

HOUSE BILL 1000

N2

1lr1964

By: **Delegate Pippy**

Introduced and read first time: February 5, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Guardian of Property of Minor or Disabled Person –**
3 **Prohibition on Distribution or Disbursement**

4 FOR the purpose of prohibiting a guardian of the property of a minor or disabled person
5 from distributing or disbursing property of the minor or disabled person without
6 court authorization or confirmation under certain circumstances; providing that, if a
7 guardian of the property violates this Act, the guardian is liable for breach of the
8 guardian’s fiduciary duty to certain persons to a certain extent; defining a certain
9 term; and generally relating to guardianship of the property of a minor or disabled
10 person.

11 BY repealing and reenacting, with amendments,
12 Article – Estates and Trusts
13 Section 13–214
14 Annotated Code of Maryland
15 (2017 Replacement Volume and 2020 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
17 That the Laws of Maryland read as follows:

18 **Article – Estates and Trusts**

19 13–214.

20 **(A) IN THIS SECTION, “FAMILY MEMBER” MEANS A CHILD, A PARENT, A**
21 **SPOUSE, A GRANDPARENT, A BROTHER, A SISTER, AN UNCLE, OR AN AUNT BY BLOOD,**
22 **ADOPTION, OR MARRIAGE.**

23 **[(a)] (B) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
24 **SUBSECTION, A guardian may distribute or disburse property without court authorization**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 or confirmation in accordance with this section.

2 **(2) A GUARDIAN OF A MINOR OR DISABLED PERSON WHO IS NOT A**
3 **FAMILY MEMBER OF THE MINOR OR DISABLED PERSON MAY NOT DISTRIBUTE OR**
4 **DISBURSE PROPERTY WITHOUT COURT AUTHORIZATION OR CONFIRMATION IF THE**
5 **DISTRIBUTION OR DISBURSEMENT WOULD FINANCIALLY BENEFIT:**

6 **(I) EXCEPT FOR REASONABLE COMPENSATION AND**
7 **REIMBURSEMENT FOR EXPENSES AS AUTHORIZED UNDER § 13-218 OF THIS**
8 **SUBTITLE, THE GUARDIAN; OR**

9 **(II) A FAMILY MEMBER OF THE GUARDIAN.**

10 **(3) IF A GUARDIAN DISTRIBUTES OR DISBURSES PROPERTY IN**
11 **VIOLATION OF PARAGRAPH (2) OF THIS SUBSECTION, THE GUARDIAN IS LIABLE FOR**
12 **BREACH OF THE GUARDIAN'S FIDUCIARY DUTY TO THE MINOR OR DISABLED PERSON**
13 **OR TO INTERESTED PERSONS FOR RESULTING DAMAGE OR LOSS TO THE SAME**
14 **EXTENT AS A TRUSTEE OF AN EXPRESS TRUST.**

15 **[(b)] (C)** (1) A guardian of a minor may pay or apply income and principal
16 from the estate as needed for the clothing, support, care, protection, welfare, and education
17 of the minor.

18 (2) (i) A guardian of a disabled person may pay or apply income and
19 principal from the estate as needed for the clothing, support, care, protection, welfare, and
20 rehabilitation of the disabled person.

21 (ii) The guardian shall give consideration to the support and care of
22 the disabled person during the probable period of the estate and the needs of persons
23 dependent upon the disabled person.

24 (3) Income and principal also may be paid or applied:

25 (i) For the benefit of persons legally dependent on the minor or
26 disabled person; and

27 (ii) With the approval of the court, for the benefit of other persons
28 maintained and supported in whole or in part by the disabled person before the
29 appointment of a guardian.

30 **[(c)] (D)** If a minor or disabled person is "disabled" as defined under 42 U.S.C. §
31 1382c(a)(3), a guardian of the minor or disabled person may pay or apply income or
32 principal from the estate to establish or fund, for the benefit of the minor or disabled person:

33 (1) A special needs trust, provided that the trustee is subject to the

1 jurisdiction of a court, bonded, and required to file annual accountings of the trust;

2 (2) A pooled asset special needs trust account, provided that the trust has
3 been approved by the attorney general of the state where the minor or disabled person
4 resides; or

5 (3) An ABLE account.

6 **[(d)] (E)** (1) (i) When a minor attains the age of majority, the guardian of
7 the minor, after meeting all prior claims and expenses of administration, shall distribute
8 the estate to the former minor as soon as possible, unless the minor is then disabled.

9 (ii) The distribution normally shall be in kind.

10 (2) (i) If the guardian is satisfied that the disability of the disabled
11 person has ceased or if the court has found in a proceeding under § 13–221 of this subtitle
12 that the disability has ceased, the guardian, after meeting all prior claims and expenses of
13 administration, shall distribute the estate to the former disabled person as soon as possible.

14 (ii) The distribution normally shall be in kind.

15 (3) When a minor or disabled person dies, the guardian shall deliver to the
16 appropriate probate court for safekeeping any will of the deceased person in the guardian's
17 possession, pay from the estate all commissions, fees, and expenses shown on the
18 court-approved final guardianship account, inform the personal representative or a
19 beneficiary named in it that the guardian has done so, and retain the balance of the estate
20 for delivery to an appointed personal representative of the decedent or other person entitled
21 to it.

22 (4) If a guardianship is terminated for reasons other than the attainment
23 of majority, cessation of disability, or death of the protected person, the guardian shall
24 distribute the estate in accordance with the order of the court terminating the
25 guardianship.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2021.