

[CORRECTED COPY]
CHAPTER 304

AN ACT concerning guardianship, amending and supplementing various sections of Title 3B of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.3B:12-1 is amended to read as follows:

Power of the court to order a protective arrangement.

3B:12-1. Power of the court to order a protective arrangement.

If it is established that a minor, an incapacitated person or an alleged incapacitated person or a person not yet in being has property or an interest therein which may be wasted or dissipated or that a basis exists for affecting the property or interest and affairs of a minor, an incapacitated person or an alleged incapacitated person or person not yet in being, or that funds are needed for the support, care and welfare of the minor, incapacitated person or alleged incapacitated person or those entitled to be supported by him, the court may, subject to the appointment of a guardian ad litem and upon notice to the guardian ad litem, without appointing a guardian of the estate, authorize, direct or ratify any single or more than one transaction necessary or desirable to achieve any security, service, care or protective arrangement meeting the foreseeable needs of the minor, incapacitated person or alleged incapacitated person or those dependent upon him.

2. N.J.S.3B:12-2 is amended to read as follows:

Matters within a protective arrangement.

3B:12-2. Matters within a protective arrangement.

Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, addition to, or establishment of, a suitable trust. The court may authorize, direct or ratify any contract, trust or other transaction relating to the minor's, incapacitated person's, alleged incapacitated person's or person's not yet in being financial affairs or involving the estate if the court determines that the transaction is in the best interests of the minor, incapacitated person, alleged incapacitated person or person not yet in being or those dependent upon him.

3. N.J.S.3B:12-3 is amended to read as follows:

Factors to be considered before approving a protective arrangement.

3B:12-3. Factors to be considered before approving a protective arrangement.

Before approving a protective arrangement or other transaction the court shall consider the interests of creditors and dependents of the minor, incapacitated person or alleged incapacitated person and, in view of his disability, whether the minor, incapacitated person or alleged incapacitated person needs the continuing protection of a guardian.

4. N.J.S.3B:12-4 is amended to read as follows:

Appointment of special guardian.

3B:12-4. Appointment of special guardian.

The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this article who shall have authority conferred by the order and shall serve until discharged by the order after reporting to the court of all matters done pursuant to the order of appointment.

If the court has appointed a special guardian to assist in the accomplishment of a protective arrangement pursuant to this section, the special guardian shall be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, upon application to the court, payable by the estate of the minor, incapacitated person or alleged incapacitated person.

5. N.J.S.3B:12-5 is amended to read as follows:

Right of alleged incapacitated person to trial on issue of incapacity.

3B:12-5. Right of alleged incapacitated person to trial on issue of incapacity.

Where application is made to the court for proceedings to affect the property and affairs of an alleged incapacitated person, and the alleged incapacitated person has not been adjudicated as such, the alleged incapacitated person or someone acting in his behalf may apply for a trial of the issue of incapacity in accordance with N.J.S.3B:12-24 and the Rules Governing the Courts of the State of New Jersey.

6. N.J.S.3B:12-6 is amended to read as follows:

Circumstances under which money may be paid or personal property delivered.

3B:12-6. Circumstances under which money may be paid or personal property delivered.

Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000.00 per annum, by paying or delivering the money or property to:

- a. The minor, if married;
- b. A parent or parents of the minor;
- c. Any person having the care and custody of the minor with whom the minor resides;
- d. A guardian of the person of the minor; or
- e. A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving written notice of the deposit to the minor.

7. N.J.S.3B:12-11 is amended to read as follows:

Affidavit of receipt; contents; filing.

3B:12-11. Affidavit of receipt; contents; filing.

The persons making payment of money or delivery of personal property as provided in this article shall obtain from the recipient thereof, if other than a financial institution or a married minor, an affidavit signed by the recipient acknowledging receipt of the money or personal property which shall set forth the recipient's status in relation to the minor and the purpose for which the money or personal property will be used. The affidavit shall be filed in the office of the Surrogate of the county in which the minor resides or if the minor resides outside the State, the county which has jurisdiction of the property.

8. N.J.S.3B:12-13 is amended to read as follows:

Power to designate testamentary guardian.

3B:12-13. Power to designate testamentary guardian.

Subject to the provisions of N.J.S.3B:12-14, either parent may, by his will, appoint a guardian of the person and a guardian of the estate, or a guardian of the person and estate, of any of the parent's children, including children en ventre sa mere, who are under the age of 18 years and unmarried at the death of the parent.

9. N.J.S.3B:12-15 is amended to read as follows:

Appointment of testamentary guardian by surviving parent.

3B:12-15. Appointment of testamentary guardian by surviving parent.

If no guardian has been appointed pursuant to N.J.S.3B:12-13 and N.J.S.3B:12-14, or if the surviving parent was so appointed, the surviving parent may, by his will, appoint a guardian of the person and a guardian of the estate, or a guardian of the person and estate, of any of the parent's children, including children en ventre sa mere, who are under the age of 18 years and unmarried at the death of the surviving parent.

