



Substitute Senate Bill No. 884

Public Act No. 17-91

AN ACT ADOPTING THE CONNECTICUT UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT AND REVISING THE CONNECTICUT UNIFORM POWER OF ATTORNEY ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2017*) Sections 1 to 10, inclusive, of this act may be cited as the "Connecticut Uniform Recognition of Substitute Decision-Making Documents Act".

Sec. 2. (NEW) (*Effective October 1, 2017*) As used in sections 1 to 10, inclusive, of this act:

(1) "Decision maker" means a person authorized to act for an individual under a substitute decision-making document, whether denominated a decision maker, agent, attorney-in-fact, proxy or representative or by another title. "Decision maker" includes an original decision maker, a co-decision maker, a successor decision maker and a person to which a decision maker's authority is delegated;

(2) "Good faith" means honesty in fact;

(3) "Health care" means a service or procedure to maintain, diagnose, treat or otherwise affect an individual's physical or mental

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condition;

(4) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity;

(5) "Personal care" means an arrangement or service to provide an individual shelter, food, clothing, transportation, education, recreation, social contact or assistance with the activities of daily living;

(6) "Property" means anything that may be subject to ownership, whether real or personal or legal or equitable, or any interest or right therein;

(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(8) "Substitute decision-making document" or "document" means a record created by an individual to authorize a decision maker to act for the individual with respect to property, health care or personal care.

Sec. 3. (NEW) (*Effective October 1, 2017*) (a) A substitute decision-making document for property executed outside this state is valid in this state if, when the document was executed, the execution complied with the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.

(b) A substitute decision-making document for health care or personal care, including the appointment of a health care representative, executed outside this state is valid in this state if, when the document was executed, the execution complied with: (1) The law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was

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executed; or (2) the law of this state, other than sections 1 to 10, inclusive, of this act.

(c) Except as otherwise provided by law, a photocopy or electronically transmitted copy of an original substitute decision-making document has the same effect as the original.

Sec. 4. (NEW) (*Effective October 1, 2017*) The meaning and effect of a substitute decision-making document and the authority of the decision maker are determined by the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.

Sec. 5. (NEW) (*Effective October 1, 2017*) (a) Except as provided in subsection (f) of section 1-56b and sections 1-350r, 19a-579b and 19a-580g of the general statutes, a person who in good faith accepts a substitute decision-making document without actual knowledge that the document is void, invalid or terminated, or that the authority of the purported decision maker is void, invalid or terminated, may assume without inquiry that the document is genuine, valid and still in effect and that the decision maker's authority is genuine, valid and still in effect.

(b) A person who is asked to accept a substitute decision-making document may request and without further investigation rely on:

(1) The decision maker's assertion of a fact concerning the individual for whom a decision will be made, the decision maker or the document;

(2) A translation of the document if the document contains, in whole or in part, a language other than English; and

(3) An opinion of counsel regarding any matter of law concerning the document if the person provides in a record the reason for the

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request.

Sec. 6. (NEW) (*Effective October 1, 2017*) (a) Except as provided in section 1-350s of the general statutes, a person who is asked to accept a substitute decision-making document shall accept within a reasonable time a document that purportedly meets the validity requirements of section 3 of this act. The person may not require an additional or different form of document for authority granted in the document presented.

(b) A person who is asked to accept a substitute decision-making document is not required to accept the document if:

(1) The person otherwise would not be required in the same circumstances to act if requested by the individual who executed the document;

(2) The person has actual knowledge of the termination of the decision maker's authority or the document;

(3) The person's request under subsection (b) of section 5 of this act for the decision maker's assertion of fact, a translation or an opinion of counsel is refused;

(4) The person in good faith believes that the document is not valid or the decision maker does not have the authority to request a particular transaction or action; or

(5) The person makes, or has actual knowledge that another person has made, a report to an agency responsible for investigating allegations of abuse, neglect, exploitation or abandonment stating a belief that the individual for whom a decision will be made may be subject to abuse, neglect, exploitation or abandonment by the decision maker or a person acting for or with the decision maker.

