

DRAFT  
FOR DISCUSSION ONLY

# REVISED UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997/1998)

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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April 1~~October 9~~ – 24~~10~~, 2016~~5~~ Drafting Committee Meeting

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~~October 2, 2015~~March 15, 2016

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**UNIFORM GUARDIANSHIP AND PROTECTIVE  
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powers available under state guardianship with no restriction.

(7) “Guardian” means a person who has qualified as a guardian of a minor or protected person pursuant to appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

~~—— (7) “Legal representative” includes the lawyer for the respondent, a representative payee, a guardian or conservator acting for a respondent in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, a Veterans Administration fiduciary, and an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.~~

(8) “Letters” includes letters of guardianship and letters of conservatorship.

(9) “Limited conservatorship” means a conservatorship under which the conservator is granted less than all powers available under state conservatorship law, is granted powers over only certain assets, or the powers of the conservator are otherwise restricted.

(10) “Limited guardianship” means a guardianship under which the guardian is granted less than all powers available under state guardianship law or the powers of the guardian are otherwise restricted.

(11) “Minor” means an unemancipated individual who has not attained [18] years of age.

(12) “Parent” means a parent whose parental rights have not been terminated.

(13) “Person” means an individual, ~~estate~~corporation, business or non-profit entity ~~trust, estate, trust, partnership, limited liability company, association, joint venture~~, government, governmental subdivision, agency, or instrumentality, or any other legal ~~or commercial~~ entity.

(14) “Person needing protection” means an individual who, for reasons other than



1 being a minor, is unable to receive and evaluate information or make or communicate decisions  
2 to such an extent that the individual lacks the ability to meet essential requirements for physical  
3 health, safety, or self-care, even with appropriate decision-making support and technological  
4 assistance ~~and appropriate decision-making support~~.

5 (153) “Protected minor” means a minor for whom a conservator, guardian, or both  
6 ~~guardian~~ has been appointed or for whom another protective order has been made by a parental  
7 appointment under Section ~~[202] of this [Act]~~ or by a court of law ~~for reasons of minor age~~ under  
8 Section ~~[204] of this [Act]~~.

9 (164) ~~““Protected person”~~ means a minor or other individual for whom a conservator,  
10 guardian, or both has been appointed or for whom another protective order has been made. T;  
11 ~~the term “protected person”~~ includes “protected minor”.

12 (175) ~~““Respondent”~~ means an individual for whom the appointment of a guardian or  
13 conservator or other protective order is sought.

14 (186) ~~““State”~~ means a sState of the United States, the District of Columbia, Puerto  
15 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
16 jurisdiction of the United States.

17 [(197) “Tribe” means an Indian tribe or band, or Alaskan Native village, which is  
18 recognized by federal law or formally acknowledged by a sState.]

### 19 **SECTION 103. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW**

20 **APPLICABLE.** Unless displaced by the particular provisions of this [act], the principles of law  
21 and equity supplement its provisions.

### 22 **SECTION 104. SUBJECT-MATTER JURISDICTION.**

23 (a) Except to the extent the guardianship is subject to the [insert citation to Uniform

1 Child Custody Jurisdiction and Enforcement Act], the court of this state has jurisdiction over  
2 guardianship for minors domiciled or present in this state. The court of this state has jurisdiction  
3 over protective proceedings for minors domiciled in or having property located in this state.

4 (b) The court of this state has jurisdiction over guardianship, conservatorship, and other  
5 protective proceedings for an adult individual as provided in the [insert citation to Uniform Adult  
6 Guardianship and Protective Proceedings Jurisdiction Act].

7 (c) After ~~the~~ service of notice in a proceeding seeking a guardianship, conservatorship,  
8 or other protective order and until termination of the proceeding, the court in which the petition  
9 is filed has:

10 (1) exclusive jurisdiction to determine the need for a guardianship,  
11 conservatorship, or other protective order;

12 (2) exclusive jurisdiction to determine how the estate of the respondent which is  
13 subject to the laws of this state must be managed, expended, or distributed to or for the use of the  
14 protected person, individuals who are ~~in fact~~ dependent upon the protected person, or other  
15 claimants; and

16 (3) concurrent jurisdiction to determine the validity of claims against the person  
17 or estate of the respondent and questions of title concerning assets of the estate.

18 (d) A court that has appointed a guardian or conservator, or issued a protective order  
19 consistent with this [act], has exclusive and continuing jurisdiction over the proceeding until it is  
20 terminated by the court or the appointment or order expires by its own terms.

21 **SECTION 105. TRANSFER OF ~~JURISDICTION~~PROCEEDINGS.**

22 (a) Except as otherwise provided in subsection (b), the following rules apply:

23 (1) After the appointment of a guardian or conservator or entry of another

1 protective order, the court making the appointment or entering the order may transfer the  
2 proceeding to a court in another [county] in this state or to another state if the court is satisfied  
3 that a transfer will serve the best interest of the protected person.

4 (2) If a guardianship or protective proceeding is pending in another state or a  
5 foreign country and a petition for guardianship or protective proceeding is filed in a court in this  
6 state, the court in this state shall notify the original court and, after consultation with the original  
7 court, assume or decline jurisdiction, whichever is in the best interest of the protected person.

8 (3) A guardian, conservator, or like fiduciary appointed in another state may  
9 petition the court for appointment as a guardian or conservator in this state if venue in this state  
10 is or will be established. The appointment may be made upon proof of appointment in the other  
11 state and presentation of a certified copy of the portion of the court record in the other state  
12 specified by the court in this state. Notice of hearing on the petition, together with a copy of the  
13 petition, must be given to the protected person, if the protected person has attained 12 years of  
14 age, and to the persons who would be entitled to notice if the regular procedures for appointment  
15 of a guardian or conservator under this [act] were applicable. The court shall make the  
16 appointment in this state unless it concludes that the appointment would not be in the best  
17 interest of the protected person. On the filing of an acceptance of office and any required bond,  
18 the court shall issue appropriate letters of guardianship or conservatorship. Not later than 14  
19 days after an appointment, the guardian or conservator shall send or deliver a copy of the order  
20 of appointment to the protected person, if the protected person has attained 12 years of age, and  
21 to all persons given notice of the hearing on the petition.

22 (b) This section does not apply to a guardianship or protective proceeding for an adult  
23 individual that is subject to the transfer provisions of [insert citation to Article 3 of the Uniform

Adult Guardianship and Protective Proceedings Jurisdiction Act (2007)].

**SECTION 106. VENUE.**

(a) Venue for a guardianship proceeding for a minor is in the [county] of this state in which the minor resides or is present at the time the proceeding is commenced.

(b) Venue for a guardianship proceeding for a person needing protection is in the [county] of this state in which the respondent resides and, if the respondent has been admitted to an institution by order of a court of competent jurisdiction, in the [county] in which the court is located. Venue for the appointment of an emergency or a temporary substitute guardian of a person needing protection is also in the [county] in which the respondent is present.

(c) Venue for a protective proceeding is in the [county] of this state in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in this state, in any [county] of this state in which property of the respondent is located.

(d) If a proceeding under this [act] is brought in more than one [county] in this state, the court of the [county] in which the proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

**SECTION 107. PRACTICE IN COURT.**

(a) Except as otherwise provided in this [act], the rules of civil procedure, including the rules concerning appellate review, govern proceedings under this [act].

(b) If guardianship and protective proceedings as to the same individual are commenced or pending in the same court, the proceedings may be consolidated.

**SECTION 108. LETTERS OF OFFICE.** Upon the guardian's filing of an acceptance

1 of office, the court shall issue appropriate letters of guardianship. Upon the conservator's filing  
2 of an acceptance of office and any required bond or compliance with any other required asset  
3 protection arrangement, the court shall issue appropriate letters of conservatorship. ~~Letters of~~  
4 ~~guardianship must indicate whether the guardian was appointed by the court or a parent.~~  
5 Limitations on the powers of a guardian or conservator or of the assets subject to a  
6 conservatorship shall be stated on the guardian's or conservator's letters.

7 **SECTION 109. EFFECT OF ACCEPTANCE OF APPOINTMENT.** By accepting  
8 appointment, a guardian or conservator submits personally to the jurisdiction of the court in any  
9 proceeding relating to the guardianship or conservatorship. ~~The petitioner shall send or deliver~~  
10 ~~notice of any proceeding to the guardian or conservator at the guardian's or conservator's~~  
11 ~~address shown in the court records and at any other address then known to the petitioner.~~

12 **SECTION 110. ADDITIONAL OR SUCCESSOR APPOINTEES.**

13 (a) The court may appoint an additional guardian or conservator at any time, including at the  
14 time of the initial order, to serve immediately or upon some other designated event, and may  
15 appoint a successor guardian or conservator in the event of a vacancy or make the appointment in  
16 contemplation of a vacancy, to serve if a vacancy occurs.

17 (b) An additional or successor guardian or conservator may file an acceptance of  
18 appointment at any time after the appointment within the, ~~but not later than~~ (1) 30 days after  
19 the occurrence of the vacancy or other designated event or (2) 10 days after learning, ~~of the~~  
20 vacancy or other designated event.

21 (c) The additional or successor guardian or conservator becomes eligible to act on the  
22 occurrence of the vacancy or designated event, or the filing of the acceptance of appointment,  
23 whichever last occurs. A successor guardian or conservator succeeds to the predecessor's

1 powers, and a successor conservator succeeds to the predecessor's title to the protected person's  
2 assets.

3 (d) Not later than 30 days after a successor guardian or conservator succeeds to the  
4 predecessor's powers, the successor guardian or conservator appointed in contemplation of a  
5 vacancy shall file a petition for confirmation with the court. Not later than 90 days after the  
6 filing of the petition, the court shall issue an order confirming the appointment, hold a hearing on  
7 the petition, or do both.

8 **SECTION 111. REMOVAL, ~~OR RESIGNATION,~~ OR DEATH OF APPOINTEE.**

9 (a) The appointment of a guardian or conservator terminates upon the death, resignation,  
10 or removal of the ~~at~~ guardian or conservator.

11 (b) A guardian or conservator may petition the court for permission to resign. The  
12 petition may include a request for a successor appointee.

13 (c) A protected person or a person interested in the welfare of a protected person may for  
14 good cause petition the court for removal of the guardian or conservator and appointment of a  
15 successor guardian or conservator.

16 (d) Termination of the appointment of a guardian or conservator ~~'s appointment~~ does not  
17 affect liability for previous acts or the obligation to account for actions taken on behalf of the  
18 protected person.

19 **SECTION 112. GENERAL NOTICE REQUIREMENTS.**

20 (a) Except as otherwise ordered by the court for good cause, if notice of a hearing on a  
21 petition is required, other than a notice for which specific requirements are otherwise provided,  
22 the petitioner shall give notice of the time and place of the hearing to the person to be notified.  
23 Notice must be given in compliance with [insert the applicable rule of civil procedure], at least

1 14 days before the hearing.

2 (b) Proof of notice must be made before or at the hearing and filed in the proceeding.

3 (c) A notice under this [act] must be given in plain language.

4 **SECTION 113. WAIVER OF NOTICE.** A person may waive notice by a writing  
5 signed by the person or the person's attorney and filed in the proceeding. However, a respondent  
6 or protected person may not waive notice.

7 **SECTION 114. GUARDIAN AD LITEM.** At any stage of a proceeding, ~~the~~<sup>a</sup> court  
8 may appoint a guardian ad litem if the court determines that representation of the interest  
9 otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem  
10 may be appointed to represent several individuals or interests. The guardian ad litem may not be  
11 the same person as the attorney representing the respondent. The court shall state on the record  
12 the duties of the guardian ad litem and its reasons for the appointment.

13 **SECTION 115. REQUEST FOR NOTICE; INTERESTED PERSONS.**

14 (a) An interested person not otherwise entitled to notice who desires to be notified  
15 before any order is made in a guardianship proceeding, including a proceeding after the  
16 appointment of a guardian, or in a protective proceeding, may file a request for notice with the  
17 clerk of the court in which the proceeding is pending. The clerk shall send or deliver a copy of  
18 the request to the guardian and to the conservator if one has been appointed. A request is not  
19 effective unless it contains a statement showing the interest of the person making it and the  
20 address of that person or a lawyer to whom notice is to be given. The request is effective only as  
21 to proceedings conducted after its filing.

22 (b) A governmental agency paying or planning to pay benefits to the respondent or  
23 protected person is an interested person in a protective proceeding.

1           **SECTION 116. MULTIPLE APPOINTMENTS OR NOMINATIONS.** If a  
2 respondent or other person makes more than one written appointment or nomination of a  
3 guardian or a conservator, the most recent controls.

4           **SECTION 117. COMPENSATION AND EXPENSES OF APPOINTEES,**  
5 **LAWYERS, AND OTHER PERSONS IN GENERAL.** If not otherwise compensated for  
6 services rendered, a ~~guardian, conservator,~~ lawyer whose services resulted in a protective order  
7 or in an order beneficial to a protected person's estate, a lawyer for the respondent or protected  
8 person, or any other person appointed by the court is entitled to reasonable compensation from  
9 the estate and reimbursement of reasonable expenses from the estate. Such fees and expenses  
10 must be approved by the court before compensation is paid or reimbursement is made, but not  
11 prior to the provision of such services or expenses being incurred. ~~If not otherwise compensated~~  
12 ~~for services rendered, a lawyer for a respondent is entitled to reasonable compensation from the~~  
13 ~~estate without court approval.~~

14           **SECTION 118. REGISTRATION OF ORDERS.**

15           (a) If a guardian has been appointed in another state and a petition for the appointment of  
16 a guardian is not pending in this state, the guardian appointed in the other state, after giving  
17 notice to the appointing court of an intent to register, may register the guardianship order in this  
18 state by filing as a foreign judgment in a court, in any appropriate [county] of this state, a  
19 certified copies of the order and letters of office.

20           (b) If a conservator has been appointed in another state and a petition for a protective  
21 order is not pending in this state, the conservator appointed in the other state, after giving notice  
22 to the appointing court of an intent to register, may register the protective order in this state by  
23 filing as a foreign judgment in a court of this state, in any [county] in which property belonging



1 to the protected person is located, certified copies of the order, ~~and~~ letters of office, and ~~of~~ any  
2 bond.

### 3 **SECTION 119. EFFECT OF REGISTRATION OF ORDERS.**

4 (a) Upon registration of a guardianship or protective order from another state, the  
5 guardian or conservator may exercise in this state all powers authorized in the order of  
6 appointment except as prohibited under the laws of this state, including maintaining actions and  
7 proceedings in this state and, if the guardian or conservator is not a resident of this state, subject  
8 to any conditions imposed upon nonresident parties.

9 (b) A court of this state may grant any relief available under this ~~[act]~~<sup>article</sup> and other  
10 law of this state to enforce a registered order.

### 11 **SECTION 120. FACILITY OF TRANSFERS TO MINORS.**

12 (a) Unless a person required to transfer money or personal property to a minor knows  
13 that a conservator has been appointed or that a proceeding for appointment of a conservator of  
14 the estate of the minor is pending, the person may do so, as to an amount or value not exceeding  
15 [\$10,000] a year, by transferring it to:

16 (1) a person who has the care and custody of the minor and with whom the minor  
17 resides;

18 (2) a guardian of the minor;

19 (3) a custodian under the Uniform Transfers To Minors Act or custodial trustee  
20 under the Uniform Custodial Trust Act; or

21 (4) a financial institution as a deposit in an interest-bearing account or certificate  
22 in the sole name of the minor and giving notice of the deposit to the minor.

