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REVISED UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

October 14-15, 2016 Drafting Committee Meeting

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**UNIFORM GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS ACT**

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REVISED UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

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Prefatory Note

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The Act replaces the Uniform Guardianship and Protective Proceedings Act (UGPPA) approved by the National Conference of Commissioners on Uniform State Laws in 1997. It may be enacted either as a free-standing Act or as part of the Uniform Probate Code (UPC). States enacting the Act as part of the UPC should consult Article V of the UPC for the official text of the Act as conformed to the Code's definitions and general provisions./

The Act covers guardianships and conservatorships for both minors and adults, as well as court orders in lieu of guardianship or conservatorship. It consists of six articles. Article 1 contains definitions and general provisions applicable to both guardianships and conservatorships. Article 2 governs guardianships for minors, whether appointed by a court or by a parent. Article 3 governs guardianships for adults. Article 4 covers conservatorships for both minors and adults. Article 5 contains boilerplate provisions common to Uniform Acts. Article 6 contains optional forms that can be used by persons petitioning for guardianship or conservatorship, and by courts rendering orders as a result of such petitions or notifying persons subject to guardianship or conservatorship of their rights.

The revised Act is the result of the work of the Drafting Committee which, in consultation with a broad range of observers representing a range of constituencies, was charged with revising UGPPA to update the Act including by implement some of the recommendations of the Third National Guardianship Summit (NGS) held in 2011. The Drafting Committee's work built upon two earlier versions of the Act: the 1982 UGPPA which significantly advanced guardianship law by recognizing limited guardianship, and the 1997 UGPPA which further advanced the law by, among other things, adopting a functional definition of capacity and emphasizing that guardianship and conservatorship should be options of last resort. The 1982 UGPPA in turn build upon the provisions of Article V of the UPC as originally approved in 1969.

The revised Act has three overarching aims.

First, it aims to reflect the person-centered philosophy endorsed by the NGS. This approach is evidenced in the revised Act's updated terminology. The terms "ward" and "incapacitated person," which were rejected by the NGS as demeaning and even offensive, are eliminated and the terms "adult subject to guardianship" and "person subject to conservatorship" used instead. The person-centered approach is also evident in new provisions requiring that persons subject to guardianship or conservatorship be given meaningful notice of their rights and how to assert them; provisions that require persons subject to guardianship and conservatorship be involved in decisions about their lives; the addition of requirements that guardians create person-centered plans; and provisions to facilitate court monitoring of compliance with these plans.

Second, it aims to create a set of legal rules that advance the key objectives embraced by the NGS and that otherwise successfully address key challenges surrounding guardianships and conservatorships. These objectives focus on protecting and respecting the rights and interests of both persons alleged to need a guardian or conservator and persons subject to guardianship or

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1 conservatorship. This includes ensuring that the least restrictive means are used to protect an
2 individual alleged to need a guardianship or conservatorship, providing better guidance to
3 guardians and conservators, and helping courts to do a better job monitoring guardians and
4 conservators.

5
6 Third, it aims to advance rules and systems that make it easier for all persons involved in
7 the process—whether they be petitioners, persons subject to guardianship or conservatorship,
8 guardians, or judges—to achieve these objectives. It does this in a number of ways including by
9 creating new petition requirements designed to ensure that judges have the information they need
10 to make appropriate decisions; by creating an option for courts to enter orders in lieu of
11 guardianship or conservatorship where such less restrictive alternative would still meet a
12 respondent’s need; and by offering model forms that can be used to make it less burdensome for
13 petitioners to seek limited appointments instead of full ones, and easier for courts to craft limited
14 orders instead of full appointments.

15
16 With these overarching objectives in mind, there are a number of more specific changes that are
17 likely to be particularly noteworthy to those considering the Act’s adoption.

18
19 First, the revised Act includes clearer guidance to appointees, many of whom are lay people.
20 Specifically, the Act clarifies how appointees are to make decisions, including those about
21 particularly fraught issues such as medical treatment and residential placement. Notably, these
22 clarifications are consistent with the person-centered approach embraced by the Act in that
23 appointees are given specific guidance as to involving the person in decisions.

24
25 Second, the revised Act recognizes the role of, and encourages the use of, less restrictive
26 alternatives, including supported decision-making and single-issue court orders in lieu of
27 guardianship and conservatorship. To this end, the revised Act provides that neither
28 guardianship nor conservatorship are appropriate where the person’s needs could be met with
29 technological assistance or decision-making support. It also allows for a protective order in lieu
30 of guardianship or conservatorship; the 1997 version, by contrast, only provided for such an
31 order in lieu of conservatorship.

32
33 Third, the revised Act expands the procedural rights for respondents with the aim of ensuring
34 that such persons’ rights are fully respected and that guardianships and conservatorships are only
35 imposed when less restrictive means are not feasible. In expanding these protections, the
36 Drafting Committee worked to strike a balance between the need to provide meaningful
37 procedural rights for persons alleged to need a guardian or conservator, and the need not to make
38 the process for appointing a guardian or conservator overly complex or expensive. Key revisions
39 include a narrowing of the exception to the general rule that the respondent must be present at
40 the hearing, a requirement that explicit findings be made before certain fundamental rights are
41 removed, and the elimination of provisions that would have allowed appointment of a guardian
42 for an adult by will or writing without prior judicial approval.

43
44 Fourth, the revised Act provide for enhanced monitoring of guardians and conservators as a way
45 of ensuring that such appointees are conforming to their fiduciary duties and protecting against
46 exploitation of those subject to guardianship and conservatorship. One innovation in the revised

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1 Act is to allow the court to identify people who will be given notice of certain key changes or
2 suspect actions, and who can therefore serve as an extra set of eyes and ears for the court. Other
3 revisions include a provision that makes bond a default option for conservators and provisions
4 that clarify factors relevant in determining the reasonableness of fees for guardians and
5 conservators.

6
7 Fifth, the revised Act provides enhanced procedural rights for persons subject to guardianship
8 and conservatorship. Key revisions include a provision that the court provide the person with
9 plain-language notice of key rights, provisions for attorney representation of persons subject to
10 guardianship and conservatorship, greater scrutiny of the guardian or conservator's ability to
11 charge fees to oppose the person's efforts to alter the appointment, and additional triggers for
12 reconsideration of an appointment.

13
14 Sixth, recognizing that persons subject to guardianship and conservatorship benefit from
15 visitation and communication with third parties, the revised Act sets forth specific rights to such
16 interactions. In recent years, some family members of persons subject to guardianship have
17 raised concerns that guardians have unreasonably restricted the ability of persons subject to
18 guardianship to receive visitors and communicate with others, and family advocates have
19 encouraged legislative responses to address this concern. The revised Act includes a variety of
20 provisions addressing this concern. These include a limitation on a guardian's ability to curtail
21 communications, visits, or interactions between the adult subject to guardianship and third
22 parties and a requirement that the guardian give priority to a residential settings that allow the
23 person to interact with those important to the person. Along similar vein, it establishes a default
24 that the adult children and spouse of an adult subject to guardianship or conservatorship are
25 entitled to notice of the person's death or a significant change in the person's condition.

26
27 Seventh, the revised Act contains a variety of provisions that are designed improve the Act's
28 instruction that a full guardianship or conservatorship must not be imposed where a limited one
29 would meet the person's needs. The Drafting Committee recognized that, despite the best efforts
30 of previous Committees, there is a lack of compliance with the 1997 Act's requirement that
31 limited guardianships and conservatorships be used where they would meet the person's needs.
32 In order to facilitate compliance with this direction, the Drafting Committee has crafted a sample
33 petition which makes it easier for a petitioner to seek a limited order, and a sample order which
34 makes it easier for a court to craft a limited order. In addition, the revised Act requires
35 petitioners seeking a full guardianship or conservatorship to do more to justify that approach, and
36 courts imposing a full guardianship to provide findings to support that imposition.

37
38 Eight, the revised Act modernizes and clarifies provisions related to minors subject to
39 guardianship. For example, consistent with modern trends in the law, the revised Act provides
40 for greater involvement of minors in decisions involving them. The age of involvement for a
41 minor has been lowered from 14 to 12, the decision-making standard for guardians now calls on
42 them to consider the minors' views, and an attorney must be appointed for a minor in certain
43 situations. The revised Act also provides greater guidance to those petitioning for guardianship
44 of a minor, courts determining whether they had jurisdiction over guardianship for minors, and
45 guardians making decisions on behalf of minors.

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1 Finally, the revised Act has been reorganized with the aim of making the act easier to
2 understand. Ease of use is important as many of those who need to comply with its directives are
3 not attorneys, but are family members or friends responding to urgent or unstable circumstances
4 and persons with limited resources and significant functional challenges.
5
6

7 **ARTICLE 1**

8 **GENERAL PROVISIONS**

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

11 **SECTION 102. DEFINITIONS.** In this [act]:

12 (1) “Adult subject to guardianship” means an adult for whom a guardian has been
13 appointed.

14 (2) “Claim,” with respect to a minor or adult subject to guardianship or conservatorship,
15 includes a claim against an individual, whether arising in contract, tort, or otherwise, and a claim
16 against an estate which arises at or after the appointment of a conservator, including expenses of
17 administration.

18 (3) “Conservator” means a person who is appointed by a court to make decisions with
19 respect to the property and financial affairs of a person subject to conservatorship. The term
20 includes a limited conservator.

21 (4) “Court” means the [designate appropriate court].

22 (5) “Decision-making support” means that one or more persons of the individual’s
23 choosing assist the individual to understand the nature and consequences of potential personal
24 and financial decisions so that the individual can make such decisions and, where consistent with
25 the individual’s wishes, assist the individual to communicate such decisions once made.

26 (6) “Full conservatorship” means a conservatorship under which the conservator is

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1 granted all powers available under state conservatorship law with no restriction except as
2 provided in [this act].

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3 (7) "Full guardianship" means a guardianship under which the guardian is granted all
4 powers available under state guardianship law with no restriction except as provided in [this act].

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5 (8) "Guardian" means a person appointed by a court to make decisions with respect to
6 the personal affairs of a minor or adult subject to guardianship. The term includes a limited,
7 emergency, and temporary substitute guardian but not a guardian ad litem.

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8 (9) "Guardian ad litem" means a person appointed to inform the court about, and
9 represent, the needs and best interests of an individual.

