



Rep. Robert Martwick

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LRB101 10074 LNS 57261 a

1 AMENDMENT TO HOUSE BILL 2661

2 AMENDMENT NO. _____. Amend House Bill 2661 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing
5 Sections 11a-9 and 11a-18 as follows:

6 (755 ILCS 5/11a-9) (from Ch. 110 1/2, par. 11a-9)

7 Sec. 11a-9. Report.➤

8 (a) The petition for adjudication of disability and for
9 appointment of a guardian should be accompanied by a report
10 which contains (1) a description of the nature and type of the
11 respondent's disability and an assessment of how the disability
12 impacts on the ability of the respondent to make decisions or
13 to function independently; (2) an analysis and results of
14 evaluations of the respondent's mental and physical condition
15 and, where appropriate, educational condition, adaptive
16 behavior and social skills, which have been performed within 3

1 months of the date of the filing of the petition; (3) an
2 opinion as to whether guardianship is needed, the type and
3 scope of the guardianship needed, and the reasons therefor; (4)
4 a recommendation as to the most suitable living arrangement
5 and, where appropriate, treatment or habilitation plan for the
6 respondent and the reasons therefor; (5) the name, business
7 address, business telephone number, and signatures of all
8 persons who performed the evaluations upon which the report is
9 based, one of whom shall be a licensed physician or a licensed
10 clinical psychologist, and a statement of the certification,
11 license, or other credentials that qualify the evaluators who
12 prepared the report.

13 (b) If for any reason no report accompanies the petition,
14 the court shall order appropriate evaluations to be performed
15 by a qualified person or persons and a report prepared and
16 filed with the court at least 10 days prior to the hearing.

17 (b-5) Upon oral or written motion by the respondent or the
18 guardian ad litem or upon the court's own motion, the court
19 shall appoint one or more independent experts to examine the
20 respondent. Upon the filing with the court of a verified
21 statement of services rendered by the expert or experts, the
22 court shall determine a reasonable fee for the services
23 performed. If the respondent is unable to pay the fee, the
24 court may enter an order upon the petitioner to pay the entire
25 fee or such amount as the respondent is unable to pay. However,
26 in cases where the Office of State Guardian is the petitioner,

1 consistent with Section 30 of the Guardianship and Advocacy
2 Act, no expert services fees shall be assessed against the
3 Office of the State Guardian.

4 (c) Unless the court otherwise directs, any report prepared
5 pursuant to this Section shall not be made part of the public
6 record of the proceedings but shall be available to the court
7 or an appellate court in which the proceedings are subject to
8 review, to the respondent, the petitioner, the guardian, and
9 their attorneys, to the respondent's guardian ad litem, and to
10 such other persons as the court may direct.

11 (Source: P.A. 98-1094, eff. 1-1-15.)

12 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

13 Sec. 11a-18. Duties of the estate guardian.

14 (a) To the extent specified in the order establishing the
15 guardianship, the guardian of the estate shall have the care,
16 management and investment of the estate, shall manage the
17 estate frugally and shall apply the income and principal of the
18 estate so far as necessary for the comfort and suitable support
19 and education of the ward, his minor and adult dependent
20 children, and persons related by blood or marriage who are
21 dependent upon or entitled to support from him, or for any
22 other purpose which the court deems to be for the best
23 interests of the ward, and the court may approve the making on
24 behalf of the ward of such agreements as the court determines
25 to be for the ward's best interests. The guardian may make

1 disbursement of his ward's funds and estate directly to the
2 ward or other distributee or in such other manner and in such
3 amounts as the court directs. If the estate of a ward is
4 derived in whole or in part from payments of compensation,
5 adjusted compensation, pension, insurance or other similar
6 benefits made directly to the estate by the Veterans
7 Administration, notice of the application for leave to invest
8 or expend the ward's funds or estate, together with a copy of
9 the petition and proposed order, shall be given to the
10 Veterans' Administration Regional Office in this State at least
11 7 days before the hearing on the application.

12 (a-5) The probate court, upon petition of a guardian, other
13 than the guardian of a minor, and after notice to all other
14 persons interested as the court directs, may authorize the
15 guardian to exercise any or all powers over the estate and
16 business affairs of the ward that the ward could exercise if
17 present and not under disability. The court may authorize the
18 taking of an action or the application of funds not required
19 for the ward's current and future maintenance and support in
20 any manner approved by the court as being in keeping with the
21 ward's wishes so far as they can be ascertained. The court must
22 consider the permanence of the ward's disabling condition and
23 the natural objects of the ward's bounty. In ascertaining and
24 carrying out the ward's wishes the court may consider, but
25 shall not be limited to, minimization of State or federal
26 income, estate, or inheritance taxes; and providing gifts to

1 charities, relatives, and friends that would be likely
2 recipients of donations from the ward. The ward's wishes as
3 best they can be ascertained shall be carried out, whether or
4 not tax savings are involved. Actions or applications of funds
5 may include, but shall not be limited to, the following:

6 (1) making gifts of income or principal, or both, of
7 the estate, either outright or in trust;

8 (2) conveying, releasing, or disclaiming his or her
9 contingent and expectant interests in property, including
10 marital property rights and any right of survivorship
11 incident to joint tenancy or tenancy by the entirety;

12 (3) releasing or disclaiming his or her powers as
13 trustee, personal representative, custodian for minors, or
14 guardian;

15 (4) exercising, releasing, or disclaiming his or her
16 powers as donee of a power of appointment;

17 (5) entering into contracts;

18 (6) creating for the benefit of the ward or others,
19 revocable or irrevocable trusts of his or her property that
20 may extend beyond his or her disability or life;

