

1 SB366
2 211833-2
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 01-APR-21

8 SYNOPSIS: Existing law provides for the appointment of
9 guardians and conservators for incapacitated
10 persons.

11 This bill would allow for the removal of a
12 guardianship or conservatorship matter from the
13 probate court to the circuit court under certain
14 circumstances.

15 This bill would prohibit the general
16 conservator of a county from serving as a temporary
17 conservator or guardian for a period of more than
18 30 days unless there are exigent circumstances as
19 determined by the court following a hearing to
20 determine the need for extension of the
21 appointment.

22 This bill would require a hearing on an
23 appointment of a limited or general guardian to be
24 held no more than 90 days after the date of the
25 filing of a petition for appointment unless all
26 interested parties agree to the extension of time.

1 This bill would require that, in any
2 proceeding for the appointment of a guardian of an
3 incapacitated person, notification regarding a
4 hearing be given to the attorney for the person
5 alleged to be incapacitated, as well as any adult
6 grandchildren of that person, if there are no adult
7 children.

8 This bill would provide that undue influence
9 exerted on a person is not, alone, adequate grounds
10 for determining that person is incapacitated and in
11 need of a guardian.

12 This bill would prohibit a court from
13 appointing a guardian or conservator for an alleged
14 incapacitated person in the event there is a person
15 holding a properly executed durable power of
16 attorney or health care directive on behalf of the
17 alleged incapacitated person unless the person
18 holding the durable power of attorney or health
19 care directive resigns, dies, becomes
20 incapacitated, or refuses to act on behalf of the
21 alleged incapacitated person.

22 This bill would prohibit automatic renewals
23 of orders appointing a temporary guardian for an
24 incapacitated person.

25 This bill would require conservators to
26 annually account to the court for administration of
27 a conservatorship.

1 This bill would prohibit a conservator from
2 having authority to dismiss an attorney who was
3 retained by an incapacitated person to challenge
4 the initial order of appointment of conservator,
5 and from refusing to allow the attorney to meet
6 with the incapacitated person or participate in
7 proceedings related to the conservatorship unless
8 the incapacitated person consents to the dismissal
9 or refusal to participate.

10 This bill would prohibit, unless
11 specifically directed by the court, a conservator
12 from sharing medical records and reports, wills,
13 investment reports, deeds, or other confidential
14 information with any person who filed the petition
15 for conservatorship or with any attorney
16 representing a petitioner.

17 This bill would prohibit an alleged
18 incapacitated person from being required to pay the
19 fees for any attorney appointed to represent his or
20 her interests, the fees of any attorney
21 representing the petitioner, or the fees of any
22 experts or witnesses retained by the petitioner or
23 the petitioner's attorney.

24 This bill would provide that if an order
25 appointing a guardian or conservator is declared
26 void for lack of subject matter jurisdiction or
27 there is a determination that the alleged

1 incapacitated person was denied due process in any
2 proceeding, no fees shall be paid to the
3 conservator, guardian, guardian ad litem, court
4 representative, or attorneys representing the
5 petitioner.

6 This bill would also provide that the annual
7 compensation paid to a guardian or conservator
8 shall be a reasonable fee based upon the actual
9 services provided by the guardian or conservator
10 for the care of an incapacitated person, minor, or
11 ward, and his or her affairs, and shall not include
12 services performed by an employee, agent, or
13 servant of the guardian or conservator.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to guardianships and conservatorships; to
20 amend Sections 26-2-2, 26-2-3, 26-2-50, 26-2A-102, 26-2A-103,
21 26-2A-105, 26-2A-107, 26-2A-133, 26-2A-147, 26-2A-152, and
22 26-5-2, Code of Alabama 1975; to allow for the removal of a
23 guardianship or conservatorship matter from the probate court
24 to the circuit court under certain circumstances; to prohibit
25 the general conservator of a county from serving as a
26 temporary conservator or guardian for more than a certain
27 amount of time except for in certain circumstances; to set