23 (b) A person who transfers money or property in compliance with this section is not

1 responsible for its proper application.

2 (c) A guardian or other person who receives money or property for a minor under  
3 subsection (a)(1) or (2) may only apply it to the support, care, education, health, and welfare of  
4 the minor, and may not derive a personal financial benefit except for reimbursement for  
5 necessary expenses. Any excess must be preserved for the future support, care, education,  
6 health, and welfare of the minor, and any balance must be transferred to the minor upon  
7 emancipation or attaining majority.

## 8 ARTICLE 2

### 9 GUARDIANSHIP OF MINOR

10 SECTION 201. ~~APPOINTMENT AND STATUS~~BASIS FOR APPOINTMENT OF  
11 GUARDIAN OF MINOR. A person becomes a guardian of a minor by parental appointment or  
12 upon appointment by the court. The guardianship status continues until terminated, without  
13 regard to the location of the guardian or minor.

#### 14 SECTION 202. PARENTAL APPOINTMENT OF GUARDIAN OF MINOR.

15 (a) A guardian may be appointed by will or other signed writing by a parent for any  
16 minor child the parent has or may have in the future. The appointment may specify the desired  
17 limitations on the powers to be given to the guardian. The appointing parent may revoke or  
18 amend the appointment before confirmation by the court.

19 (b) Upon petition of an appointing parent and a finding that the appointing parent will  
20 likely become unable to care for the child within [two] years, and after notice as provided in  
21 Section 205(a), the court, before the appointment becomes effective, may confirm the parent's  
22 selection of a guardian and terminate the rights of others to object.

23 (c) Subject to Section 203, the appointment of a guardian becomes effective upon the

1 appointing parent's death, a judicial determination that the parent is unwilling or unable to  
2 exercise parental rights, or a written determination by a physician who has examined the parent  
3 that the parent is no longer able to care for the child, whichever first occurs.

4 (d) The guardian becomes eligible to act upon the filing of an acceptance of  
5 appointment, which must be filed by the later of within (1) 30 days after the guardian's  
6 appointment becomes effective or (2) 10 days after the guardian learns of the event triggering the  
7 appointment.

8 The guardian shall:

9 (1) file the acceptance of appointment and a copy of the will, if available, with the  
10 court of the [county] in which the will was or could be probated or, in the case of another  
11 appointing instrument, file the acceptance of appointment and the appointing instrument, if  
12 available, with the court of the [county] in which the minor resides or is present; and

13 (2) give written notice of the acceptance of appointment to the appointing parent,  
14 if living, the minor, if the minor has attained 12 years of age, and a person other than the parent  
15 having care and custody of the minor.

16 (e) Unless the appointment was previously confirmed by the court, the notice given  
17 under subsection (d)(2) must include a statement of the right of those notified to terminate the  
18 appointment by filing a written objection in the court as provided in Section 203.

19 (f) Unless the appointment was previously confirmed by the court, not later than within  
20 30 days after filing the notice and the appointing instrument, a guardian shall petition the court  
21 for confirmation of the appointment, giving notice in the manner provided in Section 205(a).

22 (g) The appointment of a guardian by a parent does not supersede the parental rights of  
23 either parent. If both parents are dead or have been adjudged unwilling or unable to exercise

1 their parental rights, an appointment by the last parent who died or was adjudged unable or  
2 willing to exercise parental rights~~incapacitated~~ has priority. An appointment by a parent which  
3 is effected by filing the guardian's acceptance under a will probated in the state of the testator's  
4 domicile is effective in this state.

5 (h) The powers of a guardian who timely complies with the requirements of subsections  
6 (d) and (f) relate back to give acts by the guardian which are of benefit to the minor and occurred  
7 on or after the date the appointment became effective the same effect as those that occurred after  
8 the filing of the acceptance of the appointment.

9 (i) The authority of a guardian appointed under this section terminates upon the first to  
10 occur of the appointment of another person as guardian by the court or the giving of written  
11 notice to the guardian of the filing of an objection pursuant to Section 203.

12 **SECTION 203. OBJECTION BY MINOR OR OTHERS TO PARENTAL**  
13 **APPOINTMENT.** Until the court has confirmed an appointee under Section 202, a minor who  
14 is the subject of an appointment by a parent and who has attained 12 years of age, the other  
15 parent, or a person other than a parent or guardian having care or custody of the minor may  
16 prevent or terminate the appointment at any time by filing a written objection in the court in  
17 which the appointing instrument is filed and giving notice of the objection to the guardian and  
18 any other persons entitled to notice of the acceptance of the appointment. An objection may be  
19 withdrawn, and if withdrawn is of no effect. The objection does not preclude judicial  
20 appointment of the person selected by the parent. The court may treat the filing of an objection  
21 as a petition for the appointment of an emergency or a temporary guardian under Section 204,  
22 and proceed accordingly.

1           **SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR:**  
2           **CONDITIONS FOR APPOINTMENT.**

3           (a) A minor or a person interested in the welfare of a minor may petition for appointment  
4 of a guardian.

5           (b) The court may appoint a guardian for a minor if the court finds the appointment is in  
6 the minor's best interest, and:

7                   (1) the parents consent;

8                   (2) all parental rights have been terminated; or

9                   (3) the parents are unwilling or unable to exercise their parental rights.

10          (c) If a guardian is appointed by a parent pursuant to Section 202 fails to accept the  
11 appointment as required under Section 202(f) and the appointment has not been prevented or  
12 terminated under Section 203, ~~that appointee has priority for appointment. However,~~ the court  
13 may proceed and with appoint a guardian for the minor. The person selected by the parent shall  
14 have priority for appointment by the court. another appointment upon a finding that the  
15 appointee under Section 202 has failed to accept the appointment within 30 days after notice of  
16 the guardianship proceeding.

17          (d) If necessary and on petition or motion and whether or not the conditions of  
18 subsection (b) have been established, the court may appoint a temporary guardian for a minor  
19 upon a showing that an immediate need exists and that the appointment would be in the best  
20 interest of the minor. Notice in the manner provided in Section 11~~3~~2 must be given to the  
21 parents and to a minor who has attained 12 years of age. Except as otherwise ordered by the  
22 court, the temporary guardian has the authority of a full guardian, but the duration of the  
23 temporary guardianship may not exceed six months. ~~Within~~ Not later than seven~~five~~ days after

1 the appointment, the temporary guardian shall send or deliver a copy of the order to all  
2 individuals who would be entitled to notice of hearing under Section 205.

3 (e) If the court finds that following the procedures of this [article] will likely result in  
4 substantial harm to a minor's health or safety and that no other person appears to have authority  
5 to act in the circumstances, the court, on appropriate petition, may appoint an emergency  
6 guardian for the minor. The duration of the guardian's authority may not exceed [30] days and  
7 the guardian may exercise only the powers specified in the order. Reasonable notice of the time  
8 and place of a hearing on the petition for appointment of an emergency guardian must be given  
9 to the minor, if the minor has attained 12 years of age, to each living parent of the minor, and a  
10 person having care or custody of the minor, if other than a parent. The court may dispense with  
11 the notice if it finds from affidavit or testimony that the minor will be substantially harmed  
12 before a hearing can be held on the petition. If the guardian is appointed without notice, notice  
13 of the appointment must be given ~~within~~ not later than 48 hours after the appointment and a  
14 hearing on the appropriateness of the appointment held not later than ~~within~~ [five] days after the  
15 appointment.

16 **SECTION 205. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR:**  
17 **PROCEDURE.**

18 (a) After a petition for appointment of a guardian is filed, the court shall schedule a  
19 hearing, and the petitioner shall give notice of the time and place of the hearing, together with a  
20 copy of the petition, to:

- 21 (1) the minor, if the minor has attained 12 years of age and is not the petitioner;  
22 (2) any person alleged to have had the primary care and custody of the minor for  
23 60 or more days during the two years preceding the filing of the petition; or any person alleged to

1 have had the primary care and custody of the minor for two or more years during the five years  
2 preceding the filing of the petition;

3 (3) each living parent of the minor or, if there is none, the adult nearest in kinship  
4 that can be found;

5 (4) any person nominated as guardian by the minor if the minor has attained 12  
6 years of age;

7 (5) any appointee of a parent whose appointment has not been prevented or  
8 terminated under Section 203; and

9 (6) any guardian or conservator currently acting for the minor in this sState or  
10 elsewhere.

11 (b) The court, upon hearing, shall make the appointment if it finds that a qualified person  
12 seeks appointment, venue is proper, the required notices have been given, the conditions of  
13 Section 204(b) have been met, and the best interest of the minor will be served by the  
14 appointment. In other cases, the court may dismiss the proceeding or make any other disposition  
15 of the matter that will serve the best interest of the minor.

16 (c) If the court determines at any stage of the proceeding, before or after appointment,  
17 that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to  
18 represent the minor, giving consideration to the choice of the minor if the minor has attained 12  
19 years of age.

20 **SECTION 206. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR:**  
21 **PRIORITY OF MINOR'S NOMINEE; LIMITED GUARDIANSHIP.**

22 (a) The court shall appoint as guardian a person whose appointment will be in the best  
23 interest of the minor. The court shall appoint a person nominated by the minor, if the minor has

1 attained 12 years of age, unless the court finds the appointment will be contrary to the best  
2 interest of the minor.

3 (b) In the interest of developing self-reliance of a protected ~~person~~ minor or for other  
4 good cause, the court, at the time of appointment or later, on its own motion or on motion of the  
5 minor or other interested person, may limit the powers of a guardian otherwise granted by this  
6 [article] and thereby create a limited guardianship. Following the same procedure, the court may  
7 grant additional powers or withdraw powers previously granted.

8 **SECTION 207. DUTIES OF GUARDIAN OF ~~A~~ PROTECTED MINOR.**

9 (a) Except as otherwise limited by the court, a guardian of a protected minor has the  
10 duties and responsibilities of a parent regarding the protected minor's support, care, education,  
11 health, and welfare. A guardian shall act at all times in the protected minor's best interest and  
12 exercise reasonable care, diligence, and prudence.

13 (b) A guardian shall:

14 (1) become or remain personally acquainted with the protected minor and  
15 maintain sufficient contact with the protected minor to know of the protected minor's capacities,  
16 limitations, needs, opportunities, and physical and mental health;

17 (2) take reasonable care of the protected minor's personal effects and bring a  
18 protective proceeding if necessary to protect other property of the protected minor;

19 (3) expend money of the protected minor which has been received by the guardian  
20 for the protected minor's current needs for support, care, education, health, and welfare;

21 (4) conserve any excess money of the protected minor for the protected minor's  
22 future needs, but if a conservator has been appointed for the estate of the protected minor, the  
23 guardian shall pay the money at least quarterly to the conservator to be conserved for the



protected minor's future needs;

(5) report the condition of the protected minor and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the protected minor's welfare or as required by court rule;

(6) inform the court of any change in the protected minor's ~~custodial~~ dwelling or address; and

(7) in determining what is in the protected minor's best interest, take into ~~consideration~~ account the protected minor's preferences to the extent actually known or reasonably ascertainable by the guardian.

#### **SECTION 208. POWERS OF GUARDIAN OF ~~A~~-PROTECTED MINOR.**

(a) Except as otherwise limited by the court, a guardian of a protected minor has the powers of a parent regarding the protected minor's support, care, education, health, and welfare.

(b) A guardian may:

(1) apply for and receive money for the support of the protected minor otherwise payable to the protected minor's parent, guardian, or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

(2) if otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the protected minor, take custody of the protected minor and establish the protected minor's place of ~~custodial~~ dwelling, but may only establish or move the protected minor's ~~custodial~~ dwelling outside the state upon express authorization of the court;

(3) if a conservator for the estate of a protected minor has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other

1 appropriate action to compel a person to support the protected minor or to pay money for the  
2 benefit of the protected minor;

3 (4) consent to medical or other care, treatment, or service for the protected minor;

4 (5) consent to the marriage of the protected minor; and

5 (6) to the extent reasonable, delegate to the protected minor certain  
6 responsibilities for decisions affecting the protected minor's well-being.

7 (c) The court may specifically authorize the guardian to consent to the adoption of the  
8 protected minor.

9 **SECTION 209. DELEGATION OF POWER BY PARENT OR GUARDIAN ~~OR~~**  
10 **OF PROTECTED MINOR.**

11 (a) A parent of a minor, by a power of attorney, may delegate to another person, for a  
12 period not exceeding six months, any power regarding care, custody, or property of the minor,  
13 except the power to consent to marriage or adoption.

14 (b) A guardian of a protected minor, by a power of attorney, may delegate to another  
15 person, for a period not exceeding six months, any power regarding care or, custody, ~~or property~~  
16 of the minor ~~or protected person~~, except the power to consent to marriage or adoption.

17 ~~—————(1)~~ The guardian shall exercise reasonable care, skill, and caution in:

18 (1A) selecting an agent;

19 (2B) establishing the scope and terms of a delegation, consistent with the purposes and  
20 terms of the guardianship;

21 (3C) periodically reviewing an agent's overall performance and compliance with the  
22 terms of the delegation; and

23 (4D) redressing an action or decision of an agent which would constitute a breach of trust

1 if performed by the conservator.

2 ~~————(c2)~~ A guardian who complies with subsections ~~(b1)~~ is not liable to the protected  
3 minor or to the estate for the decisions or actions of the agent to whom a function was delegated.

4 ~~(de)~~ In performing a delegated function, an agent shall exercise reasonable care to  
5 comply with the terms of the delegation and reasonable care in the performance of delegated  
6 powers.

7 ~~(ed)~~ By accepting a delegation from a parent or guardian of a minor subject to the law of  
8 this state, an agent submits to the jurisdiction of the courts of this state.

9 ~~(f) A parent or guardian may revoke a delegation of powers at any time.~~

10 **SECTION 210. COMPENSATION, RIGHTS, AND IMMUNITIES OF**  
11 **GUARDIAN OF ~~A~~ PROTECTED MINOR; LIMITATIONS.**

12 (a) A guardian is entitled to reasonable compensation for services as guardian and to  
13 reimbursement for room, board, and clothing provided by the guardian to the protected minor,  
14 but only as approved by the court. If a conservator, other than the guardian or a person who is  
15 affiliated with the guardian, has been appointed for the estate of the protected minor, reasonable  
16 compensation and reimbursement to the guardian may be approved and paid by the conservator  
17 without order of the court. In determining the reasonableness of the guardian's compensation,  
18 the court or conservator shall consider:

- 19 (1) the necessity and quality of the services provided;  
20 (2) the guardian's experience, training, professional standing, and skills;  
21 (3) the difficulty of tasks performed, including the degree of skill and care required;  
22 (4) the conditions and circumstances under which services were performed, including  
23 whether they were provided outside of regular business hours or under dangerous or

extraordinary conditions;

(5) the effect of those services on the protected person; and

(6) the fees customarily paid for performing like services in the community.

(b) A guardian need not use the guardian's personal funds for the protected minor's expenses. A guardian is not liable to a third person for acts of the protected minor solely by reason of the guardianship. A guardian is not liable for injury to the protected minor resulting from the negligence or act of a third person providing medical or other care, treatment, or service for the protected minor except to the extent that a parent would be liable under the circumstances.

**SECTION 211. TERMINATION OF GUARDIANSHIP OF ~~A~~ PROTECTED MINOR; OTHER PROCEEDINGS AFTER APPOINTMENT.**

(a) A guardianship of a minor terminates upon the minor's death, adoption, emancipation or attainment of majority or as ordered by the court.

