D R A F T

FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

October 9 – 10, 2015 Drafting Committee Meeting

REDLINE DRAFT

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October 1, 2015

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UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997/1998)

TABLE OF CONTENTS

ARTICLE 1
GENERAL PROVISIONS

SECTION 101. SHORT TITLE. 1
SECTION 102. DEFINITIONS. 1
SECTION 103. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE. 3
SECTION 104. SUBJECT-MATTER JURISDICTION. 5
SECTION 105. TRANSFER OF JURISDICTION. 6
SECTION 106. VENUE. 7
SECTION 107. PRACTICE IN COURT. 8
SECTION 108. LETTERS OF OFFICE. 8
SECTION 109. EFFECT OF ACCEPTANCE OF APPOINTMENT. 9
SECTION 110. ADDITIONAL OR SUCCESSOR APPOINTEES 9
SECTION 111. REMOVAL OR RESIGNATION OF APPOINTEE. 11
SECTION 112. GENEAL NOTICE REQUIREMENTS. 11
SECTION 113. WAIVER OF NOTICE. 12
SECTION 114. GUARDIAN AD LITEM. 12
SECTION 115. REQUEST FOR NOTICE; INTERESTED PERSONS. 12
SECTION 116. MULTIPLE APPOINTMENTS OR NOMINATIONS. 13
SECTION 117. COMPENSATION OF APPOINTEES, LAWYERS, AND OTHER PERSONS IN GENERAL. 13
SECTION 118. REGISTRATION OF ORDERS. 13
SECTION 119. EFFECT OF REGISTRATION OF ORDERS. 14
SECTION 120. FACILITY OF TRANSFERS TO MINORS. 14

ARTICLE 2
GUARDIANSHIP OF MINOR

SECTION 201. APPOINTMENT AND STATUS OF GUARDIAN OF MINOR. 16
SECTION 202. PARENTAL APPOINTMENT OF GUARDIAN OF MINOR. 16
SECTION 203. OBJECTION BY MINOR OR OTHERS TO PARENTAL APPOINTMENT. 18
SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: CONDITIONS FOR APPOINTMENT. 19
SECTION 205. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: PROCEDURE.. 20
SECTION 206. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: PRIORITY OF MINOR'S NOMINEE; LIMITED GUARDIANSHIP. 22
SECTION 207. DUTIES OF GUARDIAN OF A PROTECTED MINOR. 22
SECTION 208. POWERS OF GUARDIAN OF A PROTECTED MINOR. 24
SECTION 209. DELEGATION OF POWER BY PARENT OR GUARDIAN OR A PROTECTED MINOR. 25

SECTION 210. RIGHTS AND IMMUNITIES OF GUARDIAN OF A PROTECTED MINOR. 26
SECTION 211. TERMINATION OF GUARDIANSHIP OF A PROTECTED MINOR; OTHER PROCEEDINGS AFTER APPOINTMENT. 27

ARTICLE 3
GUARDIANSHIP OF PERSONS NEEDING PROTECTION

SECTION 301. APPOINTMENT AND STATUS OF GUARDIAN. 28
SECTION 302. ORIGINAL PETITION FOR APPOINTMENT OF GUARDIAN 31
SECTION 303. NOTICE. 33
SECTION 304. PRELIMINARIES TO HEARING; APPOINTMENT OF LAWYER; APPOINTMENT OF [VISITOR] 34
SECTION 305. PROFESSIONAL EVALUATION. 37
SECTION 306. CONFIDENTIALITY OF RECORDS. 38
SECTION 307. PRESENCE AND RIGHTS AT HEARING. 39
SECTION 308. WHO MAY BE GUARDIAN: PRIORITIES. 41
SECTION 309. ORDER OF APPOINTMENT. 42
SECTION 310. EMERGENCY GUARDIAN. 44
SECTION 311. TEMPORARY SUBSTITUTE GUARDIAN. 45
SECTION 312. DUTIES OF GUARDIAN. 45
SECTION 313. POWERS OF GUARDIAN. 48
SECTION 314. DELEGATION OF POWER BY GUARDIAN. 50
SECTION 315. COMPENSATION, RIGHTS, AND IMMUNITIES OF GUARDIAN; LIMITATIONS. 51
SECTION 316. REPORTS; MONITORING OF GUARDIANSHIP. 52
SECTION 317. TERMINATION OR MODIFICATION OF GUARDIANSHIP. 54

ARTICLE 4
CONSERVATORSHIP AND PROTECTION OF PROPERTY

SECTION 401. APPOINTMENT AND STATUS OF CONSERVATOR; OTHER PROTECTIVE ORDER. 58
SECTION 402. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER. 60
SECTION 403. NOTICE. 62
SECTION 404. PRELIMINARIES TO HEARING ON PROPOSED CONSERVATORSHIP FOR MINOR. 63
SECTION 405. PRELIMINARIES TO HEARING ON PROPOSED CONSERVATORSHIP FOR ALLEGED PERSON NEEDING PROTECTION.; APPOINTMENT OF LAWYER; APPOINTMENT OF [VISITOR] 64
SECTION 406. PROFESSIONAL EVALUATION 67
SECTION 407. CONFIDENTIALITY OF RECORDS. 68
SECTION 408. PRESENCE AND RIGHTS AT HEARING. 68
SECTION 409. WHO MAY BE CONSERVATOR: PRIORITIES. 70
SECTION 410. ORDER OF APPOINTMENT. 71
SECTION 411. POWERS OF COURT. 72

SECTION 412. POWERS REQUIRING COURT APPROVAL. 73
SECTION 413. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS. 75
SECTION 414. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT. 77
SECTION 415. BOND; ALTERNATIVE ASSET PROTECTION ARRANGMENTS. 78
SECTION 416. TERMS AND REQUIREMENTS OF BOND. 79
SECTION 417. COMPENSATION OF CONSERVATOR. 80
SECTION 418. GENERAL DUTIES OF CONSERVATOR; PLAN. 81
SECTION 419. INVENTORY; RECORDS. 82
SECTION 420. POWERS OF CONSERVATOR IN ADMINISTRATION. 83
SECTION 421. DELEGATION BY CONSERVATOR. 86
SECTION 422. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR. 87
SECTION 423. REPORTS; APPOINTMENT OF [VISITOR]; MONITORING. 89
SECTION 424. TITLE BY APPOINTMENT. 90
SECTION 425. PROTECTED PERSON'S INTEREST INALIENABLE. 91
SECTION 426. SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING CONFLICT OF INTEREST. 92
SECTION 427. PROTECTION OF PERSON DEALING WITH CONSERVATOR. 92
SECTION 428. DEATH OF PROTECTED PERSON. 102
SECTION 429. PRESENTATION AND ALLOWANCE OF CLAIMS. 103
SECTION 430. PERSONAL LIABILITY OF CONSERVATOR. 104
SECTION 431. TERMINATION OR MODIFICATION OF CONSERVATORSHIP. 105

ARTICLE 5
MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. 110
SECTION 502. SEVERABILITY CLAUSE. 110
SECTION 503. EFFECTIVE DATE. 110
SECTION 504. REPEAL. 110

UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (1997/1998)

CHANGES TO SECTION HEADINGS IN ORIGINAL TABLE OF CONTENTS SHOWN IN TRACK CHANGES

PREFATORY NOTE

ARTICLE 1
GENERAL PROVISIONS

SECTION 101. SHORT TITLE.
SECTION 102. DEFINTIONS.
SECTION 103. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE.
~~SECTION 104. FACILITY OF TRANSFER.~~
~~SECTION 105. DELEGATION OF POWER BY PARENT OR GUARDIAN.~~
SECTION 104~~6~~. SUBJECT-MATTER JURISDICTION.
SECTION 105~~7~~. TRANSFER OF JURISDICTION.
SECTION 106~~8~~. VENUE.
SECTION 107~~9~~.~~,~~ PRACTICE IN COURT.
SECTION 108~~10~~. LETTERS OF OFFICE.
SECTION 109~~11~~. EFFECT OF ACCEPTANCE OF APPOINTMENT.
SECTION 110~~2~~. ~~TERMINATION OF OR CHANGE IN GUARDIAN'S OR CONSERVATOR'S APPOINTMENT~~ADDITIONAL OR SUCCESSOR APPOINTEE.
SECTION 111. REMOVAL OF APPOINTEE.
SECTION 112~~13~~. GENERAL NOTICE REQUIREMENTS.
SECTION 113~~24~~. WAIVER OF NOTICE.
SECTION 114~~35~~. GUARDIAN AD LITEM.
SECTION 115~~46~~. REQUEST FOR NOTICE; INTERESTED PERSONS.
SECTION 116~~57~~. MULTIPLE APPOINTMENTS OR NOMINATIONS.
SECTION 117~~6~~. COMPENSATION OF APPOINTEES, LAWYERS, AND OTHER PERSONS IN GENERAL.
SECTION 118~~76~~. REGISTRATION OF ORDERS.
SECTION 119~~87~~. EFFECT OF REGISTRATION OF ORDERS.
SECTION 120~~1986~~. FACILITY OF TRANSFERS TO MINORS.