1 timing requirements for hearings on an appointment of a
2 limited or general guardian; to expand the list of people who
3 should be notified in any proceeding for the appointment of a
4 guardian of an incapacitated person; to provide that undue
5 influence exerted on a person is not, alone, adequate grounds
6 for determining that person is incapacitated and in need of a
7 guardian; to prohibit a court from appointing a guardian or
8 conservator for an alleged incapacitated person in certain
9 circumstances; to prohibit automatic renewals of orders
10 appointing a temporary guardian for an incapacitated person;
11 to require conservators to annually account to the court for
12 administration of a conservatorship; to further provide for
13 the duties and dismissal of an attorney under certain
14 conditions who was retained by an incapacitated person; to
15 prohibit, unless specifically directed by the court, a
16 conservator from sharing certain information with certain
17 people; to prohibit an alleged incapacitated person from being
18 required to pay certain attorney fees and expert or witness
19 fees; to provide that if an order appointing a guardian or
20 conservator is declared void for lack of subject matter
21 jurisdiction or there is a determination that the alleged
22 incapacitated person was denied due process in any proceeding,
23 no fees shall be paid to the conservator, guardian, guardian
24 ad litem, court representative, or attorneys representing the
25 petitioner; and to provide that the annual compensation paid
26 to a guardian or conservator shall be a reasonable fee based
27 upon certain factors.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 26-2-2, 26-2-3, 26-2-50,
3 26-2A-102, 26-2A-103, 26-2A-105, 26-2A-107, 26-2A-133,
4 26-2A-147, 26-2A-152, and 26-5-2, Code of Alabama 1975, are
5 amended to read as follows:

6 "§26-2-2.

7 "The administration or conduct of any guardianship
8 or conservatorship of a minor or incapacitated person may be
9 removed from the probate court to the circuit court, at any
10 time before the final order appointing a permanent conservator
11 or guardian or before the final settlement thereof by the
12 guardian or conservator of any ~~such~~ guardianship or
13 conservatorship or guardian ad litem or next friend of ~~such~~
14 the ward or anyone entitled to support out of the estate of
15 ~~such~~ the ward without assigning any special equity, and an
16 order of removal must be made by the court or judge upon the
17 filing of a ~~sworn~~ verified petition by any ~~such~~ guardian or
18 conservator or guardian ad litem or next friend for the ward
19 or ~~such~~ a person entitled to support out of the estate of ~~such~~
20 the ward, reciting in what capacity the petitioner acts and
21 that in the opinion of the petitioner ~~such~~ the guardianship or
22 conservatorship can be better administered in the circuit
23 court than in the probate court.

24 "§26-2-3.

25 "~~(a) In any county where the judge of probate is~~
26 ~~required to be learned in the law, the~~ The administration or
27 conduct of any guardianship or conservatorship of a minor or

1 incapacitated person may be removed from the probate court to
2 the circuit court pursuant to Section 26-2-2 at any time
3 before a proceeding for a final order appointing a permanent
4 conservator or guardian or a final settlement thereof is
5 commenced in probate court by the guardian or conservator of
6 the guardianship or conservatorship or guardian ad litem or
7 next friend of a ward or anyone entitled to support out of the
8 estate of the ward without assigning any special equity. The
9 circuit court shall remand the administration of a
10 guardianship or conservatorship transferred pursuant to this
11 section to the probate court if the circuit court finds that
12 the removal was sought for the purpose of improper delay or
13 did not comply with applicable law. The circuit court may
14 remand the administration of a guardianship or conservatorship
15 pursuant to this section to the probate court if the circuit
16 court finds that any of the following apply:

17 "(1) The circuit court has issued a final order or
18 judgment on all contested matters pending before the circuit
19 court in the administration of the guardianship or
20 conservatorship and the time for an appeal of the order or
21 judgment has expired without an appeal being filed or, if an
22 appeal was filed, after the final adjudication of the appeal.

23 "(2) All interested parties or their representatives
24 request the administration of the guardianship or
25 conservatorship be remanded to probate court.