(b) A ~~particular~~ guardian's appointment terminates upon the death, resignation, or removal of the ~~ea~~t guardian. A resignation of a guardian is effective when approved by the court. Termination of a guardian's appointment does not affect the guardian's liability for previous acts or the obligation to account for actions taken on behalf of the protected ~~minor~~person.

(c) A protected ~~person~~ minor or a person interested in the welfare of ~~a~~ protected ~~person~~ minor may petition for any order that is in the best interest of the protected ~~person~~ minor. The petitioner shall give notice of the hearing on the petition to the protected ~~minor~~person, if the protected ~~minor~~person has attained 12 years of age and is not the petitioner, the guardian, and any other person as ordered by the court.

1 ARTICLE 3

2 GUARDIANSHIP OF PERSONS NEEDING PROTECTION

3 SECTION 301. BASIS FOR APPOINTMENT ~~AND STATUS OF GUARDIAN.~~

4 (a) Upon petition and after notice and hearing, a court may:

5 (1) appoint a limited or full guardian for a respondent who is an adult only if it  
6 finds by clear and convincing evidence that:

7 (A) the respondent is a person in need of protection; and

8 (B) the respondent's identified needs cannot be met by less restrictive  
9 means, ~~including use of appropriate technological assistance and appropriate decision-making~~  
10 support; or

11 (2) with appropriate findings, treat the petition as one for a protective order under  
12 Section 401, enter any other appropriate order, or dismiss the proceeding.

13 (b) The court, ~~whenever feasible~~, shall grant to a guardian only those powers  
14 necessitated by the protected person's limitations and demonstrated needs and make appointive  
15 and other orders that will encourage the development of the protected person's maximum self-  
16 determination ~~reliance~~ and independence.

17 (c) For the purposes of this section, less restrictive means includes appropriate decision-  
18 making support, appropriate technological assistance, and the appointment of an agent by the  
19 respondent including an appointment of an agent under a power of attorney for health-care [made  
20 pursuant to the Uniform Health-Care Decisions Act (1993)].

21 ~~(e) The guardianship continues until terminated, without regard to the location of the~~  
22 ~~guardian or the protected person~~

**SECTION 302. ORIGINAL PETITION FOR APPOINTMENT OF GUARDIAN.**

(a) An individual or a person interested in the individual's welfare may petition for a determination ~~of~~ that the individual is a person needing protection and for the appointment of a limited or full guardian for the individual.

(b) The petition must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

(1) the respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;

(2) the name and address of the respondent's:

(A) spouse [or domestic partner], or if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months before the filing of the petition; ~~and~~

(B) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters, or if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found; and

(C) adult stepchildren whom the respondent actively parented during the stepchildren's ~~or~~ minor years and with whom the respondent had an ongoing relationship within two years of the petition; ~~and~~

(3) the name and address of any person responsible for care or custody of the respondent;

(4) the name and address of any lawyer for the respondent, representative payee, a

guardian or conservator acting for a respondent in this state or elsewhere, trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, Veterans Administration fiduciary for the respondent, or an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal; ~~legal representative of the respondent,~~

(5) the name and address of any person nominated as guardian by the respondent;

(6) the name and address of any person nominated as guardian by the respondent's parent or spouse [or domestic partner] in a will or other signed writing;

(7) the name and address of any proposed guardian and the reason why the proposed guardian should be selected;

(8) the name and address of any person known to have routinely provided the individual with decision-making support within six months of the petition;

(9) the reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged need ~~for protection~~, ~~what, if any~~, all alternative means of meeting that need ~~that have~~has been considered or implemented, if no alternative means have been tried the reason they have not been tried, and the reason why alternative means are not sufficient to meet the respondent's needs;

(10) if ~~a~~ full guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; ~~and~~

(11) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and

1 (12) the respondent's need for an interpreter or translator if the respondent needs  
2 an interpreter or translator in order to effectively communicate with the court or understand court  
3 proceedings.

4 **SECTION 303. NOTICE.**

5 (a) A copy of a petition for guardianship and notice of the hearing on the petition must  
6 be served personally on the respondent. The notice must be in at least 16-point font and must  
7 include a statement that the respondent must be physically present unless excused by the court,  
8 inform the respondent of the respondent's rights at the hearing, and include a description of the  
9 nature, purpose, and consequences of an appointment. A failure to serve the respondent with a  
10 notice substantially complying with this subsection precludes the court from granting the  
11 petition.

12 (b) In a proceeding to establish a guardianship, notice of the hearing must be given to the  
13 persons listed in the petition, and to other persons interested in the respondent's welfare to whom  
14 the court has determined that notice must be given. Failure to give notice under this subsection  
15 does not preclude the appointment of a guardian or the making of a protective order.

16 (c) Notice of the hearing on a petition for an order after appointment of a guardian,  
17 together with a copy of the petition, must be given to the protected person, the guardian, and any  
18 other person the court directs.

19 (d) A guardian shall give notice of the filing of the guardian's report, together with a  
20 copy of the report, to the protected person and any other person the court directs. The notice  
21 must be delivered or sent ~~within~~ not later than 14 days after the filing of the report.



1           **SECTION 304. PRELIMINARIES TO HEARING: ~~APPOINTMENT OF~~**  
2 **~~LAWYER; APPOINTMENT OF [VISITOR].~~**

3           (a) Upon receipt of a petition to establish a guardianship, the court shall set a date and  
4 time for hearing the petition and appoint a [visitor]. The duties and reporting requirements of the  
5 [visitor] are limited to the relief requested in the petition. The [visitor] must be an individual  
6 having training or experience in the type of incapacity alleged.

7           **(b)** ~~The [visitor] shall interview the respondent in person and in a manner that the~~  
8 ~~respondent~~ person is best able to understand:

9           (1) explain to the respondent the substance of the petition, the nature, purpose,  
10 and effect of the proceeding, the respondent's rights at the hearing, and the general powers and  
11 duties of a guardian;

12           (2) determine the respondent's views about the proposed guardian, the proposed  
13 guardian's powers and duties, and the scope and duration of the proposed guardianship;

14           (3) inform the respondent of the right to employ and consult with a lawyer at the  
15 respondent's own expense and the right to request a court-appointed lawyer; and

16           (4) inform the respondent that all costs and expenses of the proceeding, including  
17 respondent's attorney's fees, will be paid from the respondent's estate.

18           **(c)** ~~In addition to the duties imposed by subsection (b),~~ the [visitor] shall:

19           (1) interview the petitioner and the proposed guardian;

20           (2) visit the respondent's present dwelling and any dwelling in which it is  
21 reasonably believed that the respondent will live if the appointment is made;

22           (3) obtain information from any physician or other person who is known to have  
23 treated, advised, or assessed the respondent's relevant physical or mental condition; and

\_\_\_\_\_ (4) make any other investigation the court directs.

(d) The [visitor] promptly shall promptly file a report in writing with the court, which must include:

\_\_\_\_\_ (1) a recommendation as to whether a lawyer should be appointed to represent the respondent;

\_\_\_\_\_ (2) a summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance and appropriate decision-making support, and cannot manage;

\_\_\_\_\_ (3) recommendations regarding the appropriateness of guardianship, including as to whether less restrictive means of intervention are available; if a guardianship is recommended, whether it should be full or limited; and, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;

\_\_\_\_\_ (4) a statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship;

\_\_\_\_\_ (5) a statement as to whether the proposed dwelling meets the respondent's individual needs and whether the respondent has expressed a preference as to residence;

\_\_\_\_\_ (6) a recommendation as to whether a professional evaluation or further evaluation is necessary;

\_\_\_\_\_ (7) a statement as to the respondent's ability to attend a hearing at the location court is typically held;

\_\_\_\_\_ (8) a statement of the respondent's ability to participate in a hearing that identifies any technology or other forms of support that would enhance the respondent's ability to

1 participate; and

2 (9) any other matters the court directs.

3  
4 **SECTION 305. PRELIMINARIES TO HEARING: APPOINTMENT AND ROLE OF**  
5 **LAWYER**

6 **Alternative A**

7 [(a**b**) The court shall appoint a lawyer to represent the respondent in the proceeding if:

8 (1) requested by the respondent;

9 (2) recommended by the [visitor]; or

10 (3) the court determines that the respondent needs representation.

11 ~~(c) The lawyer appointed to represent the respondent in the proceedings shall be~~  
12 ~~responsible for advocating for the respondent's expressed interests to the extent that those~~  
13 ~~interests can be reasonably ascertained.]~~

14 **Alternative B**

15 [(a**b**) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer  
16 to represent the respondent in the proceeding.

17 ~~(c) The lawyer appointed to represent the respondent in the proceedings shall be~~  
18 ~~responsible for advocating for the respondent's expressed interests to the extent that those~~  
19 ~~interests can be reasonably ascertained.]~~

20 **End of Alternatives**

21 (b) The lawyer representing the respondent in a guardianship proceeding shall  
22 advocate for the respondent's wishes to the extent that those wishes are reasonably ascertainable.

1       (c) If the respondent's wishes are not reasonably ascertainable, the lawyer  
2 representing the respondent shall advocate for the result that is the least restrictive option in type,  
3 duration, and scope, consistent with the respondent's interests.

4       ~~(d) The [visitor] shall interview the respondent in person and in a manner that the person~~  
5 ~~is best able to understand:~~

6       ~~—————(1) explain to the respondent the substance of the petition, the nature, purpose,~~  
7 ~~and effect of the proceeding, the respondent's rights at the hearing, and the general powers and~~  
8 ~~duties of a guardian;~~

9       ~~—————(2) determine the respondent's views about the proposed guardian, the proposed~~  
10 ~~guardian's powers and duties, and the scope and duration of the proposed guardianship;~~

11       ~~—————(3) inform the respondent of the right to employ and consult with a lawyer at the~~  
12 ~~respondent's own expense and the right to request a court-appointed lawyer; and~~

13       ~~—————(4) inform the respondent that all costs and expenses of the proceeding, including~~  
14 ~~respondent's attorney's fees, will be paid from the respondent's estate.~~

15       ~~(e) In addition to the duties imposed by subsection (c), the [visitor] shall:~~

16       ~~—————(1) interview the petitioner and the proposed guardian;~~

17       ~~—————(2) visit the respondent's present dwelling and any dwelling in which it is~~  
18 ~~reasonably believed that the respondent will live if the appointment is made;~~

19       ~~—————(3) obtain information from any physician or other person who is known to have~~  
20 ~~treated, advised, or assessed the respondent's relevant physical or mental condition; and~~

21       ~~—————(4) make any other investigation the court directs.~~

22       ~~(f) The [visitor] shall promptly file a report in writing with the court, which must~~  
23 ~~include:~~

~~\_\_\_\_\_ (1) a recommendation as to whether a lawyer should be appointed to represent the respondent;~~

~~\_\_\_\_\_ (2) a summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance and appropriate decision-making support, and cannot manage;~~

~~\_\_\_\_\_ (3) recommendations regarding the appropriateness of guardianship, including as to whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;~~

~~\_\_\_\_\_ (4) a statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship;~~

~~\_\_\_\_\_ (5) a statement as to whether the proposed dwelling meets the respondent's individual needs and whether the respondent has expressed a preference as to residence;~~

~~\_\_\_\_\_ (6) a recommendation as to whether a professional evaluation or further evaluation is necessary;~~

~~\_\_\_\_\_ (7) a statement as to the respondent's ability to attend a hearing at the location court is typically held;~~

~~\_\_\_\_\_ (8) a statement of the respondent's ability to participate in a hearing that identifies any technology or other forms of support that would enhance the respondent's ability to participate; and~~

~~\_\_\_\_\_ (9) any other matters the court directs.~~

**Legislative Note:** Those states that enact Alternative B of subsection (b) which requires appointment of counsel for the respondent in all proceedings for appointment of a guardian should not enact Section 304(d) ~~subsection (e)~~(1).

1           **SECTION 3065. PROFESSIONAL EVALUATION.**

2           (a) At or before a hearing under this [article], the court shall order a professional  
3           evaluation of the respondent if the respondent so demands. The court shall also order a  
4           professional evaluation unless the court finds that ~~the court~~ it has sufficient information to  
5           determine the respondent's ~~needs and abilities~~ cognitive and functional abilities and limitations  
6           without such an evaluation.

7           (b) If the court orders the evaluation, the respondent must be examined by a physician,  
8           psychologist, social worker, or other individual appointed by the court who is qualified to  
9           evaluate the respondent's alleged cognitive and functional abilities and limitations ~~and~~  
10          ~~abilities~~ and who will not be advantaged or disadvantaged by a decision to grant the petition. .

11          The examiner promptly shall ~~promptly~~ file a written report with the court. Unless otherwise  
12          directed by the court, the report must contain:

13                 (1) a description of the nature, type, and extent of the respondent's specific  
14          cognitive and functional abilities and limitations ~~and abilities~~;

15                 (2) an evaluation of the respondent's mental and physical condition and, if  
16          appropriate, educational potential, adaptive behavior, and social skills;

17                 (3) a prognosis for improvement and a recommendation as to the appropriate  
18          treatment, supports, or habilitation plan; and

19                 (4) the date of any assessment or examination ~~upon~~ which the report is based.

20           **SECTION 3076. CONFIDENTIALITY OF RECORDS.** The written report of a  
21          [visitor] and any professional evaluation are confidential and must be sealed ~~upon~~ filing, but are  
22          available to:

23                 (1) the court;

(2) the respondent without limitation as to use;

(3) the petitioner, the [visitor], and the petitioner's and respondent's lawyers, for purposes of the proceeding; and

(4) other persons for such purposes as the court may order for good cause.

**SECTION 3087. PRESENCE AND RIGHTS AT HEARING.**

~~(a) Unless excused by the court for good cause, the proposed guardian shall attend the hearing.~~

(a) The respondent shall attend the hearing unless the court finds by clear and convincing evidence that:

(1) the respondent consistently or repeatedly refuses to attend the hearing after having been fully informed of the respondent's right to attend the hearing and the potential consequences of failing to do so; or

(2) ~~that~~ there is no practicable way for the respondent to attend the hearing and the respondent would have no ability to participate in the hearing even with the use of appropriate support and technological assistance ~~and support.~~ =

~~(b) Unless excused by the court for good cause, the proposed guardian shall attend the hearing.~~

(c) Where it is not reasonably feasible for the respondent to participate at the location court is typically held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or to allow the respondent to participate in the hearing ~~from offsite~~ using real-time, audio-visual technology.

(d) The respondent may be assisted in the hearing by a person or persons of the

respondent's choosing, by assistive technology, by an interpreter or translator, or by a combination of such supports. If such assistance or support would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

(e) The respondent has a right to be represented at the hearing by a lawyer of the respondent's choosing.

(ef) The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged cognitive and functional limitations and abilities, and the [visitor]; and otherwise participate in the hearing.

(gf) The hearing shall~~may~~ be closed ~~up~~ upon the request of the respondent and a showing of good cause.

