

UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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**UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE
ARRANGEMENTS ACT**

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Adult” means an individual at least [18] years of age or an emancipated individual under [18] years of age.

(2) “Adult subject to conservatorship” means an adult for whom a conservator has been appointed under this [act].

(3) “Adult subject to guardianship” means an adult for whom a guardian has been appointed under this [act].

(4) “Claim” includes a claim against an individual or conservatorship estate, whether arising in contract, tort, or otherwise.

(5) “Conservator” means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship. The term includes a co-conservator.

(6) “Conservatorship estate” means the property subject to conservatorship under this [act].

(7) “Full conservatorship” means a conservatorship that grants the conservator all powers available under this [act].

(8) “Full guardianship” means a guardianship that grants the guardian all powers available under this [act].

(9) “Guardian” means a person appointed by a court to make decisions with respect to the personal affairs of an individual. The term includes a co-guardian but does not include a guardian ad litem.

(10) “Guardian ad litem” means a person appointed to inform the court about, and to represent, the needs and best interest of an individual.

(11) “Individual subject to conservatorship” means an adult or minor for whom a conservator has been appointed.

(12) “Individual subject to guardianship” means an adult or minor for whom a guardian has been appointed.

(13) “Less restrictive alternative” means an approach to meeting an individual’s needs which restricts fewer rights than would the appointment of a guardian or conservator. The term includes supported decision making, appropriate technological assistance, appointment of an agent by the individual including appointment under a [power of attorney for health care] or power of attorney for finances, or appointment of a representative payee.

(14) “Letters of office” means judicial certification of guardianship or conservatorship.

(15) “Limited conservatorship” means a conservatorship that grants the conservator less than all powers available under this [act], grants powers over only certain property, or otherwise restricts the powers of the conservator.

(16) “Limited guardianship” means a guardianship that grants the guardian less than all powers available under this [act] or otherwise restricts the powers of the guardian.

(17) “Minor” means an unemancipated individual who is under [18] years of age.

(18) “Minor subject to conservatorship” means a minor for whom a conservator has been appointed under this [act].

(19) “Minor subject to guardianship” means a minor for whom a guardian has been appointed under this [act].

(20) “Parent” does not include a parent whose parental rights have been terminated.

(21) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(22) “Property” includes tangible and intangible property.

(23) “Protective arrangement instead of guardianship or conservatorship” means a court order entered under [Article] 5, including an order authorizing a single transaction.

(24) “Protective arrangement instead of guardianship” means a court order entered under Section 502 of this [act].

(25) “Protective arrangement instead of conservatorship” means a court order entered under Section 503 of this [act].

(26) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) “Respondent” means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

(28) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(29) “Standby guardian” means a person appointed under Section 207.

(30) “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. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.

(31) “Supported decision making” means assistance from one or more persons of an individual’s choosing:

(A) in understanding the nature and consequences of potential personal and financial decisions which enables the individual to make the decisions; and

(B) when consistent with the individual’s wishes, in communicating a decision once made.

***Legislative Note:** Unlike the 1997 Act, this Act does not use the term “incapacitated person.” As this term may be used elsewhere in state law, the enacting state should review its other law to determine whether conforming amendments are necessary.*

SECTION 103. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY

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

SECTION 104. SUBJECT-MATTER JURISDICTION.

(a) Except to the extent that jurisdiction is precluded by [insert citation to Uniform Child Custody Jurisdiction and Enforcement Act], the [designate appropriate court] has jurisdiction over a guardianship for a minor domiciled or present in this state. The court has jurisdiction over a conservatorship or protective arrangement instead of conservatorship for a minor domiciled in or having property located in this state.

(b) The [designate appropriate court] has jurisdiction over a guardianship, conservatorship, and an order for a protective arrangement instead of conservatorship for an adult as provided in the [insert citation to Uniform Adult Guardianship and Protective

Proceedings Jurisdiction Act].

(c) After service of notice in a proceeding seeking a guardianship, conservatorship, or protective arrangement instead of guardianship or conservatorship 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 protective arrangement;

(2) exclusive jurisdiction to determine how property of the respondent which is subject to the law of this state must be managed, expended, or distributed to or for the use of the respondent, an individual who is dependent in fact on the respondent, or other claimant;

(3) concurrent jurisdiction to determine the validity of a claim against the respondent or property of the respondent or a question of title concerning the property; and

(4) if a guardian or conservator is appointed, exclusive jurisdiction over issues related to administration of the guardianship or conservatorship.

(d) A court that appoints a guardian or conservator, or authorizes a protective arrangement instead of guardianship or conservatorship, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the appointment or protective arrangement expires by its terms.

SECTION 105. TRANSFER OF PROCEEDING.

(a) This section does not apply to a guardianship or conservatorship for an adult that is subject to the transfer provisions of [insert citation to Article 3 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act].

(b) After appointment of a guardian or conservator, the court that made the appointment may transfer the proceeding to a court in another [county] in this state or to another state if

transfer will serve the best interest of the individual subject to the guardianship or conservatorship.

(c) If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship is filed in a court in this state, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

(d) A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in this state if jurisdiction in this state is or will be established. The appointment may be made on proof of appointment in the other state or foreign country and presentation of a certified copy of the part of the court record in the other state or country specified by the court in this state.

(e) Notice of hearing on a petition under subsection (d), together with a copy of the petition, must be given to the respondent, if the respondent is 12 years of age or older at the time of the hearing, and to the persons that would be entitled to notice if the procedures for appointment of a guardian or conservator under this [act] were applicable. The court shall make the appointment in this state unless it determines that the appointment would not be in the best interest of the respondent.

(f) Not later than 14 days after appointment under subsection (e), the guardian or conservator shall give a copy of the order of appointment to the individual subject to guardianship or conservatorship, if the individual is 12 years of age or older, and to all persons given notice of the hearing on the petition.

SECTION 106. VENUE.

(a) Venue for a guardianship proceeding for a minor is in:

(1) the [county] of this state in which the minor resides or is present at the time the proceeding commences; or

(2) the [county] where another proceeding concerning the custody and parental rights of the minor is pending.

(b) Venue for a guardianship proceeding or protective arrangement instead of guardianship for an adult is in:

(1) the [county] of this state in which the respondent resides;

(2) 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; or

(3) in a proceeding for appointment of an emergency guardian of an adult, in the [county] in which the respondent is present.

(c) Venue for a conservatorship proceeding or protective arrangement instead of conservatorship is in:

(1) the [county] of this state in which the respondent resides, whether or not a guardian has been appointed in another [county] or other jurisdiction; or

(2) 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 proceedings under this [act] are brought in more than one [county] in this state, the court of the [county] in which the first proceeding brought has the exclusive right to proceed unless the court determines venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding.

SECTION 107. PRACTICE IN COURT.

(a) Except as otherwise provided in this [act], the rules of evidence and rules of civil

procedure, including rules concerning appellate review, govern a proceeding under this [act].

(b) If a guardianship or conservatorship proceeding, or a proceeding for a protective arrangement instead of guardianship or conservatorship, for the same individual are commenced or pending in the same court, the proceedings may be consolidated.

[(c) A respondent may demand a jury trial in a proceeding under this [act] on the issue whether a basis exists for appointment of a guardian or conservator.]

Legislative Note: State policies vary on whether the jury trial may be demanded in guardianship and conservatorship cases.

SECTION 108. LETTERS OF OFFICE.

(a) On a guardian's filing of an acceptance of appointment, the court shall issue appropriate letters of office.

(b) On a conservator's filing of an acceptance of appointment and filing of any required bond or compliance with any other asset-protection arrangement required by the court, the court shall issue appropriate letters of office.

(c) Limitations on the powers of the guardian or conservator or on the property subject to conservatorship must be stated on the letters of office.

(d) The court at any time may limit the powers conferred on the guardian or conservator. The court shall issue new letters of office to reflect the limitation. The court must give notice of the limitation to the guardian or conservator, individual subject to guardianship or conservatorship, each parent of a minor subject to guardianship or conservatorship, and any other person the court determines.

SECTION 109. EFFECT OF ACCEPTANCE OF APPOINTMENT. A guardian or conservator that accepts an appointment submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

SECTION 110. CO-GUARDIAN, CO-CONSERVATOR.

(a) The court at any time may appoint a co-guardian or co-conservator to serve immediately or when a designated future event occurs.

(b) A co-guardian or co-conservator appointed to serve immediately may act when the co-guardian or co-conservator files an acceptance of appointment.

(c) A co-guardian or co-conservator appointed to serve when a designated future event occurs may act when:

(1) the designated event occurs; and

(2) the co-guardian or co-conservator files an acceptance of appointment.

(d) Unless an order of appointment under subsection (a) or subsequent order states otherwise, co-guardians or co-conservators shall make decisions jointly.

SECTION 111. JUDICIAL APPOINTMENT OF SUCCESSOR GUARDIAN OR SUCCESSOR CONSERVATOR.

(a) The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated future event occurs.

(b) A person entitled under Section 202 or 302 to petition the court to appoint a guardian may petition the court to appoint a successor guardian. A person entitled under Section 402 to petition the court to appoint a conservator may petition the court to appoint a successor conservator.

(c) A successor guardian or successor conservator appointed to serve when a designated future event occurs may act as guardian or conservator if:

(1) the event occurs; and

(2) the successor files an acceptance of appointment.

(d) A successor guardian or successor conservator succeeds to the predecessor's powers unless otherwise provided by the court.

SECTION 112. EFFECT OF DEATH, REMOVAL, OR RESIGNATION OF GUARDIAN OR CONSERVATOR.

(a) Appointment of a guardian or conservator terminates on the death or removal of the guardian or conservator, or when the court approves a resignation of the guardian or conservator under subsection (b).

(b) A guardian or conservator must petition the court to resign. The petition may include a request that the court appoint a successor. Resignation of a guardian or conservator is effective on the date the resignation is approved by the court.

(c) Death, removal, or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for an action taken on behalf of the individual subject to guardianship or conservatorship or to account for the individual's money or other property.

SECTION 113. NOTICE OF HEARING.

(a) If notice of a hearing under this [act] is required, the movant shall give notice of the date, time, and place of the hearing to the person to be notified unless otherwise ordered by the court for good cause. Except as otherwise provided in this [act], notice must be given in compliance with [insert the applicable rule of civil procedure] and at least 14 days before the hearing.

(b) Proof of notice of a hearing under this [act] must be made before or at the hearing and filed in the proceeding.

(c) Notice of a hearing under this [act] must be in at least 16-point font, in plain language,

and to the extent feasible, in a language in which the recipient is proficient.

SECTION 114. WAIVER OF NOTICE.

(a) Except as otherwise provided in subsection (b), a person may waive notice under this [act] in a record signed by the person or person's attorney and filed in the proceeding.

(b) A respondent, individual subject to guardianship, individual subject to conservatorship, or an individual subject to a protective arrangement instead of guardianship or conservatorship may not waive notice under this [act].

SECTION 115. GUARDIAN AD LITEM. At any stage of a proceeding under this [act], the court may appoint a guardian ad litem if the court determines an individual's interest otherwise would not be adequately represented. If a conflict of interest does not exist, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state on the record the duties of the guardian ad litem and the reasons for the appointment.

SECTION 116. REQUEST FOR NOTICE. A person that is interested in the welfare of a respondent, individual subject to guardianship or conservatorship, or individual subject to a protective arrangement instead of guardianship or conservatorship, and not otherwise entitled to notice under this [act], may file a request with the court for notice. If the court approves the request, the court shall give notice of the approval to the guardian or conservator if one has been appointed, or the respondent if no guardian or conservator has been appointed. The request must include a statement showing the interest of the person making it and the address of the person or an attorney for the person to whom notice is to be given.

SECTION 117. DISCLOSURE OF BANKRUPTCY OR CRIMINAL HISTORY.

(a) Before accepting appointment as a guardian or conservator, a person shall disclose to

the court whether the individual is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding, been convicted of a felony, been convicted of a crime involving dishonesty, or been convicted of [crime involving neglect, violence, or use of physical force or other crime relevant to the functions the individual would assume as guardian or conservator].

(b) A guardian or conservator that engages or anticipates engaging an agent the guardian or conservator knows has been convicted of a crime involving dishonesty, or been convicted of [a crime involving neglect, violence, or use of physical force or other crime relevant to the functions the agent is being engaged to perform] shall promptly disclose that knowledge to the court.

(c) A conservator that engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship shall promptly disclose to the court if the conservator knows the agent has is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding.

Legislative note: Enacting states should look to their criminal codes to determine the crimes and internal references to include in the bracketed sections.

SECTION 118. MULTIPLE APPOINTMENTS OR NOMINATIONS. If a respondent or other person makes more than one appointment or nomination of a guardian or conservator in a record, the latest in time governs.

SECTION 119. COMPENSATION AND EXPENSES; IN GENERAL.

(a) Unless otherwise compensated for services rendered, an attorney for a respondent in a proceeding under this [act] is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the respondent.

(b) Unless otherwise compensated for services rendered, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or

conservatorship or beneficial to an individual for whom a protective arrangement instead of guardianship or conservatorship was ordered is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the individual.

(c) The court must approve compensation and expenses payable under this section before payment. Approval is not required before a service is provided or an expense is incurred.

(d) If the court dismisses a petition under this [act] and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or [visitor] against the petitioner.

SECTION 120. COMPENSATION OF GUARDIAN OR CONSERVATOR.

(a) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, clothing, and other appropriate expenses advanced for the benefit of the individual subject to guardianship to the individual, subject to court approval. If a conservator, other than the guardian or a person affiliated with the guardian, is appointed for an individual subject to conservatorship, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without court approval.

(b) A conservator is entitled to reasonable compensation from the property of the individual subject to conservatorship, subject to court approval.

(c) In determining reasonable compensation for a guardian or conservator, the court, or conservator as provided in subsection (a), shall consider:

- (1) the necessity and quality of the services provided;
- (2) the experience, training, professional standing, and skills of the guardian or conservator;
- (3) the difficulty of the services performed, including the degree of skill and care

required;

(4) the conditions and circumstances under which a service was performed, including whether the service was provided outside of regular business hours or under dangerous or extraordinary conditions;

(5) the effect of the services on the individual subject to guardianship or conservatorship;

(6) the extent to which the services provided were or were not consistent with the guardian's or conservator's plan; and

(7) the fees customarily paid to a person that performs a like service in the community.

(d) A guardian or conservator need not use the personal funds of the guardian or conservator for the expenses of the individual subject to guardianship or conservatorship.

(e) If an individual subject to guardianship or conservatorship seeks to modify or terminate the guardianship or conservatorship or remove the guardian or conservator, the guardian or conservator may be compensated for time spent in opposition only to the extent the court determines the opposition was reasonably necessary to protect the interest of the individual subject to guardianship or conservatorship.

SECTION 121. LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP. A guardian or conservator is not personally liable to a third person for the act of an individual subject to guardianship or conservatorship solely by reason of the guardianship or conservatorship.

SECTION 122. PETITION AFTER APPOINTMENT FOR INSTRUCTION OR RATIFICATION.

(a) A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act.

(b) On notice and hearing on a petition under subsection (a), the court may give an appropriate instruction and enter any appropriate order.

SECTION 123. THIRD-PARTY ACCEPTANCE OF AUTHORITY OF GUARDIAN OR CONSERVATOR.

(a) A person must refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

(1) the person has actual knowledge or a reasonable belief that the guardian's or conservator's letters of office are invalid or that the conservator or guardian is exceeding or improperly exercising authority granted by the court; or

(2) the person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

(b) A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

(1) the guardian's or conservator's proposed action would be inconsistent with this [act]; or

(2) the person makes, or has actual knowledge that another person has made, a report to the [appropriate adult or child protective services office] stating a good faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse,

neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

(c) A person that refuses to accept the authority of a guardian or conservator in accord with subsection (c) may report the refusal and the reason for refusal to the court. The court on receiving a report shall consider whether removal of the guardian or conservator or other action is appropriate.

(d) A guardian or conservator may petition the court to require a third party to accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship.

SECTION 124. USE OF AGENT BY GUARDIAN OR CONSERVATOR.

(a) Except as otherwise provided in subsection (c), a guardian or conservator may delegate a power to an agent that a prudent guardian or conservator of comparable skills could prudently delegate under the circumstances if the delegation is consistent with the guardian's or conservator's plan and fiduciary duty.