10 (10) "Less restrictive means" means approaches to meeting a person's needs that remove
11 fewer rights than would appointment of a guardian or a conservator. The term includes
12 appropriate decision-making support, appropriate technological assistance, the appointment of an
13 agent by the respondent including appointment of an agent under a [power of attorney for health-
14 care] [made pursuant to the Uniform Health-Care Decisions Act (1993)], and a protective order
15 in lieu of guardianship or conservatorship.

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16 (11) "Letters" includes letters of guardianship and letters of conservatorship.

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17 (12) "Limited conservatorship" means a conservatorship under which a conservator is
18 granted less than all powers available under [state conservatorship law], is granted powers over
19 only certain assets, or the powers of the conservator are otherwise restricted.

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20 (13) "Limited guardianship" means a guardianship under which the guardian is granted
21 less than all powers available under [state guardianship law] or the powers of the guardian are
22 otherwise restricted.

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23 (14) "Minor" means an unemancipated individual who has not attained [18] years of age.

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1 (15) "Minor subject to guardianship" means a minor for whom a guardian has been
2 appointed by a parent under Section 202 or by a court under Section 204.

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3 (16) "Parent" means a parent whose parental rights have not been terminated.

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4 (17) "Person" means an individual, estate, business or nonprofit entity, government,

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5 governmental subdivision, agency, or instrumentality, or other legal entity.

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6 (18) "Person subject to conservatorship" means a minor or adult for whom a conservator
7 has been appointed.

Deleted: 14) "Person needing protection" means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate decision-making support and technological assistance. ¶
(15) "Protected minor" means a minor for whom a conservator, guardian, or both has been appointed or for whom another protective order has been made by a parental appointment under Section 202 or by a court of law under Section 204.¶
(

8 (19) "Protective order in lieu of guardianship or conservatorship" means a court order
9 entered pursuant to Section 118. The term includes a court order authorizing a single
10 transaction.

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11 (20) "Respondent" means an individual for whom the appointment of a guardian or
12 conservator or protective order in lieu of guardianship or conservatorship is sought.

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The term includes "protected minor"

13 (21) "Standby guardian" means a person appointed by a parent under Section 202 to
14 assume the role of guardian of a minor in the event that the conditions set forth in Section 202(c)
15 are satisfied.

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16 (22) "State" means a state of the United States, the District of Columbia, Puerto Rico,
17 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
18 of the United States.

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19 [(23) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is
20 recognized by federal law or formally acknowledged by a state.]

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21 SECTION 103. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW

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

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1 **SECTION 104. SUBJECT-MATTER JURISDICTION.**

2 (a) Except to the extent ~~that jurisdiction is precluded by~~ [insert citation to Uniform Child
3 Custody Jurisdiction and Enforcement Act], the court of this state has jurisdiction over
4 guardianship for minors ~~and protective orders in lieu of guardianship for minors~~ domiciled or
5 present in this state. The court of this state has jurisdiction over ~~conservatorship~~ for minors
6 domiciled in or having property located in this state.

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

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

- 13 (1) exclusive jurisdiction to determine the need for a guardianship,
14 conservatorship, or ~~protective order in lieu of guardianship or conservatorship~~;
15 (2) exclusive jurisdiction to determine how the estate of the respondent which is
16 subject to the laws of this state must be managed, expended, or distributed to or for the use of the
17 ~~respondent~~, individuals who are dependent upon the ~~respondent~~, or other claimants; and
18 (3) concurrent jurisdiction to determine the validity of claims against the person
19 or estate of the respondent and questions of title concerning assets of the estate.

20 (d) A court that has appointed a guardian or conservator, or issued a protective order ~~in~~
21 ~~lieu of guardianship or conservatorship~~ consistent with this [act], has exclusive and continuing
22 jurisdiction over the proceeding until it is terminated by the court or the appointment or order
23 expires by its own terms.

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1 **SECTION 105. TRANSFER OF PROCEEDINGS.**

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

3 (1) After the appointment of a guardian or conservator or entry of a protective
4 order in lieu of guardianship or conservatorship, the court making the appointment or entering
5 the order may transfer the proceeding to a court in another [county] in this state or to another
6 state if the court is satisfied that a transfer will serve the best interest of the individual subject to
7 the proceeding.

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8 (2) If a guardianship, conservatorship, or proceeding seeking a protective order in
9 lieu of guardianship or conservatorship is pending in another state or a foreign country and a
10 petition for guardianship, conservatorship, or protective order in lieu of guardianship or
11 conservatorship is filed in a court in this state, the court in this state shall notify the original court
12 and, after consultation with the original court, assume or decline jurisdiction, whichever is in the
13 best interest of the respondent.

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14 (3) A guardian, conservator, or like fiduciary appointed in another state may
15 petition the court for appointment as a guardian or conservator in this state if venue in this state
16 is or will be established. The appointment may be made on proof of appointment in the other
17 state and presentation of a certified copy of the portion of the court record in the other state
18 specified by the court in this state. Notice of hearing on the petition, together with a copy of the
19 petition, must be given to the respondent, if the respondent has attained 12 years of age, and to
20 the persons who would be entitled to notice if the regular procedures for appointment of a
21 guardian or conservator under this [act] were applicable. The court shall make the appointment
22 in this state unless it concludes that the appointment would not be in the best interest of the
23 respondent. On the filing of an acceptance of office and any required bond, the court shall issue

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1 appropriate letters of guardianship or conservatorship. Not later than 14 days after an
2 appointment, the guardian or conservator shall send or deliver a copy of the order of appointment
3 to the ~~minor or adult subject to guardianship or conservatorship~~, if the person has attained 12
4 years of age, and to all persons given notice of the hearing on the petition.

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5 (b) This section does not apply to a guardianship or ~~conservatorship or protective order~~
6 ~~in lieu of guardianship or conservatorship~~ for an adult individual that is subject to the transfer
7 provisions of [insert citation to Article 3 of the Uniform Adult Guardianship and Protective
8 Proceedings Jurisdiction Act (2007)].

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9 **SECTION 106. VENUE.**

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

12 (b) Venue for a guardianship proceeding ~~or a protective order in lieu of guardianship~~ for
13 ~~an adult~~, is in the [county] of this state in which the respondent resides and, if the respondent has
14 been admitted to an institution by order of a court of competent jurisdiction, in the [county] in
15 which the court is located. Venue for the appointment of an emergency or a temporary substitute
16 guardian of ~~an adult~~, is also in the [county] in which the respondent is present.

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

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

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1 otherwise require that the proceeding be transferred.

2 **SECTION 107. PRACTICE IN COURT.**

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

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

7 [(c) A respondent may demand a jury trial for proceedings under this act that seek to
8 determine whether the basis for appointment of a guardian or conservator exists.]

9 **SECTION 108. LETTERS OF OFFICE.** On the guardian's filing of an acceptance of
10 office, the court shall issue appropriate letters of guardianship. On the conservator's filing of an
11 acceptance of office and any required bond or compliance with any other required asset

12 protection arrangement, the court shall issue appropriate letters of conservatorship. Limitations
13 on the powers of a guardian or conservator or of the assets subject to a conservatorship shall be
14 stated on the guardian's or conservator's letters.

15 **SECTION 109. EFFECT OF ACCEPTANCE OF APPOINTMENT.** By accepting
16 appointment, a guardian or conservator submits personally to the jurisdiction of the court in any
17 proceeding relating to the guardianship or conservatorship.

18 **SECTION 110. CO-APPOINTEES OR SUCCESSOR APPOINTEES.**

19 (a) The court may appoint a co-guardian or co-conservator at any time, including at the
20 time of the initial order, to serve immediately or upon some other designated event, and may
21 appoint a successor guardian or conservator in the event of a vacancy or make the appointment in
22 contemplation of a vacancy, to serve if a vacancy occurs.

23 (b) A co-guardian, co-conservator, or successor guardian or conservator may file an

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1 acceptance of appointment at any time after the appointment within the later of 30 days after the
2 occurrence of the vacancy or other designated event or 10 days after learning of the vacancy or
3 other designated event.

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4 (c) The co-guardian, co-conservator, or successor guardian or conservator becomes
5 eligible to act on the occurrence of the vacancy or designated event, or the filing of the
6 acceptance of appointment, whichever last occurs. A successor guardian or conservator succeeds
7 to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to
8 the assets of the person subject to conservatorship,

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

14 **SECTION 111. REMOVAL, RESIGNATION, OR DEATH OF APPOINTEE.**

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

17 (b) A guardian or conservator may petition the court for permission to resign. The
18 petition may include a request for a successor appointee. A resignation of a conservator or
19 guardian is effective when approved by the court.

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20 (c) A minor or adult subject to guardianship or conservatorship, or a person interested in
21 the welfare of a minor or adult subject to guardianship or conservatorship, may for good cause
22 petition the court for removal of the guardian or conservator and appointment of a successor
23 guardian or conservator.

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(d) Termination of the appointment of a guardian or conservator does not affect liability for previous acts or the obligation to account for actions taken on behalf of the minor or adult subject to guardianship or conservatorship, or to account for the person's money or other assets.

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SECTION 112. GENERAL NOTICE REQUIREMENTS.

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

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

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

SECTION 113. WAIVER OF NOTICE. A person may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. However, a respondent or minor or adult subject to guardianship, conservatorship, or protective order in lieu of guardianship or conservatorship may not waive notice.

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

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SECTION 115. REQUEST FOR NOTICE; INTERESTED PERSONS.

(a) An interested person not otherwise entitled to notice who desires to be notified before

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1 any order is made in a guardianship or conservatorship proceeding, including a proceeding after
2 the appointment of a guardian or conservator, may file a request for notice with the clerk of the
3 court in which the proceeding is pending. The clerk shall send or deliver a copy of the request to
4 the guardian and to the conservator if one has been appointed. A request is not effective unless it
5 contains a statement showing the interest of the person making it and the address of that person
6 or a lawyer to whom notice is to be given. The request is effective only as to proceedings
7 conducted after its filing.

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8 (b) A governmental agency paying or planning to pay benefits to the respondent or
9 minor or adult subject to conservatorship or protective order in lieu of conservatorship is an
10 interested person in a proceeding under Article 4 of this Act.