(hg) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, ~~up~~ upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

#### **SECTION 30908. WHO MAY BE GUARDIAN: PRIORITIES.**

(a) Subject to subsection (c), the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority:

(1) a guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere;

(2) a person nominated as guardian by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if at the time of the nomination the respondent was able to express a preference;



1 (3) an agent appointed by the respondent under [a durable power of attorney for  
2 health care] [the Uniform Health-Care Decisions Act (1993)];

3 (4) the spouse [or domestic partner] of the respondent or an individual nominated  
4 by will or other signed writing of a deceased spouse [or domestic partner];

5 (5) an adult child of the respondent;

6 (6) a parent of the respondent, or an individual nominated by will or other signed  
7 writing of a deceased parent;

8 (7) an adult with whom the respondent has shared household responsibilities for  
9 more than six months before the filing of the petition;

10 (8) an adult stepchild~~ren~~ whom the respondent actively parented during the  
11 stepchild's~~is~~ minor years and with whom the respondent had an ongoing relationship within two  
12 years of the petition; and

13 (9) an adult who has exhibited special care and concern for the ~~person~~respondent  
14 and who is familiar with the respondent~~person~~'s values and preferences.

15 (b) With respect to persons having equal priority, the court shall select the one it  
16 considers best qualified. In determining who is best qualified, the court shall consider the  
17 potential guardian's skills and relationship with the person needing protection, the expressed  
18 wishes of the person needing protection, the extent to which the potential guardian and the  
19 person needing protection have similar values and preferences, and the likelihood that the  
20 potential guardian will be able to successfully satisfy the duties of a guardian.

21 (c) The court, acting in the best interest of the respondent, may decline to appoint a  
22 person having priority and appoint a person having a lower priority or no priority.

23 (d) An owner, operator, or employee of [a long-term-care institution] at which the

respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption.

### SECTION 31009. ORDER OF APPOINTMENT.

~~————~~ (a) A court order granting a guardianship shall clearly state:

(1) the court’s finding that the respondent’s identified needs cannot be met by less restrictive means, including use of appropriate technological assistance and appropriate decision-making support;

(2) the court’s finding that there is clear and convincing evidence that the respondent was given proper notice of the hearing on the petition; and

(3) whether or not the protected person retains the right to vote and, if not, the court’s reasons for removing that right; if no such statement is made, the protected person retains the right to vote.

(b) A court order granting a full guardianship ~~shall~~ clearly shall state the basis for granting a full guardianship and provide specific findings to support the conclusion that a limited guardianship would not meet the protected person’s functional needs;

(c) A court order granting a limited guardianship shall clearly state the powers granted to the guardian.

(d) The court shall, as part of any order granting a guardianship, identify any persons who shall subsequently be entitled to:

~~————~~ (1) ~~n~~Notice of a change in the protected person’s primary residence, ~~or~~

~~————~~ (2) ~~A copy~~ copies of the guardian’s annual reports, or ~~————~~

~~————~~ (3) ~~N~~notice of the death of the protected person or significant change in the protected person’s condition. The court shall grant the right to such notice to the spouse,

1 [domestic partner,] and adult children of the protected person unless the court determines that  
2 such notice would be contrary to the preferences or prior directions of the protected person or not  
3 in the best interest of the protected person.

4 SECTION 311. NOTIFICATION OF PROTECTED PERSON OF ORDER,  
5 RIGHTS.

6 ~~(da)~~ Not later than~~Within~~ 14 days after an appointment, a guardian shall send or deliver  
7 to the protected person and to all other persons given notice of the hearing on the petition a copy  
8 of the order of appointment, together with a notice of the right to request termination or  
9 modification.

10 (b) Not later than 30 days after an appointment, a guardian shall send or deliver to the  
11 protected person a statement of the protected person's rights. This statement shall be in at least  
12 16-point font and shall, at a minimum, notify the protected person of:

13 (1) the right to seek termination or modification of the guardianship, the right to seek  
14 removal of a guardian, and the right to obtain counsel of the protected person's choosing to  
15 represent the protected person in these matters;

16 (2) - the right to be involved in decisions affecting the protected person, including  
17 decisions about the protected person's care, residence, activities, and social interactions, to the  
18 extent reasonably possible;

19 (3) the specific right to be involved in health care decision-making to the extent  
20 reasonably feasible, and to be supported in understanding the risks and benefits of health care  
21 options where practicable;

22 (4) the right to communicate, visit, or interact with other persons, including the right to  
23 receive visitors, telephone calls, personal mail, or electronic communications, unless:

1           (A) the guardian has been specifically authorized by the court to restrict such  
2           communications, visits, or interactions,

3           (B) a protective order is in effect that limits contact between the protected person  
4           and such other persons, or

5           (C) the guardian has good cause to believe the restriction is necessary because  
6           interactions with another person poses a risk of significant physical, psychological, or  
7           financial harm to the protected person; and

8           (5) the right to a copy of the guardian's report and the guardian's plan.

9           **SECTION 3120. EMERGENCY GUARDIAN.**

10           (a) If the court finds that compliance with the procedures of this [article] will likely  
11           result in substantial harm to the respondent's health, safety, or welfare, and that no other person  
12           appears to have authority and willingness to act in the circumstances, the court, on petition by a  
13           person interested in the respondent's welfare, may appoint an emergency guardian whose  
14           authority may not exceed [60] days and who may exercise only the powers specified in the order.  
15           Immediately upon receipt of the petition for an emergency guardianship, the court shall appoint a  
16           lawyer to represent the respondent in the proceeding. Except as otherwise provided in  
17           subsection (b), reasonable notice of the time and place of a hearing on the petition must be given  
18           to the respondent and any other persons as the court directs.

19           (b) An emergency guardian may be appointed without notice to the respondent and the  
20           respondent's lawyer only if the court finds from affidavit or testimony that the respondent will be  
21           substantially harmed before a hearing on the appointment can be held. If the court appoints an  
22           emergency guardian without notice to the respondent, the respondent must be given notice of the  
23           appointment ~~within~~ not later than 48 hours after the appointment. The court shall hold a hearing

1 on the appropriateness of the appointment ~~within~~not later than [five] days after the appointment.

2 (c) Appointment of an emergency guardian, with or without notice, is not a  
3 determination that the respondent is a person needing protection.

4 (d) The court may remove an emergency guardian at any time. An emergency guardian  
5 shall make any report the court requires. In other respects, the provisions of this [act] concerning  
6 guardians apply to an emergency guardian.

7 **SECTION 31~~31~~41. TEMPORARY SUBSTITUTE GUARDIAN.**

8 (a) If the court finds that a guardian is not effectively performing the guardian's duties  
9 and that the welfare of the protected person requires immediate action, it may appoint a  
10 temporary substitute guardian for the protected person for a specified period not exceeding six  
11 months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed  
12 has the powers set forth in the previous order of appointment. The authority of any full or  
13 limited guardian previously appointed by the court is suspended as long as a temporary substitute  
14 guardian has authority. If an appointment is made without previous notice to the protected  
15 person or the affected guardian, the court, not later than~~within~~ five days after the appointment,  
16 shall inform the protected person or guardian of the appointment.

17 (b) The court may remove a temporary substitute guardian at any time. A temporary  
18 substitute guardian shall make any report the court requires. In other respects, the provisions of  
19 this [act] concerning guardians apply to a temporary substitute guardian.

20 **SECTION 31~~41~~42. DUTIES OF GUARDIAN.**

21 (a) Except as otherwise limited by the court, a guardian shall make decisions regarding  
22 the protected person's support, care, education, health, and welfare. A guardian shall promote  
23 the self-determination of the protected person and exercise authority only as necessitated by the

protected person's limitations and, to the extent possible, shall encourage the protected person to participate in decisions, act on the protected person's own behalf, and develop or regain the capacity to manage the protected person's personal affairs. A guardian at all times shall exercise reasonable care, diligence, and prudence and, when making decisions:

~~(1)~~ act in accordance with the protected person's preferences, values, and ~~expressed interests and~~ prior directions to the extent ~~those interests and directions to the extent~~ not unreasonable and actually known or reasonably ascertainable by the guardian; or, if unreasonable, unknown, or not reasonably ascertainable;

~~(2)~~ act in accordance with the protected person's best interests. In determining what is in the protected person's best interests, the guardian shall consider:

~~(1A)~~ the protected person's preferences~~expressed interests~~, values, and prior statements and actions to the extent actually known or reasonably ascertainable by the guardian;

~~(2B)~~ reasonable information received from professionals and persons who demonstrate sufficient interest in the protected person's welfare; and

~~(3C)~~ other factors that a reasonable person in the protected person's circumstances would consider, including consequences for others.

(b) A guardian shall:

(1) become or remain personally acquainted with the protected person and maintain sufficient contact, including regular visitation, with the protected person to know of the protected person's abilities, limitations, needs, opportunities, and physical and mental health;

(2) to the extent reasonably possible, involve the protected person in decisions affecting the protected person, including decisions about the protected person's care, residence, activities, and social interactions;

(3) take reasonable care of the protected person's personal effects and bring protective proceedings if necessary to protect the property of the protected person;

(4) expend money of the protected person that has been received by the guardian for the protected person's current needs for support, care, education, health, and welfare;

(5) conserve any excess money of the protected person for the protected person's future needs, but if a conservator has been appointed for the estate of the protected person, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the protected person's future needs;

(6) immediately notify the court if the protected person's condition has changed so that the protected person is capable of exercising rights previously removed; and

(7) inform the court of any change in the protected person's ~~eustodial~~ dwelling or address.

### **SECTION 3153. SCOPE OF POWERS OF GUARDIAN.**

(a) Except as otherwise limited by the court, a guardian may:

(1) apply for and receive money payable to the protected person or the protected person's guardian or custodian for the support of the protected person under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

(2) if otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the protected person, take custody of the protected person and establish the protected person's place of ~~eustodial~~ dwelling, however, the guardian must:

(A) select ~~eustodial~~ a residential placements setting that is that are consistent with the ~~expressed interests~~ preferences, values, and prior directions ~~and values~~ of the

protected person to the extent reasonably possible;

(B) in selecting among residential settings, and give priority to a residential setting that is in a location that will allow the protected person to interact with persons important to the protected person and that meets the protected person's needs in the least restrictive manner reasonably possible; unless doing so would be inconsistent with the protected person's preferences, values, or prior directions or best interests~~expressed interests and values,~~ ~~give priority to residential setting that meet the protected person's needs in the least restrictive manner reasonably possible;~~ and

(~~CB~~) within 30 days of the change, provide notice of ~~any~~ change in the ~~place of the protected person's custodial~~ dwelling to the court, the protected person, and any persons identified as entitled to such notice in the court order appointing the guardian or in a subsequent court order; ~~the notice shall include the address and nature of the new dwelling and state whether the protected person received advance notification of the change and whether the protected person objected to the change;~~

(D) absent exigent circumstances, only establish or move the protected person's place of dwelling to a nursing home or other restrictive or secure facility upon express authorization of the court; and

(~~EE~~) only establish or move the protected person's place of dwelling outside this state upon express authorization of the court;

(3) if a conservator for the estate of the protected person has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the protected person or to pay money for the benefit of the protected person;



(4) consent to medical or other care, treatment, or service for the protected person;  
provided that if:

~~———(A) the guardian involves the protected person in health-care decision-making to the extent reasonably feasible, including by encouraging and supporting the individual in understanding the risks and benefits of health care options where practicable; and~~

~~(B) the guardian defers to decisions made by pursuant to a valid power of attorney for health care [made pursuant to the Uniform Health-Care Decisions Act (1993)] of which the protected person is the principal;~~

~~(CA) where making health care decisions on behalf of the protected person, the guardian takes into consideration~~account:

(i) the risks and benefits of treatment options, and

(ii) the protected person's current and previous ~~expressed~~ wishes and values if known to the guardian or reasonably ascertainable by the guardian;

~~———(iii) the protected person's previously expressed wishes and values if known to the guardian or reasonably ascertainable by the guardian,~~

~~(B) the guardian involves the protected person in health-care decision-making to the extent reasonably feasible;~~

~~(5) consent to the marriage[ or divorce] of the protected person; and~~

~~(56)~~ to the extent reasonable, delegate to the protected person certain responsibilities for decisions affecting the protected person's well-being; and

~~(67)~~ receive the protected person's personally identifiable health-care information;

(b) The court may specifically authorize the guardian to consent to the adoption

1 of the protected person~~[, consent or deny consent to the marriage or divorce of the protected~~  
2 ~~person, or petition for divorce of the protected person]~~. In determining whether to authorize a  
3 power in this subsection, the court shall consider whether the underlying act would be in  
4 accordance with the protected person's preferences, values, and prior directions and whether the  
5 underlying act would be in the person's best interest.

6 **SECTION 31~~6~~4. DELEGATION OF POWER BY GUARDIAN.**

7 (a) A guardian, by power of attorney, may delegate to another person, any power  
8 regarding care, custody, or property of the protected person, except the power to consent to  
9 marriage, ~~or~~ adoption, or divorce. The guardian shall exercise reasonable care, skill, and caution  
10 in:

11 (1) selecting an agent;

12 (2) establishing the scope and terms of a delegation, consistent with the purposes  
13 and terms of the guardianship;

14 (3) periodically reviewing an agent's overall performance and compliance with  
15 the terms of the delegation; and

16 (4) redressing an action or decision of an agent which would constitute a breach  
17 of the guardian's duties if performed by the guardian.

18 (b) If the delegation of powers is for a period in excess of 30 days, the guardian may  
19 delegate powers only if the guardian is unavailable to act or for other good cause.

20 (c) If the delegation of powers is for a period in excess of 60 days, the guardian must file  
21 a petition with the court requesting permission to delegate powers for an extended period. The  
22 petition shall state the name and address of the agent, the duration of appointment, and the reason  
23 for the delegation. Not later than 30 days of receipt of the notice, the court shall confirm the

delegation, hold a hearing on the petition, or both.

(~~db~~) A guardian who complies with subsections (a), (b), and (c) -is not liable to the protected person or to the estate of the protected person for the decisions or actions of the agent to whom a function was delegated.

(~~ee~~) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.

(~~fd~~) By accepting a delegation from a guardian subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

(g) A guardian may revoke the delegation of powers at any time.

**SECTION 31~~7~~5. COMPENSATION, RIGHTS, AND IMMUNITIES OF  
GUARDIAN; LIMITATIONS.**

(a) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing provided to the protected person, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the protected person, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

                    (~~1~~) In determining the reasonableness of the guardian's compensation, the court or conservator shall consider:

(~~1A~~) the necessity and quality of the services provided;

(~~2B~~) the guardian's experience, training, professional standing, and skills;

(~~3C~~) the difficulty of tasks performed, including the degree of skill and care required;

(~~4D~~) the conditions and circumstances under which services were performed, including

whether they were provided outside of regular business hours or under dangerous or extraordinary conditions;

(5E) the effect of those services on the protected person; and

(6F) the fees customarily paid for performing like services in the community.

(b) A guardian need not use the guardian's personal funds for the protected person's expenses. A guardian is not liable to a third person for acts of the protected person solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the protected person is not liable for injury to the protected person resulting from the wrongful conduct of the third party.

(c) A guardian, without authorization of the court, may not revoke a power of attorney for health care [made pursuant to the Uniform Health-Care Decisions Act (1993)] of which the protected person is the principal. If a power of attorney for health care [made pursuant to the Uniform Health-Care Decisions Act (1993)] is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

(d) A guardian may not initiate the commitment of a protected person to a [mental health-care] institution except in accordance with the state's procedure for involuntary civil commitment.

(e) A guardian shall not restrict the protect person's ability to communicate, visit, or interact with other persons, including the ability to receive visitors, telephone calls, personal mail, or electronic communications, unless:

(1) specifically authorized to do so by the court,

(2) a protective order is in effect that limits contact between the protected person and such other persons, or

1           (3) the guardian has good cause to believe the restriction is necessary because  
2           interactions with another person poses a risk of significant physical, psychological, or  
3           financial harm to the protected person.