(b) In delegating a power under subsection (a), the guardian or conservator shall exercise reasonable care, skill, and caution in:

(1) selecting the agent;

(2) establishing the scope and terms of the agent's work in accordance with the guardian or conservator's plan;

(3) monitoring the agent's performance and compliance with the delegation; and

(4) redressing action or inaction of the agent which would constitute a breach of the guardian's or conservator's duties if performed by the guardian or conservator.

(c) A guardian or conservator may not delegate all powers to an agent.

(d) In performing a power delegated under this section, an agent shall:

(1) exercise reasonable care to comply with the terms of the delegation, and use reasonable care in the performance of the delegated power; and

(2) if the agent has delegated the power to make a decision on behalf of the individual subject to guardianship or conservatorship, in making the decision use the same decision-making standard the guardian or conservator would be required to use in making the decision.

(e) By accepting a delegation of a power from a guardian or conservator, an agent submits to the jurisdiction of the courts of this state in an action involving the agent's performance as agent.

(f) A guardian or conservator that delegates and monitors a power in compliance with this section is not liable for the decisions or actions of the agent.

SECTION 125. TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR.

(a) The court may appoint a temporary substitute guardian for an individual subject to guardianship for a period not longer than six months if:

(1) a proceeding to remove an existing guardian is pending; or

(2) the court finds an existing guardian is not effectively performing the guardian's duties and the welfare of the individual requires immediate action.

(b) The court may appoint a temporary substitute conservator for an individual subject to conservatorship for a period not longer than six months if:

(1) a proceeding to remove an existing conservator is pending; or

(2) the court finds that an existing conservator is not effectively performing the

conservator's duties and the welfare of the individual or the conservatorship estate requires immediate action.

(c) Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order of appointment of the guardian or conservator. The authority of an existing guardian or conservator is suspended for as long as the temporary substitute guardian or conservator has authority.

(d) The court shall give notice of appointment of a temporary substitute guardian or temporary substitute conservator, not later than [five] days after the appointment, to:

(1) the individual subject to guardianship or conservatorship;

(2) the affected guardian or conservator; and

(3) in the case of a minor, each parent of the minor and any person currently having custody or care of the minor.

(e) The court may remove a temporary substitute guardian or temporary substitute conservator at any time. The temporary substitute guardian or temporary substitute conservator shall make any report the court requires.

(f) Except as otherwise provided in this section, the provisions of this [act]:

(1) concerning a guardian for a minor apply to a temporary substitute guardian for a minor;

(2) concerning a guardian for an adult apply to a temporary substitute guardian for an adult; and

(3) concerning a conservator apply to a temporary substitute conservator.

SECTION 126. REGISTRATION OF ORDER; EFFECT

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

(b) If a conservator is appointed in another state and a petition for conservatorship is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court, may register the conservatorship in this state by filing as a foreign judgment, in a court of a [county] in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office, and any bond or other asset-protection arrangement required by the court.

(c) On registration of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in this state all powers authorized in the order except as prohibited by the law of this state other than this [act]. If the guardian or conservator is not a resident of this state, the guardian or conservator may maintain an action or proceeding in this state subject to any condition imposed by this state on a nonresident party.

(d) The court may grant any relief available under this [act] and law of this state other than this [act] to enforce a registered order.

SECTION 127. GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.

(a) An individual who is subject to guardianship or conservatorship, or person interested in the welfare of an individual subject to guardianship or conservatorship, who reasonably believes a guardian or conservator is breaching the guardian's or conservator's fiduciary duty or

otherwise acting in a manner inconsistent with this [act] may file a grievance with the court. The grievance must be in a record.

(b) Subject to subsection (c), after receiving a grievance under subsection (a), the court:

(1) shall review the grievance and, if necessary to determine the appropriate response to the grievance, court records related to the conservatorship or guardianship;

(2) shall schedule a hearing if the individual subject to conservatorship or guardianship is an adult and if the grievance supports a reasonable belief that:

(A) removal of the guardian and appointment of a successor may be appropriate in accord with Section 318;

(B) termination or modification of the guardianship may be appropriate under Section 319;

(C) removal of the conservator and appointment of a successor may be appropriate under Section 430;

(D) termination or modification of the conservatorship may be appropriate under Section 431; and

(3) may take any action supported by the grievance and record, including:

(A) ordering the guardian or conservator to provide to the court a report, accounting, inventory, updated plan, or other information;

(B) appointing a guardian ad litem;

(C) appointing an attorney for the individual subject to guardianship or conservatorship; or

(D) scheduling a hearing.

(c) The court may decline to proceed under subsection (b) if a similar grievance was

made within the preceding six months and the court followed the procedures of subsection (b) in considering the grievance.

[SECTION 128. DELEGATION BY PARENT. A parent of a minor, by a power of attorney, may delegate to another person for a period not exceeding [nine months], any of the parent's powers regarding care, custody, or property of the minor, other than power to consent to marriage or adoption unless otherwise provided by law.]

Legislative Note: A version of Section 130 has appeared in the Uniform Probate Code since 1969 and has been enacted in some form by over 40 states. However, the Drafting Committee believed the subject matter of this section was unrelated and would be more appropriately included in a state's general family law statutes. Enacting states should review their existing law to determine whether to include this section, and where it could be codified most appropriately.

[ARTICLE] 2

GUARDIANSHIP OF MINOR

SECTION 201. BASIS FOR APPOINTMENT OF GUARDIAN FOR MINOR.

- (a) A person becomes a guardian for a minor on appointment by the court.
- (b) The court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest and:
 - (1) each parent of the minor, after being fully informed of the nature and consequences of guardianship, consents;
 - (2) all parental rights have been terminated; or
 - (3) the court finds by clear-and-convincing evidence that all parents of the minor are unwilling or unable to exercise the powers the court is granting the guardian.

SECTION 202. PETITION FOR APPOINTMENT OF GUARDIAN FOR MINOR.

- (a) A person interested in the welfare of a minor, including the minor for whom the appointment is sought, may petition for appointment of a guardian for the minor.

(b) A petition under subsection (a) must state the petitioner's name, principal residence, current street address, if different, relationship to the minor and interest in the appointment and, to the extent known, the following:

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

(2) the name and current street address of the minor's parents;

(3) the name and current address, if known, of any person that had primary care or custody of the minor for 60 or more days during the two years immediately before the filing of the petition or any person that had the primary care or custody of the minor for at least 730 days during the five years immediately before the filing of the petition;

(4) the name and address of an attorney for the minor, if any, and an attorney for each parent of the minor, if any

(5) the reason guardianship is sought and the reason guardianship would be in the best interest of the minor;

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

(7) if the minor has property other than personal effects, a general statement of the minor's property with an estimate of its value;

(8) whether the minor needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings;

(9) if the minor has parents, whether a parent needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings;

and

(10) a statement of any other proceedings concerning the care or custody of the minor pending in any court in this state or another jurisdiction.

(c) A petition under subsection (a) must state the name and address of an attorney representing the petitioner, if any.

SECTION 203. NOTICE AND HEARING.

(a) If a petition is filed under Section 202, the court shall schedule a hearing and the petitioner shall:

(1) serve notice of the date, time, and place of the hearing, together with a copy of the petition personally to each of the following that is not the petitioner:

(A) the minor, if the minor will be 12 years of age or older at the time of the hearing;

(B) each parent of the minor or, if there is none, the adult nearest in kinship who can be found with reasonable diligence;

(C) any adult with whom the minor resides;

(D) any person not otherwise listed that had primary care or custody of the minor for 60 or more days during the two years immediately before the filing of the petition or for at least 730 days during the five years immediately before the filing of the petition; and

(E) any other person the court determines should receive personal service of notice; and

(2) give notice in accord with Section 113 of the date, time, and place of the hearing, together with a copy of the petition to:

(A) any person nominated as guardian by the minor if the minor is 12

years of age or older;

(B) any appointee of a parent if the appointment has not been prevented or terminated;

(C) each grandparent and adult sibling of the minor;

(D) any guardian or conservator acting for the minor in this state or another jurisdiction; and

(E) any other person the court determines.

(b) Notice required by subsection (a) must include a statement of the right to request appointment of an attorney for the minor, the right to object to appointment of a guardian, and a description of the nature, purpose, and consequences of appointment of a guardian.

(c) Failure to serve each of the following individuals with a notice substantially complying with subsections (a) and (b) precludes the court from granting a petition for guardianship of the minor:

(1) the minor if the minor is 12 years of age or older; and

(2) each parent of the minor unless the court finds by clear-and-convincing evidence that the parent waived the right to notice in a record or cannot be located with due diligence.

(d) If a petitioner is unable to give notice to a parent of a minor under subsection (a), or alleges that a parent of the minor waived the right to notice under this section, the court shall appoint a [visitor] who shall:

(1) interview the petitioner and the minor;

(2) ascertain whether the parent could not be located with due diligence, if the petitioner alleges the parent could not be located; and

(3) investigate any other matter relating to the petition the court directs.

Legislative Note: The term “visitor” is bracketed because some states use a different term for the person appointed by the court to investigate and report on certain facts. A visitor must have training and experience sufficient to serve as the “eyes and ears” of the court. Often, a visitor is a trained social work professional.

SECTION 204. ATTORNEY FOR MINOR OR PARENT.

(a) The court shall appoint an attorney to represent a minor who is the subject of a proceeding under Section 202 if:

- (1) requested by the minor if the minor is 12 years of age or older;
- (2) recommended by a guardian ad litem; or
- (3) the court determines the minor needs representation.

(b) An attorney appointed under subsection (a) shall:

- (1) make reasonable efforts to ascertain the minor’s wishes;
- (2) advocate for the minor’s wishes to the extent reasonably ascertainable; and
- (3) if the minor’s wishes are not reasonably ascertainable, advocate for the

minor’s best interest.

(c) A minor who is the subject of a proceeding under Section 202 may retain an attorney to represent the minor in the proceeding.

(d) A parent of a minor who is the subject of a proceeding under Section 202 may retain an attorney to represent the parent in the proceeding.

[(e) The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under Section 202 if:

- (1) the parent objects to appointment of a guardian for the minor;
- (2) the court determines that counsel is needed to ensure that consent to

appointment of a guardian is informed; or

(3) the court otherwise determines the parent needs representation.]

Legislative Note: The Drafting Committee believed that subsection (e) is important and should be included, but recognized that some states have different policies regarding rights of parents in these cases.

SECTION 205. ATTENDANCE AT HEARING

(a) The court shall require a minor who is the subject of a hearing under Section 203 to attend the hearing, and allow the minor to participate in the hearing unless the court determines, based on clear-and-convincing evidence presented at the hearing or a separate hearing, that:

(1) the minor consistently and repeatedly has refused to attend the hearing after being fully informed of the right to attend the hearing and, if the minor is 12 years of age or older, the potential consequences of failing to do so;

(2) there is no practicable way for the minor to attend the hearing;

(3) the minor lacks the ability or maturity to participate meaningfully in the hearing; or

(4) attendance would be harmful to the minor.

(b) Unless excused by the court for good cause, the person proposed to be appointed as guardian for a minor shall attend the hearing under Section 203.

(c) Each parent of the minor shall have the right to attend a hearing under Section 203.

(d) A person may request permission to participate in a hearing under Section 203. The court may grant the request, with or without hearing, on determining that it is in the best interest of the minor who is the subject of the hearing. The court may attach appropriate conditions to the person's participation.

**SECTION 206. ORDER OF APPOINTMENT; PRIORITY OF NOMINEE;
LIMITED GUARDIANSHIP FOR MINOR.**

(a) The court, after the hearing conducted under Section 203, may appoint a guardian for a minor if appointment is proper under Section 201 or dismiss the proceeding.

(b) In appointing a guardian under subsection (a), the following rules apply:

(1) The court shall appoint a person nominated as guardian by a parent of the minor in a will or other record unless the court finds the appointment is contrary to the best interest of the minor.

(2) If multiple parents have nominated different persons to serve as guardian for the minor, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the nominees is in the best interest of the minor.

(3) If a guardian is not appointed under paragraph (1) or (2), the court shall appoint the person nominated by the minor if the minor is 12 years of age or older unless the court finds that appointment is contrary to the best interest of the minor. In that case, the court shall appoint as guardian a person whose appointment is in the best interest of the minor.

(c) In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life, developing self-reliance of a minor, or for other good cause, the court, at the time of appointment of a guardian for a minor or later, on its own or on motion of the minor or other interested person, may limit the powers otherwise granted by this [article] to a guardian and thereby create a limited guardianship. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

(d) The court, as part of an order appointing a guardian for a minor, shall state rights

retained by any parents of the minor, which may include contact or visitation with the minor, decision making regarding the minor's health care, education, or another matter, or access to a record regarding the minor.

(e) The order granting a guardianship for a minor must state that each parent of the minor is entitled to notice that:

- (1) the guardian has delegated custody of the minor subject to guardianship;
- (2) the court has modified or limited the powers of the guardian; or
- (3) the court has removed the guardian.

(f) The order granting a guardianship for a minor must identify any person in addition to a parent of the minor that is entitled to notice of the events listed in subsection (e).

SECTION 207. STANDBY GUARDIAN FOR MINOR.

(a) A parent of a minor may, in a signed record, nominate a person to serve as standby guardian for the minor if the parent later becomes unable or unwilling to care for or make decisions with respect to the minor. The parent may state desired limitations on the powers to be granted the standby guardian. The parent may revoke or amend, in a signed record, the nomination at any time before the court appoints a standby guardian under subsection (b).

(b) The court may appoint a standby guardian for a minor on:

- (1) petition by a parent of the minor or a person nominated under subsection (a);

and

- (2) finding that all parents of the minor likely will be unable or unwilling to care for or make decisions with respect to the minor within [two years] after the appointment.

(c) A petition under subsection (b)(1) shall include the same information required under section 202 for the appointment of a guardian for a minor.

(d) Upon filing a petition under subsection (b)(1), the petitioner shall:

(1) serve a copy of the petition personally to:

(A) the minor, if the minor is 12 years of age or older, and the minor's attorney, if any;

(B) each parent of the minor;

(C) the person nominated as standby guardian; and

(D) any other person the court determines; and

(2) include with the copy of the petition served under paragraph (1) a statement of the right to request appointment of an attorney for the minor, the right to object to appointment of a standby guardian, and a description of the nature, purpose, and consequences of appointment of a standby guardian.

(e) A person entitled to notice under subsection (d), not later than 60 days after service of the petition and statement, may object to appointment of the standby guardian by filing an objection with the court and giving notice of the objection to each other person entitled to notice under subsection (d).

(f) If an objection is filed under subsection (e), the court shall conduct a hearing in accord with Section 203 to determine whether a standby guardian should be appointed and, if so, the person that should be appointed. If no objection is filed, the court may proceed to make the appointment.

(g) Failure to serve each of the following individuals with notice substantially complying with subsection (d) precludes the court from granting a petition for appointment of a standby guardian for the minor:

(1) the minor, if the minor is 12 years of age or older; and

(2) each parent of the minor, unless the court finds by clear-and-convincing evidence that the parent, in a record, waived the right to notice or cannot be located with due diligence.

(h) If a petitioner is unable to give notice under subsection (d) to a parent of the minor, or alleges that a parent of the minor waived the right to notice under this section, the court shall appoint a [visitor] who shall:

(1) interview the petitioner and the minor;

(2) if the petitioner alleges the parent cannot be located, ascertain whether the parent cannot be located with due diligence; and

(3) investigate any other matter relating to the petition the court directs.

(i) If the court finds under subsection (b) that a standby guardian should be appointed, the following rules apply:

(1) The court shall appoint the person nominated under subsection (a) unless the court finds the appointment is contrary to the best interest of the minor.

(2) If multiple parents have nominated different persons to serve as standby guardian for the minor, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the nominees is in the best interest of the minor.

(j) An order appointing a standby guardian under this section must state that each parent of the minor is entitled to notice, and identify any other person entitled to notice, in the event the standby guardian assumes the duties and powers of the guardian and:

(1) delegates custody of the minor;

(2) the court modifies or limits the powers of the guardian; or

(3) the court removes the guardian.

(k) A standby guardian appointed under this section may act as guardian, with all duties and powers of a guardian under Sections 209 and 210, when all parents of the minor become unable or unwilling to exercise the duties and powers granted to the standby guardian in the event of the parents' inability or unwillingness.

