

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)
Act 386 of 1998

700.5106 Appointment or approval of professional guardian or professional conservator as guardian or conservator; findings; bond; compensation or other benefits; schedule of visitation; care; appointment of nonbanking corporation to act as fiduciary in state.

Sec. 5106. (1) Subject to subsections (2) and (3), the court may appoint or approve a professional guardian or professional conservator, as appropriate, as a guardian or conservator under this act, or as a plenary guardian or partial guardian as those terms are defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(2) The court shall only appoint a professional guardian or professional conservator as authorized under subsection (1) if the court finds on the record all of the following:

(a) The appointment of the professional guardian or professional conservator is in the ward's, developmentally disabled individual's, incapacitated individual's, or protected individual's best interests.

(b) There is no other person that is competent, suitable, and willing to serve in that fiduciary capacity in accordance with section 5212, 5313, or 5409.

(3) The court shall not appoint a professional guardian or professional conservator as authorized under subsection (1) unless the professional guardian or professional conservator files a bond in an amount and with the conditions as determined by the court. For a professional conservator, the sureties and liabilities of the bond are subject to sections 5410 and 5411.

(4) A professional guardian or professional conservator appointed under this section shall not receive as a result of that appointment a benefit beyond compensation specifically authorized for that type of fiduciary by this act or the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not prevent a person from providing compensation or other benefits, from a source other than the estate of the ward, developmentally disabled individual, incapacitated individual, or protected individual, to a professional guardian or professional conservator appointed or approved under this section. If a professional guardian or professional conservator appointed or approved under this section receives or is to receive compensation or other benefits as a result of that appointment from a person other than this state, a political subdivision of this state, or a trust created under section 5407(2), the professional guardian or professional conservator shall file with the appointing or approving court a written statement of the compensation or other benefit received or to be received, including the source of the compensation or other benefit, in a form and in a manner prescribed by the Michigan court rules. The professional guardian or professional conservator shall serve a copy of the form described in this subsection to the ward, developmentally disabled individual, incapacitated individual, or protected individual and to interested persons.

(5) A professional guardian appointed under this section shall establish and maintain a schedule of visitation so that an individual associated with the professional guardian who is responsible for the ward's care visits the ward within 3 months after the professional guardian's appointment and not less than once within 3 months after each previous visit.

(6) A professional guardian appointed under this section shall ensure that there are a sufficient number of employees assigned to the care of wards for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided.

(7) For the purposes of the statutory authorization required by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL 487.11105, to act as a fiduciary in this state, if the court appoints a for-profit or nonprofit, nonbanking corporation organized under the laws of this state to serve in a fiduciary capacity that is listed in subsection (1), the nonbanking corporation is authorized to act in that fiduciary capacity. The authorization under this subsection confers the fiduciary capacity only to the extent necessary in the particular matter of each appointment and is not a general grant of fiduciary authority. A nonbanking corporation is not authorized to act in any other fiduciary capacity.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001;—Am. 2017, Act 136, Eff. Jan. 24, 2018.

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