4           **SECTION 318. GUARDIAN’S PLAN.**

5           (a) Not later than 90 days after appointment, a guardian shall submit a plan to the  
6           court identifying:

7                   (1) the living arrangement, services, and supports the guardian expects to  
8                   arrange, facilitate, or continue for the protected person;

9                   (2) social or educational activities the guardian expects to facilitate on behalf  
10                  of the protected person;

11                  (3) persons, if any, with whom the protected person has a relationship and any  
12                  plans the guardian has for facilitating visits with those persons;

13                  (4) the anticipated nature and frequency of the guardian’s visits and  
14                  communication with the protected person;

15                  (5) goals for the protected person and how the guardian anticipates achieving  
16                  those goals; and

17                  (6) whether the protected person already has a plan in place and, if so,  
18                  whether the guardian’s plan is consistent with that existing plan.

19           (b) The court shall review the guardian’s plan to determine whether or not to approve  
20           it. In deciding whether to approve the plan, the court shall consider whether the plan is  
21           consistent with the duties set forth in Section 312.

22  
23  
24           (c) After the guardian’s plan is approved by the court, the guardian shall provide a copy

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1 of the guardian's plan to the protected person and such other persons as the court directs.

2 **SECTION 3196. REPORTS; MONITORING OF GUARDIANSHIP.**

3 (a) ~~Within~~ Not later than 30 days after appointment, a guardian shall report to the court  
4 in writing on the condition of the protected person and account for money and other assets in the  
5 guardian's possession or subject to the guardian's control. A guardian shall report at least  
6 annually thereafter and whenever ordered by the court. A report must state or contain:

7 (1) the current mental, physical, and social condition of the protected person;

8 (2) the living arrangements ~~for all addresses~~ of the protected person during the  
9 reporting period;

10 (3) the decision-making support, technological assistance, medical services,  
11 educational and ~~-,~~ vocational services, and other supports and services provided to the protected  
12 person and the guardian's opinion as to the adequacy of the protected person's care;

13 (4) a summary of the guardian's visits with the protected person, including the  
14 dates of those visits;

15 (5) activities on the protected person's behalf;

16 (6) ~~and~~ the extent to which the protected person has participated in decision-  
17 making;

18 (67) if the protected person is living in a [mental health-care]  
19 institution ~~institutionalized~~ or living in a facility that provides the individual with healthcare or  
20 other personal services, whether the guardian considers the institution or facility's current plan  
21 for support, care, treatment, or habilitation to be consistent with the person's preferences, values,  
22 and prior directions and in the protected person's best interest ~~and consistent with the protected~~  
23 ~~person's expressed interests and personal values;~~

1 (8) any commissions, gifts, or other benefits the guardian has received as a result  
2 of being guardian or actions taken as guardian;

3 (97) whether the guardian has deviated from the guardian's previously approved  
4 plan and, if so, the reason for that deviation;

5 (10) plans for future care and support; ~~and~~

6 (118) a recommendation as to the need for continued guardianship and any  
7 recommended changes in the scope of the ~~guardianship~~ guardianship; and

8 (12) whether the successor guardian, if any, is alive and able to serve.

9 (b) The court may appoint a [visitor] to review a report, interview the protected person or  
10 guardian, and make any other investigation the court directs.

11 (c) A copy of the guardian's report shall be provided to the protected person; and any  
12 other persons whom the court has determined ~~is~~are entitled to such reports.

13 (d) The court shall establish a system for monitoring annual reports and review such  
14 reports no less than annually in order to determine whether:

15 (1) ~~Whether~~ the report provides sufficient information to establish that the  
16 guardian has complied with ~~his or her~~ the guardian's duties;

17 (2) ~~Whether~~ the guardianship should continue; and

18 (3) ~~Whether~~ the guardian's requested fees, if any, should be approved.

19 (e) If the court determines that there is reason to believe that the guardian has not  
20 complied with the guardian's duties, the guardianship should be modified or terminated ~~not~~  
21 ~~continue~~, or the requested fees are not reasonable, the court: ~~shall~~:

22 (1) shall notify the protected person; and any other persons entitled to such  
23 notification according to the initial court order or a subsequent court order, ~~and~~

(2) shall require additional information from the guardian,

-(3) may appoint a [visitor] to interview the protected person or guardian, and  
make any other investigation the court directs, and

-(4) may hold a hearing to consider removal of the guardian, termination of the  
guardianship, a change in the powers granted to the guardian or other terms of the guardianship,  
or adjustment of fees if the court concludes that such a hearing would help the court determine  
whether the guardian has complied with the guardian's duties, whether the guardianship should  
continue, whether the scope of the guardian's powers or other terms of the guardianship should  
be modified, or whether the requested fees are reasonable, ~~or both~~.

**SECTION 32017. TERMINATION OR MODIFICATION OF GUARDIANSHIP;  
REMOVAL OF GUARDIAN.**

(a) A guardianship terminates upon the death of the protected person or upon order of the court.

(b) A protected person, ~~a~~ guardian, or person interested in the welfare of a protected person may petition for:

(1) termination of the guardianship on the ground that the person ~~no longer~~  
~~meets~~ is not a ~~the definition of~~ "person needing protection," that termination would be in the best  
interest of the protected person, or for other good cause; ~~or~~

(2) modification of a guardianship on the grounds that the extent of the protection  
or assistance previously granted is no longer appropriate or for other good cause; or

(3) removal of the guardian for failure to perform the guardian's duties or other  
good cause.

(c) The court shall engage in fact-finding and may conduct a hearing to determine



1 whether termination or modification of a guardianship or removal of a guardian is appropriate  
2 ~~upon~~:

3 (1) ~~a~~<sup>A</sup> petition of a protected person, ~~a~~ guardian, or another person interested in  
4 the protected person's welfare; or

5 (2) ~~a~~<sup>A</sup> communication from a protected person, a guardian, or another person  
6 interested in the protected person's welfare that suggests that termination or modification of the  
7 guardianship, or removal of the guardian, may be appropriate; or

8 (3) ~~a~~<sup>A</sup> report from a guardian or conservator that the protected person's functional  
9 needs have changed that suggests that termination or modification may be appropriate.

10 (d) ~~On~~<sup>Upon</sup> presentation by the petitioner of evidence establishing a prima facie case for  
11 termination, the court shall order the termination unless it is proven that continuation of the  
12 guardianship is in the best interest of the protected person and necessary to meet the protected  
13 person's needs.

14 (e) The court shall modify the powers granted to the guardian if the powers or either  
15 excessive or inadequate due to changes in the protected person's abilities or limitations, supports,  
16 or other circumstances. ~~The court shall modify the type of appointment or powers granted to the~~  
17 ~~guardian if the extent of protection or assistance previously granted is currently excessive. The~~  
18 ~~court may modify the type of appointment or powers granted to the guardian if the protected~~  
19 ~~person's capacity to provide for support, care, education, health, and welfare has so changed as~~  
20 ~~to warrant that action.~~

21 (~~f~~<sup>e</sup>) Except as otherwise ordered by the court for good cause, the court, before  
22 terminating or modifying a guardianship, shall follow the same procedures to safeguard the  
23 rights of the protected person as apply to a petition for guardianship.

1 (g) A protected person seeking to remove a guardian or to terminate or modify the terms  
2 of the person's guardianship is entitled to be represented by counsel of the protected person's  
3 choosing for that purpose. The court shall award such counsel reasonable attorney's fees for  
4 such representation ~~provided that if the underlying~~ legal services benefited the protected person  
5 or were reasonably necessary to protect the person's interests.

6 [(h) The following provisions apply in a proceeding to terminate a guardianship that is  
7 initiated by the protected person:

8 (1) The guardian may file a written report to the court regarding any matter  
9 relevant to the proceeding;

10 (2) The guardian may file a motion for instructions regarding any relevant matter,  
11 including whether the guardian may be involved in the termination proceeding;

12 (3) Except for the actions authorized in paragraphs (1) and (2) of this subsection,  
13 or as otherwise ordered by the court, the guardian may not take any action to oppose or  
14 interfere in the termination proceeding; and

15 (4) Unless ordered by the court, the guardian shall have no duty to participate in  
16 the termination proceeding.]

## 17 ARTICLE 4

### 18 CONSERVATORSHIP AND PROTECTION OF PROPERTY

#### 19 SECTION 401. ~~APPOINTMENT AND STATUS~~ BASIS FOR APPOINTMENT OF 20 CONSERVATOR; OTHER PROTECTIVE ORDER.

21 (a) ~~Upon~~On petition and after notice and hearing, the court may appoint a limited or full  
22 conservator or make any other protective order provided in this [article] in relation to the estate  
23 and affairs of:

1 (1) a minor, if the court determines that the minor owns money or property  
2 requiring management or protection that cannot otherwise be provided or has or may have  
3 business affairs that may be put at risk or prevented because of the minor's age, or that money is  
4 needed for support and education and that protection is necessary or desirable to obtain or  
5 provide money; or

6 (2) any individual, including a minor, if the court determines that, for reasons  
7 other than age:

8 (A) by clear and convincing evidence, the individual is unable to manage  
9 property and business affairs because of an impairment in the ability to receive and evaluate  
10 information or make decisions, even with the use of appropriate technological assistance and  
11 appropriate decision-making support, or because the individual is missing, detained, or unable to  
12 return to the United States; and

13 (B) by a preponderance of the evidence, the individual has property that  
14 will be wasted or dissipated unless management is provided or money is needed for the support,  
15 care, education, health, and welfare of the individual or of individuals who are entitled to the  
16 individual's support and that protection is necessary or desirable to obtain or provide money.

17 (b) The court, ~~whenever feasible~~, shall grant to a conservator only those powers  
18 necessitated by the protected person's limitations and demonstrated needs and make appointive  
19 and other orders that will encourage the development of the protected person's maximum self-  
20 ~~determination~~reliance and independence.

21 (c) The conservatorship continues until terminated, without regard to the location of the  
22 conservator or the protected person.

1           **SECTION 402. ORIGINAL PETITION FOR APPOINTMENT OR**  
2           **PROTECTIVE ORDER.**

3           (a) The following may petition for the appointment of a conservator or for any other  
4           appropriate protective order:

5                       (1) the person to be protected;

6                       (2) an individual interested in the estate, affairs, or welfare of the person to be  
7           protected, including a parent, spouse, [domestic partner,] child, grandchild, or guardian of the  
8           protected person, or custodian;

9                       (3) a custodian appointed for the protected person under the Uniform  
10           Transfers To Minors Act or custodial trustee appointed for the protected person under the  
11           Uniform Custodial Trust Act; or

12                      (43) a person who would be adversely affected by lack of effective management  
13           of the property and business affairs of the person to be protected.

14           (b) A petition under subsection (a) must set forth the petitioner's name, residence,  
15           current address if different, relationship to the respondent, and interest in the appointment or  
16           other protective order, and, to the extent known, state or contain the following with respect to the  
17           respondent and the relief requested:

18                      (1) the respondent's name, age, principal residence, current street address, and, if  
19           different, the address of the dwelling where it is proposed that the respondent will reside if the  
20           appointment is made;

21                      (2) if the petition alleges impairment in the respondent's ability to receive and  
22           evaluate information, a brief description of the nature and extent of the respondent's alleged  
23           impairment;

(3) if the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts;

(4) the name and address of the respondent's:

(A) spouse [or domestic partner] or, if the respondent has none, an adult with whom the respondent has shared household responsibilities for more than six months before the filing of the petition; ~~and~~

(B) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters or, if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found; and

(C) adult stepchildren whom the respondent actively parented during the stepchildren's ~~his~~ minor years and with whom the respondent had an ongoing relationship within two years of the petition;

(5) the name and address of the person responsible for care or custody of the respondent;

(6) the name and address of any lawyer for the respondent, representative payee, a guardian or conservator acting for a respondent in this state or elsewhere, trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, Veterans Administration fiduciary for the respondent, or an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal ~~legal representative of the respondent;~~

(7) a general statement of the respondent's property with an estimate of its value,

1 including any insurance or pension, and the source and amount of other anticipated income or  
2 receipts; and

3 (8) the reason why a conservatorship or other protective order is necessary,  
4 including a brief description of the nature and extent of the respondent's need ~~for protection~~, all  
5 ~~what, if any~~, alternative means of meeting ~~that need~~ ~~ose needs~~ that have ~~has~~ been considered or  
6 implemented, if no alternative means have been tried the reason they have not been tried, and the  
7 reason why those alternative means are insufficient to meet the respondent's needs.

8 (9) the respondent's need for an interpreter or translator if the respondent would  
9 need an interpreter or translator in order to effectively communicate with the court or  
10 understand court proceedings

11 (c) If a conservatorship is requested, the petition must also set forth to the extent known:

12 (1) the name and address of any proposed conservator and the reason why the  
13 proposed conservator should be selected;

14 (2) the name and address of any person nominated as conservator by the  
15 respondent if the respondent has attained 12 years of age; and

16 (3) the type of conservatorship requested and, if a full conservatorship, the reason  
17 why limited conservatorship is inappropriate or, if a limited conservatorship, the property to be  
18 placed under the conservator's control and any limitation on the conservator's powers and duties.

#### 19 **SECTION 403. NOTICE.**

20 (a) A copy of the petition and the notice of hearing on a petition for conservatorship or  
21 other protective order must be served personally on the respondent, but if the respondent's  
22 whereabouts is unknown or personal service cannot be made, service on the respondent must be  
23 made by [substituted service] [or] [publication]. The notice must be in at least 16--point font.

1 The notice must include a statement that the respondent must be physically present unless  
2 excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the  
3 appointment of a conservator is requested, include a description of the nature, purpose, and  
4 consequences of an appointment. A failure to serve the respondent with a notice substantially  
5 complying with this subsection precludes the court from granting the petition.

6 (b) In a proceeding to establish a conservatorship or for another protective order, notice  
7 of the hearing must be given to the persons listed in the petition, and to other persons interested  
8 in the respondent's welfare to whom the court has determined that notice must be given. Failure  
9 to give notice under this subsection does not preclude the appointment of a conservator or the  
10 making of another protective order.

11 (c) Notice of the hearing on a petition for an order after appointment of a conservator or  
12 making of another protective order, together with a copy of the petition, must be given to the  
13 protected person, if the protected person has attained 12 years of age and is not missing,  
14 detained, or unable to return to the United States, any conservator of the protected person's  
15 estate, and any other person as ordered by the court.

16 (d) A conservator shall give notice of the filing of the conservator's inventory, report, ~~or~~  
17 and plan of conservatorship, together with a copy of the inventory, report, ~~or~~ and plan of  
18 conservatorship to the protected person and any other person the court directs. The notice must  
19 be delivered or sent not later than ~~within~~ 14 days after the filing of the inventory, report, or plan  
20 of conservatorship.

#### 21 **SECTION 404. PRELIMINARIES TO HEARING ON PROPOSED** 22 **CONSERVATORSHIP FOR MINOR.**

23 (a) ~~Upon~~ On the filing of a petition to establish a conservatorship or for another

1 protective order for the reason that the respondent is a minor, the court shall set a date for  
2 hearing. If the court determines at any stage of the proceeding that the interests of the minor are  
3 or may be inadequately represented, it shall appoint a lawyer to represent the minor, giving  
4 consideration to the choice of the minor if the minor has attained 12 years of age.