(l) Before assuming the duties and powers of standby guardian, the guardian must file an acceptance of appointment, and give notice of the acceptance to:

(1) each parent of the minor, unless the parent, in a record, waived the right to notice or cannot be located with due diligence;

(2) the minor, if the minor is 12 years of age or older; and

(3) a person, other than the parent, having care or custody of the minor.

(m) A person that receives notice under subsection (l) or any other person interested in the welfare of the minor may file with the court an objection to the standby guardian's assumption of duties and powers. The court shall hold a hearing if the objection supports a reasonable belief that the conditions for assumption of duties and powers have not been satisfied.

SECTION 208. EMERGENCY GUARDIAN FOR MINOR.

(a) On petition by a person interested in a minor's welfare or on its own, the court may appoint an emergency guardian for the minor if the court finds that:

(1) appointment of an emergency guardian is likely to prevent substantial harm to the minor's health, safety, or welfare; and

(2) no other person appears to have authority and willingness to act in the circumstances.

(b) The duration of authority of an emergency guardian for a minor may not exceed [60

days] and the guardian may exercise only the powers specified in the order. The emergency guardian's authority can be extended once for a period not to exceed [60 days] if the court finds that the conditions for appointment of an emergency guardian in subsection (a) continue.

(c) Except as otherwise provided in subsection (d), reasonable notice of the date, time, and place of a hearing on a petition for appointment of an emergency guardian for a minor must be given to:

- (1) the minor, if the minor is 12 years of age or older;
- (2) an attorney appointed under Section 204;
- (3) each parent of the minor;
- (4) a person, other than a parent, having care or custody of the minor; and
- (5) any other person the court determines.

(d) The court may appoint an emergency guardian for a minor without notice if the court finds from an affidavit or testimony that the minor will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to an unrepresented minor or the attorney for a represented minor, notice of the appointment must be given to the individuals listed in subsection (c) not later than 48 hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment not later than [five] days after the appointment.

(e) Appointment of an emergency guardian, with or without notice, is not a determination that the conditions required for appointment of a guardian under Section 201 are satisfied.

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

SECTION 209. DUTIES OF GUARDIAN FOR MINOR.

(a) A guardian for a minor is a fiduciary. Except as otherwise limited by the court, a guardian for a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health, and welfare. A guardian shall act in the minor's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian of a minor shall:

(1) be personally acquainted with the minor and maintain sufficient contact with the minor to know of the minor's abilities, limitations, needs, opportunities, and physical and mental health;

(2) take reasonable care of the minor's personal effects and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship, if necessary to protect other property of the minor;

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

(4) conserve any money of the minor not expended under paragraph (3) for the minor's future needs, but if a conservator is appointed for the minor, pay the money at least quarterly to the conservator to be conserved for the minor's future needs;

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

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

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

SECTION 210. POWERS OF GUARDIAN FOR MINOR.

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

(b) A guardian of a minor may:

(1) apply for and receive funds otherwise payable for the support of the minor to the minor's parent, guardian, or custodian under a 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 minor, take custody of the minor and establish the minor's place of dwelling, but may establish or move the minor's dwelling outside the state only on authorization of the court;

(3) if the minor is not subject to conservatorship, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the minor or make a payment for the benefit of the minor;

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

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

(c) The court may authorize a guardian of a minor to consent to the adoption of the minor who does not have a parent.

(d) A guardian of a minor may consent to the marriage of the minor [if authorized by the court].

Legislative Note: *An enacting state should consider its existing state law governing consent to marriage by minors when determining whether to require specific authorization of consent to marriage.*

SECTION 211. REMOVAL OF GUARDIAN FOR MINOR, TERMINATION OF GUARDIANSHIP; APPOINTMENT OF SUCCESSOR.

(a) A guardianship for a minor terminates:

(1) on the minor's death, adoption, emancipation, or attainment of majority, or

(2) when the court finds that the standard in Section 201 for appointment of a

guardian is not satisfied unless the court finds that:

(A) termination of the guardianship would be harmful to the minor; and

(B) the minor's interest in the continuation of the guardianship outweighs the interest of any parent of the minor in restoration of the parent's right to make decisions for the minor.

(b) A minor subject to guardianship or a person interested in the welfare of the minor may petition the court to terminate the guardianship, modify the guardianship, remove the guardian and appoint a successor guardian, or remove the standby guardian and appoint a different standby guardian.

(c) A petitioner under subsection (b) shall give notice of the hearing on the petition to the minor if the minor is 12 years of age or older and is not the petitioner, the guardian, each parent of the minor, and any other person the court determines.

(d) In selecting a successor guardian for a minor, the court shall follow the procedures in Section 206(b).

(e) Not later than 30 days after appointment of a successor guardian for a minor, the court shall give notice of the appointment to the minor subject to guardianship if the minor is 12 years of age or older, each parent of the minor, and any other person the court determines.

(f) When terminating a guardianship for a minor under this Section, the court may enter

an order providing for transitional arrangements if such arrangements will assist the minor with a transition of custody and are in the best interest of the child.

(g) A guardian of a minor that is removed shall cooperate with a successor guardian to facilitate transition of the guardian's responsibilities and protect the best interest of the minor.

[ARTICLE] 3

GUARDIANSHIP OF ADULT

SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN FOR ADULT.

(a) On petition and after notice and hearing, the court may:

(1) appoint a guardian for a respondent who is an adult if it finds by clear-and-convincing evidence that the respondent lacks the ability to meet essential requirements for physical health, safety, or self care because:

(A) the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and

(B) the respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives; or

(2) with appropriate findings, treat the petition as one for a conservatorship under [Article] 4 or a protective arrangement instead of guardianship or conservatorship under [Article] 5, enter any other appropriate order, or dismiss the proceeding.

(b) The court shall grant to a guardian appointed under subsection (a) only those powers necessitated by the limitations and demonstrated needs of the respondent and enter orders that will encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship,

protective arrangement instead of guardianship, or other less restrictive alternatives would meet the needs of the respondent.

SECTION 302. PETITION FOR APPOINTMENT OF GUARDIAN FOR ADULT.

(a) A person interested in an adult's welfare, including the adult for whom the order is sought, may petition for the appointment of a guardian for the adult.

(b) A petition under subsection (a) must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent, interest in the appointment, and state or contain the following to the extent known:

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

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

(A) spouse [or domestic partner], or if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than six months in the 12-month period before the filing of the petition;

(B) adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

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

(3) the name and current address of each of the following, if applicable:

(A) a person responsible for care of the respondent;

(B) any attorney currently representing the respondent;

(C) the representative payee appointed by the Social Security

Administration for the respondent;

(D) a guardian or conservator acting for the respondent in this state or in another jurisdiction;

(E) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(F) the Veterans Administration fiduciary for the respondent;

(G) an agent designated under a [power of attorney for health care] in which the respondent is identified as the principal;

(H) an agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(I) a person nominated as guardian by the respondent;

(J) a person nominated as guardian by the respondent's parent or spouse [or domestic partner]in a will or other signed record;

(K) a proposed guardian and the reason the proposed guardian should be selected; and

(L) a person known to have routinely assisted the respondent with decision making within the six months before the filing of the petition;

(4) the reason a guardianship is necessary, including a brief description of:

(A) the nature and extent of the respondent's alleged need;

(B) any protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's alleged need that have been considered or

implemented;

(C) if no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented, and

(D) the reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's alleged need;

(5) whether the petitioner seeks a limited guardianship or full guardianship;

(6) if the petitioner seeks a full guardianship, the reason limited guardianship or a protective arrangement instead of guardianship is inappropriate;

(7) if a limited guardianship is requested, the powers to be granted to the guardian;

(8) the name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

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

(10) whether the respondent needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings.

(c) A petition under subsection (a) must state the name and address of an attorney representing the petitioner, if any.

SECTION 303. NOTICE AND HEARING.

(a) On receipt of a petition under Section 302 for appointment of a guardian for a respondent who is an adult, the court shall set a date, time, and place for hearing the petition.

(b) A copy of a petition under Section 302 and notice of a hearing on the petition must be

served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing including the right to an attorney and to attend at the hearing. The notice must also include a description of the nature, purpose, and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

(c) In a proceeding on a petition under Section 302, notice of the hearing also must be given to any person required to be listed in the petition under Section 302 (b)(1)-(3) and any other person the court determines is entitled to notice. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

(d) Notice of a hearing on a petition filed after the appointment of a guardian which seeks an order under this [article], together with a copy of the petition, must be given to the adult subject to guardianship, the guardian, and any other person the court determines.

SECTION 304. APPOINTMENT OF [VISITOR].

(a) On receipt of a petition for appointment of a guardian for a respondent who is an adult under Section 302, the court shall appoint a [visitor]. The [visitor] must be an individual having training or experience in the type of abilities, limitations, and needs alleged in the petition.

(b) A [visitor] appointed under subsection (a) shall interview the respondent in person and in a manner the respondent is best 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 appointment, including views about a proposed guardian, the guardian's proposed powers and duties, and the scope and

duration of the proposed guardianship;

(3) inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

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

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

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

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

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

(4) investigate the allegations in the petition and any other matter relating to the petition the court directs.

(d) A [visitor] under this section promptly shall file a report in a record with the court, which must include:

(1) a recommendation whether an attorney should be appointed to represent the respondent;

(2) a summary of self care and independent-living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage;

(3) recommendations regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternatives for

meeting the respondent's needs are available and, if a guardianship is recommended, whether it should be full or limited and, if a limited guardianship, the powers to be granted to the guardian;

(4) a statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;

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

(6) a recommendation whether a professional evaluation under Section 306 is necessary;

(7) a statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;

(8) a statement whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(9) any other matter the court directs.

Legislative Note: The term "visitor" is bracketed because some states use a different term for the person appointed by the court to investigate and report on certain facts. A visitor must have training and experience sufficient to serve as the "eyes and ears" of the court. Often, a visitor is a trained social work professional.

SECTION 305. APPOINTMENT AND ROLE OF ATTORNEY FOR ADULT.

Alternative A

(a) The court shall appoint an attorney to represent the respondent in a proceeding under Section 302 if:

(1) requested by the respondent;

(2) recommended by the [visitor]; or

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

Alternative B

(a) Unless the respondent in a proceeding under Section 302 is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the respondent's ability to pay.

End of Alternatives

(b) An attorney representing the respondent in a proceeding under Section 302 shall:

(1) make reasonable efforts to ascertain the respondent's wishes;

(2) advocate for the respondent's wishes to the extent reasonably ascertainable; and

(3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration, and scope, consistent with the respondent's interests.

Legislative Note: A state that enacts Alternative B of subsection (a) should not enact Section 304(d)(1).

SECTION 306. PROFESSIONAL EVALUATION.

(a) At or before a hearing on a petition for a guardianship for an adult, the court shall order a professional evaluation of the respondent:

(1) unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation; or

(2) if the respondent requests the evaluation.

(b) If the court orders an evaluation under subsection (a), the respondent must be examined by a licensed physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities.

The court shall not appoint an individual to conduct an examination if the individual will be

advantaged or disadvantaged by a decision to grant the petition or otherwise has a conflict of interest. The individual conducting the evaluation promptly shall file report in a record 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 cognitive and functional abilities and limitations;

(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 recommendation for the appropriate treatment, support, or habilitation plan; and

(4) the date of the examination on which the report is based.

(c) The respondent has the right to decline to participate in an evaluation ordered under subsection (a).

SECTION 307. ATTENDANCE AND RIGHTS AT HEARING.

(a) Except as otherwise provided in subsection (b), a hearing under Section 303 shall proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

(b) A hearing under Section 303 may proceed without the respondent in attendance if the court finds by clear-and-convincing evidence that:

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

(2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance.

(c) The respondent may be assisted in a hearing under Section 303 by a person or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance 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.

(d) The respondent has a right to choose an attorney to represent the respondent at a hearing conducted under Section 303.

(e) For or at a hearing conducted under Section 303, the respondent may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including any court-appointed evaluator and the [visitor];

and

(3) otherwise participate in the hearing.

(f) Unless excused by the court for good cause, the proposed guardian shall attend a hearing conducted under Section 303.

(g) A hearing conducted under Section 303 shall be closed on request of the respondent and a showing of good cause.

(h) Any person may request to participate in a hearing conducted under Section 303. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

SECTION 308. CONFIDENTIALITY OF RECORDS.

(a) The existence of a proceeding for or the existence of a guardianship for an adult is a matter of public record unless the court seals the records after:

(1) the respondent or individual subject to guardianship requests the records be sealed; and

(2) either:

(A) the petition for guardianship is dismissed; or

(B) the guardianship is terminated.

(b) An adult subject of a proceeding for a guardianship, whether or not a guardian is appointed, any attorney designated by the adult, and a person entitled to notice under Section 310(e) are entitled to access court records of the proceeding and resulting guardianship, including a guardian's report or plan. In addition, a person for good cause may petition the court for access to court records of the guardianship, including an annual report or guardian's plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship, or furthers the public interest and does not endanger the welfare or financial interest of the adult.

[(c) A report under Section 304 of a [visitor] or a professional evaluation under Section 306 is confidential and must be sealed on filing, but is available to:

(1) the court;

(2) the individual who is the subject of the report or evaluation, without limitation as to use;

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

(4) an agent appointed under a [power of attorney for health care] or power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and

(5) other persons when it is in the public interest or for a purpose the court orders for good cause.]

SECTION 309. WHO MAY BE GUARDIAN OF ADULT: PRIORITIES.

(a) Except as otherwise provided in subsection (c), the court in appointing a guardian for an adult 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 another jurisdiction;

(2) a person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;

(3) an agent appointed by the respondent under [a power of attorney for health care];

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

(5) a family member or other individual who has exhibited special care and concern for the respondent.

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

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

(d) A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, [domestic partner,]parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

(1) the individual is related to the respondent by blood, marriage, or adoption; or

(2) the court finds by clear-and-convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

(e) 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 the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

SECTION 310. ORDER OF APPOINTMENT.

(a) A court order appointing a guardian for an adult must clearly:

(1) include a finding that clear and convincing evidence has established that the identified needs of the respondent cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives, including use of appropriate supportive services, technological assistance, or supported decision making;

(2) include a finding that clear-and-convincing evidence established that the respondent was given proper notice of the hearing on the petition;

(3) state whether the adult subject to guardianship retains the right to vote and, if

the adult does not retain the right to vote, include findings that support removing that right [which must include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process]; and

(4) state whether the adult subject to guardianship retains the right to marry and, if the adult does not retain the right to marry, include findings that support removing that right.

(b) An adult subject to guardianship retains the right to vote unless the order under subsection (a) includes the statement required by subsection (a)(3). An adult subject to guardianship retains the right to marry unless the order under subsection (a) includes the findings required by subsection (a)(4).

(c) A court order establishing a full guardianship for an adult clearly must state the basis for granting a full guardianship and include specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the adult subject to guardianship.

(d) A court order establishing a limited guardianship for an adult must state clearly the powers granted to the guardian.

(e) The court must, as part of any order establishing a guardianship for an adult, identify any person that subsequently is entitled to:

(1) notice of the rights of the adult subject to guardianship;

(2) notice of a change in the primary dwelling of the adult subject to guardianship;

(3) notice that the guardian has delegated:

(A) the power to manage the care of the adult subject to guardianship;

(B) the power to make decisions about where the adult subject to guardianship lives;

(C) the power to make major medical decisions on behalf of the adult

subject to guardianship;

(D) any power that requires court approval under Section 315; or

(E) substantially all powers of the guardian.

(4) notice that the guardian will be unavailable to visit the adult subject to guardianship for more than two months or unable to perform the guardian's duties for more than one month;

(5) a copy of the guardian's report and plan;

(6) access to court records pertaining to the guardianship;

(7) notice of the death or significant change in the condition of the adult subject to guardianship;

(8) notice that the court has limited or modified the powers of the guardian; and

(9) notice of the guardian's removal.

(f) A spouse[, domestic partner,] and adult children of the adult subject to guardianship are entitled to notice under subsection (e) unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to guardianship or not in the best interest of the adult.

Legislative Note: *The bracketed language in Section 310(e) may conflict with an enacting state's existing law as it relates to voting rights and states should consider whether the language is consistent with the state's policy preference.*

SECTION 311. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.