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

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14 **SECTION 117. PROTECTIVE ORDER IN LIEU OF GUARDIANSHIP OR**
15 **CONSERVATORSHIP.**

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16 (a) If the court finds that the basis for appointment of a guardian or conservator exists,
17 the court, in lieu of appointing a conservator or a guardian, may:

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

21 (A) a particular medical treatment or refusal of a particular medical
22 treatment;

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23 (B) a move to specified place of residence;

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1 (C) payment, delivery, deposit, or retention of funds or property;

2 (D) sale, mortgage, lease, or other transfer of property;

3 (E) purchase of an annuity;

4 (F) entry into a contractual relationship, including a contract for life care,
5 a deposit contract, or a contract for training and education; or

6 (G) addition to or establishment of a suitable trust[, including a trust
7 created under the Uniform Custodial Trust Act (1987)]; and

8 (2) authorize, direct, or ratify any other contract, trust, will, or transaction relating
9 to the property and business affairs of the respondent, including a settlement of a claim.

10 (b) In deciding whether to approve under this section a protective arrangement or other
11 transaction related to the personal affairs of a minor, the court shall consider the best interests of
12 the minor and the preferences of the minor if the minor has reached the age of 12.

13 (c) In deciding whether to approve under this section a protective arrangement or other
14 transaction related to the personal affairs of the adult respondent, the court shall consider the
15 factors that a guardian must consider when making decisions on behalf of an adult subject to
16 guardianship.

17 (d) In deciding whether to approve under this section a protective arrangement or other
18 transaction related to the property or financial affairs of a respondent, the court shall consider the
19 factors that a conservator must consider when making decisions on behalf of a person subject to
20 conservatorship.

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

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1 **SECTION 118. COMPENSATION AND EXPENSES OF APPOINTEES,**
2 **LAWYERS, AND OTHER PERSONS IN GENERAL.**

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3 (a) If not otherwise compensated for services rendered, a lawyer for a respondent in a
4 proceeding brought under this act is entitled to reasonable compensation and reimbursement of
5 reasonable expenses from the estate of the respondent. Such fees and expenses must be
6 approved by the court before compensation is paid or reimbursement is made, but not before the
7 provision of such services or expenses being incurred.

8 (b) If not otherwise compensated for services rendered, a person whose services resulted in
9 an order beneficial to a minor or adult subject to guardianship or conservatorship, or a person
10 whose services resulted in an order beneficial to a person for whom a protective order in lieu of
11 guardianship or conservatorship was entered, is entitled to reasonable compensation from the
12 estate and reimbursement of reasonable expenses from the estate of such benefited person. Such
13 fees and expenses must be approved by the court before compensation is paid or reimbursement
14 is made, but not before the provision of such services or expenses being incurred.

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15 **SECTION 119. COMPENSATION OF GUARDIAN, CONSERVATOR**

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16 (a) A guardian is entitled to reasonable compensation for services as guardian and to
17 reimbursement for room, board, and clothing provided by the guardian to the minor or adult
18 subject to guardianship, but only as approved by the court. If a conservator, other than the
19 guardian or a person who is affiliated with the guardian, has been appointed for the estate of the
20 minor or adult subject to guardianship, reasonable compensation and reimbursement to the
21 guardian may be approved and paid by the conservator without order of the court.

22 (b) A conservator is entitled to reasonable compensation from the estate of the person
23 subject to conservatorship.

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

3 (1) the necessity and quality of the services provided;

4 (2) the experience, training, professional standing, and skills of the guardian or
5 conservator;

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

8 (4) the conditions and circumstances under which services were performed,
9 including whether they were provided outside of regular business hours or under dangerous or
10 extraordinary conditions;

11 (5) the effect of those services on the minor subject to guardianship;

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

14 (7) the fees customarily paid to persons who perform like services in the
15 community.

16 (d) A guardian or conservator need not use the personal funds of the guardian or
17 conservator for the expenses of the minor subject to guardianship or minor or adult subject to
18 guardianship or conservatorship.

19 (e) If a minor or adult subject to guardianship or conservatorship seeks court
20 intervention to modify or terminate the guardianship or conservatorship or to remove the
21 guardian or conservator, the guardian or conservator may be compensated only for time spent
22 opposing such efforts to the extent that the court has determined that the opposition is or was
23 necessary to protect the interests of the minor or adult subject to guardianship or conservatorship.

SECTION 120. LIABILITY OF GUARDIAN, CONSERVATOR TO THIRD

PARITES A guardian or conservator is not liable to a third person for acts of a minor or adult subject to guardianship or conservatorship solely by reason of the guardianship or conservatorship.

SECTION 121. PETITION FOR INSTRUCTION OR APPROVAL POST APPOINTMENT

(a) A guardian or conservator acting in the guardian or conservator's sole discretion may petition the appointing court for instructions concerning fiduciary responsibility or for approval of a particular act.

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

(c) If the guardian or conservator acts according to the court's instruction or as approved, the guardian or conservator shall not be liable for an act covered by that instruction or approval. Failure to make such petition shall not in itself be evidence of a breach of the guardian or conservator's fiduciary obligations.

SECTION 122. REGISTRATION OF ORDERS.

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

(b) If a conservator has been appointed in another state and a petition for a conservatorship is not pending in this state, the conservator appointed in the other state, after

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1 giving notice to the appointing court of an intent to register, may register the conservatorship in
2 this state by filing as a foreign judgment in a court of this state, in any [county] in which property
3 belonging to the person subject to conservatorship is located, certified copies of the order, letters
4 of office, and any bond.

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5 SECTION 123. EFFECT OF REGISTRATION OF ORDERS.

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6 (a) On registration of a guardianship or conservatorship order from another state, the
7 guardian or conservator may exercise in this state all powers authorized in the order of
8 appointment except as prohibited under the law of this state other than this [act], including
9 maintaining actions and proceedings in this state and, if the guardian or conservator is not a
10 resident of this state, subject to any conditions imposed upon nonresident parties.

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

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13 SECTION 124. FACILITY OF TRANSFERS TO MINOR.

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14 (a) Unless a person required to transfer money or personal property to a minor knows
15 that a conservator has been appointed or that a proceeding for appointment of a conservator of
16 the estate of the minor is pending, the person may do so, as to an amount or value not exceeding
17 [\$14,000] a year, by transferring it to:

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

20 (2) a guardian of the minor;

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

23 (4) a financial institution as a deposit in an interest-bearing account or certificate

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1 in the sole name of the minor and giving notice of the deposit to the minor.

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

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

10 ARTICLE 2

11 GUARDIANSHIP OF MINOR

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

16 SECTION 202. PARENTAL APPOINTMENT OF STANDBY GUARDIAN.

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

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

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1 selection of a standby guardian and terminate the rights of others to object.

2 (c) A person appointed by a parent as a standby guardian pursuant to this section is
3 presumed to be qualified for appointment as guardian. Subject to Section 203, the standby
4 guardian becomes the guardian of the minor upon the appointing parent's death, a judicial
5 determination that the parent is unwilling or unable to exercise parental rights, or a written
6 determination by a physician who has examined the parent that the parent is no longer able to
7 care for the child, whichever first occurs.

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8 (d) The standby guardian becomes eligible to act as guardian of the minor upon the filing
9 of an acceptance of appointment, which must be filed by the later of 30 days after the guardian's
10 the event triggering the appointment or 10 days after the standby guardian learns of the event
11 triggering the appointment as guardian. The standby guardian shall:

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

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

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

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22 (f) Unless the appointment was previously confirmed by the court, not later than 30 days
23 after filing the notice and the appointing instrument, a standby guardian shall petition the court

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for confirmation of the appointment, giving notice in the manner provided in Section 205(a).

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

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

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

SECTION 203. OBJECTION TO APPOINTMENT OF STANDBY GUARDIAN.

(a) Unless the court has confirmed an appointee under Section 202, the following persons may file a written objection with the court:

(1) a minor who is the subject of an appointment, if the minor has attained 12 years of age,

(2) another parent of the minor,

(3) a person having 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 alleged to have had the primary care and custody of the minor for at least 730 days during the five years

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preceding the filing of the objection,

(b) A person filing an objection under section (a) must give notice the objection to the

standby guardian and any other persons entitled to notice of the acceptance of the appointment.

(c) If an objection is filed, the court shall hold a hearing to determine whether the

standby guardian should be confirmed and, if not, whether another person should be appointed.

The objection does not preclude judicial appointment of the person selected by the parent. The

court may treat the filing of an objection as a petition for the appointment of an emergency or a

temporary guardian under Section 204, and proceed accordingly.

(d) An objection made under this Section may be withdrawn, and if withdrawn is of

no effect.

SECTION 204. BASIS FOR JUDICIAL APPOINTMENT OF GUARDIAN

(a) The court may appoint a guardian for a minor if the court finds the appointment is in

the minor's best interest, and:

(1) the parents consent;

(2) all parental rights have been terminated; or

(3) the court finds by clear and convincing evidence that the parents are unwilling

or unable to exercise their parental rights.

(b) If a guardian appointed by a parent pursuant to Section 202 fails to accept the

appointment as required under Section 202(f) and the appointment has not been prevented or

terminated under Section 203, the court may proceed and appoint a guardian for the minor. The

person selected by the parent shall have priority for appointment by the court.

(c) If necessary and on petition or motion and whether or not the conditions of

subsection (a) have been established, the court may appoint a temporary guardian for a minor on

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SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR: CONDITIONS FOR APPOINTMENT.¶
. (a) A minor or a person interested in the welfare of a minor may petition for appointment of a guardian

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1 a showing that an immediate need exists and that the appointment would be in the best interest of
2 the minor. Notice ~~must~~ be given to the parents and to a minor who has attained 12 years of age.
3 Except as otherwise ordered by the court, the temporary guardian has the authority of a full
4 guardian, but the duration of the temporary guardianship may not exceed ~~nine~~ months. Not later
5 than seven days after the appointment, the temporary guardian shall send or deliver a copy of the
6 order to all individuals who would be entitled to notice of hearing under Section 205.

