

ENROLLED HOUSE
BILL NO. 2015

By: Davis of the House

and

Hendrick of the Senate

An Act relating to probate procedure and guardianship; amending 58 O.S. 1991, Sections 541 and 550, which relate to certain vouchers and accounts; modifying certain procedure; providing for certain time for certain filings and information; exempting certain itemized accountings; requiring certain oaths; requiring certain proof of payment if requested; amending 30 O.S. 1991, Section 1-124, which relates to guardianship and conservatorship handbook; requiring Administrative Office of the Courts to develop certain summary of duties of guardians and conservators; amending 30 O.S. 1991, Section 3-115, which relates to appointment of special guardian; permitting court to appoint attorney in certain circumstances; providing for presentation of certain evidence of incapacity and certain emergency plan of care; providing for powers and duties of special guardian; amending 30 O.S. 1991, Sections 3-124, 4-201 and 4-763, which relate to sale or lease of certain properties; modifying procedure for conveyance of certain real property by ward or guardian; providing for certain waivers; providing for notice; adding to list of persons from whom certain bonds are not necessary; repealing 58 O.S. 1991, Sections 547 and 551, which relate to certain probate reports and certain items without vouchers; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 58 O.S. 1991, Section 541, is amended to read as follows:

Section 541. At the final accounting for settlement of the estate or at any other time when required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants, and all other matters necessary to show the condition of its affairs; provided, however, that if waived in writing by all persons entitled to distribution or if the personal representative is the sole recipient, no itemized accounting of income and expenses shall be required in the final accounting. It shall be sufficient for the personal representative to state under oath that:

1. All income has been properly received and expenses lawfully made;

2. All allowed and approved claims have been paid;

3. All funeral expenses, taxes and costs of the administrator have been paid; and

4. The estate is ready for closing.

SECTION 2. AMENDATORY 58 O.S. 1991, Section 550, is amended to read as follows:

Section 550. In rendering his account, the executor or administrator must ~~produce and~~, upon request of the court or an interested party, file vouchers or other proof of payment for all charges, debts, claims, and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher or other proof of payment is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher or other proof of payment is lost, or for other good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

SECTION 3. AMENDATORY 30 O.S. 1991, Section 1-124, is amended to read as follows:

Section 1-124. ~~The Office of the Court Administrator~~ Administrative Office of the Courts shall prepare a guardianship and conservatorship handbook for distribution to the district courts. The handbook shall be written in clear, simple language and shall include information about the laws and procedures which apply to adult guardianships and conservatorships and the duties and responsibilities of such guardians and conservators. In conjunction with the guardianship handbook, the Administrative Office of the Courts shall develop a summary of the duties of guardians and conservators including, but not limited to, statutory notices, timetables, and required court approvals. The summary shall emphasize the significance of timely accountability to the court and to the ward as well as the sanctions and penalties which may be imposed for failure to comply with the requirements of the law or orders of the court. Copies of the handbook shall be made available to the public through the offices of the district court clerks.

SECTION 4. AMENDATORY 30 O.S. 1991, Section 3-115, is amended to read as follows:

Section 3-115. A. The court may appoint a special guardian for a person who appears to be or has been found to be an incapacitated or partially incapacitated person when it appears:

1. There is imminent danger that the health or safety of said person will be seriously impaired or that the financial resources of said person will be seriously damaged or dissipated unless immediate action is taken; and

2. No other person appears to have authority to act in the circumstances or the guardian previously appointed is unable to or refuses to take action.

Except as otherwise provided by this section, the appointment of a special guardian shall be for a period not to exceed ten (10) days.

B. The request for appointment of a special guardian may be included in the petition to appoint a guardian or by separate petition, either of which must be verified.

C. The court may appoint an attorney, separate and apart from the petitioner's attorney, for the subject of the proceeding who does not have legal representation and either cannot afford a private attorney or cannot retain counsel due to incapacity and may

proceed to hear the petition as same pertains to appointment of a special guardian with or without notice. If notice is required, the notice shall set a time for hearing on the petition within seventy-two (72) hours. Notice shall be served on:

1. The subject of the proceeding;
2. The attorney of the subject of the proceeding, if any;
3. The spouse of the subject of the proceeding, if any, and if the spouse is not the petitioner; and
4. At least one other adult relative of the subject of the proceeding or any other person who is not the petitioner, as directed by the court.

Notice shall be personally served in the manner as the court directs on the subject of the proceeding and on other persons receiving notice as directed by the court.

D. The court may without notice appoint a special guardian upon the filing of the petition ~~and~~, upon presentation of evidence of the incapacity of the subject of the proceeding, upon a showing that an immediate or reasonably foreseeable serious physical harm to the subject of the proceeding or serious impairment of the financial resources of said person will result from a delay, and upon presentation of a proposed emergency plan of care for the subject of the proceeding. Whenever a special guardian is immediately appointed as provided by this subsection, the court shall cause a copy of the petition, order and letters of special guardianship to be served on:

1. The subject of the proceeding;
2. The spouse of the subject of the proceeding, if any, if the spouse is not the petitioner; and
3. At least one other adult relative of the subject of the proceeding, if such relative is known or can be ascertained with reasonable diligence, or by any other person who is not the petitioner, as directed by the court.