ARTICLE 2
GUARDIANSHIP OF MINOR

SECTION 201. APPOINTMENT AND STATUS OF GUARDIAN OF MINOR~~.~~
SECTION 202. PARENTAL APPOINTMENT OF GUARDIAN OF MINOR.
SECTION 203. OBJECTION BY MINOR OR OTHERS TO PARENTAL APPOINTMENT.
SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: CONDITIONS FOR APPOINTMENT.
SECTION 205. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: PROCEDURE.

SECTION 206. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: PRIORITY OF MINOR'S NOMINEE; LIMITED GUARDIANSHIP.
SECTION 207. DUTIES OF GUARDIAN OF PROTECTED MINOR.
SECTION 208. POWERS OF GUARDIAN OF PROTECTED MINOR.
SECTION 209. DELEGATION OF POWERS BY PARENT OR GUARDIAN OF PROTECTED MINOR.
SECTION 2010~~9~~. RIGHTS AND IMMUNITIES OF GUARDIAN OF PROTECTED MINOR.
SECTION 21~~0~~11. TERMINATION OF GUARDIANSHIP OF MINOR; OTHER PROCEEDINGS AFTER APPOINTMENT.

ARTICLE 3

GUARDIANSHIP OF ~~INCAPACITATED PERSON~~PERSONS NEEDING PROTECTION ~~FOR REASONS OTHER THAN MINOR STATUS~~

SECTION 301. APPOINTMENT AND STATUS OF GUARDIAN.
~~SECTION 302. APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING.~~
~~SECTION 303. APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING: EFFECTIVENESS; ACCEPTANCE; CONFIRMATION.~~
SECTION 302~~4~~. ORIGINAL PETITION FOR APPOINTMENT OF ~~A~~ GUARDIAN~~JUDICIAL APPOINTMENT OF GUARDIAN: PETITION~~
~~SECTION SECTION~~
SECTION 303. NOTICE.
SECTION 304~~03~~5. ~~JUDICIAL APPOINTMENT OF GUARDIAN:~~ PRELIMINARIES TO HEARING; APPOINTMENT OF LAWYER; APPOINTMENT OF [VISITOR].
SECTION 305~~46~~. ~~JUDICIAL APPOINTMENT OF GUARDIAN:~~ PROFESSIONAL EVALUATION.
SECTION 306~~57~~. CONFIDENTIALITY OF RECORDS.
SECTION 307~~68~~. ~~JUDICIAL APPOINTMENT OF GUARDIAN:~~ PRESENCE AND RIGHTS AT HEARING.
~~SECTION 3079. NOTICE.~~
SECTION 308~~810~~. WHO MAY BE GUARDIAN: PRIORITIES~~.~~
SECTION 309~~911~~. ~~FINDINGS;~~ ORDER OF APPOINTMENT.
SECTION 310~~102~~. EMERGENCY GUARDIAN.
SECTION 311~~1213~~. TEMPORARY SUBSTITUTE GUARDIAN.
SECTION 312~~24~~. DUTIES OF GUARDIAN.
SECTION 313~~35~~. POWERS OF GUARDIAN.
SECTION 314~~4~~. ~~–~~DELEGATION BY GUARDIAN.
SECTION 315~~546~~. COMPENSATION, RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.
SECTION 316~~657~~. REPORTS; MONITORING OF GUARDIANSHIP.
SECTION 317~~68~~. TERMINATION OR MODIFICATION OF GUARDIANSHIP.
~~SECTION 318. REGISTRATION OF GUARDIANSHIP ORDER.~~

ARTICLE 4

CONSERVATORSHIP AND PROTECTION OF PROPERTY ~~OF PROTECTED PERSON~~

SECTION 401. ~~PROTECTIVE PROCEEDING~~ APPOINTMENT AND STATUS OF CONSERVATOR; OTHER PROTECTIVE ORDER~~.~~

~~SECTION 402. JURISDICTION OVER BUSINESS AFFAIRS OF PROTECTED PERSON.~~

SECTION 402~~3~~. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER.

SECTION 403~~4~~. NOTICE.

SECTION 404~~5~~. ~~ORIGINAL PETITION: MINORS;~~ PRELIMINARIES TO HEARING ON CONSERVATORSHIP FOR MINOR.

SECTION 405~~6~~. ~~ORIGINAL PETITION:~~PRELIMINARIES TO HEARING ON CONSERVATORSHIP OF ALLEGED PERSON~~S~~ IN NEED OF PROTECTION; APPOINTMENT OF LAWYER; APPOINTMENT OF [VISITOR] ~~FOR REASONS OTHER THAN MINOR STATUSPERSONS UNDER DISABILITY; PRELIMINARIES TO HEARING.~~

SECTION 406. PROFESSIONAL EVALUATION

SECTION 407. CONFIDENTIALITY OF RECORDS.

SECTION 408. ~~ORIGINAL PETITION: PROCEDURE AT HEARING~~PRESENCE AND RIGHTS AT HEARING.

SECTION 409. WHO MAY BE CONSERVATOR: PRIORITIES.

SECTION 410~~09~~. ~~ORIGINAL PETITION: ORDERS~~ORDER OF APPOINTMENT.

SECTION 411~~20~~. POWERS OF COURT.

SECTION 412~~1~~. POWERS REQUIRING~~ED~~ COURT APPROVAL.

SECTION 413~~2~~. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS.

~~SECTION 413. WHO MAY BE CONSERVATOR: PRIORITIES.~~

SECTION 414~~4~~. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.

SECTION 415. BOND; ASSET PROTECTION ARRANGEMENTS.

SECTION 416. TERMS AND REQUIREMENTS OF BOND.

SECTION 417. COMPENSATION AND EXPENSES OF CONSERVATOR.

SECTION 418. GENERAL DUTIES OF CONSERVATOR; PLAN.

SECTION 419. INVENTORY; RECORDS.

SECTION 420. POWERS OF CONSERVATOR IN ADMINISTRATION.

SECTION 421. DELEGATION BY CONSERVATOR.

SECTION 422. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.

SECTION 423~~0~~. REPORTS; APPOINTMENT OF [VISITOR]; MONITORING.

SECTION 424~~1~~. TITLE BY APPOINTMENT.

SECTION 425~~2~~. PROTECTED PERSON'S INTEREST INALIENABLE.

SECTION 426~~3~~. SALE, ENCUMBERANCE, OR OTHER TRANSACTION INVOLVING CONFLICT OF INTEREST.

SECTION 427~~4~~. PROTECTION OF PERSON DEALING WITH CONSERVATOR.

~~SECTION 425. POWERS OF CONSERVATOR IN ADMINISTRATION.~~

~~SECTION 426. DELEGATION.~~

~~SECTION 427. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.~~

SECTION 428. DEATH OF PROTECTED PERSON.

SECTION 429. PRESENTATION AND ALLOWANCE OF CLAIMS.

SECTION 430. PERSONAL LIABILITY OF CONSERVATOR.

SECTION 431. TERMINATION OR MODIFICATION OF CONSERVATORSHIP~~F PROCEEDINGS~~.

~~SECTION 432. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDING.~~

~~SECTION 433. FOREIGN CONSERVATOR: PROOF OF AUTHORITY; BOND; POWERS.~~

ARTICLE 5
MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
SECTION 502. SEVERABILITY CLAUSE.
SECTION 503. EFFECTIVE DATE.
SECTION 504. REPEAL.

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

Prefatory Note (subject to revision)

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Guardianship and Protective Proceedings Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) "Claim," with respect to a protected person, includes a claim against an individual, whether arising in contract, tort, or otherwise, and a claim against an estate which arises at or after the appointment of a conservator, including expenses of ~~:~~administration.

(2) "Conservator" means a person who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.

(3) "Court" means the [designate appropriate court].

(4) "Decision-making support" means assistance with understanding ~~, including help with understanding~~ the nature and consequences of potential personal and financial ~~choices~~decisions~~,~~ provided to an individual by one or more persons of the individual's choosing so that the individual can make ~~that helps the person make personal and/or financial~~ decisions for him or herself.

(5~~4~~) "Expressed interests" means the preferences or values communicated by a person through words or through other means.

(6~~5~~4) "Guardian" means a person who has qualified as a guardian of a minor or ~~incapacitated~~ protected person pursuant to appointment by a parent ~~or spouse,~~ or by the court.

The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

~~(5) "Incapacitated person~~Person needing protection~~" means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate support from one or more individuals of the person's choosing and even with appropriate technological assistance.~~

(7~~6~~) "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~~7~~) "Letters" includes letters of guardianship and letters of conservatorship.

(9~~8~~) "Minor" means an unemancipated individual who has not attained [18] years of age.