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

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19 **SECTION 205. JUDICIAL APPOINTMENT OF GUARDIAN: PETITION**

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

22 ~~(b) A petition under subsection (a) must set forth the minor's name, principal residence,~~
23 ~~current street address if different, relationship to the respondent, and interest in the appointment~~

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1 and, to the extent known, state or contain the following with respect to the respondent and the
2 relief requested:
3 (1) the minor's name, age, principal residence, current street address, and, if
4 different, the address of the dwelling in which it is proposed that the respondent will reside if the
5 appointment is made;
6 (2) the name and street address of the minor's parents;
7 (3) the name and address if known of any person responsible for care or custody
8 of the minor for 60 or more days during the two years preceding the filing of the petition or any
9 person alleged to have had the primary care and custody of the minor for at least 730 total days
10 during the five years preceding the filing of the petition;
11 (4) the name and address of any proposed guardian and the reason why the
12 proposed guardian should be selected;
13 (5) if the minor has property other than personal goods, a general statement of the
14 minor's property with an estimate of its value;
15 (6) if the minor is above the age of 12, the minor's need for an interpreter or
16 translator to effectively communicate with the court or understand court proceedings; and
17 (7) if the minor has parents, the parents' needs for an interpreter or translator if
18 the parents need an interpreter or translator in order to effectively communicate with the court or
19 understand court proceedings; and
20 (8) any other proceedings concerning the care or custody of the minor currently in
21 any court either in this state or in another jurisdiction.

22 **SECTION 20~~6~~, JUDICIAL APPOINTMENT OF GUARDIAN; NOTICE**

23 (a) After a petition for appointment of a guardian is filed, the court shall schedule a

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1 hearing, ~~and~~ the petitioner shall:

2 (1) ~~provide personal service of~~ notice of the time and place of the hearing, together

3 with a copy of the petition, ~~to~~:

4 (A) the minor, if the minor has attained 12 years of age and is not the petitioner;

5 (B) each parent of the minor or, if there ~~are~~ none, the adult nearest in kinship that

6 can be found;

7 (2) ~~provide a notice of time and place of the hearing by personal service, mail, or any~~

8 ~~other reasonable means, together with a copy of the petition, to~~:

9 (A) ~~any person alleged to have had the primary care and custody of the minor for~~

10 ~~60 or more days during the two years preceding the filing of the petition or any person alleged to~~

11 ~~have had the primary care and custody of the minor for at least 730 days during the five years~~

12 ~~preceding the filing of the petition~~;

13 (B) ~~any person nominated as guardian by the minor if the minor has attained 12~~

14 ~~years of age~~;

15 (C) ~~any appointee of a parent whose appointment has not been prevented or~~

16 ~~terminated under Section 203; and~~

17 (D) ~~any guardian or conservator currently acting for the minor in this state or~~

18 ~~elsewhere.~~

19 (b) ~~The notice required in subsection (a) must be in plain language and in at least 16-~~

20 ~~point font and the petitioner must make reasonable efforts to provide notice to each person listed~~

21 ~~in subsection (a) in a language in which the person is proficient. The notice must include a~~

22 ~~statement of the right to request appointment of an attorney for the minor, the right to object to~~

23 ~~an appointment, and a description of the nature, purpose, and consequences of an appointment.~~

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(c) A failure to serve the parents of the minor and the minor if the minor has reached the age of 12 with a notice substantially complying with this subsection precludes the court from granting a petition for permanent guardianship of a minor, but does not preclude the court from granting an emergency or temporary guardianship for a minor.

SECTION 207. JUDICIAL APPOINTMENT OF GUARDIAN: APPOINTMENT OF LAWYER

(a) The court shall appoint a lawyer, giving consideration to the choice of the minor if the minor has attained 12 years of age, to represent the minor to in the proceeding if:

(1) requested by the minor or the parent of a minor;

(2) recommended by the guardian ad litem; or

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

(b) The lawyer representing the respondent shall make reasonable efforts to ascertain the respondent's wishes.

(c) The lawyer representing the respondent shall advocate for the respondent's wishes to the extent that those wishes are reasonably ascertainable.

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

SECTION 208. JUDICIAL APPOINTMENT OF GUARDIAN: ORDER; PRIORITY OF MINOR'S NOMINEE; LIMITED GUARDIANSHIP.

(a) The court, on hearing, may appoint a guardian for the minor if appointment is proper under Section 204, dismiss the proceeding, or enter an order another order that serves the best interest of the minor.

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

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Deleted: If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained 12 years of age.¶

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(b) ~~A court appointing a guardian under section (a)~~, shall appoint as guardian a person

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whose appointment will be in the best interest of the minor. The court shall appoint a person

nominated by the minor, if the minor has attained 12 years of age, unless the court finds the

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appointment will be contrary to the best interest of the minor.

(c) In the interest of developing self-reliance of a protected minor or for other good

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cause, the court, at the time of appointment or later, on its own motion or on motion of the minor

or other interested person, may limit the powers of a guardian otherwise granted by this [article]

and thereby create a limited guardianship. Following the same procedure, the court may grant

additional powers or withdraw powers previously granted.

SECTION 209. DUTIES OF GUARDIAN.

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

(b) A guardian shall:

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

(2) take reasonable care of the protected minor's personal effects and bring a

~~conservatorship proceeding, or proceeding for a protective order in lieu of conservatorship~~ if

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necessary to protect other property of the protected minor;

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

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

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

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

and

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

SECTION 210. POWERS OF GUARDIAN.

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

(b) A guardian may:

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

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

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minor's dwelling outside the state, on express authorization of the court;

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

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

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

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

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

SECTION 211. DELEGATION OF POWER BY PARENT OR GUARDIAN.

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

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(b) A guardian of a protected minor, by a power of attorney, may delegate to another person, for a period not exceeding nine months, any power regarding care or custody of the minor, except the power to consent to marriage or adoption. The guardian shall exercise reasonable care, skill, and caution in:

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(1) selecting an agent;

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

(3) periodically reviewing an agent's overall performance and compliance with

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the terms of the delegation; and

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

(c) A guardian who complies with subsection (b) is not liable to the protected minor or to the estate of the minor for the decision or action of the agent to whom a function was delegated.

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

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

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

SECTION 212. TERMINATION OF GUARDIANSHIP; OTHER PROCEEDINGS AFTER APPOINTMENT.

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

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

ARTICLE 3

GUARDIANSHIP OF ADULT

SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN OF ADULT.

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

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SECTION 210. COMPENSATION, RIGHTS, AND IMMUNITIES OF GUARDIAN OF PROTECTED MINOR; LIMITATIONS.¶

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

(1) the necessity and quality of the services provided;¶
(2) the guardian's experience, training, professional standing, and skills;¶
(3) the difficulty of tasks performed, including the degree of skill and care required; ¶

(4) the conditions and circumstances under which services were performed, including whether they were provided outside of regular business hours or under dangerous or extraordinary conditions;¶
(5) the effect of those services on the protected person; and¶
(6) the fees customarily paid for performing like services in the community.¶

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

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

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(1) appoint a limited or full guardian or enter a protective order in lieu of guardianship as provided in Section 117 for a respondent who is an adult only if it finds by clear and convincing evidence that:

(A) the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because:

(i) the respondent is unable to receive and evaluate information or make or communicate decisions even with appropriate decision-making support and technological assistance, or

(ii) because the person's own will has been overcome by deception and control exerted by another person; and

(iii) the respondent's identified needs cannot be met by less restrictive means; or

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

(b) The court shall grant to a guardian only those powers necessitated by the limitations and demonstrated needs of the adult subject to guardianship and make appointive and other orders that will encourage the development of the person's maximum self-determination and independence. The court may not appoint a full guardian if a limited guardian would meet the needs of the adult subject to guardianship.

SECTION 302. ORIGINAL PETITION FOR APPOINTMENT OF GUARDIAN.

(a) A person interested in the individual's welfare, including the person for whom the order is sought, may petition for a determination that the basis for appointment of a guardian exists and for the appointment of a limited or full guardian for the individual or for a protective

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1 order in lieu of guardianship.

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

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

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

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

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

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

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

21 (4) the name and address of any lawyer for the respondent, representative payee, a
22 guardian or conservator acting for a respondent in this state or elsewhere, trustee or custodian of
23 a trust or custodianship of which the respondent is a beneficiary, Veterans Administration

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1 fiduciary for the respondent, ~~an agent designated under a [power of attorney for health care], in~~
2 which the respondent is identified as the principal, ~~and an agent designated under a power of~~
3 ~~attorney for finances in which the respondent is identified as the principal;~~

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

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

6 respondent's parent or spouse [or domestic partner] in a will or other signed writing;

7 (7) the name and address of any proposed guardian and the reason why the

8 proposed guardian should be selected;

9 (8) the name and address of any person known to have routinely provided the

10 individual with decision-making support within six months of the petition;

11 (9) the reason why guardianship is necessary, including a brief description of the

12 nature and extent of the respondent's alleged need, ~~all alternative means of meeting that need~~

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13 that have been considered or implemented, if no alternative means have been tried the reason

14 they have not been tried, and the reason why alternative means are not sufficient to meet the

15 respondent's needs;

16 (10) if a full guardianship is requested, the reason why limited guardianship is

17 inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited

18 guardian;

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

20 including any insurance or pension, and the source and amount of any other anticipated income

21 or receipts; and

22 (12) the respondent's need for an interpreter or translator ~~to effectively~~

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23 communicate with the court or understand court proceedings.

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1 **SECTION 303. NOTICE.**

2 (a) A copy of a petition for guardianship or for a protective order in lieu of guardianship
3 and notice of the hearing on the petition must be served personally on the respondent. The notice
4 must be in plain language and in at least 16-point font. The notice must include a statement that
5 the respondent must be physically present unless excused by the court, inform the respondent of
6 the respondent's rights at the hearing, and include a description of the nature, purpose, and
7 consequences of an appointment. A failure to serve the respondent with a notice substantially
8 complying with this subsection precludes the court from granting the petition. The petitioner
9 must make reasonable efforts to provide the notice in a language in which the respondent is
10 proficient.

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

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

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

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1 **SECTION 304. PRELIMINARIES TO HEARING: APPOINTMENT OF**

2 **[VISITOR].**

3 (a) On receipt of a petition to establish a guardianship or protective order in lieu of
4 guardianship, the court shall set a date and time for hearing the petition and appoint a [visitor].

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5 The duties and reporting requirements of the [visitor] are limited to the relief requested in the
6 petition. The [visitor] must be an individual having training or experience in the type of
7 incapacity alleged.

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

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

13 (2) determine the respondent's views about the appointment or order sought by
14 the petitioner including, if the petition is for a guardianship, any views about any proposed
15 guardian, the guardian's proposed powers and duties, and the scope and duration of the proposed
16 guardianship;

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

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

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

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

23 (2) visit the respondent's present dwelling and any dwelling in which it is

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1 reasonably believed that the respondent will live if the appointment is made;
2 (3) obtain information from any physician or other person who is known to have
3 treated, advised, or assessed the respondent's relevant physical or mental condition; and
4 (4) make any other investigation the court directs.