10. N.J.S.3B:12-16 is amended to read as follows:

Bond of testamentary guardian.

3B:12-16. Bond of testamentary guardian.

Before receiving his letters, a testamentary guardian of a minor shall give bond in accordance with N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by direction of the will of the parent appointing the guardian or by order of the court. However, regardless of the direction, the guardian shall, with respect to property to which the ward is or shall be entitled from any source, other than the parent or other than any policy of life insurance upon the life of the parent, give bond in accordance with that section before exercising any authority or control over the property.

11. N.J.S.3B:12-24 is amended to read as follows:

Issue of incapacity triable without jury unless jury is demanded.

3B:12-24. Issue of incapacity triable without jury unless jury is demanded.

In civil actions or proceedings for the determination of incapacity or for the appointment of a guardian for an alleged incapacitated person, the trial of the issue of incapacity may be had without a jury pursuant to Rules Governing the Courts of the State of New Jersey, unless a trial by jury is demanded by the alleged incapacitated person or someone on his behalf.

C.3B:12-24.1 Determination by the court of need for guardianship services, specific services.

12. Determination by the court of need for guardianship services, specific services.

a. General Guardian. If the court finds that an individual is incapacitated as defined in N.J.S.3B:1-2 and is without capacity to govern himself or manage his affairs, the court may appoint a general guardian who shall exercise all rights and powers of the incapacitated person. The general guardian of the estate shall furnish a bond conditioned as required by the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

b. Limited Guardian. If the court finds that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself, the court may appoint a limited guardian of the person, limited guardian of the estate, or limited guardian of both the person and estate. A court, when establishing a limited guardianship shall make specific findings regarding the individual's capacity, including, but not limited to which areas, such as residential, educational, medical, legal, vocational and financial decision making, the incapacitated person retains sufficient capacity to manage. A judgment of limited guardianship may specify the limitations upon the authority of the guardian or alternatively the areas of decision making retained by the person. The limited guardian of the estate shall furnish a bond in accordance with the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

c. Pendente lite; Temporary Guardian.

(1) Whenever a complaint is filed in the Superior Court to declare a person incapacitated and appoint a guardian, the complaint may also request the appointment of a temporary guardian of the person or estate, or both, pendente lite. Notice of a pendente lite temporary guardian application shall be given to the alleged incapacitated person or alleged incapacitated person's attorney or the attorney appointed by the court to represent the alleged incapacitated person.

(2) Pending a hearing for the appointment of a guardian, the court may for good cause shown and upon a finding that there is a critical need or risk of substantial harm, including, but not limited to:

(a) the physical or mental health, safety and well-being of the person may be harmed or jeopardized;

(b) the property or business affairs of the person may be repossessed, wasted, misappropriated, dissipated, lost, damaged or diminished or not appropriately managed;

(c) it is in the best interest of the alleged incapacitated person to have a temporary guardian appointed and such may be dealt with before the hearing to determine incapacity can be held,

after any notice as the court shall direct, appoint a temporary guardian pendente lite of the person or estate, or both, of the alleged incapacitated person.

(3) A pendente lite temporary guardian appointed pursuant to this section may be granted authority to arrange interim financial, social, medical or mental health services or temporary accommodations for the alleged incapacitated person determined to be necessary to deal with critical needs of or risk of substantial harm to the alleged incapacitated person or the alleged incapacitated person's property or assets. The pendente lite temporary guardian may be authorized to make arrangements for payment for such services from the estate of the alleged incapacitated person.

(4) A pendente lite temporary guardian appointed hereunder shall be limited to act for the alleged incapacitated person only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person.

(5) The alleged incapacitated person's attorney or attorney appointed by the court to represent the alleged incapacitated person shall be given notice of the appointment of the pendente lite temporary guardian. The pendente lite temporary guardian shall communicate all actions taken on behalf of the alleged incapacitated individual to the alleged incapacitated person's attorney or attorney appointed by the court to represent the alleged incapacitated person who shall have the right to object to such actions.

(6) A pendente lite temporary guardian appointment shall not have the effect of an adjudication of incapacity or effect of limitation on the legal rights of the individual other than those specified in the court order.

(7) If the court enters an order appointing a pendente lite temporary guardian without notice, the alleged incapacitated person may appear and move for its dissolution or modification on two days' notice to the plaintiff and to the temporary guardian or on such shorter notice as the court prescribes.

(8) Every order appointing a pendente lite temporary guardian granted without notice expires as prescribed by the court, but within a period of not more than 45 days, unless within that time the court extends it for good cause shown for the same period.

(9) The pendente lite temporary guardian, upon application to the court, shall be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, which shall be payable by the estate of the alleged incapacitated person or minor.