(10~~9~~) "Parent" means a parent whose parental rights have not been terminated.

(11~~0~~) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12~~1~~) "Person needing protection" means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for

physical health, safety, or self-care, even with appropriate ~~support from one or more individuals of the person's choosing and even with appropriate~~ technological assistance and appropriate decision-making support.

(13~~21~~) "Protected minor" means a minor for whom a conservator, guardian, or both guardian has been appointed or other protective order has been made by a parental appointment under Section [202] of this [Act] or by a court of law for reasons of minor age under Section [204] of this [Act].

(14) "Protected person" means a minor or other individual for whom a c~~C~~onservator, guardian, or both has been appointed or other protective order has been made; the term "protected person" includes "protected minor".

(15~~32~~) "Respondent" means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

(15~~64~~~~3~~) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

[(16~~7~~5~~4~~) [~~[~~"Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a State.]

~~(15)] "Ward" means an individual for whom a guardian has been appointed.~~

Comment (subject to revision)

SECTION 103. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE. Unless displaced by the particular provisions of this [act], the principles of law and equity supplement its provisions.

Comment (subject to revision)

~~**SECTION 104. FACILITY OF TRANSFER.**~~

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

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

~~(2) a guardian of the minor;~~

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

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

~~(b) A person who transfers money or property in compliance with this section is not responsible for its proper application.~~

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

~~**SECTION 105. DELEGATION OF POWER BY PARENT OR GUARDIAN.** A parent or a guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding six months, any power regarding care, custody, or property of the minor or ward~~protected person~~, except the power to consent to marriage or adoption.~~

SECTION 104~~6~~. SUBJECT-MATTER JURISDICTION.

(a) Except to the extent the guardianship is subject to the [insert citation to Uniform Child Custody Jurisdiction and Enforcement Act], the court of this state has jurisdiction over guardianship for minors domiciled or present in this state. The court of this state has jurisdiction over protective proceedings for minors domiciled in or having property located in this state.

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

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

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

(2) exclusive jurisdiction to determine how the estate of the respondent which is subject to the laws of this state must be managed, expended, or distributed to or for the use of the

protected person, individuals who are in fact dependent upon the protected person, or other claimants; and

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

Comment (subject to revision)

SECTION 105~~7~~. TRANSFER OF JURISDICTION.

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

(1) After the appointment of a guardian or conservator or entry of another protective order, the court making the appointment or entering the order may transfer the proceeding to a court in another [county] in this state or to another state if the court is satisfied that a transfer will serve the best interest of the ~~ward~~protected person~~ or protected person~~.

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

(3) A guardian, conservator, or like fiduciary appointed in another state may petition the court for appointment as a guardian or conservator in this state if venue in this state is or will be established. The appointment may be made upon proof of appointment in the other state and presentation of a certified copy of the portion of the court record in the other state specified by the court in this state. Notice of hearing on the petition, together with a copy of the petition, must be given to the ~~ward~~protected person~~ or protected~~

~~person~~, if the ~~ward~~protected person ~~or protected person~~ has attained ~~14~~ 12 years of age, and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or conservator under this [act] were applicable. The court shall make the appointment in this state unless it concludes that the appointment would not be in the best interest of the ~~ward or protected person~~protected person. On the filing of an acceptance of office and any required bond, the court shall issue appropriate letters of guardianship or conservatorship. Not later than 14 days after an appointment, the guardian or conservator shall send or deliver a copy of the order of appointment to the ~~ward or protected person~~protected person, if the ~~ward~~protected person ~~or protected person~~ has attained 12~~4~~ years of age, and to all persons given notice of the hearing on the petition.

(b) This section does not apply to a guardianship or protective proceeding for an adult 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)].

Comment (subject to revision)

SECTION 106~~8~~. 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~~an incapacitated person~~ 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~~n incapacitated person~~ 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.

Comment (subject to revision)

SECTION 1079. 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.

Comment (subject to revision)

SECTION 10810. LETTERS OF OFFICE. Upon the guardian's filing of an acceptance of office, the court shall issue appropriate letters of guardianship. Upon the conservator's filing of an acceptance of office and any required bond or compliance with any other required asset protection arrangement, the court shall issue appropriate letters of

conservatorship. Letters of guardianship must indicate whether the guardian was appointed by the court or, a parent, or the spouse. Any limitationLimitations on the powers of a guardian or conservator or of the assets subject to a conservatorship must be endorsedshall be stated on the guardian's or conservator's letters.

Comment (subject to revision)

SECTION 1091~~11~~. EFFECT OF ACCEPTANCE OF APPOINTMENT. By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship. The petitioner shall send or deliver notice of any proceeding to the guardian or conservator at the guardian's or conservator's address shown in the court records and at any other address then known to the petitioner.

Comment (subject to revision)

SECTION 110~~2~~. ADDITIONAL OR SUCCESSOR APPOINTEES ~~TERMINATION OF OR CHANGE IN GUARDIAN'S OR CONSERVATOR'S APPOINTMENT~~.

~~(a) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the court. [A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding.] Termination~~

~~of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected personprotected person.~~

~~(b) A wardprotected person, protected person, or person interested in the welfare of a ward or protected personprotected person may petition for removal of a guardian or conservator on the ground that the person no longer meets the definition of "person needing protection," that removal would be in the best interest of the ward or protected personprotected person, or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.~~

~~(c)~~ The court may appoint an additional guardian or conservator at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian or conservator in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian or conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever last occurs. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.

Comment (subject to revision)

SECTION 111. REMOVAL OR RESIGNATION OF APPOINTEE.

(a) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of that guardian or conservator.

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

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

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

SECTION 112~~13~~. GENEAL NOTICE REQUIREMENTS~~NOTICE~~.

(a) Except as otherwise ordered by the court for good cause, if notice of a hearing on a petition is required, other than a notice for which specific requirements are otherwise provided, the petitioner shall give notice of the time and place of the hearing to the person to be notified. Notice must be given in compliance with [insert the applicable rule of civil procedure], at least 14 days before the hearing.

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

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

Comment (subject to revision)

SECTION 113~~24~~. WAIVER OF NOTICE. A person may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. However, a respondent ~~, ward,~~ or protected person may not waive notice.

Comment (subject to revision)

SECTION 114~~35~~. GUARDIAN AD LITEM. At any stage of a proceeding, a court may appoint a guardian ad litem if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. The guardian ad litem may not be the same person as the attorney representing the respondent. The court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.

Comment (subject to revision)

SECTION 115~~46~~. REQUEST FOR NOTICE; INTERESTED PERSONS. An interested person not otherwise entitled to notice who desires to be notified before any order is made in a guardianship proceeding, including a proceeding after the appointment of a guardian, or in a protective proceeding, may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall send or deliver a copy of the request to the guardian and to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or a lawyer to whom notice is to be given. The request is effective only as to proceedings conducted after its filing. A governmental agency paying or planning to pay benefits to the respondent or protected person is an interested person in a protective proceeding.

Comment (subject to revision)

SECTION 1165~~57~~. MULTIPLE APPOINTMENTS OR NOMINATIONS. If a respondent or other person makes more than one written appointment or nomination of a guardian or a conservator, the most recent controls.

Comment (subject to revision)

SECTION 1176~~6~~. COMPENSATION OF APPOINTEES, LAWYERS, AND OTHER PERSONS IN GENERAL.

If not otherwise compensated for services rendered, a guardian, conservator, lawyer whose services resulted in a protective order or in an order beneficial to a protected person's estate, lawyer for the protected person, or any other person appointed by the court is entitled to reasonable compensation from the estate. Such fees must be approved by the court before compensation is paid but not prior to the provision of such services. If not otherwise compensated for services rendered, a lawyer for a respondent is entitled to reasonable compensation from the estate without court approval.

Comment (subject to revision)

SECTION 1187~~79~~. REGISTRATION OF ORDERS.

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

copies of the order and letters of office.

(b) ——If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any [county] in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

Comment (subject to revision)

SECTION 119~~820~~. EFFECT OF REGISTRATION OF ORDERS.

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

———(b) A court of this state may grant any relief available under this [article] and other law of this state to enforce a registered order.

SECTION 1~~2~~20~~19~~. FACILITY OF TRANSFERS TO MINORS.

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

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

(2) a guardian of the minor;

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

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

(b) A person who transfers money or property in compliance with this section is not responsible for its proper application.

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

Comment (subject to revision)

ARTICLE 2

GUARDIANSHIP OF MINOR

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

Comment (subject to revision)

SECTION 202. PARENTAL APPOINTMENT OF GUARDIAN OF MINOR.

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

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

(c) Subject to Section 203, the appointment of a guardian becomes effective upon the appointing parent's death, a judicial determination that the parent is unwilling or unable to exercise parental rights~~n adjudication that the parent is an incapacitated person~~, or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever first occurs.

