Chapter 125

2005 EDITION

Protective Proceedings

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GENERAL PROVISIONS

125.005 Definitions. As used in this chapter:

(1) "Conservator" means a person appointed as a conservator under the provisions of this chapter.

(2) "Fiduciary" means a guardian or conservator appointed under the provisions of this chapter or any other person appointed by a court to assume duties with respect to a protected person under the provisions of this chapter.

(3) "Financially incapable" means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. "Manage financial resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

(4) "Guardian" means a person appointed as a guardian under the provisions of this chapter.

(5) "Incapacitated" means a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety. "Meeting the essential requirements for physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

(6) "Minor" means any person who has not attained 18 years of age.

(7) "Protected person" means a person for whom a protective order has been entered.

(8) "Protective order" means an order of a court appointing a fiduciary or any other order of the court entered for the purpose of protecting the person or estate of a respondent or protected person.

(9) "Protective proceeding" means a proceeding under this chapter.

(10) "Respondent" means a person for whom entry of a protective order is sought in a petition filed under ORS 125.055.

(11) "Visitor" means a person appointed by the court under ORS 125.150 for the purpose of interviewing and evaluating a respondent or protected person. [1995 c.664 §1]

125.010 Protective proceedings. (1) Any person who is interested in the affairs or welfare of a respondent may file a petition for the appointment of a fiduciary or entry of other protective order.

(2) A protective proceeding is commenced by the filing of a petition in a court with jurisdiction over protective proceedings.

(3) The court may appoint any of the following fiduciaries in a protective proceeding:

(a) A guardian, with the powers and duties specified in this chapter.

(b) A conservator, with the powers and duties specified in this chapter.

(c) A temporary fiduciary, with the powers and duties specified in this chapter.

(d) Any other fiduciary necessary to implement a protective order under ORS 125.650.

(4) In addition to appointing a fiduciary, or in lieu of appointing a fiduciary, the court may enter any other protective order in a protective proceeding in the manner provided by ORS 125.650.

(5) The court may make a determination described in ORS 127.550 with regard to an advance directive in a protective proceeding in which a guardian or temporary guardian has been appointed for the principal, or in which the petition seeks the appointment of a guardian or a temporary guardian for the principal. [1995 c.664 §2; 2001 c.396 §1]

125.015 Jurisdiction of protective proceedings; proceedings in other states. (1) The probate courts and commissioners provided for in ORS chapter 111 have exclusive jurisdiction of protective proceedings.

(2) If an Oregon court exercising probate jurisdiction becomes aware that a protective proceeding has been commenced in another state, the Oregon court shall notify the court in the other state of the proceedings in this state. After consultation with the court of the other state, the Oregon court shall determine whether it is in the best interests of the respondent or protected person for the Oregon court to continue to exercise jurisdiction in the matter or whether it would be in the best interests of the respondent or protected person to terminate the Oregon proceedings and transfer the matter to the other court. [1995 c.664 §3]

125.020 Venue for protective proceedings. (1) Except as provided in this section, a protective proceeding must be commenced in the county where the respondent resides or is present.

(2) If the respondent resides in an institution by reason of an order of a court, the proceeding may be commenced in the county where that court sits.

(3) If the respondent does not reside in this state and is not present in this state, a conservatorship proceeding may be commenced in any county where property of the respondent is located.

(4) The court may transfer a protective proceeding at any time to another court if the transfer is in the best interests of the respondent or protected person. [1995 c.664 §4]

125.025 Authority of the court in protective proceedings. (1) A court having jurisdiction over a protective proceeding shall exercise continuing authority over the proceeding. Subject to the provisions of this chapter, the court may act upon the petition or motion of any person or upon its own authority at any time and in any manner it deems appropriate to determine the condition and welfare of the respondent or protected person and to inquire into the proper performance of the duties of a fiduciary appointed under the provisions of this chapter.

(2) A court having jurisdiction over a protective proceeding in which the respondent or protected person is a minor shall consider and apply all relevant provisions of the Indian Child Welfare Act codified at 25 U.S.C. sections 1901 et seq.

(3) A court having jurisdiction over a protective proceeding may:

(a) Compel the attendance of any person, including respondents, protected persons, fiduciaries and any other person who may have knowledge about the person or estate of a respondent or protected person. The court may require those persons to respond to inquiries and produce documents that are subject to discovery under ORCP 36.

(b) Appoint counsel for a respondent or protected person.

(c) Appoint investigators, visitors and experts to aid the court in the court's investigation.

(d) Exercise jurisdiction over any transaction entered into by a fiduciary to determine if a conflict of interest existed and enter an appropriate judgment with respect to the transaction.

(e) Surcharge a surety for any loss caused by failure of a fiduciary to perform a fiduciary duty or any other duty imposed by this chapter, including a surcharge for attorney fees incurred by a respondent or protected person by reason of the failure.

(f) Require immediate delivery of a protected person or property of the protected person, including records, accounts and documents relating to that property, to the court or to a place it designates.

(g) Require the fiduciary to produce any and all records that might provide information about the treatment or condition of the protected person or property of the protected person.

(h) Remove a fiduciary whenever that removal is in the best interests of the protected person.

(i) Appoint a successor fiduciary when a fiduciary has died, resigned or been removed.

(j) Require a respondent or protected person to submit to a physical or mental examination pursuant to ORCP 44.

(k) Make provisions for parenting time or visitation or order support for any minor who is a respondent or protected person in a protective proceeding.

(L) Impose any conditions and limitations upon the fiduciary that the court considers appropriate, including limitations on the duration of the appointment. Any conditions or limitations imposed on the fiduciary must be reflected in the letters of appointment.

(4) When a person files a petition or motion for a support order under subsection (3)(k) of this section:

(a) The person shall state in the petition or motion, to the extent known:

(A) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(B) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the minor.

(b) The person shall include with the petition or motion a certificate regarding any pending support proceeding and any existing support order. The person shall use a certificate that is in a form established by court rule and include information required by court rule and paragraph (a) of this subsection.

(5) When the court acts upon its own authority to order support under subsection (3)(k) of this section, at least 21 days before the hearing the court shall notify the Administrator of the Division of Child Support of the Department of Justice, or the branch office providing support services to the county where the hearing will be held, of the hearing. Before the hearing the administrator shall inform the court, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100,

109.103, 109.165, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the minor.

(6) The Judicial Department and the Department of Justice may enter into an agreement regarding how the courts give the notice required under subsection (5) of this section to the Department of Justice and how the Department of Justice gives the information described in subsection (5)(a) and (b) to the courts.

(7) If the court finds that a conservator should be appointed, the court may exercise all the powers over the estate and affairs of the protected person that the protected person could exercise if present and not under disability, except the power to make a will. The court shall exercise those powers for the benefit of the protected person and members of the household of the protected person.

(8) The powers of the court in protective proceedings may be exercised by the court directly or through a fiduciary. [1995 c.664 §5; 1997 c.707 §27; 2003 c.116 §11]

125.030 Use of limited judgment in protective proceedings. (1) The appointment of a fiduciary in a protective proceeding shall be made by limited judgment.

(2) The court in a protective proceeding may enter a limited judgment only for the following decisions of the court:

(a) A decision on an objection to an accounting.

(b) A decision on placement of a protected person.

(c) A decision on the sale of the residence of a protected person.

(d) Such decisions of the court as may be specified by rules or orders of the Chief Justice of the Supreme Court under ORS 18.028.

(3) A court may enter a limited judgment under subsection (2) of this section only if the court determines that there is no just reason for delay. The judgment document need not reflect the court's determination that there is no just reason for delay. [2005 c.568 §36]

PROCEDURE IN PROTECTIVE PROCEEDINGS

125.050 Application of ORCP and Oregon Evidence Code. Except as otherwise provided by this chapter, the Oregon Rules of Civil Procedure and the Oregon Evidence Code apply in protective proceedings. [1995 c.664 §6]

125.055 Petitions in protective proceedings. (1) A petition in a protective proceeding that seeks the appointment of a fiduciary must designate the type of fiduciary that the petitioner seeks to have appointed. If the petition does not request the appointment of a fiduciary, or if the petition requests both the appointment of a fiduciary and some other protective order, the petition must contain a statement of the nature of the protective order requested. The caption of the petition must reflect the type of fiduciary whose appointment is requested or, if the appointment of a fiduciary is not requested, the nature of the protective order requested. An original and duplicate copy of the petition must be filed with the court.

(2) A petition in a protective proceeding must contain the following information to the extent that the petitioner is aware of the information or to the extent that the petitioner is able to acquire the information with reasonable effort:

(a) The name, age, residence address and current location of the respondent.

(b) The interest of the petitioner.

(c) The name, age and address of the petitioner and any person nominated as fiduciary in the petition and the relationship of the nominated person to the respondent.

(d) A statement as to whether the person nominated to be fiduciary has been convicted of a crime, has filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation. If the nominated person has been convicted of a crime, filed for or received protection under bankruptcy laws or had a professional or occupational license revoked or canceled, the petition shall contain a statement of the circumstances surrounding those events. If the person nominated is not the petitioner, the statement must indicate that the person nominated is willing and able to serve.

(e) The name and address of any fiduciary that has been appointed for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

(f) The name and address of the respondent's treating physician and any other person who is providing care to the respondent.

(g) The factual information that supports the request for the appointment of a fiduciary or entry of other protective order, and the names and addresses of all persons

who have information that would support a finding that an adult respondent is incapacitated or financially incapable.

(h) A statement that indicates whether the nominated person intends to place the respondent in a mental health treatment facility, a nursing home or other residential facility.

(i) A general description of the estate of the respondent and the respondent's sources of income and the amount of that income.

(j) A statement indicating whether the person nominated as fiduciary is a public or private agency or organization that provides services to the respondent or an employee of a public or private agency or organization that provides services to the respondent.

(3) In addition to the requirements of subsection (2) of this section, if a petition seeks appointment of a guardian, the petition must contain a statement on whether the guardian will exercise any control over the estate of the respondent. If the guardian will exercise any control over the estate of the respondent, the petition must contain a statement of the monthly income of the respondent, the sources of the respondent's income, and the amount of any moneys that the guardian will be holding for the respondent at the time of the appointment. If the petition seeks the appointment of a guardian for an adult respondent or of a temporary fiduciary who will exercise the powers of a guardian for an adult respondent, the petition must contain a statement notifying the court that a visitor must be appointed.

(4) In addition to the requirements of subsection (2) of this section, if a petition seeks appointment of a conservator or a temporary fiduciary who will exercise the powers of a conservator or if a petition seeks a protective order relating to the estate of the respondent, the petition must contain the petitioner's estimate of the value of the estate.

(5) A petitioner may join parties in a petition in the manner provided by ORCP 28 for the joining of defendants.

(6) The court shall review a petition seeking appointment of a guardian and shall dismiss the proceeding without prejudice, or require that the petition be amended, if the court determines that the petition does not meet the requirements of this section. [1995 c.664 §7; 1997 c.717 §4; 2003 c.227 §3]

125.060 Who must be given notice. (1) The notices required by this section must be given to all persons whose identities and addresses can be ascertained in the exercise of reasonable diligence by the person required to give the notice.