(10) The pendente lite temporary guardian shall furnish a bond in accordance with the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

d. Disclosure of information. Physicians and psychologists licensed by the State are authorized to disclose medical information, including but not limited to medical, mental health and substance abuse information as permitted by State and federal law, regarding the alleged incapacitated person in affidavits filed pursuant to the Rules Governing the Courts of the State of New Jersey.

e. Court appearance. The alleged incapacitated person shall appear in court unless the plaintiff and the court-appointed attorney certify that the alleged incapacitated person is unable to appear because of physical or mental incapacity.

f. Communication. When a person who is allegedly in need of guardianship services appears to have a receptive or expressive communication deficit, all reasonable means of communication with the person shall be attempted for the purposes of this section, including written, spoken, sign or non-formal language, which includes translation of the person's spoken or written word when the person is unable to communicate in English, and the use of adaptive equipment.

g. Additional subject areas. At the request of the limited guardian, and if the incapacitated person is not represented, after appointment of an attorney for the incapacitated person and with notice to all interested parties, the court may determine that a person is in need of guardian services regarding additional subject areas and may enlarge the powers of the guardian to protect the person from significant harm.

h. Limitations of guardian powers. At the request of the guardian, the incapacitated person or another interested person, and if the incapacitated person is not represented, after appointment of an attorney for the incapacitated person and with notice to all interested parties,

the court may limit the powers conferred upon a guardian.

13. N.J.S.3B:12-25 is amended to read as follows:

Appointment of guardian.

3B:12-25. Appointment of guardian.

The Superior Court may determine the incapacity of an alleged incapacitated person and appoint a guardian for the person, guardian for the estate or a guardian for the person and estate. Letters of guardianship shall be granted to the spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3), if the spouse is living with the incapacitated person as man and wife or as a domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) at the time the incapacitation arose, or to the incapacitated person's heirs, or friends, or thereafter first consideration shall be given to the Office of the Public Guardian for Elderly Adults in the case of adults within the statutory mandate of the office, or if none of them will accept the letters or it is proven to the court that no appointment from among them will be to the best interest of the incapacitated person or the estate, then to any other proper person as will accept the same. Consideration may be given to surrogate decision-makers, if any, chosen by the incapacitated person before the person became incapacitated by way of a durable power of attorney pursuant to section 4 of P.L. 2000, c. 109 (C.46:2B-8.4), health care proxy or advance directive.

The Office of the Public Guardian for Elderly Adults shall have the authority to not accept guardianship in cases determined by the public guardian to be inappropriate or in conflict with the office.

14. N.J.S.3B:12-26 is amended to read as follows:

Action against incapacitated person when guardian newly appointed; leave of court required.

3B:12-26. Action against incapacitated person when guardian newly appointed; leave of court required.

No action shall be brought or maintained against an incapacitated person within one month after appointment of a guardian except by leave of the court wherein the action is to be brought or maintained.

15. N.J.S.3B:12-27 is amended to read as follows:

Distribution of property of an incapacitated person as intestate property.

3B:12-27. Distribution of property of an incapacitated person as intestate property.

If an incapacitated person dies intestate or without any will except one which was executed after commencement of proceedings which ultimately resulted in adjudicating a person incapacitated and before a judgment has been entered adjudicating a return to competency, the person's property shall descend and be distributed as in the case of intestacy.

16. N.J.S.3B:12-28 is amended to read as follows:

Return to competency; restoration of estate.

3B:12-28. Return to competency; restoration of estate.

The Superior Court may, on summary action filed by the person adjudicated incapacitated or the guardian, adjudicate that the incapacitated person has returned to full or partial competency and restore to that person his civil rights and estate as it exists at the time of the return to competency if the court is satisfied that the person has recovered his sound reason and is fit to govern himself and manage his affairs, or, in the case of an incapacitated person determined to be incapacitated by reason of chronic alcoholism, that the person has reformed and become habitually sober and has continued so for one year next preceding the commencement of the action, and in the case of an incapacitated person determined to be incapacitated by reason of chronic use of drugs that the person has reformed and has not been a chronic user of drugs for one year next preceding the commencement of the action.

17. N.J.S.3B:12-29 is amended to read as follows:

Appointment of guardian of the property for nonresident incapacitated person.

3B:12-29. Appointment of guardian of the property for nonresident incapacitated person.

When a nonresident has been or shall be found to be an incapacitated person under the laws of the state or country wherein the nonresident resides, the Superior Court may appoint a guardian for the nonresident's property in this State.

18. N.J.S.3B:12-30 is amended to read as follows:

Appointment of guardian of adult by parents or spouse or domestic partner; judgment confirming appointment.

3B:12-30. Appointment of guardian of adult by parents or spouse or domestic partner; judgment confirming appointment.