(d) The guardian becomes eligible to act upon the filing of an acceptance of

appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:

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

(2) give written notice of the acceptance of appointment to the appointing parent, if living, the minor, if the minor has attained 12~~4~~ years of age, and a person other than the parent having care and custody of the minor.

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

(f) Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in Section 205(a).

(g) The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged unwilling or unable to exercise their parental rights ~~incapacitated persons~~, an appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent which is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(h) The powers of a guardian who timely complies with the requirements of subsections (d) and (f) relate back to give acts by the guardian which are of benefit to the minor

and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.

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

Comment (subject to revision)

SECTION 203. OBJECTION BY MINOR OR OTHERS TO PARENTAL APPOINTMENT. Until the court has confirmed an appointee under Section 202, a minor who is the subject of an appointment by a parent and who has attained 124 years of age, the other parent, or a person other than a parent or guardian having care or custody of the minor may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn, and if withdrawn is of no effect. The objection does not preclude judicial appointment of the person selected by the parent. The court may treat the filing of an objection as a petition for the appointment of an emergency or a temporary guardian under Section 204, and proceed accordingly.

Comment (subject to revision)

———

SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: CONDITIONS FOR APPOINTMENT.

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

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

(1) the parents consent;

(2) all parental rights have been terminated; or

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

(c) If a guardian is appointed by a parent pursuant to Section 202 and the appointment has not been prevented or terminated under Section 203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under Section 202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

(d) If necessary and on petition or motion and whether or not the conditions of subsection (b) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in Section 113 must be given to the parents and to a minor who has attained 124 years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of a full~~n unlimited~~ guardian, but the duration of the temporary guardianship may not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under Section 205.

(e) If the court finds that following the procedures of this [article] will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed [30] days and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained 124 years of age, to each living parent of the minor, and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment must be given within 48 hours after the appointment and a hearing on the appropriateness of the appointment held within [five] days after the appointment.

Comment (subject to revision)

SECTION 205. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: PROCEDURE.

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

(1) the minor, if the minor has attained 124 years of age and is not the petitioner;

(2) any person alleged to have had the primary care and custody of the minor for 60 or more days during the two years preceding ~~during the 60 days before~~ the filing of

the petition, or any person alleged to have the primary care and custody of the minor for two or more years during the five years preceding the petition;

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

———(4) any person nominated as guardian by the minor if the minor has attained 142 years of age;

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

———(6) any guardian or conservator currently acting for the minor in this State or elsewhere.

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

———(c) If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained 124 years of age.

Comment (subject to revision)

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

(a) The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained 124 years of age, unless the court finds the appointment will be contrary to the best interest of the minor.

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

Comment (subject to revision)

SECTION 207. DUTIES OF GUARDIAN OF A PROTECTED MINOR.

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

(b) A guardian shall:

(1) become or remain personally acquainted with the ~~ward~~protected minor~~person~~ and maintain sufficient contact with the ~~ward~~~~protected person~~protected minor to

know of the ~~ward~~~~protected person~~protected minor's capacities, limitations, needs, opportunities, and physical and mental health;

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

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

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

(5) report the condition of the ~~ward~~~~protected person~~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 ~~ward~~~~protected person~~protected minor's welfare or as required by court rule; ~~and~~

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

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

Comment (subject to revision)

SECTION 208. POWERS OF GUARDIAN OF A PROTECTED MINOR.

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

(b) A guardian may:

(1) apply for and receive money for the support of the ~~ward~~~~protected person~~protected minor otherwise payable to the ~~ward~~~~protected person~~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 ~~ward~~~~protected person~~protected minor, take custody of the ~~ward~~~~protected person~~protected minor and establish the ~~ward~~~~protected person~~protected minor's place of custodial dwelling, but may only establish or move the ~~ward~~~~protected person~~protected minor's custodial dwelling outside the state upon express authorization of the court;

(3) if a conservator for the estate of a ~~ward~~~~protected person~~protected minor 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 ~~ward~~~~protected person~~protected minor or to pay money for the benefit of the ~~ward~~~~protected person~~protected minor;

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

(5) consent to the marriage of the ~~ward~~~~protected person~~protected minor;

and

(6) to the extent reasonableif reasonable under all of the circumstances, delegate to the wardprotected personprotected minor certain responsibilities for decisions affecting the wardprotected personprotected minor's well-being.

(c) The court may specifically authorize the guardian to consent to the adoption of the wardprotected personprotected minor.

Comment (subject to revision)

SECTION 209. DELEGATION OF POWER BY PARENT OR GUARDIAN OR A PROTECTED MINROR.

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

(b) A guardian of a protected minor, by power of attorney, may delegate to another person, any power regarding care, custody, or property of the minor or protected person, except the power to consent to marriage or adoption.

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

(A) selecting an agent;

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

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

(D) redressing an action or decision of an agent which would constitute a breach of trust if performed by the conservator.

(2) ~~(2)~~ A ~~conservator~~guardian who complies with subsections (1) is not liable to the protected minor~~person~~ or to the estate for the decisions or actions of the agent to whom a function was delegated.

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

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

Comment (subject to revision)

SECTION ~~209~~ 210. RIGHTS AND IMMUNITIES OF GUARDIAN OF A PROTECTED MINOR.

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

(b) A guardian need not use the guardian's personal funds for the ~~ward~~protected minor~~person~~'s expenses. A guardian is not liable to a third person for acts of the ~~ward~~protected ~~person~~ minor solely by reason of the guardianship. A guardian is not liable for injury to the ~~ward~~protected ~~person~~ minor resulting from the negligence or act of a third person providing

medical or other care, treatment, or service for the ~~ward~~protected minor~~person~~ except to the extent that a parent would be liable under the circumstances.

Comment (subject to revision)

SECTION ~~210~~ 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 that 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 person.

(c~~b~~) A ~~ward~~protected person or a person interested in the welfare of ~~a ward~~protected person may petition for any order that is in the best interest of the ~~ward~~protected person. The petitioner shall give notice of the hearing on the petition to the ~~ward~~protected person, if the ~~ward~~protected person has attained 12~~4~~ years of age and is not the petitioner, the guardian, and any other person as ordered by the court.

Comment (subject to revision)

ARTICLE 3

GUARDIANSHIP OF ~~INCAPACITATED PERSON~~PERSONS NEEDING PROTECTION ~~FOR REASONS OTHER THAN MINOR STATUS~~

SECTION 301. APPOINTMENT AND STATUS OF GUARDIAN.

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

(1) appoint a limited or full guardian for a respondent ~~A person becomes a guardian of an incapacitated person by a parental or spousal appointment or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.~~only if it finds by clear and convincing evidence that:

(A) the respondent is a person in need of protection~~n incapacitated person~~; and

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

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

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

(c) The guardianship continues until terminated, without regard to the location of the guardian or the protected person

Comment—— (subject to revision)

~~**SECTION 302. APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING.**~~

~~(a) A parent, by will or other signed writing, may appoint a guardian for an unmarried child who the parent believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.~~

~~(b) An individual, by will or other signed writing, may appoint a guardian for the individual's spouse who the appointing spouse believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.~~

~~(c) The incapacitated person, the person having care or custody of the incapacitated person if other than the appointing parent or spouse, or the adult nearest in kinship to the incapacitated person may file a written objection to an appointment, unless the court has confirmed the appointment under subsection (d). The filing of the written objection terminates the appointment. An objection may be withdrawn and, if withdrawn, is of no effect. The objection does not preclude judicial appointment of the person selected by the parent or spouse. Notice of the objection must be given to the guardian and any other person entitled to notice of the acceptance of the appointment. The court may treat the filing of an objection as a petition for the appointment of an emergency guardian under Section 312 or for the appointment of a limited or unlimited guardian under Section 304 and proceed accordingly.~~

~~(d) Upon petition of the appointing parent or spouse, and a finding that the~~

~~appointing parent or spouse will likely become unable to care for the incapacitated person within [two] years, and after notice as provided in this section, the court, before the appointment becomes effective, may confirm the appointing parent's or spouse's selection of a guardian and terminate the rights of others to object.~~

~~SECTION 303. APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING: EFFECTIVENESS; ACCEPTANCE; CONFIRMATION.~~

~~(a) The appointment of a guardian under Section 302 becomes effective upon the death of the appointing parent or spouse, the adjudication of incapacity of the appointing parent or spouse, or a written determination by a physician who has examined the appointing parent or spouse that the appointing parent or spouse is no longer able to care for the incapacitated person, whichever first occurs.~~

~~(b) A guardian appointed under Section 302 becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days after the guardian's appointment becomes effective. The guardian shall:~~

~~(1) file the notice of acceptance of appointment and a copy of the will with the court of the [county] in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court in the [county] in which the incapacitated person resides or is present; and~~

~~(2) give written notice of the acceptance of appointment to the appointing parent or spouse if living, the incapacitated person, a person having care or custody of the incapacitated person other than the appointing parent or spouse, and the adult nearest in kinship.~~

~~(c) Unless the appointment was previously confirmed by the court, the notice~~

~~given under subsection (b)(2) must include a statement of the right of those notified to terminate the appointment by filing a written objection as provided in Section 302.~~

~~(d) An appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.~~

~~(e) Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian appointed under Section 302 shall file a petition in the court for confirmation of the appointment. Notice of the filing must be given in the manner provided in Section 309.~~

~~(f) The authority of a guardian appointed under Section 302 terminates upon the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to Section 302, whichever first occurs.~~

~~(g) The appointment of a guardian under this section is not a determination of incapacity.~~

~~(h) The powers of a guardian who timely complies with the requirements of subsections (b) and (e) relate back to give acts by the guardian which are of benefit to the incapacitated person and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of appointment.~~

SECTION 30214. ~~JUDICIAL APPOINTMENT OF GUARDIAN:~~ 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~~incapacity, in whole or in part,~~ and for the appointment of a limited or ~~unlimited~~ 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 ~~resided~~ 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;

(C) adult stepchildren whom the respondent actively parented during their minor years and with whom the respondent had an ongoing relationship within two years of the petition.