(a) A guardian appointed under Section 309 shall give to the adult subject to guardianship and to all other persons given notice under Section 303 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

(b) Not later than 30 days after appointment of a guardian under Section 309, the court shall give to the adult subject to guardianship, the guardian, and any other person entitled to notice under Section 310(e) or a subsequent order a statement of the rights of the adult subject to guardianship and procedures to seek relief if the adult is denied those rights. The statement must be in at least 16-point font, in plain language, and to the extent feasible, in a language in which the adult subject to guardianship is proficient. The notice must notify the adult subject to guardianship of the right to:

(1) seek termination or modification of the guardianship, or removal of the guardian, and choose an attorney to represent the adult in these matters;

(2) be involved in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, and social interactions, to the extent reasonably feasible;

(3) be involved in health-care decision making to the extent reasonably feasible, and be supported in understanding the risks and benefits of healthcare options when reasonably feasible;

(4) be notified at least 14 days in advance of a change in the adult's primary dwelling or a permanent move to a nursing home, mental-health facility, or other facility that places restrictions on the individual's ability to leave or have visitors unless the change or move is proposed in the guardian's plan or authorized by the court by specific order;

(5) be notified of the right to object to a change or move described in paragraph (4) and the process for objecting;

(6) communicate, visit, or interact with others, including receiving visitors, and making or receiving telephone calls, personal mail, or electronic communications, including through social media unless:

(A) the guardian has been authorized by the court by specific order to restrict communications, visits, or interactions;

(B) a protective order or protective arrangement instead of guardianship is in effect that limits contact between the adult subject to guardianship and a person; or

(C) the guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological, or financial harm to the adult subject to guardianship and:

(i) the restriction is for a period of not more than 60 days; or

(ii) the person with whom contact is restricted is not an individual with whom the adult subject to guardianship has a family or social relationship;

(7) receive copies of the guardian's plan and report; and

(8) object to the guardian's plan or report.

SECTION 312. EMERGENCY GUARDIAN.

(a) On petition by a person interested in an adult's welfare or on its own after a petition has been filed under Section 302, the court may appoint an emergency guardian for the adult if the court finds:

(1) appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety, or welfare;

(2) no other person appears to have authority and willingness to act in the circumstances; and

(3) there is reason to believe that a basis for appointment of a guardian under Section 301 may exist.

(b) The duration of authority of an emergency guardian for an adult may not exceed [60]

days and the emergency guardian may exercise only the powers specified in the order. The emergency guardian's authority may be extended once for not more than [60 days] if the court finds that the conditions for appointment of an emergency guardian in subsection (a) continue.

(c) Immediately on receipt of a petition for an emergency guardianship for an adult, the court shall appoint an attorney to represent the respondent in the proceeding. Except as otherwise provided in subsection (d), reasonable notice of the date, time, and place of a hearing on the petition must be given to the respondent, the respondent's attorney, and any other person the court determines.

(d) The court may appoint an emergency guardian for an adult without notice and a hearing only if the court finds from an 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 and a hearing, not later than 48 hours after the appointment, the court shall notify the respondent, the respondent's attorney, and any other person the court determines of the appointment. The court shall conduct a hearing on the appropriateness of the appointment not later than [five] days after the appointment.

(e) Appointment of an emergency guardian under this section is not a determination that the conditions required for appointment of a guardian under Section 301 have been satisfied.

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

SECTION 313. DUTIES OF GUARDIAN FOR ADULT.

(a) A guardian for an adult is a fiduciary. Except as otherwise limited by the court, a

guardian for an adult shall make decisions regarding the support, care, education, health, and welfare of the adult subject to guardianship to the extent necessitated by the adult's limitations.

(b) A guardian for an adult shall promote the self-determination of the adult subject to guardianship and, to the extent reasonably feasible, encourage the adult to participate in decisions, act on the adult's own behalf, and develop or regain the capacity to manage the adult's personal affairs. In furtherance of this duty, the guardian shall:

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

(2) to the extent reasonably feasible, identify the values and preferences of the adult subject to guardianship and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, and social interactions; and

(3) make reasonable efforts to identify and facilitate supportive relationships and services for the adult subject to guardianship.

(c) A guardian for an adult at all times shall exercise reasonable care, diligence, and prudence when acting on behalf of or making decisions for the adult subject to guardianship. In furtherance of this duty, the guardian shall:

(1) take reasonable care of the personal effects, pets, and service or support animals of the adult subject to guardianship and bring a proceeding for a conservatorship or protective arrangement instead of conservatorship if necessary to protect the adult's property;

(2) expend money of the adult subject to guardianship that has been received by the guardian for the adult's current needs for support, care, education, health, and welfare;

(3) conserve any excess money of the adult subject to guardianship for the adult's

future needs, but if a conservator has been appointed for the adult, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the adult's future needs; and

(4) monitor the quality of services, including long-term care services, provided to the adult subject to guardianship.

(d) In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to guardianship would make if able, the guardian shall consider the adult's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the guardian.

(e) If a guardian for an adult cannot make a decision under subsection (d) because the guardian does not know and cannot reasonably determine the decision that the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accord with the best interest of the adult. In determining the best interest of the adult, the guardian shall consider:

(1) information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;

(2) other information the guardian believes the adult would have considered if the adult were able to act; and

(3) other factors that a reasonable person in the circumstances of the adult would consider, including consequences for others.

(f) A guardian for an adult immediately shall notify the court if the condition of the adult

subject to guardianship has changed so that the adult is capable of exercising rights previously removed.

SECTION 314. POWERS OF GUARDIAN FOR ADULT.

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

(1) apply for or receive money or benefits for the support of the adult, unless a conservator has been appointed for the adult and the application or receipt is within the powers of the conservator;

(2) if otherwise consistent with an order by a court with jurisdiction relating to the dwelling of the adult, establish the adult's place of dwelling;

(3) consent to medical or other care, treatment, or service for the adult;

(4) if a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit;

(5) to the extent reasonable, delegate to the adult certain responsibility for decisions affecting the adult's well-being; and

(6) receive personally identifiable healthcare information of the adult.

(b) The court may by specific order authorize a guardian for an adult to consent to the adoption of the adult.

[(c) The court may by specific order authorize a guardian for an adult to:

(1) consent or withhold consent to the marriage of the adult if the adult's right to marry has been removed under Section 310;

(2) petition for divorce, dissolution, or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage; or

(3) support or oppose a petition for divorce, dissolution, or annulment of marriage of the adult or for a declaration of invalidity of the adult's marriage.]

(d) In determining whether to authorize a power under subsection (b)[or (c)], the court shall consider whether the underlying act would be in accordance with the adult's preferences, values, and prior directions and whether the underlying act would be in the adult's best interest.

(e) In exercising a guardian's power under subsection (a)(2) to establish the dwelling of the adult subject to guardianship, the guardian shall:

(1) select a residential setting the guardian believes the adult would select if the adult were able, in accord with the decision-making standard in Section 313(d) and (e). If the guardian does not know and cannot reasonably determine what setting the adult subject to guardianship probably would choose if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall choose in accord with Section 313(e) a residential setting that is consistent with the adult's best interest;

(2) in selecting among residential settings, give priority to a residential setting that is in a location that will allow the adult subject to guardianship to interact with persons important to the adult and meet the adult's needs in the least-restrictive manner reasonably feasible unless doing so would be inconsistent with the decision-making standard in Section 313(d) and (e);

(3) not later than 30 days after a change in the dwelling of the adult subject to guardianship, give notice of the change to the court, the adult subject to guardianship, and any person identified as entitled to the notice in the court order appointing the guardian or a subsequent order. The notice must include the address and nature of the new dwelling and state whether the adult subject to guardianship received advance notice of the change and whether the

adult objected to the change;

(4) establish or move the permanent place of dwelling of an adult subject to guardianship to a nursing home, mental-health facility, or other facility that places restrictions on the individual's ability to leave or have visitors only if:

(A) the establishment or move is set forth in the guardian's plan;

(B) the court authorizes the establishment or move; or

(C) notice of the establishment or move was given at least 14 days before the establishment or move to the adult subject to guardianship and all persons entitled to the notice under Section 310(e) or a subsequent order and no objection has been filed;

(5) establish or move the place of dwelling of an adult subject to guardianship outside this state only if consistent with the guardian's plan and authorized by the court by specific order; and

(6) take action that would result in the sale of or surrender the lease to the primary dwelling of the adult subject to guardianship only if:

(A) the action is specifically set forth in the guardian's plan;

(B) the court authorizes the action by specific order; or

(C) notice of the action was given at least 14 days before the action to the adult subject to guardianship and all persons entitled to the notice under Section 310(e) or a subsequent order and no objection has been filed.

(f) In exercising a guardian's power under subsection (a)(3) to make health-care decisions, the guardian must:

(1) involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks

and benefits of health-care options;

(2) defer to a decision by an agent under a [power of attorney for health care made] executed by the adult and cooperate to the extent feasible with the agent making the decision; and

(3) take into account:

(A) the risks and benefits of treatment options; and

(B) the current and previous wishes and values of the adult, if known or reasonably ascertainable by the guardian.

SECTION 315. SPECIAL LIMITATIONS ON GUARDIAN'S POWER.

(a) Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend a [power of attorney for health care] or power of attorney for finances executed by the adult. If a [power of attorney for health care] is in effect, unless there is a court order to the contrary, a health-care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent which the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

(b) A guardian for an adult may not initiate the commitment of the adult to a [mental health] facility except in accordance with the state's procedure for involuntary civil commitment.

(c) A guardian for an adult may not restrict the ability of the adult to communicate, visit, or interact with others, including receiving visitors or making or receiving telephone calls, personal mail, or electronic communications including through social media, or participating in

social activities, unless:

(1) authorized by the court by specific order;

(2) a protective order or a protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or

(3) the guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological, or financial harm to the adult and the restriction is:

(A) for a period of not more than seven business days if the person has a family or pre-existing social relationship with the adult; or

(B) for a period of not more than 60 days if the person does not have a family or pre-existing social relationship with the adult.

SECTION 316. GUARDIAN'S PLAN.

(a) A guardian for an adult shall file with the court a plan for the care of the adult not later than 60 days after appointment, when there is a significant change in circumstances, and when the guardian seeks to deviate significantly from the guardian's plan. The plan must be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the guardian. The plan must identify:

(1) the living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue for the adult;

(2) social and educational activities the guardian expects to facilitate on behalf of the adult;

(3) any person with whom the adult has a relationship and any plan the guardian

has for facilitating visits with the person;

(4) the anticipated nature and frequency of the guardian's visits and communication with the adult;

(5) goals for the adult including any goal related to the restoration of the adult's rights and how the guardian anticipates achieving the goals;

(6) whether the adult already has a plan in place and, if so, whether the guardian's plan is consistent with the adult's plan; and

(7) a statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

(b) A guardian shall give notice of the filing of the guardian's plan, along with a copy of the plan, to the adult subject to guardianship, a person entitled to notice under Section 310(e) or a subsequent order, and other persons the court determines. The notice must include a statement of the right to object to the plan and given not later than 14 days after the filing.

(c) An adult subject to guardianship and any person entitled under subsection (b) to receive a copy of the guardian's plan may object to the plan.

(d) The court shall review a guardian's plan under this section. In deciding whether to approve the plan, the court shall consider an objection under subsection (c) and whether the plan is consistent with the guardian's duties and powers under Sections 313 and 314. The court may not approve the plan until [30] days after its filing.

(e) After a guardian's plan under this section is approved by the court, the guardian shall provide a copy of the plan to the adult subject to guardianship, a person entitled to notice under Section 310(e) or a subsequent order, and other persons the court determines.

SECTION 317. GUARDIAN'S REPORT; MONITORING OF GUARDIANSHIP.

(a) A guardian for an adult, not later than 60 days after appointment and at least annually thereafter, shall submit to the court a report in a record regarding the condition of the adult and accounting for money and other property in the guardian's possession or subject to the guardian's control. Each report must state or contain:

- (1) the mental, physical, and social condition of the adult;
- (2) the living arrangements of the adult during the reporting period;
- (3) a summary of the supported decision making, technological assistance, medical services, educational and vocational service, and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;
- (4) a summary of the guardian's visits with the adult, including the dates of the visits;
- (5) action taken on behalf of the adult;
- (6) the extent to which the adult has participated in decision making;
- (7) if the adult is living in a [mental health] facility or living in a facility that provides the adult with health-care or other personal services, whether the guardian considers the facility's current plan for support, care, treatment, or habilitation consistent with the adult's preferences, values, prior directions, and best interest;
- (8) anything of more than de minimis value that the guardian, any individual who resides with the guardian, or the spouse,[domestic partner,] parent, child, or sibling of the guardian has received from an individual providing goods or services to the adult;
- (9) if the guardian has delegated powers to an agent, the powers delegated and the reason for the delegation;

(10) any business relation the guardian has with a person the guardian has paid or a person that has benefited from the property of the adult;

(11) a copy of the guardian's most recent plan and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

(12) plans for future care and support;

(13) a recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship; and

(14) whether any co-guardian or successor guardian appointed to serve when a designated future event occurs is alive and able to serve.

(b) The court may appoint a [visitor] to review a report submitted under this section, interview the guardian or adult subject to guardianship, or investigate any other matter involving the guardianship.

(c) Notice of the filing of a guardian's report under this section, together with a copy of the report, must be given to the adult subject to guardianship, a person entitled to notice under Section 310(e) or a subsequent order, and any other person the court determines. The notice and report must be given not later than 14 days after the filing of the report.

(d) The court shall establish a system for monitoring reports submitted under this section and review the reports at least annually to determine whether:

(1) the report provides sufficient information to establish the guardian has complied with the guardian's duties;

(2) the guardianship should continue; and

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

(e) If the court determines there is reason to believe a guardian for an adult has not

complied with the guardian's duties or the guardianship should be modified or terminated, the court:

(1) shall notify the adult, the guardian, and any other person entitled to notice under Section 310(e) or a subsequent order;

(2) may require additional information from the guardian;

(3) may appoint a [visitor] to interview the adult or guardian or investigate any matter involving the guardianship; and

(4) may consider removing the guardian under Section 318 or terminating the guardianship or changing the powers of the guardian or other terms of the guardianship under Section 319.

(f) If the court has reason to believe that fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

(g) A guardian for an adult may petition the court for approval of a report filed under this section. The court after review may approve the report. If the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

SECTION 318. REMOVAL OF GUARDIAN FOR ADULT; APPOINTMENT OF SUCCESSOR.

(a) The court may remove a guardian for an adult for failure to perform the guardian's duties or for other good cause and appoint a successor guardian to assume the duties of guardian.

(b) The court shall conduct a hearing to determine whether to remove a guardian for an adult and appoint a successor on:

(1) petition of the adult, guardian, or person interested in the welfare of the adult, that contains allegations that, if true, would support a reasonable belief that removal of the

guardian and appointment of a successor may be appropriate but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six months;

(2) communication from the adult, guardian, or person interested in the welfare of the adult which supports a reasonable belief that removal of the guardian and appointment of a successor may be appropriate; or

(3) determination by the court that a hearing would be in the best interest of the adult.

(c) Notice of a petition under subsection (b)(1) shall be given to the adult subject guardianship, the guardian, and such other persons as the court determines.

(d) An adult subject to guardianship who seeks to remove the guardian and have a successor appointed has a right to choose an attorney to represent the adult. [If the adult subject to guardianship is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 305.] The court shall award reasonable attorney's fees to the attorney for the adult as provided in Section 119.

(e) In selecting a successor guardian of the adult, the court shall follow the procedures under Section 309.

(f) Not later than 30 days after appointing a successor guardian, the court shall give notice of the appointment to the adult subject to guardianship and any person entitled to the notice under Section 310(e) or a subsequent order.

Legislative Note: A state may make the policy decision to include the bracketed language in subsection (c). This policy decision parallels Alternative A in Section 305.

**SECTION 319. TERMINATION OR MODIFICATION OF GUARDIANSHIP
FOR ADULT.**

(a) An adult subject to guardianship, the guardian for the adult, or a person interested in the welfare of the adult may petition for:

(1) termination of the guardianship on the ground that a basis for appointment under Section 301 does not exist or termination would be in the best interest of the adult, or for other good cause; or

(2) modification of the guardianship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

(b) The court shall conduct a hearing to determine whether termination or modification of a guardianship of an adult is appropriate on:

(1) petition under subsection (a) that contains allegations that, if true, would support a reasonable belief that termination or modification of the guardianship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six months;

(2) communication from the adult, guardian, or person interested in the welfare of the adult which supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because of a change in the functional needs of the adult or supports or services available to the adult;

(3) a report from a guardian or conservator which indicates that termination or modification may be appropriate because the functional needs of the adult or supports or services available to the adult have changed or a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the adult's needs are available; or

(4) a determination by the court that a hearing would be in the best interest of the adult.