5 (b) While a petition to establish a conservatorship or for another protective order is  
6 pending, after preliminary hearing and without notice to others, the court may make orders to  
7 preserve and apply the property of the minor as may be required for the support of the minor or  
8 individuals who are in fact dependent upon the minor. The court may appoint a [master] to assist  
9 in that task.

10 **SECTION 405. PRELIMINARIES TO HEARING ON PROPOSED**  
11 **CONSERVATORSHIP FOR ~~ALLEGED PERSON~~ ALLEGED TO NEED ~~NEEDING~~**  
12 **PROTECTION: ; ~~APPOINTMENT OF LAWYER~~; APPOINTMENT OF [VISITOR].**

13 (a) ~~Upon~~ On the filing of a petition for a conservatorship or other protective order for a  
14 respondent for reasons other than being a minor, the court shall set a date for hearing. The court  
15 shall appoint a [visitor] unless the petition does not request the appointment of a conservator and  
16 the respondent is represented by a lawyer. The duties and reporting requirements of the [visitor]  
17 are limited to the relief requested in the petition. The [visitor] must be an individual having  
18 training or experience in the type of incapacity alleged.

19 (be) The [visitor] shall interview the respondent in person and in a manner the  
20 respondent is best able to understand:

21 (1) explain to the respondent the substance of the petition and the nature, purpose,  
22 and effect of the proceeding;

23 (2) if the appointment of a conservator is requested, inform the respondent of the



general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;

(3) inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense, and the right to request a court-appointed lawyer; and

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate.

(c~~d~~) In addition to the duties imposed by subsection (b~~e~~), the [visitor] shall:

(1) interview the petitioner and the proposed conservator, if any; and

(2) make any other investigation the court directs.

(d~~e~~) The [visitor] ~~promptly~~ shall ~~promptly~~ file a report with the court, which must include:

(1) a recommendation as to whether a lawyer should be appointed to represent the respondent;

(2) recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;

(3) a statement of the qualifications of the proposed conservator, together with a statement ~~as to whether the respondent approves or disapproves of the proposed conservator, and~~ a statement of the powers and duties proposed or the scope of the conservatorship;

(4) a recommendation ~~as to whether~~ a professional evaluation or further

1 evaluation is necessary;

2 (5) a statement as to the respondent's ability to attend a hearing at the location  
3 court is typically held;

4 (6) a statement ~~as~~ to the respondent's ability to participate in a hearing that  
5 identifies any technology or other forms of support that would enhance the respondent's ability  
6 to participate; and

7 (7) any other matters the court directs.

8 (ef) While a petition to establish a conservatorship or for another protective order is  
9 pending, after preliminary hearing and without notice to others, the court may issue orders to  
10 preserve and apply the property of the respondent as may be required for the support of the  
11 respondent or individuals who are in fact dependent upon the respondent. The court may appoint  
12 a [master] to assist in that task.

13 **SECTION 406. PRELIMINARIES TO HEARING ON PROPOSED**  
14 **CONSERVATORSHIP FOR ALLEGED PERSON ALLEGED TO NEED**  
15 **PROTECTION: APPOINTMENT AND ROLE OF LAWYER**

16 **Alternative A**

17 **(ab)** The court shall appoint a lawyer to represent the respondent in the proceeding if:

18 (1) requested by the respondent;

19 (2) recommended by the [visitor]; or

20 (3) the court determines that the respondent needs representation.

21 ~~—— (c) The lawyer appointed to represent the respondent in the proceedings shall be~~  
22 ~~responsible for advocating for the respondent's expressed interests to the extent those interests~~  
23 ~~can be reasonably ascertained.~~

1 **Alternative B**

2 (a) Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to  
3 represent the respondent in the proceeding, regardless of the respondent's ability to pay.

4 ~~(c) The lawyer appointed to represent the respondent in the proceedings shall be~~  
5 ~~responsible for advocating for the respondent's expressed interests to the extent those interests~~  
6 ~~can be reasonably ascertained.~~

7 **End of Alternatives**

8 (b) The lawyer representing the respondent in a conservatorship proceeding shall  
9 advocate for the respondent's wishes to the extent that those wishes are reasonably ascertainable.

10 (bc) If the respondent's wishes are not reasonably ascertainable, the lawyer  
11 representing the respondent shall advocate for the result that is the least restrictive option in type,  
12 duration, and scope, consistent with the respondent's interests.

13 ~~(c) The [visitor] shall interview the respondent in person and in a manner the respondent~~  
14 ~~is best able to understand;~~

15 ~~===== (1) explain to the respondent the substance of the petition and the nature, purpose,~~  
16 ~~and effect of the proceeding;~~

17 ~~===== (2) if the appointment of a conservator is requested, inform the respondent of the~~  
18 ~~general powers and duties of a conservator and determine the respondent's views regarding the~~  
19 ~~proposed conservator, the proposed conservator's powers and duties, and the scope and duration~~  
20 ~~of the proposed conservatorship;~~

21 ~~===== (3) inform the respondent of the respondent's rights, including the right to employ~~  
22 ~~and consult with a lawyer at the respondent's own expense, and the right to request a court-~~  
23 ~~appointed lawyer; and~~

~~\_\_\_\_\_ (4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate.~~

~~\_\_\_\_\_ (d) In addition to the duties imposed by subsection (c), the [visitor] shall:~~

~~\_\_\_\_\_ (1) interview the petitioner and the proposed conservator, if any; and~~

~~\_\_\_\_\_ (2) make any other investigation the court directs.~~

~~\_\_\_\_\_ (e) The [visitor] shall promptly file a report with the court, which must include:~~

~~\_\_\_\_\_ (1) a recommendation as to whether a lawyer should be appointed to represent the respondent;~~

~~\_\_\_\_\_ (2) recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;~~

~~\_\_\_\_\_ (3) a statement of the qualifications of the proposed conservator, together with a statement as to whether the respondent approves or disapproves of the proposed conservator, and a statement of the powers and duties proposed or the scope of the conservatorship;~~

~~\_\_\_\_\_ (4) a recommendation as to whether a professional evaluation or further evaluation is necessary;~~

~~\_\_\_\_\_ (5) a statement as to the respondent's ability to attend a hearing at the location court is typically held;~~

~~\_\_\_\_\_ (6) a statement to the respondent's ability to participate in a hearing that identifies any technology or other forms of support that would enhance the respondent's ability to participate; and~~

~~\_\_\_\_\_ (7) any other matters the court directs.~~

~~(f) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent. The court may appoint a [master] to assist in that task.~~

**Legislative Note:** Those states that enact Alternative B of subsection (b) which requires appointment of counsel for the respondent in all protective proceedings should not enact Section 504(d)(1)subsection (e)(1).

**SECTION 4076. PROFESSIONAL EVALUATION.** At or before a hearing on a proposed conservatorship for a person alleged to be a person needing protection, the court shall order a professional evaluation of the respondent if the respondent so demands. The court shall also order a professional evaluation unless the court finds that the court has sufficient information to determine the respondent's needs and abilities without such ~~an~~ evaluation. If the court orders the evaluation, the respondent must be examined by a physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional limitations and abilities and who will not be advantaged or disadvantaged by a decision to grant the petition. The examiner ~~shall~~ promptly shall file a written report with the court. Unless otherwise directed by the court, the report must contain:

(1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations and abilities with regard to the management of the respondent's property and business affairs;

(2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(3) prognosis for improvement with regard to the ability to manage respondent's property

and business affairs; and

(4) the date of any assessment or examination upon which the report is based.

**SECTION 4087. CONFIDENTIALITY OF RECORDS.** The written report of a [visitor] and any professional evaluation are confidential and must be sealed upon filing, but are available to:

(1) the court;

(2) the respondent without limitation as to use;

(3) the petitioner, the [visitor], and the petitioner's and respondent's lawyers, for purposes of the proceeding; and

(4) other persons for such purposes as the court may order for good cause.

**SECTION 4098. PRESENCE AND RIGHTS AT HEARING.**

~~(a) Unless excused by the court for good cause, a proposed conservator shall attend the hearing.~~

~~(a)~~ (b) The respondent shall attend the hearing unless the court finds by clear and convincing evidence that:

(1) the respondent consistently or repeatedly refuses to attend the hearing after having been fully informed of the respondent's right to attend the hearing and the potential consequences of failing to do so, or

(2) that ~~that~~ there is no practicable way for the respondent to attend the hearing and the respondent would have no ability to participate in the hearing even with appropriate support and technological assistance ~~and support~~.

(b) (a) Unless excused by the court for good cause, a proposed conservator shall attend the hearing.

(c) Where it is not reasonably feasible for the respondent to participate at the location court is typically held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or ~~to~~ allow the respondent to participate in the hearing from ~~offsite~~ using real-time, audio-visual technology.

(d) The respondent may be assisted in the hearing by a person or persons of the respondent's choosing, by assistive technology, by an interpreter or translator, or by a combination of such supports. If such support would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

(e) The respondent has a right to be represented in the hearing by a lawyer of the respondent's choosing.

~~(f)~~ (e) The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, social worker, or other individual qualified to evaluate the alleged cognitive and functional limitations and abilities, and the [visitor], and otherwise participate in the hearing.

~~(g)~~ (f) The hearing ~~may~~ shall be closed ~~upon~~ request of the respondent and a showing of good cause.

~~(h)~~ (g) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, ~~upon~~ determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

#### **SECTION ~~41009~~. WHO MAY BE CONSERVATOR: PRIORITIES.**

(a) Except as otherwise provided in subsection (d), the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:

(1) a conservator, guardian of the estate, or other like fiduciary appointed by a court to act for the respondent~~or recognized by an appropriate court of any other jurisdiction in which the protected person resides;~~

(2) a person nominated as conservator by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if the respondent has attained 12 years of age and at the time of the nomination was able to ~~to~~ express a preference;

(3) an agent appointed by the respondent to manage the respondent's property under a durable power of attorney;

(4) the spouse [or domestic partner] of the respondent;

(5) an adult child of the respondent;

(6) a parent of the respondent;

(7) a person appointed as a trustee of a trust established by the respondent for the benefit of the respondent or the respondent's estate;

(8) an agent appointed by the respondent as a health-care agent under a power of attorney for health care [made pursuant to the Uniform Health-Care Decisions Act (1993)];

(97) an adult with whom the respondent has shared household responsibilities for more than six months before the filing of the petition;

(108) an adult stepchild~~ren~~ whom the respondent actively parented during the stepchild's~~si~~ minor years and with whom the respondent had an ongoing relationship within two years of the petition; and

(119) an adult who has exhibited special care and concern for the person and who is familiar with the person's values and preferences.

(b) A person having priority under subsection (a)(1), (4), (5), or (6) may designate in



1 writing a substitute to serve ~~instead~~ and thereby transfer the priority to the substitute.

2 (c) With respect to persons having equal priority, the court shall select the one it  
3 considers best qualified. In determining who is best qualified, the court shall consider the  
4 potential conservator's skills and relationship with the person needing protection, the likelihood  
5 that the potential conservator will be able to successfully satisfy the duties of a conservator, and  
6 the preferences, values, and prior directions~~expressed wishes~~ of the person needing protection,  
7 ~~and the likelihood that the potential conservator will be able to successfully satisfy the duties of a~~  
8 ~~conservator.~~

9 (d) The court, acting in the best interest of the protected person, may decline to appoint a  
10 person having priority and appoint a person having a lower priority or no priority.

11 (e) An owner, operator, or employee of [a long-term care institution] at which the  
12 respondent is receiving care may not be appointed as conservator unless related to the respondent  
13 by blood, marriage, or adoption.

#### 14 **SECTION 4101. ORDER OF APPOINTMENT.**

15 (a) If a proceeding is brought for the reason that the respondent is a minor, after a  
16 hearing on the petition, ~~upon~~ finding that the appointment of a conservator or other protective  
17 order is in the best interest of the minor, the court shall make an appointment or other appropriate  
18 protective order.

19 (b) If a proceeding is brought for reasons other than that the respondent is a minor, a  
20 court order granting a conservatorship shall clearly state:

21 (1) the court's finding that the respondent's identified needs cannot be met by less  
22 restrictive means, including use of appropriate technological assistance and appropriate  
23 decision-making support;

1                   (2) the court's finding that there is clear and convincing evidence that the  
2                   respondent was given proper notice of the hearing on the petition.

3                   (c**b**) If a proceeding is brought for reasons other than that the respondent is a minor, after  
4 a hearing on the petition, ~~up~~on finding that the respondent is a person needing protection, the  
5 court shall make the least restrictive order consistent with its findings. The court shall make  
6 orders necessitated by the protected person's limitations and demonstrated needs, including  
7 appointive and other orders that will encourage the development of maximum self-~~reliance~~  
8 determination and independence of the protected person.

9                   (c) The court shall, as part of any order granting a conservatorship, identify any persons  
10 who shall subsequently be entitled to:

11                   (1) ~~b~~Notice of a sale or relinquishment of the protected person's primary  
12 residence;

13                   (2) a copy ~~Copies~~ of the conservator's annual report and plan; and

14                   (3) ~~n~~Notice of the death of the protected person or significant change in the  
15 protected person's condition.

16 **SECTION 412. NOTIFICATION OF PROTECTED PERSON OF ORDER, RIGHTS.**

17 ~~——~~(~~a~~**d**) Not later than~~Within~~ 14 days after an appointment, the conservator shall deliver or  
18 send a copy of the order of appointment, together with a statement of the right to ~~seek~~request  
19 termination or modification, to the protected person, if the protected person has attained 12 years  
20 of age and is not missing, detained, or unable to return to the United States, and to all other  
21 persons given notice of the petition.

22                   **(b) Not later than 30 days after an appointment, a guardian shall send or deliver to the**  
23 **protected person a statement of the protected person's rights. This statement shall be in at least**

16-point font and shall, at a minimum, notify the protected person of:

(1) the right to seek termination or modification of the conservatorship, the right to seek removal of a conservator, and the right to obtain counsel of the protected person's choosing to represent the protected person in these matters;

(2) the right to participate in decision-making to the extent possible; and

(3) the right to a copy of the conservator's inventory, report, and plan of conservatorship.

### **SECTION 41~~13~~<sup>13</sup>. POWERS OF COURT.**

(a) After hearing and ~~up~~on determining that a basis for a conservatorship or other protective order exists, the court has the following powers, which may be exercised directly or through a conservator:

(1) with respect to a minor for whom an appointment has been made for reasons of age, all the powers over the estate and business affairs of the minor which may be necessary for the best interest of the minor and members of the minor's immediate family; and

(2) with respect to an adult, or to a minor for whom an appointment has been made for reasons other than age, for the benefit of the protected person and individuals who are in fact dependent on the protected person for support, all the powers over the estate and business affairs of the protected person which the person could exercise if the person were an adult, present, and not under conservatorship or other protective order.

(b) Subject to Section 108~~10~~<sup>10</sup> requiring endorsement of limitations on the letters of office, the court may limit at any time the powers of a conservator otherwise conferred and may remove or modify any limitation.

### **SECTION 41~~42~~<sup>42</sup>. POWERS REQUIRING COURT APPROVAL.**

(a) After notice to interested persons and ~~up~~on express authorization of the court, a

conservator may:

(1) make gifts, except as otherwise provided in Section 4272(b);

(2) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(3) exercise or release a power of appointment;

(4) create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;

(5) exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value;

(6) exercise any right to an elective share in the estate of the protected person's deceased spouse [or domestic partner] and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and

(7) make, amend, or revoke the protected person's will.

