

**§5-410. Who may be conservator; priorities**

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

A. A conservator, other than a temporary or emergency conservator, 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 conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances; [PL 2017, c. 402, Pt. A, §2 (NEW); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. An agent appointed by the respondent to manage the respondent's property under a power of attorney for finances; [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, §63 (AMD).]

E. [PL 2019, c. 417, Pt. A, §64 (RP).]

F. An adult child of the respondent; [PL 2019, c. 417, Pt. A, §65 (NEW).]

G. A parent of the respondent or a person nominated in the will of a deceased parent; and [PL 2019, c. 417, Pt. A, §65 (NEW).]

H. A family member or other individual who has exhibited special care and concern for the respondent. [PL 2019, c. 417, Pt. A, §65 (NEW).]

[PL 2019, c. 417, Pt. A, §§63-65 (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 conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential conservator's relationship with the respondent, the potential conservator's skills, the expressed wishes of the respondent, the extent to which the potential conservator and the respondent have similar values and preferences and the likelihood that the potential conservator will be able to satisfy the duties of a conservator 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 conservator 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 conservator who has a lower or no priority: relationships with the respondent, the higher priority person's and the potential conservator's skills, the expressed wishes of the respondent and the extent to which the person with higher priority and the potential conservator with lower priority or no priority have similar values and preferences as the respondent and the likelihood that the potential conservator will be able to satisfy the duties of a conservator successfully. [PL 2019, c. 417, Pt. A, §66 (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 conservator 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 health care institution; exceptions.** An owner, operator or employee of a long-term health care institution at which the respondent is receiving care may not be appointed as conservator 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, §§63-66 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF).

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