



Sen. Ira I. Silverstein

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1 AMENDMENT TO SENATE BILL 1309

2 AMENDMENT NO. _____. Amend Senate Bill 1309, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

7 (755 ILCS 5/4-1) (from Ch. 110 1/2, par. 4-1)

8 Sec. 4-1. Capacity of testator.†

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

12 (b) Except as stated herein, there is a rebuttable
13 presumption that a will or codicil is void if it was executed
14 or modified after the testator is adjudicated disabled under
15 Article XIa of this Act. The rebuttable presumption is overcome
16 by clear and convincing evidence that the testator had the

1 capacity to execute the will or codicil at the time the will or
2 codicil was executed. The rebuttable presumption does not apply
3 if the will or codicil was completed in compliance with
4 subsection (d-5) of Section 11a-18 of this Act. This subsection
5 (b) applies only to wills or codicils executed or modified
6 after the effective date of this amendatory Act of the 99th
7 General Assembly.

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

9 (755 ILCS 5/11a-18) (from Ch. 110 1/2, par. 11a-18)

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

11 (a) To the extent specified in the order establishing the
12 guardianship, the guardian of the estate shall have the care,
13 management and investment of the estate, shall manage the
14 estate frugally and shall apply the income and principal of the
15 estate so far as necessary for the comfort and suitable support
16 and education of the ward, his minor and adult dependent
17 children, and persons related by blood or marriage who are
18 dependent upon or entitled to support from him, or for any
19 other purpose which the court deems to be for the best
20 interests of the ward, and the court may approve the making on
21 behalf of the ward of such agreements as the court determines
22 to be for the ward's best interests. The guardian may make
23 disbursement of his ward's funds and estate directly to the
24 ward or other distributee or in such other manner and in such
25 amounts as the court directs. If the estate of a ward is

1 derived in whole or in part from payments of compensation,
2 adjusted compensation, pension, insurance or other similar
3 benefits made directly to the estate by the Veterans
4 Administration, notice of the application for leave to invest
5 or expend the ward's funds or estate, together with a copy of
6 the petition and proposed order, shall be given to the
7 Veterans' Administration Regional Office in this State at least
8 7 days before the hearing on the application.

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

1 not tax savings are involved. Actions or applications of funds
2 may include, but shall not be limited to, the following:

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

5 (2) conveying, releasing, or disclaiming his or her
6 contingent and expectant interests in property, including
7 marital property rights and any right of survivorship
8 incident to joint tenancy or tenancy by the entirety;

9 (3) releasing or disclaiming his or her powers as
10 trustee, personal representative, custodian for minors, or
11 guardian;

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

14 (5) entering into contracts;

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

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

20 (8) exercising the rights of the ward to elect benefit
21 or payment options, to terminate, to change beneficiaries
22 or ownership, to assign rights, to borrow, or to receive
23 cash value in return for a surrender of rights under any
24 one or more of the following:

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

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

1 (iii) mutual fund and other dividend investment
2 plans,

3 (iv) retirement, profit sharing, and employee
4 welfare plans and benefits;

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

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

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

14 The guardian in his or her petition shall briefly outline
15 the action or application of funds for which he or she seeks
16 approval, the results expected to be accomplished thereby, and
17 the tax savings, if any, expected to accrue. The proposed
18 action or application of funds may include gifts of the ward's
19 personal property or real estate, but transfers of real estate
20 shall be subject to the requirements of Section 20 of this Act.
21 Gifts may be for the benefit of prospective legatees, devisees,
22 or heirs apparent of the ward or may be made to individuals or
23 charities in which the ward is believed to have an interest.
24 The guardian shall also indicate in the petition that any
25 planned disposition is consistent with the intentions of the
26 ward insofar as they can be ascertained, and if the ward's

1 intentions cannot be ascertained, the ward will be presumed to
2 favor reduction in the incidents of various forms of taxation
3 and the partial distribution of his or her estate as provided
4 in this subsection. The guardian shall not, however, be
5 required to include as a beneficiary or fiduciary any person
6 who he has reason to believe would be excluded by the ward. A
7 guardian shall be required to investigate and pursue a ward's
8 eligibility for governmental benefits.

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

14 (c) The guardian of the estate of a ward shall appear for
15 and represent the ward in all legal proceedings unless another
16 person is appointed for that purpose as guardian or next
17 friend. This does not impair the power of any court to appoint
18 a guardian ad litem or next friend to defend the interests of
19 the ward in that court, or to appoint or allow any person as
20 the next friend of a ward to commence, prosecute or defend any
21 proceeding in his behalf. Without impairing the power of the
22 court in any respect, if the guardian of the estate of a ward
23 and another person as next friend shall appear for and
24 represent the ward in a legal proceeding in which the
25 compensation of the attorney or attorneys representing the
26 guardian and next friend is solely determined under a

1 contingent fee arrangement, the guardian of the estate of the
2 ward shall not participate in or have any duty to review the
3 prosecution of the action, to participate in or review the
4 appropriateness of any settlement of the action, or to
5 participate in or review any determination of the
6 appropriateness of any fees awarded to the attorney or
7 attorneys employed in the prosecution of the action.

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

25 (d-5) Upon a verified petition by the plenary or limited
26 guardian of the estate or the request of the ward that is

1 accompanied by a current physician's report that states the
2 ward possesses testamentary capacity, the court may enter an
3 order authorizing the ward to execute a will or codicil. In so
4 ordering, the court shall authorize the guardian to retain
5 independent counsel for the ward with whom the ward may execute
6 or modify a will or codicil.

7 (e) Absent court order pursuant to the Illinois Power of
8 Attorney Act directing a guardian to exercise powers of the
9 principal under an agency that survives disability, the
10 guardian will have no power, duty or liability with respect to
11 any property subject to the agency. This subsection (e) applies
12 to all agencies, whenever and wherever executed.

13 (f) Upon petition by any interested person (including the
14 standby or short-term guardian), with such notice to interested
15 persons as the court directs and a finding by the court that it
16 is in the best interest of the disabled person, the court may
17 terminate or limit the authority of a standby or short-term
18 guardian or may enter such other orders as the court deems
19 necessary to provide for the best interest of the disabled
20 person. The petition for termination or limitation of the
21 authority of a standby or short-term guardian may, but need
22 not, be combined with a petition to have another guardian
23 appointed for the disabled person.

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