(c) Notice of a petition under subsection (b)(1) shall be given to the adult subject guardianship, the guardian, and such other persons as the court determines.

(d) On presentation of prima facie evidence for termination of a guardianship for an adult, the court shall order termination unless it is proven that the basis for appointment of a guardian under Section 301 is satisfied.

(e) The court shall modify the powers granted to a guardian for an adult if the powers are excessive or inadequate due to a change in the abilities or limitations of the adult, the adult's supports, or other circumstances.

(f) Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of the adult which apply to a petition for guardianship.

(g) An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has a right to choose an attorney to represent the adult in this matter. [If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 305.] The court shall award reasonable attorney's fees to the attorney for the adult as provided in Section 119.

Legislative Note: A state may make the policy decision to include the bracketed language in subsection (c). This policy decision parallels Alternative A in Section 305.

[ARTICLE] 4

CONSERVATORSHIP

SECTION 401. BASIS FOR APPOINTMENT OF CONSERVATOR.

(a) On petition and after notice and hearing, the court may appoint a conservator for the

property or financial affairs of a minor, if the court finds by a preponderance of evidence that:

(1) the minor owns money or property requiring management or protection that otherwise cannot be provided; or

(2) appointment of a conservator is in the minor's best interest and:

(A) if the minor has a parent, the court gives weight to any recommendation of the minor's parent whether an appointment is in the minor's best interest; and

(B) either:

(i) the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(ii) appointment is necessary or desirable to obtain or provide money needed for the support, care, education, health, or welfare of the minor.

(b) On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of an adult if the court determines by clear and convincing evidence that:

(1) the adult is unable to manage property or financial affairs because:

(A) of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appropriate supportive services, technological assistance, and supported decision making; or

(B) the adult is missing, detained, or unable to return to the United States;

(2) appointment is necessary to:

(A) avoid harm to the adult or significant dissipation of the property of the adult; or

(B) obtain or provide money needed for the support, care, education, health, or welfare of the adult, or of an individual entitled to the adult's support, and protection is necessary or desirable to obtain or provide money for the purpose; and

(3) the respondent's identified needs cannot be met by less restrictive alternatives.

(c) The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and enter orders that encourage the development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship, or other less restrictive alternatives would meet the needs of the respondent.

SECTION 402. PETITION FOR APPOINTMENT OF CONSERVATOR.

(a) The following may petition for the appointment of a conservator:

(1) the individual for whom the order is sought;

(2) a person interested in the estate, financial affairs, or welfare of the individual, including a person that would be adversely affected by lack of effective management of property and financial affairs of the individual; or

(3) the guardian of the individual.

(b) A petition under subsection (a) must set forth the petitioner's name, principal residence, current street address, if different, the petitioner's relationship to the respondent, the petitioner's interest in the appointment, and state or contain the following to the extent known:

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

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

(A) spouse [or domestic partner] or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than six months in the 12-month period before the filing of the petition;

(B) adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

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

(3) the name and current address of each of the following, if applicable:

(A) a person responsible for the care or custody of the respondent;

(B) any attorney currently representing the respondent;

(C) the representative payee appointed by the Social Security Administration for the respondent;

(D) a guardian or conservator acting for a respondent in this state or another jurisdiction;

(E) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(F) the Veterans Administration fiduciary for the respondent;

(G) an agent designated under a [power of attorney for health care] in which the respondent is identified as the principal;

(H) an agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(I) a person known to have routinely assisted the respondent with decision making within the six months before the filing of the petition;

(J) any proposed conservator, including a person nominated by the respondent if the respondent is 12 years of age or older;

(K) if the individual for whom a conservator is sought is a minor:

(i) an adult with whom the minor resides if not otherwise listed;

and

(ii) any person not otherwise listed that had the care or custody of the minor for 60 or more days during the two years preceding the filing of the petition or any person that had the primary care or custody of the minor for at least 730 days during the five years preceding the filing of the petition;

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

(5) the reason conservatorship is necessary, including a brief description of:

(A) the nature and extent of the respondent's alleged need;

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

(C) any protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's alleged need which have been considered or implemented;

(D) if no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented, and

(E) the reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's need;

(6) whether the respondent needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings;

(7) whether the petitioner seeks a limited conservatorship or a full conservatorship;

(8) if the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;

(9) if the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed; and

(10) if the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any other requested limitation on the authority of the conservator.

(c) A petition under subsection (a) must state the name and address of an attorney representing the petitioner, if any.

SECTION 403. NOTICE AND HEARING.

(a) On receipt of a petition for appointment of a conservator under Section 402, the court shall set a date, time, and place for hearing the petition.

(b) A copy of a petition under Section 402 and notice of a hearing on the petition must be served personally on the respondent. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by [substituted service] [or] [publication]. The notice inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a

description of the nature, purpose, and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

(c) In a proceeding on a petition under Section 402, notice of the hearing also must be given to the persons required to be listed in the petition under Section 402(b)(1)-(3), and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

(d) Notice of a hearing on a petition filed after the appointment of a conservator which seeks an order under this [article], together with a copy of the petition, must be given to the individual subject to conservatorship if the individual is 12 years of age or older and is not missing, detained, or unable to return to the United States, the conservator, and any other person the court determines.

SECTION 404. PROPERTY WHILE PROCEEDING IS PENDING. While a petition under Section 402 is pending, after preliminary hearing and without notice to others, the court may enter an order to preserve and apply property of the respondent as may be required for the support of the respondent or an individual who is in fact dependent on the respondent. The court may appoint a [master] to assist in implementation of the order.

SECTION 405. APPOINTMENT AND ROLE OF [VISITOR].

(a) If the respondent in a proceeding to appoint a conservator is a minor, the court may appoint a [visitor] to investigate a matter related to the petition or to inform the minor or a parent of the minor about the petition or a related matter.

(b) If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a [visitor][unless the adult is represented by an attorney appointed by the court]. 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 abilities, limitations, and needs alleged in the petition.

(c) A [visitor] appointed for an adult under subsection (b) shall interview the respondent in person and in a manner the respondent is best 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 conservator;

(2) determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties, and the scope and duration of the proposed conservatorship;

(3) inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney; and

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

(d) In addition to the duties imposed by subsection (c), the [visitor] appointed for an adult under subsection (b) shall:

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

(2) review financial records of the respondent, if relevant to the [visitor's] recommendation under subsection (e)(2);

(3) state whether the respondent's needs could be met by a less restrictive alternative, including a protective arrangement instead of conservatorship, and, if so, identify the less restrictive alternative; and

(4) investigate the allegations in the petition and any other matter relating to the petition the court directs.

(e) A [visitor] appointed for an adult under subsection (b) promptly shall file a report in a record with the court, which must include:

(1) a recommendation whether an attorney should be appointed to represent the respondent;

(2) a recommendation:

(A) regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternatives for meeting the respondent's needs are available;

(B) if a conservatorship is recommended, whether it should be full or limited; and

(C) if a limited conservatorship is recommended, the powers to be granted to the conservator, and the property that should be placed under the conservator's control;

(3) a statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator;

(4) a recommendation whether a professional evaluation is necessary under Section 407;

(5) a statement whether the respondent is able to attend a hearing at the location court proceedings are typically conducted;

(6) a statement whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(7) any other matter the court directs.

Legislative Note: The term “visitor” is bracketed because some states use a different term for the person appointed by the court to investigate and report on certain facts. A visitor must have training and experience sufficient to serve as the “eyes and ears” of the court. Often, a visitor is a trained social work professional.

SECTION 406. APPOINTMENT AND ROLE OF ATTORNEY.

Alternative A

(a) The court shall appoint an attorney to represent a respondent in a proceeding under Section 402 if:

- (1) requested by the respondent;
- (2) recommended by the [visitor]; or
- (3) the court determines that the respondent needs representation.

Alternative B

(a) Unless a respondent in a proceeding under Section 402 is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the respondent’s ability to pay.

End of Alternatives

(b) The attorney representing the respondent in a proceeding under Section 402 shall:

- (1) make reasonable efforts to ascertain the respondent’s wishes;
- (2) advocate for the respondent’s wishes to the extent reasonably ascertainable;

and

- (3) if the respondent’s wishes are not reasonably ascertainable, advocate for the result that is the least-restrictive option in type, duration, and scope, consistent with the respondent’s interests.

[(c) The court shall appoint an attorney to represent a parent of a minor who is the subject

of a proceeding under Section 402 if:

(1) the parent objects to appointment of a conservator;

(2) the court determines that counsel is needed to ensure that consent to appointment of a conservator is informed; or

(3) the court otherwise determines the parent needs representation.]

Legislative Note: *A state that enacts Alternative B should not enact Section 405(d)(1). Subsection (c) is bracketed in recognition that states have differing policies regarding the rights of parents in these cases.*

SECTION 407. PROFESSIONAL EVALUATION.

(a) At or before a hearing on a petition seeking a conservatorship for a respondent who is an adult under Section 402, the court shall order a professional evaluation of the respondent:

(1) unless the court finds it has sufficient information to determine the respondent's needs and abilities without the evaluation; or

(2) if the adult requests the evaluation.

(b) If the court orders an evaluation under subsection (a), the respondent must be examined by a licensed physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise has a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record 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 cognitive and functional abilities and limitations with regard to the management of the respondent's property and financial affairs;

(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 with regard to the ability to manage the respondent's property and financial affairs; and

(4) the date of the examination on which the report is based.

(c) The respondent has the right to decline to participate in an evaluation ordered under subsection (a).

SECTION 408. ATTENDANCE AND RIGHTS AT HEARING.

(a) Except as otherwise provided in subsection (b), a hearing under Section 403 shall proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

(b) A hearing under Section 403 may proceed without the respondent in attendance if the court finds by clear-and-convincing evidence that:

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

(2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or

(3) the respondent is a minor who has received proper notice and attendance would be harmful to the minor.

(c) The respondent may be assisted in a hearing under Section 403 by a person or persons

of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance 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.

(d) The respondent has a right to choose an attorney to represent the respondent at a hearing conducted under Section 403.

(e) At a hearing conducted under Section 403, the respondent may:

- (1) present evidence and subpoena witnesses and documents;
- (2) examine witnesses, including any court-appointed evaluator the [visitor]; and
- (3) otherwise participate in the hearing.

(f) Unless excused by the court for good cause, the proposed conservator shall attend a hearing conducted under Section 403.

(g) A hearing conducted under Section 403 shall be closed on request of the respondent and a showing of good cause.

(h) Any person may request to participate in a hearing conducted under Section 403. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

SECTION 409. CONFIDENTIALITY OF RECORDS.

(a) The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

- (1) the respondent, the individual subject to conservatorship, or the parent of a minor subject to conservatorship requests the record be sealed; and

(2) either:

(A) the petition for conservatorship is dismissed; or

(B) the conservatorship is terminated.

(b) An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the individual, and a person entitled to notice under Section 411 or a subsequent order are entitled to access court records of the proceeding and resulting conservatorship, including the conservator's plan and report. In addition, a person for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court shall grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

[(c) A report under Section 405 of a [visitor] or professional evaluation under Section 407 is confidential and must be sealed on filing, but is available to:

(1) the court;

(2) the individual who is the subject of the report or evaluation, without limitation as to use;

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

(4) an agent appointed under a power of attorney for finances in which the respondent is identified as the principal, unless the court orders otherwise; and

(5) other persons when it is in the public interest or for a purpose the court orders for good cause.]

Legislative Note: Subsection (c) is bracketed in recognition that states have different policies and procedures regarding the sealing of court records.

SECTION 410. WHO MAY BE CONSERVATOR: PRIORITIES.

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

(1) a conservator, other than a temporary or emergency conservator, currently acting for the respondent in another jurisdiction;

(2) a person nominated as conservator by the respondent, including the respondent's most recent nomination made in a power of attorney for finances;

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

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

(5) a family member or other individual who has exhibited special care and concern for the respondent.

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

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

(d) A person that provides paid services to the respondent, or an individual who is

employed by a person that provides paid services to the respondent or is the spouse, [domestic partner,]parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as conservator unless:

(1) the individual is related to the respondent by blood, marriage, or adoption; or

(2) the court finds by clear-and-convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

(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 the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

SECTION 411. ORDER OF APPOINTMENT.

(a) A court order appointing a conservator for a minor must include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservator would not meet the identified needs of the minor.

(b) A court order appointing a conservator for an adult must include a clear finding that:

(1) the identified needs of the respondent cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternatives, including use of appropriate supportive services, technological assistance, or supported decision making; and

(2) clear-and-convincing evidence established the respondent was given proper notice of the hearing on the petition.

(c) A court order establishing a full conservatorship for an adult clearly must state the basis for granting a full conservatorship and include specific findings to support the conclusion that a limited conservatorship would not meet the functional needs of the adult.

(d) A court order establishing a limited conservatorship must state clearly the property placed under the control of the conservator and the powers granted to the conservator.

(e) The court, as part of an order establishing a conservatorship, must identify any person that subsequently is entitled to:

(1) notice of the rights of the individual subject to conservatorship;

(2) notice of a sale of or surrender of a lease to the primary dwelling of the individual subject to conservatorship;

(3) notice that the conservator has delegated any power that requires court approval under Section 414 or substantially all powers of the conservator;

(4) notice that the conservator will be unavailable to perform the conservator's duties for more than one month;

(5) copies of the conservator's plan and report;

(6) access to court records pertaining to the conservatorship;

(7) a transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

(8) notice of the death or significant change in the condition of the individual subject to conservatorship;

(9) notice that the court has limited or modified the powers of the conservator;

and

(10) notice of the conservator's removal.

(f) If an individual subject to conservatorship is an adult, the spouse[, domestic partner,] and adult children of the adult subject to conservatorship are entitled under subsection (e) to notice unless the court determines notice would be contrary to the preferences or prior directions

of the adult subject to conservatorship or not in the best interest of the adult subject to conservatorship.

(g) If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under subsection (e) to notice unless the court determines notice would not be in the best interest of the minor.

SECTION 412. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.

(a) A conservator appointed under Section 410 shall give to the individual subject to conservatorship and to all other persons given notice under Section 403 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

(b) Not later than 30 days after appointment of a conservator under Section 410, the court shall give to the individual subject to conservatorship, the conservator, and any other person entitled to notice under Section 410(e) a statement of the rights of the individual subject to conservatorship and procedures to seek relief if the individual is denied those rights. The statement must be in plain language, in at least 16-point font, and to the extent feasible, in a language in which the individual subject to conservatorship is proficient. The notice must notify the individual subject to conservatorship of the right to:

- (1) seek termination or modification of the conservatorship, or removal of the conservator, and choose an attorney to represent the individual in these matters;
- (2) participate in decision making to the extent reasonably feasible;
- (3) receive a copy of the conservator's inventory, plan, and report; and
- (4) object to the conservator's inventory, plan, or report.

(c) If a conservator is appointed under Section 401(b)(1)(B) and the individual subject to

conservatorship is missing, notice under subsections (a) and (b) to the individual is not required.

SECTION 413. EMERGENCY CONSERVATOR.

(a) On petition by a person interested in an individual's welfare or on its own after a petition has been filed under Section 402, the court may appoint an emergency conservator for the individual if the court finds:

(1) appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the respondent's property or financial interests;

(2) no other person appears to have authority and willingness to act in the circumstances; and

(3) there is reason to believe that a basis for appointment of a conservator under Section 401 may exist.

(b) The duration of authority of an emergency conservator may not exceed [60] days and the emergency conservator may exercise only the powers specified in the order. The emergency conservator's authority may be extended once for not more than [60 days] if the court finds that the conditions for appointment of an emergency conservator in subsection (a) continue.

(c) Immediately on receipt of a petition for an emergency conservator, the court shall appoint an attorney to represent the respondent in the proceeding. Except as otherwise provided in subsection (d), reasonable notice of the date, time, and place of a hearing on the petition must be given to the respondent, the respondent's attorney, and any other person the court determines.