The parents who have been appointed the guardian of an unmarried incapacitated person or the spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) who has been appointed the guardian of an incapacitated person may, by will, appoint a testamentary guardian of the person, or a guardian of the estate, or of both the person and estate of the incapacitated person. Before the appointment of a testamentary guardian becomes effective, the person designated as the testamentary guardian shall apply to the court in a summary manner, upon notice to the incapacitated person, to any guardian who may have been appointed for the incapacitated person, to the person or institution having the care of the incapacitated person and to such heirs as the court may direct, for a judgment confirming that appointment under the will.

19. N.J.S.3B:12-31 is amended to read as follows:

Consent by surviving parent to guardian's appointment.

3B:12-31. Consent by surviving parent to guardian's appointment.

Where an appointment of a testamentary guardian is made by a parent under N.J.S.3B:12-30 and the other parent survives the appointing parent, the appointment shall be effective only when the surviving parent, at or before the issuance of letters, consents to the appointment in writing and signs and acknowledges the consent in the presence of two witnesses present at the same time who subscribe their names as witnesses thereto in the presence of the surviving parent, unless the surviving parent has been adjudged an incapacitated person.

20. N.J.S.3B:12-32 is amended to read as follows:

3B:12-32. Temporary appointment of guardian if person not adjudicated an incapacitated person.

If the person for whom a testamentary guardian has been appointed under the will of a parent, spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) has not been adjudicated as an incapacitated person in accordance with N.J.S.3B:12-24 and the Rules Governing the Courts of New Jersey, the person named as the testamentary guardian may apply to the court in the manner provided in N.J.S.3B:12-30 for a judgment designating that person as the temporary guardian of the person or of the estate, or of both the person and estate of the alleged incapacitated person until the issue of incapacity has been determined. Upon the determination of the issue of incapacity, the court shall either enter a judgment confirming the appointment of the testamentary guardian or vacating the appointment of the temporary guardian.

21. N.J.S.3B:12-33 is amended to read as follows:

Bond of testamentary guardian.

3B:12-33. Bond of testamentary guardian.

Before receiving his letters, a testamentary guardian of an incapacitated person shall give bond in accordance with N.J.S.3B:15-1 unless the guardian is relieved from doing so by direction of the will of the parent, spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) appointing the guardian. However, regardless of any direction, the guardian shall, with respect to property to which the ward is or shall be entitled from any source, other than the parent, spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3) or other than any policy of life insurance upon the life of the parent, spouse or domestic partner as defined in section 3 of P.L. 2003, c. 246 (C.26:8A-3), give bond in accordance with that section before exercising any authority or control over that property.

22. N.J.S.3B:12-34 is amended to read as follows:

Determination into fitness of a testamentary guardian of the person of an incapacitated person.

3B:12-34. Determination into fitness of a testamentary guardian of the person of an incapacitated person.

If a will appointing a testamentary guardian of the person of an incapacitated person has been or is to be probated in the Surrogate's Court of any county or the Superior Court, the Superior Court may, in an action brought upon notice to the ward and guardian named in the will, inquire into the present custody of the incapacitated person, and make any order touching the testamentary guardianship as may be for the best interest and welfare of the incapacitated person.

23. N.J.S.3B:12-35 is amended to read as follows:

Effect of a testamentary appointment.

3B:12-35. Effect of a testamentary appointment.

The appointment of a testamentary guardian of the person of an incapacitated person or his estate shall be good and effectual against any other person claiming the guardianship over or custody of the incapacitated person or his estate, as the case may be.

24. N.J.S.3B:12-36 is amended to read as follows:

Authority of court with respect to ward's person and estate.

3B:12-36. Authority of court with respect to ward's person and estate.

If a guardian has been appointed as to the person of a minor or an incapacitated person, the court shall have authority over the ward's person and all matters relating thereto; and if a guardian has been appointed to the estate of a minor or an incapacitated person, the court shall have authority over the ward's estate, and all matters relating thereto.

25. N.J.S.3B:12-37 is amended to read as follows:

Letters of guardianship to state any limitations at the time of appointment or later.

3B:12-37. Letters of guardianship to state any limitations at the time of appointment or later.

If the court limits any power conferred on the guardian, the limitation shall be so stated in certificates of letters of guardianship thereafter issued.

26. N.J.S.3B:12-38 is amended to read as follows:

Title to ward's property vested in guardian as trustee.

3B:12-38. Title to ward's property vested in guardian as trustee.

The appointment of a guardian of the estate of a minor or an incapacitated person vests in him title as trustee to all property of his ward, presently held or thereafter acquired, including title to any property theretofore held for the ward by attorneys in fact. The appointment of a guardian is not a transfer or alienation within the meaning of general provisions of any Federal or State statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the ward of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a guardian.

27. N.J.S.3B:12-39 is amended to read as follows:

Delegation of parent's or guardian's powers regarding ward's care, custody or property; limitations.