(2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other protective order must be given by the petitioner to the following persons:

(a) The respondent, if the respondent has attained 14 years of age.

(b) The spouse, parents and adult children of the respondent.

(c) If the respondent does not have a spouse, parent or adult child, the person or persons most closely related to the respondent.

(d) Any person who is cohabiting with the respondent and who is interested in the affairs or welfare of the respondent.

(e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

(f) If the respondent is a minor, the person who has exercised principal responsibility for the care and custody of the respondent during the 60-day period before the filing of the petition.

(g) If the respondent is a minor and has no living parents, any person nominated to act as fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

(h) If the respondent is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(i) If the respondent is receiving moneys paid or payable for public assistance provided under ORS chapter 411 or 414 by the State of Oregon through the Department of Human Services, a representative of the department.

(j) If the respondent is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the respondent is confined.

(k) If the respondent is a foreign national, the consulate for the respondent's country.

(L) Any other person that the court requires.

(3) Notice of a motion for the termination of the protective proceedings, for removal of a fiduciary, for modification of the powers or

authority of a fiduciary, for approval of a fiduciary's actions or for protective orders in addition to those sought in the petition must be given by the person making the motion to the following persons:

(a) The protected person, if the protected person has attained 14 years of age.

(b) Any person who has filed a request for notice in the proceedings.

(c) Except for a fiduciary who is making a motion, any fiduciary who has been appointed for the protected person.

(d) If the protected person is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(e) If the protected person is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the protected person is confined.

(f) Any other person that the court requires.

(4) A request for notice under subsection (3)(b) of this section must be in writing and include the name, address and phone number of the person requesting notice. A copy of the request must be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has been appointed. The original request must be filed with the court. The person filing the request must pay the fee specified by ORS 21.310 (5).

(5) A person who files a request for notice in the proceedings in the manner provided by subsection (4) of this section is entitled to receive notice from the fiduciary of any motion specified in subsection (3) of this section and of any other matter to which a person listed in subsection (2) of this section is entitled to receive notice under a specific provision of this chapter.

(6) If the Department of Human Services is nominated as guardian for the purpose of consenting to the adoption of a minor, the notice provided for in this section must also be given to the minor's brothers, sisters, aunts, uncles and grandparents.

(7) In addition to the requirements of subsection (2) of this section, notice of the filing of a petition for the appointment of a guardian for a person who is alleged to be incapacitated must be given by the petitioner to the following persons:

(a) Any attorney who is representing the respondent in any capacity.

(b) If the respondent is a resident of a nursing home or residential facility, or if the person nominated to act as fiduciary intends to place the respondent in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the respondent is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends to place the respondent in such a facility, the system described in ORS 192.517 (1).

(8) In addition to the requirements of subsection (3) of this section, in a protective proceeding in which a guardian has been appointed, notice of the motions specified in subsection (3) of this section must be given by the person making the motion to the following persons:

(a) Any attorney who represented the protected person at any time during the protective proceeding.

(b) If the protected person is a resident of a nursing home or residential facility, or if the motion seeks authority to place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the motion seeks authority to place the protected person in such a facility, the system described in ORS 192.517 (1).

(9) A respondent or protected person may not waive the notice required under this section.

(10) The requirement that notice be served on an attorney for a respondent or protected person under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney receiving the notice to represent the respondent or protected person in the protective proceeding. [1995 c.664 §8; 1997 c.717 §5; 1999 c.122 §3; 1999 c.775 §2; 2001 c.900 §22; 2003 c.143 §3; 2005 c.22 §98; 2005 c.381 §22; 2005 c.498 §2]

125.065 Manner of giving notice. (1) Notice of the filing of a petition must be personally served on any respondent who has attained 14 years of age. Notice of a petition must be personally served on the parents of a respondent if the petition is based on the fact that the respondent is a minor. The notice may not be served on the respondent by the visitor appointed by the court. The notice shall be written in language reasonably understandable by the respondent. The notice must be printed in type size equal to at least 12-point type.

(2) Except as provided in subsection (1) of this section, the notices required under ORS 125.060 may be mailed to the last-known address of the person. If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, notice of the filing of a petition may be given by publishing at least once a week for three consecutive weeks a copy of the notice in a newspaper having general circulation in the county where the hearing is to be held. The last publication of the notice must be at least 15 days before the final date for the filing of objections.

(3) The date of personal service or mailing under this section must be at least 15 days before the final date for the filing of objections to the petition or motion. If the proceedings are subject to the Uniform Child Custody Jurisdiction and Enforcement Act provided for in ORS 109.701 to 109.834, the date of service or mailing must be at least 21 days before the final date for the filing of objections to the petition or motion.

(4) The court for good cause shown may provide for a different method or time of giving notice under this section.

(5) Proof of the giving of notice must be filed in the proceeding before the court enters any order on a petition or motion. [1995 c.664 §9; 1999 c.649 §53]

125.070 Contents of notice. (1) The notice required by ORS 125.060 must contain the following:

(a) The name, address and telephone number of the petitioner or the person making the motion, and the relationship of the petitioner or person making the motion to the respondent.

(b) A copy of the petition or motion.

(c) A statement on where objections may be made or filed and the deadline for making or filing those objections.

(d) If a hearing has been set, the date, time and place of the hearing.

(2) In addition to the requirements of subsection (1) of this section, a notice of a petition for the appointment of a conservator for a respondent who is alleged to be financially incapable or a notice of a petition for the appointment of a guardian or conservator for a respondent who is a minor that is served on the respondent must contain the following:

(a) An explanation of the purpose and possible consequences of the petition.

(b) A statement that financial resources of the respondent may be used to pay court-approved expenditures of the proceeding.

(c) Information regarding any free or low-cost legal services and other relevant services available in the area.

(d) Information on any appointment of a visitor and the role of the visitor.

(e) A statement of the rights of the respondent as follows:

(A) The right to be represented by an attorney.

(B) The right to file a written or oral objection.

(C) The right to request a hearing.

(D) The right to present evidence and cross-examine witnesses at any hearing.

(E) The right to request at any time that the power of the fiduciary be limited by the court.

(F) The right to request at any time the removal of the fiduciary or a modification of the protective order.

(3) In addition to the requirements of subsection (1) of this section, a notice of a petition for the appointment of a guardian for a respondent who is alleged to be incapacitated must contain a notice, printed in 14-point type, in substantially the following form:

NOTICE TO RESPONDENT

To: Respondent _____:

_____, Petitioner, who is your _____ (relationship to respondent), <u>or</u> that is an agency or business that provides guardianship services, has asked a judge for the power to make decisions for you. The judge has been asked to give this person, agency or business the authority to make the following decisions for you (mark the appropriate spaces):

__ Medical and health care decisions, including decisions on which doctors you will see and what medications and treatments you will receive.

__ Residential decisions, including decisions on whether you can stay where you are currently living or be moved to another place.

__ Financial decisions, including decisions on paying your bills and decisions about how your money is spent.

__ Other decisions: _____

_____.

<u>YOUR MONEY MAY BE USED IF THE JUDGE APPOINTS A GUARDIAN FOR YOU. YOU MAY BE ASKED TO PAY FOR THE TIME AND EXPENSES OF THE GUARDIAN, THE TIME AND EXPENSES OF THE PETITIONER'S ATTORNEY, THE</u>

TIME AND EXPENSES OF YOUR ATTORNEY, FILING FEES AND OTHER COSTS.

YOU MUST TELL SOMEONE AT THE COURTHOUSE BEFORE _____ (DATE) IF YOU OPPOSE HAVING SOMEONE ELSE MAKE THESE DECISIONS FOR YOU.

OBJECTIONS:

You can write to the judge if you do not want someone else making decisions for you. The judge's address is: _____.

You have the right to object to the appointment of a guardian by saying you want to continue to make your own decisions. If you do not want another person, agency or business making decisions for you, you can object. If you do not want _____ (Proposed Guardian) to make these decisions for you, you can object. If you do not want your money to be used to pay for these expenses, you can object.

You can object any time after the judge has appointed a guardian. You can ask the judge at any time to limit the kinds of decisions that the guardian makes for you so that you can make more decisions for yourself. You can also ask the judge at any time to end the guardianship.

THE HEARING:

The judge will hold a hearing if you do not want a guardian, do not want this particular person to act as your guardian or do not want your money used this way. At the hearing, the judge will listen to what you and others have to say about whether you need someone else to make decisions for you, who that person should be and whether your money should be spent on these things. You can have your witnesses tell the judge why you do not need a guardian and you can bring in records and other information about why you think that you do not need a guardian. You can ask your witnesses questions and other witnesses questions.

THE COURT VISITOR:

The judge will appoint someone to investigate whether you need a guardian to make decisions for you. This person is called a "visitor." The visitor works for the judge and does not work for the person who filed the petition asking the judge to appoint a guardian for you, for you or for any other party. The visitor will come and talk to you about the guardianship process, about whether you think that you need a guardian and about who you would want to be your guardian if the judge decides that you need a guardian. The visitor will talk to other people who have information about whether you need a guardian. The visitor will make a report to the judge about whether what the petition says is true, whether the visitor thinks that you need a guardian, whether the person proposed as your guardian is able and willing to be your guardian, who would be the best guardian for you and what decisions the guardian should make for you. If there is a hearing about whether to appoint a guardian for you, the visitor will be in court to testify.

You can tell the visitor if you don't want someone else making decisions for you when the visitor comes to talk with you about this matter.

LEGAL SERVICES:

You can call a lawyer if you don't want someone else making decisions for you. If you don't have a lawyer, you can ask the judge whether a lawyer can be appointed for you.

There may be free or low-cost legal services or other relevant services in your local area that may be helpful to you in the guardianship proceeding. For information about these services, you can call the following telephone numbers _____ and ask to talk to people who can help you find legal services or other types of services.

OBJECTION FORM:

You can mark the blue sheet (Respondent's Objection) that is attached to this form if you do not want someone else to make your decisions for you. You can give the blue sheet to the visitor when the visitor comes to talk with you about this, you can show it to your attorney or you can mail it to the judge.

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(4) In addition to the requirements of subsection (1) of this section, a notice of a petition that is served on a respondent who is alleged to be incapacitated must contain an objection form, printed on blue paper in 14-point type, in substantially the following form:

IN THE _____ COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF _____

	) Case No. _____
(Case Title)	)
	) RESPONDENT'S
	) OBJECTION
	)
	)
	)

I object to the petition for the following reasons:

___ I do not want anyone else making any of my decisions for me.
___ I do not want _____ making any decisions for me.
___ I do not want _____ to make the following decisions for me:
_____
_____

_____
(Signature of Respondent)

_____
(Date)

GIVE TO THE VISITOR OR MAIL TO:
_____
_____

(5) In addition to the requirements of subsection (1) of this section, a notice of a petition provided to a person other than the respondent must contain a statement as follows:

_____

NOTICE: If you wish to receive copies of future filings in this case, you must inform the judge and the person named as petitioner in this notice. You must inform the judge by filing a request for notice and paying any applicable fee. The request for notice must be in writing, must clearly indicate that you wish to receive future filings in the proceedings and must contain your name, address and phone number. You must notify the person named as petitioner by mailing a copy of the request to the petitioner. Unless you take these steps, you will receive no further copies of the filings in the case.