21 (7) exercising options of the ward to purchase or
22 exchange securities or other property;

23 (8) exercising the rights of the ward to elect benefit
24 or payment options, to terminate, to change beneficiaries
25 or ownership, to assign rights, to borrow, or to receive
26 cash value in return for a surrender of rights under any

1 one or more of the following:

2 (i) life insurance policies, plans, or benefits,

3 (ii) annuity policies, plans, or benefits,

4 (iii) mutual fund and other dividend investment
5 plans,

6 (iv) retirement, profit sharing, and employee
7 welfare plans and benefits;

8 (9) exercising his or her right to claim or disclaim an
9 elective share in the estate of his or her deceased spouse
10 and to renounce any interest by testate or intestate
11 succession or by inter vivos transfer;

12 (10) changing the ward's residence or domicile; or

13 (11) modifying by means of codicil or trust amendment
14 the terms of the ward's will or any revocable trust created
15 by the ward, as the court may consider advisable in light
16 of changes in applicable tax laws.

17 The guardian in his or her petition shall briefly outline
18 the action or application of funds for which he or she seeks
19 approval, the results expected to be accomplished thereby, and
20 the tax savings, if any, expected to accrue. The proposed
21 action or application of funds may include gifts of the ward's
22 personal property or real estate, but transfers of real estate
23 shall be subject to the requirements of Section 20 of this Act.
24 Gifts may be for the benefit of prospective legatees, devisees,
25 or heirs apparent of the ward or may be made to individuals or
26 charities in which the ward is believed to have an interest.

1 The guardian shall also indicate in the petition that any
2 planned disposition is consistent with the intentions of the
3 ward insofar as they can be ascertained, and if the ward's
4 intentions cannot be ascertained, the ward will be presumed to
5 favor reduction in the incidents of various forms of taxation
6 and the partial distribution of his or her estate as provided
7 in this subsection. The guardian shall not, however, be
8 required to include as a beneficiary or fiduciary any person
9 who he has reason to believe would be excluded by the ward. A
10 guardian shall be required to investigate and pursue a ward's
11 eligibility for governmental benefits.

12 (b) Upon the direction of the court which issued his
13 letters, a guardian may perform the contracts of his ward which
14 were legally subsisting at the time of the commencement of the
15 ward's disability. The court may authorize the guardian to
16 execute and deliver any bill of sale, deed or other instrument.

17 (c) The guardian of the estate of a ward shall appear for
18 and represent the ward in all legal proceedings unless another
19 person is appointed for that purpose as guardian or next
20 friend. This does not impair the power of any court to appoint
21 a guardian ad litem or next friend to defend the interests of
22 the ward in that court, or to appoint or allow any person as
23 the next friend of a ward to commence, prosecute or defend any
24 proceeding in his behalf. Without impairing the power of the
25 court in any respect, if the guardian of the estate of a ward
26 and another person as next friend shall appear for and

1 represent the ward in a legal proceeding in which the
2 compensation of the attorney or attorneys representing the
3 guardian and next friend is solely determined under a
4 contingent fee arrangement, the guardian of the estate of the
5 ward shall not participate in or have any duty to review the
6 prosecution of the action, to participate in or review the
7 appropriateness of any settlement of the action, or to
8 participate in or review any determination of the
9 appropriateness of any fees awarded to the attorney or
10 attorneys employed in the prosecution of the action.

11 (d) Adjudication of disability shall not revoke or
12 otherwise terminate a trust which is revocable by the ward. A
13 guardian of the estate shall have no authority to revoke a
14 trust that is revocable by the ward, except that the court may
15 authorize a guardian to revoke a Totten trust or similar
16 deposit or withdrawable capital account in trust to the extent
17 necessary to provide funds for the purposes specified in
18 paragraph (a) of this Section. If the trustee of any trust for
19 the benefit of the ward has discretionary power to apply income
20 or principal for the ward's benefit, the trustee shall not be
21 required to distribute any of the income or principal to the
22 guardian of the ward's estate, but the guardian may bring an
23 action on behalf of the ward to compel the trustee to exercise
24 the trustee's discretion or to seek relief from an abuse of
25 discretion. This paragraph shall not limit the right of a
26 guardian of the estate to receive accountings from the trustee

1 on behalf of the ward.

2 (d-5) Upon a verified petition by the plenary or limited
3 guardian of the estate or the request of the ward that is
4 accompanied by a current physician's or a licensed clinical
5 psychologist's report that states the ward possesses
6 testamentary capacity, the court may enter an order authorizing
7 the ward to execute a will or codicil. In so ordering, the
8 court shall authorize the guardian to retain independent
9 counsel for the ward with whom the ward may execute or modify a
10 will or codicil.

11 (e) Absent court order pursuant to the Illinois Power of
12 Attorney Act directing a guardian to exercise powers of the
13 principal under an agency that survives disability, the
14 guardian will have no power, duty or liability with respect to
15 any property subject to the agency. This subsection (e) applies
16 to all agencies, whenever and wherever executed.

17 (f) Upon petition by any interested person (including the
18 standby or short-term guardian), with such notice to interested
19 persons as the court directs and a finding by the court that it
20 is in the best interest of the person with a disability, the
21 court may terminate or limit the authority of a standby or
22 short-term guardian or may enter such other orders as the court
23 deems necessary to provide for the best interest of the person
24 with a disability. The petition for termination or limitation
25 of the authority of a standby or short-term guardian may, but
26 need not, be combined with a petition to have another guardian

1 appointed for the person with a disability.

2 (Source: P.A. 99-143, eff. 7-27-15; 99-302, eff. 1-1-16;
3 99-642, eff. 7-28-16.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.".