

### **§ 3901 Appointment of guardians for persons with disabilities.**

(a) The Court of Chancery shall have the power to appoint guardians for the person or property, or both, of any person with a disability pursuant to this chapter and Chapter 39A of this title. "Person with a disability" means any person who:

(1) By reason of being under the age of 18 is legally unable to manage their own property or make decisions concerning the care of their own person; or

(2) By reason of mental or physical incapacity is unable properly to manage or care for their own person or property, or both, and, in consequence thereof, is in danger of dissipating or losing such property or of becoming the victim of designing persons or, in the case where a guardian of the person is sought, such person is in danger of substantially endangering person's own health, or of becoming subject to abuse by other persons or of becoming the victim of designing persons; or

(3) By reason of § 5703(1) or (2) of Title 16 is deemed legally incapable of giving informed consent to sterilization.

(b) The Court of Chancery shall establish rules concerning the filing of petitions for appointment of guardians. The monetary thresholds referenced in subsections (k) and (l) of this section shall be established by rule, with the concurrence of the Court of Chancery and the Superior Court and the approval of the Supreme Court.

(c) Upon the filing of such petition, the Court shall enter an order fixing a time and place for a hearing thereon. The Court shall by rule provide for reasonable notice to the person with an alleged disability and to such others, if any, as the Court may deem desirable; provided that, in all cases where a guardian of the person or guardian of the property of an adult with a disability is sought, the person with an alleged disability shall be entitled to representation by counsel.

(d) If, upon the filing of a petition, the Court finds the person with an alleged disability is in danger of incurring imminent serious physical harm or substantial economic loss or expense the Court may without notice and hearing appoint an interim guardian of the person or property to serve for a period of up to 30 days; provided, that a hearing shall be held within 30 days of such appointment in accordance with subsection (c) of this section. The guardian so appointed shall have all of the powers and duties granted to guardians in subchapter II of this chapter.

(e) After determining at a hearing (or, for a period of up to 30 days, after determining without a hearing in the case of a person with a disability who is in danger of incurring imminent serious economic loss or expense) that an individual is a person with a disability within the meaning of this section, the Court shall have the same powers of control over the estate of the person with a disability which the person with a disability could exercise, if not incapacitated, except the power to make a will. In exercising these powers the Court shall substitute its judgment for that of the person with a disability to order relief from the incapacity or incapacities which the Court has found. In substituting its judgment, the Court shall act toward the property of the person with a disability as it believes to be in the best interest of the person with a disability and the estate of the person with a disability. The powers of

the Court over the property of the person with a disability are plenary and include, but are not limited to, powers to make gifts and charitable contributions; to convey or release any contingent or expectant interest in property including marital property rights and any right of survivorship incident to joint tenancy or tenants by the entirety; to exercise or release the power of the person with a disability as trustee, personal representative, custodian for minor, conservator or as donee of a power of appointment; to enter into contracts; to create revocable or irrevocable trusts of property of the estate, which may extend beyond the incapacity or life of the person with a disability; to exercise or grant options of the person who is incapacitated to purchase securities or other property; to exercise right of the person who is incapacitated to select options; to cause estate of the person who is incapacitated to become the beneficiary under insurance and annuity policies or to surrender such policies for their cash value; to exercise right of the person who is incapacitated to an elective share in the estate of deceased spouse of the person who is incapacitated and to renounce or disclaim any interest receivable by testate or intestate succession or by inter vivos transfer.

(f) After hearing or, for a period of up to 30 days, after determining without a hearing in the case of a person with a disability who is in danger of incurring imminent serious physical harm and upon determining that a basis for appointment of a guardian of the person exists, the Court shall have the same powers, rights and duties respecting the person with a disability that parents have respecting their child, including the right to approve or reject medical treatment. In exercising these powers, the Court shall act in the best interest of the person with a disability.

(g) The Court shall have the power to grant certificates of guardianship of the property and certified copies of orders terminating the guardianship, both of which may be filed or recorded to give record notice of the authority of the guardian, subject to general statutory requirements governing the filing or recording of documents of title to land or other property.

(h) From the time of the Court's decree appointing a guardian of the property, the person with a disability shall be under disability to contract with regard to the property forming the subject matter of the guardianship during the pendency thereof.

(i) Whenever there is no Chancellor or Vice Chancellor available to exercise the powers conferred by subsection (d) of this section, any judge of the Superior Court may exercise such powers.

(j) Nothing in this section shall be construed to mean an adult is infirm or incapacitated or in need of a guardian for the sole reason an adult relies upon, or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, nor shall anything in this section be construed to authorize or require any medical care or treatment over the implied or express objections of said person.

(k)(1) The Superior Court or Court of Common Pleas shall have the power to appoint a guardian for the property and approve settlement in connection with a single-transaction matter arising out of a tort claim of a person with a disability, except that no guardian need be appointed for a person under the age of 18:

- a. In matters involving settlement of a tort claim of an amount equal to or less than the monetary threshold established by rule pursuant to subsection (b) of this section, provided that the net settlement funds are deposited in a Uniform Transfer to Minor Act ("UTMA") account for the benefit of the minor;
- b. In matters involving settlement of a tort claim of a gross amount in excess of the monetary threshold established by rule pursuant to subsection (b) of this section, provided that:
  1. The net settlement funds are placed in a court-approved annuity or structured financial instrument for the benefit of the minor; or
  2. No greater than the monetary threshold established by rule pursuant to subsection (b) of this section of the net settlement funds are deposited in a UTMA account, with the balance of the settlement funds placed in a court approved annuity or structured financial instrument for the benefit of the minor.

(2) However, for good cause shown, the Court, in the best interests of the minor, may appoint a guardian and transfer the matter to the Court of Chancery for the purpose of administering the estate of the minor so as to protect the estate and maximize benefits available to the minor, including public benefits.

(1)(1) The Court of Chancery may appoint a guardian with limited authority in cases where a person under the age of 18 holds or receives property and may establish rules regarding when such limited guardianship will terminate. In cases where the minor has or will receive personal property with a value equal to or less than the monetary threshold established by rule pursuant to subsection (b) of this section, a guardian need not be appointed if:

- a. The funds are placed in an annuity or structured financial instrument for the benefit of the minor;
- b. The funds are deposited into a UTMA account for the benefit of the minor; or
- c. The personal property is registered or titled in the name of an adult followed in substance by the words "As custodian for [name of minor] under the Delaware Uniform Transfers to Minors Act."

(2) Nothing in paragraph (1)(1) of this section shall limit the Court's power to appoint a guardian of the property of a minor if, for good cause shown, the Court determines that a guardian is necessary to protect the minor's estate and maximize benefits available to the minor, including public benefits.

Code 1852, §§ 1959, 1960; 15 Del. Laws, c. 470, § 1; 19 Del. Laws, c. 257, § 1; 22 Del. Laws, c. 451, § 1; Code 1915, §§ 3914, 3915; Code 1935, §§ 4422, 4423; 43 Del. Laws, c. 228, § 1; 48 Del. Laws, c. 234, § 1; 12 Del. C. 1953, § 3901; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del. Laws, c. 83, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 117, § 1; 76 Del. Laws, c. 380, §§ 1, 2; 78 Del. Laws, c. 179, §§ 83-91; 79 Del. Laws, c. 226, § 1.;