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(c) A person who refuses to accept a substitute decision-making document in violation of this section is subject to:

(1) A court order mandating acceptance of the document; and

(2) Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.

Sec. 7. (NEW) (*Effective October 1, 2017*) The remedies under sections 1 to 10, inclusive, of this act are not exclusive and do not abrogate any right or remedy under any other law of this state.

Sec. 8. (NEW) (*Effective October 1, 2017*) In applying and construing sections 1 to 10, inclusive, of this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Sec. 9. (NEW) (*Effective October 1, 2017*) Sections 1 to 10, inclusive, of this act, modify, limit and supersede the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., but do not modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of said act, 15 USC 7003(b).

Sec. 10. (NEW) (*Effective October 1, 2017*) Sections 1 to 9, inclusive, of this act apply to a substitute decision-making document created before, on or after October 1, 2017.

Sec. 11. Section 1-351 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(a) An agent under a power of attorney may perform the activities listed in this subsection on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority to perform such activities and exercise of the

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authority to perform such activities is not otherwise prohibited by another agreement or instrument to which the authority or property is subject such as a trust agreement:

(1) Create, amend, revoke, or terminate an inter vivos trust, provided, in the case of a trust established for a disabled person pursuant to 42 USC 1396p(d)(4)(A) or 42 USC 1396p(d)(4)(C), the creation of such trust by an agent shall be only as permitted by federal law;

(2) Make a gift;

(3) Create or change rights of survivorship;

(4) Create or change a beneficiary designation;

[(5) Delegate authority granted under the power of attorney;]

[(6)] (5) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

[(7)] (6) Exercise fiduciary powers that the principal has authority to delegate; [or]

[(8)] (7) Disclaim property, including a power of appointment;

(8) Exercise all powers the principal may have over any of the principal's digital device, digital asset, user account and electronically stored information, including any user account and digital asset that currently exists or may exist as technology develops, whether the same is in the principal's name or that the principal owns or lawfully uses jointly with any other individual; such powers include, but are not limited to, changing and circumventing the principal's username and password to gain access to such user accounts and information; transferring or withdrawing funds or other assets among or from such user accounts; and opening new user accounts in the principal's name,

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all as the agent determines is necessary or advisable. The principal may give the principal's lawful consent and authorizes the agent to access, manage, control, delete and terminate any electronically stored information and communications of the principal to the extent fully allowable under the federal Electronic Communications Privacy Act of 1986, 18 USC 2510 et seq., as amended from time to time, the Connecticut Revised Uniform Fiduciary Access to Digital Assets Act, and any other federal, state or international privacy law or other law. The agent is authorized to take any actions the principal is authorized to take under all applicable terms of service, terms of use, licensing and other account agreements or laws. To the extent a specific reference to any federal, state, local or international law is required in order to give effect to the provisions of this subdivision, the principal may provide that the principal's intention is to so reference such law, whether such law is now in existence or comes into existence or is amended after the date of execution of the power of attorney; or

(9) With respect to any intellectual property interests of the principal, including, without limitation, copyrights, contracts for payments of royalties and trademarks, act in all ways with respect to such interests as if the agent were the owner thereof, including, without limitation, registering ownership, transferring ownership and recording documents to effectuate or memorialize such transfer, granting and revoking licenses, entering, terminating and enforcing agreements, defending ownership and conferring agency upon professionals to represent the principal's interests before governmental agencies, and in general, to exercise all powers with respect to the intellectual property that the principal could exercise if present.

(b) Notwithstanding a grant of authority to perform an act described in subsection (a) of this section, unless the power of attorney otherwise provides, an agent [that is not an ancestor, spouse or descendant of the principal] may not exercise authority under a power

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of attorney to create in the agent, or [in an individual to whom the agent owes a legal obligation of support] a dependent of the agent, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

(c) Subject to the provisions set forth in subsections (a), (b), (d) and (e) of this section, if a power of attorney grants to an agent authority to perform all acts that a principal could perform, the agent has the general authority described in sections 1-351c to 1-351o, inclusive. Such general authority shall permit the agent to authorize another person to exercise the authority granted under the power of attorney.

(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 1-351p.

