

75-5-311 Who may be guardian -- Priorities.

(1) As used in this section:

- (a) "Specialized care professional" means a person who is certified as a National Certified Guardian or National Master Guardian by the Center for Guardianship Certification or similar organization.
- (b) "Suitable institution" means any nonprofit or for profit corporation, partnership, sole proprietorship, or other type of business organization that is owned, operated by, or employs a specialized care professional.

(2) The court shall appoint a guardian in accordance with the incapacitated person's most recent nomination, unless that person is disqualified or the court finds other good cause why the person should not serve as guardian. That nomination shall have been made prior to the person's incapacity, shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Guardian by an Adult

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as my guardian in the event that after the date of this instrument I become incapacitated.

Executed at _____ (city, state)
on this _____ day of _____

(Signature)

(3) Except as provided in Subsection (2), persons who are not disqualified have priority for appointment as guardian in the following order:

- (a) a person who has been nominated by the incapacitated person, by any means other than that described in Subsection (2), if the incapacitated person was 14 years of age or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;
- (b) the spouse of the incapacitated person;
- (c) an adult child of the incapacitated person;
- (d) a parent of the incapacitated person, including a person nominated by will, written instrument, or other writing signed by a deceased parent;
- (e) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;
- (f) a person nominated by the person who is caring for him or paying benefits to him;
- (g) a specialized care professional, so long as the specialized care professional does not:
 - (i) profit financially or otherwise from or receive compensation for acting in that capacity, except for the direct costs of providing guardianship or conservatorship services; or
 - (ii) otherwise have a conflict of interest in providing those services; or
- (h) any competent person or suitable institution.

Amended by Chapter 364, 2013 General Session