26 "(b) Nothing in subsection (a) shall prevent the
27 administration of a guardianship or conservatorship from being

1 removed again to the circuit court pursuant to Section 26-2-2
2 after the administration has been remanded to the probate
3 court as provided above.

4 "§26-2-50.

5 "The general conservator of the county ~~must~~ shall
6 only be appointed conservator of an incapacitated person if no
7 other suitable person applies for appointment and qualifies
8 and if there ~~be~~ is no general conservator, the sheriff must be
9 appointed. The general conservator of the county shall not
10 serve as a temporary conservator or guardian for a period of
11 more than 30 days unless there are exigent circumstances as
12 determined by the court following a hearing to determine the
13 need for extension of the appointment.

14 "§26-2A-102.

15 "(a) Except as provided by subsection (e), an
16 incapacitated person or any person interested in the welfare
17 of the incapacitated person may file a verified petition for
18 appointment of a limited or general guardian.

19 "(b) After the filing of a petition, the court shall
20 set a date for hearing on the issue of incapacity so that
21 notices may be given as required by Section 26-2A-103, and,
22 unless the allegedly incapacitated person is represented by
23 counsel, appoint an attorney to represent the person in the
24 proceeding. The hearing on appointment of a limited or general
25 guardian shall be held no more than 90 days after the date of
26 the filing of a petition for appointment unless all interested
27 parties agree to the extension of time. The person so

1 appointed may be granted the powers and duties of a guardian
2 ad litem. The person alleged to be incapacitated shall be
3 examined by a physician or other qualified person appointed by
4 the court who shall submit a report in writing to the court.
5 The person alleged to be incapacitated also shall be
6 interviewed by a court representative sent by the court. The
7 person granted the powers and duties of a guardian ad litem
8 shall not also serve as the court representative. The court
9 representative also shall interview the person who appears to
10 have caused the petition to be filed and any person who is
11 nominated to serve as guardian and visit the present place of
12 abode of the person alleged to be incapacitated and the place
13 it is proposed that the person will be detained or reside if
14 the appointment is made and submit a report in writing to the
15 court. The court may utilize the service of any public or
16 charitable agency as an additional court representative to
17 evaluate the condition of the allegedly incapacitated person
18 and to make appropriate recommendations to the court.

19 "(c) A person alleged to be incapacitated is
20 entitled to be present at the hearing in person. The person is
21 entitled to be represented by counsel, to present evidence, to
22 cross-examine witnesses, including the court-appointed
23 physician or other qualified person and any court
24 representative, and upon demand to trial by jury as provided
25 in Section 26-2A-35. The issue may be determined at a closed
26 hearing if the person alleged to be incapacitated or counsel
27 for the person so requests.

1 "(d) Any person may apply for permission to
2 participate in the proceeding, and the court may grant the
3 request, with or without hearing, upon determining that the
4 best interest of the alleged incapacitated person will be
5 served thereby. The court may attach appropriate conditions to
6 the permission.

7 "(e) The custodial parent or parents or an adult
8 custodial sibling of an adult child who is incapacitated by
9 reason of an intellectual disability, may file, in lieu of a
10 petition, a written request to be appointed guardian of his or
11 her adult child or his or her adult sibling in order to
12 continue performing custodial and other parental
13 responsibilities or family responsibilities, or both
14 responsibilities, for the child after the child has passed his
15 or her minority. The court may waive any or all procedural
16 requirements of the Uniform Guardianship Act, including notice
17 and service, and appointments, and interviews. The adult child
18 alleged to be incapacitated shall have had an examination by a
19 physician or other qualified person and furnish a written
20 report of the findings to the court.

21 "In lieu of a hearing, the probate court shall hold
22 an informal hearing with the custodial parent or custodial
23 parents or custodial adult sibling requesting the
24 guardianship, the adult child for whom the guardianship is
25 sought, and a guardian ad litem for the adult child chosen by
26 the judge of probate.

1 "Following the interview, the court may do any of
2 the following:

3 "(1) Issue an order appointing the custodial parent
4 or custodial parents or custodial sibling as guardian of the
5 adult child as in any other proceeding pursuant to this
6 section.

