any of the following actions, the guardian shall petition the court for an order authorizing the guardian to:

(a) Make or change the last will and testament of the ward.

(b) Except as otherwise provided in this paragraph, make or change the designation of a beneficiary in a will, trust, insurance policy, bank account or any other type of asset of the ward which includes the designation of a beneficiary. The guardian is not required to petition the court for an order authorizing the guardian to utilize an asset which has a designated beneficiary, including the closure or discontinuance of the asset, for the benefit of a ward if:

(1) The asset is the only liquid asset available with which to pay for the proper care, maintenance, education and support of the ward;

(2) The asset, or the aggregate amount of all the assets if there is more than one type of asset, has a value that does not exceed \$5,000; or

(3) The asset is a bank account, investment fund or insurance policy and is required to be closed or discontinued in order for the ward to qualify for a federal program of public assistance.

(c) Create for the benefit of the ward or others a revocable or irrevocable trust of the property of the estate.

(d) Except as otherwise provided in this paragraph, exercise the right of the ward to revoke or modify a revocable trust or to surrender the right to revoke or modify a revocable trust. The court shall not authorize or require the guardian to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:

(1) Evidences an intent of the ward to reserve the right of revocation or modification exclusively to the ward;

(2) Provides expressly that a guardian may not revoke or modify the trust; or

(3) Otherwise evidences an intent that would be inconsistent with authorizing or requiring the guardian to exercise the right to revoke or modify the trust.

2. Any other interested person may also petition the court for an order authorizing or directing the guardian to take any action described in subsection 1.

3. The court may authorize the guardian to take any action described in subsection 1 if, after notice to any person who is adversely affected by the proposed action and an opportunity for a hearing, the court finds by clear and convincing evidence that:

(a) A reasonably prudent person or the ward, if ~~competent,~~ **not incapacitated**, would take the proposed action and that a person has committed or is about to commit any act, practice or course of conduct which operates or would operate as a fraud or act of exploitation upon the ward or estate of the ward and that person:

(1) Is designated as a beneficiary in or otherwise stands to gain from an instrument which was executed by or on behalf of the ward; or

(2) Will benefit from the lack of such an instrument; or

(b) The proposed action is otherwise in the best interests of the ward for any other reason not listed in this section.

4. The petition must contain, to the extent known by the petitioner:

(a) The name, date of birth and current address of the ward;

(b) A concise statement as to the condition of the ward's estate; and

(c) A concise statement as to the necessity for the proposed action.

5. As used in this section:

(a) "Exploitation" means any act taken by a person who has the trust and confidence of a ward or any use of the power of attorney of a ward to:

(1) Obtain control, through deception, intimidation or undue influence, over the money, assets or property of the ward with the intention of permanently depriving the ward of the ownership, use, benefit or possession of the ward's money, assets or property.

(2) Convert money, assets or property of the ward with the intention of permanently depriving the ward of the ownership, use, benefit or possession of the ward's money, assets or property.

➤ As used in this paragraph, "undue influence" does not include the normal influence that one member of a family has over another.

(b) "Fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive the ward of the ward's rights or property or to otherwise injure the ward.

(c) "Interested person" has the meaning ascribed to it in NRS 132.185 and also includes a named beneficiary under a trust or other instrument if the validity of the trust or other instrument may be in question.

Sec. 18. NRS 159.081 is hereby amended to read as follows:

159.081 1. A guardian of the person shall make and file in the guardianship proceeding for review of the court a written report on the condition of the ward and the exercise of authority and performance of duties by the guardian:

(a) Annually, not later than 60 days after the anniversary date of the appointment of the guardian;

(b) Within 10 days of moving a ward to a secured residential long-term care facility; and

(c) At such other times as the court may order.

2. A report filed pursuant to paragraph (b) of subsection 1 must:

(a) Include a copy of the written recommendation upon which the transfer was made; and

(b) Be served, without limitation, on the **ward and any** attorney for the ward .
~~+, if any.~~

3. The court may prescribe the form and contents for filing a report described in subsection 1.

4. The guardian of the person shall give to the guardian of the estate, if any, a copy of each report not later than 30 days after the date the report is filed with the court.

5. The court is not required to hold a hearing or enter an order regarding the report.

Sec. 19. NRS 159.085 is hereby amended to read as follows:

159.085 1. Not later than 60 days after the date of the appointment of a general or special guardian of the estate or, if necessary, such further time as the court may allow, the guardian shall make and file in the guardianship proceeding a verified inventory of all of the property of the ward which comes to the possession or knowledge of the guardian.

2. A temporary guardian of the estate who is not appointed as the general or special guardian shall file an inventory with the court by not later than the date on which the temporary guardian files a final accounting as required pursuant to NRS 159.177.

3. The guardian shall take and subscribe an oath, which must be endorsed or attached to the inventory, before any person authorized to administer oaths, that the inventory contains a true statement of:

(a) All of the estate of the ward which has come into the possession of the guardian;

(b) All of the money that belongs to the ward; and

(c) All of the just claims of the ward against the guardian.

