

Public Policy Position
HB 4909 – HB 4912

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,403 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On November 8, 2024, the Section adopted its position after a discussion and vote at a scheduled meeting. 21 members voted in favor of the Section's position, 0 members voted against this position, 1 member abstained, 1 member did not vote.

Oppose as drafted, but if revisions are adopted the Section will move to a neutral position.

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Guardianship, Conservatorship & End of Life Committee

Suggested Changes to Guardianship Package:

HB 4909 (S-3); HB 4910 (S-3); HB 4911 (S-3); HB 4912 (S-3)

(1) Distinctions between professional and non-professional guardians should be eliminated. As acknowledged by the MPJA, there is no empirical evidence that family members are less likely than a professional guardian to abuse an individual, and all guardians and conservators should be treated equally.

- The ability for all guardians to delegate visits when certain guidelines are met is important if we are to have sufficient individuals and entities willing to serve as professional guardians.
 - HB 4910, Page 15, Line 13, should delete "If the guardian is not a professional guardian" (regarding the ability of a non-professional guardian to delegate in-person visits);
 - HB 4910, Page 15, Lines 19 - 21 should be deleted (indicating that a professional guardian shall not delegate in-person visits).
- Professional and non-professional guardians should have equal ability (and restrictions) for removing a protected individual from his or her residence.
 - The following should be eliminated in HB 4910:
 1. Page 24, Lines 7 and 10, the word "professional"
 2. Page 24, Lines 26 - 29/Page 25 Lines 1 - 5, in its entirety
 3. Page 25, Lines 6, 10, 11, 14, 15, 22, 23, 25, and 28, the word "professional"
 4. Page 27, Lines 9, 13, 17, 19, and 25, the word "professional"
 5. Page 28, Lines 3 and 5, the word "professional."
 - The following should be eliminated in HB 4911:
 1. Page 8, Line 27 , the word "professional":
 2. Page 11, Lines 25-29/Page 12 Lines 1-2, in its entirety;

(2) In support of limited guardianships and conservatorships, Letters of Guardianship or Conservatorship should specify the specific fiduciary powers designated.

- HB 4909, Page 9, should add the following new subsection after Line 27:

(8) Letters of guardianship shall specifically indicate the fiduciary powers designated to the guardian and those rights retained by the ward.

- HB 4910, Page 35, should add the following new subsection after Line 11:

(n) If a conservator were to be appointed, identify any powers which the individual wishes to retain or exclude from the powers that could be awarded to the conservator.

(3) Interpersonal disputes should not be the sole basis for removing a person from the priority of appointment.

- HB 4909, Page 8, Lines 7 - 12 and HB 4909, Page 10, Lines 18 - 24 should be eliminated and instead read as follows:

(f) The person's ability to fulfill duties. Interpersonal disputes alone must not be the sole basis for finding a person with priority, under subsection (2) or (3), is unsuitable unless the court finds by preponderance of evidence that it interferes with their ability to fulfill their duties.

(4) Independent evaluations should model the uniform guardianship act whereby an evaluation may be ordered if the individual requests the evaluation, or may be ordered in other cases if the court finds it has insufficient information to determine that individual's needs and abilities without the evaluation.

- HB4911, Page 3, Lines 9 - 19 should be eliminated in its entirety;
- HB4910, Page 29, Lines 15 - 21 should be eliminated and instead read as follows:

(b) At or before a hearing on a petition for a conservator's appointment or another a protective arrangement, on account of alleged mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court shall order a professional evaluation of the individual to be protected;

(c) if that individual requests the evaluation; or may order in other cases if the court finds it has insufficient information to determine that individual's needs and abilities without the evaluation.

(d) If the court orders an evaluation under subsection (b), the individual to be protected must be examined by a licensed physician or mental health professional appointed by the court who is qualified to evaluate the individual's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation shall file a report in a record with the court at least 5 days before the hearing set under section 5303. Unless otherwise directed by the court, the report must comply with Section 5304(3).

(e) The individual alleged to be in need of protection may decline to participate in an evaluation ordered under Section 5406(2).

(f) A report prepared as provided in Section 5304 must not be made apart of the proceeding's public record, but must be available to the court or an appellate court

in which the proceeding is subject to review, to the alleged incapacitated individual and that individual's counsel and to other persons as the court directs. The report may be used as provided in the Michigan rules of evidence.

(5) The imposition of accounting for sentimental items should be eliminated and should provide that the guardian and conservator should not have an obligation to store those sentimental items at their own expense. We are not opposed to concept that a guardian or conservator, as may be applicable, should inquire if there are items of sentimental value that they would like to have preserved to the extent practical and possible.

- The following should be eliminated in HB 4910:
 - Page 16, Lines 2 - 11 (regarding a guardian's obligation to inventory all sentimental items with an attestation regarding the care for those items);
 - Page 28, Lines 16 - 17 (regarding the inventory from Page 16);
 - Page 39, Lines 11 - 29/Page 40 Lines 3 - 4 (regarding a conservator's obligation to inventory all sentimental items with an attestation regarding the care for those items);
 - Page 42, Lines 15 - 18 (regarding the unclear language which requires the conservator to account for how the conservator fulfilled his or her duties when selling or disposing of any sentimental items)

(6) For the privacy protection and to avoid unnecessary administrative burden, back-up documentation for an inventory and accountings should be available upon request for review.

- Council's suggested change was inserted in HB4910, Page 42 Lines 4 - 11, but appears to have been inadvertently left off the previous section.
 - HB4910 Page 41 Lines 13 - 18 should mirror Page 42 Lines 4 -11.