_____

[1995 c.664 §10; 1999 c.775 §3; 2001 c.416 §1]

125.075 Presentation of objections. (1) Any person who is interested in the affairs or welfare of a respondent or protected person may present objections to a petition or to a motion in a protective proceeding, including but not limited to:

(a) Any person entitled to receive notice under ORS 125.060.

(b) Any stepparent or stepchild of the respondent or protected person.

(c) Any other person the court may allow.

(2) Objections to a petition may be either written or oral. Objections to a motion must be in writing. Objections to a petition or to a motion must be made or filed with the court within 15 days after notice of the petition or motion is served or mailed in the manner prescribed by ORS 125.065. The court shall designate a place where oral objections may be made. If a person appears within the time allowed at the place designated by the court for the purpose of making oral objections, the clerk of the court shall provide a means of reducing the oral objections to a signed writing for the purpose of filing the objection.

(3) If objections are presented by any of the persons listed in subsection (1) of this section, the court shall schedule a hearing on the objections. The petitioner or person making the motion shall give notice to all persons entitled to notice under ORS 125.060 (3) of the date, time and place of the scheduled hearing at least 15 days before the date set for hearing. Notice shall be given in the manner prescribed by ORS 125.065.

(4) Notwithstanding ORS 21.310, the court shall not charge or collect any fee from a respondent or protected person for the filing of objections under the provisions of this section or for the filing of any motion by a respondent or protected person.

(5) The court for good cause shown may provide for a different method or time of giving notice under subsection (3) of this section. [1995 c.664 §11]

125.080 Hearing. (1) The court may require that a hearing be held on any petition or motion in a protective proceeding.

(2) A hearing must be held on a petition or motion if an objection is filed to the petition or motion and the objection is not withdrawn before the time scheduled for the hearing.

(3) The respondent or protected person may appear at a hearing in person or by counsel.

(4) If the court requires that a hearing be held on a petition, or a hearing is otherwise required under this section, the court may appoint counsel for the respondent unless the respondent is already represented by counsel. [1995 c.664 §12; 1999 c.775 §1; 2003 c.227 §4]

125.085 Motions after appointment of a fiduciary. (1) The court may remove a fiduciary on the motion of any person who is entitled to file an objection to a petition under the provisions of ORS 125.075, or upon the court's own motion.

(2) On motion of the fiduciary, the court may accept the resignation of the fiduciary and make any other order that may be appropriate, including appointment of a successor fiduciary.

(3) Upon motion by any person who is entitled to file an objection to a petition under the provisions of ORS 125.075, or upon the court's own motion, the court may order a modification of the powers or authority of the fiduciary or termination of the protective proceedings. [1995 c.664 §13]

125.090 Termination of proceedings. (1) A protected person is entitled to the same rights and procedures provided in the original proceedings when a motion to terminate the protective proceeding is filed and a fiduciary opposes the motion. The fiduciary has the burden of proving by clear and convincing evidence that a protected person continues to be incapacitated or financially incapable if a motion to terminate a protective proceeding is filed and the fiduciary opposes the motion. A visitor must be appointed if a motion for termination of a guardianship is filed and objections are filed to the motion. A visitor may be appointed if a motion for termination of a conservatorship is filed.

(2) The court may terminate protective proceedings upon motion after determining any of the following:

(a) The appointment of a fiduciary or other protective order was made because the protected person was a minor, and the protected person has attained the age of majority.

(b) The appointment of a fiduciary or other protective order was made because the protected person was incapacitated, and the protected person is no longer incapacitated.

(c) The appointment of a fiduciary or other protective order was made because the protected person was financially incapable, and the protected person is no longer financially incapable or the conditions of ORS 125.535 have been met.

(d) The protected person has died.

(e) The best interests of the protected person would be served by termination of the proceedings.

(3) The court shall terminate a protective proceeding by entry of a general judgment. [1995 c.664 §14; 2005 c.568 §37]

125.095 Compensation and expenses payable in protective proceedings. (1) Funds of the protected person may be used to pay reasonable compensation to any visitor, attorney, physician, fiduciary or temporary fiduciary for services rendered in the protective proceeding or for services rendered on behalf of the fiduciary or protected person.

(2) Prior court approval is required before the payment of the fees of any visitor or physician if the fees are incurred for services relating to proceedings arising out of the filing of an objection to a petition or motion.

(3) Prior court approval is required before payment of compensation to a fiduciary or to the attorneys for a fiduciary, except that prior court approval is not required before payment of compensation to a conservator if the conservator is a trust company that has complied with ORS 709.030, or if the conservator is the Department of Veterans' Affairs. [1995 c.664 §15; 1997 c.631 §409; 2005 c.625 §65]

VISITORS

125.150 Appointment of visitors. (1) The court shall appoint a visitor upon the filing of a petition in a protective proceeding that seeks the appointment of a guardian for an adult respondent or temporary fiduciary who will exercise the powers of a guardian for an adult respondent. The court may appoint a visitor in any other protective proceeding or in a proceeding under ORS 109.329.

(2) A visitor may be an officer, employee or special appointee of the court. The person appointed may not have any personal interest in the proceedings. The person appointed must have training or expertise adequate to allow the person to appropriately evaluate the functional capacity and needs of a respondent or protected person, or each petitioner and the person to be adopted under ORS 109.329. The court shall provide a copy of the petition and other filings in the proceedings that may be of assistance to the visitor.

(3) A visitor appointed by the court under this section shall interview a person nominated or appointed as fiduciary and the respondent or protected person, or each petitioner and the person to be adopted under ORS 109.329, personally at the place where the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, is located.

(4) Subject to any law relating to confidentiality, the visitor may interview any physician or psychologist who has examined the respondent or protected person, or each petitioner under ORS 109.329, the person or officer of the institution having the care, custody or control of the respondent or protected person, or each petitioner under ORS 109.329, and any other person who may have relevant information.

(5) If requested by a visitor under subsection (4) of this section, a physician or psychologist who has examined the respondent or protected person, or each petitioner under ORS 109.329, may, with patient authorization or in response to a court order in accordance with ORCP 44 or a subpoena under ORCP 55, provide any relevant information the physician or psychologist has regarding the respondent or protected person, or each petitioner under ORS 109.329.

(6) A visitor shall determine whether it appears that the respondent or protected

person, or each petitioner or the person to be adopted under ORS 109.329, is able to attend the hearing and, if able to attend, whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, is willing to attend the hearing.

(7) If a petition is filed seeking the appointment of a guardian for an adult respondent, a visitor shall investigate the following matters:

(a) The inability of the respondent to provide for the needs of the respondent with respect to physical health, food, clothing and shelter;

(b) The location of the respondent's residence and the ability of the respondent to live in the residence while under guardianship;

(c) Alternatives to guardianship considered by the petitioner and reasons why those alternatives are not available;

(d) Health or social services provided to the respondent during the year preceding the filing of the petition, when the petitioner has information as to those services;

(e) The inability of the respondent to resist fraud or undue influence; and

(f) Whether the respondent's inability to provide for the needs of the respondent is an isolated incident of negligence or improvidence, or whether a pattern exists.

(8) If a petition is filed seeking the appointment of a fiduciary, a visitor shall determine whether the respondent objects to:

(a) The appointment of a fiduciary; and

(b) The nominated fiduciary or prefers another person to act as fiduciary.

(9) If a petition is filed seeking the appointment of a conservator in addition to the appointment of a guardian, a visitor shall investigate whether the respondent is financially incapable. The visitor shall interview the person nominated to act as conservator and shall interview the respondent personally at the place where the respondent is located.

(10) A visitor shall determine whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, wishes to be represented by counsel and, if so, whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, has retained counsel and, if not, the name of an attorney the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, wishes to retain.

(11) If the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, has not retained counsel, a visitor shall determine whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, desires the court to appoint counsel.

(12) If the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, does not plan to retain counsel and has not requested the appointment of counsel by the court, a visitor shall determine whether the appointment of counsel would help to resolve the matter and whether appointment of counsel is necessary to protect the interests of the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329. [1995 c.664 §16; 2003 c.89 §1; 2003 c.227 §5; 2003 c.579 §§3,4]

125.155 Visitor's report. (1) A visitor shall file a report in writing with the court within 15 days after the visitor is appointed. The court may grant additional time for filing the visitor's report upon a showing of necessity and good cause.

(2) The report of the visitor appointed at the time a petition is filed requesting the appointment of a fiduciary must include the following:

(a) A statement of information gathered by the visitor relating to the correctness of the allegations contained in the petition, whether the appointment of a fiduciary is necessary and whether the nominated fiduciary is qualified and willing to serve.

(b) The name, address and telephone number of each person interviewed for the report, the date of the interview and the relationship of the person interviewed to the respondent.

(c) The recommendations of the visitor with regard to the suitability of the nominated fiduciary, any limitations that should be imposed on the fiduciary and the need for further evaluation.

(d) The recommendation of the visitor on any issue the court specifically asks the visitor to investigate regarding the propriety of appointing a fiduciary for the respondent.

(e) The visitor's determinations required by ORS 125.150.

(f) Any express communication made by the respondent relating to the desires of the respondent regarding representation by counsel.

(g) Any express communication made by the respondent with respect to whether the respondent is willing to attend a hearing, wishes to contest the appointment of a fiduciary, objects to the nominated fiduciary or prefers another person act as fiduciary.

(3) The State Court Administrator may prescribe one or more forms to be used by visitors for filing their reports.

(4) As soon as possible after a report is filed with the court under the provisions of this section, the clerk of the court shall mail copies of the report to any person who has filed with the court a specific request for a copy of the report. A request made under ORS 125.060 (3)(b) does not meet the requirements of this subsection unless the request specifically requests a copy of the visitor's report.

(5) The visitor must be present at the hearing on any objections to the appointment of a fiduciary. A visitor is entitled to reasonable compensation for attendance at the hearing. The court shall notify the visitor of the time and place of any hearing on objections to the appointment. [1995 c.664 §17; 2003 c.227 §6]

125.160 Subsequent appointment of visitor. At any time after the appointment of a fiduciary, the court may appoint a visitor. The court may require the visitor to perform any duty the visitor could have performed if appointed at the time the fiduciary was appointed, including interviewing relevant persons, examining relevant records, reporting in writing to the court and being present at any hearing. [1995 c.664 §18]

125.165 Qualifications and standards for visitors. (1) A presiding judge shall by court order establish:

(a) Qualifications for persons serving as visitors for the court, in addition to those qualifications established by this section; and

(b) Standards and procedures to be used by visitors in the performance of their duties.

(2) A visitor may be an employee of the court. The visitor may not have any personal interest in the respondent or protected person, or any pecuniary or financial interest in the proceedings, if those interests could compromise or otherwise affect the decisions of the visitor. A visitor may not receive compensation for services rendered as a fiduciary for two or more protected persons at the same time who are not related to the fiduciary.