3B:12-39. Delegation of parent's or guardian's powers regarding ward's care, custody or property; limitations.

A parent, other than where custody of a minor has been awarded by a court of competent jurisdiction, with the consent of the other parent, if the latter is living and not an incapacitated person or a guardian of the person of a minor or an incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

28. N.J.S.3B:12-41 is amended to read as follows:

Guardian of ward's person entitled to reimbursement for expenses; payments to third persons.

3B:12-41. Guardian of ward's person entitled to reimbursement for expenses; payments to third persons.

If another person has been appointed guardian of the ward's estate, the guardian of the ward's person is entitled to receive reasonable reimbursement and fees for his services and for room and board furnished to the ward, provided the same has been agreed upon between the guardian of the person and the guardian of the estate; and provided, further, that the amounts agreed upon are reasonable under the circumstances. The guardian of the person may request the guardian of the estate to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

29. N.J.S.3B:12-42 is amended to read as follows:

Reporting condition of ward's person and property to court.

3B:12-42. Reporting condition of ward's person and property to court.

A guardian shall report at time intervals as ordered by the court, unless otherwise waived by the court, the condition of the ward and the condition of the ward's estate which has been subject to the guardian's possession or control as ordered by the court.

a. A report by the guardian of the person shall state or contain:

- (1) the current mental, physical and social condition of the ward;
- (2) the living arrangements for all addresses of the ward during the reporting period;
- (3) the medical, educational, vocational and other services provided to the ward and the guardian's opinions as to the adequacy of the ward's care;
- (4) a summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;
- (5) if the ward is institutionalized, whether or not the guardian considers the current plan for care, treatment or habilitation to be in the ward's best interest;
- (6) plans for future care; and
- (7) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

b. The court may appoint an individual to review a report, interview the ward or guardian and make any other investigation the court directs.

c. Agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) and public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7 shall be exempt from this section.

30. N.J.S.3B:12-43 is amended to read as follows:

Expenditures to be made by guardian out of ward's estate.

3B:12-43. Expenditures to be made by guardian out of ward's estate.

A guardian of the estate of a minor or incapacitated person may expend or distribute so much or all of the income or principal of his ward for the support, maintenance, education, general use and benefit of the ward and his dependents, in the manner, at the time or times and to the extent that the guardian, in an exercise of a reasonable discretion, deems suitable and proper, taking into account the requirements of the "Prudent Investor Act," P.L.1997, c.36 (C.3B:20-11.1 et seq.), with or without court order, with due regard to the duty and ability of any person to support or provide for the ward if the ward is a minor, and without due regard to the duty and ability of any person to support or provide for the ward if the ward is an incapacitated person, and with or without regard to any other funds, income or property which may be available for that purpose.

31. N.J.S.3B:12-44 is amended to read as follows:

Recommendations to be considered by guardian of ward's estate in making expenditures.

3B:12-44. Recommendations to be considered by guardian of ward's estate in making expenditures.

In making expenditures under N.J.S.3B:12-43, the guardian of the estate of a minor or incapacitated person shall consider recommendations relating to the appropriate standard of support, education and benefit for the ward made by a parent or guardian of the person, if any. The guardian of the estate may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the ward pursuant to the recommendations of a parent or guardian of the person unless the guardian knows that the parent or the guardian is deriving personal financial benefit therefrom, or unless the recommendations are clearly not in the best interests of the ward.

32. N.J.S.3B:12-45 is amended to read as follows:

Other factors to be considered by guardian of ward's estate in making expenditures.

3B:12-45. Other factors to be considered by guardian of ward's estate in making expenditures.

In making expenditures under N.J.S.3B:12-43, the guardian of the estate of a minor or incapacitated person shall expend or distribute sums reasonably necessary for the support, education, care or benefit of the ward with due regard to:

- a. The size of the ward's estate;
- b. The probable duration of the guardianship and the likelihood that the ward, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; and
- c. The accustomed standard of living of the ward and members of the ward's household.

33. N.J.S.3B:12-46 is amended to read as follows:

Persons for whose benefit expenditures may be made by guardian of ward's estate.

3B:12-46. Persons for whose benefit expenditures may be made by guardian of ward's estate.

The guardian of the estate of a minor or incapacitated person may expend funds of the ward's estate under N.J.S.3B:12-43 for the support of persons legally dependent on the ward and others who are members of the ward's household who are unable to support themselves, and who are in need of support.

34. N.J.S.3B:12-47 is amended to read as follows:

Persons who whom funds may be paid.

3B:12-47. Persons to whom funds may be paid.

Funds expended by the guardian of the estate of a minor or an incapacitated person under N.J.S.3B:12-43 may be paid by the guardian to any person, including the ward, to reimburse for expenditures which the guardian might have made, or in advance for services to be rendered to the ward when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

35. N.J.S.3B:12-48 is amended to read as follows:

Powers conferred upon a guardian.

