

**TITLE 18-C
PROBATE CODE**

**ARTICLE 3
PROBATE OF WILLS AND ADMINISTRATION**

**PART 1
GENERAL PROVISIONS**

§3-108. Probate, testacy and appointment proceedings; ultimate time limit

1. Limitations period; exceptions. An informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may not be commenced more than 3 years after the decedent's death, except:

A. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

B. Appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

C. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

D. An informal appointment or a formal testacy or appointment proceeding may be commenced more than 3 years after the decedent's death if no proceeding concerning the succession or estate administration has occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets as provided in section 3-709 beyond that necessary to confirm title in the successors to the estate, and claims other than expenses of administration may not be presented against the estate;

E. A formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from a person other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will; and

F. Appropriate probate, appointment or testacy proceedings may be commenced in relation to a claim for personal injury made against the decedent by a person without actual notice of the death of the decedent at any time within 6 years after the cause of action accrues. If the proceedings are commenced more than 3 years after the decedent's death, any recovery is limited to applicable insurance.

<p>Sec. 1 amends §3-108, sub-§1, ¶D</p>
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2. Limitations period inapplicable. The limitations under subsection 1 do not apply to proceedings to construe probated wills or determine heirs of an intestate.

3. Special provision regarding date of death. In cases under subsection 1, paragraph A or B, the date on which a testacy or appointment proceeding is properly commenced is deemed to be the date of the decedent's death for purposes of other limitations provisions of this Code that relate to the date of death.

**ARTICLE 5
MAINE UNIFORM GUARDIANSHIP, CONSERVATORSHIP AND PROTECTIVE
PROCEEDINGS**

**PART 3
GUARDIANSHIP OF ADULT**

§5-308. Confidentiality of records

1. Matter of public record; exception. The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the records after:

A. The respondent or individual subject to guardianship requests the records be sealed; and

B. Either:

(1) The petition for guardianship is dismissed; or

(2) The guardianship is terminated.

2. Access to court records. An adult subject of a proceeding for a guardianship, whether or not a guardian is appointed, any attorney designated by the adult and a person entitled to notice under section 5-310, subsection 5 are entitled to access court records of the proceeding and resulting guardianship, including a guardian's report or plan. In addition, a person for good cause may petition the court for access to court records of the guardianship, including an annual report or guardian's plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interest of the adult.

3. Reports confidential; availability. A report under section 5-304 of a visitor or a professional evaluation under section 5-306 is confidential and must be sealed on filing but is available to:

A. The court;

B. The individual who is the subject of the report or evaluation, without limitation as to use;

C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;

D. An agent appointed under a power of attorney for health care or advance health care directive, or power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and

E. Other persons when it is in the public interest or for a purpose the court orders for good cause.

Sec. 2
amends
§5-308,
sub-§4

4. Effective date. This section takes effect January 1, 2021.

PART 4 CONSERVATORSHIP

§5-409. Confidentiality of records

1. Matter of public record; exceptions. The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

- A. The respondent, the individual subject to conservatorship or the parent of a minor subject to conservatorship requests the record be sealed; and
- B. Either:
 - (1) The petition for conservatorship is dismissed; or
 - (2) The conservatorship is terminated.

2. Access to records. An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the individual and a person entitled to notice under section 5-411 or a subsequent order are entitled to access court records of the proceeding and resulting conservatorship, including the conservator's plan and report. In addition, a person for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court shall grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

3. Reports; availability. A report under section 5-405 of a visitor or professional evaluation under section 5-407 is confidential and must be sealed on filing but is available to:

- A. The court;
- B. The individual who is the subject of the report or evaluation, without limitation as to use;
- C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;
- D. An agent appointed under a power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and
- E. Other persons when it is in the public interest or for a purpose the court orders for good cause.

Sec. 3
amends
§5-409,
sub-§4

4. Effective date. This section takes effect January 1, 2021.

§5-423. Conservator's report and accounting; monitoring

1. Report. A conservator shall file a report in a record with the court regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or removal, on termination of the conservatorship and at any other time as the court directs.