(3) A visitor must:

(a) Have the training and expertise adequate to allow the person to conduct the interviews and make the recommendations required under ORS 125.150 and 125.155, to communicate with, assess and interact with respondents and protected persons, and to perform the other duties required of a visitor; and

(b) Demonstrate sufficient knowledge of the law so as to be able to inform a respondent or protected person of the nature and effect of a protective proceeding, to inform a respondent or protected person of the rights of the respondent or protected person in the protective proceeding, to answer the questions of a respondent or protected person and to inform fiduciaries concerning their powers and duties. [1999 c.775 §10; 2003 c.227 §2]

125.170 Payment and reimbursement for visitor services. (1) Not more than once each calendar year, the court may charge a respondent or protected person for any visitor services provided during the year. The court may order reimbursement to the state from the assets of the respondent or protected person for the cost of any interview or report unless the court finds that the assessment would impose a hardship on the respondent or protected person. If the respondent or protected person is receiving public assistance, there is a rebuttable presumption that charging a respondent or protected person for the services of a visitor would impose a hardship.

(2) The presiding judge by court order shall establish fees for visitors conducting interviews and preparing reports.

(3) All amounts collected under this section in reimbursement for visitor services shall be forwarded to the State Court Administrator and are continuously appropriated to the State Court Administrator. Funds appropriated to the State Court Administrator under this section may be used by the State Court Administrator for the purpose of funding visitor services provided under ORS 125.150 and 125.155. [1999 c.775 §9; 2003 c.227 §1]

FIDUCIARIES GENERALLY

125.200 Preferences in appointing fiduciary. The court shall appoint the most suitable person who is willing to serve as fiduciary after giving consideration to the specific circumstances of the respondent, any stated desire of the respondent, the relationship by blood or marriage of the person nominated to be fiduciary to the respondent, any preference expressed by a parent of the respondent, the estate of the respondent and any impact on ease of administration that may result from the appointment. [1995 c.664 §19]

125.205 Persons not qualified to act as fiduciary. A person is not qualified to serve as a fiduciary if the person is incapacitated, financially incapable, a minor or is acting as a health care provider, as defined in ORS

127.505, for the protected person. [1995 c.664 §20]

125.210 Notice to court of criminal conviction, revocation or cancellation of occupational license or bankruptcy proceedings. (1) A person nominated as a fiduciary who has been convicted of a crime, has filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation must inform the court of the circumstances of those events before the person is appointed. If the person nominated to be a fiduciary is also the petitioner, the information required by this section may be provided in the petition for appointment of a fiduciary in the manner specified by ORS 125.055.

(2) A person who has been appointed as a fiduciary who is convicted of a crime, files for or receives protection under the bankruptcy laws or has a license revoked or canceled that is required by the laws of any state for the practice of a profession or occupation must inform the court of the circumstances of those events immediately.

(3) A person who is required to give notice to the court under subsection (2) of this section must also give notice to those persons listed in ORS 125.060 (3).

(4) The court may decline to appoint a person as fiduciary, or may remove a person as fiduciary, if the person fails to comply with the provisions of this section. [1995 c.664 §21]

125.215 Acceptance of appointment as fiduciary; notice of proceedings to fiduciary. (1) If the person filing a petition in a protective proceeding is also nominated in the petition as fiduciary for the respondent, the signature of the petitioner on the petition acts as acceptance of appointment upon entry of an order appointing the petitioner as fiduciary. If the person nominated as a fiduciary is not the petitioner, the person nominated must file an acceptance of the appointment before the entry of the order appointing the fiduciary.

(2) A fiduciary must promptly file with the court any change in the name, residence or post-office address of the fiduciary.

(3) The court has personal jurisdiction over any person who accepts appointment as a fiduciary for the purpose of any matter relating to the protective proceeding, whether the person is a resident or nonresident of this state.

(4) Notice of an objection, motion or other matter in a protective proceeding may be personally served on the fiduciary or mailed to the fiduciary or the fiduciary's attorney by ordinary mail at the address listed in the court records and to any address for the fiduciary or the fiduciary's attorney known to the person giving notice. [1995 c.664 §22]

125.220 [1995 c.664 §23; repealed by 1999 c.774 §1 (125.221 enacted in lieu of 125.220)]

125.221 Conflicts of interest. (1) A fiduciary may employ a person in which the fiduciary has a pecuniary or financial interest only after disclosing the nature of the interest to the court if the person is employed for the purpose of providing direct services to the protected person or for the purpose of providing services to the fiduciary that directly affect the protected person. Before the person is employed, the fiduciary must provide the court with the following:

(a) A full and accurate disclosure of the pecuniary or financial interest of the fiduciary in the person.

(b) A full and accurate disclosure of the services to be performed by the person.

(c) A full and accurate disclosure of the anticipated costs to the estate in using the person to provide the services.

(2) In addition to the disclosures required by subsection (1) of this section, after making such inquiry as the court deems appropriate, the court may require additional disclosures for the purpose of assessing whether the pecuniary or financial interest of the fiduciary could compromise or otherwise affect decisions made by the fiduciary in carrying out the duties of the fiduciary.

(3) The continuing authority of a court over protective proceedings under ORS 125.025 includes the authority to supervise and inquire into:

(a) Whether the fiduciary by employing a person in which the fiduciary has a pecuniary or financial interest is acting reasonably to accomplish the purposes for which the fiduciary was appointed.

(b) Whether the employment of the person by the fiduciary is necessary to provide the services efficiently and effectively.

(c) The extent that the pecuniary or financial interest of the person employed by the fiduciary could compromise or otherwise affect the decisions made by the fiduciary in carrying out the duties of the fiduciary.

(4) In addition to the disclosures required by subsections (1) and (2) of this section, prior court approval is required for payment of compensation to a person who is the spouse, parent or child of the fiduciary or to a business entity in which the spouse, parent or child of the fiduciary has an ownership interest and that is employed by the fiduciary to provide direct services to a pro-

tected person or to provide services to the fiduciary that directly affect the protected person. The fiduciary must provide the court with the following information:

(a) The specific services to be provided;

(b) The qualifications of the person providing the services;

(c) The rate of compensation charged by the person; and

(d) Any other information relevant to either the person providing the services or the services being provided to the protected person, including, but not limited to, loss of a professional license or a criminal conviction.

(5) The court may not approve any fees or expenses requested by the fiduciary to the extent that the combined fees of the fiduciary and the person employed by the fiduciary under this section exceed the amount the court finds would have been appropriate for payment to the fiduciary if the fiduciary had provided the services alone.

(6) A fiduciary has a pecuniary or financial interest in another person for the purposes of this section if the fiduciary, or any person related to, employed by or affiliated with the fiduciary has:

(a) Any direct or indirect ownership interest in the person;

(b) A business association with the person; or

(c) Any financial involvement with the person.

(7) A fiduciary has a pecuniary or financial interest in another person for the purposes of this section if the fiduciary, or any person related to, employed by or affiliated with the fiduciary, receives remuneration or any other financial benefit from the person, without regard to whether that remuneration or benefit is directly tied to the services provided to the fiduciary or protected person.

(8) In addition to the grounds specified in subsections (6) and (7) of this section, a fiduciary has a pecuniary or financial interest in another person for the purposes of this section if the relationship between the fiduciary and other person is such that the relationship could compromise or otherwise affect decisions made by the fiduciary in carrying out the duties of the fiduciary.

(9) A fiduciary employs a person for the purposes of this section whether the person is engaged as an employee or as an independent contractor. [1999 c.774 §2 (enacted in lieu of 125.220); 2003 c.392 §1]

125.225 Removal of fiduciary. (1) A court shall remove a fiduciary whenever that removal is in the best interests of the protected person.

(2) In addition to any other grounds, the court may remove a conservator if the conservator fails to use good business judgment and diligence in the management of the estate under the control of the conservator. The court may apply a higher standard of care to a conservator who claims to have greater than ordinary skill or expertise.

(3) The court may remove a guardian if the guardian places the protected person in a mental health treatment facility, a nursing home or other residential facility and:

(a) Failed to disclose in the petition for appointment that the guardian intended to make the placement; or

(b) Failed to comply with ORS 125.320 (3) before making the placement.

(4) On termination of the authority of a fiduciary, an interim fiduciary may be appointed by the court to serve for a period not to exceed 60 days. An interim fiduciary under this subsection may be appointed by the court without the appointment of a visitor, additional notices or any other additional procedure, except as may be determined necessary by the court.

(5) Upon termination of the authority of a fiduciary, the court may appoint a successor fiduciary. A petition for appointment as successor fiduciary must be filed in the same manner as provided for an original petition, and is subject to all provisions applicable to an original petition for the appointment of a fiduciary except:

(a) No filing fee shall be charged or collected for the filing of a petition for the appointment of a successor fiduciary; and

(b) The court may enter an order waiving the requirement of appointing a visitor if the termination of the fiduciary's authority results from the resignation or death of the fiduciary. [1995 c.664 §24]

125.230 Termination of fiduciary's authority; discharge of fiduciary. (1) Except as provided in subsection (3) of this section, a fiduciary's authority terminates upon the death, resignation or removal of the fiduciary or upon the protected person's death. If the fiduciary is a guardian appointed solely by reason of the minority of the protected person, the fiduciary's authority terminates upon the protected person attaining 18 years of age.

(2) Resignation or removal of a fiduciary does not discharge the fiduciary until a final report or accounting has been approved by the court, any surety exonerated and the fiduciary discharged by order of the court.

(3) A guardian retains the authority to direct disposition of the remains of a deceased protected person if the guardian is

unaware of any contact during the 12-month period immediately preceding the death of the protected person between the protected person and any person with priority over the fiduciary to control disposition of the remains under ORS 97.130 or to make an anatomical gift under ORS 97.954. [1995 c.664 §25; 1997 c.472 §11]

125.235 Liability of fiduciary. A fiduciary is not personally liable to third persons for acts of the protected person solely by reason of being appointed fiduciary. [1995 c.664 §26]

125.240 Professional fiduciaries. (1) If a petition seeks the appointment of a professional fiduciary as described in subsection (5) of this section, the petition must contain the following information in addition to that information required under ORS 125.055:

(a) A description of the events that led to the involvement of the professional fiduciary in the case.

(b) The professional fiduciary's educational background and professional experience.

(c) The fees charged by the professional fiduciary and whether the fees are on an hourly basis or are based on charges for individual services rendered.

(d) The names of providers of direct services to protected persons that are repeatedly used by the professional fiduciary under contract.

(e) The disclosures required under ORS 125.221 if the person nominated to act as fiduciary will employ a person in which the nominated person has a pecuniary or financial interest.

(f) The number of protected persons for whom the person performs fiduciary services at the time of the petition.

(g) Whether the professional fiduciary has ever had a claim against the bond of the fiduciary and a description of the circumstances causing the claim.

(h) Whether the professional fiduciary or any staff with responsibility for making decisions for clients or for management of client assets has ever filed for bankruptcy and the date of filing.

(i) Whether the professional fiduciary or any staff with responsibility for making decisions for clients or for management of client assets has ever been denied a professional license that is directly related to responsibilities of the professional fiduciary, or has ever held a professional license that is directly related to responsibilities of the professional fiduciary that was revoked or canceled. If such a license has been denied, revoked or canceled, the petition must reflect the date of the denial, revocation or cancellation and the name of the regulatory body that denied, revoked or canceled the license.