4. *A copy of the inventory filed with the court and a notice of the filing must be served on the ward, his or her attorney and any guardian ad litem representing the ward.*

5. Whenever any property of the ward not mentioned in the inventory comes to the possession or knowledge of a guardian of the estate, the guardian shall:

(a) Make and file in the proceeding a verified supplemental inventory not later than 30 days after the date the property comes to the possession or knowledge of the guardian; or

(b) Include the property in the next accounting.

~~15-1~~ 6. The court may order which of the two methods described in subsection ~~14-1~~ 5 the guardian shall follow.

~~16-1~~ 7. The court may order all or any part of the property of the ward appraised as provided in NRS 159.0865 and 159.305.

~~17-1~~ 8. If the guardian neglects or refuses to file the inventory within the time required pursuant to subsection 1, the court may, for good cause shown and upon such notice as the court deems appropriate:

(a) Revoke the letters of guardianship and the guardian shall be liable on the bond for any loss or injury to the estate caused by the neglect of the guardian; or

(b) Enter a judgment for any loss or injury to the estate caused by the neglect of the guardian.

Sec. 20. NRS 159.0893 is hereby amended to read as follows:

159.0893 1. A guardian shall present a copy of the court order appointing the guardian and letters of guardianship to a bank or other financial institution that holds any account or other assets of the ward before the guardian may access the account or other assets.

2. The bank or other financial institution shall accept the copy of the court order appointing the guardian and letters of guardianship as proof of guardianship and allow the guardian access to the account or other assets of the ward, subject to any limitations set forth in the court order.

3. Unless the bank or other financial institution is a party to the guardianship proceeding, the bank or other financial institution is not entitled to a copy of any:

(a) ~~{Competency}~~ *Capacity* evaluation of the ward or any other confidential information concerning the medical condition or the placement of the ward; or

(b) Inventory or accounting of the estate of the ward.

Sec. 21. NRS 159.095 is hereby amended to read as follows:

159.095 1. A guardian of the estate shall appear for and represent the ward in all actions, suits or proceedings to which the ward is a party, unless the court finds that the interests of the guardian conflict with the interests of the ward or it is otherwise appropriate to appoint a guardian ad litem in the action, suit or proceeding.

2. Upon final resolution of the action, suit or proceeding, the guardian of the estate or the guardian ad litem shall notify the court of the outcome of the action, suit or proceeding.

3. If the person of the ward would be affected by the outcome of any action, suit or proceeding, the guardian of the person, if any, should be joined to represent the ward in the action, suit or proceeding.

4. If the ward is a party to any criminal action, the guardian of the estate and the guardian of the person must be notified of the action.

Sec. 22. NRS 159.097 is hereby amended to read as follows:

159.097 Any contract, except to the extent of the reasonable value of necessities, and any transaction with respect to the property of a ward made by the ward are voidable by the guardian of the estate if such contract or transaction was made at any time by the ward while ~~{an incompetent}~~ *he or she was incapacitated* or a minor.

Sec. 22.5. *NRS 159.105 is hereby amended to read as follows:*

159.105 1. ~~{Other than claims for attorney's fees that are subject to the provisions of subsection 3, a}~~ *4* guardian of the estate may pay from the guardianship estate the following claims without complying with the provisions of this section and NRS 159.107 and 159.109:

(a) The guardian's claims against the ward or the estate; and

(b) Any claims accruing after the appointment of the guardian which arise from contracts entered into by the guardian on behalf of the ward.

2. The guardian shall report all claims and the payment of claims made pursuant to subsection 1 in the account that the guardian makes and files in the guardianship proceeding following each payment.

~~{2. Claims for attorney's fees which are associated with the commencement and administration of the guardianship of the estate:~~

~~— (a) May be made at the time of the appointment of the guardian of the estate or any time thereafter; and~~

~~— (b) May not be paid from the guardianship estate unless the payment is made in compliance with the provisions of this section and NRS 159.107 and 159.109.~~

Sec. 23. NRS 159.115 is hereby amended to read as follows:

159.115 1. ~~{Upon}~~ *Except as otherwise ordered by the court, upon* the filing of any petition under NRS 159.078 or 159.113, or any account, notice must be given *to the ward and the persons specified in NRS 159.034* in the manner prescribed by ~~{NRS 159.034}~~ *that section*.

2. The notice must:

(a) Give the name of the ward.

(b) Give the name of the petitioner.

(c) Give the date, time and place of the hearing.

(d) State the nature of the petition.

(e) Refer to the petition for further particulars, and notify all persons interested to appear at the time and place mentioned in the notice and show cause why the court order should not be made.

1 **Sec. 24.** NRS 159.134 is hereby amended to read as follows:

2 159.134 1. All sales of real property of a ward must be ~~+~~

3 ~~—(a) Reported to the court; and~~

4 ~~—(b) Confirmed~~ *confirmed* by the court *pursuant to NRS 159.146* before

5 *escrow closes for the sale and* title to the real property passes to the purchaser.

6 2. ~~+~~ ~~The report and a~~ A petition for confirmation of the sale must be filed with

7 the court not later than 30 days after the date of ~~teach~~ the sale ~~+~~, *which is the*

8 *date on which the contract for the sale was signed.*

9 3. The court shall set the date of the hearing *for confirmation of the sale* and

10 give notice of the hearing in the manner required pursuant to NRS 159.115 or as the

11 court may order.