(b) A conservator, in making, amending, or revoking the protected person's will, shall comply with [the state's statute for executing wills].

(c) The court, in exercising or ~~in~~-approving a conservator's exercise of the powers listed in subsection (a), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The court shall also consider:

(1) the financial needs of the protected person and the needs of individuals who are ~~in fact~~ dependent on the protected person for support and the interest of creditors;

(2) possible reduction of income, estate, inheritance, or other tax liabilities;

- (3) eligibility for governmental assistance;
- (4) the protected person's previous pattern of giving or level of support;
- (5) the existing estate plan;
- (6) the protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and
- (7) any other factors the court considers relevant.

(d) Without authorization of the court, a conservator may not revoke or amend a durable power of attorney of which the protected person is the principal. If a durable power of attorney is in effect, absent a court order to the contrary, a decision of the agent takes precedence over that of a conservator.

## **SECTION 4135. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS.**

(a) If the court finds that the respondent is a person needing protection, the court, without appointing a conservator, may:

(1) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:

- (A) payment, delivery, deposit, or retention of funds or property;
- (B) sale, mortgage, lease, or other transfer of property;
- (C) purchase of an annuity;
- (D) making a contract for life care, deposit contract, or -contract for training and education; or
- (E) addition to or establishment of a suitable trust[, including a trust

created under the Uniform Custodial Trust Act (1987)]; and

(2) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.

(b) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in Section 4124(c).

(c) The court may appoint a [master] to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The [master] has the authority conferred by the order and shall serve until discharged by order after report to the court.

**SECTION 4164. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.**

(a) A protected person or a person interested in the welfare of a protected person may file a petition in the appointing court for an order:

- (1) requiring bond or collateral or additional bond or collateral, or reducing bond;
- (2) requiring an accounting for the administration of the protected person's estate;
- (3) directing distribution;
- (4) removing the conservator and appointing a temporary or successor conservator;
- (5) modifying the type of appointment or powers granted to the conservator if the extent of protection or management previously granted is currently excessive or insufficient or the protected person's ability to manage the estate and business affairs has so changed as to warrant the action; or

(6) granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning fiduciary

1 responsibility.

2 (c) ~~Upon~~On notice and hearing the petition, the court may give appropriate instructions  
3 and make any appropriate order.

4 **SECTION 41~~7~~5. BOND; ALTERNATIVE ASSET PROTECTION**  
5 **ARRANGMENTS.**

6 (a) The court shall require a conservator to furnish a bond with sureties as it may specify,  
7 or require an alternative asset protection arrangement, conditioned ~~up~~on faithful discharge of all  
8 duties of the conservatorship according to law. The court may waive this requirement only if the  
9 court finds that such a bond or arrangement is not necessary to protect the interests of the  
10 protected person. The court may not waive this requirement if the conservator is in the business  
11 of serving as a conservator and is being paid for this service.

12 (b) Unless otherwise directed by the court, the bond must be in the amount of the  
13 aggregate capital value of the property of the estate in the conservator's control, plus one year's  
14 estimated income, and minus the value of assets deposited under arrangements requiring an order  
15 of the court for their removal and the value of any real property that the fiduciary, by express  
16 limitation, lacks power to sell or convey without court authorization. The court, in place of  
17 sureties on a bond, may accept collateral for the performance of the bond, including a pledge of  
18 securities or a mortgage of real property.

19 **SECTION 41~~8~~6. TERMS AND REQUIREMENTS OF BOND.**

20 (a) The following rules apply to ~~the~~any bond required under Section 416:

21 (1) Except as otherwise provided by the terms of the bond, sureties and the  
22 conservator are jointly and severally liable.

23 (2) By executing the bond of a conservator, a surety submits to the jurisdiction of

1 the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary  
2 duties of the conservator in which the surety is named as a party. Notice of any proceeding must  
3 be sent or delivered to the surety at the address shown in the court records at the place where the  
4 bond is filed and to any other address then known to the petitioner.

5 (3) On petition of a successor conservator or any interested person, a proceeding  
6 may be brought against a surety for breach of the obligation of the bond of the conservator.

7 (4) The bond of the conservator may be proceeded against until liability under the  
8 bond is exhausted.

9 (b) A proceeding may not be brought against a surety on any matter as to which an  
10 action or proceeding against the primary obligor is barred.

11 **SECTION 4197. COMPENSATION OF CONSERVATOR.** A conservator is entitled  
12 to reasonable compensation from the protected person's estate. In determining the  
13 reasonableness of compensation to be paid for services performed by a conservator, the court  
14 shall consider:

- 15 (1~~a~~) the necessity and quality of the services provided;  
16 (2~~b~~) the conservator's experience, training, professional standing, and skills;  
17 (3~~e~~) the difficulty of tasks performed, including the degree of skill and care required;  
18 (4~~d~~) the conditions and circumstances under which services were performed, including  
19 whether they were provided outside of regular business hours or under dangerous or  
20 extraordinary conditions;  
21 (5~~e~~) the effect of those services on the protected person; ~~and~~  
22 (6~~f~~) the fees customarily paid for performing like services in the community; and  
23 (7~~g~~) the extent to which the services provided were or were not consistent with the



conservator's plan.

**SECTION 42018. GENERAL DUTIES OF CONSERVATOR; PLAN.**

(a) A conservator, in relation to powers conferred by this [article] or implicit in the title acquired by virtue of the proceeding, is a fiduciary and shall observe the standards of care applicable to a trustee.

(b) A conservator shall promote the self-determination of the protected person and exercise authority only as necessitated by the protected person's limitations and, to the extent possible, shall encourage the protected person to participate in decisions, act on the protected person's own behalf, and develop or regain the capacity to manage the protected person's personal affairs. A conservator at all times shall exercise reasonable care, diligence, and prudence and, when making decisions:

~~(1)~~ act in accordance with the protected person's preferences, values, and expressed interests and prior directions to the extent ~~those interests and directions to the extent~~ not unreasonable and actually known or reasonably ascertainable by the conservator; or, if unreasonable, unknown, or not reasonably ascertainable;

~~(2)~~ act in accordance with the protected person's best interests. In determining what is in the protected person's best interests, the conservator shall consider:

~~(1A)~~ the protected person's ~~expressed interest~~preferences, values, and prior statements and actions to the extent actually known or reasonably ascertainable by the conservator;

~~(2B)~~ reasonable information received from professionals and persons who demonstrate sufficient interest in the protected person's welfare; and

~~(3C)~~ other factors that a reasonable person in the protected person's circumstances would consider, including consequences for others.

1 (c) if acting in accordance with the protected person's preferences, values, and prior  
2 directions would fail to preserve the resources needed to maintain the protected person's  
3 wellbeing and lifestyle, the conservator may act to preserve such resources if doing so would be  
4 in the protected person's best interest.

5 ———(d) In investing an estate, selecting assets of the estate for distribution, and  
6 invoking powers of revocation or withdrawal available for the use and benefit of the protected  
7 person and exercisable by the conservator, a conservator shall take into account any estate plan  
8 of the person known to the conservator and may examine the will and any other donative,  
9 nominative, or other appointive instrument of the person.

10 (ee) ~~Within~~ Not later than 60 days after appointment, a conservator shall file with the  
11 appointing court a plan for protecting, managing, expending, and distributing the assets of the  
12 protected person's estate. The plan must be based on the actual needs of the person and take into  
13 account~~consideration~~ the best interest of the person as well as the protected person's preferences,  
14 values, and prior directions ~~expressed interests~~ to the extent known to the conservator or  
15 reasonably ascertainable by conservator. The conservator shall include in the plan steps to  
16 develop or restore the person's ability to manage the person's property, how the conservator will  
17 involve the person in decisions about property management, an estimate of the duration of the  
18 conservatorship, and projections of resources and expenses, ~~and resources~~ including projections  
19 of any fees the conservator anticipates charging to the person.

20 (f) The court shall review the conservator's plan to determine whether or not to  
21 approve it. In deciding whether to approve the plan, the court shall consider whether the plan is  
22 consistent with the conservator's duties set forth in this Section.

23 (g) After the conservator's plan is approved by the court, the conservator shall provide a

1 copy of the conservator's plan to the protected person and such other persons as the court directs.

2 ~~===== (d) In investing an estate, selecting assets of the estate for distribution, and invoking~~  
3 ~~powers of revocation or withdrawal available for the use and benefit of the protected person and~~  
4 ~~exercisable by the conservator, a conservator shall take into account any estate plan of the person~~  
5 ~~known to the conservator and may examine the will and any other donative, nominative, or other~~  
6 ~~appointive instrument of the person.~~

7 **SECTION 4219. INVENTORY; RECORDS.**

8 (a) ~~Within~~ Not later than 60 days after appointment, a conservator shall prepare and file  
9 with the appointing court a detailed inventory of the estate subject to the conservatorship,  
10 together with an oath or affirmation that the inventory is believed to be complete and accurate as  
11 far as information permits.

12 (b) A conservator shall keep records of the administration of the estate and make them  
13 available for examination on reasonable request of the protected person or an interested person.

14 **SECTION 4220. POWERS OF CONSERVATOR IN ADMINISTRATION.**

15 (a) Except as otherwise qualified or limited by the court in its order of appointment and  
16 endorsed on the letters, a conservator has all of the powers granted in this section and any  
17 additional powers granted by law to a trustee in this state.

18 (b) A conservator, acting reasonably and in an effort to accomplish the purpose of the  
19 appointment, and without further court authorization or confirmation, may:

20 (1) collect, hold, and retain assets of the estate, including assets in which the  
21 conservator has a personal interest and real property in another state, until the conservator  
22 considers that disposition of an asset should be made;

23 (2) receive additions to the estate;

- 1 (3) continue or participate in the operation of any business or other enterprise;
- 2 (4) acquire an undivided interest in an asset of the estate in which the conservator,
- 3 in any fiduciary capacity, holds an undivided interest;
- 4 (5) invest assets of the estate as though the conservator were a trustee;
- 5 (6) deposit money of the estate in a financial institution, including one operated
- 6 by the conservator;
- 7 (7) acquire or dispose of an asset of the estate, including real property in another
- 8 state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange,
- 9 partition, change the character of, or abandon an asset of the estate;
- 10 (8) make ordinary or extraordinary repairs or alterations in buildings or other
- 11 structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- 12 (9) subdivide, develop, or dedicate land to public use, make or obtain the vacation
- 13 of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving
- 14 or receiving considerations, and dedicate easements to public use without consideration;
- 15 (10) enter for any purpose into a lease as lessor or lessee, with or without option
- 16 to purchase or renew, for a term within or extending beyond the term of the conservatorship;
- 17 (11) enter into a lease or arrangement for exploration and removal of minerals or
- 18 other natural resources or enter into a pooling or unitization agreement;
- 19 (12) grant an option involving disposition of an asset of the estate and take an
- 20 option for the acquisition of any asset;
- 21 (13) vote a security, in person or by general or limited proxy;
- 22 (14) pay calls, assessments, and any other sums chargeable or accruing against or
- 23 on account of securities;

1                   (15) sell or exercise stock subscription or conversion rights;

2                   (16) consent, directly or through a committee or other agent, to the reorganization,

3 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

4                   (17) hold a security in the name of a nominee or in other form without disclosure

5 of the conservatorship so that title to the security may pass by delivery;

6                   (18) insure the assets of the estate against damage or loss and the conservator

7 against liability with respect to a third person;

8                   (19) borrow money, with or without security, to be repaid from the estate or

9 otherwise and advance money for the protection of the estate or the protected person and for all

10 expenses, losses, and liability sustained in the administration of the estate or because of the

11 holding or ownership of any assets, for which the conservator has a lien on the estate as against

12 the protected person for advances so made;

13                   (20) pay or contest any claim, settle a claim by or against the estate or the

14 protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any

15 claim belonging to the estate to the extent the claim is uncollectible;

16                   (21) pay taxes, assessments, compensation of the conservator and any guardian,

17 and other expenses incurred in the collection, care, administration, and protection of the estate;

18                   (22) allocate items of income or expense to income or principal of the estate, as

19 provided by other law, including creation of reserves out of income for depreciation,

20 obsolescence, or amortization or for depletion of minerals or other natural resources;

21                   (23) pay any sum distributable to a protected person or individual who is in fact

22 dependent on the protected person by paying the sum to the distributee or by paying the sum for

23 the use of the distributee:

(A) to the guardian of the distributee;

(B) to a distributee's custodian under [the Uniform Transfers to Minors Act (1983/1986)] or custodial trustee under [the Uniform Custodial Trust Act (1987)]; or

(C) if there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;

(24) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties;

and

(25) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

#### **SECTION 4231. DELEGATION BY CONSERVATOR.**

(a) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the performance of functions that a prudent trustee of comparable skills may delegate under similar circumstances.

(b) The conservator shall exercise reasonable care, skill, and caution in:

- (1) selecting an agent;
- (2) establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;
- (3) periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and
- (4) redressing an action or decision of an agent which would constitute a breach of fiduciary duties~~trust~~ if performed by the conservator.

(c) A conservator who complies with subsections (a) and (b) is not liable to the protected

1 person or to the estate for the decisions or actions of the agent to whom a function was delegated.

2 (d) In performing a delegated function, an agent shall exercise reasonable care to comply  
3 with the terms of the delegation and reasonable care in the performance of delegated powers.

4 (e) By accepting a delegation from a conservator subject to the law of this state, an agent  
5 submits to the jurisdiction of the courts of this state.

6 (f) A conservator may revoke the delegation of powers at any time.

7 **SECTION 4242. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.**

8 (a) Unless otherwise specified in the order of appointment and endorsed on the letters of  
9 appointment or contrary to the plan filed pursuant to Section 4198, a conservator may expend or  
10 distribute income or principal of the estate of the protected person without further court  
11 authorization or confirmation for the support, care, education, health, and welfare of the  
12 protected person and individuals who are in fact dependent on the protected person, including the  
13 payment of child or spousal support, in accordance with the following rules:

14 (1) A conservator shall consider recommendations relating to the appropriate  
15 standard of support, care, education, health, and welfare for the protected person or an individual  
16 who is in fact dependent on the protected person made by a guardian, if any, and, if the protected  
17 person is a minor, the conservator shall consider recommendations made by a parent.

18 (2) A conservator may not be surcharged for money paid to persons furnishing  
19 support, care, education, or benefit to a protected person, or an individual who is in fact  
20 dependent on the protected person, in accordance with the recommendations of a parent or  
21 guardian of the protected person unless the conservator knows that the parent or guardian derives  
22 personal financial benefit therefrom, including relief from any personal duty of support, or the  
23 recommendations are not in the best interest of the protected person.

1 (3) In making distributions under this subsection, the conservator shall consider:

2 (A) the size of the estate, the estimated duration of the conservatorship,  
3 and the likelihood that the protected person, at some future time, may be fully self-sufficient and  
4 able to manage business affairs and the estate;

5 (B) the accustomed standard of living of the protected person and  
6 individuals who are in fact dependent on the protected person; ~~and~~

7 (C) other money or sources used for the support of the protected person;  
8 ~~and-~~

9 (D) the protected person's ~~preferences and values~~~~expressed interests and~~  
10 ~~personal values.~~

11 (4) Money expended under this subsection may be paid by the conservator to any  
12 person, including the protected person, as reimbursement for expenditures that the conservator  
13 might have made, or in advance for services to be rendered to the protected person if it is  
14 reasonable to expect the services will be performed and advance payments are customary or  
15 reasonably necessary under the circumstances.