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

(4) the name and address of any legal representative of the respondent,~~;~~

~~(5)~~ (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 in a will or other signed~~prior~~ writing;

(7~~6~~) 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~~7~~) 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, alternative means of meeting that need has been considered or implemented, and why alternative means are not sufficient to meet the respondent's needs ~~incapacity~~;

(10~~8~~) if an ~~unlimited~~ 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~~9~~) 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.

Comment (subject to revision)

SECTION 303. NOTICE.

(a) A copy of a petition for guardianship and notice of the hearing on the petition must be served personally on the respondent. The notice must be ~~in~~ in at least 16 point font and must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and include a description

of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.

(b) In a proceeding to establish a guardianship, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a guardian or the making of a protective order.

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

(d) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the protected person and any other person the court directs. The notice must be delivered or sent within 14 days after the filing of the report.

Comment (subject to revision)

SECTION 304~~35~~. ~~JUDICIAL APPOINTMENT OF GUARDIAN:~~ PRELIMINARIES TO HEARING; APPOINTMENT OF LAWYER; APPOINTMENT OF [VISITOR]~~.~~

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

ALTERNATE PROVISIONS ON APPOINTMENT OF A LAWYER

Alternative A

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

(1) requested by the respondent;

(2) recommended by the [visitor]; or

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

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

Alternative B

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

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

End of Alternatives

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

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

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

(3) inform the respondent of 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.

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

(1) interview the petitioner and the proposed guardian;

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

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

(4) make any other investigation the court directs.

(fe) The [visitor] 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, 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 and

(97) 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 subsection (e)(1).*

Comment (subject to revision)

SECTION 3054~~6~~. ~~JUDICIAL APPOINTMENT OF GUARDIAN:~~ PROFESSIONAL EVALUATION.

(a) At or before a hearing under this [article], 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. ~~may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands~~

(b) ~~.~~ If the court orders the evaluation, the respondent must be examined by a physician, psychologist, ~~psychiatric social worker,~~ or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional limitations and abilities~~impairment and functional abilities~~. The examiner shall promptly 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;

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

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

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

Comment (subject to revision)

SECTION 306~~57~~. 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.

Comment (subject to revision)

SECTION 3076~~8~~. ~~JUDICIAL APPOINTMENT OF GUARDIAN:~~ PRESENCE AND RIGHTS AT HEARING.

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

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

(1) the respondent refuses to attend the hearing, or

(2) that ~~is impossible for the respondent to attend the hearing, and/or 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 technological assistance and support~~and participate in the hearing, unless excused by the court for good cause~~.

(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 a translator, or by a combination of such supports. If such ~~support~~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 ~~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 ~~impairment~~cognitive and functional limitations and abilities, and the [visitor]; and otherwise participate in the hearing.

(f) The hearing ~~may be held in a location convenient to the respondent and~~ may be closed upon the request of the respondent and a showing of good cause.

(g~~b~~) 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.

Comment (subject to revision)

~~**SECTION 3079. NOTICE.**~~

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

~~(b) In a proceeding to establish a guardianship, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not~~

~~preclude the appointment of a guardian or the making of a protective order.~~

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

~~(d) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward~~protected person~~ and any other person the court directs. The notice must be delivered or sent within 14 days after the filing of the report.~~

SECTION 308~~10~~. 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 ~~had sufficient capacity~~was able to express a preference;

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

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

(5) an adult child of the respondent;

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

(7) an adult with whom the respondent has shared household

responsibilities ~~resided~~ for more than six months before the filing of the petition;~~.~~

(8) an adult stepchildren whom the respondent actively parented during their minor years and with whom the respondent had an ongoing relationship within two years of the petition; and

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

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

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

(d~~c~~) 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.

Comment (subject to revision)

SECTION 309~~11~~. ~~FINDINGS;~~ ORDER OF APPOINTMENT.

(a) A court order granting a full guardianship shall clearly 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;

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

~~(a) The court may:~~

~~(1) appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:~~

~~(A) the respondent is an incapacitated person; and~~

~~(B) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate technological assistance; or~~

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

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

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

(1) Notice of a change in the protected person's primary residence, or

(2) Copies of the guardian's annual reports

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

(~~c~~d) Within 14 days after an appointment, a guardian shall send or deliver to the

protected person~~ward~~ and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

Comment (subject to revision)

SECTION 310~~2~~. EMERGENCY GUARDIAN.

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

(b) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the respondent, the respondent must be given notice of the appointment within 48 hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within [five] days after the appointment.

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

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

Comment (subject to revision)

SECTION 31~~3~~1. TEMPORARY SUBSTITUTE GUARDIAN.

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

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

Comment (subject to revision)

SECTION 31~~2~~4. DUTIES OF GUARDIAN.

(a) Except as otherwise limited by the court, a guardian shall make decisions regarding the ~~ward~~protected person's support, care, education, health, and welfare. A guardian

shall promote the self-determination of the protected person and exercise authority only as necessitated by the ~~ward~~protected person's limitations and, to the extent possible, shall encourage the ~~ward~~protected person to participate in decisions, act on the ~~ward~~protected person's own behalf, and develop or regain the capacity to manage the ~~ward~~protected person's personal affairs. ~~A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian.~~ A guardian at all times shall ~~act in the ward's best interest and~~ exercise reasonable care, diligence, and prudence and, when making decisions:

(1) act in accordance with the protected person's 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:

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

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

(C) 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 ~~ward~~protected

person and maintain sufficient contact, including regular visitation, with the ~~ward~~protected person to know of the ~~ward~~protected person's abilities~~capacities~~, limitations, needs, opportunities, and physical and mental health;

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

(3~~2~~) take reasonable care of the ~~ward~~protected person's personal effects and bring protective proceedings if necessary to protect the property of the ~~ward~~protected person;

(4~~3~~) expend money of the ~~ward~~protected person that has been received by the guardian for the ~~ward~~protected person's current needs for support, care, education, health, and welfare;

(5~~4~~) conserve any excess money of the ~~ward~~protected person for the ~~ward~~protected person's future needs, but if a conservator has been appointed for the estate of the ~~ward~~protected person, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ~~ward~~protected person's future needs;

(6~~5~~) immediately notify the court if the ~~ward~~protected person's condition has changed so that the ~~ward~~protected person is capable of exercising rights previously removed; and

(7~~6~~) inform the court of any change in the ~~ward~~protected person's custodial dwelling or address.

Comment (subject to revision)

SECTION 313~~5~~. POWERS OF GUARDIAN.

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

(1) apply for and receive money payable to the ~~ward~~protected person or the ~~ward~~protected person's guardian or custodian for the support of the ~~ward~~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 ~~ward~~protected person, take custody of the ~~ward~~protected person and establish the ~~ward~~protected person's place of custodial dwelling, however, the guardian must:

(A) select custodial placements that are consistent with the expressed interests and values of the protected person to the extent reasonable and, unless doing so would be inconsistent with the protected person's expressed interests and values, give priority to residential setting that meet the protected person's needs in the least restrictive manner reasonably possible;

(B~~A~~) ~~but~~ provide notice of any change in the place of the custodial dwelling to the court, the protected person, and any persons identified as entitled to such notice in the court order appointing the guardian; ~~, and~~

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

(3) if a conservator for the estate of the ~~ward~~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 ~~ward~~protected

person or to pay money for the benefit of the ~~ward~~protected person;

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

~~;~~

(A) the guardian takes into consideration:

(i) the risks and benefits of treatment options,

(ii) the protected person's current 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 ~~ward~~protected person; and

(6) ~~if reasonable under all of the circumstances~~to the extent reasonable, delegate to the ~~ward~~protected person certain responsibilities for decisions affecting the ~~ward~~protected person's well-being.

