



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: April 29, 2015

TO: All Members of the Delaware House of Representatives
and Delaware State Senate

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 63 (Guardian Sale of Ward's Real Estate)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 63 which memorializes the Court of Chancery's long-standing practice of requiring notice to interested parties, appointment of an appraiser, and a return of sale in petitions to sell real estate owned by a person with a disability. The amendment confirms that the Court may consider a petition to sell real estate based on the papers submitted or may require a hearing. The remaining changes were made to reorganize the Section in a more logical manner and make it easier to understand.

As background, a guardian of the property of a person with a disability may wish to sell real estate. For example, if the person with a disability can no longer live in a home due to lack of accessible features, dementia, or distance from supportive relatives, a sale of real estate may be quite appropriate. However, since real estate transactions generally involve large sums of money and potential for sales at less than fair market value, the Court of Chancery scrutinizes the sale process. Indeed, the Court recently adopted the attached amended Rule 113 which outlines safeguards, including judicial appointment of an independent appraiser, judicial review of the proposed sales contract, and notice to interested parties to identify objections. The Court rule overlaps with the legislation but will need to be amended if the legislation passes. For example, the bill (line 14) allows 20 days to object after issuance of notice while the rule allows 13 days to object after receipt of notice.

SCPD endorses the proposed legislation subject to consideration of a few amendments.

First, the references to "deed" and "land" in line 29 are "underinclusive" since the sale may involve leases or other interests (lines 9-11) and the property may be something other than "land". Compare reference to "property" rather than "land" at line 39. The bill could therefore be improved by amending line 29 as follows:

“...authorized to execute a deed or other conveyance of interest for the benefit of the purchaser which may convey as full a title or interest of the person with a disability to the property as the person...”

Second, in line 13, the sponsors could consider adding the following after “Guardian”: “and other persons with a legal or equitable interest in the property”. Cf. Brown v. Federal National Mortgage Association, Del. Supr., 359 A.2d 206 (1976); Gelof v. First National Bank of Frankford, Del. Supr., 373 A.2d 206 (1977).

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: Ms. Lexie McFassel, Public Guardian
Mr. Brian Hartman
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 63 guardian sale of wards real estate 4-29-15

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: AMENDMENT TO COURT OF CHANCERY RULES, SECTION XIII, RULE 113

This 15th day of December 2014, IT IS HEREBY ORDERED that Court of Chancery Rules, Section XIII, Rule 113 shall be amended effective January 1st, 2015.

Rule 113 shall be amended as follows:

Rule 113. Application to sell real estate of disabled person.

~~When a guardian of the property or trustee makes an application to the Court to sell real estate, there shall be produced with the application a valuation of the real estate by at least one disinterested person familiar with the value of real estate in the vicinity of the subject property.~~

~~If the real estate is offered at public sale, such approval shall be obtained prior to the sale. If the real estate is offered at private sale, then approval by the Court shall be a condition of such offer, and such approval shall be obtained before the delivery of the deed to the property.~~

(a) Appointment of Appraiser. When a guardian of the property makes an application to the Court to sell real estate, the guardian shall first file a motion to appoint an appraiser pursuant to 12 Del. C. § 3951(b). The motion shall be accompanied by a proposed order for the appointment of an appraiser by the Court. The appraiser appointed shall be appointed by the Court and shall be independent of the parties and disinterested in the transaction. The appraiser so appointed shall provide the appraisal report to the guardian or trustee within thirty (30) days of the appointment.

(b) Petition to Sell Real Estate.

(1) The guardian shall be authorized to market the real estate of the disabled person for a price equal to or in excess of the appraised value, with the final terms of sale subject to further order of the Court. Thereafter, after obtaining a written contract offer for sale of the real estate, the guardian shall submit a petition to the Court providing a copy of the proposed contract, a copy of the appraisal by the Court appointed appraiser, and any other relevant information regarding the proposed sale. If the guardian seeks to sell the real estate for less than the appraised value, the guardian's petition shall be accompanied by an affidavit explaining why such sale is in the disabled person's best interests, including information regarding the carrying costs of the property, whether the property is vacant, how the property was advertised and marketed, how long the property was marketed, the number of showings and offers received, and whether the proposed sale is an arms-length transaction.

(2) Notice of the petition shall be sent to interested parties identified in the petition to appoint a guardian and to the Office of the Attorney General as counsel for Medicaid in

the case of any disabled person who is approved for and receiving Medicaid benefits at the time of the petition. Persons receiving notice shall be required to file any objection within thirteen days of the receipt of such notice. If no objection is filed within the required time period, the Court may, in its discretion, set the matter down for a hearing or consider the proposed sale based on the documents submitted. In considering the petition, the Court shall consider the provisions of 12 Del. C. § 3951 and may approve the sale of the real estate for such price as it finds to be fair and reasonable and in the best interest of the disabled person.