(d) The court may appoint an emergency conservator without notice and a hearing only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a hearing on the appointment can be held. If the court appoints an emergency conservator without notice and a hearing, not later than 48

hours after the appointment, the court shall notify the respondent, the respondent's attorney, and other person the court determines of the appointment. The court shall hold a hearing on the appropriateness of the appointment not later than [five] days after the appointment.

(e) Appointment of an emergency conservator is not a determination that the conditions required for appointment of a conservator under Section 401 have been satisfied.

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

SECTION 414. POWERS OF CONSERVATOR REQUIRING COURT

APPROVAL.

(a) Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under Section 403(d) and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

(1) make gifts, except those of de minimis value;

(2) sell, encumber an interest in, or surrender a lease to the primary dwelling of the individual subject to conservatorship;

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

(4) exercise or release a power of appointment;

(5) create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual subject to conservatorship;

(6) exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

(7) exercise a right to an elective share in the estate of a deceased spouse[or domestic partner] of the individual subject to conservatorship or to renounce or disclaim a property interest; [and]

(8) grant a creditor a priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to conservatorship and preferential treatment otherwise would be impermissible under Section 428(e)[; and

(9) make, modify, amend, or revoke the will of the individual subject to conservatorship in compliance with [the state's statute for executing wills]].

(b) In approving a conservator's exercise of the powers listed in subsection (a), the court shall consider primarily the decision the individual subject to conservatorship would make if able, to the extent the decision can be ascertained.

(c) To determine under subsection (b) the decision the individual subject to conservatorship would make if able, the court shall consider the individual's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable. The court also shall consider:

(1) the financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship 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 previous pattern of giving or level of support provided by the individual subject to conservatorship;

(5) any existing estate plan or lack of estate plan of the individual subject to conservatorship;

(6) the life expectancy of the individual subject to conservatorship and the probability that the conservatorship will terminate before the individual's death; and

(7) any other relevant factors.

(d) A conservator may not revoke or amend a power of attorney for finances executed by the individual subject to conservatorship. If a power of attorney for finances is in effect, a decision of the agent takes precedence over that of the conservator, unless there is a court order to the contrary.

SECTION 415. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.

An individual subject to conservatorship or a person interested in the welfare of the individual may file a petition in the court for an order:

(1) requiring the conservator to furnish bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished;

(2) requiring an accounting for the administration of the conservatorship 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 to meet the individual's needs, including because the individual's abilities or supports have changed;

(6) rejecting or modifying the conservator's inventory, plan, or report; or

(7) granting other appropriate relief.

SECTION 416. BOND; ALTERNATIVE ASSET-PROTECTION

ARRANGEMENT.

(a) The court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. The court may not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service except as provided by subsection (c).

(b) Unless the court directs otherwise, the bond required under this section must be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

(c) [A regulated financial-service institution qualified to do trust business] in this State need not give a bond.

SECTION 417. TERMS AND REQUIREMENTS OF BOND.

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

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

(2) By executing a bond provided by a conservator, a surety submits to the

jurisdiction of the court that issued letters of office to the conservator in a proceeding pertaining to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the court records at the place where the bond is filed and any other address of the surety then known to the person required to provide the notice.

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

(4) A proceeding against the bond may be brought until liability under the bond is exhausted.

(b) A proceeding may not be brought against a surety of a bond under this section on a matter as to which a proceeding against the conservator is barred.

(c) The surety or sureties of the bond must immediately serve notice to the court and to the individual under conservatorship if the bond is not renewed by the conservator.

SECTION 418. DUTIES OF CONSERVATOR.

(a) A conservator is a fiduciary and has a duty of prudence and duty of loyalty to the individual subject to conservatorship.

(b) A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf, and develop or regain the capacity to manage the individual's personal affairs.

(c) In making a decision on behalf of the individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would

make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current directions, preferences, opinions, values, and actions to the extent actually known or reasonably ascertainable by the conservator.

(d) If a conservator cannot make a decision under subsection (c) because the conservator does not know and cannot reasonably determine the decision that the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the conservator believes the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise would unreasonably harm or endanger the welfare of the individual, the conservator shall act in accord with the best interest of the individual. In determining the best interest of the individual, the conservator shall consider:

(1) information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;

(2) other information the conservator believes the individual would have considered if the individual were able to act; and

(3) other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.

(e) Except when inconsistent with the conservator's duties under subsections (a) through (d), a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:

(1) the circumstances of the individual subject to conservatorship and the conservatorship estate;

(2) general economic conditions;

(3) the possible effect of inflation or deflation;

(4) the expected tax consequences of an investment decision or strategy;

(5) the role of each investment or course of action in relation to the conservatorship estate as a whole;

(6) the expected total return from income and appreciation of capital;

(7) the need for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) the special relationship or value, if any, of specific property to the individual subject to conservatorship.

(f) The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

(g) A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

(h) A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

(i) In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to

the conservator and may examine the will or other donative, nominative, or other appointive instrument of the individual.

(j) A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or a court issues an order finding:

(1) the property lacks sufficient equity; or

(2) insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual subject to conservatorship.

(k) If a power of attorney for finances is in effect, a conservator shall cooperate with the agent to the extent feasible.

(l) A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by [the Revised Uniform Fiduciary Access to Digital Assets Act] or by court order.

(m) A conservator of an adult shall notify the court if the condition of the adult subject to conservatorship has changed so that the adult is capable of exercising rights previously removed immediately upon learning of the change.

SECTION 419. CONSERVATOR'S PLAN.

(a) A conservator, not later than 60 days after appointment and when there is a significant change in circumstances or when the conservator seeks to deviate significantly from the conservator's plan, shall file with the court a plan for protecting, managing, expending, and distributing the assets of the conservatorship estate. The plan must be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values, and prior directions, to the extent known to or

reasonably ascertainable by the conservator. The conservator shall include in the plan:

(1) a budget setting forth projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual subject to conservatorship;

(2) how the conservator will involve the individual in decisions about management of the conservatorship estate;

(3) any step the conservator plans to take to develop or restore the ability of the individual subject to conservatorship to manage the conservatorship estate; and

(4) an estimate of the duration of the conservatorship.

(b) A conservator shall give notice of the filing of the conservator's plan, along with a copy of the plan, to the individual subject to conservatorship, a person entitled to notice under Section 411(e) or a subsequent order, and other persons the court determines. The notice must be given not later than 14 days after the filing.

(c) An individual subject to conservatorship and any person entitled under subsection (b) to receive notice and a copy of the conservator's plan may object to the plan.

(d) The court shall review a conservator's plan filed under subsection (a). In deciding whether to approve the plan, the court shall consider any objection under subsection (c) and whether the plan is consistent with the conservator's duties and powers. The court may not approve the plan until [30] days after its filing.

(e) After a conservator's plan under this section is approved by the court, the conservator shall provide a copy of the plan to the individual subject to conservatorship, a person entitled to notice under Section 411(e) or a subsequent order, and other persons the court determines.

SECTION 420. INVENTORY; RECORDS.

(a) Not later than 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, 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 give notice of the filing of an inventory to the individual subject to conservatorship, a person entitled to notice under Section 411(e) or a subsequent order, and other persons the court determines. The notice must be given not later than 14 days after the filing.

(c) A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian of the individual, or any person the conservator or the court determines.

SECTION 421. ADMINISTRATIVE POWERS OF CONSERVATOR NOT REQUIRING COURT APPROVAL

(a) Except as otherwise provided in Section 414 or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional powers granted to a trustee by law of this state other than this [act].

(b) A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the appointment, without specific court authorization or confirmation, may:

(1) collect, hold, and retain property included in the conservatorship estate,

including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;

(2) receive additions to the conservatorship estate;

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

(4) acquire an undivided interest in property included in the conservatorship estate in which the conservator, in a fiduciary capacity, holds an undivided interest;

(5) invest assets of the conservatorship estate;

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

(7) acquire or dispose of property of the conservatorship 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 property included in the conservatorship estate;

(8) make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze existing or erect a new party wall or building;

(9) subdivide, develop, or dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation, exchange or partition land by giving or receiving consideration, and dedicate an easement to public use without consideration;

(10) enter for any purpose into a lease of property as lessor or lessee, with or without an 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 a pooling or unitization agreement;

- (12) grant an option involving disposition of property included in the conservatorship estate or accept or exercise an option for the acquisition of property;
- (13) vote a security, in person or by general or limited proxy;
- (14) pay a call, assessment, or other sum chargeable or accruing against or on account of a security;
- (15) sell or exercise a stock subscription or conversion right;
- (16) consent, directly or through a committee or 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 conservatorship estate against damage or loss in accordance with Section 418(j) and the conservator against liability with respect to a third person;
- (19) borrow money, with or without security, to be repaid from the conservatorship estate or otherwise;
- (20) advance money for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses, and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate as against the individual subject to conservatorship for the advances;
- (21) pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible;

(22) pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred in the collection, care, administration, and protection of the conservatorship estate;

(23) pay a sum distributable to an individual subject to conservatorship or individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or 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] or custodial trustee under [the Uniform Custodial Trust Act]; 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 an action, claim, or proceeding in any jurisdiction for the protection of the conservatorship estate or of the conservator in the performance of the conservator's duties;

(25) structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the individual's preferences, values, and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and

(26) execute and deliver any instrument that will accomplish or facilitate the exercise of a power vested in the conservator.

SECTION 422. DISTRIBUTION FROM CONSERVATORSHIP ESTATE. Except as otherwise provided in Section 414 or qualified or limited in the court's order of appointment and stated in the letters of office, and unless contrary to a conservator's plan filed under Section

419, a conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health, or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with the following rules:

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

(2) A conservator acting in compliance with the conservator's duties under Section 418 is not liable for a distribution made based on a recommendation under paragraph (1) unless the conservator knows the distribution is not in the best interest of the individual subject to conservatorship.

(3) In making an expenditure or distribution under this subsection, the conservator shall consider:

(A) the size of the conservatorship estate, the estimated duration of the conservatorship, and the likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate;

(B) the accustomed standard of living of the individual subject to conservatorship and an individual who is in fact dependent on the individual subject to conservatorship;

(C) other money or source used for the support of the individual subject to

conservatorship; and

(D) the preferences, values, and prior directions of the individual subject to conservatorship.

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

**SECTION 423. CONSERVATOR'S REPORT AND ACCOUNTING;
MONITORING.**

(a) A conservator shall file a report in a record with the court regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or removal, on termination of the conservatorship, and at any other time the court directs.

(b) A report under subsection (a) must state or contain:

(1) an accounting that contains a list of property included in the conservatorship estate and of the receipts, disbursements, liabilities, and distributions during the period for which the report is made;

(2) a list of the services provided to the individual subject to conservatorship;

(3) a copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how and why the conservator has deviated;

(4) any recommended change in the conservatorship, including its scope and whether the conservatorship needs to continue;

(5) to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts, and mortgages or other debts of the individual subject to conservatorship with [all but the last four digits of the] account numbers and the individual's Social Security number redacted;

(6) anything of more than de minimis value which the conservator, any individual who resides with the conservator, or the spouse, [domestic partner,]parent, child, or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

(7) any business relation the conservator has with a person providing goods or services to the individual subject to conservatorship;

(8) any business relation the conservator has with a person the conservator has paid or a person that has benefited from the property of the individual subject to conservatorship; and

(9) whether any co-conservator or successor conservator appointed to serve when a designated future event occurs is alive and able to serve.

(c) The court may appoint a [visitor] to review a report under this section or conservator's plan under Section 419, interview the individual subject to conservatorship or conservator, and investigate any matter involving the conservatorship the court directs. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

(d) Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, a person entitled to notice under Section 411(e) or a subsequent order, and a person the court determines is entitled

to the report. The notice and report must be given not later than 14 days after filing.

(e) The court shall establish procedures for monitoring a conservator's plan and report and review the plan and report not less than annually to determine whether:

(1) the plan and report provide sufficient information to establish the conservator has complied with the conservator's duties;

(2) the conservatorship should continue; and

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

(f) If the court determines there is reason to believe the conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

(1) shall notify the conservator, the individual subject to conservatorship, and any other person entitled to notice under Section 411(e) or a subsequent order;

(2) may require additional information from the conservator;

(3) may appoint a [visitor] to interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship the court directs; and

(4) may, consistent with Sections 430 and 431, hold a hearing to consider removal of the conservator, termination of the conservatorship, or a change in the powers granted to the conservator or terms of the conservatorship.

(g) If the court determines there is reason to believe a conservator's requested fees are not reasonable, the court shall hold a hearing to adjust the fees.

(h) A conservator may petition the court for approval of a report or accounting filed under this section. The court after review may approve the report or accounting. If the court approves the report or accounting, there is a rebuttable presumption the report or accounting is accurate as to a matter adequately disclosed in the report or accounting. An order, after notice

and hearing, approving an interim report of a conservator adjudicates liabilities concerning a matter adequately disclosed in the accounting included in the report. An order, after notice and hearing, approving a final report discharges the conservator from all liabilities, claims, and causes of action by a person given notice of the report and the hearing as to a matter adequately disclosed in the report.

SECTION 424. ATTEMPTED TRANSFER OF PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.

(a) The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferrable or assignable by the individual and is not subject to levy, garnishment, or similar process for claims against the individual unless allowed under Section 428.

(b) If an individual subject to conservatorship enters into a contract after having the right to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.

(c) A third party that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of this state other than this [act].

SECTION 425. TRANSACTION INVOLVING CONFLICT OF INTEREST. A transaction involving a conservatorship estate which is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by the court by specific order after notice to a person entitled to notice under Section 411(e) or a subsequent order. A transaction affected by a substantial conflict between fiduciary duties and personal interests includes a sale, encumbrance, or other transaction involving the

conservatorship estate entered into by the conservator, an individual with whom the conservator resides, the spouse, [domestic partner,]descendant, sibling, agent, or attorney of the conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

SECTION 426. PROTECTION OF PERSON DEALING WITH CONSERVATOR.

(a) A person that assists or deals with a conservator in good faith and for value in any transaction, other than one requiring a court order under Section 414, is protected as though the conservator properly exercised the power in question. Knowledge by a person that the person is dealing with a conservator does not alone require the person to inquire into the existence of the authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority that are stated in letters of office, or as otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.

(b) Protection under subsection (a) extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and is not a substitute for protection provided to a person that assists or deals with a conservator by comparable provisions in law of this state other than this [act] relating to commercial transactions or simplifying transfers of securities by fiduciaries.

SECTION 427. DEATH OF INDIVIDUAL SUBJECT TO CONSERVATORSHIP.

(a) If an individual subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual in the conservator's possession, inform the personal representative named in the will if feasible, or if not feasible a beneficiary named in the will, of the delivery.

[(b) If 40 days after the death of an individual subject to conservatorship no personal

representative has been appointed 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 to administer and distribute the decedent's estate. The conservator shall give notice to a person nominated as personal representative by a will of the decedent of which the conservator is aware. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator has acquired the powers and duties of a personal representative.

(c) Issuance of an order under this section has the effect of an order of appointment of a personal representative [under Section 3-308 and Parts 6 through 10 of Article III of the Uniform Probate Code]].

(d) On the death of an individual subject to conservatorship, the conservator shall conclude the administration of the conservatorship estate by distributing property subject to conservatorship to the individual's successors. Not later than [30] days after distribution, the conservator shall file a final report and petition for discharge.

Legislative Note: These subsections are bracketed for several reasons. First, the enacting jurisdiction's probate code may already specifically address the right of the conservator to petition for appointment as personal representative or the right of the conservator to distribute the conservatorship assets directly to the estate beneficiaries. Second, subsections (b) and (c) are not essential and may be omitted if the enacting jurisdiction chooses. Even though the state's statute may not specifically authorize a conservator to petition for appointment as personal representative, a conservator, like any other holder of a decedent's assets, may eventually take action to effect a distribution. Finally, subsection (b) is specifically tailored for states, such as those that have enacted the Uniform Probate Code, which allow the appointment of a personal representative without prior notice to the estate beneficiaries. States which require notice to interested persons prior to the appointment of a personal representative should modify subsection (b) accordingly.

SECTION 428. PRESENTATION AND ALLOWANCE OF CLAIM.