2. Contents. A report under subsection 1 must state or contain:

A. An accounting that contains a list of property included in the conservatorship estate and of the receipts, disbursements, liabilities and distributions during the period for which the report is made;

B. A list of the services provided to the individual subject to conservatorship;

C. A copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how and why the conservator has deviated;

D. Any recommended change in the conservatorship, including its scope and whether the conservatorship needs to continue;

Sec. 4
amends
§5-423,
sub-§2,
¶E

E. An annual credit report of the individual subject to conservatorship and, to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts and mortgages or other debts of the individual subject to conservatorship, with all but the last 4 digits of the account numbers and the individual's social security number redacted;

F. Anything of more than de minimis value that the conservator, any individual who resides with the conservator or the spouse, domestic partner, parent, child or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

G. Any business relation the conservator has with a person providing goods or services to the individual subject to conservatorship;

H. Any business relation the conservator has with a person the conservator has paid or a person that has benefited from the property of the individual subject to conservatorship; and

I. Whether any coconservator or successor conservator appointed to serve when a designated future event occurs is alive and able to serve.

3. Visitor. The court may appoint a visitor to review a report under this section or conservator's plan under section 5-419, interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

4. Notice of report; copy. Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order, and a person the court determines is entitled to the report. Notwithstanding section 5-409, the credit report provided pursuant to subsection 2, paragraph E is confidential and may not be provided with the rest of the conservator's report except to the individual subject to conservatorship. The notice and report must be given not later than 14 days after filing.

5. Monitoring; frequency of report. The court shall establish procedures for monitoring a conservator's plan and report and review the plan and report not less than annually to determine whether:

A. The plan and report provide sufficient information to establish the conservator has complied with the conservator's duties;

B. The conservatorship should continue; and

C. The conservator's requested fees, if any, should be approved.

6. Noncompliance. If the court determines there is reason to believe the conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

- A. Shall notify the conservator, the individual subject to conservatorship and all persons entitled to notice under section 5-411, subsection 5 or a subsequent order;
- B. May require additional information from the conservator;
- C. May appoint a visitor to interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs; and
- D. May, consistent with sections 5-430 and 5-431, hold a hearing to consider removal of the conservator, termination of the conservatorship or a change in the powers granted to the conservator or terms of the conservatorship.

7. Unreasonable fees. If the court determines there is reason to believe a conservator's requested fees are not reasonable, the court shall hold a hearing to adjust the fees.

8. Approval of report or accounting. A conservator may petition the court for approval of a report or accounting filed under this section. The court after review may approve the report or accounting. An order, after notice and hearing, approving a final report or accounting discharges the conservator from all liabilities, claims and causes of action by a person given notice of the report or accounting and the hearing as to a matter adequately disclosed in the report or accounting.

9. Application to existing conservatorships. For conservatorships established prior to January 1, 2008, the conservator is not subject to the requirement for an annual report and accounting until so ordered by the court.

§5-431. Termination or modification of conservatorship

1. Conservatorship for a minor. A conservatorship for a minor terminates on the earlier of:

- A. An order of the court;
- B. The minor becoming an adult or, if the minor consents or the court finds by clear and convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining 21 years of age;
- C. Emancipation of the minor; and
- D. Death of the minor.

2. Conservatorship for an adult. A conservatorship for an adult terminates on order of the court or when the adult dies.

3. Petition for termination or modification. An individual subject to conservatorship, the conservator or a person interested in the welfare of the individual may petition for:

- A. Termination of the conservatorship on the ground that a basis for appointment under section 5-401 does not exist or termination would be in the best interest of the individual, or for other good cause; or
- B. Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

4. Hearing. The court shall conduct a hearing to determine whether termination or modification of a conservatorship is appropriate on:

A. Petition under subsection 3 that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. A communication from the individual subject to conservatorship, the conservator or a person interested in the welfare of the individual that supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because of a change in the functional needs of the individual or in the supports or services available to the individual;

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual subject to conservatorship have changed or a protective arrangement of conservatorship or other less restrictive alternatives are available; or

D. A determination by the court that a hearing would be in the best interest of the individual.

5. Notice of petition. Notice of a petition under subsection 3 must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

6. Termination. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless a basis for appointment of a conservator under section 5-401 is satisfied.

