



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: April 22, 2015

TO: The Honorable Members of the Delaware General Assembly

FROM: Robert D. Overmiller, Chairperson
GACEC

RE: **House Bill No. 63 (Guardianship and Sale of Ward's Real Estate)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Bill No. 46** which memorializes the procedures to be followed by a guardian when selling properties owned by a ward with a disability.

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. The Court recently adopted the 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. The GACEC **endorses** the proposed legislation subject to consideration of a few amendments.

First, the references to "deed" and "land" in line 29 are under inclusive 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, Council asks that the sponsors 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 time and consideration of our observations and recommendations. Please feel free to contact me or Wendy Strauss should you have any questions.