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

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

9 (2) a summary of self-care and independent living tasks, the respondent can
10 manage without assistance or with existing supports, could manage with the assistance of
11 supportive services or benefits, including use of appropriate technological assistance and
12 appropriate decision-making support, and cannot manage;

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

17 (4) a statement of the qualifications of the proposed guardian, together with a
18 statement whether the respondent approves or disapproves of the proposed guardian;

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

21 (6) a recommendation as to whether a professional evaluation or further
22 evaluation is necessary;

23 (7) a statement as to the respondent's ability to attend a hearing at the location

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1 court is typically held;

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

5 (9) any other matters the court directs.

6 **SECTION 305. PRELIMINARIES TO HEARING: APPOINTMENT AND ROLE**
7 **OF LAWYER.**

8 **Alternative A**

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

10 (1) requested by the respondent;

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

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

13 **Alternative B**

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

16 **End of Alternatives**

17 (b) The lawyer representing the respondent shall make reasonable efforts to ascertain the
18 respondent's wishes.

19 (c) The lawyer representing the respondent shall advocate for the respondent's wishes to
20 the extent that those wishes are reasonably ascertainable.

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

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

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SECTION 306. PROFESSIONAL EVALUATION.

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

(b) If the court orders an evaluation under subsection (a), the respondent must be examined by a physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and who will not be advantaged or disadvantaged by a decision to grant the petition. The examiner promptly shall file a written report with the court. Unless otherwise directed by the court, the report must contain:

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(1) a description of the nature, type, and extent of the respondent's specific 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 a recommendation as to the appropriate treatment, support, or habilitation plan; and

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

SECTION 307. CONFIDENTIALITY OF RECORDS.

(a) The written report of a [visitor] and any professional evaluation are confidential and must be sealed on filing, but are available to:

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(1) the court;

(2) the respondent without limitation as to use;

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

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

(b) The person who has been the subject of a proceeding for a guardianship or protective order in lieu of guardianship, whether or not a guardian was appointed, the person's attorney, and any person entitled to notice under Section 310(d) are entitled to access court records pertaining to the proceeding and resulting guardianship, including the annual report and the guardian's plan. In addition, any person with an interest in the welfare of the adult subject to guardianship for other good cause may petition the court for access to court records pertaining to the guardianship or guardianship proceeding, including the annual report and the guardian's plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship, or would further the public interest and not endanger the respondent or adult subject to guardianship.

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SECTION 308. PRESENCE AND RIGHTS AT HEARING.

(a) The respondent shall attend the hearing called pursuant to Section 303 unless the court finds by clear and convincing evidence that:

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

(2) there is no practicable way for the respondent to attend the hearing and the respondent would have no ability to participate in the hearing even with the use of appropriate

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1 support and technological assistance.

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

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

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

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

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

19 (g) The hearing shall be closed on the request of the respondent and a showing of good
20 cause.

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

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1 **SECTION 309. WHO MAY BE GUARDIAN; PRIORITIES.**

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

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

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

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

11 (4) a conservator, other than a temporary or emergency conservator, or like
12 fiduciary currently acting for the respondent in this state or elsewhere;

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

15 (6) an adult child of the respondent;

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

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

20 (9) an adult stepchild whom the respondent actively parented during the
21 stepchild's minor years and with whom the respondent had an ongoing relationship within two
22 years of the petition; and

23 (10) an adult who has exhibited special care and concern for the respondent and

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1 who is familiar with the respondent's values and preferences.

2 (b) With respect to persons having equal priority, the court shall select the person it
3 considers best qualified. In determining who is best qualified, the court shall consider the

4 potential guardian's skills and relationship with the respondent, the expressed wishes of the

5 respondent, the extent to which the potential guardian and the respondent have similar values and
6 preferences, and the likelihood that the potential guardian will be able to successfully satisfy the
7 duties of a guardian.

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

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

13 **SECTION 310. ORDER OF APPOINTMENT.**

14 (a) A court order granting a guardianship must clearly state:

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

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

20 (3) whether or not the adult subject to guardianship retains the right to vote and, if
21 not, the court's findings that support removing that right [including a finding that the adult
22 subject to guardianship cannot communicate, with or without support, a specific desire to
23 participate in the voting process]; if the no such statement is made in the order, the adult subject

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1 to guardianship retains the right to vote; and

2 (4) whether or not the adult subject to guardianship retains the right to

3 marry and, if not, the court's findings that support removing that right; if no statement is made in

4 the order as to whether the adult subject to guardianship retains the right to marry, the adult

5 subject to guardianship retains the right to marry.(b) A court order granting a full guardianship

6 clearly shall state the basis for granting a full guardianship and provide specific findings to

7 support the conclusion that a limited guardianship would not meet the functional needs of the

8 adult subject to guardianship.

9 (c) A court order granting a limited guardianship must state clearly the powers granted to

10 the guardian.

11 (d) The court shall, as part of any order granting a guardianship, identify any persons

12 who are subsequently entitled to:

13 (1) notice of the rights of the person's rights of the adult subject to

14 conservatorship;

15 (2) notice of a change in the primary residence of the adult subject to

16 guardianship.

17 (3) a copy of the guardian's annual report and plan;

18 (4) access to court records pertaining the guardianship;

19 (5) notice of the death of the adult subject to guardianship or significant change in

20 the condition of the adult subject to guardianship.

21 (e) The persons entitled to such notice under subsection (d) shall include the spouse[, ,

22 domestic partner,] and adult children of the adult subject to guardianship unless the court

23 determines that such notice would be contrary to the preferences or prior directions of the adult

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1 subject to guardianship or not in the best interest of the adult subject to guardianship,
2 **SECTION 311. NOTIFICATION OF ADULT SUBJECT TO GUARDIANSHIP**
3 **OF ORDER; RIGHTS.**

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4 (a) Not later than 14 days after an appointment, a guardian shall send or deliver to the
5 adult subject to guardianship and to all other persons given notice of the hearing on the petition a
6 copy of the order of appointment, together with a notice of the right to request termination or
7 modification.

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8 (b) Not later than 30 days after an appointment, the court shall send or deliver to the
9 adult subject to guardianship, the guardian, and any other persons entitled to such notice pursuant
10 to Section 310(d), a statement of the rights of the adult subject to guardianship and how to seek
11 relief if denied those rights. The statement shall be in plain language, in at least 16-point font,
12 and, to the extent feasible, in a language in which the adult subject to guardianship can
13 understand. The notice must notify the adult subject to guardianship of the right to:

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

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17 (2) be involved in decisions affecting the adult subject to guardianship, including
18 decisions about the person's care, residence, activities, and social interactions, to the extent
19 reasonably possible;

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

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23 (4) be notified of a change in the person's primary residence and the right to be notified

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1 of a permanent move to a nursing home or other restrictive or secure facility at least 14 days in
2 advance unless the action is proposed in the guardian's plan or expressly authorized by the court,
3 and of the right to contest such move and the process for contesting it:

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

6 (A) the guardian has been specifically authorized by the court to restrict
7 such communications, visits, or interactions;

8 (B) a protective order is in effect that limits contact between the adult
9 subject to guardianship and such other persons; or

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

13 (5) receive a copy of the guardian's report and the guardian's plan.

14 **SECTION 312. EMERGENCY GUARDIAN.**

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

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(b) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the respondent, the respondent must be given notice of the appointment 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.

(c) Appointment of an emergency guardian, with or without notice, is not a determination that the conditions required for appointment of a limited or full guardian under Section 301 have been satisfied.

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

SECTION 313. TEMPORARY SUBSTITUTE GUARDIAN.

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

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(b) The court may remove a temporary substitute guardian at any time. A temporary

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1 substitute guardian shall make any report the court requires. In other respects, the provisions of
2 this [act] concerning guardians apply to a temporary substitute guardian.

3 **SECTION 314. DUTIES OF GUARDIAN.**

4 (a) Except as otherwise limited by the court, a guardian shall make decisions regarding
5 the support, care, education, health, and welfare of the adult subject to guardianship to the extent
6 necessitated by the person's limitations.

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7 (b) A guardian shall promote the self-determination of the adult subject to guardianship
8 and, to the extent possible, shall encourage the person to participate in decisions, act on the
9 person's own behalf, and develop or regain the capacity to manage the person's personal affairs.

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10 As part of this duty, the guardian shall:

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

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14 (2) to the extent reasonably possible, identify the values and preferences of the person
15 and involve the adult subject to guardianship in decisions affecting the adult, including decisions
16 about the adult's care, residence, activities, and social interactions;

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

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

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22 (1) take reasonable care of the personal effects of the adult subject to guardianship and
23 bring a proceeding for a conservatorship or protective order in lieu of conservatorship if

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1 necessary to protect the adult's property;
2 (2) expend money of the adult subject to guardianship that has been received by the
3 guardian for the adult's current needs for support, care, education, health, and welfare;
4 (3) conserve any excess money of the adult subject to guardianship for the adult's future
5 needs, but if a conservator has been appointed for the estate of the adult, the guardian shall pay
6 the money to the conservator, at least quarterly, to be conserved for the adult's future needs;
7 (4) monitor the quality of services, including long-term care services, provided to the
8 adult subject to guardianship;

9 (d) A guardian making a decision on behalf of the adult subject to guardianship shall
10 make the decision the guardian reasonably believes the adult subject to guardianship would make
11 if the adult were able unless doing so would unreasonably harm or endanger the welfare or
12 interests of the adult subject to guardianship. To determine the decision the adult subject to
13 guardianship would make the adult were able, the guardian shall consider the person's prior or
14 current directions, preferences, opinions, values, and actions to the extent actually known or
15 reasonably ascertainable by the guardian.

16 (e) If the guardian does not know or cannot reasonably ascertain the decision that the
17 adult subject to guardianship probably would make if the adult were able, or making the decision
18 the guardian reasonably believes the person would make would unreasonably harm or endanger
19 the welfare or interests of the adult subject to guardianship, the guardian shall act in accordance
20 with the best interests of the adult subject to guardianship. In determining the best interests of
21 the adult subject to guardianship, the guardian shall take into account;

22 (1) information received from professionals and persons who demonstrate
23 sufficient interest in the welfare of the adult subject to guardianship,

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(1) the protected person's preferences, values, and prior statements and actions to the extent actually known or reasonably ascertainable by the guardian;¶
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1 (2) other information the guardian believes the adult subject to guardianship would
2 have considered if the adult were able to act, and, (3) other factors that a reasonable person in
3 the circumstances of the adult subject to guardianship would consider, including consequences
4 for others.

