

IN THE SENATE

SENATE BILL NO. 1044, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM PROBATE CODE; AMENDING SECTION 15-3-715, IDAHO CODE,  
2 TO REVISE TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES AND TO  
3 MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 15-5-424, IDAHO CODE,  
4 TO REVISE POWERS OF CONSERVATORS IN ADMINISTRATION AND TO MAKE TECHNICAL  
5 CORRECTIONS.  
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 15-3-715, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 15-3-715. TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES --  
11 EXCEPTIONS. Except as restricted or otherwise provided by the will or by an  
12 order in a formal proceeding and subject to the priorities stated in section  
13 15-3-902 of this code, a personal representative, acting reasonably for the  
14 benefit of the interested persons, may properly:

15 (1) Retain assets owned by the decedent pending distribution or liqui-  
16 dation including those in which the representative is personally interested  
17 or which are otherwise improper for trust investment;

18 (2) Receive assets from fiduciaries, or other sources;

19 (3) Exercise the same power as the decedent in performance, compromise  
20 or refusal to perform the decedent's contracts which continue as obligations  
21 of the decedent's estate. In performing enforceable contracts by the decedent  
22 to convey or lease land, the personal representative, among other possible  
23 courses of action may:

24 (a) ~~e~~Execute and deliver a deed of conveyance for cash payment of all  
25 sums remaining due or the purchaser's note for the sum remaining due se-  
26 cured by a mortgage or deed of trust on the land; or

27 (b) ~~d~~Deliver a deed in escrow with directions that the proceeds, when  
28 paid in accordance with the escrow agreement, be paid to the successors  
29 of the decedent, as designated in the escrow agreement;

30 (4) Satisfy written charitable pledges of the decedent irrespective of  
31 whether the pledges constituted binding obligations of the decedent or were  
32 properly presented as claims, if in the judgment of the personal representa-  
33 tive the decedent would have wanted the pledges completed under the circum-  
34 stances;

35 (5) If funds are not needed to meet debts and expenses currently payable  
36 and are not immediately distributable, deposit or invest liquid assets of  
37 the estate, including moneys received from the sale of other assets, in fed-  
38 erally insured interest-bearing accounts, readily marketable secured loan  
39 arrangements or other prudent investments which would be reasonable for use  
40 by trustees generally;

41 (6) Acquire or dispose of an asset, including land in this or another  
42 state, for cash or on credit, at public or private sale; and manage, develop,

1 improve, exchange, partition, change the character of, or abandon an estate  
2 asset;

3 (7) Make ordinary or extraordinary repairs or alterations in buildings  
4 or other structures, demolish any improvements, raze existing or erect new  
5 party walls or buildings;

6 (8) Subdivide, develop or dedicate land to public use; make or obtain  
7 the vacation of plats and adjust boundaries; or adjust differences in valua-  
8 tion on exchange or partition by giving or receiving considerations; or ded-  
9 icate easements to public use without consideration;

10 (9) Enter for any purpose into a lease as lessor or lessee, with or with-  
11 out option to purchase or renew, for a term within or extending beyond the pe-  
12 riod of administration;

13 (10) Enter into a lease or arrangement for exploration and removal of  
14 minerals or other natural resources or enter into a pooling or unitization  
15 agreement;

16 (11) Abandon property when, in the opinion of the personal representa-  
17 tive, it is valueless, or is so encumbered, or is in condition that it is of no  
18 benefit to the estate;

19 (12) Vote stocks or other securities in person or by general or limited  
20 proxy;

21 (13) Pay calls, assessments, and other sums chargeable or accruing  
22 against or on account of securities, unless barred by the provisions relat-  
23 ing to claims;

24 (14) Hold a security in the name of a nominee or in other form without  
25 disclosure of the interest of the estate but the personal representative is  
26 liable for any act of the nominee in connection with the security so held;

27 (15) Insure the assets of the estate against damage, loss and liability  
28 and himself against liability as to third persons;

29 (16) Borrow money with or without security to be repaid from the estate  
30 assets or otherwise; and advance money for the protection of the estate;

31 (17) Effect a fair and reasonable compromise with any debtor or  
32 obligor, or extend, renew or in any manner modify the terms of any obligation  
33 owing to the estate. If the personal representative holds a mortgage, pledge  
34 or other lien upon property of another person, he may, in lieu of foreclo-  
35 sure, accept a conveyance or transfer of encumbered assets from the owner  
36 thereof in satisfaction of the indebtedness secured by lien;