7 "(2) Deny the request for appointment as guardian
8 pursuant to the special proceedings allowed only for a
9 custodial parent or custodial parents or custodial sibling.

10 "(3) Delay a determination on the request to gather
11 additional information in compliance with one or more of the
12 usual requirements for appointments, interviews, or
13 examinations by physicians or other qualified persons.

14 "§26-2A-103.

15 "(a) In ~~a~~ any proceeding for the appointment of a
16 guardian of an incapacitated person, ~~and, if notice is~~
17 ~~required in a proceeding for appointment of a temporary~~
18 ~~guardian,~~ notice of hearing must be given to each of the
19 following:

20 "(1) The person alleged to be incapacitated, his or
21 her attorney if he or she has retained one, his or her ~~her or~~
22 ~~his~~ spouse, ~~(if any),~~ and adult children, or if none, parents
23 and adult grandchildren.

24 "(2) Any person who is serving as guardian,
25 conservator, or who has the care and custody of the person
26 alleged to be incapacitated.

1 "(3) In case no other person is notified under
2 paragraph (1), at least one of the nearest adult relatives
3 residing in this state, if any can be found, ~~and~~.

4 "(4) Any other person as directed by the court.

5 "(b) Notice of hearing on a petition for an order
6 subsequent to appointment of a guardian must be given to the
7 ward, the guardian, and any other person as ordered by the
8 court.

9 "(c) Notice must be served personally on the alleged
10 incapacitated person. Notices to other persons as required by
11 subsection (a) (1) must be served personally if the person to
12 be notified can be found within the state. In all other cases,
13 required notices must be given as provided in Section
14 26-2A-50.

15 "(d) The person alleged to be incapacitated may not
16 waive notice.

17 "§26-2A-105.

18 "(a) The court shall exercise the authority
19 conferred in this division so as to encourage the development
20 of maximum self-reliance and independence of the incapacitated
21 person and make appointive and other orders only to the extent
22 necessitated by the incapacitated person's mental and adaptive
23 limitations or other conditions warranting the procedure.

24 "(b) The court may appoint a guardian as requested
25 if it is satisfied that the person for whom a guardian is
26 sought is incapacitated and that the appointment is necessary
27 or desirable as a means of providing continuing care and

1 supervision ~~of the person~~ of the incapacitated person. Undue
2 influence exerted on a person shall not, alone, be adequate
3 grounds for determining that person is incapacitated and in
4 need of a guardian. The court, on appropriate findings, may
5 (i) treat the petition as one for a protective order under
6 Section 26-2A-130 and proceed accordingly, (ii) enter any
7 other appropriate order, or (iii) dismiss the proceedings. The
8 court shall not appoint a guardian or conservator for an
9 alleged incapacitated person in the event there is a person
10 holding a properly executed durable power of attorney or
11 health care directive on behalf of the alleged incapacitated
12 person unless the person holding the durable power of attorney
13 or health care directive resigns, dies, becomes incapacitated,
14 or refuses to act on behalf of the alleged incapacitated
15 person.

16 "(c) The court, at the time of appointment or later,
17 on its own motion or on appropriate petition or motion of the
18 incapacitated person or other interested person, may limit the
19 powers of a guardian otherwise conferred by this chapter and
20 thereby create a limited guardianship. Any limitation on the
21 statutory power of a guardian of an incapacitated person must
22 be endorsed on the guardian's letters or, in the case of a
23 guardian by parental or spousal appointment, must be reflected
24 in letters issued at the time any limitation is imposed.
25 Following the same procedure, a limitation may be removed or
26 modified and appropriate letters issued.

27 "§26-2A-107.