(e) Subject to the provisions set forth in subsections (a), (b) and (d) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(g) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

Sec. 12. Subsection (a) of section 1-352 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

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(a) (1) [The use of either the following short form or long form in the creation of a power of attorney is authorized, and, when used, the short form or long form shall be construed in accordance with the provisions of sections 1-350 to 1-353b, inclusive.] A document substantially in the form of either the short form, as set forth in subdivision (2) of this subsection, or the long form, as set forth in subdivision (3) of this subsection, may be used to create a statutory power of attorney that has the meaning and effect prescribed in sections 1-350 to 1-353b, inclusive. No provision of sections 1-350 to 1-353b, inclusive, shall be construed to bar the use of any other or different form of power of attorney desired by the parties concerned.

(2) "DURABLE STATUTORY POWER OF ATTORNEY - SHORT FORM

Notice: The powers granted by this document are broad and sweeping. They are defined in the Connecticut Uniform Power of Attorney Act, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned. The grantor of any power of attorney or the agent may make application to a [court of probate] Probate Court for an accounting as provided in subsection [(b)] (d) of section 45a-175 of the general statutes. This power of attorney does not authorize the agent to make health care decisions for you.

Know All Persons by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to the Connecticut Uniform Power of Attorney Act:

That I (insert name and address of the principal) do hereby appoint (insert name and address of the agent, or each agent, if more than one is designated) my agent(s) TO ACT

If more than one agent is designated and the principal wishes each

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agent alone to be able to exercise the power conferred, insert in this blank the word 'severally'. Failure to make any insertion or the insertion of the word 'jointly' shall require the agents to act jointly.

First: In my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in the Connecticut Uniform Power of Attorney Act to the extent that I am permitted by law to act through an agent:

(Strike out and initial in the opposite box any one or more of the subparagraphs as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subparagraphs (A) to (M), inclusive, shall automatically constitute an elimination also of subparagraph (N).)

To strike out any subparagraph the principal must draw a line through the text of that subparagraph AND write his initials in the box opposite.

- | | | |
|-----|---|-----|
| (A) | Real property; | () |
| (B) | Tangible personal property; | () |
| (C) | Stocks and bonds; | () |
| (D) | Commodities and options; | () |
| (E) | Banks and other financial institutions; | () |
| (F) | Operation of entity or business; | () |
| (G) | Insurance and annuities; | () |
| (H) | Estates, trusts and other beneficial interests; | () |
| (I) | Claims and litigation; | () |
| (J) | Personal and family maintenance; | () |
| (K) | Benefits from governmental programs or civil or military service; | () |
| (L) | Retirement plans; | () |
| (M) | Taxes; | () |
| (N) | All other matters; | () |
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(Special provisions and limitations may be included in the statutory form power of attorney only if they conform to the requirements of the Connecticut Uniform Power of Attorney Act.)

Second: LIMITATION ON AGENT'S AUTHORITY

[With full and unqualified authority to delegate any or all of the foregoing powers to any person or persons whom my agent(s) shall select.] An agent MAY NOT use my property to benefit the agent or a dependent of the agent unless I have included that authority in any special instructions below.

Third: Hereby ratifying and confirming all that said agent(s) or substitute(s) do or cause to be done.

Fourth: [LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the special instructions.] With full and unqualified authority to exercise or delegate any or all of the foregoing powers granted under this power of attorney to any person or persons whom my agent(s) shall select.

Fifth: DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent: _____

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Successor Agent's Address: _____

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent: _____

Second Successor Agent's Address: _____

Sixth: DESIGNATION OF CONSERVATOR OF ESTATE (OPTIONAL)

If a conservator of my estate should be appointed, I designate that be appointed to serve as conservator of my estate. If is unable to serve or cease to serve as conservator of my estate, I designate that be appointed to serve as conservator of my estate.

I direct that bond for the conservator of my estate, including any sureties thereon be required not be required.

Seventh: EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

The execution of this statutory short form power of attorney shall be duly acknowledged by the principal in the manner prescribed for the acknowledgment of a conveyance of real property.

