

§5-309. Who may be guardian of adult; priorities

1. Priority for appointment. Except as otherwise provided in subsection 3, the court in appointing a guardian for an adult shall consider persons otherwise qualified in the following order of priority:

A. A guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An agent appointed by the respondent under a power of attorney for health care or an advance health care directive; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

D. A spouse or domestic partner of the respondent; [PL 2019, c. 417, Pt. A, §31 (AMD).]

E. [PL 2019, c. 417, Pt. A, §32 (RP).]

F. An adult child of the respondent; [PL 2019, c. 417, Pt. A, §33 (NEW).]

G. A parent of the respondent, including a person nominated by will or other writing signed by a deceased parent; [PL 2019, c. 417, Pt. A, §33 (NEW).]

H. Any relative of the respondent with whom the respondent resided for more than 6 months within the 12 months prior to the filing of the petition under section 5-302; and [PL 2019, c. 417, Pt. A, §33 (NEW).]

I. A family member or other individual who has exhibited special care and concern for the respondent. [PL 2019, c. 417, Pt. A, §33 (NEW).]

[PL 2019, c. 417, Pt. A, §§31-33 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential guardian's relationship with the respondent, the potential guardian's skills, the expressed wishes of the respondent, the extent to which the potential guardian and the respondent have similar values and preferences and the likelihood the potential guardian will be able to satisfy the duties of a guardian successfully.

[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection 1 and appoint a person having a lower priority or no priority. In its determination, the court may evaluate whatever factors the court determines appropriate, including comparing the following factors for the person having priority and the potential guardian who has a lower or no priority: relationships with the respondent, the higher priority person's and the potential guardian's skills, the expressed wishes of the respondent and the extent to which the person with higher priority and the potential guardian with lower or no priority have similar values and preferences as the respondent and the likelihood that the potential guardian will be able to satisfy the duties of a guardian successfully.

[PL 2019, c. 417, Pt. A, §34 (AMD).]

4. Appointment prohibited; exceptions. A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

A. The individual is related to the respondent by blood, marriage or adoption; or [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent. [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

5. Long-term care institution; exceptions. An owner, operator or employee of a long-term care institution at which the respondent is receiving care may not be appointed as guardian unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.
[PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 2017, c. 402, Pt. A, §2 (NEW). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. A, §§31-34 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

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