(7) receiieve the protected person's personally identifiable health care information,

(b) The court may specifically authorize the guardian to consent to the adoption of the ~~ward~~protected person.

Comment (subject to revision)

SECTION 314. DELEGATION OF POWER BY GUARDIAN.

(a) A guardian, by power of attorney, may delegate to another person, any power regarding care, custody, or property of the ~~minor or~~ protected person, except the power to consent to marriage or adoption. The guardian 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 guardianship;

(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 the guardian's duties ~~trust~~ if performed by the guardian.

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

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

(d) ~~(d)~~ 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.

Comment (subject to revision)

SECTION 3154~~6~~. 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 ~~ward~~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 ~~ward~~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:

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

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

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

(~~d~~D) 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;

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

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

(b) A guardian need not use the guardian's personal funds for the ~~ward~~protected

person's expenses. A guardian is not liable to a third person for acts of the ~~ward~~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 ~~ward~~protected person is not liable for injury to the ~~ward~~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 ~~ward~~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 ~~ward~~protected person to a [mental health-care] institution except in accordance with the state's procedure for involuntary civil commitment.

Comment (subject to revision)

SECTION 316~~57~~. REPORTS; MONITORING OF GUARDIANSHIP.

(a) Within 30 days after appointment, a guardian shall report to the court in writing on the condition of the ~~ward~~protected person and account for money and other assets in the guardian's possession or subject to the guardian's control. A guardian shall report at least annually thereafter and whenever ordered by the court. A report must state or contain:

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

(2) the living arrangements for all addresses of the ~~ward~~protected person

during the reporting period;

(3) the medical, educational, vocational, and other services provided to the ~~ward~~protected person and the guardian's opinion as to the adequacy of the ~~ward~~protected person's care;

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

(5) ~~and~~ activities on the ~~ward~~protected person's behalf and the extent to which the ~~ward~~protected person has participated in decision-making;

(6~~5~~) if the ~~ward~~protected person is institutionalized, whether the guardian considers the current plan for support, care, treatment, or habilitation to be in the ~~ward~~protected person's best interest and consistent with the protected person's expressed interests and personal values;

(7~~6~~) plans for future care and support; and

(8~~7~~) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

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

(c) A copy of the guardian's report shall be provided to the protected person, and any other persons whom the court has determined are entitled to such reports ~~entitled to such reports as a result of the initial court order~~.

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

(1) Whether the report provides sufficient information to establish that the

guardian has complied with his or her duties;

(2) Whether the guardianship should continue; and

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

~~establish a system for monitoring guardianships, including the filing and review of annual reports.~~

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

(1) notify the protected person, and any other persons entitled to such notification according to the initial court order, and

-(2) require additional information from the guardian ~~and/or demand that the guardian appear in court~~, hold a hearing, or both.

Comment (subject to revision)

SECTION 317~~768~~. TERMINATION OR MODIFICATION OF GUARDIANSHIP.

(a) A guardianship terminates upon the death of the ~~ward~~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

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.

(c) The court shall engage in fact-finding and may conduct a hearing to determine whether termination or modification of a guardianship is appropriate upon:

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

(2) A communication from a protected person, a guardian, or another person interested in the protected person's welfare that suggests that termination or modification may be appropriate; or

(3) A report from a guardian or conservator that the protected person's functional needs have changed that suggests that termination or modification may be appropriate.

~~(b) A particular guardian's appointment terminates upon the death, resignation, or removal of that 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 person.~~

~~. (c) A protected person or person interested in the welfare of a protected person may petition for removal of a guardian or conservator on the ground that the person no longer meets the definition of "person needing protection," that removal would be in the best interest of the protected person, or for other good cause. A guardian may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a~~

~~successor guardian.~~

(d~~b~~) ~~On petition of a ward, a guardian, or another person interested in the ward's welfare, the~~ The court shall~~may terminate a guardianship if the ward~~protected person ~~no longer needs the assistance or protection of a guardian.~~ Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination unless it is proven that continuation of the guardianship is in the best interest of the protected person and necessary to meet the protected person's needs.

(e) The court shall~~may~~ modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive. The court may modify the type of appointment or powers granted to the guardian ~~or insufficient~~ if ~~or~~ the ~~ward~~protected person's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

~~(ec) The court shall engage in fact-finding and may conduct a hearing to determine whether termination or modification of a guardianship is appropriate upon:~~

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

~~(2) A communication from a protected person, a guardian, or another person interested in the protected person's welfare that gives rise to a reasonable suspicion that termination or modification is approx3priate; or~~

~~(3) 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.~~

(d~~fdc~~) Except as otherwise ordered by the court for good cause, the court, before terminating or modifying a guardianship, shall follow the same procedures to safeguard the rights of the ~~ward~~protected person as apply to a petition for guardianship. ~~Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination unless it is proven that continuation of the guardianship is in the best interest of the ward~~~~protected person and necessary to meet the protected person's needs~~~~.~~

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

Comment (subject to revision)

ARTICLE 4

CONSERVATORSHIP AND PROTECTION OF PROPERTY ~~OF PROTECTED PERSON~~

SECTION 401. APPOINTMENT AND STATUS OF CONSERVATOR; OTHER PROTECTIVE ORDER~~PROTECTIVE PROCEEDING~~.

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

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

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

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

(B) by a preponderance of the evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the

individual's support and that protection is necessary or desirable to obtain or provide money.

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

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

Comment (subject to revision)

~~**SECTION 402. JURISDICTION OVER BUSINESS AFFAIRS OF PROTECTED PERSON.** After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has:~~

~~(1) exclusive jurisdiction to determine the need for a conservatorship or other protective order;~~

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

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

SECTION 4023. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER.

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

(1) the person to be protected;

(2) an individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian; or

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

(b) A petition under subsection (a) must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, 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 where it is proposed that the respondent will reside if the appointment is made;

(2) if the petition alleges impairment in the respondent's ability to receive and evaluate information, a brief description of the nature and extent of the respondent's alleged 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 ~~resided~~ 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 their 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 legal representative of the respondent;

(7) 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 other anticipated income or receipts; and

(8) the reason why a conservatorship or other protective order is ~~in the best interest of the respondent~~necessary, including a brief description of the nature and extent of the respondent's need for protection, what, if any, alternative means of meeting those needs has been considered or implemented, and why those alternative means are insufficient to meet the respondent's needs.~~.~~

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

known:

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

(2) the name and address of any person nominated as conservator by the respondent if the respondent has attained 124 years of age; and

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

Comment (subject to revision)

SECTION 4034. NOTICE.

(a) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent, but if the respondent's whereabouts is unknown or personal service cannot be made, service on the respondent must be made by [substituted service] [or] [publication]. The notice must be in at least 16 point font. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.

(b) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing must be given to the persons listed in the petition. Failure to give notice

under this subsection does not preclude the appointment of a conservator or the making of another protective order.

(c) Notice of the hearing on a petition for an order after appointment of a conservator or making of another protective order, together with a copy of the petition, must be given to the protected person, if the protected person has attained 12~~4~~ years of age and is not missing, detained, or unable to return to the United States, any conservator of the protected person's estate, and any other person as ordered by the court.

(d) A conservator shall give notice of the filing of the conservator's inventory, report, or plan of conservatorship, together with a copy of the inventory, report, or plan of conservatorship to the protected person and any other person the court directs. The notice must be delivered or sent within 14 days after the filing of the inventory, report, or plan of conservatorship.

Comment (subject to revision)

SECTION 40~~5~~4. ~~ORIGINAL PETITION: MINORS;~~ PRELIMINARIES TO HEARING ON PROPOSED CONSERVATORSHIP FOR MINOR.

(a) Upon the filing of a petition to establish a conservatorship or for another protective order for the reason that the respondent is a minor, the court shall set a date for hearing. If the court determines at any stage of the proceeding that the interests of the minor are or may be inadequately represented, it shall~~may~~ appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained 12~~4~~ years of age.

(b) 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 make orders to

preserve and apply the property of the minor as may be required for the support of the minor or individuals who are in fact dependent upon the minor. The court may appoint a [master] to assist in that task.

Comment (subject to revision)

SECTION 406~~6~~5. ~~ORIGINAL PETITION:~~ PRELIMINARIES TO HEARING ON PROPOSED CONSERVATORSHIP FOR ALLEGED PERSON NEEDING PROTECTION.; APPOINTMENT OF LAWYER; APPOINTMENT OF [VISITOR]

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

Alternative A

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

(1) requested by the respondent;

(2) recommended by the [visitor]; or

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

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

Alternative B

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

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

End of Alternatives

(c) The [visitor] shall interview the respondent in person and in a manner the respondent is best able to understand~~, to the extent that the respondent is able to understand~~:

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

(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.

(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 ~~and~~

(7~~5~~) any other matters the court directs.