In Witness Whereof I have hereunto signed my name and affixed my seal this day of, 20...

.... (Signature of Principal) (Seal)

....
Witness

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....
Witness

STATE OF
COUNTY OF

} ss:

On this the day of ..., 20.., before me, (name of the principal), signer of the foregoing instrument, personally appeared, and acknowledged the execution of such instrument to be his/her free act and deed.

....

Commissioner of the Superior Court

Notary Public

My commission expires:"

(3) "DURABLE STATUTORY POWER OF ATTORNEY - LONG FORM

Notice: The powers granted by this document are broad and sweeping. They are defined in the Connecticut Uniform Power of Attorney Act, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned. The grantor of any power of attorney, [or] the agent or such other person or entities as authorized by statute may make application to a [court of probate] Probate Court for an accounting as provided in subsection [(b)] (d) of section 45a-175 of the general statutes. This power of attorney does not authorize the agent to make health care decisions for you.

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Know All Persons by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to the Connecticut Uniform Power of Attorney Act:

That I (insert name and address of the principal) do hereby appoint (insert name and address of the agent, or each agent, if more than one is designated) my agent(s) TO ACT

If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word 'severally'. Failure to make any insertion or the insertion of the word 'jointly' shall require the agents to act jointly.

First: In my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in the Connecticut Uniform Power of Attorney Act to the extent that I am permitted by law to act through an agent:

(Strike out and initial in the opposite box any one or more of the subparagraphs as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subparagraphs (A) to (M), inclusive, shall automatically constitute an elimination also of subparagraph (N).)

To strike out any subparagraph the principal must draw a line through the text of that subparagraph AND write his initials in the box opposite.

- (A) Real property; ()
- (B) Tangible personal property; ()
- (C) Stocks and bonds; ()
- (D) Commodities and options; ()
- (E) Banks and other financial institutions; ()
- (F) Operation of entity or business; ()
- (G) Insurance and annuities; ()

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- (H) Estates, trusts and other beneficial interests; ()
- (I) Claims and litigation; ()
- (J) Personal and family maintenance; ()
- (K) Benefits from governmental programs or civil or military service; ()
- (L) Retirement plans; ()
- (M) Taxes; ()
- (N) All other matters; ()

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(Special provisions and limitations may be included in the statutory form power of attorney only if they conform to the requirements of the Connecticut Uniform Power of Attorney Act.)

OPTIONAL ESTATE PLANNING POWERS

YOU SHOULD SEEK LEGAL ADVICE BEFORE INCLUDING THE FOLLOWING POWERS:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death.)

My agent MAY NOT do any of the following specific acts UNLESS I HAVE INITIALED the specific authority listed below:

- (O) Create, amend, revoke or terminate an inter vivos trust, provided in the case of a trust established for a disabled person pursuant to 42 USC 1396p (d)(4)(A) or 42 USC 1396p (d)(4)(C), the creation of such trust by an agent shall be only as permitted by federal law; ()
- (P) Make a gift, subject to the limitations of the Connecticut Uniform Power of Attorney Act and any special instructions in this power of attorney. Unless otherwise ()

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provided in the special instructions, gifts per recipient may not exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code Section 2503(b), or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code Section 2513, in an amount per recipient not to exceed twice the annual federal gift tax exclusion limit. In addition, an agent must determine that gifts are consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors;

- (Q) Create or change rights of survivorship; ()
- (R) Create or change a beneficiary designation; ()
- [(S) Authorize another person to exercise the authority granted under this power of attorney;] ()
- [(T)] (S) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; ()
- [(U)] (T) Exercise fiduciary powers that the principal has authority to delegate; ()
- [(V)] (U) Disclaim or refuse an interest in property, including a power of appointment. ()
- (V) Exercise all powers I may have over any digital device, digital asset, user account and electronically stored information, including any user account and digital asset that currently exists or may exist as technology develops, whether the same is in my own name or that I own or lawfully use jointly with any other individual; such powers include, but are not limited to, changing and circumventing my username and password to gain access to such user accounts and information; transferring or withdrawing funds or ()