12 4. An interested person may file written objections to the confirmation of the

13 *sale before the hearing for confirmation of the* sale. If such objections are filed,

14 the court shall conduct a hearing regarding those objections during which the

15 interested person may offer witnesses in support of the objections. *The court may,*

16 *in its discretion, allow oral objections to the confirmation of the sale on the date*

17 *of the hearing for confirmation of the sale.*

18 5. Before the court confirms a sale, the court must find that notice of the sale

19 was given in the manner required pursuant to NRS 159.1425 ~~+~~ ~~159.1435~~ and

20 159.144, unless the sale was exempt from notice pursuant to NRS 159.123.

21 **Sec. 25.** NRS 159.1385 is hereby amended to read as follows:

22 159.1385 1. ~~+~~ ~~After the court has granted authority to sell real property~~

23 *of a ward, a* guardian may enter into a written contract with any bona fide agent,

24 broker or multiple agents or brokers to secure a purchaser for ~~any real~~ *such*

25 *property .* ~~of the estate.~~ Such a contract may grant an exclusive right to sell the

26 property to the agent, broker or multiple agents or brokers.

27 2. The guardian shall provide for the payment of a commission upon the sale

28 of the real property which:

29 (a) Must be paid from the proceeds of the sale;

30 (b) Must be fixed in an amount not to exceed:

31 (1) Ten percent for unimproved real property; or

32 (2) Seven percent for ~~improved~~ real property ~~+~~ *with any type of*

33 *improvement;* and

34 (c) Must be authorized by the court by confirmation of the sale.

35 3. Upon confirmation of the sale by the court, the contract for the sale

36 becomes binding and enforceable against the estate.

37 4. A guardian may not be held personally liable and the estate is not liable for

38 the payment of any commission set forth in a contract entered into with an agent or

39 broker pursuant to this section until the sale is confirmed by the court, and then is

40 liable only for the amount set forth in the contract.

41 **Sec. 26.** NRS 159.1415 is hereby amended to read as follows:

42 159.1415 1. ~~When an offer~~ *Except as otherwise provided in subsection*

43 *10 of NRS 159.146, if a contract of sale* to purchase real property of a guardianship

44 estate is presented to the court for confirmation:

45 (a) Other persons may submit higher bids ~~to the~~ *in open* court; and

46 (b) The court may confirm the highest bid.

47 2. Upon confirmation of a sale of real property by the court, the commission

48 for the sale must be divided between the listing agent or broker and the agent or

49 broker who secured the purchaser to whom the sale was confirmed, if any, in

50 accordance with the contract with the listing agent or broker.

1 **Sec. 27.** NRS 159.142 is hereby amended to read as follows:

2 159.142 1. If a ward owns real property jointly with one or more other
3 persons, *after the court grants authority to sell the property*, the interest owned by
4 the ward may be sold to one or more joint owners of the property only if:

5 (a) *All joint owners of the property have been given notice that the court has*
6 *granted the authority to sell the property;*

7 (b) The guardian files a petition with the court to confirm the sale pursuant to
8 NRS 159.134; and

9 ~~1(b)~~ (c) The court confirms the sale.

10 2. The court shall confirm the sale only if:

11 (a) The net amount of the proceeds from the sale to the estate of the ward is not
12 less than 90 percent of the fair market value of the portion of the property to be
13 sold; and

14 (b) Upon confirmation, the estate of the ward will be released from all liability
15 for any mortgage or lien on the property.

16 **Sec. 28.** NRS 159.1425 is hereby amended to read as follows:

17 159.1425 1. Except as otherwise provided in this section and except for a
18 sale pursuant to NRS 159.123 or 159.142, a guardian may sell the real property of a
19 ward only after *the court grants authority for the sale pursuant to NRS 159.113*
20 *and* notice of the sale is published: ~~the~~

21 (a) ~~A~~ *In a* newspaper that is published in the county in which the property, or
22 some portion of the property, is located; ~~or~~

23 (b) If a newspaper is not published in ~~that~~ *the* county ~~in which the~~
24 *property, or some portion of the property, is located:*

25 (1) In a newspaper of general circulation in the county; or

26 (2) In such other newspaper as the court orders ~~it~~ *; or*

27 (c) *On a Multiple Listing Service.*

28 2. Except as otherwise provided in this section and except for a sale of real
29 property pursuant to NRS 159.123 or 159.142 ~~it~~:

30 ~~—(a) The notice of a public auction for the sale of real property must be~~
31 ~~published not less than three times before the date of the sale, over a period of 14~~
32 ~~days and 7 days apart.~~

33 ~~—(b) The~~ *, the* notice of a ~~private~~ sale must be published not less than three
34 times before the date on which ~~offers will~~ *the sale may be* ~~accepted~~ *made*, over
35 a period of 14 days and 7 days apart.

36 3. For good cause shown, the court may order fewer publications and shorten
37 the time of notice, but must not shorten the time of notice to less than 8 days.

38 4. The court may waive the requirement of publication pursuant to this
39 section if:

40 (a) The guardian is the sole devisee or heir of the estate; or

41 (b) All devisees or heirs of the estate consent to the waiver in writing.