1 "(a) If an incapacitated person has no guardian, an
2 emergency exists, and no other person appears to have
3 authority to act in the circumstances, on appropriate filing
4 of a verified petition the court, ~~without notice,~~ may appoint
5 a temporary guardian whose authority may not extend beyond 30
6 days and who may exercise those powers granted in the order.
7 For the purposes of this section, an emergency is a
8 circumstance that likely will result in substantial harm to a
9 respondent's health, safety, or welfare, and for which the
10 appointment of a guardian is necessary because no other person
11 has authority and is willing to act on the respondent's
12 behalf.

13 "(b) If the appointed guardian is not effectively
14 performing duties and the court further finds that the welfare
15 of the incapacitated person requires immediate action, it may
16 appoint, with ~~or without~~ notice, a temporary guardian for the
17 incapacitated person having the powers of a general guardian
18 for a specified period not to exceed six months, provided that
19 if the county conservator is appointed, he or she may not
20 serve as temporary guardian for a period beyond 30 days
21 without a showing of exigent circumstances. The authority of
22 any permanent guardian previously appointed by the court is
23 suspended as long as a temporary guardian has authority.

24 "(c) The court may remove a temporary guardian at
25 any time. A temporary guardian shall make any report and
26 comply with any conditions the court imposes or requires. In

1 other respects the provisions of this chapter concerning
2 guardians apply to temporary guardians.

3 "(d) There shall be no automatic renewal of an order
4 appointing a temporary guardian made pursuant to this section.

5 "§26-2A-133.

6 "(a) The person to be protected or any person who is
7 interested in the estate, affairs, or welfare of the person,
8 including a parent, child, guardian, custodian, or any person
9 who would be adversely affected by lack of effective
10 management of the person's property and business affairs may
11 file a verified petition for the appointment of a conservator
12 or for other appropriate protective order.

13 "(b) The petition must set forth to the extent known
14 the interest of the petitioner; the name, age, residence, and
15 address of the person to be protected; the names and addresses
16 of all persons, known to the petitioner, who must be given
17 notice, a general statement of the person's property with an
18 estimate of the value thereof, including any compensation,
19 insurance, pension, or allowance to which the person is
20 entitled; the reason why appointment of a conservator or other
21 protective order is necessary, and whether bond has been
22 relieved. If the appointment of a conservator is requested,
23 the petition must also set forth the name and address of the
24 person whose appointment is sought and the basis of the claim
25 to priority for appointment.

26 "§26-2A-147.

1 "Each conservator shall account to the court for
2 administration of the conservatorship upon resignation or
3 removal and at other times as the court may direct, but if not
4 otherwise directed, the conservator ~~must, at least once in~~
5 ~~three years,~~ shall account to the court at least once a year
6 beginning from the date of his or her appointment as
7 conservator. If the conservator shall die before making the
8 accounting, the conservator's personal representative will
9 make the accounting, or if no personal representative has been
10 appointed, the sureties on the conservator's bond may proceed
11 to make the accounting. On termination or removal of the
12 protected person's minority or disability, a conservator shall
13 account to the court or to the formerly protected person. An
14 order after notice and hearing allowing an intermediate
15 account of a conservator is a final adjudication as to
16 liabilities concerning the matters considered in connection
17 therewith. Thereafter, at any time prior to final settlement,
18 the account may be reopened by the court on motion or petition
19 of the conservator or ward or other party having an interest
20 in the estate for amendment or revision if it later appears
21 that the account is incorrect either because of fraud or
22 mistake. An order, following notice and hearing, allowing a
23 final account is a final adjudication as to all previously
24 unsettled liabilities of the conservator to the protected
25 person or the protected person's successors relating to the
26 conservatorship. In connection with any account, the court may

1 require a conservator to submit to a physical examination of
2 the estate, to be made in any manner the court specifies.

3 "§26-2A-152.

4 "(a) Subject to limitation provided in Section
5 26-2A-154, a conservator shall have all of the powers
6 conferred in this section and any additional powers now or
7 hereafter conferred by law on trustees in this state. In
8 addition, a conservator of the estate of an unmarried minor as
9 to whom no one has parental rights, has the powers of a
10 guardian of a minor described in Section 26-2A-78 until the
11 minor attains the age of 19 years, or the disabilities of
12 nonage have been removed, but the parental rights so conferred
13 on a conservator do not preclude appointment of a guardian as
14 provided in Division 1 of this article.

