

18-A §5-409. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS AUTHORIZED

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(a). If it is established in a proper proceeding that a basis exists as described in section 5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. 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, or addition to or establishment of a suitable trust.

[1979, c. 540, §1 (NEW) .]

(b). If it has been established in a proper proceeding that a basis exists as described in section 5-401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving the protected person's estate if the court determines that the transaction is in the best interests of the protected person, subject to the provisions of subsection (d).

[2005, c. 12, Pt. DDD, §5 (AMD); 2005, c. 12, Pt. DDD, §17 (AFF) .]

(c). Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

[1979, c. 540, §1 (NEW) .]

(d). The court may authorize a gift or other transfer for less than fair market value from the protected person's estate other than to the protected person's spouse or dependent, blind or disabled child if the court finds that the gift or other transfer will not, directly or indirectly, diminish the protected person's estate in order to qualify for federal or state aid or benefits, including the MaineCare program under Title 22, chapter 855, and the court finds:

(1). That the remaining estate assets of the protected person are sufficient for the protected person's care and maintenance for the next 36 months, including due provision for the protected person's established standard of living and for the support of any persons the protected person is legally obligated to support and any dependents of the protected person; and [2005, c. 12, Pt. DDD, §6 (NEW); 2005, c. 12, Pt. DDD, §17 (AFF).]

(2). That the gift or other transfer will not hasten the date of eligibility for MaineCare coverage of the protected person's long-term care expenses during the next 36 months. [2005, c. 12, Pt. DDD, §6 (NEW); 2005, c. 12, Pt. DDD, §17 (AFF).]

This subsection does not prevent a transfer to a trust established pursuant to 42 United States Code, Section 1396p(d)(4) or otherwise specifically allowed by law governing the federal Medicaid program under 42 United States Code.

[2005, c. 12, Pt. DDD, §6 (NEW); 2005, c. 12, Pt. DDD, §17 (AFF) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2005, c. 12, §§DDD5,6 (AMD). 2005, c. 12, §DDD17 (AFF).

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