(j) A statement that the criminal records check required under subsection (2) of this section does not disqualify the person from acting as a fiduciary.

(k) Whether the professional fiduciary and any staff responsible for making decisions for clients or for management of client assets is or has been certified by a national or state association of professional fiduciaries, the name of any such association and whether the professional fiduciary or other staff person has ever been disciplined by any such association and the result of the disciplinary action.

(L) The name, address and telephone number of the individual who is to act as primary decision maker for the protected person and the name of the person with whom the protected person will have personal contact if that person is not the person who will act as primary decision maker for the protected person.

(2)(a) If a petition seeks the appointment of a professional fiduciary as described in subsection (5) of this section, the professional fiduciary and all staff with responsibility for making decisions for clients or for management of client assets must undergo a criminal records check before the court may appoint the professional fiduciary. The results of the criminal records check shall be provided by the petitioner to the court. Results of criminal records checks submitted to the court are confidential, shall be subject to inspection only by the parties to the proceedings and their attorneys, and shall not be subject to inspection by members of the public except pursuant to a court order entered after a showing of good cause. A professional fiduciary must disclose to the court any criminal conviction of the professional fiduciary that occurs after the criminal records check was performed. The criminal records check under this subsection shall consist of a check for a criminal record in the State of Oregon and a national criminal records check if:

(A) The person has resided in another state within five years before the date that the criminal records check is performed;

(B) The person has disclosed the existence of a criminal conviction; or

(C) A criminal records check in Oregon discloses the existence of a criminal record in another jurisdiction.

(b) The requirements of this subsection do not apply to any person who serves as a public guardian or conservator, or any staff of a public guardian or conservator, who is

operating under ORS 125.700 to 125.730 or 406.050 and who is otherwise required to acquire a criminal records check for other purposes.

(3)(a) If a petition seeks the appointment of a public guardian and conservator operating under the provisions of ORS 125.700 to 125.730, or the appointment of a conservator under ORS 406.050 (7), the petition need not contain the information described in subsection (1)(d) or (L) of this section.

(b) If a public guardian and conservator operating under the provisions of ORS 125.700 to 125.730 is appointed to act as a fiduciary, or a conservator operating under the authority of ORS 406.050 (7) is appointed, the public guardian or conservator must file with the court within three days after receipt of written notice of the appointment a statement containing the name, address and telephone number of the individual who will act as primary decision maker for the protected person and the name of the person with whom the protected person will have personal contact if the person named as primary decision maker will not have personal contact with the protected person.

(4) If the court appoints a professional fiduciary as described in subsection (5) of this section, the professional fiduciary must update all information required to be disclosed by subsection (1) of this section and provide a copy of the updated statement upon the request of the protected person or upon the request of any person entitled to notice under ORS 125.060 (3). The professional fiduciary must provide an updated statement without demand to the court, the protected person and persons entitled to notice under ORS 125.060 (3) at any time that there is a change in the information provided under subsection (1)(L) or (3)(b) of this section.

(5) The provisions of this section apply to any person nominated as a fiduciary or serving as a fiduciary who is acting at the same time as a fiduciary for three or more protected persons who are not related to the fiduciary. [1999 c.774 §4; 2001 c.102 §4; 2001 c.104 §37]

125.242 Exemptions for financial institutions and trust companies. ORS 125.221 and 125.240 do not apply to a financial institution, as defined in ORS 706.008, or trust company, as defined in ORS 706.008. [1999 c.774 §5]

Note: 125.242 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 125 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

GUARDIANS

125.300 In general. (1) A guardian may be appointed for an adult person only as is necessary to promote and protect the well-being of the protected person. A guardianship for an adult person must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations.

(2) An adult protected person for whom a guardian has been appointed is not presumed to be incompetent.

(3) A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include but are not limited to the right to contact and retain counsel and to have access to personal records. [1995 c.664 §27]

125.305 Order of appointment. (1) After determining that conditions for the appointment of a guardian have been established, the court may appoint a guardian as requested if the court determines by clear and convincing evidence that:

(a) The respondent is a minor in need of a guardian or the respondent is incapacitated;

(b) The appointment is necessary as a means of providing continuing care and supervision of the respondent; and

(c) The nominated person is both qualified and suitable, and is willing to serve.

(2) The court shall make a guardianship order that is no more restrictive upon the liberty of the protected person than is reasonably necessary to protect the person. In making the order the court shall consider the information in the petition, the report of the visitor, the report of any physician or psychologist who has examined the respondent, if there was an examination and the evidence presented at any hearing.

(3) The court may require that a guardian post bond.

(4) The Department of Human Services may be appointed guardian of a minor if the minor has no living parents and if no willing, qualified and suitable relative or other person has petitioned the court for appointment as a guardian. [1995 c.664 §28]

125.310 Letters of guardianship. The court shall issue letters of guardianship to the guardian after the filing of any acceptance of the appointment and bond that may be required. A copy of the order appointing the guardian must be attached to the letters

of guardianship. Letters of guardianship must be in substantially the following form:

State of Oregon,)
) LETTERS OF
County of ____) GUARDIANSHIP

BY THESE LETTERS OF GUARDIANSHIP be informed:

That on ____ (month) ____ (day), 2____, the _____ Court, ____ County, State of Oregon, appointed_____ (name of guardian) guardian for _____ (name of protected person) and that the named guardian has qualified and has the authority and duties of guardian for the named protected person as provided in the order appointing the guardian, a copy of which is attached to these letters.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at my office on ____ (month) ____ (day), 2____. (Seal)

_____, Clerk of the Court
By _____, Deputy

[1995 c.664 §29]

125.315 General powers and duties of guardian. (1) A guardian has the following powers and duties:

(a) Except to the extent of any limitation under the order of appointment, the guardian has custody of the protected person and may establish the protected person's place of abode within or without this state.

(b) The guardian shall provide for the care, comfort and maintenance of the protected person and, whenever appropriate, shall arrange for training and education of the protected person. Without regard to custodial rights of the protected person, the guardian shall take reasonable care of the person's clothing, furniture and other personal effects unless a conservator has been appointed for the protected person.

(c) Subject to the provisions of ORS 127.505 to 127.660, the guardian may consent, refuse consent or withhold or withdraw consent to health care, as defined in ORS 127.505, for the protected person. A guardian is not liable solely by reason of consent under this paragraph for any injury to the protected person resulting from the negligence or acts of third persons.

(d) The guardian may:

(A) Make advance funeral and burial arrangements;

(B) Subject to the provisions of ORS 97.130, control the disposition of the remains of the protected person; and

(C) Subject to the provisions of ORS 97.954 (1), make an anatomical gift of all or any part of the body of the protected person.

(e) The guardian of a minor has the powers and responsibilities of a parent who has legal custody of a child, except that the guardian has no obligation to support the minor beyond the support that can be provided from the estate of the minor, and the guardian is not liable for the torts of the minor. The guardian may consent to the marriage or adoption of a protected person who is a minor.

(f) Subject to the provisions of ORS 125.320 (2), the guardian may receive money and personal property deliverable to the protected person and apply the money and property for support, care and education of the protected person. The guardian shall exercise care to conserve any excess for the protected person's needs.

(2) If a conservator has been appointed for the protected person, the guardian may file a motion with the court seeking an order of the court on the duties of the conservator relating to payment of support for the protected person. [1995 c.664 §30; 1997 c.472 §12]

125.320 Limitations on guardian. (1) A guardian may not authorize the sterilization of the protected person.

(2) A guardian may not use funds from the protected person's estate for room and board that the guardian or guardian's spouse, parent or child have furnished the protected person unless the charge for the service is approved by order of the court before the payment is made.

(3)(a) Before a guardian may place an adult protected person in a mental health treatment facility, a nursing home or other residential facility, the guardian must file a statement with the court informing the court that the guardian intends to make the placement.

(b) Notice of the statement of intent must be given in the manner provided by ORS 125.065 to the persons specified in ORS 125.060 (3).

(c) In addition to the requirements of paragraph (b) of this subsection, notice of the statement of intent must be given in the manner provided by ORS 125.065 by the guardian to the following persons:

(A) Any attorney who represented the protected person at any time during the protective proceeding.

(B) If the protected person is a resident of a nursing home or residential facility, or if the notice states the intention to place the protected person in a nursing home or resi-

dential facility, the office of the Long Term Care Ombudsman.

(C) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the notice states the intention to place the protected person in such a facility, the system described in ORS 192.517 (1).

(d) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person must clearly indicate the manner in which the protected person may object to the proposed placement.

(e) The guardian may thereafter place the adult protected person in a mental health treatment facility, a nursing home or other residential facility without further court order. If an objection is made in the manner provided by ORS 125.075, the court shall schedule a hearing on the objection as soon as practicable.

(f) The requirement that notice be served on an attorney for a protected person under paragraph (c)(A) of this subsection does not impose any responsibility on the attorney receiving the notice to represent the protected person in the protective proceeding. [1995 c.664 §31; 2001 c.473 §1; 2005 c.498 §3]

125.325 Guardian's report. Within 30 days after each anniversary of appointment, a guardian for an adult protected person shall file with the court a verified written report. Copies of the guardian's report must be given to those persons specified in ORS 125.060 (3). The report shall be in substantially the following form:

IN THE _____ COURT
_____ COUNTY,
STATE OF OREGON
DEPARTMENT OF PROBATE

In the Matter of the Guardianship of _____, (Name of protected person) A Protected Person.	)))))))	No. _____

GUARDIAN'S REPORT

I am the guardian for the person named above, and I make the following report to the court as required by law:

1. My name is _____.

2. My address and telephone number are:
_____
_____

Phone _____

3. The name, if applicable, and address of the place where the person now resides are:
_____
_____

4. The person is currently residing at the following type of facility or residence:
_____

5. The person is currently engaged in the following programs and activities and receiving the following services (brief description):
_____

6. I was paid for providing the following items of lodging, food or other services to the person:
_____
_____

7. The name of the person primarily responsible for the care of the person at the person's place of residence is:
_____

8. The name and address of any hospital or other institution where the person is now admitted on a temporary or permanent basis are:
_____
_____

9. The person's physical condition is as follows (brief description):
_____
_____

10. The person's mental condition is as follows (brief description):
_____
_____

11. I made the following contacts with the person during the past year (brief description):
_____

12. I made the following major decisions on behalf of the person during the past year (brief description):
_____

13. I believe the guardianship should or should not continue because:
_____

14. At the time of my last report, I held the following amount of money on behalf of the person: $_____. Since my last report, I received the following amount of money on behalf of the person: $_____. I spent the following amount of money on behalf of the person: $_____. I now hold the following amount of money on behalf of the person: $_____.

15. A true copy of this report will be given to the person, any conservator for the person and any other person who has requested notice.

16. Since my last report:

(a) I have been convicted of the following crimes (not including traffic violations):

_____

(b) I have filed for or received protection from creditors under the Federal Bankruptcy Code (yes or no): _____.

(c) I have had a professional or occupational license revoked or suspended (yes or no): _____.

(d) I have had my driver license revoked or suspended (yes or no): _____.