3B:12-48. Powers conferred upon a guardian.

A guardian of the estate of a minor or an incapacitated person has all of the powers conferred upon the guardian by law and the provisions of this chapter except as limited by the judgment. These powers shall specifically include the right to file or defend any litigation on behalf of the ward, including but not limited to, the right to bring an action for divorce or annulment on any

grounds authorized by law.

36. N.J.S.3B:12-49 is amended to read as follows:

Powers conferred upon the court.

3B:12-49. Powers conferred upon the court.

The court has, for the benefit of the ward, the ward's dependents and members of his household, all the powers over the ward's estate and affairs which he could exercise, if present and not under a disability, except the power to make a will, and may confer those powers upon a guardian of the estate. These powers include, but are not limited to, the power to convey or release the ward's present and contingent and expectant interests in real and personal property, including dower and curtesy and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release the ward's powers as trustee, personal representative, custodian for minor, guardian, or 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 ward's disability or life, to exercise the ward's options to purchase securities or other property, to exercise the ward's rights to elect options and change beneficiaries under insurance annuity policies and to surrender the policies for their cash value, to exercise the ward's right to an elective share in the estate of the ward's deceased spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3) to the extent permitted by law and to renounce any interest by testate or intestate succession or by inter vivos transfer and to engage in planning utilizing public assistance programs consistent with current law.

37. N.J.S.3B:12-54 is amended to read as follows:

Duty of guardian to deliver property when minor attains 18 years of age.

3B:12-54. Duty of guardian to deliver property when minor attains 18 years of age.

Except as provided in section 2 of P.L.2003, c.258 (C.3B:12-54.1), when a minor who has not been adjudged an incapacitated person attains 18 years of age, his guardian, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former ward as soon as possible.

38. N.J.S.3B:12-56 is amended to read as follows:

Powers, rights and duties of a guardian of the person of a ward generally.

3B:12-56. Powers, rights and duties of a guardian of the person of a ward generally.

a. A guardian of the person of a ward is not legally obligated to provide for the ward from his own funds.

b. A guardian of the person of a ward is not liable to a third person for acts of the ward solely by reason of the relationship and is not liable for injury to the ward resulting from the wrongful conduct of a third person providing medical or other care, treatment or service for the ward except to the extent that the guardian of the ward failed to exercise reasonable care in choosing the provider.

c. If a ward has previously executed a valid power of attorney for health care or advance directive under P.L.1991, c.201 (C.26:2H-53 et seq.), or revocation pursuant to section 5 of P.L.1991, c.201 (C.26:2H-57), a guardian of the ward shall act consistent with the terms of such document unless revoked or altered by the court.

d. To the extent specifically ordered by the court for good cause shown, the guardian of the person of the ward may initiate the voluntary admission, as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), of a ward to a State psychiatric facility, as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), or a private psychiatric facility. A ward so admitted shall be entitled to all of the rights of a voluntarily admitted patient, which rights shall be exercised on behalf of the ward by the guardian. The guardian of the ward shall exercise the ward's rights in a manner consistent with the wishes of the ward except to the extent that compliance with those wishes would create a significant risk to the health or safety of the ward. If the wishes of the ward are

not ascertainable with reasonable efforts, the guardian of the ward shall exercise the ward's rights in a manner consistent with the best interests of the ward. Notwithstanding the provisions of this section to the contrary, if the ward objects to the initiation of voluntary admission for psychiatric treatment or to the continuation of that voluntary admission, the State's procedures for involuntary commitment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) shall apply. If the ward objects to any other decision of the guardian of the ward pursuant to this section, this objection shall be brought to the attention of the Superior Court, Chancery Division, Probate Part, which may, in its discretion, appoint an attorney or guardian ad litem for the ward, hold a hearing or enter such orders as may be appropriate in the circumstances.

39. N.J.S.3B:12-57 is amended to read as follows:

Powers and duties of a guardian of the person of a ward.

3B:12-57. Powers and duties of a guardian of the person of a ward.

a. (Deleted by amendment, P.L.2005, c.304.)

b. (Deleted by amendment, P.L.2005, c.304.)

c. (Deleted by amendment, P.L.2005, c.304.)

d. (Deleted by amendment, P.L.2005, c.304.)

e. (Deleted by amendment, P.L.2005, c.304.)

f. In accordance with Section 12 of P.L.2005, c.304 (C.3B:12-24.1), a guardian of the person of a ward shall exercise authority over matters relating to the rights and best interest of the ward's personal needs, only to the extent adjudicated by a court of competent jurisdiction. In taking or forbearing from any action affecting the personal needs of a ward, a guardian shall give due regard to the preferences of the ward, if known to the guardian or otherwise ascertainable upon reasonable inquiry. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction, the guardian shall:

(1) take custody of the ward and establish the ward's place of abode in or outside of this State;

(2) personally visit the ward or if a public agency which is authorized to act pursuant to P.L.1965, c.59 (C.30:4-165.1 et seq.) and P.L.1970, c.289 (C.30:4-165.7 et seq.) or the Office of the Public Guardian pursuant to P.L. 1985, c.298 (C.52:27G-20 et seq.) or their representatives which may include a private or public agency, visits the ward not less than once every three months, or as deemed appropriate by the court, and otherwise maintain sufficient contact with the ward to know his capacities, limitations, needs, opportunities and physical and mental health;

(3) provide for the care, comfort and maintenance and, whenever appropriate, the education and training of the ward;

(4) subject to the provisions of subsection c. of N.J.S.3B:12-56, give or withhold any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service;

(5) take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and, where appropriate, sell or dispose of such effects to meet the current needs of the ward;

(6) institute an action for the appointment of a guardian of the property of the ward, if necessary for the protection of the property;

(7) develop a plan of supportive services for the needs of the ward and a plan to obtain the supportive services;

(8) if necessary, institute an action against a person having a duty to support the ward or to pay any sum for the ward's welfare in order to compel the performance of the duties;

(9) receive money, payable from any source for the current support of the ward, and tangible personal property deliverable to the ward. Any sums so received shall be applied to the ward's current needs for support, health care, education and training in the exercise of the guardian's reasonable discretion, with or without court order, with or without regard to the duty or ability of any person to support or provide for the ward and with or without regard to any other funds, income or property that may be available for that purpose, unless an application is

made to the court to establish a supplemental needs trust or other trust arrangement. However, the guardian may not use funds from the ward's estate for room and board, which the guardian, the guardian's spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3), parent or child have furnished the ward, unless agreed to by a guardian of the ward's estate pursuant to N.J.S.3B:12-41, or unless a charge for the service is approved by order of the court made upon notice to at least one of the heirs of the ward, if possible. The guardian shall exercise care to conserve any excess funds for the ward's needs; and

(10) If necessary, institute an action that could be maintained by the ward including but not limited to, actions alleging fraud, abuse, undue influence and exploitation.

g. In the exercise of the foregoing powers, the guardian shall encourage the ward to participate with the guardian in the decision-making process to the maximum extent of the ward's ability in order to encourage the ward to act on his own behalf whenever he is able to do so, and to develop or regain higher capacity to make decisions in those areas in which he is in need of guardianship services, to the maximum extent possible.

40. N.J.S. 3B:12-58 is amended to read as follows:

Gifts to charities and other objects.

3B:12-58. Gifts to charities and other objects.

If the estate is ample to provide for the purposes implicit in the distributions authorized by this article, a guardian for the estate of an incapacitated person may apply to the court for authority to make gifts to charity and other objects as the ward might have been expected to make.

41. N.J.S. 3B:12-59 is amended to read as follows:

Purchase of real property for use of an incapacitated person and his dependents.

3B:12-59. Purchase of real property for use of an incapacitated person and his dependents.

When it shall appear to the court that it would be advantageous to the incapacitated person and to those legally dependent upon him for their support or are members of the incapacitated person's household, or any of them, if a dwelling house and a lot of land were purchased or a lot of land were purchased and a dwelling house built thereon, for the use of the incapacitated person and to those legally dependent upon him for their support or who are members of the incapacitated person's household, or any of them, the court may direct the guardian of his estate to purchase a house and lot or to purchase a lot and build a dwelling house thereon and to enter into contracts therefor as the court shall deem advisable, and to expend all necessary funds from the ward's estate for that purpose.

42. N.J.S.3B:12-60 is amended to read as follows:

Guardian's duty with respect to will of deceased incapacitated person.

3B:12-60. Guardian's duty with respect to will of deceased incapacitated person.

Upon the death of an incapacitated person, the guardian shall deliver to the Surrogate of the county where the incapacitated person resided prior to death for safekeeping any will of the deceased person which may have come into the guardian's possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto.

43. N.J.S.3B:12-61 is amended to read as follows:

Power of guardian to act as personal representative of the estate of a deceased incapacitated person.

3B:12-61. Power of guardian to act as personal representative of the estate of a deceased incapacitated person.

If within 40 days after the death of an incapacitated person, no other person has been appointed personal representative and no action for an appointment is pending in the Superior

Court or Surrogate's court of the county where the incapacitated person resided at his death, the guardian may apply to the Superior Court for authority to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a guardian, after notice to all persons interested in the incapacitated person's estate either as heirs or devisees and including any person nominated executor in any will of which the applicant is aware, the court may order the conferral of those powers, upon determining that there is no objection, and may enter judgment that the guardian has all of the powers and duties of a personal representative. The making and entry of a judgment under this section shall have the effect of an order of appointment of a personal representative, except that the estate in the name of the guardian, after administration, may be distributed to persons entitled to the decedent's estate under his will or the laws of intestacy without prior retransfer to the guardian as personal representative.

