

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing
5 Sections 4-1 and 11a-18 as follows:

6 (755 ILCS 5/4-1) (from Ch. 110 1/2, par. 4-1)

7 Sec. 4-1. Capacity of testator.†

8 (a) Every person who has attained the age of 18 years and
9 is of sound mind and memory has power to bequeath by will the
10 real and personal estate which he has at the time of his death.

11 (b) Except as stated herein, there is a rebuttable
12 presumption that a will or codicil is void if it was executed
13 or modified after the testator is adjudicated disabled under
14 Article XIa of this Act. The rebuttable presumption is overcome
15 by clear and convincing evidence that the testator had the
16 capacity to execute the will or codicil at the time the will or
17 codicil was executed. The rebuttable presumption does not apply
18 if the will or codicil was completed in compliance with
19 subsection (d-5) of Section 11a-18 of this Act. This subsection
20 (b) applies only to wills or codicils executed or modified
21 after the effective date of this amendatory Act of the 99th
22 General Assembly.

23 (Source: P.A. 80-808.)

1 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

2 Sec. 11a-18. Duties of the estate guardian.

3 (a) To the extent specified in the order establishing the
4 guardianship, the guardian of the estate shall have the care,
5 management and investment of the estate, shall manage the
6 estate frugally and shall apply the income and principal of the
7 estate so far as necessary for the comfort and suitable support
8 and education of the ward, his minor and adult dependent
9 children, and persons related by blood or marriage who are
10 dependent upon or entitled to support from him, or for any
11 other purpose which the court deems to be for the best
12 interests of the ward, and the court may approve the making on
13 behalf of the ward of such agreements as the court determines
14 to be for the ward's best interests. The guardian may make
15 disbursement of his ward's funds and estate directly to the
16 ward or other distributee or in such other manner and in such
17 amounts as the court directs. If the estate of a ward is
18 derived in whole or in part from payments of compensation,
19 adjusted compensation, pension, insurance or other similar
20 benefits made directly to the estate by the Veterans
21 Administration, notice of the application for leave to invest
22 or expend the ward's funds or estate, together with a copy of
23 the petition and proposed order, shall be given to the
24 Veterans' Administration Regional Office in this State at least
25 7 days before the hearing on the application.

1 (a-5) The probate court, upon petition of a guardian, other
2 than the guardian of a minor, and after notice to all other
3 persons interested as the court directs, may authorize the
4 guardian to exercise any or all powers over the estate and
5 business affairs of the ward that the ward could exercise if
6 present and not under disability. The court may authorize the
7 taking of an action or the application of funds not required
8 for the ward's current and future maintenance and support in
9 any manner approved by the court as being in keeping with the
10 ward's wishes so far as they can be ascertained. The court must
11 consider the permanence of the ward's disabling condition and
12 the natural objects of the ward's bounty. In ascertaining and
13 carrying out the ward's wishes the court may consider, but
14 shall not be limited to, minimization of State or federal
15 income, estate, or inheritance taxes; and providing gifts to
16 charities, relatives, and friends that would be likely
17 recipients of donations from the ward. The ward's wishes as
18 best they can be ascertained shall be carried out, whether or
19 not tax savings are involved. Actions or applications of funds
20 may include, but shall not be limited to, the following:

21 (1) making gifts of income or principal, or both, of
22 the estate, either outright or in trust;

23 (2) conveying, releasing, or disclaiming his or her
24 contingent and expectant interests in property, including
25 marital property rights and any right of survivorship
26 incident to joint tenancy or tenancy by the entirety;

1 (3) releasing or disclaiming his or her powers as
2 trustee, personal representative, custodian for minors, or
3 guardian;

4 (4) exercising, releasing, or disclaiming his or her
5 powers as donee of a power of appointment;

6 (5) entering into contracts;

7 (6) creating for the benefit of the ward or others,
8 revocable or irrevocable trusts of his or her property that
9 may extend beyond his or her disability or life;

10 (7) exercising options of the ward to purchase or
11 exchange securities or other property;

12 (8) exercising the rights of the ward to elect benefit
13 or payment options, to terminate, to change beneficiaries
14 or ownership, to assign rights, to borrow, or to receive
15 cash value in return for a surrender of rights under any
16 one or more of the following:

17 (i) life insurance policies, plans, or benefits,

18 (ii) annuity policies, plans, or benefits,

19 (iii) mutual fund and other dividend investment
20 plans,

21 (iv) retirement, profit sharing, and employee
22 welfare plans and benefits;

23 (9) exercising his or her right to claim or disclaim an
24 elective share in the estate of his or her deceased spouse
25 and to renounce any interest by testate or intestate
26 succession or by inter vivos transfer;

1 (10) changing the ward's residence or domicile; or

2 (11) modifying by means of codicil or trust amendment
3 the terms of the ward's will or any revocable trust created
4 by the ward, as the court may consider advisable in light
5 of changes in applicable tax laws.