(a) A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the individual subject to

conservatorship arising before or during the conservatorship on presentation and allowance in accordance with the priorities under subsection (d). A claimant may present a claim by:

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

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

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

(c) A claimant whose claim under subsection (a) has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment, or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

(d) If a conservatorship 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) a claim of the federal or state government having priority under law other than this [act];

(3) a claim incurred by the conservator for support, care, education, health, or welfare previously provided to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship;

(4) a claim arising before the conservatorship; and

(5) all other claims.

(e) Preference may not be given in the payment of a claim under subsection (d) over another claim of the same class. A claim due and payable may not be preferred over a claim not due unless:

(1) doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health-care expenses of the individual subject to conservatorship; and

(2) the court authorizes the preference under Section 414(a)(8).

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

SECTION 429. PERSONAL LIABILITY OF CONSERVATOR.

(a) Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the conservator fails to reveal in the contract or before entering into the contract the conservator's representative capacity.

(b) A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.

(c) A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate, or a claim based on a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

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

SECTION 430. REMOVAL OF CONSERVATOR; APPOINTMENT OF SUCCESSOR.

(a) The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

(b) The court shall conduct a hearing to determine whether to remove a conservator and appoint a successor on:

(1) petition of the individual subject to conservatorship, conservator, or person interested in the welfare of the individual that contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six months;

(2) communication from the individual subject to conservatorship, conservator, or

person interested in the welfare of the individual which supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

(3) determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.

(c) Notice of a petition under subsection (b)(1) shall be given to the individual subject to conservatorship, the conservator, and such other persons as the court determines.

(d) An individual subject to conservatorship who seeks to remove the conservator and have a successor appointed has a right to choose an attorney to represent the individual in this matter. [If the individual subject to conservatorship is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 406.] The court shall award reasonable attorney's fees to the attorney for the individual as provide in Section 119.

(e) In selecting a successor conservator, the court shall follow the procedures under Section 410.

(f) Not later than 30 days after appointing a successor conservator, the court shall give notice of the appointment to the individual subject to conservatorship and any person entitled to the notice under Section 411(e) or a subsequent order.

SECTION 431. TERMINATION OR MODIFICATION OF CONSERVATORSHIP.

(a) A conservatorship for a minor terminates on the earlier of:

(1) an order of the court;

(2) the minor becomes an adult or, if the minor consents or the court finds by clear-and-convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining age 21;

(3) emancipation of the minor; or

(4) death of the minor.

(b) A conservatorship for an adult terminates on order of the court or when the adult dies.

(c) An individual subject to conservatorship, the conservator, or a person interested in the welfare of the individual may petition for:

(1) termination of the conservatorship on the ground that a basis for appointment under Section 401 does not exist or termination would be in the best interest of the individual, or for other good cause; or

(2) modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

(d) The court shall conduct a hearing to determine whether termination or modification of a conservatorship is appropriate on:

(1) petition under subsection (c) that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six months;

(2) a communication from the individual subject to conservatorship, conservator, or person interested in the welfare of the individual which supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because of a change in the functional needs of the individual or in the supports or services available to the individual;

(3) a report from a guardian or conservator which indicates that termination or modification may be appropriate because the functional needs or supports or services available to

the individual subject to conservatorship have changed or a protective arrangement of conservatorship or other less restrictive alternatives are available; or

(4) a determination by the court that a hearing would be in the best interest of the individual.

(e) Notice of a petition under subsection (c) shall be given to the individual subject to conservatorship, the conservator, and such other persons as the court determines.

(f) On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless a basis for appointment of a conservator under Section 401 is satisfied.

(g) The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports, or other circumstances.

(h) Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship which apply to a petition for conservatorship.

(i) An individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship has a right to choose an attorney to represent the individual in this matter. [If the individual is not represented by an attorney, the court shall appoint an attorney under the same conditions in Section 406.] The court shall award reasonable attorney's fees to the individual's attorney as provided in Section 119.

(j) On termination of a conservatorship and whether or not formally distributed by the conservator, property of the conservatorship estate passes to the individual formerly subject to conservatorship or the individual's heirs, successors, or assigns. The order of termination must

provide for expenses of administration and direct the conservator to file a final report and petition for discharge on approval of the final report.

(k) The court shall enter a final order of discharge on the approval of the final report and satisfaction by the conservator of any other condition placed by the court on the conservator's discharge.

(l) On the death of an individual subject to conservatorship or other event terminating or partially terminating the conservatorship, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual or other persons entitled to it. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be effected.

SECTION 432. TRANSFER FOR BENEFIT OF MINOR WITHOUT APPOINTMENT OF CONSERVATOR.

(a) Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or a proceeding is pending for conservatorship for the minor, the person may transfer an amount or value not exceeding \$[14,000] in a 12-month period to:

(1) a person that has the care or 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 Uniform Gifts to Minors Act]; or

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

(b) A person that transfers money or property under this section is not responsible for its

proper application.

(c) A person that receives money or property for a minor under subsection (a)(1) or (2) may apply it only to the support, care, education, health, and welfare of the minor, and may not derive a personal financial benefit from it, except for reimbursement for necessary expenses. Funds in excess of those required to be so applied must be preserved for the future support, care, education, health, or welfare of the minor, and the balance, if any, transferred to the minor when the minor becomes an adult or is otherwise emancipated.

[ARTICLE] 5

OTHER PROTECTIVE ARRANGEMENTS

SECTION 501. AUTHORITY FOR PROTECTIVE ARRANGEMENT.

(a) Under this [article], a court:

(1) upon receiving a petition for a guardianship for an adult may order a protective arrangement instead of guardianship as a less restrictive alternative to guardianship; and

(2) upon receiving a petition for a conservatorship for an individual may order a protective arrangement instead of conservatorship as a less restrictive alternative to conservatorship.

(b) A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this [article] for a protective arrangement instead of guardianship.

(c) The following persons may petition under this [article] for a protective arrangement instead of conservatorship:

(1) the individual for whom the protective arrangement is sought;

(2) a person interested in the property, financial affairs, or welfare of the

individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; and

(3) the guardian of the individual.

SECTION 502. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.

(a) After the hearing conducted on a petition for guardianship under Section 302 or a protective arrangement instead of guardianship under Section 501(b), the court may enter an order for a protective arrangement instead of guardianship under subsection (b) if the court finds by clear-and-convincing evidence that:

(1) the respondent lacks the ability to meet essential requirements for physical health, safety, or self care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making, and

(2) the respondent's identified needs cannot be met by less restrictive alternatives.

(b) If the court makes the findings under subsection (a), the court, instead of appointing a guardian, may:

(1) authorize or direct a transaction necessary to meet the respondent's need for health, safety, or care, including:

(A) a particular medical treatment or refusal of a particular medical treatment;

(B) a move to a specified place of dwelling; or

(C) visitation or supervised visitation between the respondent and another

person;

(2) restrict access to the respondent by a person whose access places the respondent at serious risk of physical or psychological harm; and

(3) order other arrangements on a limited basis that are appropriate.

(c) In deciding whether to enter an order under this section, the court shall consider the factors under Sections 313 and 314 which a guardian must consider when making a decision on behalf of an adult subject to guardianship.

SECTION 503. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.

(a) After the hearing conducted on a petition for conservatorship for an adult under Section 402 or a protective arrangement instead of conservatorship for an adult under Section 501(c), the court may enter an order for a protective arrangement instead of conservatorship under subsection (c) for the respondent if the court finds:

(1) by clear-and-convincing evidence that the respondent is unable to manage property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making, or the adult is missing, detained, or unable to return to the United States;

(2) by a preponderance of the evidence that:

(A) the respondent has property likely to be wasted or dissipated unless management is provided; or

(B) the order under subsection (c) is necessary or desirable to obtain or provide money needed for the support, care, education, health, or welfare of the adult or an

individual who is entitled to the respondent's support and protection; and

(3) the respondent's identified needs cannot be met by less restrictive alternatives.

(b) After the hearing conducted on a petition for conservatorship for a minor under Section 402 or a protective arrangement instead of conservatorship for a minor under Section 501(c), the court may enter an order for a protective arrangement instead of conservatorship under subsection (c) for the respondent if the court finds by a preponderance of the evidence that the minor owns money or property requiring management or protection that cannot be provided otherwise and:

(1) the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

(2) the order under subsection (c) is necessary or desirable to obtain or provide money needed for the support, care, education, health, or welfare of the minor.

(c) If the court makes the findings under subsection (a) or (b), the court, instead of appointing a conservator, may:

(1) authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including:

(A) an action to establish eligibility for benefits;

(B) payment, delivery, deposit, or retention of funds or property;

(C) sale, mortgage, lease, or other transfer of property;

(D) purchase of an annuity;

(E) entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training, or employment;

(F) addition to or establishment of a trust;

(G) ratification or invalidation of a contract, trust, will, or other transaction, including a transaction related to the property or business affairs of the respondent; or

(H) settlement of a claim; or

(2) restrict access to the respondent's property by a person whose access to the property places the respondent at serious risk of financial harm.

(d) If, after the hearing conducted under Section 505 on a petition under Section 501(a)(2) or (c), a court may enter an order to restrict access to the respondent or the respondent's property by a person that the court finds by clear-and-convincing evidence:

(1) through fraud, coercion, duress, or the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial harm to the respondent or the respondent's property; and

(2) poses a serious risk of substantial financial harm to the respondent or the respondent's property.

(e) In deciding whether to enter an order under subsection (c) or (d), the court shall consider the factors under Section 418 a conservator must consider when making a decision on behalf of an individual subject to conservatorship.

(f) In deciding whether to enter an order under subsection (c) or (d) for a respondent who is a minor, the court also shall consider the best interest of the respondent, the preference of the parents of the respondent, and the preference of the respondent if the minor is 12 years of age or older.

SECTION 504. PETITION.

(a) A petition for a protective arrangement instead of guardianship or conservatorship

must set forth the petitioner's name, principal dwelling, current street address, if different, relationship to the respondent, interest in the protective arrangement, and state or contain the following to the extent known:

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

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

(A) spouse [or domestic partner], or if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than six months in the 12-month period before the filing of the petition;

(B) adult children or, if none, each parent and adult sibling of the respondent, or, if none, at least one adult nearest in kinship to the respondent who can be found with reasonable diligence; and

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

(3) the name and current address of each of the following, if applicable:

(A) a person responsible for care or custody of the respondent;

(B) any attorney currently representing the respondent;

(C) the representative payee appointed by the Social Security Administration for the respondent;

(D) a guardian or conservator acting for the respondent in this state or in another jurisdiction;

(E) a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(F) the Veterans Administration fiduciary for the respondent;

(G) an agent designated under a [power of attorney for health care] in which the respondent is identified as the principal;

(H) an agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(I) a person nominated as guardian or conservator by the respondent;

(J) a person nominated as guardian by the respondent's parent or spouse [or domestic partner] in a will or other signed record;

(K) a proposed guardian and the reason the proposed guardian should be selected;

(L) a person known to have routinely assisted the respondent with decision making within the six months before the filing of the petition; and

(M) if the respondent is a minor:

(i) an adult with whom the respondent resides if not otherwise listed; and

(ii) any person not otherwise listed that had primary care or custody of the respondent for 60 or more days during the two years immediately preceding the filing of the petition or any person that had primary care or custody of the respondent for at least 730 days during the five years immediately preceding the filing of the petition;

(4) the nature of the protective arrangement sought;

(5) the reason a protective arrangement sought is necessary, including a brief

description of:

(A) the nature and extent of the respondent's alleged need;

(B) any less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented and, if none, the reason they have not been considered or implemented; and

(C) the reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;

(6) the name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

(7) whether the respondent needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings;

(8) if a protective arrangement instead of conservatorship is sought, 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

(9) if a protective arrangement instead of guardianship is sought and the respondent has property other than personal effects, 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.

(b) A petition under subsection (a) must state the name and address of an attorney representing the petitioner, if any.

SECTION 505. NOTICE AND HEARING.

(a) On receipt of a petition under Section 501, the court shall set a date, time, and place for hearing on the petition.

(b) A copy of a petition under Section 501 and notice of the hearing under subsection (a) must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing including the right an attorney and to attend the hearing. The notice must also include a description of the nature, purpose, and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

(c) In a hearing under subsection (a), notice of the hearing also must be given to the persons listed in the petition and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

(d) Notice of a hearing on a petition filed under this [act] after the court has ordered a protective arrangement under this [article], together with a copy of the petition, must be given to the respondent and any other person the court determines.

SECTION 506. APPOINTMENT OF [VISITOR].

(a) On receipt of a petition for protective arrangement instead of guardianship under Section 501, the court shall appoint a [visitor]. A [visitor] appointed under this subsection must be an individual having training or experience in the type of abilities, limitations, and needs alleged in the petition.

(b) On receipt of a petition for a protective order instead of conservatorship for a minor under Section 501, the court may appoint a [visitor] to investigate a matter related to the petition or to inform the respondent or a parent of the respondent about the petition or a related matter.

(c) On receipt of a petition for a protective order instead of conservatorship for an adult under Section 501, the court shall appoint a [visitor][unless the respondent is represented by an

attorney appointed by the court].

(d) A [visitor] appointed under subsection (a) or (c) shall interview the respondent in person and, in a manner the respondent is best able to understand:

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

(2) determine the respondent's views with respect to the order sought;

(3) inform the respondent of the respondent's right to employ and consult with an attorney at the respondent's expense and the right to request a court-appointed attorney;

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, may be paid from the respondent's assets;

(5) if the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;

(6) if a protective arrangement instead of guardianship is sought, obtain information from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition;

(7) if a protective arrangement instead of conservatorship is sought, review financial records of the respondent if relevant to the [visitor's] recommendation under subsection (e)(3); and

(8) investigate the allegations in the petition and any other matter relating to the petition the court directs.

(e) A [visitor] under this section promptly shall file a report in a record with the court, which must include:

(1) a recommendation whether an attorney should be appointed to represent the respondent;

(2) to the extent relevant to the order sought, a summary of self care, independent-living tasks, and financial management tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage;

(3) recommendations regarding the appropriateness of the protective arrangement sought and whether less restrictive alternatives for meeting the respondent's needs are available;

(4) if the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;

(5) a recommendation whether a professional evaluation under Section 508 is necessary;

(6) a statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;

(7) a statement whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and

(8) any other matter the court directs.

SECTION 507. APPOINTMENT AND ROLE OF ATTORNEY.

Alternative A

(a) The court shall appoint an attorney to represent the respondent in a proceeding under this [article] if:

- (1) requested by the respondent;
- (2) recommended by the [visitor]; or
- (3) the court determines that the respondent needs representation.

Alternative B

(a) Unless the respondent in a proceeding under this [article] is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the respondent's ability to pay.

End of Alternatives

(b) An attorney representing the respondent in a proceeding under this [article] shall:

- (1) make reasonable efforts to ascertain the respondent's wishes;
- (2) advocate for the respondent's wishes to the extent reasonably ascertainable; and
- (3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration, and scope, consistent with the respondent's interests.

[(c) The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under this [article] if:

- (1) the parent objects to the entry of an order for a protective arrangement instead of guardianship or conservatorship;
- (2) the court determines that counsel is needed to ensure that consent to the entry of an order for a protective arrangement is informed; or
- (3) the court otherwise determines the parent needs representation.]

Legislative Note: *The Drafting Committee believed that subsection (c) is important and should be included, but recognized that some states have different policies regarding rights of parents in*

these cases.

SECTION 508. PROFESSIONAL EVALUATION.

(a) At or before a hearing on a petition for a protective order instead of guardianship under this [article], the court shall order a professional evaluation of the respondent:

(1) unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation; or

(2) if the respondent requests the evaluation.

(b) If the court orders an evaluation under subsection (a), the respondent must be examined by a licensed physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the respondent's cognitive and functional abilities and alleged limitations. The court shall not appoint an individual to conduct an examination if the individual will be advantaged or disadvantaged by a decision to grant the petition or otherwise has a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record 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 cognitive and functional abilities and limitations;

(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 recommendation for the appropriate treatment, support, or habilitation plan; and

(4) the date of the examination on which the report is based.

(c) The respondent has the right to decline to participate in an evaluation ordered under subsection (a).

SECTION 509. ATTENDENCE AND RIGHTS AT HEARING.