7. Modification. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.

8. Safeguard rights of individual. Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.

9. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship is not represented by an attorney, the court shall appoint an attorney under the same conditions in section 5-406. The court shall award reasonable attorney's fees to the individual's attorney as provided in section 5-119.

10. Property; report; petition for discharge. On termination of a conservatorship and whether or not formally distributed by the conservator, property of the conservatorship estate passes to the individual formerly subject to conservatorship or other persons entitled to the property. The order of termination must provide for expenses of administration and direct the conservator to file a final report and petition for discharge on approval of the final report.

11. Discharge. The court shall enter a final order of discharge on the approval of the final report and satisfaction by the conservator of any other condition placed by the court on the conservator's discharge.

12. Distribution. On the death of an individual subject to conservatorship or other event terminating or partially terminating the conservatorship, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual or other persons entitled

Sec. 5
amends
§5-431,
sub-§8

to it. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be effected.

PART 5 OTHER PROTECTIVE ARRANGEMENTS

§5-511. Confidentiality of records

1. Matter of public record; exceptions. The existence of a proceeding for or the existence of one or more protective arrangements instead of a guardianship or conservatorship is a matter of public record unless the court seals the record after:

- A. The respondent, the individual subject to the protective arrangements or the parent of a minor subject to the protective arrangements requests the record be sealed; and
- B. Either:
 - (1) The proceeding is dismissed;
 - (2) The protective arrangement is no longer in effect; or
 - (3) Any act authorized by the order granting the protective arrangement has been completed.

2. Access to records. A respondent, an individual subject to a proceeding for one or more protective arrangements instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to one or more protective arrangements and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangements or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

3. Reports sealed; availability. A report of a visitor or professional evaluation generated in the course of a proceeding under this Part must be sealed on filing but is available to:

- A. The court;
- B. The individual who is the subject of the report or evaluation, without limitation as to use;
- C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of the proceeding;
- D. Unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal;
- E. If the order is for one or more protective arrangements instead of guardianship and unless the court directs otherwise, an agent appointed under a power of attorney for health care in which the respondent is identified as the principal; and
- F. Other persons when it is in the public interest or for a purpose the court orders for good cause.

4. Effective date. This section takes effect January 1, 2021.

Proposed
PATLAC
amendment
amends
§5-511,
sub-§4

**ARTICLE 8
MISCELLANEOUS PROVISIONS**

**PART 3
EFFECTIVE DATE**

§8-301. Time of taking effect; provisions for transition

1. Effective date. This Code takes effect on September 1, 2019.

2. Applicability. Except as provided elsewhere in this Code, on the effective date of this Code:

<p>Sec. 6 amends §8-301, sub-§2, ¶A-1</p>
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A. The Code applies to any wills of decedents who die on or after the effective date;

A-1. The intestate succession provisions of Article 2, Part 1, Subpart 1, the elective share provisions of Article 2, Part 2 and the exempt property and allowances provisions of Article 2, Part 4 apply to the estates of decedents who die on or after the effective date;

B. The Code applies to any proceedings in court pending on the effective date or commenced on or after the effective date regardless of the time of the death of the decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;

C. Every personal representative appointed prior to September 1, 2019 continues to hold the appointment but has only the powers conferred by this Code and is subject to the duties imposed with respect to any act occurring or done on or after the effective date, and a guardian or conservator appointed prior to September 1, 2019 has the powers conferred by this Code on guardians and conservators, unless otherwise limited by the original order of appointment or subsequent court order under this Code;

D. An act done before September 1, 2019 in any proceeding and any accrued right is not impaired by this Code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before September 1, 2019, the provisions remain in force with respect to that right;

E. Any rule of construction or presumption provided in this Code applies to instruments executed and multiple party accounts opened before September 1, 2019 unless there is a clear indication of a contrary intent; and

F. For an adoption decree entered before January 1, 1981 and not amended after January 1, 1981, the child is the child of both the former and adopting parents for purposes of intestate succession, notwithstanding section 2-117, unless the decree provides otherwise.