6 The guardian in his or her petition shall briefly outline
7 the action or application of funds for which he or she seeks
8 approval, the results expected to be accomplished thereby, and
9 the tax savings, if any, expected to accrue. The proposed
10 action or application of funds may include gifts of the ward's
11 personal property or real estate, but transfers of real estate
12 shall be subject to the requirements of Section 20 of this Act.
13 Gifts may be for the benefit of prospective legatees, devisees,
14 or heirs apparent of the ward or may be made to individuals or
15 charities in which the ward is believed to have an interest.
16 The guardian shall also indicate in the petition that any
17 planned disposition is consistent with the intentions of the
18 ward insofar as they can be ascertained, and if the ward's
19 intentions cannot be ascertained, the ward will be presumed to
20 favor reduction in the incidents of various forms of taxation
21 and the partial distribution of his or her estate as provided
22 in this subsection. The guardian shall not, however, be
23 required to include as a beneficiary or fiduciary any person
24 who he has reason to believe would be excluded by the ward. A
25 guardian shall be required to investigate and pursue a ward's
26 eligibility for governmental benefits.

1 (b) Upon the direction of the court which issued his
2 letters, a guardian may perform the contracts of his ward which
3 were legally subsisting at the time of the commencement of the
4 ward's disability. The court may authorize the guardian to
5 execute and deliver any bill of sale, deed or other instrument.

6 (c) The guardian of the estate of a ward shall appear for
7 and represent the ward in all legal proceedings unless another
8 person is appointed for that purpose as guardian or next
9 friend. This does not impair the power of any court to appoint
10 a guardian ad litem or next friend to defend the interests of
11 the ward in that court, or to appoint or allow any person as
12 the next friend of a ward to commence, prosecute or defend any
13 proceeding in his behalf. Without impairing the power of the
14 court in any respect, if the guardian of the estate of a ward
15 and another person as next friend shall appear for and
16 represent the ward in a legal proceeding in which the
17 compensation of the attorney or attorneys representing the
18 guardian and next friend is solely determined under a
19 contingent fee arrangement, the guardian of the estate of the
20 ward shall not participate in or have any duty to review the
21 prosecution of the action, to participate in or review the
22 appropriateness of any settlement of the action, or to
23 participate in or review any determination of the
24 appropriateness of any fees awarded to the attorney or
25 attorneys employed in the prosecution of the action.

26 (d) Adjudication of disability shall not revoke or

1 otherwise terminate a trust which is revocable by the ward. A
2 guardian of the estate shall have no authority to revoke a
3 trust that is revocable by the ward, except that the court may
4 authorize a guardian to revoke a Totten trust or similar
5 deposit or withdrawable capital account in trust to the extent
6 necessary to provide funds for the purposes specified in
7 paragraph (a) of this Section. If the trustee of any trust for
8 the benefit of the ward has discretionary power to apply income
9 or principal for the ward's benefit, the trustee shall not be
10 required to distribute any of the income or principal to the
11 guardian of the ward's estate, but the guardian may bring an
12 action on behalf of the ward to compel the trustee to exercise
13 the trustee's discretion or to seek relief from an abuse of
14 discretion. This paragraph shall not limit the right of a
15 guardian of the estate to receive accountings from the trustee
16 on behalf of the ward.

17 (d-5) Upon a verified petition by the plenary or limited
18 guardian of the estate or the request of the ward that is
19 accompanied by a current physician's report that states the
20 ward possesses testamentary capacity, the court may enter an
21 order authorizing the ward to execute a will or codicil. In so
22 ordering, the court shall authorize the guardian to retain
23 independent counsel for the ward with whom the ward may execute
24 or modify a will or codicil.

25 (e) Absent court order pursuant to the Illinois Power of
26 Attorney Act directing a guardian to exercise powers of the

1 principal under an agency that survives disability, the
2 guardian will have no power, duty or liability with respect to
3 any property subject to the agency. This subsection (e) applies
4 to all agencies, whenever and wherever executed.

5 (f) Upon petition by any interested person (including the
6 standby or short-term guardian), with such notice to interested
7 persons as the court directs and a finding by the court that it
8 is in the best interest of the disabled person, the court may
9 terminate or limit the authority of a standby or short-term
10 guardian or may enter such other orders as the court deems
11 necessary to provide for the best interest of the disabled
12 person. The petition for termination or limitation of the
13 authority of a standby or short-term guardian may, but need
14 not, be combined with a petition to have another guardian
15 appointed for the disabled person.

16 (Source: P.A. 95-331, eff. 8-21-07.)