17. Since my last report, I have delegated the following powers over the protected person for the following periods of time (provide name of person powers delegated to):

_____

Dated this _____ day of _____, 2_____.

_____
Guardian

STATE OF OREGON)
) ss.
County of _____)

I, _____ (guardian's name), being first duly sworn, say that the above statements are true.

_____
(Guardian's signature)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2_____.

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

_____

[1995 c.664 §32; 1997 c.717 §6]

125.330 Limitations on guardian appointed for person committed to custody of Department of Corrections. (1) Except as provided in subsection (2) of this section, a guardian appointed for a person committed to the legal and physical custody of the Department of Corrections may not exercise those powers specified in ORS 125.315 (1)(a) or (b) while the person remains confined.

(2) A guardian appointed for a person committed to the legal and physical custody of the Department of Corrections may take reasonable care of the person's clothing, furniture and other personal effects that are not located at the person's place of confinement.

(3) A guardian appointed for an incarcerated person may exercise those powers specified in ORS 125.315 (1)(c) only to the extent that the exercise of those powers is consistent with the protected person's status as a confined person and with the powers and duties of the superintendent or other officials of the facility. In no event may a guardian appointed for a person committed to the legal and physical custody of the Department of Corrections exercise more authority over health care decisions than the protected person could exercise given the person's status as a confined person. [1999 c.122 §2]

CONSERVATORS

(Appointment)

125.400 Order of appointment. Upon the filing of a petition seeking the appointment of a conservator, the court may appoint a conservator and make other appropriate protective orders if the court finds by clear and convincing evidence that the respondent is a minor or financially incapable, and that the respondent has money or property that requires management or protection. [1995 c.664 §33]

125.405 Letters of conservatorship. The court shall issue letters of conservatorship to the conservator after the filing of any acceptance of the appointment and bond that may be required. Letters of conservatorship must be in substantially the following form:

_____

State of Oregon,)
) LETTERS OF
County of _____) CONSERVATORSHIP

BY THESE LETTERS OF CONSERVATORSHIP be informed:

That on _____ (month) _____ (day), 2_____, the _____ Court, _____ County, State of Oregon, appointed _____ (name of conservator) conservator of the estate of _____ (name of protected person) and that the named conservator has qualified and has the authority and duties of conservator of the estate of the named protected person as provided by law.

LIMITATIONS: _____

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at my office on _____ (month) _____ (day), 2_____. (Seal)

_____, Clerk of the Court
By _____, Deputy

_____

[1995 c.664 §34]

(Bond)

125.410 Conservator's bond. (1) Except as provided in subsection (2) of this section, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservator according to law, with sureties as specified by the court. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the control of the conservator plus one year's estimated income minus the value of securi-

ties and money deposited under arrangements requiring an order of the court for their removal and the value of any real property that the conservator, by express limitation of power, lacks power to sell or convey without court authorization.

(2)(a) The court may waive a bond for good cause shown.

(b) Subsection (1) of this section does not affect the provisions of ORS 709.240, relating to a trust company acting as fiduciary, ORS 125.715, relating to a public guardian acting as fiduciary, or ORS 406.050 (7), relating to the Department of Veterans' Affairs acting as fiduciary.

(3) Sureties for a bond required under this section are jointly and severally liable with the conservator and with each other.

(4) Letters of conservatorship may not be issued until the bond required by this section is approved by the court.

(5) The bond of the conservator continues in effect until the sureties on the bond are released by order of the court.

(6) The court may at any time increase or reduce the amount of the bond required of a conservator for the protection of the protected person and the estate of the protected person.

(7) If a surety on a bond required by this section gives notice of intent to cancel the bond, the conservator shall execute and file in the protective proceeding a new bond before the cancellation date specified by the surety. The new bond shall be in the amount and subject to those conditions that may be required by the court. If the conservator fails to file a new bond, the authority of the conservator ends on the date specified by the surety for cancellation of the bond. The letters of conservatorship issued to the conservator are void from that date, and the conservator must make and file the final accounting of the conservator. [1995 c.664 §36; 2001 c.102 §5; 2005 c.625 §66]

125.415 Termination of bond by surety. (1) A surety may cancel the obligation of the surety upon notice in writing to the conservator and the court. The notice shall specify an effective date for the cancellation that is not less than 30 days after the date of the notice.

(2) A surety's obligation under a bond shall continue until court approval of an accounting covering the period during which the bond was effective and an order is entered releasing the sureties. [1995 c.664 §37]

(Conservator's Powers and Duties)

125.420 Power of conservator over property of protected person. A conservator shall take possession of all the property of substantial value of the protected person, and of rents, income, issues and profits from those properties whether accruing before or after the appointment of the conservator. The conservator shall also take possession of all proceeds from the sale, mortgage, lease or other disposition of property of the protected person. The conservator may permit the protected person to retain possession and control of property and funds for living requirements as appropriate to the needs and capacities of the protected person. The title to all property of the protected person is in the protected person and not in the conservator. [1995 c.664 §38]

125.425 Powers of conservator to pay expenses of protected person and dependents. (1) A conservator may expend or distribute income or principal of the estate without prior court authorization or confirmation for the support, education, care or benefit of the protected person and the dependents of the protected person after the conservator considers recommendations relating to the appropriate standard of support, education, care and benefit for the protected person made by any parent or guardian of the protected person. The conservator is not personally responsible for sums paid to persons or organizations furnishing support, education, care or benefit to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless:

(a) The conservator knows that the parent or guardian is deriving personal financial benefit from those payments; or

(b) The recommendations made by the parent or guardian clearly are not in the best interests of the protected person.

(2) A conservator may expend or distribute income or principal of the estate without prior court authorization or confirmation for the support, education, care or benefit of the protected person and the dependents of the protected person if those amounts are reasonably necessary for the support, education, care or benefit of the protected person with due regard to:

(a) The size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage the affairs of the protected person and the estate that has been conserved for the protected person;

(b) The accustomed standard of living of the protected person and members of the household of the protected person; and

(c) Other funds or sources used for the support of the protected person.

(3) A conservator may expend or distribute income or principal of the estate without prior court authorization or confirmation for the support, education, care or benefit of the dependents of the protected person, other persons who are members of the protected person's household who are unable to support themselves and who are in need of support, and any other persons who were receiving support from the protected person before the appointment of the conservator.

(4) The conservator may reimburse any person, including the protected person, who has expended funds for the purposes specified in this section. The conservator may pay any person in advance for those purposes if the conservator reasonably believes that the services will be performed and where advance payments are customary or reasonably necessary under the circumstances. [1995 c.664 §39]

125.430 Sale of protected person's residence. (1) A protected person's principal residence may be sold by a conservator only with the prior approval of the court. A motion seeking prior approval must be filed with the court and notice given to the persons specified in ORS 125.060 (3).

(2) For purposes of this section, "principal residence" means a residence that is owned by the protected person and in which the protected person resides or last resided, whether or not the protected person resides in the residence at the time approval to sell is sought from the court. [1995 c.664 §40]

125.435 Power of conservator to make gifts. If the estate has adequate funds to provide for the purposes specified in ORS 125.425, a conservator may make gifts on behalf of the protected person for such purposes as the protected person might have been expected to make. The conservator may make gifts without prior court approval of up to $250 to a person in a calendar year, not to exceed an aggregate amount of $1,000 for all gifts in a calendar year. The conservator must have prior court approval for any other gifts. [1995 c.664 §41]

125.440 Acts conservator may perform only with court approval. A conservator may perform the following acts only with prior court approval:

(1) Convey or release contingent or expectant interests of the protected person in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(2) Create revocable or irrevocable trusts of property of the estate. A trust created by the conservator may extend beyond the period of disability of the protected person or beyond the life of the protected person. A trust created by the conservator must be consistent with the will of the protected person or any other written or oral expression of testamentary intent made by the protected person before the person became incapacitated. The court may not approve a trust that has the effect of terminating the conservatorship.

(3) Exercise rights of the protected person to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(4) Disclaim any interest the protected person may have by testate or intestate succession or by inter vivos transfer.

(5) Authorize, direct or ratify any annuity contract or contract for life care. [1995 c.664 §42]

125.445 Acts authorized to be performed without prior court approval. A conservator may perform the following acts without prior court authorization or confirmation if the conservator is acting reasonably to accomplish the purposes for which the conservator was appointed:

(1) Collect, hold and retain assets of the estate including land wherever situated, until, in the judgment of the conservator, disposition of the assets should be made. Assets of the estate may be retained even though those assets include property in which the conservator is personally interested.

(2) Receive additions to the estate.

(3) Continue or participate in the operation of any business or other enterprise.

(4) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest.

(5) Invest and reinvest estate assets and funds in the same manner as a trustee may invest and reinvest.

(6) Deposit estate funds in a bank including a bank operated by the conservator.

(7) Except as limited in ORS 125.430, acquire or dispose of an estate asset including real property wherever situated for cash or on credit, at public or private sale.

(8) Manage, develop, improve, exchange, partition, change the character of or abandon an estate asset in connection with the exercise of any power vested in the conservator.

(9) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, or

raze existing or erect new party walls or buildings.

(10) Subdivide, develop or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration.

(11) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.

(12) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(13) Grant an option involving disposition of an estate asset or take an option for acquisition of any asset.

(14) Vote a security, in person or by general or limited proxy.

(15) Pay calls, assessments and any other sums chargeable or accruing against or on account of securities.

(16) Sell or exercise stock subscription or conversion rights, or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.

(17) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery. The conservator is liable for any act of the nominee in connection with the stock so held.

(18) Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons.

(19) Borrow money to be repaid from estate assets or otherwise and mortgage or pledge property of the protected person as security therefor.

(20) Advance money for the protection of the estate or the protected person, and for all expenses, losses and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets. The conservator has a lien on the estate as against the protected person for advances so made.

(21) Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

(22) Pay taxes, assessments, compensation of the conservator and other expenses incurred in the collection, care, administration and protection of the estate.

(23) Allocate items of income or expense to either income or principal, including creation of reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties.

(24) Pay any sum distributable to a protected person or a dependent of a protected person by paying the sum to the protected person or the dependent, or by paying the sum either to a guardian, custodian under ORS 126.700, or conservator of the protected person or, if none, to a relative or other person with custody of the protected person.

(25) Employ persons, including attorneys, auditors, investment advisers or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of administrative duties, acting upon their recommendation without independent investigation, and instead of acting personally, employing one or more agents to perform any act of administration, whether or not discretionary, except that payment to the conservator's attorney of record is subject to the provisions of ORS 125.095.

(26) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of duties.

(27) Prosecute claims of the protected person including those for the personal injury of the protected person.

(28) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator. [1995 c.664 §43]

125.450 Voidable transactions. Any sale or encumbrance to a conservator, the spouse, agent or attorney of the conservator, or any corporation or trust in which the conservator has a substantial beneficial interest, or any transaction that is otherwise affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after the filing of a motion with the court seeking approval of the transaction. [1995 c.664 §44]

(Desires of Protected Person)

125.455 Power of competent protected person over estate. (1) A protected person, if mentally competent, may make wills, change beneficiaries of life insurance and annuity policies and exercise any power of appointment or any elective right to share in the estate of a deceased spouse.