37 (18) Pay taxes, assessments, compensation of the personal representa-  
38 tive, and other expenses incident to the administration of the estate;

39 (19) Sell or exercise stock subscription or conversion rights; con-  
40 sent, directly or through a committee or other agent, to the reorganization,  
41 consolidation, merger, dissolution, or liquidation of a corporation or  
42 other business enterprise;

43 (20) Allocate items of income or expense to either estate income or  
44 principal, as permitted or provided by law;

45 (21) Employ persons, including attorneys, auditors, investment advi-  
46 sors, or agents, even if they are associated with the personal representa-  
47 tive, to advise or assist the personal representative in the performance of  
48 his administrative duties; act without independent investigation upon their  
49 recommendations; and instead of acting personally, employ one (1) or more  
50 agents to perform any act of administration, whether or not discretionary;

1 (22) Prosecute or defend claims, or proceedings in any jurisdiction for  
 2 the protection of the estate and of the personal representative in the per-  
 3 formance of his duties;

4 (23) Sell, mortgage, or lease any real or personal property of the  
 5 estate or any interest therein for cash, credit, or for part cash and part  
 6 credit, and with or without security for unpaid balances;

7 (24) Continue any unincorporated business or venture in which the dece-  
 8 dent was engaged at the time of his death:

9 (a) ~~±~~In the same business form for a period of not more than four (4)  
 10 months from the date of appointment of a general personal representa-  
 11 tive if continuation is a reasonable means of preserving the value of  
 12 the business including good will;;

13 (b) ~~±~~In the same business form for any additional period of time that  
 14 may be approved by order of the court in a formal proceeding to which the  
 15 persons interested in the estate are parties; or

16 (c) ~~±~~Throughout the period of administration if the business is incor-  
 17 porated by the personal representative and if none of the probable dis-  
 18 tributees of the business who are competent adults object to its incor-  
 19 poration and retention in the estate;

20 (25) Incorporate any business or venture in which the decedent was en-  
 21 gaged at the time of his death;

22 (26) Provide for exoneration of the personal representative from per-  
 23 sonal liability in any contract entered into on behalf of the estate;

24 (27) Satisfy and settle claims and distribute the estate as provided in  
 25 this code;

26 (28) Take control of, conduct, continue or terminate any accounts of  
 27 the decedent on any social networking website, any microblogging or short  
 28 message service website or any e-mail service website.

29 SECTION 2. That Section 15-5-424, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31 15-5-424. POWERS OF CONSERVATOR IN ADMINISTRATION. (~~a~~1) A conservator  
 32 has all of the powers conferred herein and any additional powers conferred by  
 33 law on trustees in this state. In addition, a conservator of the estate of  
 34 an unmarried minor under the age of eighteen (18) years, as to whom no one has  
 35 parental rights, has the duties and powers of a guardian of a minor described  
 36 in section 15-5-209 of this code until the minor attains the age of eighteen  
 37 (18) years or marries, but the parental rights so conferred on a conservator  
 38 do not preclude appointment of a guardian as provided by part 2 of this chap-  
 39 ter.

40 (~~b~~2) A conservator has power without court authorization or confirma-  
 41 tion, to invest and reinvest funds of the estate as would a trustee.

42 (~~e~~3) A conservator, acting reasonably in efforts to accomplish the pur-  
 43 pose for which he was appointed, may act without court authorization or con-  
 44 firmation to:

45 (~~1~~a) ~~e~~Collect, hold and retain assets of the estate including land in  
 46 another state, until, in his judgment, disposition of the assets should  
 47 be made, and the assets may be retained even though they include an asset  
 48 in which he is personally interested;

49 (~~2~~b) ~~±~~Receive additions to the estate;