5 (f) A guardian immediately shall notify the court if the condition of the adult subject to
6 guardianship has changed so that the person is capable of exercising rights previously removed
7 and of any change in the dwelling or address of the adult subject to guardianship.

8 SECTION 315. SCOPE OF POWERS OF GUARDIAN.

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

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

14 (2) if otherwise consistent with the terms of any order by a court with jurisdiction
15 relating to custody of the adult subject to guardianship, take custody of the person and establish
16 the person's place of dwelling; however, the guardian shall:

17 (A) select a residential setting that the guardian believes the adult subject
18 to guardianship would select if the adult were able in accordance with the decision-making
19 standard set forth in Section 314(d). If the guardian does not know or cannot reasonably
20 ascertain what setting the adult subject to guardianship probably would choose if the adult were
21 able, the guardian shall choose a residential setting that is consistent with the person's best
22 interests in accordance with the decision-making standard set forth in Section 314(d);

23 (B) in selecting among residential settings, give priority to a residential

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

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

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

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

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

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. (7) inform the court

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1 setting that is in a location that will allow the adult subject to guardianship to interact with
2 persons important to the person and that meets the person's needs in the least restrictive manner
3 reasonably possible unless doing so would be inconsistent with decision-making standard set
4 forth in Section 314(d); and (C) not later than 30 days after a change in the dwelling of the adult
5 subject to guardianship, provide notice of a change to the court, the adult subject to guardianship,
6 and any persons identified as entitled to such notice in the court order appointing the guardian or
7 in a subsequent court order. The notice shall include the address and nature of the new dwelling
8 and state whether the adult subject to guardianship received advance notification of the change
9 and whether the person objected to the change;

10 (D) only establish or move the permanent place of dwelling of an adult
11 subject to guardianship to a nursing home or other restrictive or secure facility if such a move is
12 set forth in the guardian's plan, or upon express authorization of the court, or if notice of the
13 move is provided at least 14 days before the move to the adult subject to guardianship and all
14 persons entitled to such notice pursuant to Section 310(d);

15 (E) only establish or move the place of dwelling of an adult subject to
16 guardianship outside this state upon express authorization of the court; and

17 (F) only take action that would result in the sale of or surrender lease to the person's primary
18 residence if that action is specifically set forth in the guardian's plan, or upon express
19 authorization of the court, or if notice of such action is provided to at least 14 days before such
20 action to the adult subject to guardianship and all persons entitled to such notice pursuant to
21 Section 310(d);

22 (3) if a conservator for the estate of the protected person has not been appointed,
23 commence a proceeding, including an administrative proceeding, or take other appropriate action

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1 to compel another person to support the adult subject to guardianship or to pay funds for the
 2 person's benefit;
 3 (4) consent to medical or other care, treatment, or service for the adult subject to
 4 guardianship. When making health care decisions for the adult subject to guardianship, the
 5 guardian must;
 6 (A) involve the person in health-care decision-making to the extent
 7 reasonably feasible, including by encouraging and supporting the person in understanding the
 8 risks and benefits of health care options where practicable;
 9 (B) defer to decisions made pursuant to a valid [power of attorney for
 10 health care made pursuant to the Uniform Health-Care Decisions Act (1993)] executed by the
 11 adult subject to guardianship before the appointment of the guardian and cooperate to the extent
 12 feasible with the agent making such decisions; and
 13 (C) take into account:
 14 (i) the risks and benefits of treatment options; and
 15 (ii) the current and previous wishes and values of the adult subject
 16 to guardianship if known to the guardian or reasonably ascertainable by the guardian;
 17 (5) to the extent reasonable, delegate to the adult subject to guardianship certain
 18 responsibilities for decisions affecting the person's well-being; and
 19 (6) receive the personally identifiable health-care information of the adult subject
 20 to guardianship.

21 (b) The court may specifically authorize the guardian to consent to the adoption of the
 22 adult subject to guardianship; consent or deny consent to the marriage if the person's right to
 23 marry has been removed under Section 310; consent or deny consent to the divorce, dissolution,

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

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6 SECTION 316. DELEGATION OF POWER BY GUARDIAN.

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

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11 (1) selecting an agent;

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

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

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

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

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

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

2 (d) A guardian who complies with subsections (a), (b), and (c) is not liable to the adult
3 subject to guardianship or to the estate of the person for the decisions or actions of the agent to
4 whom a function was delegated.

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

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

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

10 **SECTION 317. IMMUNITIES OF GUARDIAN; SPECIAL LIMITATIONS ON**
11 **GUARDIAN'S POWER**

12 (a) A guardian need not use the guardian's personal funds for the expenses of the adult
13 subject to guardianship.

14 (b) A guardian is not liable to a third person for acts of the protected person solely by
15 reason of the relationship. A guardian who exercises reasonable care in choosing a third person
16 providing medical or other care, treatment, or service for the adult subject to guardianship is not
17 liable for injury to the person resulting from the wrongful conduct of the third party.

18 (c) A guardian, without authorization of the court, does not have the power to revoke a
19 [power of attorney for health care] [made pursuant to the Uniform Health-Care Decisions Act
20 (1993)] or a power of attorney for finances [made pursuant to the Uniform Power of Attorney
21 Act (2006)]which the adult subject to guardianship executed before the guardian's appointment.
22 If a [power of attorney for health care] [made pursuant to the Uniform Health-Care Decisions
23 Act (1993)] is in effect, absent an order of the court to the contrary, a health-care decision of the

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SECTION 317. COMPENSATION, RIGHTS, AND IMMUNITIES OF GUARDIAN; LIMITATIONS.¶
.. (a) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing provided to the protected person, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the protected person, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court. In determining the reasonableness of the guardian's compensation, the court or conservator shall consider:¶
.. (1) the necessity and quality of the services provided;¶
.. (2) the guardian's experience, training, professional standing, and skills;¶
.. (3) the difficulty of tasks performed, including the degree of skill and care required; ¶
.. (4) the conditions and circumstances under which services were performed, including whether they were provided outside of regular business hours or under dangerous or extraordinary conditions;¶
.. (5) the effect of those services on the protected person; and¶
.. (6) the fees customarily paid for performing like services in the community.

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1 agent takes precedence over that of a guardian and a guardian shall cooperate with the agent to
2 the extent feasible. If a power of attorney for finances [made pursuant to the Uniform Power of
3 Attorney Act (2006)] is in effect, absent an order of the court to the contrary, a decision by the
4 agent that the agent is authorized to make under the power of attorney for finances takes
5 precedence over that of the guardian and the guardian shall cooperate with the agent to the extent
6 feasible.

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

10 (e) A guardian may not restrict the ability of the adult subject to guardianship to
11 communicate, visit, or interact with other persons, including the ability to receive visitors or
12 make or receive telephone calls, personal mail, or electronic communications or to participate in
13 social activities including social media, unless:

14 (1) specifically authorized by the court;

15 (2) a protective order is in effect that limits contact between the adult subject to
16 guardianship and such other persons; or

17 (3) the guardian has good cause to believe the restriction is necessary because
18 interactions with a specified person poses a risk of significant physical, psychological, or
19 financial harm to the adult subject to guardianship.

20 **SECTION 318. GUARDIAN'S PLAN.**

21 (a) Not later than 90 days after appointment, and a least once every five years thereafter,
22 a guardian shall submit a plan to the court identifying:

23 (1) the living arrangement, services, and supports the guardian expects to arrange,

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1 facilitate, or continue for the adult subject to guardianship;

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2 (2) social or educational activities the guardian expects to facilitate on behalf of

3 the adult subject to guardianship;

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4 (3) persons, if any, with whom the adult subject to guardianship has a relationship

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5 and any plans the guardian has for facilitating visits with those persons;

6 (4) the anticipated nature and frequency of the guardian's visits and

7 communication with the adult subject to guardianship;

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8 (5) goals for the adult subject to guardianship, including any goals related to the

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9 restoration of the person's rights, and how the guardian anticipates achieving those goals; and

10 (6) whether the adult subject to guardianship already has a plan in place and, if so,

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11 whether the guardian's plan is consistent with the person's plan.

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12 (b) The court shall review the guardian's plan to determine whether or not to approve it.

13 In deciding whether to approve the plan, the court shall consider whether the plan is consistent

14 with the duties set forth in Section 312.

15 (c) After the guardian's plan is approved by the court, the guardian shall provide a copy

16 of the guardian's plan to the adult subject to guardianship and such other persons as the court

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17 directs.

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18 **SECTION 319. GUARDIAN'S REPORTS; MONITORING OF GUARDIANSHIP.**

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19 (a) Not later than 30 days after appointment, a guardian shall report to the court in

20 writing on the condition of the adult subject to guardianship and account for money and other

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21 assets in the guardian's possession or subject to the guardian's control. A guardian shall report at

22 least annually thereafter and whenever ordered by the court. A report must state or contain:

23 (1) the current mental, physical, and social condition of the adult subject to

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1	<u>guardianship;</u>	
2	(2) the living arrangements of the <u>adult subject to guardianship</u> during the	Deleted: protected person
3	reporting period;	
4	(3) the decision-making support, technological assistance, medical services,	
5	educational and vocational services, and other supports and services provided to the <u>adult subject</u>	
6	<u>to guardianship</u> and the guardian's opinion as to the adequacy of the person's care;	Deleted: protected person
7	(4) a summary of the guardian's visits with the <u>adult subject to guardianship</u> ,	Deleted: protected
8	including the dates of those visits;	Deleted: protected person
9	(5) activities on <u>behalf of the adult subject to guardianship</u> ;	Deleted: the protected person's
10	(6) the extent to which the <u>adult subject to guardianship</u> has participated in	Deleted: protected person
11	decision-making;	
12	(7) if the <u>adult subject to guardianship</u> is living in a [mental health-care]	Deleted: protected person
13	institution or living in a facility that provides the <u>person</u> with healthcare or other personal	Deleted: individual
14	services, whether the guardian considers the institution or facility's current plan for support, care,	
15	treatment, or habilitation to be consistent with the person's preferences, values, <u>prior directions</u> ,	Deleted: and
16	and <u>best interest</u> ;	Deleted: in the protected person's
17	(8) any <u>thing of more than de minimis value</u> , <u>that the guardian or an immediate</u>	Deleted: commissions, gifts, or other benefits
18	<u>family member of the guardian</u> has <u>received from individuals providing goods or services to the</u>	Deleted: received
19	<u>adult subject to guardianship</u> ;	Deleted: as a result of being guardian or actions taken as guardian
20	(9) <u>any business relations that the guardian has with a person who the guardian</u>	Formatted: Indent: Left: 0.5", First line: 0.5"
21	<u>has paid or has otherwise benefited using the assets of the adult subject to guardianship</u> ,	
22	<u>and</u>	
23	(10) <u>a copy of the guardian's previously approved plan and a statement as to</u>	Deleted: 9
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1 whether the guardian has deviated from the plan and, if so, the reason for that deviation;

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2 (1) plans for future care and support;

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3 (1) a recommendation as to the need for continued guardianship and any

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4 recommended changes in the scope of the guardianship; and

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

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6 (b) The court may appoint a [visitor] to review a report, interview the guardian or adult
7 subject to guardianship, and make any other investigation the court directs.