(f) ~~The court may also appoint a physician, psychologist, or other individual qualified to evaluate the alleged impairment to conduct an examination of the respondent.~~

~~(g)~~ 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 subsection (e)(1).*

Comment (subject to revision)

SECTION 406. 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 u~~y~~nless 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, ~~psychiatric social worker,~~ or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional limitations ~~impairment and func~~and ~~tional~~ abilities. The examiner shall promptly 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.

Comment (subject to revision)

SECTION 407. 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.

Comment (subject to revision)

SECTION 408. PRESENCE AND RIGHTS AT HEARING~~ORIGINAL PETITION: PROCEDURE AT HEARING.~~.

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

(b) The respondent shall attend the hearing unless the court finds by clear and convincing evidence that the respondent refuses to attend the hearing, or that ~~is impossible for the respondent to attend the hearing, and/or~~ 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 technological assistance and support.

(c) Where 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 a 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 shall attend and participate in the hearing, unless excused by the court for good cause.~~ 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~~impairment~~, and the [visitor], and otherwise participate in the hearing.

(f) The hearing may be ~~held in a location convenient to the respondent and may be~~ closed upon request of the respondent and a showing of good cause.

(g) ~~(gb)~~ 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.

Comment (subject to revision)

SECTION 409. 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 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 ~~had sufficient capacity~~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; ~~and~~

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

(8) an adult stepchildren whom the respondent actively parented during their minor years and with whom the respondent had an ongoing relationship within two years of the petition; and

(9) 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 writing a substitute to serve instead and thereby transfer the priority to the substitute.

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

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

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

Comment (subject to revision)

SECTION 41009. ORIGINAL PETITION: ORDERSORDER OF APPOINTMENT.

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

(b) If a proceeding is brought for reasons other than that the respondent is a minor, after a hearing on the petition, upon finding that the respondent is a person needing protectiona basis exists for a conservatorship or other protective order, the court shall make the least restrictive order consistent with its findings. The court shall make orders necessitated by

the protected person's limitations and demonstrated needs, including appointive and other orders that will encourage the development of maximum self-reliance and independence of the protected person.

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

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

(2) Copies of the conservator's annual report and plan;

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

(~~c~~d) Within 14 days after an appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained 12~~4~~ years of age and is not missing, detained, or unable to return to the United States, and to all other persons given notice of the petition.

~~(cd) The appointment of a conservator or the entry of another protective order is not a determination of incapacity of the protected person.~~

Comment (subject to revision)

SECTION 411~~0~~. POWERS OF COURT.

(a) After hearing and upon 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 110 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.

Comment (subject to revision)

SECTION ~~411~~ 412. POWERS REQUIRING ~~REQUIRED~~ COURT APPROVAL.

(a) After notice to interested persons and upon express authorization of the court, a conservator may:

(1) make gifts, except as otherwise provided in Section 427(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 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.

Comment (subject to revision)

SECTION 413~~2~~. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS.

(a) If the court finds that the respondent is a person needing protection~~a basis is established for a protective order with respect to an individual~~, 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 411(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.

Comment (subject to revision)

~~SECTION 413. 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 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 14 years of age and at the time of the nomination had sufficient capacity 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 of the respondent;~~

~~(5) an adult child of the respondent;~~

~~(6) a parent of the respondent; and~~

~~(7) an adult with whom the respondent has resided for more than six months before the filing of the petition.~~

~~(b) A person having priority under subsection (a)(1), (4), (5), or (6) may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.~~

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

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

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

SECTION 414. 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 responsibility.

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

Comment (subject to revision)

SECTION 415. BOND; ALTERNATIVE ASSET PROTECTION ARRANGMENTS.

(a) The court shall~~may~~ require a conservator to furnish a bond with sureties as it may specify, or require an alternative asset protection arrangement, conditioned upon faithful discharge of all duties of the conservatorship according to law. The court may waive this requirement only if the court finds that ~~, with sureties as it may specify~~such a bond or arrangement is not necessary to protect the interests of the protected person.

(b)~~.~~ Unless otherwise directed by the court, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. The court, in place of

sureties on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

Comment (subject to revision)~~nt~~

SECTION 416. TERMS AND REQUIREMENTS OF BOND.

(a) The following rules apply to any bond required:

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

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

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

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

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

Comment (subject to revision)

SECTION 417. COMPENSATION ~~AND EXPENSES~~OF CONSERVATOR. ~~.~~

~~If not otherwise compensated for services rendered, a guardian, conservator, lawyer for the respondent, lawyer whose services resulted in a protective order or in an order beneficial to a protected person's estate, or any other person appointed by the court is entitled to reasonable compensation from the estate.~~

~~(2)~~ In determining the reasonableness of compensation for services performed by a ~~guardian or~~ conservator, the court shall consider:

(a) the necessity and quality of the services provided;

(b) the conservators~~guardian~~'s experience, training, professional standing, and skills;

(c) the difficulty of tasks performed, including the degree of skill and care required;

(d) 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;

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

(f) the fees customarily paid for performing like services in the community;

(g) ~~in the case of a conservator,~~ the extent to which the services provided were or were not consistent with the conservator's plan.

~~Compensation may be paid and expenses reimbursed without court order. If the court determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount must be repaid to the estate.~~

Comment (subject to revision)

SECTION 418. 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 may exercise authority only as necessitated by the limitations of the protected person, and to the extent possible, shall encourage the person to participate in decisions, act in the person's own behalf, and develop or regain the ability to manage the person's estate and business affairs.~~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 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:

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

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

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

(c) Within 60 days after appointment, a conservator shall file with the appointing court a plan for protecting, managing, expending, and distributing the assets of the protected person's estate. The plan must be based on the actual needs of the person and take into consideration the best interest of the person as well as the protected person's expressed interests to the extent known to the conservator or reasonably ascertainable by conservator. The conservator shall include in the plan steps to develop or restore the person's ability to manage the person's property, how the conservator will involve the person in decisions about property management, an estimate of the duration of the conservatorship, and projections of expenses and resources.

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

Comment (subject to revision)

SECTION 419. INVENTORY; RECORDS.

(a) Within 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as

information permits.

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

Comment (subject to revision)

SECTION 420. POWERS OF CONSERVATOR IN ADMINISTRATION.

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

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

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

(2) receive additions to the estate;

(3) continue or participate in the operation of any business or other enterprise;

(4) acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) invest assets of the estate as though the conservator were a trustee;

(6) deposit money of the estate in a financial institution, including one operated by the conservator;

(7) acquire or dispose of an asset of the estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate;

(8) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(9) subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;

(10) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset;

(13) vote a security, in person or by general or limited proxy;

(14) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

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

(16) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other

business enterprise;

(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;

(18) insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;

(19) borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;

(20) pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;

(21) pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;

(22) allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;

(23) pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for 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.

Comment (subject to revision)

SECTION 421. 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 trust if performed by the conservator.

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

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

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

Comment (subject to revision)

SECTION 422. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.

(a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment or contrary to the plan filed pursuant to Section 418, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child or spousal support, in accordance with the following rules:

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

(2) A conservator may not be surcharged for money paid to persons

furnishing support, care, education, or benefit to a protected person, or an individual who is in fact dependent on the protected person, in accordance with the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.

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

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

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

(C) other money or sources used for the support of the protected person.

(D) the protected person's expressed interests and personal values.

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

(b) If the estate is ample to provide for the distributions authorized by subsection (a), a conservator for a protected person other than a minor may make gifts that the protected person might have been expected to make, in amounts that do not exceed in the aggregate for any

calendar year 20 percent of the income of the estate in that year.

Comment (subject to revision)

SECTION 4230. REPORTS; APPOINTMENT OF [VISITOR]; MONITORING.

(a) A conservator shall report to the court for administration of the estate annually unless the court otherwise directs, upon resignation or removal, upon termination of the conservatorship, and at other times as the court directs. An order, after notice and hearing, allowing an intermediate report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the accounting. An order, after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship.

(b) A report must state or contain:

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

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

(3) any recommended changes in the plan for the conservatorship as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.

(4) to the extent feasible, copies of the most recent reasonably available financial statements evidencing the status of the protected person's bank accounts, investment accounts, and mortgage(s) or other debts.

(c) The court may appoint a [visitor] to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs. In connection with a report, the court may order a conservator to submit the assets of the estate to

an appropriate examination to be made in a manner the court directs.

(d) A copy of the conservators's report shall be provided to the protected person, and any other persons entitled to such reports as a result of the initial court order.

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

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

(2) Whether the conservatorship should continue; and

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

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

(1) notify the conservator, the protected person, and any other persons entitled to such notification according to the initial court order

(2) require additional information from the conservator, demand that the conservator appear in court, or both.

~~(d) The court shall establish a system for monitoring conservatorships, including the filing and review of conservators' reports and plans.~~

Comment (subject to revision)

SECTION 42~~41~~. TITLE BY APPOINTMENT.

