

§5-503. Basis for protective arrangements instead of conservatorship for adult or minor

1. Findings. After the hearing conducted on a petition for conservatorship for an adult under section 5-402 or one or more protective arrangements instead of conservatorship for an adult under section 5-501, subsection 3, the court may enter an order for one or more protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds:

A. By clear and convincing evidence that the respondent is unable to manage property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provides adequate protection for the respondent, or the adult is missing, detained or unable to return to the United States; [PL 2019, c. 417, Pt. A, §85 (AMD).]

B. By a preponderance of the evidence that:

(1) The respondent has property likely to be wasted or dissipated unless management is provided; or

(2) The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the adult or an individual who is entitled to the respondent's support and protection; and [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. The respondent's identified needs cannot be met by less restrictive alternatives. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2019, c. 417, Pt. A, §85 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Protective arrangements for minors. After the hearing conducted on a petition for conservatorship for a minor under section 5-402 or a protective arrangement instead of conservatorship for a minor under section 5-501, subsection 3, the court may enter an order for a protective arrangement or protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds by a preponderance of the evidence that the minor owns money or property requiring management or protection that cannot be provided otherwise and:

A. The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Orders other than conservatorship. If the court makes the findings under subsection 1 or 2, the court, instead of appointing a conservator, may:

A. Authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including but not limited to:

(1) An action to establish eligibility for benefits;

(2) Payment, delivery, deposit or retention of funds or property;

(3) Sale, mortgage, lease or other transfer of property;

(4) Purchase of an annuity;

(5) Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;

(6) Addition to or establishment of a trust;

(6-A) Creation, modification, amendment or revocation of a will or a codicil;

(7) Ratification or invalidation of a contract, trust, will or other transaction, including a transaction related to the property or business affairs of the respondent; or

(8) Settlement of a claim; or [PL 2019, c. 417, Pt. A, §86 (AMD).]

B. Restrict access to the respondent's property by a person whose access to the property places the respondent at serious risk of financial harm. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

[PL 2019, c. 417, Pt. A, §86 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

4. Order to restrict access. If, after the hearing conducted under section 5-505 on a petition under section 5-501, subsection 1, paragraph B or section 5-501, subsection 3, a court may enter an order to restrict access to the respondent or the respondent's property by a person that the court by clear and convincing evidence finds:

A. Through fraud, coercion, duress or the use of deception and control, caused or attempted to cause harm to the respondent or the respondent's property; or [PL 2019, c. 417, Pt. A, §87 (AMD).]

B. Poses a significant risk of harm to the respondent or the respondent's property. [PL 2019, c. 417, Pt. A, §87 (AMD).]

[PL 2019, c. 417, Pt. A, §87 (AMD).]

5. Factors. In deciding whether to enter an order under subsection 3 or 4, the court shall consider the factors under section 5-418 a conservator must consider when making a decision on behalf of an individual subject to conservatorship. In addition, in deciding whether to enter an order under this section, including whether supported decision making or other less restrictive alternatives are appropriate, the court may consider the following factors: any proposed vetting of the person or persons chosen to provide support in decision making; reports to the court by an interested party or parties regarding the effectiveness of an existing supported decision-making arrangement; or any other information the court determines necessary or appropriate to determine whether supportive services, technological assistance, supported decision making, protective arrangements or less restrictive arrangements will provide adequate protection for the respondent.

[PL 2019, c. 417, Pt. A, §88 (AMD).]

6. Minors; factors. In deciding whether to enter an order under subsection 3 or 4 for a respondent who is a minor, the court also shall consider the best interest of the respondent, the preference of the parents of the respondent and the preference of the respondent if the minor is 14 years of age or older. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§85-88 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

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