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8 (c) A copy of the guardian's report shall be provided to the adult subject to guardianship
9 and any other person whom the court has determined is entitled to such report.

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

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

14 (2) the guardianship should continue; and

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

16 (e) If the court determines that there is reason to believe that the guardian has not
17 complied with the guardian's duties, the guardianship should be modified or terminated, or the
18 requested fees are not reasonable, the court:

19 (1) shall notify the adult subject to guardianship and any other person entitled to
20 such notification according to the initial court order or a subsequent court order;

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21 (2) shall require additional information from the guardian;

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22 (3) may appoint a [visitor] to interview the adult subject to guardianship or
23 guardian, and make any other investigation the court directs; and

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

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SECTION 320. REMOVAL OF GUARDIAN.

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(a) A court may remove a guardian for failure to perform the guardian's duties or for other good cause.

(b) An adult subject to guardianship, guardian, or person interested in the welfare of a adult subject to guardianship may petition for removal of the guardian and appointment of a successor guardian.

(c) The court shall engage in fact-finding and may conduct a hearing to determine whether removal of a guardian is appropriate on:

(1) a petition of an adult subject to guardianship, guardian, or another person interested in welfare of an adult subject to guardianship provided that the court shall have the discretion not to engage in fact-finding if such a petition has been made within the preceding six months;

(2) a communication from an adult subject to guardianship, guardian, or other person interested in the welfare of the adult subject to guardianship that suggests that removal of the guardian may be appropriate; or

(3) the court's determination that such a hearing would be in the interest of the adult subject to guardianship.

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1 (d) An adult subject to guardianship seeking to remove a guardian is entitled to be
2 represented by counsel of the person's choosing. [If the person is not represented by counsel, the
3 court shall appoint a counsel under the conditions set forth in Section 305.] The court shall
4 award counsel reasonable attorney's fees for such representation if the legal services benefited
5 the adult subject to guardianship or were reasonably necessary to protect the person's interests.

6 **SECTION 321. TERMINATION OR MODIFICATION OF GUARDIANSHIP.**

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

9 (1) termination of the guardianship on the ground that the basis for appointment
10 of a guardian set forth in Section 301 does not exist, that termination would be in the best interest
11 of the adult subject to guardianship, or for other good cause; or

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

14 (b) The court shall engage in fact-finding and may conduct a hearing to determine
15 whether termination or modification of a guardianship or removal of a guardian is appropriate
16 on:

17 (1) a petition of an adult subject to guardianship, guardian, or another person
18 interested in the protected person's welfare provided that the court shall have the discretion not
19 to engage in fact-finding if such a petition has been made within the preceding six months unless
20 ;

21 (2) a communication from an adult subject to guardianship, guardian, or other
22 person interested in the protected person's welfare that suggests that termination or modification
23 of the guardianship, or removal of the guardian, may be appropriate;

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(b)

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1 (3) a report from a guardian or conservator that the functional needs of the adult
2 subject to guardianship have changed such that termination or modification may be appropriate;
3 or

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4 (4) the court's determination that a hearing would be in the interest of the person
5 subject to guardianship.

6 (c) On presentation by the petitioner of evidence establishing a prima facie case for
7 termination, the court shall order the termination unless it is proven that continuation of the
8 guardianship is in the best interest of the adult subject to guardianship and necessary to meet the
9 person's needs.

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10 (d) The court shall modify the powers granted to the guardian if the powers are either
11 excessive or inadequate due to changes in the abilities or limitations of the adult subject to
12 guardianship, the person's supports, or other circumstances.

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13 (e) Except as otherwise ordered by the court for good cause, the court, before
14 terminating or modifying a guardianship, shall follow the same procedures to safeguard the
15 rights of the adult subject to guardianship as apply to a petition for guardianship.

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16 (f) An adult subject to guardianship seeking to terminate or modify the terms of the
17 person's guardianship is entitled to be represented by counsel of the person's choosing. If the
18 person is not represented by counsel, the court shall appoint counsel under the conditions set
19 forth in Section 305.1. The court shall award counsel reasonable attorney's fees for such

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20 representation if the legal services benefited the adult subject to guardianship or were reasonably
21 necessary to protect the person's interests.

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ARTICLE 4

CONSERVATORSHIP AND PROTECTION OF PROPERTY

SECTION 401. BASIS FOR APPOINTMENT OF CONSERVATOR;

PROTECTIVE ORDER.

(a) On petition and after notice and hearing, the court may appoint a limited or full conservator or make a protective order in lieu of conservatorship as provided in Section 118, in relation to the estate and affairs of:

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

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

(A) by clear and convincing evidence, the individual is unable to manage property and financial affairs because:

(i) of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate technological assistance and appropriate decision-making support,

(ii) the person's own will has been overcome by deception and control exerted by another person, or

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

. (1) The guardian may file a written report to the court regarding any matter relevant to the proceeding.¶

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

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

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

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1 (iii) the individual is missing, detained, or unable to return to the

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2 United States; and

3 (B) by a preponderance of the evidence, the individual has property that is

4 likely to be wasted or dissipated unless management is provided, or money is needed for the

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5 support, care, education, health, and welfare of the individual or of individuals who are entitled

6 to the individual's support and that protection is necessary or desirable to obtain or provide

7 money for such purpose.

8 (b) The court shall grant to a conservator only those powers necessitated by the

9 limitations and demonstrated needs of the person subject to conservatorship and make appointive

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10 and other orders that will encourage the development of the person's maximum self-

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11 determination and independence.

12 (c) The conservatorship continues until terminated, without regard to the location of the

13 conservator or the person subject to conservatorship.

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14 **SECTION 402. ORIGINAL PETITION FOR APPOINTMENT OF**

15 **CONSERVATOR OR PROTECTIVE ORDER.**

16 (a) The following may petition for the appointment of a conservator or for a protective

17 order in lieu of conservatorship;

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18 (1) the person for whom the order is sought;

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19 (2) an individual interested in the estate, affairs, or welfare of the person to be

20 protected, including a parent, spouse, [domestic partner,] child, grandchild, or guardian of the

21 protected person; or

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

22 (4) a person who would be adversely affected by lack of effective management of

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23 the property and financial affairs of the person to be protected.

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

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

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

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

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

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

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

(C) adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within

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1 two years of the petition;

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

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

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

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12 (8) the reason why a conservatorship or other protective order is necessary,
13 including a brief description of the nature and extent of the respondent's need, all alternative
14 means of meeting that need that have been considered or implemented, if no alternative means
15 have been tried the reason they have not been tried, and the reason alternative means are

16 insufficient to meet the respondent's need; and ▼

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17 (9) the respondent's need for an interpreter or translator to effectively
18 communicate with the court or understand court proceedings. ▼

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

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

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

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

4 **SECTION 403. NOTICE.**

5 (a) A copy of the petition and the notice of hearing on a petition for conservatorship or
6 other protective order must be served personally on the respondent, but if the respondent's
7 whereabouts is unknown or personal service cannot be made, service on the respondent must be
8 made by [substituted service] [or] [publication]. The notice must be in plain language, in at least
9 16-point font, and, to the extent feasible, in a language in which the respondent is proficient.

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

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

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20 (c) Notice of the hearing on a petition for an order after appointment of a conservator or
21 protective order in lieu of conservatorship, together with a copy of the petition, must be given to
22 the person subject to conservatorship, if the person has attained 12 years of age and is not
23 missing, detained, or unable to return to the United States, any conservator of the protected

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1 person's estate, and any other person as ordered by the court.

2 (d) A conservator shall give notice of the filing of the conservator's inventory, report,
3 and plan of conservatorship, together with a copy of the inventory, report, and plan of
4 conservatorship to the person subject to conservatorship and any other person the court directs.
5 The notice must be delivered or sent not later than 14 days after the filing of the inventory,
6 report, or plan of conservatorship.

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7 **SECTION 404. PRELIMINARIES TO HEARING ON PROPOSED**
8 **CONSERVATORSHIP FOR MINOR.**

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

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

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19 **SECTION 405. PRELIMINARIES TO HEARING ON PROPOSED**
20 **CONSERVATORSHIP FOR ADULT: APPOINTMENT OF [VISITOR].**

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21 (a) On the filing of a petition for a conservatorship or other a protective order in lieu of
22 conservatorship for a respondent for reasons other than being a minor, the court shall set a date
23 for hearing. The court shall appoint a [visitor] unless the petition does not request the

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1 appointment of a conservator and the respondent is represented by a lawyer. The duties and
2 reporting requirements of the [visitor] are limited to the relief requested in the petition. The
3 [visitor] must be an individual having training or experience in the type of incapacity alleged.

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

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

9 (2) determine the respondent's views about the order or appointment sought by
10 the petitioner including, if the petition is for a conservatorship, any views about any proposed
11 conservator, the conservator's proposed powers and duties, and the scope and duration of the
12 proposed conservatorship; (3) inform the respondent of the respondent's right to
13 employ and consult with a lawyer at the respondent's own expense, and the right to request a
14 court-appointed lawyer; and

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

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

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

19 (2) make any other investigation the court directs.