The notice shall be served in the manner the court directs.

E. The court shall grant the special guardian only those powers necessary to act with respect to the particular emergency, as determined by the court. The special guardian shall be granted only powers to accomplish acts that are both supported by the proposed emergency plan of care and found necessary by the court. Power to change the place of residence of the subject of the proceeding shall be specifically granted by the court upon a showing that the needs of the subject of the proceeding cannot be met within such subject's present residential arrangements. The court's approval shall be required for any changes in either the emergency plan of care or the specified powers of the special guardian. The letters for a special guardian shall state that the person is a special guardian, the date of the expiration of the special guardianship, and the specific power or powers of the special guardian.

F. The appointment of a special guardian shall be effective from the date of appointment until a guardian is appointed pursuant to Section 1-112 of this title, or for thirty (30) days, whichever is less.

G. The court shall not require bond if ~~such~~ the appointment is over the person only, and may require or waive bond if the appointment is as to the property of the ward.

H. The authority of any guardian or limited guardian previously appointed by the court is suspended with regard to the powers granted to the special guardian, but not otherwise, for as long as a special guardian has authority as provided by this section.

I. The court may remove a special guardian at any time. The special guardian shall file a report showing all actions taken

during the special guardianship and shall make any other report the court requires.

SECTION 5. AMENDATORY 30 O.S. 1991, Section 3-124, is amended to read as follows:

Section 3-124. ~~No~~ When the ward owns an interest in a tract of real property in addition to a homestead interest, no conveyance, deed, contract or lease executed pursuant to the authority granted by Section ~~60~~ 3-123 of this ~~act~~ title shall be valid, unless the sale or leasing be conducted in the manner provided by law for the sale or leasing of other lands of an incapacitated or partially incapacitated person, be approved by the court in which the guardianship proceeding is pending, and the spouse of the ward be a party to such conveyance, deed, contract or lease and join in the execution and acknowledgment thereof, but when the ward owns no interest in a tract of real property other than a homestead interest or possible homestead interest, a guardian may execute a conveyance thereof on behalf of the ward for the purpose of waiving such homestead interest or possible homestead interest, if so authorized by order of the court in which such proceeding is pending, made pursuant to application and notice sent by ordinary mail to the persons set forth in Section 3-110 of this title at least ten (10) days prior to the hearing of such application.

SECTION 6. AMENDATORY 30 O.S. 1991, Section 4-201, is amended to read as follows:

Section 4-201. A. Before the entry of an order appointing a person or organization as a guardian of the person and before the letters issue, the court may require the person or organization to be appointed to provide a bond to the State of Oklahoma, with sufficient sureties, to be approved by the court, and in such penal sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law.

B. 1. Before the entry of an order appointing a person or organization as the guardian of a minor or as the guardian or limited guardian of the property of an incapacitated or partially incapacitated person takes effect, and before the letters issue, the court shall require the person or organization to be appointed to provide a bond, in an amount not less than the value of intangible personal property as alleged in the petition or otherwise determined by the court at the hearing on the petition, to the State of Oklahoma, with sufficient sureties, to be approved by the court, and in such penal sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law.

2. Except as otherwise provided by paragraph 3 of this subsection, upon a finding by the court that:

- a. the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than Forty Thousand Dollars (\$40,000.00); and
- b. the guardian of the ward is either a parent, spouse, brother, sister, grandparent, child or grandchild of the ward,

the court may order that a bond is not necessary.

3. A bond shall be required and maintained for cases subject to the Uniform Veterans Guardianship Act.

C. In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the court at the hearing on the petition, the guardian will file at the time the inventory is filed a bond to the full amount of the intangible personal property, which bond will be in substitution for the bond originally filed on

the appointment of the guardian. The amount of the bond in the future may be adjusted up or down in amount based upon the intangible personal property shown in future annual accountings, provided however, no bond shall be reduced except upon order of the court.

SECTION 7. AMENDATORY 30 O.S. 1991, Section 4-763, is amended to read as follows:

Section 4-763. Every guardian authorized to sell real estate shall, before the sale, give bond to the State of Oklahoma, with sufficient surety to be approved by the court, with condition to sell the same in the manner and to account for the proceeds of the sale as provided for by the Oklahoma Guardianship and Conservatorship Act. The court may order that such bond is not required if the court specifically finds that the general bond, if any, of the guardian is of a sufficient penal amount to provide for the proceeds of the sale in addition to the property secured by said bond or upon a finding by the court that:

1. The anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward, after sale, is less than Forty Thousand Dollars (\$40,000.00); and

2. The guardian of the ward is either a parent, spouse, brother, sister, grandparent, child or grandchild of the ward.

SECTION 8. REPEALER 58 O.S. 1991, Sections 547 and 551, are hereby repealed.

SECTION 9. This act shall become effective September 1, 1994.

Passed the House of Representatives the 16th day of May, 1994.

Speaker of the House of
Representatives

Passed the Senate the 18th day of May, 1994.

President of the Senate