15 "(b) A conservator without court authorization or
16 confirmation may invest and reinvest funds of the estate as
17 would a trustee.

18 "(c) A conservator, acting as a fiduciary in efforts
19 to accomplish the purpose of the appointment, may act without
20 court authorization or confirmation, to do any of the
21 following:

22 "(1) Collect, hold, and retain assets of the estate,
23 including land in another state and stocks of private
24 corporations, until determining that disposition of the assets
25 should be made, and the assets may be retained even though
26 they include an asset in which the conservator is personally
27 interested.

1 "(2) Receive additions to the estate7.

2 "(3) Acquire an undivided interest in an asset of
3 the estate that is otherwise an investment authorized for the
4 conservator and in which the conservator, in any fiduciary
5 capacity, holds an undivided interest7.

6 "(4) Invest and reinvest estate assets in accordance
7 with subsection (b)7.

8 "(5) Deposit estate funds to the extent insured in a
9 state or federally insured financial institution, including
10 one operated by the conservator7.

11 "(6) Acquire an asset for the estate that is an
12 authorized investment for conservators, including land in
13 another state, for cash or on credit, at public or private
14 sale, and manage, develop, improve, partition, or change the
15 character of an estate asset7.

16 "(7) Dispose of an asset, other than real property,
17 of the estate for cash or on credit, at public or private
18 sale, and manage or change the character of an estate asset7.

19 "(8) Make ordinary or extraordinary repairs or
20 alterations in buildings or other structures7.

21 "(9) Enter for any purpose into a lease as lessor or
22 lessee for a term not exceeding five years7.

23 "(10) Enter into a lease or arrangement for
24 exploration and removal of minerals or other natural resources
25 or enter into a pooling or unitization agreement7.

26 "(11) Grant an option for a period not exceeding one
27 year involving disposition of an estate asset7.

1 "(12) Vote a security, in person or by general or
2 limited proxy7.

3 "(13) Pay calls, assessments, and any other sums
4 chargeable or accruing against or on account of securities7.

5 "(14) Sell or exercise stock-subscription or
6 conversion rights7.

7 "(15) Deposit any stocks, bonds, or other securities
8 at any time held in any pool or voting trust containing terms
9 or provisions approved by the conservator7.

10 "(16) Consent, directly or through a committee or
11 other agent, to the reorganization, consolidation, merger,
12 dissolution, or liquidation of a corporation or other business
13 enterprise7.

14 "(17) Insure the assets of the estate against damage
15 or loss and the conservator against liability with respect to
16 third persons7.

17 "(18) Borrow money for the protection of the estate
18 to be repaid from estate assets or otherwise; advance money
19 for the protection of the estate or the protected person and
20 for all expenses, losses, and liability sustained in the
21 administration of the estate or because of the holding or
22 ownership of any estate assets, for which the conservator has
23 a lien on the estate as against the protected person for
24 advances so made7.

25 "(19) Pay or contest any claim; settle a claim by or
26 against the estate or the protected person by compromise,
27 arbitration, or otherwise; and release, in whole or in part,

1 any claim belonging to the estate to the extent the claim is
2 uncollectible~~7.~~

3 "(20) Pay reasonable annual compensation of the
4 conservator, subject to the limitations set out in subsection
5 (c) of Section 2 of the act amending this section and final
6 approval of the court in an accounting under Section
7 26-2A-147~~7.~~

8 "(21) Pay taxes, assessments, and other expenses
9 incurred in the collection, care, administration, and
10 protection of the estate~~7.~~

11 "(22) Allocate items of income or expense to either
12 estate income or principal, as provided by the applicable
13 principal and income act or other law, including creation of
14 reserves out of income for depreciation, obsolescence, or
15 amortization, or for depletion in mineral or timber
16 properties~~7.~~