(a) Except as otherwise provided in subsection (b), a hearing under this [article] shall proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

(b) A hearing under this [article] may proceed without the respondent in attendance if the court finds by clear-and-convincing evidence that:

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

(2) there is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or

(3) the respondent is a minor who has received proper notice and attendance would be harmful to the minor.

(c) The respondent may be assisted in a hearing under this [article] by a person or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance 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.

(d) The respondent has a right to choose an attorney to represent the respondent at a hearing conducted under this [article].

(e) At a hearing conducted under [this article], the respondent may:

- (1) present evidence and subpoena witnesses and documents;
- (2) examine witnesses, including any court-appointed evaluator and the [visitor];

and

- (3) otherwise participate in the hearing.

(f) A hearing conducted under this [article] shall be closed on request of the respondent and a showing of good cause.

(g) Any person may request to participate in a hearing conducted under [this article]. The court may grant the request, with or without hearing, on determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the person's participation.

SECTION 510. NOTICE OF ORDER. The court shall give notice of an order under this [article] to the individual who is the subject of the protective arrangement instead of guardianship or conservatorship, a person whose access to the respondent is restricted by the order, and any other person the court determines.

SECTION 511. CONFIDENTIALITY OF RECORDS.

(a) The existence of a proceeding for or the existence of a protective arrangement instead of a guardianship or conservatorship is a matter of public record unless the court seals the record after:

- (1) the respondent, the individual subject to the protective arrangement, or the parent of a minor subject to the protective arrangement requests the record be sealed; and

- (2) either:

- (A) the proceeding is dismissed;

- (B) the protective arrangement is no longer in effect; or

(C) any act authorized by the order granting the protective arrangement has been completed.

(b) A respondent, an individual subject to a proceeding for a protective arrangement instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to a protective arrangement, and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangement or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

[(c) A report of a [visitor] or professional evaluation generated in the course of a proceeding under this [article] must be sealed on filing, but is available to:

- (1) the court;
- (2) the individual who is the subject of the report or evaluation, without limitation as to use;
- (3) the petitioner, [visitor], and petitioner's and respondent's attorneys, for purposes of the proceeding;
- (4) unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal;
- (5) if the order is for a protective arrangement instead of guardianship and unless the court directs otherwise, an agent appointed under a [power of attorney for health care] in which the respondent is identified as the principal; and
- (6) other persons when it is in the public interest or for a purpose the court orders

for good cause.]

Legislative Note: Subsection (c) is bracketed in recognition that states have different policies and procedures regarding the sealing of court records.

SECTION 512. APPOINTMENT OF [MASTER]. The court may appoint a [master] to assist in implementing a protective arrangement under this [article]. The [master] has the authority conferred by the order of appointment and serves until discharged by court order.

[[ARTICLE] 6

FORMS

SECTION 601. USE OF FORMS. Use of the forms contained in this [article] is optional. Failure to use these forms does not prejudice any party.

Legislative note: Enacting states may wish to modify forms in this section to best reflect state practice. The Appendix to this Act includes sample orders that courts may use to deny or grant a guardianship, conservatorship, or a protective arrangement instead of guardianship or conservatorship for an adult in accord with this Act.

SECTION 602. PETITION FOR GUARDIANSHIP FOR MINOR. This form may be used to petition for guardianship of a minor.

Petition for Guardianship for Minor

State of:

[County] of:

Name and address of attorney representing Petitioner, if applicable:

Note to Petitioner: This form can be used to petition for a guardian for a minor. A court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest, and: (1) the parents, after being fully informed of the nature and consequences of guardianship, provide consent; (2) all parental rights have been terminated; or (3) the court finds by clear-and-convincing evidence that the parents are unwilling or unable to exercise their parental rights.

1. Information about the person filing this petition (the "Petitioner").

- a. Name:
- b. Principal residence:
- c. Current street address (if different):

- d. Relationship to minor:
- e. Interest in this petition:
- f. Telephone number (optional):
- h. Email address (optional):

2. Information about the minor alleged to need a guardian.

Provide the following information to the extent known.

- a. Name:
- b. Age:
- c. Principal residence:
- d. Current street address (if different):
- e. If Petitioner anticipates the minor moving, or seeks to move the minor, proposed new address:
- f. Does the minor need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain.
- g. Telephone number (optional):
- h. Email address (optional):

3. Information about the minor's parent(s).

- a. Name(s) of living parent(s):
- b. Current street address(es) of living parent(s):
- d. Does any parent need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain.

4. People who are required to be notified of this petition. State the name and current address of any of the people listed in Appendix A.

5. Appointment requested. State the name and address of any proposed guardian and the reason the proposed guardian should be selected.

6. State why Petitioner seeks the appointment. Include a description of the nature and extent of the minor's alleged need.

7. Property. If the minor has property other than personal effects, state the minor's property with an estimate of its value.

8. Other proceedings. If there are any other proceedings concerning the care or custody of the minor currently pending in any court in this state or another jurisdiction, please describe them.

9. Attorney(s). If the minor or the minor's parent is represented by an attorney in this matter, state the name, [telephone number, email address,]and address of the attorney(s).

SIGNATURE

Signature of Petitioner

Date

Signature of Petitioner's Attorney if
Petitioner is Represented by Counsel

Date

APPENDIX A:

People whose name and address must be listed in Section 4 of this petition if they are not the Petitioner.

- The minor, if the minor is 12 years of age or older;
- Each parent of the minor or, if there are none, the adult nearest in kinship that can be found;
- An adult with whom the minor resides;
- Any person that had primary care or custody of the minor for 60 or more days during the two years preceding the filing of the petition or any person that had had the primary care or custody of the minor for at least 730 days during the five years preceding the filing of the petition;
- If the minor is 12 years of age or older, any person nominated as guardian by the minor;
- Any person nominated as guardian by a parent of the minor;
- The grandparents of the minor;
- Adult siblings of the minor;
- Any current guardian or conservator of the minor appointed in this state or another jurisdiction.

SECTION 603. PETITION FOR GUARDIANSHIP OR PROTECTIVE

ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT,

CONSERVATORSHIP OR PROTECTIVE ARRANGEMENT INSTEAD OF

CONSERVATORSHIP FOR ADULT OR MINOR. This form may used to petition for: (1)

guardianship for an adult; (2) conservatorship for an adult or a minor, (3) a protective

arrangement instead of guardianship for an adult; or (4) a protective arrangement instead of

conservatorship for an adult or a minor.

**Petition for Guardianship or Protective Arrangement Instead of Guardianship for Adult,
or for Conservatorship or Protective Arrangement Instead of Conservatorship for Minor
or Adult**

State of:

[County] of:

Name and address of attorney representing Petitioner, if applicable:

Note to Petitioner: This form can be used to petition for a guardian, conservator, or both, or for a protective arrangement instead of either a guardianship or conservatorship.

The court may appoint a guardian or order a protective arrangement instead of guardianship for an adult if the adult lacks the ability to meet essential requirements for physical health, safety, or self care because (1) the adult is unable to receive and evaluate information or make or communicate decisions even with the use of supportive services, technological assistance, and supported decision-making, and (2) the adult's identified needs cannot be met by less-restrictive alternatives.

The court may appoint a conservator or order a protective arrangement instead of conservatorship for an adult if the adult is unable to manage property and financial affairs because (1) of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of supportive services, technological assistance, and supported decision making or the adult is missing, detained, or unable to return to the United States, and (2) appointment is necessary to avoid harm to the adult or significant dissipation of the property of the adult, or to obtain or provide money needed for the support, care, education, health, or welfare of the adult, or of an individual who is entitled to the adult's support, and that protection is necessary or desirable to provide money for the purpose.

The court may appoint a conservator or order a protective arrangement instead of conservatorship for a minor if (1) the minor owns money or property requiring management or protection that cannot otherwise be provided; or (2) it would be in the minor's best interest, and the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age, or appointment is necessary or desirable to provide money needed for the support, care, education, health, or welfare of the minor.

The court may also order a protective arrangement instead of conservatorship that restricts access to an individual or an individual's property by a person that the court finds: (1) through fraud, coercion, duress, or the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial harm to the individual or the individual's property; and (2) poses a serious risk of substantial financial harm to the individual or the individual's property.

1. Information about the person filing this petition (the "Petitioner").

- a. Name:
- b. Principal residence:
- c. Current street address (if different):
- d. Relationship to Respondent:
- e. Interest in this petition:
- f. Telephone number (optional):

- g. Email address (optional):
- 2. Information about the individual alleged to need protection (the “Respondent”).** Provide the following information to the extent known.
- a. Name:
 - b. Age:
 - c. Principal residence:
 - d. Current street address (if different):
 - e. If Petitioner anticipates Respondent moving, or seeks to move Respondent, proposed new address:
 - f. Does Respondent need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain.
 - g. Telephone number (optional):
 - h. Email address (optional):
- 3. People who are required to be notified of this petition.** State the name and address of any of the people listed in Appendix A.
- 4. Existing agents.** State the name and address of any person appointed as an agent under a power of attorney for finances or [power of attorney for health care], or who has been appointed as the individual’s representative for payment of benefits.
- 5. Action requested.** State whether Petitioner is seeking appointment of a guardian, a conservator, or a protective arrangement instead of an appointment.
- 6. Order requested or appointment requested.** If seeking a protective arrangement instead of a guardianship or conservator, state the transaction or other action you would want the court to order. If seeking appointment of a guardian or conservator, state the powers Petitioner requests the court grant to a guardian or conservator.
- 7. State why the appointment or protective arrangement sought is necessary.** Include a description of the nature and extent of Respondent’s alleged need.
- 8. State all less-restrictive alternatives to meeting Respondent’s alleged need that have been considered or implemented.** Less-restrictive alternatives could include supported decision making, technological assistance, or the appointment of an agent by Respondent including appointment under a [power of attorney for health care] or power of attorney for finances. If no alternatives have been considered or implemented, state the reason why not.
- 9. Explain why less-restrictive alternatives will not meet Respondent’s alleged need.**
- 10. Provide a general statement of Respondent’s property and an estimate of its value.** Include any real property such as a house or land, insurance or pension, and the source and amount of any other anticipated income or receipts. As part of this statement,

- indicate, if known, how the property is titled (for example, is it jointly owned?).
- 11. For petitions seeking appointment of a conservator:** (skip this section if not asking for appointment of a conservator)
- a. If seeking appointment of a conservator with all powers permissible under this state's law, explain why appointment of a conservator with fewer powers (i.e., a "limited conservatorship") or other protective arrangement instead of conservatorship will not meet the individual's alleged needs.
 - b. If seeking a limited conservatorship, state the property Petitioner requests be placed under the conservator's control and any proposed limitation on the conservator's powers and duties.
 - c. State the name and address of any proposed conservator and the reason the proposed conservator should be selected.
 - d. If Respondent is 12 years of age or older, state the name and address of any person Respondent nominates as conservator.
 - e. If alleging a limitation in Respondent's ability to receive and evaluate information, provide a brief description of the nature and extent of Respondent's alleged limitation.
 - f. If alleging that Respondent is missing, detained, or unable to return to the United States, state the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning Respondent's whereabouts.
- 12. For petitions seeking appointment of a guardian:** (skip this section if not asking for appointment of a guardian)
- a. If seeking appointment of a guardian with all powers permissible under this state's law, explain why appointment of a guardian with fewer powers (i.e., a "limited guardianship") or other protective order is inappropriate.
 - b. If seeking a limited guardianship, state the powers Petitioner requests be granted to the guardian.
 - c. State the name and address of any proposed guardian and the reason the proposed guardian should be selected.
 - d. State the name and address of any person nominated as guardian by Respondent, or by Respondent's parent or spouse [or domestic partner] in a will or other signed writing or other record.
- 13. Attorney.** If Petitioner, Respondent, or, if Respondent is a minor, Respondent's parent is represented by an attorney in this matter, state the name, [telephone number, email address, and]address of the attorney(s).

SIGNATURE

Signature of Petitioner

Date

Signature of Petitioner’s Attorney if
Petitioner is Represented by Counsel

Date

APPENDIX A:

People whose name and address must be listed in Section 3 of this petition.

- Respondent’s spouse [or domestic partner], or if Respondent has none, any adult with whom Respondent has shared household responsibilities in the past six months;
- Respondent’s adult children, or, if Respondent has none, Respondent’s parents and adult brothers and sisters, or if Respondent has none, one or more adults nearest in kinship to Respondent who can be found with reasonable diligence;
- Respondent’s adult stepchildren whom Respondent actively parented during the stepchildren’s minor years and with whom Respondent had an ongoing relationship within two years of this petition;
- Any person responsible for the care or custody of Respondent;
- Any attorney currently representing Respondent;
- Any representative payee for Respondent appointed by the Social Security Administration;
- Any current guardian or conservator for Respondent appointed in this state or another jurisdiction;
- Any trustee or custodian of a trust or custodianship of which Respondent is a beneficiary;
- Any Veterans Administration fiduciary for Respondent;
- Any person Respondent has designated as agent under a power of attorney for finances;
- Any person Respondent has designated as agent under a [power of attorney for health care];
- Any person known to have routinely assisted the individual with decision making in the previous six months.
- Any person Respondent nominates as guardian or conservator; and
- Any person nominated as guardian by Respondent’s parent or spouse [or domestic partner]in a will or other signed writing or other record.

**SECTION 604. NOTIFICATION OF RIGHTS FOR ADULT SUBJECT TO
GUARDIANSHIP OR CONSERVATORSHIP.** This form may an adult subject to
guardianship or conservatorship of the adult’s rights under Sections 311 and 412.

Notification of Rights

You are getting this notice because a guardian, conservator, or both has been appointed for you. It tells you about some important rights you have. It does not tell you about all your rights. If you have questions about your rights, you can ask an attorney or another person, including your guardian or conservator, to help you understand your rights.

General rights:

You have the right to exercise any right the court has not given to your guardian or conservator.

You also have the right to ask the court to:

- end your guardianship, conservatorship, or both;
- increase or decrease the powers granted to your guardian, conservator, or both;
- make other changes that affect what your guardian or conservator can do or how they do it; and
- replace the person that was appointed with someone else.

You also have a right to hire an attorney to help you do any of these things.

Additional rights for persons for whom a guardian has been appointed:

As an adult subject to guardianship, you have a right to:

- (1) be involved in decisions affecting you, including decisions about your care, where you live, your activities, and your social interactions, to the extent reasonably feasible;
- (2) be involved in decisions about your health care to the extent reasonably feasible, and to have other people help you understand the risks and benefits of health-care options;
- (3) be notified at least 14 days in advance of a change in where you live or a permanent move to a nursing home, mental-health facility, or other facility that places restrictions on your ability to leave or have visitors, unless the guardian has proposed this change in the guardian's plan or the court has expressly authorized it;
- (4) ask the court to prevent your guardian from changing where you live or selling or surrendering your primary dwelling by [insert process for asking the court to prevent such a move];
- (5) vote and get married unless the court order appointing your guardian states that you cannot do so;
- (6) receive a copy of your guardian's report and your guardian's plan; and
- (7) communicate, visit, or interact with other people (this includes the right to have visitors, to make and get telephone calls, personal mail, or electronic communications) unless:
 - your guardian has been authorized by the court by specific order to restrict such communications, visits, or interactions;
 - a protective order is in effect that limits contact between you and other people; or
 - your guardian has good cause to believe the restriction is needed to protect you from significant physical, psychological, or financial harm and the restriction is for not more than seven business days if the person has a family or pre-existing social relationship with you or not more than 60 days if the person does not have that kind of relationship with you.

Additional rights for persons for whom a conservator has been appointed:

As an adult subject to conservatorship, you have a right to:

- (1) participate in decisions about how your property is managed to the extent feasible; and
- (2) receive a copy of your conservator's inventory, report, and plan.]

[ARTICLE] 7

MISCELLANEOUS PROVISIONS

SECTION 701. 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 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 703. APPLICABILITY. This [act] applies to a proceeding for appointment of a guardian, conservator, or protective arrangement instead of guardianship or conservatorship commenced before [the effective date of this [act]] and a guardianship, conservatorship, or protective arrangement instead of guardianship or conservatorship in existence on [the effective date of this [act]] unless the court finds application of a particular provision of this [act] would substantially interfere with the effective conduct of the proceeding or prejudice the rights of a party, in which case the particular provision of this [act] does not apply and the superseded law applies.

[SECTION 704. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 705. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

SECTION 706. EFFECTIVE DATE. This [act] takes effect