(a) The appointment of a conservator vests title in the conservator as trustee to all

property of the protected person, or to the part thereof specified in the order, held at the time of appointment or thereafter acquired. An order vesting title in the conservator to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order.

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

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

Comment (subject to revision)

SECTION 425~~2~~. PROTECTED PERSON'S INTEREST INALIENABLE.

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

———(b) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against 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.

Comment (subject to revision)

SECTION 426~~3~~. 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, descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

Comment (subject to revision)

SECTION 427~~4~~. 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 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 110 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.

Comment (subject to revision)

~~**SECTION 425. POWERS OF CONSERVATOR IN ADMINISTRATION.**~~

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

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

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

~~(2) receive additions to the estate;~~

~~(3) continue or participate in the operation of any business or other enterprise;~~

~~(4) acquire an undivided interest in an asset of the estate in which the~~

~~conservator, in any fiduciary capacity, holds an undivided interest;~~

~~(5) invest assets of the estate as though the conservator were a trustee;~~

~~(6) deposit money of the estate in a financial institution, including one operated by the conservator;~~

~~(7) acquire or dispose of an asset of the estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate;~~

~~(8) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;~~

~~(9) subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;~~

~~(10) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;~~

~~(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;~~

~~(12) grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset;~~

~~(13) vote a security, in person or by general or limited proxy;~~

~~(14) pay calls, assessments, and any other sums chargeable or accruing~~

~~against or on account of securities;~~

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

~~(16) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;~~

~~(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;~~

~~(18) insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;~~

~~(19) borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;~~

~~(20) pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;~~

~~(21) pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;~~

~~(22) allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;~~

~~(23) pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for 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.~~

~~**Comment**~~

~~This section is based on UGPPA (1982) Section 2-323 (UPC Section 5-423 (1982)) with some changes. For example, the provision authorizing delegation is now stated as a separate section. See Section 426. Also, subsection (b)(23) is revised to expand the list of individuals to whom the conservator may pay sums otherwise distributable to the protected person. The list now includes custodians under the Uniform Transfers to Minors Act (1983/1986) and trustees under the Uniform Custodial Trust Act (1987). But the most significant change to this section is the deletion of the language of former subsection (a) that allowed a conservator of a minor to exercise the powers of a guardian without seeking formal appointment to that office.~~

~~While subsection (b)(7) authorizes a conservator to deal with real property located in another state, before disposing of the property in the other state, local law may require that the conservator have some contact with or supervision by a court in that state.~~

~~In recent years, structured settlements have become more common. While the term "structured settlement" is not expressly used in this section, subsection (b)(20) would authorize a conservator to enter into such an agreement. The court, by means of a protective arrangement, may also approve a structured settlement without appointing a conservator. See Section 412(a)(2).~~

~~**SECTION 426. DELEGATION.**~~

~~(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 trust if performed by the conservator.~~

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

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

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

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

~~**Comment**~~

~~This new section is based on Section 9 of the Uniform Prudent Investor Act (1994), which itself was derived from the Restatement (Third) of Trusts: Prudent Investor Rule Section 171 (1992). The Uniform Prudent Investor Act (1994), despite its title, addresses more than investment of trust assets. It also covers a variety of topics, including delegation, relating to the general management of trusts. Section 9 of the Act is designed to replace Section 3(24) of the Uniform Trustee Powers Act (1964) on which the former delegation provision of this Act was based. Unlike UGPPA (1982) Section 2-323(c)(24) (UPC Section 5-423(c)(24)(1982)), which merely authorized delegation without specifying standards, this section subjects delegation to a standard of care.~~

~~The purpose of this section is to encourage and protect the trustee in making delegations appropriate to the facts and circumstances of the particular conservatorship. This section is designed to strike the appropriate balance between the advantages and hazards of delegation. The standard for whether a particular function is delegable by a conservator is whether it is a function that a prudent conservator might delegate under similar circumstances. This section does not~~

~~mandate delegation or hold a conservator liable for failing to delegate. However, such liability may be imposed under some other section if the conservator, due to a failure to delegate, is unable to perform required duties. See, e.g., Section 418 (general duties of conservator).~~

~~This section applies to delegation both to agents and co-conservators. Whether a conservator may delegate to a co-conservator functions which may not be delegated to an agent and vice versa will depend on the facts and circumstances of the particular conservatorship.~~

~~Under subsection (b)(3), the duty to review the agent's performance includes the periodic evaluation of the continued need for and appropriateness of the delegation, including the need to possibly terminate the relationship. The conservator's compliance with this duty should also protect the protected person against the risks of an overly broad delegation.~~

~~Although subsection (c) exonerates the conservator from personal responsibility for the agent's conduct when the delegation satisfies the standards of subsection (a), subsection (d) makes the agent responsible to the conservatorship.~~

~~SECTION 427. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.~~

~~(a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment or contrary to the plan filed pursuant to Section 418, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the~~

~~protected person and individuals who are in fact dependent on the protected person, including the payment of child or spousal support, in accordance with the following rules:~~

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

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

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

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

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

~~(C) other money or sources used for the support of the protected person.~~

~~(4) Money expended under this subsection may be paid by the conservator~~

~~to any person, including the protected person, as reimbursement for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.~~

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

~~**Comment**~~

~~This section sets forth a conservator's specific duties and powers with respect to ongoing distributions. Distributions upon termination of the conservatorship are addressed in Section 431. Special rules with respect to a termination due to the death of the protected person are covered in Section 428. Distributions under this section may be made without court authorization or confirmation.~~

~~This section is based on subsections (a) and (b) of UGPPA (1982) Section 2-324 (subsections (a) and (b) of UPC Section 5-424 (1982)) but with several changes. The categories for which distributions can be made have been expanded to include health and welfare. The authority to make distributions for the protected person's dependents has been clarified. "Dependents" is not limited to dependents whom the protected person is legally obligated to support, but refers to individuals who are in fact dependent on the protected person, such as children in college and adult children with developmental disabilities. Child and spousal support payments are now specifically included within permitted distributions to dependents. Although~~

~~Section 411 allows the making of a gift, it may only be done pursuant to court order. Under this section, a conservator may make a gift without court order if the gift meets the stated limitations.~~

SECTION 428. 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 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.]

Comment (subject to revision)

SECTION 429. 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 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 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 due proof, procure an order for its allowance, payment, or security by encumbering assets of the

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

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

———(1) costs and expenses of administration;

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

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

———(4) claims arising before the conservatorship; and

———(5) all other claims.

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

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

Comment (subject to revision)

SECTION 430. PERSONAL LIABILITY OF CONSERVATOR.

———(a) Except as otherwise agreed, a conservator is not personally liable on a

contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.

———(b) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if personally at fault.

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

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

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

Comment (subject to revision)

g

SECTION 431. TERMINATION ~~OF PROCEEDINGS~~OR MODIFICATION OF CONSERVATORSHIP.

———(a) A conservatorship terminates upon the death of the protected person or upon order of the court. Unless created for reasons other than that the protected person is a minor, a

conservatorship created for a minor also terminates when the protected person attains majority or is emancipated.

(1) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution to the person's successors. The conservator shall file a final report and petition for discharge within [30] days after distribution.

(b) A particular conservator's appointment terminates upon the death, resignation, or removal of that guardian. A resignation of a conservator is effective when approved by the court. Termination of a conservator's appointment does not affect the conservator's liability for previous acts or the obligation to account for the money or other assets of the protected person.

. (c) A protected person or person interested in the welfare of a protected person may petition for removal of a conservator on the ground that the person no longer meets the definition of "person needing protection," that removal would be in the best interest of the protected person, or for other good cause. A conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor conservator.

~~(b) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution to the person's successors. The conservator shall file a final report and petition for discharge within [30] days after distribution.~~

(d~~c~~) ~~On petition of a protected person, a conservator, or another person interested in a protected person's welfare, t~~The court shall ~~may~~ 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.

(ed) The court shall engage in fact-finding to determine whether termination or modification of a conservatorship is appropriate upon:

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

(2) 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 is appropriate; or

(3) 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.

(fd) 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 of the conservatorship is in the best interest of the protected person.

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

the person's interests.

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

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

Comment (subject to revision)

~~**SECTION 432. REGISTRATION OF GUARDIANSHIP ORDERS.** If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate [county] of this state, certified copies of the order and letters of office.~~

~~**SECTION 433. REGISTRATION OF PROTECTIVE ORDERS.** If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any [county] in which property belonging to the protected person is~~

~~located, certified copies of the order and letters of office and of any bond.~~

~~SECTION 434. EFFECT OF REGISTRATION.~~

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

~~(b) A court of this state may grant any relief available under this [article] and other law of this state to enforce a registered order.~~

ARTICLE 5

MISCELLANEOUS PROVISIONS

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

SECTION 502. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

SECTION 503. EFFECTIVE DATE. This [act] takes effect .....

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

(1) .....

(2) .....

(3) .....