42 5. Publication for the sale of real property is not required pursuant to this
43 section if the property to be sold is reasonably believed to have a *net* value of
44 \$10,000 or less. In lieu of publication, the guardian shall post notice of the sale in
45 three of the most public places in the county in which the property, or some portion
46 of the property, is located for at least 14 days before ~~it~~:

47 ~~—(a) The date of the sale at public auction; or~~

48 ~~—(b) The~~ *the* date on *or after* which ~~offers~~ *an offer* will be accepted for a
49 ~~private~~ sale.

50 6. Any notice published or posted pursuant to this section must include,
51 without limitation:

52 (a) ~~For a public auction:~~

~~(1) A description of the real property which reasonably identifies the property to be sold; and~~

~~(2) The date, time and location of the auction.~~

~~(b) For a private sale:~~

~~(1) A description of the real property which reasonably identifies the property to be sold; and~~

~~(2) (b) The date, time and location that offers on or after which an offer will be accepted.~~

Sec. 29. NRS 159.144 is hereby amended to read as follows:

159.144 1. Except for the sale of real property pursuant to NRS 159.123 or 159.142, a sale of real property of a guardianship estate : ~~at a private sale;~~

(a) Must not occur before the date stated in the notice.

(b) Except as otherwise provided in this paragraph, must not occur sooner than 14 days after the date of the first publication or posting of the notice. For good cause shown, the court may shorten the time in which the sale may occur to not sooner than 8 days after the date of the first publication or posting of the notice. If the court so orders, the notice of the sale and the sale may be made to correspond with the court order.

(c) Must occur not later than 1 year after the date stated in the notice.

2. The offers made in a ~~private~~ sale:

(a) Must be in writing; and

(b) May be delivered to the place designated in the notice or to the guardian at any time ~~;~~

~~(1) After~~ *after* the date of the first publication or posting of the notice . ~~;~~ *and*

~~(2) Before the date on which the sale is to occur;~~

Sec. 30. NRS 159.1455 is hereby amended to read as follows:

159.1455 1. Except as otherwise provided in subsection 2, the court shall not confirm a sale of real property of a guardianship estate ~~at a private sale;~~ unless:

(a) The court is satisfied that the amount offered represents the fair market value of the property to be sold; and

(b) Except for a sale of real property pursuant to NRS 159.123, the real property has been appraised within 1 year before the date of the sale. If the real property has not been appraised within this period, a new appraisal must be conducted pursuant to NRS 159.086 and 159.0865 at any time before the sale or confirmation by the court of the sale.

2. The court may waive the requirement of an appraisal ~~and allow the guardian to rely on the assessed value of the real property for purposes of taxation in obtaining confirmation by the court of the sale;~~ *upon a showing to and specific findings by the court on the record that:*

(a) An additional appraisal will unduly delay the sale; and

(b) The delay will impair the estate of the ward.

Sec. 31. NRS 159.146 is hereby amended to read as follows:

159.146 1. At the hearing to confirm the sale of real property, the court shall:

(a) Consider whether the sale is necessary or in the best interest of the estate of the ward; and

(b) Examine the return on the investment and the evidence submitted in relation to the sale.

2. The court shall confirm the sale and order conveyances to be executed if it appears to the court that:

(a) Good reason existed for the sale;

(b) The sale was conducted in a legal and fair manner;

(c) The amount of the offer ~~for bid~~ is not disproportionate to the value of the property; and

(d) It is unlikely that ~~an offer or~~ a bid would be made which exceeds the original offer : ~~for bid~~

(1) By at least 5 percent if the offer ~~for bid~~ is less than \$100,000; or

(2) By at least \$5,000 if the offer ~~for bid~~ is \$100,000 or more.

3. The court shall not confirm the sale if the conditions in this section are not satisfied.

4. If the court does not confirm the sale, the court:

(a) May order a new sale; **or**

(b) May conduct a public auction in open court. ~~for~~

~~(c) May accept a written offer or bid from a responsible person and confirm the sale to the person if the written offer complies with the laws of this state and exceeds the original bid:~~

~~(1) By at least 5 percent if the bid is less than \$100,000; or~~

~~(2) By at least \$5,000 if the bid is \$100,000 or more.~~

5. If the court ~~does not confirm the sale and~~ orders a new sale:

(a) Notice must be given in the manner set forth in NRS 159.1425; and

(b) The sale must be conducted in all other respects as though no previous sale has taken place.

6. If a higher offer ~~for bid~~ is received by the court during the hearing to confirm the sale, the court may continue the hearing ~~rather than accept the offer or bid as set forth in paragraph (c) of subsection 4~~ if the court determines that the person who made the ~~original~~ offer ~~for bid~~ **being confirmed** was not notified of the hearing and ~~that the person who made the original offer or bid~~ may wish to increase **the price of** his or her ~~bid~~ **offer**. This subsection does not grant a right to a person to have a continuance granted and may not be used as a ground to set aside an order confirming a sale.