(2) Except as provided in this section and ORS 125.420, a protected person for whom a conservator has been appointed cannot convey or encumber the estate of the protected person or make any contract or election affecting the estate of the protected person. [1995 c.664 §45]

125.460 Consideration of estate plan of protected person. In investing the estate, selecting assets of the estate for distribution and utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, the conservator and the court shall take into account any known estate plan of the protected person, including the will of the protected person, any revocable trust of which the protected person is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the death of the protected person to another or others that the protected person may have originated. The conservator may examine the will of the protected person. [1995 c.664 §46]

(Inventory of Property)

125.465 Discovery of property; examination by conservator. (1) The court may order any person to appear and give testimony by deposition if it appears probable that the person:

(a) Has concealed, secreted or disposed of any property of the protected person;

(b) Has been entrusted with property of the protected person and fails to account for that property to the conservator;

(c) Has concealed, secreted or disposed of any writing, instrument or document relating to the affairs of the protected person;

(d) Has knowledge or information that is necessary to the administration of the affairs of the protected person; or

(e) As an officer or agent of a corporation, has refused to allow examination of the books and records of the corporation that the protected person has a right to examine.

(2) If a person is cited to appear under this section and fails to appear or to answer questions asked as authorized by the order of the court, the person may be held in contempt of court. [1995 c.664 §47]

125.470 Filing of inventory required; supplemental inventory. (1) Within 90 days after the date of appointment, unless a longer time is granted by the court, a conservator must file in the protective proceeding an inventory of all the property of the estate of the protected person that has come into the possession or knowledge of the conservator. The inventory must show the estimates by the conservator of the respective true cash values as of the date of the protective order. If the protected person has attained 14 years of age, a copy of the inventory must be served on the protected person personally or by mail.

(2) Whenever any property of the estate of the protected person not included in the inventory or any subsequent accounting and not derived from any asset included in a prior inventory or any subsequent accounting comes into the possession or knowledge of the conservator, the conservator must file a supplemental inventory in the protective proceeding. The supplemental inventory must be filed within 30 days after the date of receiving possession or knowledge of the property.

(3) If the estate of the protected person includes real property, the conservator must record in the deed records of the clerk of the county in which the real property is situated a certified copy of the inventory required by this section or an abstract in substantially the following form:

_____

The protected person's name is _____

_____

Conservatorship Case # _____
County where proceedings are pending

_____

Conservator is _____
Conservator's address is _____
Attorney's name is _____
Attorney's address is _____
The following real property is subject to proceedings: _____

Signature

_____

Dated _____
STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2____, by _____.

_____
Notary Public for Oregon
My commission expires: _____

_____

[1995 c.664 §48]

(Accountings)

125.475 Conservator's accounting to court; contents. (1) Unless the court by order provides otherwise, a conservator shall account to the court for the administration of the protected estate within 60 days after each anniversary of appointment. In addition,

a conservator shall account to the court for the administration of the protected estate:

(a) Within 60 days after the death of the protected person, a minor protected person attains majority or an adult protected person becomes able to manage the protected person's financial resources; and

(b) Within 30 days after the removal of the conservator, the resignation of the conservator or the termination of the conservator's authority under ORS 125.410 (7).

(2) Each accounting must include the following information:

(a) The period of time covered by the accounting.

(b) The total value of the property with which the conservator is chargeable according to the inventory, or, if there was a prior accounting, the amount of the balance of the prior accounting.

(c) All money and property received during the period covered by the accounting.

(d) All disbursements made during the period covered by the accounting.

(e) The amount of bond posted by the conservator during the period covered by the accounting.

(f) Such other information as the conservator considers necessary, or that the court might require, for the purpose of disclosing the condition of the estate.

(3) Vouchers for disbursements must accompany the accounting unless otherwise provided by order or rule of the court or unless the conservator is a trust company that has complied with ORS 709.030. If vouchers are not required, the conservator shall:

(a) Maintain the vouchers for a period of not less than one year following the date on which the order approving the final accounting is entered;

(b) Permit interested persons to inspect the vouchers and receive copies of the vouchers at their own expense at the place of business of the conservator during the conservator's normal business hours at any time before the end of one year following the date on which the order approving the final accounting is entered; and

(c) Include in each annual accounting and the final accounting a statement that the vouchers are not filed with the accounting but are maintained by the conservator and may be inspected and copied as provided in this subsection.

(4) The court may waive a final accounting if:

(a) The conservator was appointed because the protected person was a minor, and the protected person has attained the age of majority, or the conservator was appointed because the protected person was financially incapable, and the protected person is no longer financially incapable;

(b) The protected person gives a receipt to the conservator for the property delivered to the protected person; and

(c) The conservator files with the court a copy of the receipt issued by the protected person to the conservator.

(5) Copies of accountings must be served on all persons listed in ORS 125.060 (3). The court may waive service on the protected person if service of the copy would not assist the protected person in understanding the proceedings.

(6) The court may require a conservator to submit to a physical check of the estate in the control of the conservator at any time and in any manner the court may specify.

(7) The Chief Justice of the Supreme Court may by rule specify the form and contents of accounts that must be filed by a conservator. [1995 c.664 §49; 1997 c.631 §411; 1999 c.592 §4; 2005 c.123 §2]

125.480 Approval of accounting. Subject to appeal or vacation within the time allowed by law, an order, made upon notice and hearing, allowing an intermediate accounting of a conservator, is final as to the liabilities of the conservator concerning the matters considered in connection with the intermediate accounting. An order, made upon notice and hearing, allowing a final accounting is final as to all previously unsettled liabilities of the conservator to the protected person or successors relating to the conservatorship. [1995 c.664 §50]

(Liabilities)

125.485 Liability of conservator. (1) A conservator is not personally liable on a contract entered into in the fiduciary capacity of the conservator in the course of administering the estate unless:

(a) The contract specifically makes the conservator liable in a personal capacity; or

(b) The conservator fails to reveal the representative capacity of the conservator and identity of the estate in the contract.

(2) The conservator is personally liable for obligations arising from ownership, obligations arising out of control of property of the estate and torts committed in the course of administration of the estate only if the conservator is personally at fault.

(3) Claims based on contracts entered into by a conservator in the fiduciary capacity of the conservator, on obligations arising from ownership or control of the estate or on torts committed in the course of adminis-

tration of the estate may be asserted against the estate by proceeding against the conservator in the fiduciary capacity of the conservator, whether or not the conservator is personally liable.

(4) Any question of liability between the estate and the conservator personally may be determined in a proceeding for accounting or for indemnification, or in any other appropriate proceeding or action. [1995 c.664 §51]

125.490 Status of persons dealing with conservator. (1) A person who in good faith either assists a conservator or deals with the conservator for value in any transaction other than those requiring a court order under the provisions of this chapter is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not require the person to inquire into existence of a power or the propriety of its exercise, except that restrictions on powers of conservators that are indorsed on letters are effective as to third persons. A person is not required to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection provided under subsection (1) of this section:

(a) Is not affected by any procedural irregularity or jurisdictional defect in the proceedings that resulted in the issuance of letters; and

(b) Is in addition to the protection provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

(3) A person who holds property in which the protected person has an interest, or who is indebted either to the protected person or to the protected person and others, may enter into transactions with the conservator with respect to the property or debt to the same extent that the person could deal with the protected person if the protected person were not under protection. [1995 c.664 §52]

(Claims and Expenses)

125.495 Payment of claims against estate or protected person. (1) A conservator shall pay from the estate claims against the estate and against the protected person arising before or after the conservatorship upon their presentation, allowance and maturity. Claims that become absolute at an uncertain event may not be allowed. The conservator may allow claims against the estate of a protected person in part and disallow them in part.

(2) A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator or the attorney for the conservator a written statement of the claim stating the basis of the claim, the name and address of the claimant and of the claimant's attorney if the claimant is represented by an attorney in respect to the claim, and the amount claimed.

(b) The claimant may file the claim with the clerk of the court in which the proceeding is pending, captioned in a manner that will identify the protected person and the clerk's number of the proceeding, and deliver or mail a copy of the statement to the conservator or the attorney of the conservator.

(3) If the conservator disallows the claim in whole or in part, or if the conservator finds that the claim is valid but not due, the conservator shall notify the claimant or the attorney of the claimant in writing of the disallowance or finding of the conservator.

(4) The presentation of a claim and any defect in form or substance may be waived by the conservator or by the court if the claim, properly stated, is a valid and absolute obligation of the estate.

(5) The conservator may reconsider any claim previously rejected or allowed, or may compromise any claim against the estate of a protected person, including contingent, unliquidated and unmatured claims. [1995 c.664 §53]

125.500 Enforcement of claim against estate or protected person. (1) An action upon a claim may not be brought until the claim is disallowed or until 60 days have elapsed from the date of its presentment without allowance of payment.

(2) A creditor of the protected person or the estate of the protected person whose claim is secured may not exercise remedies against the security until at least 30 days after the claim is presented and after notice to the conservator or the attorney of the conservator that the creditor intends to exercise remedies against the security. The court may shorten the period for cause.

(3) The conservator may convey the security to the secured creditor in full or partial satisfaction of the claim if the secured creditor agrees to accept the conveyance as full satisfaction or partial satisfaction of the debt. [1995 c.664 §54]

125.505 Notice of claim to conservator. If a proceeding is pending against a protected person at the time of appointment of a conservator or is commenced against the protected person after appointment of a conservator, the plaintiff must give notice of the proceeding to the conservator or the attorney of the conservator if any judgment or order arising out of the proceeding will con-

stitute a claim against the estate. [1995 c.664 §55]

125.510 Procedure where claim disallowed. (1) If the conservator disallows a claim in whole or in part, or if the conservator does not allow or disallow a claim within 60 days after it is presented, the claimant may:

(a) File in the conservatorship proceeding a request for a summary determination of the claim by the court, with proof of service of a copy upon the conservator or the attorney of the conservator; or

(b) Commence a separate action against the conservator on the claim in a court of competent jurisdiction. The action shall proceed and be tried as any other action.

(2) If the claimant requests a summary hearing, the conservator may, within 30 days after service of the request, notify the claimant in writing that if the claimant desires to prove the claim the claimant must commence a separate action against the conservator within 60 days after service of the notice. If the claimant fails to commence an action against the conservator within that time, the claim is barred.

(3) An order allowing or disallowing in whole or in part a claim that has been considered upon a summary hearing may not be appealed. [1995 c.664 §56]

125.515 Effect of presentation of claim on statute of limitations. (1) The following periods of time shall not be part of the time limited for the commencement of an action under any statute of limitation:

(a) The period of time beginning at the presentation of a claim and ending 30 days after the claim is disallowed.

(b) If the claim is not allowed or disallowed within 60 days after it is presented, the period of time beginning with the presentation of the claim and ending 90 days after the claim is presented.

(2) For the purpose of any statute of limitation, an action is considered commenced upon the filing of a request for a summary determination of a claim that has been disallowed in whole or in part. [1995 c.664 §57]

125.520 Order of payment of expenses and claims. If it is likely that the estate of the protected person will be exhausted before all claims against the estate are paid, the conservator shall give preference in the payment of claims in the following order of priority:

(1) Funds needed for the current care, maintenance and support of the protected person and the dependents of the protected person and claims for the expenses of administration.