17 "(23) Pay any sum distributable to a protected
18 person or dependent of the protected person by - (i) paying
19 the sum to the distributee, (ii) applying the sum for the
20 benefit of the distributee, or (iii) paying the sum for the
21 use of the distributee to the guardian of the distributee, or,
22 if none, to a relative or other person having custody of the
23 distributee~~7.~~

24 "(24) Employ persons, including attorneys, auditors,
25 investment advisors, or agents, even though they are
26 associated with the conservator, to advise or assist in the
27 performance of administrative duties~~7.~~

1 "(25) Prosecute or defend actions, claims, or
2 proceedings in any jurisdiction for the protection of estate
3 assets and of the conservator in the performance of fiduciary
4 duties~~;~~.

5 "(26) Execute and deliver all instruments that will
6 accomplish or facilitate the exercise of the powers vested in
7 the conservator~~;~~and.

8 "(27) Hold a security in the name of a nominee or in
9 other form without disclosure of the conservatorship so that
10 title to the security may pass by delivery, but the
11 conservator is liable for any act of the nominee in connection
12 with the stock so held.

13 "(d) A conservator, acting as a fiduciary in efforts
14 to accomplish the purpose of the appointment, may act with
15 prior court authorization, to do any of the following:

16 "(1) Continue or participate in the operation of any
17 business or other enterprise~~;~~.

18 "(2) Demolish any improvements and raze or erect new
19 party walls or buildings~~;~~.

20 "(3) Dispose of any real property, including land in
21 another state, for cash or on credit, at public or private
22 sale, and manage, develop, improve, partition, or change the
23 character of estate real property~~;~~.

24 "(4) Subdivide, develop, or dedicate land or
25 easements to public use; make or obtain the vacation of plats
26 and adjust boundaries~~;~~.

1 "(5) Enter for any purpose into a lease as lessor or
2 lessee for a term of five or more years or extending beyond
3 the term of the conservatorship~~7~~.

4 "(6) Grant an option for a term of more than one
5 year involving disposition of an estate asset~~7~~and.

6 "(7) Take an option for the acquisition of any
7 asset.

8 "(e) The conservator shall not have authority to
9 dismiss an attorney who was retained by an incapacitated
10 person to challenge the initial order of appointment of
11 conservator, nor refuse to allow the attorney to meet with the
12 incapacitated person or participate in proceedings related to
13 the conservatorship unless the incapacitated person consents
14 to the dismissal or refusal to participate.

15 "(f) Except as specifically directed by the court, a
16 conservator shall not share medical records and reports,
17 wills, investment reports, deeds, or other confidential
18 information with any person who filed the petition for
19 conservatorship or with any attorney representing a
20 petitioner.

21 "§26-5-2.

22 "If not otherwise directed, the conservator must, at
23 least once ~~in three years~~ annually, file in the court of
24 probate an account of his or her guardianship, accompanied
25 with the vouchers showing his or her receipts and
26 disbursements, which must be verified by affidavit. Upon the
27 filing of ~~such~~ the account and vouchers the court must appoint

1 a guardian ad litem to represent the ward in any circumstance
2 where the ward is not represented by counsel independently
3 retained by the ward."

4 Section 2. (a) An alleged incapacitated person shall
5 not be required to pay the fees for any attorney appointed to
6 represent his or her interests, the fees of any attorney
7 representing the petitioner, or the fees of any experts or
8 witnesses retained by the petitioner or the petitioner's
9 attorney.

10 (b) In the event an order appointing a guardian or
11 conservator is declared void for lack of subject matter
12 jurisdiction or there is a determination that the alleged
13 incapacitated person was denied due process in any proceeding,
14 no fees shall be paid to the conservator, guardian, guardian
15 ad litem, court representative, or attorneys representing the
16 petitioner.

17 (c) The annual compensation paid to a guardian or
18 conservator shall be a reasonable fee based upon the actual
19 services provided by the guardian or conservator for the care
20 of an incapacitated person, minor, or ward, and his or her
21 affairs, and shall not include services performed by an
22 employee, agent, or servant of the guardian or conservator.

23 Section 3. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.