7. Except as otherwise provided in this ~~subsection, if a higher offer or bid is received by the court during the hearing to confirm the sale and the court does not accept that offer or bid, each successive bid must be for not less than:~~

~~(a) An additional \$5,000, if the original offer is for \$100,000 or more; or~~

~~(b) An additional \$250 if the original offer is less than \$100,000.~~

~~Upon the request of the guardian during the hearing to confirm the sale, the court may set other incremental bid amounts.~~ **section, only the name of the buyer and the price of the sale may be changed at a public auction in open court. An order confirming the sale is sufficient as an addendum to the original contract to allow escrow to close.**

8. **The title company may be changed at a public auction in open court if the estate and the buyer have mutually agreed to the change in writing.**

9. **The date of the close of escrow must be at least 10 judicial days after the date that the notice of the entry of order confirming the sale is filed with the clerk of the court unless the contract specifies a later date. The parties to the sale may extend the date of the close of escrow by mutual agreement in writing.**

10. **If the estate owes more than the value of the property and the estate has made an agreement with all lienholders to accept the sale price and waive any deficiency between the sale price and the amount owed to all lienholders, the sale must be confirmed without the potential for bidding in court. All other portions of the confirmation of sale must be adhered to. The valuation by the bank shall be deemed to be sufficient to meet the appraisal requirement for the sale, and the date of the sale is the date on which the bank approves the sale.**

Sec. 32. NRS 159.1515 is hereby amended to read as follows:

159.1515 1. ~~1. A~~ Except as otherwise provided in subsection 2, a guardian may sell ~~perishable property and other~~ or dispose of personal property of the ward ~~without~~ that has a value of less than \$100 if:

(a) A notice ~~and title to~~ of intent to sell or dispose of the property ~~passes without confirmation by the court if the property:~~

~~(a) Will depreciate in value if not disposed of promptly; or~~

~~(b) Will incur loss or expense by being kept.~~

~~2. The~~ is mailed by certified mail or delivered personally to the ward, his or her attorney and the persons specified in NRS 159.034; and

(b) No objection to the sale or disposal is made within 15 days after such notice is received.

2. A guardian ~~is responsible for the actual value~~ may authorize the immediate destruction of the personal property ~~unless the guardian obtains confirmation by the court of the sale~~ of a ward without notice if:

(a) The guardian determines that the property has been contaminated by vermin or biological or chemical agents;

(b) The expenses related to the decontamination of the property cause salvage to be impractical;

(c) The property constitutes an immediate threat to public health or safety;

(d) The handling, transfer or storage of the property might endanger public health or safety or exacerbate contamination; and

(e) The value of the property is less than \$100 or, if the value of the property is \$100 or more, a state or local health officer has endorsed the destruction of the property.

Sec. 33. NRS 159.1535 is hereby amended to read as follows:

159.1535 1. Except as otherwise provided in NRS 159.1515 and 159.152, a guardian may sell the personal property of the ward only after notice of the sale is ~~published~~:

(a) Given to the:

(1) Ward if he or she is 14 years of age or older;

(2) Parent or legal guardian of the ward, if the ward is a minor who is less than 14 years of age; and

(3) Spouse of the ward and all other known relatives of the ward who are within the second degree of consanguinity; and

(b) Published in:

~~1. A~~ (1) A newspaper that is published in the county in which the property, or some portion of the property, is located; or

~~2. If a newspaper is not published in that the county in which the property, or some portion of the property, is located:~~

~~1. In a newspaper of general circulation in the county; or~~

~~2. In such other newspaper as the court orders.~~

2. Except as otherwise provided in this section:

~~(a) The notice of a public sale must be published not less than three times before the date of the sale, over a period of 14 days and 7 days apart.~~

~~(b) The, the notice of a private sale must be published not less than three times before the date on which offers will be accepted, over a period of 14 days and 7 days apart.~~

3. For good cause shown, the court may order fewer publications and shorten the time of notice, but must not shorten the time of notice to less than 8 days.

4. The notice must include, without limitation:

(a) ~~For a public sale:~~

~~(1) A description of the personal property to be sold; and~~

~~(2) The date, time and location of the sale.~~

~~(b)~~ For a ~~private~~ sale ~~that~~ *other than a sale described in paragraph (b):*

(1) A description of the personal property to be sold; and

(2) The date, time and location that offers will be ~~accepted~~

~~(c)~~ *received.*

(b) For a sale on an appropriate auction website on the Internet:

(1) A description of the personal property to be sold;

(2) The date the personal property will be listed; and

(3) The Internet address of the website on which the sale will be posted.

Sec. 34. NRS 159.154 is hereby amended to read as follows:

159.154 1. The guardian may sell the personal property of a ward ~~by public sale~~ at:

(a) The residence of the ward; or

(b) Any other location designated by the guardian.

2. The guardian may sell the personal property ~~by public sale~~ only if the property is made available for inspection at the time of the sale or photographs of the personal property are posted on an appropriate auction website on the Internet.

3. Personal property may be sold ~~at a public or private sale~~ for cash or upon credit.

4. Except as otherwise provided in NRS 159.1515, a sale or disposition of any personal property of the ward must not be commenced until 30 days after an inventory of the property is filed with the court and a copy thereof is sent by regular mail to the persons specified in NRS 159.034. An affidavit of mailing must be filed with the court.

5. The guardian is responsible for the actual value of the personal property unless the guardian makes a report to the court, not later than 90 days after the conclusion of the sale, showing that good cause existed for the sale and that the property was sold for a price that was not disproportionate to the value of the property.

