
**PRELIMINARY DRAFT
No. 3199**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2010 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 29-3-9.

Synopsis: Guardianships. Specifies a guardian's powers concerning the estate planning of a protected person. Repeals the current statute governing a guardian's authority to engage in estate planning for a protected person.

Effective: July 1, 2010.



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, 2010]: **Sec. 4.5. (a) After notice to interested persons and upon
4 authorization of the court, a guardian may, if the protected person
5 has been found by the court to lack testamentary capacity, do any
6 of the following:**

7 **(1) Make gifts.**

8 **(2) Exercise any power with respect to transfer on death or
9 payable on death transfers that is described in IC 30-5-5-7.5.**

10 **(3) Convey, release, or disclaim contingent and expectant
11 interests in property, including marital property rights and
12 any right of survivorship incident to joint tenancy or tenancy
13 by the entireties.**

14 **(4) Exercise or release a power of appointment.**

15 **(5) Create a revocable or irrevocable trust of all or part of the
16 property of the estate, including a trust that extends beyond
17 the duration of the guardianship.**

18 **(6) Revoke or amend a trust that is revocable by the protected
19 person.**

20 **(7) Exercise rights to elect options and change beneficiaries
21 under insurance policies, retirement plans, and annuities.**

22 **(8) Surrender an insurance policy or annuity for its cash
23 value.**

24 **(9) Exercise any right to an elective share in the estate of the
25 protected person's deceased spouse.**

26 **(10) Renounce or disclaim any interest by testate or intestate
27 succession or by transfer inter vivos.**

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



1 protected person has a will, the protected person's distribution of
2 assets under the will is prima facie evidence of the protected
3 person's intent. The court shall also consider:

4 (1) the financial needs of the protected person and the needs
5 of individuals who are dependent on the protected person for
6 support;

7 (2) the interests of creditors;

8 (3) the possible reduction of income taxes, estate taxes,
9 inheritance taxes, or other federal, state, or local tax
10 liabilities;

11 (4) the eligibility of the protected person for governmental
12 assistance;

13 (5) the protected person's previous pattern of giving or level
14 of support;

15 (6) the protected person's existing estate plan, if any;

16 (7) the protected person's life expectancy and the probability
17 that the guardianship will terminate before the protected
18 person's death; and

19 (8) any other factor the court considers relevant.

20 (c) A guardian may examine and receive, at the expense of the
21 guardian, copies of the following documents of the protected
22 person:

23 (1) A will.

24 (2) A trust.

25 (3) A power of attorney.

26 (4) A health care appointment.

27 (5) Any other estate planning document.

28 SECTION 2. IC 29-3-9-4 IS REPEALED [EFFECTIVE JULY 1,
29 2010].