(2) Expenses and claims for the care, maintenance and support of the protected person and the dependents of the protected person that are not paid under subsection (1) of this section.

(3) Debts and taxes with preference under federal law.

(4) Taxes with preference under the laws of this state that are due and payable while possession of the estate of the protected person is retained by the conservator.

(5) All other claims against the conservatorship estate. [1995 c.664 §58; 1997 c.717 §7]

(Termination of Proceedings)

125.525 Termination of conservatorship. An order terminating a conservatorship shall direct the conservator to deliver the assets in the possession of the conservator to the protected person:

(1) Immediately, to the extent that the assets are not required for payment of expenses of administration and debts incurred by the conservator for the account of the estate of the protected person; and

(2) Upon entry of an order approving the final accounting or surcharging the conservator, to the extent of any balance remaining. [1995 c.664 §59]

125.530 Powers and duties of conservator on death of protected person. If a protected person dies and the conservator has possession of a will of the protected person, the conservator shall either deliver the will to the personal representative named in the will or deliver the will to the court for safekeeping. If the conservator delivers the will to the court for safekeeping, the conservator must inform any personal representative named in the will that the conservator has made that delivery. If it is not possible to inform the named personal representative, the conservator shall inform the beneficiaries named in the will of the delivery. The conservator shall retain and administer the estate for delivery to the personal representative of the decedent or other persons entitled to the estate. [1995 c.664 §60; 1997 c.717 §8]

125.535 Disposition of small estate. If at any time the estate of a protected person consists of personal property having a value not exceeding by more than $10,000 the aggregate amount of unpaid expenses of administration of the protected estate and claims against the estate, the conservator, with prior accounting and approval of the court by order, may pay the expenses and claims from the estate and deliver all the remaining personal property to the person designated by the court in the order, to be held, invested or used as ordered by the

court. The recipient of the property shall give a receipt to the conservator. The receipt is a release of and acquittance to the conservator as to the property delivered. The conservator shall file in the protective proceeding proper receipts or other evidence satisfactory to the court showing the delivery. Upon the court receiving the evidence, the court shall enter an order terminating the protective proceeding. [1995 c.664 §61]

(Payment to Foreign Conservator)

125.540 Payment of debt and delivery of property to foreign conservator. (1) A person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock or chose in action belonging to a protected person, may make payment or delivery to a conservator, guardian or other fiduciary appointed by a court of the state where the protected person resides, upon being presented with proof of appointment and an affidavit made by the fiduciary stating that:

(a) A protective proceeding relating to the protected person is not pending in this state; and

(b) The fiduciary is entitled to payment or to receive delivery.

(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor. [1995 c.664 §62]

TEMPORARY FIDUCIARIES

125.600 In general. (1) A temporary fiduciary who will exercise the powers of a guardian may be appointed by the court if the court makes a specific finding by clear and convincing evidence that the respondent is incapacitated or a minor, that there is an immediate and serious danger to the life or health of the respondent, and that the welfare of the respondent requires immediate action.

(2) A temporary fiduciary who will exercise the powers of a conservator may be appointed by the court if the court makes a specific finding by clear and convincing evidence that the respondent is financially incapable or a minor, that there is an immediate and serious danger to the estate of the respondent, and that the welfare of the respondent requires immediate action.

(3) A temporary fiduciary may be appointed only for a specific purpose and only for a specific period of time. The period of time may not exceed 30 days. The court may extend the period of the temporary fiduciary's authority for an additional period not to exceed 30 days upon motion and good cause shown. The court may terminate the authority of a temporary fiduciary at any time.

(4) Except as otherwise provided in this section and ORS 125.605 and 125.610, a temporary fiduciary is subject to all provisions of this chapter. [1995 c.664 §63]

125.605 Procedure for appointment of temporary fiduciary. (1) In addition to the requirements of ORS 125.055, a petition for the appointment of a temporary fiduciary must contain allegations of the conditions required under ORS 125.600.

(2) Notice of a petition for the appointment of a temporary fiduciary must be given to the persons specified in ORS 125.060 (2) in the manner provided by ORS 125.065 at least two days before the appointment of a temporary fiduciary. The court may waive the requirement that notice be given before appointment if the court finds that the immediate and serious danger requires an immediate appointment. In no event may the notice required by ORS 125.060 be given more than two days after the appointment is made.

(3) Notice of a motion for the extension of a temporary fiduciary's authority beyond 30 days under ORS 125.600 (3) must be given to the persons specified in ORS 125.060 (2) in the manner provided by ORS 125.065 at least two days before the entry of an order granting the extension.

(4) The court shall appoint a visitor if the petition seeks appointment of a temporary guardian. A visitor may be appointed by the court if a petition seeks appointment of a temporary conservator. Within three days after the appointment of the temporary fiduciary, the visitor shall conduct an interview of the respondent. The visitor shall report to the court within five days after the appointment of a temporary fiduciary is made. The report of the visitor shall be limited to the conditions alleged to support the appointment of a temporary fiduciary.

(5) If objections are made to the appointment of a temporary fiduciary or to the extension of a temporary fiduciary's authority under ORS 125.600 (3), the court shall hear the objections within two judicial days after the date on which the objections are filed. Notwithstanding ORS 21.310, no fee shall be charged to any person filing an objection to the appointment of a temporary fiduciary or to the extension of a temporary fiduciary's authority under ORS 125.600 (3). [1995 c.664 §64; 1997 c.717 §9]

125.610 Report of temporary fiduciary. (1) A temporary fiduciary shall file a report with the court setting out all activities of the temporary fiduciary under the authority of the appointment. Except as provided in subsection (2) of this section, the report must be filed:

(a) When the temporary fiduciary completes the duties of the fiduciary;

(b) When the temporary appointment expires; or

(c) When the court orders the termination of the temporary fiduciary's authority.

(2) If the person appointed as temporary fiduciary is appointed to act as a permanent fiduciary for the protected person, the report of the activities of the temporary fiduciary may be included in the first annual report of the guardian or in the first accounting of the conservator. [1995 c.664 §65]

OTHER PROTECTIVE ORDERS

125.650 Other protective orders. (1) The court may enter protective orders without the appointment of a fiduciary or in addition to appointment of a fiduciary. A petition for a protective order that does not seek the appointment of a fiduciary is subject to all requirements prescribed for petitions for appointment of a fiduciary. A court may enter a protective order other than appointment of a fiduciary only upon a determination that grounds exist for the appointment of a fiduciary.

(2) In issuing protective orders under this section, the court may exercise any power that could be exercised by a guardian or conservator in a protective proceeding, or any power that could be exercised by the court in a protective proceeding in which a fiduciary is appointed.

(3) Before entering a protective order under this section, the court shall consider the interests of creditors and dependents of the protected person and whether the protected person needs the continuing protection of a fiduciary.

(4) The court may appoint a fiduciary whose authority is limited to a specified time and whose power is limited to certain acts needed to implement the protective order. A fiduciary appointed under this subsection need only make such report to the court as the court may require.

(5) In addition to any other protective order that may be entered under this section, the court may authorize, direct or ratify:

(a) Any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the protected person, including but 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.

(b) Any contract, trust or other transaction relating to the protected person's financial affairs or involving the estate of the person if the court determines that the transaction is in the best interests of the protected person. [1995 c.664 §66]

PUBLIC GUARDIANS AND CONSERVATORS

125.700 Office of public guardian and conservator; expenses; termination. The county court or board of county commissioners of any county:

(1) After making a determination that there exists a need within the county for a guardian or conservator for persons who do not have relatives or friends willing to serve as a guardian or conservator and capable of assuming the duties of guardianship or conservatorship, may create within the county the office of public guardian and conservator and such subordinate positions as may be necessary to operate effectively the office of public guardian and conservator within the county.

(2) May expend county funds for the purpose of operating the office of public guardian and conservator.

(3) After establishment of the office of public guardian and conservator within a county, upon the finding that the county does not need the service of a public guardian and conservator, may terminate the office. [Formerly 126.905]

Note: 125.700 to 125.730 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 125 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

125.705 Effect of vacancy in office of public guardian and conservator. The person appointed to the office of public guardian and conservator shall serve in the office at the pleasure of the appointing authority. If the person holding the office of public guardian and conservator in a county is removed from office, dies, becomes incapacitated or resigns, the removal, death, incapacity or resignation shall operate to remove such public guardian and conservator as guardian and conservator of all estates then under the guardianship and conservatorship of the person. [Formerly 126.915]

Note: See note under 125.700.

125.710 Powers and duties of public guardian and conservator. (1) The public guardian and conservator may serve as the guardian or conservator, or both, of any person of whom the court having probate jurisdiction in the county may have jurisdiction. The public guardian and conservator may serve as guardian or conservator upon the petition of any person or upon the own petition of the public guardian and conservator.

(2) When appointed as guardian or conservator by the court having probate jurisdiction, the public guardian and conservator shall serve as provided in ORS chapter 125, ORS 127.005 and 127.015 except as specifically stated to the contrary in ORS 125.700 to 125.730.

(3) The public guardian and conservator in the discretion of the public guardian and conservator may employ private attorneys if the fees for the attorneys can be defrayed out of funds of the guardianship or conservatorship estate. [Formerly 126.925]

Note: See note under 125.700.

125.715 Bond; exoneration of surety. (1) Before entering into office as public guardian and conservator, the person appointed to the office shall file an official bond in such amount as may be fixed from time to time by the board of county commissioners or the court having probate jurisdiction, which bond shall inure to the joint benefit of the several guardianship or conservatorship estates in which the person is acting as guardian or conservator and the county. The public guardian and conservator shall not be required to file bonds in individual estates.

(2) Upon removal of the public guardian and conservator in accordance with the provisions of ORS 125.705, the surety on the public guardian and conservator bond shall be exonerated upon order to that effect of the court having probate jurisdiction in the county. [Formerly 126.935]

Note: See note under 125.700.

125.720 Deposit of funds. All funds coming into the custody of the public guardian and conservator shall be deposited in the county treasury and disbursed by proper warrant, or shall be deposited in one or more banks or invested in one or more insured savings and loan associations authorized to do business within the county, or as provided by ORS 125.445 (5). [Formerly 126.945]

Note: See note under 125.700.

125.725 Reimbursement of public guardian and conservator's expenses from estate of ward or protected person. The public guardian and conservator shall have a claim against the ward's or protected person's estate for reasonable expenses incurred in the execution of the guardianship or conservatorship and such compensation for services and those of the attorney of the public guardian and conservator as the court having probate jurisdiction in the county deems just and reasonable. If the public guardian and conservator is compensated by the county for services, any reimbursement of expenses or compensation shall be paid to the county. [Formerly 126.955]

Note: See note under 125.700.

125.730 Fees prohibited. No fee shall be charged or received by any court having probate jurisdiction for the filing of any petition asking for the appointment of the public guardian and conservator or for any official service performed by that court in the course of the guardianship or conservatorship proceedings. [Formerly 126.965]

Note: See note under 125.700.