6. The family members of the ward and any interested persons must be offered the first right of refusal to acquire the personal property of the ward at fair market value.

Sec. 35. NRS 159.173 is hereby amended to read as follows:

159.173 If a guardian of the estate sells or transfers any real or personal property that is specifically devised or bequeathed by the ward or which is held by the ward as a joint tenancy, designated as being held by the ward in trust for another person or held by the ward as a revocable trust and the ward ~~was competent~~ *had the capacity* to make a will or create the interest at the time the will or interest was created, but ~~was not competent~~ *did not have the capacity* to make a will or create the interest at the time of the sale or transfer and never executed a valid later will or changed the manner in which the ward held the interest, the devisee, beneficiary or legatee may elect to take the proceeds of the sale or other transfer of the interest, specific devise or bequest.

Sec. 35.5. NRS 159.183 is hereby amended to read as follows:

159.183 1. Subject to the discretion and approval of the court and except as otherwise provided in subsection ~~4~~ *5*, a guardian must be allowed:

(a) Reasonable compensation for the guardian's services;

(b) Necessary and reasonable expenses incurred in exercising the authority and performing the duties of a guardian; and

(c) Reasonable expenses incurred in retaining accountants, attorneys, appraisers or other professional services.

2. Reasonable compensation and services must be based upon similar services performed for persons who are not under a legal disability. In determining whether compensation is reasonable, the court may consider:

- (a) The nature of the guardianship;
- (b) The type, duration and complexity of the services required; and
- (c) Any other relevant factors.

3. In the absence of an order of the court pursuant to this chapter shifting the responsibility of the payment of compensation and expenses, the payment of compensation and expenses must be paid from the estate of the ward. In evaluating the ability of a ward to pay such compensation and expenses, the court may consider:

- (a) The nature, extent and liquidity of the ward's assets;
- (b) The disposable net income of the ward;
- (c) Any foreseeable expenses; and
- (d) Any other factors that are relevant to the duties of the guardian pursuant to NRS 159.079 or 159.083.

4. Any compensation or expenses, including, without limitation, attorney's fees, must not be paid from the estate of the ward unless and until the payment of such fees is approved by the court pursuant to this section or section 3 of this act, as applicable.

5. A ~~private professional~~ guardian is not allowed compensation or expenses , including, without limitation, attorney's fees, for services incurred by the ~~private professional~~ guardian as a result of a petition to have him or her removed as guardian if the court removes the ~~private professional~~ guardian , pursuant to the provisions of paragraph (b), (d), (e), (f) or (h) of subsection 1 of NRS 159.185.

Sec. 36. NRS 159.185 is hereby amended to read as follows:

159.185 1. The court may remove a guardian if the court determines that:

(a) The guardian has become mentally ~~incompetent~~ **incapacitated**, unsuitable or otherwise incapable of exercising the authority and performing the duties of a guardian as provided by law;

(b) The guardian is no longer qualified to act as a guardian pursuant to NRS 159.0613 if the ward is an adult or NRS 159.061 if the ward is a minor;

(c) The guardian has filed for bankruptcy within the previous 5 years;

(d) The guardian of the estate has mismanaged the estate of the ward;

(e) The guardian has negligently failed to perform any duty as provided by law or by any order of the court and:

(1) The negligence resulted in injury to the ward or the estate of the ward;

or

(2) There was a substantial likelihood that the negligence would result in injury to the ward or the estate of the ward;

(f) The guardian has intentionally failed to perform any duty as provided by law or by any lawful order of the court, regardless of injury;

(g) The best interests of the ward will be served by the appointment of another person as guardian; or

(h) The guardian is a private professional guardian who is no longer qualified as a private professional guardian pursuant to NRS 159.0595.

2. A guardian may not be removed if the sole reason for removal is the lack of money to pay the compensation and expenses of the guardian.

Sec. 37. NRS 159.1995 is hereby amended to read as follows:

159.1995 1. In a guardianship proceeding in this State, a court of this State may request the appropriate court of another state to do any of the following:

- (a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to the procedures of that state;

(c) Order that an evaluation or assessment be made of the ward;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this State a certified copy of the transcript or other record of a hearing under paragraph (a) or any other proceeding, any evidence otherwise produced under paragraph (b), and any evaluation or assessment prepared in compliance with an order under paragraph (c) or (d);

(f) Issue any order necessary to ensure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the proposed ward, the ward or the ~~incompetent~~ *person who is incapacitated*; and

(g) Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state relating to the ward or proposed ward, including protected health information as defined in 45 C.F.R. § 160.103.

2. If a court of another state in which a guardianship or conservatorship proceeding is pending requests assistance of the kind provided in subsection 1, a court of this State has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Sec. 38. NRS 159.215 is hereby amended to read as follows:

159.215 1. A member of the Armed Forces of the United States, a reserve component thereof or the National Guard may, by written instrument and without the approval of a court, appoint any ~~incompetent~~ adult residing in this State *who is not incapacitated* as the guardian of the person of a minor child who is a dependent of that member. The instrument must be:

(a) Executed by both parents if living, not divorced and having legal custody of the child, otherwise by the parent having legal custody; and

(b) Acknowledged in the same manner as a deed.

