

Minor Settlement

SECTION 62-5-103. Facility of payment or delivery.

Section effective January 1, 2019. See, also, Section 62-5-103 effective until January 1, 2019.

(A) A person under a duty to pay or deliver money or personal property to a minor or incapacitated individual may perform this duty in amounts not exceeding a net aggregate amount of fifteen thousand dollars each year by paying or delivering the money or property to the conservator for the minor or incapacitated person, if the person under a duty to pay or deliver money or personal property has actual knowledge that a conservator has been appointed or an appointment is pending. If the person under a duty to pay or deliver money or personal property to a minor or incapacitated person does not have actual knowledge that a conservator has been appointed or that appointment of a conservator is pending, the person may pay or deliver the money or property in amounts not exceeding a net aggregate of fifteen thousand dollars each year to:

(1) a person having the care and custody of the minor or incapacitated individual with whom the minor or incapacitated individual resides;

(2) a guardian of the minor or an incapacitated individual; or

(3) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor or for the minor under the Uniform Gifts to Minors Act and giving notice of the deposit to the minor.

(B) The persons, other than a financial institution under subsection (A)(3) above, receiving money or property for a minor or incapacitated individual, serve as fiduciaries subject to fiduciary duties, and are obligated to apply the money for the benefit of the minor or incapacitated individual with due regard to:

(1) the size of the estate, the probable duration of the minority or incapacity, and the likelihood that the minor or incapacitated individual, at some future time, may be able to manage his affairs and his estate;

(2) the accustomed standard of living of the minor or incapacitated individual and members of his household; and

(3) other funds or resources used or available for the support or any obligation to provide support for the minor or incapacitated individual.

(C) The persons may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's or incapacitated individual's support. Money or other property received on behalf of a minor or incapacitated individual may not be used by a person to discharge a legal or customary obligation of support that may exist between that person and the minor or incapacitated individual. Excess sums must be preserved for future benefit of the minor or incapacitated individual, and any balance not used and property received for the minor or incapacitated individual must be turned over to the minor when he attains majority or is emancipated by court order; or, to the incapacitated individual when he has been readjudicated as no longer incapacitated. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of the money or personal property. If the net aggregate amount exceeds fifteen thousand dollars, a conservatorship shall be required.

(D) An employer may fulfill his duties to a minor or incapacitated individual by delivering a check to or depositing payment into an account in the name of the minor or incapacitated employee.

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 20; 1990 Act No. 521, Section 82; 1997 Act No. 152, Section 20; 2017 Act No. 87 (S.415), Section 5.A, eff January 1, 2019.

SECTION 62-5-433. Definitions; procedures for settlement of claims in favor of or against minors or incapacitated persons.

Section effective January 1, 2019. See, also, Section 62-5-433 effective until January 1, 2019.

(A)(1) For purposes of this section and for any claim exceeding twenty-five thousand dollars in favor of or against any minor or incapacitated individual, “court” means the circuit court of the county in which the minor or incapacitated individual resides or the circuit court in the county in which the suit is pending. For purposes of this section and for any claim not exceeding twenty-five thousand dollars in favor of or against any minor or incapacitated individual, “court” means either the circuit court or the probate court of the county in which the minor or incapacitated individual resides or the circuit court or probate court in the county in which the suit is pending.

(2) “Claim” means the net or actual amount accruing to or paid by the minor or incapacitated individual as a result of the settlement.

(3) “Petitioner” means either a conservator appointed by the court for the minor or incapacitated individual or the guardian or guardian ad litem of the minor or incapacitated individual if a conservator has not been appointed.

(B) The settlement of a claim over twenty-five thousand dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property must be effected on his behalf in the following manner:

(1) The petitioner must file with the court a verified petition setting forth all of the pertinent facts concerning the claim, payment, attorney’s fees, and expenses, if any, and the reasons why, in the opinion of the petitioner, the proposed settlement should be approved. For all claims that exceed twenty-five thousand dollars, the verified petition must include a statement by the petitioner that, in his opinion, the proposed settlement is in the best interests of the minor or incapacitated individual.

(2) If, upon consideration of the petition and after hearing the testimony as it may require concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated individual, the court shall issue its order approving the settlement and authorizing the petitioner to consummate it and, if the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated individual, to receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated individual.

(3) The order authorizing the settlement must require that payment or delivery of the money or personal property be made through the conservator. If a conservator has not been appointed, the petitioner, upon receiving the money or personal property, shall pay and deliver it to the court pending the appointment and qualification of a duly appointed conservator. If a party subject to the court order fails or refuses to pay the money or deliver the personal property as required by the order, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

(C) The settlement of a claim that does not exceed twenty-five thousand dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property may be effected in any of the following manners:

(1) If a conservator has been appointed, he may settle the claim without court authorization or confirmation, as provided in Section 62-5-424, or he may petition the court for approval, as provided in items (1), (2), and (3) of subsection (B). If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated individual, the conservator shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated individual.

(2) If a conservator has not been appointed, the guardian or guardian ad litem must petition the court for approval of the settlement, as provided in items (1) and (2) of subsection (B), and

without the appointment of a conservator. The payment or delivery of money or personal property to or for a minor or incapacitated individual must be made in accordance with Section 62-5-103. If a party subject to the court order fails or refuses to pay the money or deliver the personal property, as required by the order and in accordance with Section 62-5-103, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

(D) The settlement of a claim that does not exceed two thousand five hundred dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property may be effected by the parent or guardian of the minor or incapacitated individual without court approval of the settlement and without the appointment of a conservator. If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated individual, the parent or guardian shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated individual. The payment or delivery of money or personal property to or for a minor or incapacitated individual must be made in accordance with Section 62-5-103.

HISTORY: 1988 Act No. 659, Section 9; 1990 Act No. 521, Sections 84-86; 2000 Act No. 398, Section 1; 2017 Act No. 87 (S.415), Section 5.A, eff January 1, 2019.

SECTION 62-5-434. Omitted.

Section effective January 1, 2019. See, also, Section 62-5-434 effective until January 1, 2019.

HISTORY: Former Section, titled Settlement of claims involving minors completed between July 1, 1987, and September 24, 1987, presumed valid, had the following history: 1988 Act No. 659, Section 21. Omitted by 2017 Act No. 87, Section 5.A, eff January 1, 2019.

SECTION 62-5-435. Omitted.

Section effective January 1, 2019. See, also, Section 62-5-435 effective until January 1, 2019.

HISTORY: Former Section, titled Liability for approving or completing settlement, had the following history: 1988 Act No. 659, Section 21(A) (last sentence). Omitted by 2017 Act No. 87, Section 5.A, eff January 1, 2019.

SECTION 62-5-436. Omitted.

Section effective January 1, 2019. See, also, Section 62-5-436 effective until January 1, 2019.

HISTORY: Former Section, titled Payment of benefits from U.S. Department of Veterans Affairs to a minor or an incapacitated person; definitions, had the following history: 2016 Act No. 278 (S.777), Section 1, eff June 9, 2016. Omitted by 2017 Act No. 87, Section 5.A, eff January 1, 2019. See now, Code 1976 Section 62-5-431.