

House Bill 1314

By: Representatives Purcell of the 122nd, Houston of the 139th, and Greene of the 134th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 29 of the Official Code of Georgia Annotated, relating to guardians and
2 wards, so as to change certain provisions relating to petition to sell or otherwise dispose of
3 property by a guardian, service, and full return; to change certain provisions relating to
4 appointment of a successor in the event of a guardian's death and when a ward may call for
5 an accounting; to change certain provisions relating to procedure for appointment of
6 guardians of incapacitated adults; to change certain provisions relating to modification or
7 termination of guardianships of incapacitated adults; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Title 29 of the Official Code of Georgia Annotated, relating to guardians and wards, is
12 amended by striking subsections (a), (b), and (c) of Code Section 29-2-7, relating to petition
13 to sell or otherwise dispose of property by a guardian, service, and full return, and inserting
14 in lieu thereof the following:

15 "(a) A guardian of the property desiring to sell, rent, lease, exchange, or otherwise dispose
16 of property other than property that is perishable, liable to deteriorate, or expensive to keep
17 or listed stocks and bonds shall file a petition with the probate court stating the property
18 involved and the interests in such property, the specific purpose of the transaction, the
19 proposed price, if any, and all other terms or conditions proposed for the transaction. In the
20 event full particulars are lacking, the petition shall state the reasons for any such omission.
21 The petition shall include the names and addresses of the spouse and all adult children of
22 the ward who are living and whose addresses are known; or, if none, the names and
23 addresses of any and all parents, adult siblings, adult nieces, adult nephews, and
24 grandparents of the ward who are living and whose addresses are known; or, if none, the
25 names and addresses of two adult friends of the ward.

1 (b) Upon filing the petition, the minor or the incapacitated adult shall be served personally
 2 if the minor or the incapacitated adult is within this state. If the minor or the incapacitated
 3 adult is outside of this state or cannot be located, service upon the minor or the
 4 incapacitated adult may be by personal service or by registered or certified mail or statutory
 5 overnight delivery to the last known address of the minor or the incapacitated adult. If the
 6 incapacitated adult is a patient in any hospital, medical facility, residential facility, or any
 7 similar institution located within or outside this state, service upon such incapacitated adult
 8 may be perfected by delivery of a copy of the petition and citation to the incapacitated adult
 9 by a member of the staff of the institution in which the incapacitated adult is confined; the
 10 staff member shall make a certificate of the delivery and return the same to the judge of the
 11 probate court issuing the citation. The judge of the probate court shall appoint a guardian
 12 ad litem for the minor or the incapacitated adult and cause a copy of the petition and
 13 citation to be served personally upon or by first-class mail to the guardian ad litem and
 14 shall cause a copy of the petition and citation to be served also by first-class mail upon the
 15 spouse and all adult children of the ward who are living and whose addresses are known;
 16 or, if none, any and all parents, adult siblings, adult nieces, adult nephews, and
 17 grandparents of the ward who are living and whose addresses are known; or, if none, two
 18 adult friends of the ward. The probate judge may direct any additional service or notice as
 19 the judge may determine to be proper in the interests of due process and reasonable
 20 opportunity for any party or interest to be heard.

21 (c) If no written objection by a person so notified is filed within 30 days following the
 22 mailing of notice or service upon the guardian ad litem and such other person or persons
 23 as required by subsection (b) of this Code section, the probate court shall order such sale
 24 summarily in the manner and terms petitioned. If timely written objection is filed, the court
 25 shall hear the matter not sooner than ten days after expiration of the period within which
 26 to file an objection and grant or deny the petition for sale or make such other order as is in
 27 the best interest of the estate, which may require the sale to be private or at public outcry
 28 including confirmation of the sale by the court or otherwise. An appeal shall lie to the
 29 superior court in the manner, under the restrictions, and with the effect provided for appeals
 30 from the probate court in other cases."

31 SECTION 2.

32 Said title is further amended by striking subsection (a) of Code Section 29-2-75, relating to
 33 appointment of a successor in the event of a guardian's death and when a ward may call for
 34 an accounting, and inserting in lieu thereof the following:

35 "(a) In the event of the death or disability of a duly appointed guardian, the judge of the
 36 probate court shall have the discretionary authority to appoint a successor guardian. The

1 judge shall notify the nearest of kin of the ward to appear before him or her at the next term
 2 of court. If the judge is satisfied after a hearing that the appointment of a successor
 3 guardian will not be detrimental to the best interests of the ward and no good cause is
 4 shown against it, he or she shall be authorized to enter an order appointing a successor
 5 guardian."