➤ If both parents do not execute the instrument, the executing parent shall send by certified mail, return receipt requested, to the other parent at his or her last known address, a copy of the instrument and a notice of the provisions of subsection 3.

2. The instrument must contain a provision setting forth the:

(a) Branch of the Armed Forces;

(b) Unit of current assignment;

(c) Current rank or grade; and

(d) Social security number or service number,

➤ of the parent who is the member.

3. The appointment of a guardian pursuant to this section:

(a) May be terminated by a written instrument signed by either parent of the child if that parent has not been deprived of his or her parental rights to the child; and

(b) Is terminated by any order of a court.

Sec. 39. NRS 449.6922 is hereby amended to read as follows:

449.6922 ~~“Incompetent”~~ *“Incapacitated”* has the meaning ascribed to it in NRS 159.019.

Sec. 40. NRS 449.6942 is hereby amended to read as follows:

449.6942 1. A physician shall take the actions described in subsection 2:

(a) If the physician diagnoses a patient with a terminal condition;

(b) If the physician determines, for any reason, that a patient has a life expectancy of less than 5 years; or

(c) At the request of a patient.

2. Upon the occurrence of any of the events specified in subsection 1, the physician shall explain to the patient:

(a) The existence and availability of the Physician Order for Life-Sustaining Treatment form;

(b) The features of and procedures offered by way of the POLST form; and

(c) The differences between a POLST form and the other types of advance directives.

3. Upon the request of the patient, the physician shall complete the POLST form based on the preferences and medical indications of the patient.

4. A POLST form is valid upon execution by a physician and:

(a) If the patient is 18 years of age or older and of sound mind, the patient;

(b) If the patient is 18 years of age or older and ~~incompetent,~~ **incapacitated**, the representative of the patient; or

(c) If the patient is less than 18 years of age, the patient and a parent or legal guardian of the patient.

5. As used in this section, "terminal condition" has the meaning ascribed to it in NRS 449.590.

Sec. 41. NRS 449.6944 is hereby amended to read as follows:

449.6944 1. A Physician Order for Life-Sustaining Treatment form may be revoked at any time and in any manner by:

(a) The patient who executed it, if ~~incompetent,~~ **not incapacitated**, without regard to his or her age or physical condition;

(b) If the patient is ~~incompetent,~~ **incapacitated**, the representative of the patient; or

(c) If the patient is less than 18 years of age, a parent or legal guardian of the patient.

2. The revocation of a POLST form is effective upon the communication to a provider of health care, by the patient or a witness to the revocation, of the desire to revoke the form. The provider of health care to whom the revocation is communicated shall:

(a) Make the revocation a part of the medical record of the patient; or

(b) Cause the revocation to be made a part of the medical record of the patient.

Sec. 42. NRS 449.695 is hereby amended to read as follows:

449.695 1. Except as otherwise provided in this section and NRS 449.6946, a provider of health care shall comply with a valid Physician Order for Life-Sustaining Treatment form, regardless of whether the provider of health care is employed by a health care facility or other entity affiliated with the physician who executed the POLST form.

2. A physician may medically evaluate the patient and, based upon the evaluation, may recommend new orders consistent with the most current information available about the patient's health status and goals of care. Before making a modification to a valid POLST form, the physician shall consult the patient or, if the patient is ~~incompetent,~~ **incapacitated**, shall make a reasonable attempt to consult the representative of the patient and the patient's attending physician.

3. Except as otherwise provided in subsection 4, a provider of health care who is unwilling or unable to comply with a valid POLST form shall take all reasonable measures to transfer the patient to a physician or health care facility so that the POLST form will be followed.

4. Life-sustaining treatment must not be withheld or withdrawn pursuant to a POLST form of a patient known to the attending physician to be pregnant, so long as it is probable that the fetus will develop to the point of live birth with the continued application of life-sustaining treatment.

5. Nothing in this section requires a provider of health care to comply with a valid POLST form if the provider of health care does not have actual knowledge of the existence of the form.

Sec. 43. NRS 616C.505 is hereby amended to read as follows:

616C.505 If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit and is payable as follows:

1. In addition to any other compensation payable pursuant to chapters 616A to 616D, inclusive, of NRS, burial expenses are payable in an amount not to exceed \$10,000, plus the cost of transporting the remains of the deceased employee. When the remains of the deceased employee and the person accompanying the remains are to be transported to a mortuary or mortuaries, the charge of transportation must be borne by the insurer.

2. Except as otherwise provided in subsection 3, to the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until the death of the surviving spouse.

3. If there is a surviving spouse and any surviving children of the deceased employee who are not the children of the surviving spouse, the compensation otherwise payable pursuant to subsection 2 must be paid as follows until the entitlement of all children of the deceased employee to receive compensation pursuant to this subsection ceases:

(a) To the surviving spouse, 50 percent of the death benefit is payable until the death of the surviving spouse; and

(b) To each child of the deceased employee, regardless of whether the child is the child of the surviving spouse, the child's proportionate share of 50 percent of the death benefit and, except as otherwise provided in subsection 11, if the child has a guardian, the compensation the child is entitled to receive may be paid to the guardian.