16 (b) If the estate is ample to provide for the distributions authorized by subsection (a), a  
17 conservator for a protected person other than a minor may make gifts that the protected person  
18 might have been expected to make, in amounts that do not exceed in the aggregate for any  
19 calendar year 20 percent of the income of the estate in that year.

20 **SECTION 42~~53~~. REPORTS; APPOINTMENT OF [VISITOR]; MONITORING.**

21 (a) A conservator shall report to the court for administration of the estate annually unless  
22 the court otherwise directs, upon resignation or removal, upon termination of the  
23 conservatorship, and at other times as the court directs. An order, after notice and hearing,



1 allowing an intermediate report of a conservator adjudicates liabilities concerning the matters  
2 adequately disclosed in the accounting. An order, after notice and hearing, allowing a final  
3 report adjudicates all previously unsettled liabilities relating to the conservatorship.

4 (b) A report must state or contain:

5 (1) a list of the assets of the estate under the conservator's control and a list of the  
6 receipts, disbursements, and distributions during the period for which the report is made;

7 (2) a list of the services provided to the protected person; ~~and~~

8 (3) whether the conservator has deviated for the conservator's previously  
9 approved plan and, if so, the reason for that deviation;

10 ~~(43)~~ any recommended changes in the plan for the conservatorship as well as a  
11 recommendation as to the continued need for conservatorship and any recommended changes in  
12 the scope of the conservatorship; ~~;~~

13 ~~(54)~~ to the extent feasible, copies of the most recent reasonably available financial  
14 statements evidencing the status of the protected person's bank accounts, investment accounts,  
15 and mortgage~~(s)~~ or other debts;

16 (6) any commissions, gifts, or other benefits the conservator has received as a  
17 result of being conservator or actions taken as conservator; and

18 (7) whether the successor conservator, if any, is alive and able to serve.~~;~~

19 (c) The court may appoint a [visitor] to review a report or plan, interview the protected  
20 person or conservator, and make any other investigation the court directs. In connection with a  
21 report, the court may order a conservator to submit the assets of the estate to an appropriate  
22 examination to be made in a manner the court directs.

23 (d) A copy of the conservators's report shall be provided to the protected person, and any

1 other persons entitled to such reports as a result of the initial or subsequent court order.

2 (e) The court shall establish a system for monitoring a conservator's annual reports and  
3 plans, and shall review such reports and plans no less than annually in order to determine  
4 whether:

5 (1) ~~Whether~~ the report and plan provide sufficient information to establish that the  
6 conservator has complied with ~~his or her~~ the conservator's duties;

7 (2) ~~Whether~~ the conservatorship should continue; and

8 (3) ~~Whether~~ the conservator's requested fees, if any, should be approved.

9 (f) If the court determines that there is reason to believe that the conservator has not  
10 complied with the conservator's duties, the conservatorship should not continue, or the requested  
11 fees are not reasonable, the court: ~~shall~~

12 (1) shall notify the conservator, the protected person, and any other persons  
13 entitled to such notification according to the initial court order or subsequent court order;

14 (2) shall require additional information from the conservator,

15 (3) may appoint a [visitor] to interview the protected person or conservator, and  
16 make any other investigation the court directs, and

17 (4) may hold a hearing to consider removal of the conservator, termination of the  
18 conservatorship, a change in the powers granted to the conservator or other terms of the  
19 conservatorship, or adjustment of fees if the court concludes that such a hearing would help the  
20 court determine whether the conservator has complied with the conservator's duties, whether the  
21 conservatorship should continue, whether the scope of the conservator's powers or other terms of  
22 the conservatorship should be modified, or whether the requested fees are reasonable.

23 ~~demand that the conservator appear in court, or both.~~

1           **SECTION 4264. TITLE BY APPOINTMENT.**

2           (a) The appointment of a conservator vests title in the conservator as trustee to all  
3 property of the protected person, or to the part thereof specified in the order, held at the time of  
4 appointment or thereafter acquired. An order vesting title in the conservator to only a part of the  
5 property of the protected person creates a conservatorship limited to assets specified in the order.

6           (b) Letters of conservatorship are evidence of vesting title of the protected person's  
7 assets in the conservator. An order terminating a conservatorship transfers title to assets  
8 remaining subject to the conservatorship, including any described in the order, to the formerly  
9 protected person or the person's successors.

10          (c) Subject to the requirements of other statutes governing the filing or recordation of  
11 documents of title to land or other property, letters of conservatorship and orders terminating  
12 conservatorships may be filed or recorded to give notice of title as between the conservator and  
13 the protected person.

14           **SECTION 4275. PROTECTED PERSON'S INTEREST INALIENABLE.**

15          (a) Except as otherwise provided in subsections (c) and (d), the interest of a protected  
16 person in property vested in a conservator is not transferrable or assignable by the protected  
17 person. An attempted transfer or assignment by the protected person, although ineffective to  
18 affect property rights, may give rise to a claim against the protected person for restitution or  
19 damages which, subject to presentation and allowance, may be satisfied as provided in Section  
20 429.

21          (b) Property vested in a conservator by appointment and the interest of the protected  
22 person in that property are not subject to levy, garnishment, or similar process for claims against  
23 the protected person unless allowed under Section 429.

(c) A person without knowledge of the conservatorship who in good faith and for ~~security or substantially equivalent~~ value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession, is protected as if the protected person or transferee had valid title.

(d) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided in other law.

**SECTION 42~~36~~. SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING CONFLICT OF INTEREST.** Any transaction involving the conservatorship estate which is affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, the spouse, [domestic partner,] descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

**SECTION 42~~27~~. PROTECTION OF PERSON DEALING WITH CONSERVATOR.**

(a) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order under Section ~~410 or 411~~ or 412 is protected as though the conservator properly exercised the power. That a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters as provided in Section ~~10810~~ are effective as to third persons. A person who pays or delivers

assets to a conservator is not responsible for their proper application.

(b) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

#### **SECTION 43028. DEATH OF PROTECTED PERSON.**

[(a)] -If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the protected person which may have come into the conservator's possession, inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it.

[(b)] -If a personal representative has not been appointed within 40 days after the death of a protected person and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative in order to administer and distribute the decedent's estate. ~~Upon~~ On application for an order conferring ~~upon~~ the conservator the powers of a personal representative, after notice given by the conservator to any person nominated as personal representative by any will of which the applicant is aware, the court may grant the application ~~upon~~ determining that there is no objection and endorse the letters of conservatorship to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative.

(c) The issuance of an order under this section has the effect of an order of appointment of a personal representative [as provided in Section 3-308 and Parts 6 through 10 of Article III of

the Uniform Probate Code]. However, the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without retransfer to the conservator as personal representative.]

#### **SECTION ~~431~~29. PRESENTATION AND ALLOWANCE OF CLAIMS.**

(a) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship ~~upon~~ their presentation and allowance in accordance with the priorities stated in subsection (d). A claimant may present a claim by:

(1) sending or delivering to the conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(2) filing a written statement of the claim, in a form acceptable to the court, with the clerk of court and sending or delivering a copy of the statement to the conservator.

(b) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court, whichever first occurs. A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant ~~within~~ not later than 60 days after its presentation. The conservator before payment may change an allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations that has not already expired relating to the claim until 30 days after its disallowance.

(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, ~~upon~~ on due proof, procure an order for its allowance, payment, or security by encumbering assets of the estate. If a

1 proceeding is pending against a protected person at the time of appointment of a conservator or is  
2 initiated against the protected person thereafter, the moving party shall give to the conservator  
3 notice of any proceeding that could result in creating a claim against the estate.

4 (d) If it appears that the estate is likely to be exhausted before all existing claims are  
5 paid, the conservator shall distribute the estate in money or in kind in payment of claims in the  
6 following order:

7 (1) costs and expenses of administration;

8 (2) claims of the federal or state government having priority under other law;

9 (3) claims incurred by the conservator for support, care, education, health, and  
10 welfare previously provided to the protected person or individuals who are in fact dependent on  
11 the protected person;

12 (4) claims arising before the conservatorship; and

13 (5) all other claims.

14 (e) Preference may not be given in the payment of a claim over any other claim of the  
15 same class, and a claim due and payable may not be preferred over a claim not due.

16 (f) If assets of the conservatorship are adequate to meet all existing claims, the court,  
17 acting in the best interest of the protected person, may order the conservator to grant a security  
18 interest in the conservatorship estate for payment of any or all claims at a future date.

19 **SECTION 4329. PERSONAL LIABILITY OF CONSERVATOR.**

20 (a) Except as otherwise agreed, a conservator is not personally liable on a contract  
21 properly entered into in a fiduciary capacity in the course of administration of the estate unless  
22 the conservator fails to reveal in the contract the representative capacity and identify the estate.

23 (b) A conservator is personally liable for obligations arising from ownership or control

1 of property of the estate or for other acts or omissions occurring in the course of administration  
2 of the estate only if personally at fault.

3 (c) Claims based on contracts entered into by a conservator in a fiduciary capacity,  
4 obligations arising from ownership or control of the estate, and claims based on torts committed  
5 in the course of administration of the estate may be asserted against the estate by proceeding  
6 against the conservator in a fiduciary capacity, whether or not the conservator is personally liable  
7 therefor.

8 (d) A question of liability between the estate and the conservator personally may be  
9 determined in a proceeding for accounting, surcharge, or indemnification, or in another  
10 appropriate proceeding or action.

11 [(e) A conservator is not personally liable for any environmental condition on or injury  
12 resulting from any environmental condition on land solely by reason of an acquisition of title  
13 under Section ~~421~~424.]

14 **SECTION 4331. TERMINATION OR MODIFICATION OF**  
15 **CONSERVATORSHIP; REMOVAL OF CONSERVATOR.**

16 (a) A conservatorship terminates ~~upon~~ the death of the protected person or ~~upon~~ order of  
17 the court. Unless created for reasons other than that the protected person is a minor, a  
18 conservatorship created for a minor also terminates when the protected person attains majority or  
19 is emancipated.

20 ~~—————(1) Upon~~On the death of a protected person, the conservator shall conclude the  
21 administration of the estate by distribution to the person's successors. The conservator shall file  
22 a final report and petition for discharge ~~within not later than~~ [30] days after distribution.

23 (b) A ~~particular~~ conservator's appointment terminates ~~upon~~ the death, resignation, or



1 removal of that ~~guardian~~conservator. A resignation of a conservator is effective when approved  
2 by the court. Termination of a conservator's appointment does not affect the conservator's  
3 liability for previous acts or the obligation to account for the money or other assets of the  
4 protected person.

5 . (c) A protected person, conservator, or person interested in the welfare of a protected  
6 person may petition for:

7 (1) termination of the conservatorship~~removal of a conservator~~ on the grounds  
8 that the person is not a ~~no longer meets the definition of~~ "person needing protection," that  
9 removal would be in the best interest of the protected person, or for other good cause;

10 (2) modification of the conservatorship on the grounds that the extent of  
11 protection or assistance previously granted is no longer appropriate of for other good  
12 cause;

13 (3) removal of the conservator for failure to perform the conservator's duties or  
14 other good cause or on the grounds that the conservator wishes to resign; or

15 (4) appointment of a successor conservator.

16 ~~A conservator may petition for permission to resign. A petition for removal or~~  
17 ~~permission to resign may include a request for appointment of a successor conservator.~~

18 ~~(d) The court shall terminate the conservatorship if the protected person no longer needs~~  
19 ~~the assistance or protection of a conservator. Termination of the conservatorship does not affect~~  
20 ~~a conservator's liability for previous acts or the obligation to account for funds and assets of the~~  
21 ~~protected person.~~

22 (de) The court shall engage in fact-finding to determine whether termination or  
23 modification of a conservatorship or removal of a conservator is appropriate ~~upon~~:

(1) ~~a~~A petition of a protected person, ~~a~~conservator, or another person interested in the protected person's welfare; ~~or~~

(2) ~~a~~A communication from a protected person, ~~a~~conservator, or another person interested in the protected person's welfare that gives rise to a reasonable suspicion that termination or modification of the conservatorship, or removal of the conservator, is appropriate; or

(3) ~~a~~A report from a guardian or conservator that the protected person's functional needs have changed that gives rise to a reasonable suspicion that termination or modification is appropriate.

~~(e)~~ On presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order termination unless it is proven that the continuation of the conservatorship is in the best interest of the protected person and necessary to meet the protected person's needs. The court shall terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator. Termination of the conservatorship does not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.

~~(f)~~ The court shall modify the powers granted to the conservator if the powers or either excessive or inadequate due to changes in the protected person's abilities or limitations, supports, or other circumstances.

~~(g)~~ Except as otherwise ordered by the court for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for conservatorship. ~~Upon the establishment of a prima facie case for termination, the court shall order termination unless it is proved that continuation~~

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1 ~~of the conservatorship is in the best interest of the protected person.~~

2 (hg) A protected person seeking to terminate or modify the terms of the person's  
3 conservatorship is entitled to be represented by counsel of the person's choice for that purpose.  
4 The court shall award such counsel reasonable attorney's fees for such good faith representation  
5 ~~provided that underlying~~if the legal services benefited the protected person or were reasonably  
6 necessary to protect the person's interests.

7 (ih) ~~Upon~~On termination of a conservatorship and whether or not formally distributed  
8 by the conservator, title to assets of the estate passes to the formerly protected person or the  
9 person's successors. The order of termination must provide for expenses of administration and  
10 direct the conservator to execute appropriate instruments to evidence the transfer of title or  
11 confirm a distribution previously made and to file a final report and a petition for discharge ~~upon~~  
12 approval of the final report.

13 (ji) The court shall enter a final order of discharge ~~upon~~ the approval of the final report  
14 and satisfaction by the conservator of any other conditions placed by the court on the  
15 conservator's discharge.

16 [(k) The following provisions apply in a proceeding to terminate a conservatorship that is  
17 initiated by the protected person:

18 (1) The conservator may file a written report to the court regarding any matter  
19 relevant to the proceeding;

20 (2) The conservator may file a motion for instructions regarding any relevant  
21 matter, including whether the conservator may be involved in the termination proceeding;

22 (3) Except for the actions authorized in paragraphs (1) and (2) of this subsection,  
23 or as otherwise ordered by the court, the conservator may not take any action to oppose

1 or interfere in the termination proceeding; and

2 (4) Unless ordered by the court, the conservator shall have no duty to participate  
3 in the termination proceeding.]

## 4 **ARTICLE 5**

### 5 **MISCELLANEOUS PROVISIONS**

6 **SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
7 applying and construing this uniform act, consideration must be given to the need to promote  
8 uniformity of the law weith respect to its subject matter among states that enact it.

9 **SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
10 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the  
11 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but  
12 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
13 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
14 U.S.C. Section 7003(b).

15 **SECTION 50~~3~~2. SEVERABILITY CLAUSE.** If any provision of this [act] or its  
16 application to any person or circumstances is held invalid, the invalidity does not affect other  
17 provisions or applications of the [act] which can be given effect without the invalid provision or  
18 application, and to this end the provisions of this [act] are severable.

19 **SECTION 504. REPEAL; CONFORMING AMENDMENTS.**

20 **SECTION 50~~3~~5. EFFECTIVE DATE.** This [act] takes effect . . . .

21 ~~**SECTION 504. REPEAL.** The following acts and parts of acts are repealed:~~

22 ~~—————(1) . . . .~~

23 ~~—————(2) . . . .~~

1 ————— (3) . . . .