- 1           (3c) ~~e~~Continue or participate in the operation of any business or other  
2 enterprise;
- 3           (4d) ~~a~~Acquire an undivided interest in an estate asset in which the con-  
4 servator, in any fiduciary capacity, holds an undivided interest;
- 5           (5e) ~~i~~Invest and reinvest estate assets in accordance with subsection  
6 (b2) of this section;
- 7           (6f) ~~d~~Deposit estate funds in a bank including a bank operated by the  
8 conservator;
- 9           (7g) ~~a~~Acquire or dispose of an estate asset including land in another  
10 state for cash or on credit, at public or private sale; and to manage,  
11 develop, improve, exchange, partition, change the character of, or  
12 abandon an estate asset;
- 13           (8h) ~~m~~Make ordinary or extraordinary repairs or alterations in build-  
14 ings or other structures, to demolish any improvements, to raze exist-  
15 ing or erect new party walls or buildings;
- 16           (9i) ~~s~~Subdivide, develop, or dedicate land to public use; to make or  
17 obtain the vacation of plats and adjust boundaries; to adjust differ-  
18 ences in valuation on exchange or to partition by giving or receiving  
19 considerations; and to dedicate easements to public use without consid-  
20 eration;
- 21           (10j) ~~e~~Enter for any purpose into a lease as lessor or lessee with or  
22 without option to purchase or renew for a term within or extending be-  
23 yond the term of the conservatorship;
- 24           (11k) ~~e~~Enter into a lease or arrangement for exploration and removal of  
25 minerals or other natural resources or enter into a pooling or unitiza-  
26 tion agreement;
- 27           (12l) ~~g~~Grant an option involving disposition of an estate asset, to  
28 take an option for the acquisition of any asset;
- 29           (13m) ~~v~~Vote a security, in person or by general or limited proxy;
- 30           (14n) ~~p~~Pay calls, assessments, and any other sums chargeable or accru-  
31 ing against or on account of securities;
- 32           (15o) ~~s~~Sell or exercise stock subscription or conversion rights; to  
33 consent, directly or through a committee or other agent, to the reorga-  
34 nization, consolidation, merger, dissolution, or liquidation of a cor-  
35 poration or other business enterprise;
- 36           (16p) ~~h~~Hold a security in the name of a nominee or in other form without  
37 disclosure of the conservatorship so that title to the security may pass  
38 by delivery, but the conservator is liable for any act of the nominee in  
39 connection with the stock so held;
- 40           (17q) ~~i~~Insure the assets of the estate against damage or loss, and the  
41 conservator against liability with respect to third persons;
- 42           (18r) ~~b~~Borrow money to be repaid from estate assets or otherwise; to ad-  
43 vance money for the protection of the estate or the protected person,  
44 and for all expenses, losses, and liability sustained in the adminis-  
45 tration of the estate or because of the holding or ownership of any es-  
46 tate assets and the conservator has a lien on the estate as against the  
47 protected person for advances so made;
- 48           (19s) ~~p~~Pay or contest any claim; to settle a claim by or against the es-  
49 tate or the protected person by compromise, arbitration, or otherwise;

1 and to release, in whole or in part, any claim belonging to the estate to  
2 the extent that the claim is uncollectible;

3 (~~20t~~) pPay taxes, assessments, compensation of the conservator, and  
4 other expenses incurred in the collection, care, administration and  
5 protection of the estate;

6 (~~21u~~) aAllocate items of income or expense to either estate income or  
7 principal, as provided by law, including creation of reserves out of in-  
8 come for depreciation, obsolescence, or amortization, or for depletion  
9 in mineral or timber properties;

10 (~~22v~~) pPay any sum distributable to a protected person or his dependent  
11 without liability to the conservator, by paying the sum to the distribu-  
12 tee or by paying the sum for the use of the distributee either to his  
13 guardian or, if none, to a relative or other person with custody of his  
14 person;

15 (~~23w~~) eEmploy persons, including attorneys, auditors, investment ad-  
16 visors, or agents, even though they are associated with the conserva-  
17 tor to advise or assist him in the performance of his administrative du-  
18 ties; to act upon their recommendation without independent investiga-  
19 tion; and instead of acting personally, to employ one (1) or more agents  
20 to perform any act of administration, whether or not discretionary;

21 (~~24x~~) pProsecute or defend actions, claims or proceedings in any ju-  
22 risdiction for the protection of estate assets and of the conservator in  
23 the performance of his duties; ~~and~~

24 (~~25y~~) eExecute and deliver all instruments which will accomplish or fa-  
25 cilitate the exercise of the powers vested in the conservator; and

26 (z) Take control of, conduct, continue or terminate any accounts of the  
27 protected person on any social networking website, any microblogging or  
28 short message service website or any e-mail service website.