44. N.J.S.3B:12-63 is amended to read as follows:

Guardian's final account and delivery of property upon termination of guardianship.

3B:12-63. Guardian's final account and delivery of property upon termination of guardianship.

Upon termination of the guardianship, pursuant to N.J.S.3B:12-64 the guardian, after the allowance of his final account, shall pay over and distribute all funds and properties of the former ward or to the estate of the former ward in accordance with the order of the court.

45. N.J.S.3B:12-64 is amended to read as follows:

When authority and responsibility of guardian terminate.

3B:12-64. When authority and responsibility of guardian terminate.

a. The authority and responsibility of a guardian of the person or estate of an incapacitated person terminate upon:

- (1) the death, resignation or removal of the guardian;
- (2) upon the death of the incapacitated person; or
- (3) upon the entry of a judgment adjudicating the restoration of competency or termination of guardianship for other reasons.

b. However, termination does not affect the guardian's liability for prior acts, nor the guardian's obligation to account for funds and assets of the ward.

c. Notwithstanding the termination of the guardianship, the guardian may make final burial and funeral arrangements if the body remains unclaimed for five days and may pay for burial and funeral costs, Surrogate fees of administration, probate and bond from the guardianship account. Resignation of a guardian does not terminate the guardianship unless it has been approved by a judgment of the court.

d. Upon the death of an incapacitated person the guardian shall provide written notification to the Surrogate and shall provide the Surrogate with a copy of the death certificate within seven days of the guardian's receipt of the death certificate.

46. N.J.S.3B:12-66 is amended to read as follows:

Filling vacancy in guardianship.

3B:12-66. Filling vacancy in guardianship. The Superior Court, or the Surrogate's court in the case of a minor, shall have jurisdiction to fill the vacancy by the appointment of a substituted guardian. The Superior Court may fill the vacancy in case of a guardian of a minor or where letters of guardianship were granted by the Superior Court or when removing or discharging the guardian. The Surrogate's court may fill the vacancy in the case of a guardian of a minor where letters were granted by the Surrogate's Court.

47. N.J.S.3B:22-2 is amended to read as follows:

Order of priority of claims when assets insufficient.

3B:22-2. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- a. Reasonable funeral expenses;
- b. Costs and expenses of administration;
- c. Debts for the reasonable value of services rendered to the decedent by the Office of the Public Guardian for Elderly Adults;
- d. Debts and taxes with preference under federal law or the laws of this State;
- e. Reasonable medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- f. Judgments entered against the decedent according to the priorities of their entries respectively;
- g. All other claims.

No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due. The commencement of an action against the personal representative for the recovery of a debt or claim or the entry of a judgment thereon against the personal representative shall not entitle such debt or claim to preference over others of the same class.

C.3B:12-66.1 Removal from New Jersey after appointment of guardian.

48. Removal from New Jersey after Appointment of Guardian.

a. A guardian appointed in this State desiring to move to another state with his ward shall obtain an order from the Superior Court of this State consenting to the ward's removal and if applicable, the guardian's discharge. The Superior Court may transfer the guardianship to another state if the court is satisfied that a transfer will serve the best interest of the ward.

b. The ward's removal and discharge of the guardian shall be on such terms as the Superior Court deems necessary, including requiring filing and settlement of the guardian's account and filing of an exemplified copy of the order evidencing the other state court's acceptance of jurisdiction over the guardianship and the guardian.

C.3B:12-66.2 Transfer into New Jersey of guardianship established in another state.

49. Transfer into New Jersey of Guardianship Established in Another State.

a. A guardian or like fiduciary appointed in another state may file a summary action in the Superior Court for the transfer of the guardianship and the appointment as a guardian in this State if domicile in this State is or will be established.

b. Notice of hearing shall be given to the ward and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian under the New Jersey Rules of Court were applicable.

c. The Superior Court shall grant an application for the transfer of a guardianship established in another state unless the court determines that the proposed guardianship is a collateral attack on an existing or proposed guardianship or the transfer and appointment would not be in the best interest of the ward.

d. An exemplified record of a court of competent jurisdiction evidencing the original proceeding adjudicating the ward's incapacity and any amendment or modification orders entered subsequent to the original judgment shall be filed with the Superior Court. Subject to due process principles, full faith and credit may be accorded to a court in another state's determination of the ward's incapacity. The Superior Court may fix the rights, powers, and duties of the guardian that the court determines are necessary to administer the ward's person or estate, or both person and estate, in this State.

e. The guardian shall give notice of the application to transfer guardianship to the court in the other state.

50. This act shall take effect immediately.

Approved January 11, 2006.