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**PRELIMINARY DRAFT**  
**No. 3422**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2009 GENERAL ASSEMBLY**

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DIGEST

**Citations Affected:** IC 29-3-9.

**Synopsis:** Guardianships. Specifies a guardian's powers concerning the estate planning of a protected person. Repeals the statute limiting a guardian's power to engage in estate planning for a protected person to the part of the guardianship estate that is required for the protected person's future support or the future support of the protected person's dependents during the lifetime of the protected person.

**Effective:** July 1, 2009.



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A BILL FOR AN ACT to amend the Indiana Code concerning probate.

*Be it enacted by the General Assembly of the State of Indiana:*

1           SECTION 1. IC 29-3-9-4.5 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: **Sec. 4.5. (a) After notice to interested persons and upon  
4 authorization of the court, a guardian may do any of the following:**

5           **(1) Make gifts, in accordance with the protected person's  
6 wishes.**

7           **(2) Convey, release, or disclaim contingent and expectant  
8 interests in property, including marital property rights and  
9 any right of survivorship incident to joint tenancy or tenancy  
10 by the entireties.**

11           **(3) Exercise or release a power of appointment.**

12           **(4) Create a revocable or irrevocable trust of all or part of the  
13 property of the estate, including a trust that extends beyond  
14 the duration of the guardianship.**

15           **(5) Revoke or amend a trust that is revocable by the protected  
16 person.**

17           **(6) Exercise rights to elect options and change beneficiaries  
18 under insurance policies, retirement plans, and annuities.**

19           **(7) Surrender an insurance policy or annuity for its cash  
20 value.**

21           **(8) Exercise any right to an elective share in the estate of the  
22 protected person's deceased spouse.**

23           **(9) Renounce or disclaim any interest by testate or intestate  
24 succession or by transfer inter vivos.**

25           **(b) Before approving a guardian's exercise of a power listed in  
26 subsection (a), the court shall consider primarily the decision that  
27 the protected person would have made, to the extent that the  
28 decision of the protected person can be ascertained. The court shall  
29 also consider:**

30           **(1) the financial needs of the protected person and the needs  
31 of individuals who are dependent on the protected person for**



- 1           **support;**  
2           **(2) the interests of creditors;**  
3           **(3) the possible reduction of income taxes, estate taxes,**  
4           **inheritance taxes, or other federal, state, or local tax**  
5           **liabilities;**  
6           **(4) the eligibility of the protected person for governmental**  
7           **assistance;**  
8           **(5) the protected person's previous pattern of giving or level**  
9           **of support;**  
10          **(6) the protected person's existing estate plan, if any;**  
11          **(7) the protected person's life expectancy and the probability**  
12          **that the guardianship will terminate before the protected**  
13          **person's death; and**  
14          **(8) any other factor the court considers relevant.**  
15          **(c) A guardian may examine and receive, at the expense of the**  
16          **guardian, copies of the following documents of the protected**  
17          **person:**  
18               **(1) A will.**  
19               **(2) A trust.**  
20               **(3) A power of attorney.**  
21               **(4) A health care appointment.**  
22               **(5) Any other estate planning document.**  
23          SECTION 2. IC 29-3-9-4 IS REPEALED [EFFECTIVE JULY 1,  
24          2009].