4. In the event of the subsequent death of the surviving spouse:

(a) Each surviving child of the deceased employee, in addition to any amount the child may be entitled to pursuant to subsection 3, must share equally the compensation theretofore paid to the surviving spouse but not in excess thereof, and it is payable until the youngest child reaches the age of 18 years.

(b) Except as otherwise provided in subsection 11, if the children have a guardian, the compensation they are entitled to receive may be paid to the guardian.

5. If there are any surviving children of the deceased employee under the age of 18 years, but no surviving spouse, then each such child is entitled to his or her proportionate share of 66 2/3 percent of the average monthly wage for the support of the child.

6. Except as otherwise provided in subsection 7, if there is no surviving spouse or child under the age of 18 years, there must be paid:

(a) To a parent, if wholly dependent for support upon the deceased employee at the time of the injury causing the death of the deceased employee, 33 1/3 percent of the average monthly wage.

(b) To both parents, if wholly dependent for support upon the deceased employee at the time of the injury causing the death of the deceased employee, 66 2/3 percent of the average monthly wage.

(c) To each brother or sister until he or she reaches the age of 18 years, if wholly dependent for support upon the deceased employee at the time of the injury causing the death of the deceased employee, his or her proportionate share of 66 2/3 percent of the average monthly wage.

1 7. The aggregate compensation payable pursuant to subsection 6 must not
2 exceed 66 2/3 percent of the average monthly wage.

3 8. In all other cases involving a question of total or partial dependency:

4 (a) The extent of the dependency must be determined in accordance with the
5 facts existing at the time of the injury.

6 (b) If the deceased employee leaves dependents only partially dependent upon
7 the earnings of the deceased employee for support at the time of the injury causing
8 his or her death, the monthly compensation to be paid must be equal to the same
9 proportion of the monthly payments for the benefit of persons totally dependent as
10 the amount contributed by the deceased employee to the partial dependents bears to
11 the average monthly wage of the deceased employee at the time of the injury
12 resulting in his or her death.

13 (c) The duration of compensation to partial dependents must be fixed in
14 accordance with the facts shown, but may not exceed compensation for 100
15 months.

16 9. Compensation payable to a surviving spouse is for the use and benefit of
17 the surviving spouse and the dependent children, and the insurer may, from time to
18 time, apportion such compensation between them in such a way as it deems best for
19 the interest of all dependents.

20 10. In the event of the death of any dependent specified in this section before
21 the expiration of the time during which compensation is payable to the dependent,
22 funeral expenses are payable in an amount not to exceed \$10,000.

23 11. If a dependent is entitled to receive a death benefit pursuant to this section
24 and is less than 18 years of age or ~~incompetent,~~ **incapacitated**, the legal
25 representative of the dependent shall petition for a guardian to be appointed for that
26 dependent pursuant to NRS 159.044. An insurer shall not pay any compensation in
27 excess of \$3,000, other than burial expenses, to the dependent until a guardian is
28 appointed and legally qualified. Upon receipt of a certified letter of guardianship,
29 the insurer shall make all payments required by this section to the guardian of the
30 dependent until the dependent is emancipated, the guardianship terminates or the
31 dependent reaches the age of 18 years, whichever occurs first, unless paragraph (a)
32 of subsection 12 is applicable. The fees and costs related to the guardianship must
33 be paid from the estate of the dependent. A guardianship established pursuant to
34 this subsection must be administered in accordance with chapter 159 of NRS,
35 except that after the first annual review required pursuant to NRS 159.176, a court
36 may elect not to review the guardianship annually. The court shall review the
37 guardianship at least once every 3 years. As used in this subsection,
38 ~~“incompetent”~~ **“incapacitated”** has the meaning ascribed to it in NRS 159.019.

39 12. Except as otherwise provided in paragraphs (a) and (b), the entitlement of
40 any child to receive his or her proportionate share of compensation pursuant to this
41 section ceases when the child dies, marries or reaches the age of 18 years. A child is
42 entitled to continue to receive compensation pursuant to this section if the child is:

43 (a) Over 18 years of age and incapable of supporting himself or herself, until
44 such time as the child becomes capable of supporting himself or herself; or

45 (b) Over 18 years of age and enrolled as a full-time student in an accredited
46 vocational or educational institution, until the child reaches the age of 22 years.

47 13. As used in this section, “surviving spouse” means a surviving husband or
48 wife who was married to the employee at the time of the employee’s death.

49 **Sec. 44.** NRS 159.1435 is hereby repealed.

50 **Sec. 45.** This act becomes effective on January 1, 2018.

TEXT OF REPEALED SECTION

159.1435 Public auction for sale of real property: Where held; postponement.

1. Except for a sale pursuant to NRS 159.123 or 159.142, a public auction for the sale of real property must be held:

- (a) In the county in which the property is located or, if the real property is located in two or more counties, in either county;
- (b) Between the hours of 9 a.m. and 5 p.m.; and
- (c) On the date specified in the notice, unless the sale is postponed.

2. If, on or before the date and time set for the public auction, the guardian determines that the auction should be postponed:

- (a) The auction may be postponed for not more than 3 months after the date first set for the auction; and

- (b) Notice of the postponement must be given by a public declaration at the place first set for the sale on the date and time that was set for the sale.