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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE - LIMITED GUARDIANSHIP
AND GUARDIANSHIP OF ADULTS

Introduced By: Senators Lombardi, Archambault, Lynch Prata, Conley, and Nesselbush

Date Introduced: April 04, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 33-15 of the General Laws entitled "Limited Guardianship and
2 Guardianship of Adults" is hereby amended by adding thereto the following section:

3 **33-15-18.1. Rights of persons subject to limited guardianship, guardianship and**
4 **conservatorship.**

5 (a) Unless specifically authorized by court order, a limited guardian, guardian or
6 conservator shall not restrict a ward's right of communication, visitation, or interaction with other
7 persons, including the right to receive visitors, telephone calls, or personal mail. If a ward is
8 unable to express consent to communication, visitation, or interaction with a person due to a
9 physical or mental condition, then consent of the ward may be presumed based on the ward's
10 prior relationship history with the person.

11 (b) A limited guardian, guardian or conservator may, for good cause shown, move the
12 court to have restrictions placed on a person's ability to communicate, visit, or interact with a
13 ward in accordance with subsection (c) of this section. Good cause means and includes:

14 (1) Whether any protective orders have been issued to protect the ward from the person
15 seeking access to the ward;

16 (2) Whether abuse, neglect, or financial exploitation of the ward by the person seeking
17 access to the ward has occurred or is likely to occur;

18 (3) Documented wishes of the ward to reject communication, visitation, or interaction

1 with specific persons; or

2 (4) Any other factors deemed relevant by the court.

3 (c)(1) A court may order restrictions placed on the communications, visitations, or
4 interactions a person may have with a ward upon a showing of good cause by the limited
5 guardian, guardian or conservator.

6 (2) In determining whether to issue an order in accordance with subsection (c)(1) of this
7 section, the following factors shall be considered by the court:

8 (i) Whether any protective orders have been issued to protect the ward from the person
9 seeking access to the ward;

10 (ii) Whether the person has been charged with abuse, neglect, or financial exploitation of
11 the ward;

12 (iii) Whether the ward expresses a desire to communicate, visit, or interact with the
13 person;

14 (iv) If the ward is unable to communicate, whether a properly executed living will,
15 durable power of attorney, or advance directive contains a preference by the ward with regard to
16 the person's communication, visitation, or interaction with the ward; and

17 (v) Any other factors deemed relevant by the court.

18 (3) Prior to issuing an order pursuant to subsection (c) of this section, the court shall
19 consider the following restrictions in the order listed:

20 (i) Placing reasonable time, manner, or place restrictions on communication, visitation, or
21 interaction between the ward and another person based on the history between the ward and the
22 person or the ward's wishes, or both;

23 (ii) Requiring that communication, visitation, or interaction between the ward and
24 another person be supervised; or

25 (iii) Denying communication, visitation, or interaction between the ward and another
26 person; provided, that, unless the court finds that the person poses a threat to the ward, supervised
27 communication, visitation, or interaction under subsection (c)(3)(ii) of this section shall be
28 ordered prior to the denial of any communication, visitation, or interaction.

29 (d)(1) If any interested person, including the ward, reasonably believes that subsection (a)
30 of this section or an order issued pursuant to subsection (c)(1) of this section has been violated,
31 then such person may move the court to:

32 (i) Require the limited guardian, guardian or conservator to grant a person access to the
33 ward;

34 (ii) Restrict, or further restrict, a person's access to the ward;

1 (iii) Modify the limited guardian, guardian or conservator's duties; or
2 (iv) Discharge and replace the limited guardian, guardian or conservator pursuant to §33-
3 15-18.

4 (2) Notwithstanding actions available to the court pursuant to subsection (d)(1) of this
5 section, a limited guardian, guardian or conservator who is found to be knowingly isolating a
6 ward and who has violated subsection (a) of this section or an order issued pursuant to subsection
7 (c) of this section shall be subject to discharge and replacement pursuant to §33-15-18.

8 (e)(1) Except as provided in subsection (e)(2) of this section, the court shall schedule a
9 hearing on a motion filed pursuant to subsection (b) or (d) of this section no later than thirty (30)
10 days after the date the motion is filed. The court may, in its discretion, order mediation to be
11 conducted between the parties and the ward prior to the hearing. If mediation results in agreement
12 of the parties and the ward with regard to communication, visitation, or interaction with the ward,
13 the agreement shall be approved and memorialized in an order by the court.

14 (2)(i) If the motion states that the ward's health is in significant decline or that the ward's
15 death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but
16 no later than ten (10) days after the motion is filed.

17 (ii) When a scheduling order is issued for a motion filed pursuant to subsection (e)(2)(i)
18 of this section, the court shall also order that supervised communication, visitation, or interaction
19 with the ward be granted during the period prior to the hearing.

20 (3) Notice of the hearing, a copy of the motion, and a copy of any order issued pursuant
21 to subsection (e)(2)(ii) of this section, if applicable, shall be personally served upon the ward and
22 any person against whom the motion is filed, and nothing in this section shall affect the ward's
23 right to appear and be heard in the proceedings.

24 (f)(1) The court may award the prevailing party in any action brought under this section
25 court costs and reasonable attorneys' fees; provided, however, that an award of court costs or
26 attorneys' fees shall not be paid out of the ward's estate.

27 (2) The court, upon motion or upon its own initiative, shall impose upon a limited
28 guardian, guardian or conservator who is found to be knowingly isolating a ward and who has
29 violated subsection (a) of this section or an order issued pursuant to subsection (c) of this section
30 an appropriate sanction, including an order to pay court costs and reasonable attorneys' fees of the
31 other party or parties; provided, however, that no sanction shall be paid out of the ward's estate.

32 (g) A limited guardian, guardian or conservator shall promptly notify a ward's closest
33 relatives and any person designated by the ward to be notified, along with the appropriate contact
34 information and upon the limited guardian, guardian or conservator's knowledge of such event

1 and information, in the event:

2 (1) The ward's residence has changed;

3 (2) The ward is staying at a location other than the ward's residence for more than seven
4 (7) consecutive days;

5 (3) The ward is admitted to or discharged from a nursing home or assisted-care living
6 facility as defined in §§23-17-2 and 23-17.4-2;

7 (4) The ward is admitted to a medical facility for:

8 (i) Emergency care in response to a life-threatening injury or medical condition; or

9 (ii) Acute care; or

10 (iii) The ward dies; provided, that notification of the ward's death shall be made in person
11 or by telephone.

12 (h)(1) A limited guardian, guardian or conservator is not required to provide notice in
13 accordance with subsection (g) of this section if:

14 (i) A person who is entitled to notice under subsection (g) of this section informs the
15 limited guardian, guardian or conservator, in writing, that the person does not wish to receive
16 such notice; or

17 (ii) The ward or a court order has expressly prohibited the limited guardian, guardian or
18 conservator from providing notice to the person.

19 (2) A limited guardian, guardian or conservator shall not provide contact information in
20 accordance with subsection (g) of this section if an order of protection or restraining order has
21 been issued against the person on behalf of the ward.

22 SECTION 2. This act shall take effect upon passage and shall apply to limited
23 guardianships, guardianships or conservatorships created before, on, or after the effective date of
24 this act.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE - LIMITED GUARDIANSHIP
AND GUARDIANSHIP OF ADULTS

1 This act would provide persons under limited guardianship, guardianship and
2 conservatorship with rights designed to protect them from mental, physical and financial abuse by
3 their guardians and conservators.

4 This act would take effect upon passage and would apply to limited guardianships,
5 guardianships or conservatorships created before, on, or after the effective date of this act.

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