6 **SECTION 3.**

7 Said title is further amended by striking paragraph (2) of subsection (a) of Code Section
 8 29-5-6, relating to procedure for appointment of guardians of incapacitated adults, and
 9 inserting in lieu thereof the following:

10 "(2) The petition for the appointment of a guardian shall set forth:

11 (A) The name, age, address, and county of residence of the proposed ward, if known;

12 (B) The name, address, and county of residence of the petitioner;

13 (C) The relation of the petitioner to the proposed ward;

14 (D) A statement of the reasons the proposed guardianship is sought, including the facts
 15 which support the claim of incapacity;

16 (E) The type of and any foreseeable limits on duration of guardianship sought;

17 (F) The names and addresses of the spouse and all adult children of the proposed ward
 18 who are living and whose addresses are known; or, if none, ~~then~~ the names and
 19 addresses of ~~the two next of kin~~ any and all parents, adult siblings, adult nieces, adult
 20 nephews, and grandparents of the proposed ward who are living and whose addresses
 21 are known; ~~or, if only one next of kin, then that one;~~ or, if none, ~~then~~ the names and
 22 addresses of two adult friends of the proposed ward;

23 (G) The names and addresses of the representatives of the alleged incompetent, if
 24 appointed under Code Sections 37-1-1 and 37-3-1 through 37-3-6 and Articles 2
 25 through 6 of Chapter 3 of Title 37; Code Sections 37-4-1 through 37-4-3 and 37-4-5
 26 through 37-4-8, Articles 2 through 5 of Chapter 4 of Title 37, and Code Section 37-5-3;
 27 or Code Sections 37-7-1, 37-7-2, and 37-7-4 through 37-7-7 and Articles 2 through 6
 28 of Chapter 7 of Title 37 and known to petitioner;

29 (H) All known income and assets of the proposed ward and, in any case involving the
 30 creation or termination of a guardianship over property where the proposed ward has
 31 an interest in real property, the name of the county in which such property is located;
 32 and

33 (I) The name and address of any person or persons nominated by the petitioner or
 34 petitioners to serve as guardian and whether the person or persons have consented or
 35 will consent to serve as guardian."

1 appointment of a guardian was required to be ordered pursuant to subparagraph (b)(2)(C)
 2 of this Code section. The date of the hearing shall be not less than ten days after the date
 3 notice is mailed. Either the proposed ward or the petitioner may file a written response
 4 to the evaluation report at any time up to the conclusion of the hearing. The response may
 5 include, but is not limited to, independent evaluations, affidavits of individuals with
 6 personal knowledge of the proposed ward, and a statement of applicable law."

7 **SECTION 6.**

8 Said title is further amended by striking paragraph (2) of subsection (f) of Code Section
 9 29-5-6, relating to procedure for appointment of guardians of incapacitated adults, and
 10 inserting in lieu thereof the following:

11 "(2) Service of the court's order shall be made by first-class mail upon the ward; his or
 12 her attorney; his or her representatives; his or her guardian ad litem, if any; the guardian,
 13 if appointed; ~~and the petitioner; and the person or persons for whom notice of the petition~~
 14 for appointment of a guardian was required to be ordered pursuant to subparagraph
 15 (b)(2)(C) of this Code section."

16 **SECTION 7.**

17 Said title is further amended by striking subsection (a) of Code Section 29-5-9, relating to
 18 modification or termination of guardianships of incapacitated adults, and inserting in lieu
 19 thereof the following:

20 "(a) Upon the petition of any interested person, including the incapacitated person, or upon
 21 the probate court's own motion after review of the guardianship reports, a guardianship of
 22 the person or property of an adult ward may be modified or terminated, as appropriate, by
 23 the court:

24 (1) By the procedures provided in Article 2 of Chapter 2 of this title in the event of such
 25 conflicts of interest or unfitness as substantially impair the guardian's ability to perform
 26 his or her duties under this chapter effectively or in the event of any other misconduct of
 27 the guardian;

28 (2) By the procedures provided for in Article 3 of Chapter 2 of this title in the event of
 29 the resignation, disability, or death of the guardian, except that the persons to be notified
 30 shall be the same as set forth in paragraph (2) of subsection (a) of Code Section 29-5-6;

31 (3) By adjusting the guardianship order in the event of a significant change in the extent
 32 of the incapacity of the ward or the circumstances of the ward or the guardian; or

33 (4) By restoring all personal and property rights and terminating the guardianship upon
 34 a proper showing that the need for the guardianship has ended."

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SECTION 8.

2 All laws and parts of laws in conflict with this Act are repealed.