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other digital assets among or from such user accounts; opening new user accounts in my name; all as my agent determines is necessary or advisable. I hereby give my lawful consent and fully authorize my agent to access, manage, control, delete and terminate any electronically stored information and communications of mine to the fullest extent allowable under the federal Electronic Communications Privacy Act of 1986, 18 USC 2510 et seq., as amended from time to time, the Connecticut Revised Uniform Fiduciary Access to Digital Assets Act and any other federal, state or international privacy law or other law and to take any actions I am authorized to take under all applicable terms of service, terms of use, licensing and other account agreements or laws. To the extent a specific reference to any federal, state, local or international law is required in order to give effect to this provision, I specifically provide that my intention is to so reference such law, whether such law is now in existence or comes into existence or is amended after the date of this document.

(W)

With respect to any intellectual property interests of mine, including, without limitation, copyrights, contracts for payments of royalties and trademarks, act in all ways with respect to such interests as if my agent were the owner thereof, including, without limitation, registering ownership, transferring ownership and recording documents to effectuate or memorialize such transfer, granting and revoking licenses, entering, terminating and enforcing agreements, defending ownership and conferring agency upon professionals to represent my interests before governmental agencies, and in general, to exercise all powers with respect to the intellectual property that I could exercise if present.

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Second: LIMITATION ON AGENT'S AUTHORITY

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An agent MAY NOT use my property to benefit the agent or a dependent of the agent, except to the extent that I have included such authority elsewhere in this document.

Third: With full and unqualified authority to exercise or delegate any or all of the foregoing powers granted under this power of attorney to any person or persons whom my agent(s) shall select.

[Third] Fourth: Hereby ratifying and confirming all that said agent(s) or substitute(s) do or cause to be done.

[Fourth: LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the special instructions.]

Fifth: DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent: _____

Successor Agent's Address: _____

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent: _____

Second Successor Agent's Address: _____

Sixth: DESIGNATION OF CONSERVATOR OF ESTATE (OPTIONAL)

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and deed.

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Commissioner of the Superior Court

Notary Public

My commission expires:"

Sec. 13. Subsection (a) of section 45a-660 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(a) (1) A conserved person may, at any time, petition the [court of probate] Probate Court having jurisdiction for the termination of a conservatorship. A petition for termination of a conservatorship shall be determined by a preponderance of the evidence. The conserved person shall not be required to present medical evidence at such a hearing. A hearing on the petition shall be held not later than thirty days after the date the petition was filed in the [Court of Probate] Probate Court, unless the hearing is continued for good cause. If such hearing is not held within such thirty-day period or continuance period, if applicable, the conservatorship shall terminate. If the [court of probate] Probate Court having jurisdiction finds a conserved person to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. If the court finds upon hearing and after notice which the court prescribes, that a conserved person is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of the conserved person's property be restored to the conserved person. [The] Unless the court determines that reinstatement is not in the best interests of the conserved person, the court [may] shall order the reinstatement of any authority of any agent under a power of attorney

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that was previously limited or suspended by the court because of the conservatorship. (2) If the court finds upon hearing and after notice which the court prescribes that a conserved person has no assets of any kind remaining except for that amount allowed by subsection (c) of section 17b-80, the court may order that the conservatorship of the estate be terminated. The court shall thereupon order distribution of the remaining assets to the conservator of the person or, if there is no conservator or the conservator declines or is unable to accept or the conservator is the Commissioner of Social Services, to some suitable person, to be determined by the court, to hold for the benefit of the conserved person, upon such conservator or person giving such probate bond, if any, as the court orders. (3) If any conserved person having a conservator dies, the conserved person's property other than property which has accrued from the sale of the conserved person's real property shall be delivered to the conserved person's executor or administrator. The unexpended proceeds of the conserved person's real property sold as aforesaid shall go into the hands of the executor or administrator, to be distributed as such real property would have been.

Sec. 14. Subsection (b) of section 45a-334g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2017*):

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under sections 45a-334b to 45a-334s, inclusive. A custodian that is a financial institution, as defined in section 36a-41, may charge a fee that is set forth in such institution's deposit agreement with a customer.

Approved June 30, 2017