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

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

23 (2) recommendations regarding the appropriateness of a conservatorship,

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

4 (3) a statement of the qualifications of the proposed conservator, together with a
5 statement whether the respondent approves or disapproves of the proposed conservator;

6 (4) a recommendation whether a professional evaluation or further evaluation is
7 necessary;

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

10 (6) a statement as to the respondent's ability to participate in a hearing that
11 identifies any technology or other form of support that would enhance the respondent's ability to
12 participate; and

13 (7) any other matters the court directs.

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

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19 **SECTION 406. PRELIMINARIES TO HEARING; APPOINTMENT AND ROLE**
20 **OF LAWYER.**

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21 **Alternative A**

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

23 (1) requested by the respondent;

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(2) recommended by the [visitor]; or

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

Alternative B

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

End of Alternatives

(b) The lawyer representing the respondent shall make reasonable efforts to ascertain the respondent's wishes.

(c) The lawyer representing the respondent shall advocate for the respondent's wishes to the extent those wishes are reasonably ascertainable.

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

***Legislative Note:** Those states that enact Alternative B of subsection (a) which requires appointment of counsel for the respondent in all conservatorship proceedings should not enact Section 405(d)(1).*

SECTION 407. PROFESSIONAL EVALUATION.

(a) At or before a hearing on a proposed conservatorship for an adult respondent, the court shall order a professional evaluation of the respondent if the respondent so demands. The court shall also order a professional evaluation unless the court finds that the court has sufficient information to determine the respondent's needs and abilities without such evaluation.

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

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1 and who will not be advantaged or disadvantaged by a decision to grant the petition. The
2 examiner promptly shall file a written report with the court. Unless otherwise directed by the
3 court, the report must contain:

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

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

9 (3) prognosis for improvement with regard to the ability to manage respondent's property
10 and financial affairs; and

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

12 **SECTION 408. CONFIDENTIALITY OF RECORDS.**

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13 (a) The written report of a [visitor] and any professional evaluation are confidential
14 and must be sealed on filing, but are available to:

15 (1) the court;

16 (2) the respondent without limitation as to use;

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

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

20 (b) The person who has been the subject of a proceeding for a conservatorship or
21 protective order in lieu of conservator, whether or not a conservator was appointed, the person's
22 attorney, and any person entitled to notice under Section 411(d) are entitled to access court
23 records pertaining to the proceeding and any resulting conservatorship, including the annual

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1 report and the conservator's plan. In addition, any person with an interest in the welfare of the
2 person subject to conservatorship for other good cause may petition the court for access to court
3 records pertaining to a conservatorship or conservatorship proceeding, including the annual
4 report and conservator's plan. The court shall grant access if access is in the best interest of the
5 person subject to conservatorship or would further the public interest and not endanger the
6 welfare of the respondent or person subject to conservatorship.

7 **SECTION 409. PRESENCE AND RIGHTS AT HEARING.**

8 (a) The respondent shall attend the hearing called pursuant to Section 403 unless the
9 court finds by clear and convincing evidence that:

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

13 (2) there is no practicable way for the respondent to attend and the respondent
14 would have no ability to participate in the hearing even with appropriate support and
15 technological assistance; or

16 (3) the respondent is a minor and has received proper notice;

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

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

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

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

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

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

(g) The hearing shall be closed on request of the respondent and a showing of good cause.

(h) Any person may request permission to participate in the proceeding. 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 participation.

SECTION 410. WHO MAY BE CONSERVATOR: PRIORITIES.

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

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

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

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1 _____ (3) an agent appointed by the respondent to manage the respondent's property

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2 under a power of attorney for finances;

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3 _____ (4) a guardian, other than a temporary or emergency guardian, or like fiduciary

4 currently acting for the respondent in this state or elsewhere;

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

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6 (6) an adult child of the respondent;

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7 (7) a parent of the respondent;

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8 (8) a person appointed as a trustee of a trust established by the respondent for the

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9 benefit of the respondent or the respondent's estate;

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

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

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14 (11) an adult stepchild whom the respondent actively parented during the
15 stepchild's minor years and with whom the respondent had an ongoing relationship within two
16 years of the petition; and

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

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

21 (c) With respect to persons having equal priority, the court shall select the one it
22 considers best qualified. In determining who is best qualified, the court shall consider the
23 potential conservator's skills and relationship with the respondent, the likelihood that the

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1 potential conservator will be able to successfully satisfy the duties of a conservator, and the
2 preferences, values, and prior directions of the respondent .

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

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

9 **SECTION 411. ORDER OF APPOINTMENT.**

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

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

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

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

21 (c) If a proceeding is brought for reasons other than that the respondent is a minor, after
22 a hearing on the petition, on finding that the basis for appointing a conservator exists, the court
23 shall make the least restrictive order consistent with its findings. The court shall make orders

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1 necessitated by the limitations and demonstrated needs of the person subject to conservatorship,
2 including appointive and other orders that will encourage the development of maximum self-
3 determination and independence of the person subject to conservatorship.

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

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6 (1) notice of the rights of the person subject to conservatorship;

7 (2) notice of a sale of or surrender of a lease to the primary residence of the
8 person subject to conservatorship;

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9 (3) a copy of the conservator's annual report and plan;

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10 (4) access to court records pertaining to the conservatorship; and

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11 (4) notice of the death of the person subject to conservatorship or significant

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12 change in the person's condition.

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13 (e) The persons entitled to notice under subsection (d) shall include the spouse,

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14 domestic partner, and adult children of the person subject to conservatorship unless the court
15 determines that such notice would be contrary to the preferences or prior directions of the person
16 subject to conservatorship or not in the best interest of the person subject to conservatorship.

17 **SECTION 412. NOTIFICATION OF PERSON SUBJECT TO**

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18 **CONSERVATORSHIP OF ORDER; RIGHTS.**

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

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1 (b) Not later than 30 days after an appointment, the court shall send or deliver to the
2 person subject to conservatorship, the conservator, and any other persons entitled to such notice
3 pursuant to Section 411(d), a statement of the rights of the person subject to conservatorship and
4 how the person can seek relief if the person is denied those rights. The statement shall be in
5 plain language, in at least 16-point font, and, to the extent feasible, in a language in which the
6 person subject to conservatorship is proficient. The notice must notify the person subject to
7 conservatorship of the right to:
8 (1) seek termination or modification of the conservatorship, seek removal of a
9 conservator, and obtain counsel of the person subject to conservatorship's choosing to represent
10 the person in these matters;
11 (2) participate in decision-making to the extent possible; and
12 (3) receive a copy of the conservator's inventory, report, and plan of
13 conservatorship.

14 SECTION 413. POWERS OF COURT.

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

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

20 (2) with respect to an adult, or to a minor for whom an appointment has been
21 made for reasons other than age, for the benefit of the person subject to conservatorship and
22 individuals who are in fact dependent on the person subject to conservatorship for support, all the
23 powers over the estate and financial affairs of the person subject to conservatorship which the

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1 person could exercise if the person were an adult, present, and not subject to conservatorship or
2 other protective order.

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3 (b) Subject to Section 108 requiring endorsement of limitations on the letters of office,
4 the court may limit at any time the powers of a conservator otherwise conferred and may remove
5 or modify any limitation.

6 SECTION 414. POWERS REQUIRING COURT APPROVAL.

7 (a) A conservator may exercise the following powers with respect to the property of the
8 person subject to conservatorship only after notice to interested persons and on express
9 authorization of the court, a conservator may:

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10 (1) the power to make gifts, except those of de minimus value;

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11 (2) the power to sell real property, encumber an interest in real property, or surrender a
12 lease to the primary residence of a person subject to conservatorship

13 (3) the power to convey, release, or disclaim contingent and expectant interests in
14 property, including marital property rights and any right of survivorship incident to joint tenancy
15 or tenancy by the entirety;

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16 (4) the power to exercise or release a power of appointment;

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17 (5) the power to create a revocable or irrevocable trust of property of the estate,

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18 whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend
19 a trust revocable by the person subject to conservatorship;

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

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22 (7) the power to exercise any right to an elective share in the estate of the

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23 deceased spouse [or domestic partner] of the person subject to conservatorship and to renounce

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1 or disclaim any interest by testate or intestate succession or by transfer inter vivos;
2 (8) the power to grant a creditor a priority for payment over creditors of the same
3 or higher class if the creditor is providing property or services used to meet the basic living and
4 care need of the person subject to conservatorship and such preferential treatment would be
5 otherwise impermissible under Section 431(e); and

6 [(8) the power to make, modify, amend, or revoke the will of the person subject to
7 conservatorship, (b) A conservator, in making, amending, or revoking the will of a person
8 subject to conservatorship, shall comply with [the state's statute for executing wills].

9 (c) The court, in exercising or approving a conservator's exercise of the powers listed in
10 subsection (a), shall consider primarily the decision that the person subject to conservatorship
11 would make it able, to the extent that the decision can be ascertained.

12 To determine the decision the person would make if the person were able, the court shall
13 consider the person's prior or current directions, preferences, opinions, values, and actions to the
14 to the extent actually known or reasonably ascertainable. The court shall also consider:

15 (1) the financial needs of the person subject to conservatorship and the needs of
16 individuals who are dependent on the person subject to conservatorship for support and the
17 interest of creditors;

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

19 (3) eligibility for governmental assistance;

20 (4) the previous pattern of giving or level of support provided by the person
21 subject to conservatorship;

22 (5) the existing estate plan;

23 (6) the life expectancy of the person subject to conservatorship and the probability

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1 that the conservatorship will terminate before the person's death; and
2 (7) any other factors the court considers relevant.

3 (d) Without authorization of the court, a conservator may not revoke or amend a power
4 of attorney for finances that the person subject to conservatorship executed before the
5 conservator's appointment. If a power of attorney for finances is in effect, absent a court order
6 to the contrary, a decision of the agent takes precedence over that of a conservator.

7 **SECTION 415. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.**

8 A person subject to conservatorship or a person interested in the welfare of a person subject to
9 conservatorship may file a petition in the appointing court for an order:

10 (a) requiring bond or collateral or additional bond or collateral, or reducing bond;

11 (b) requiring an accounting for the administration of the estate of the person subject to
12 conservatorship;

13 (c) directing distribution;

14 (d) removing the conservator and appointing a temporary or successor conservator;

15 (e) modifying the type of appointment or powers granted to the conservator if the extent
16 of protection or management previously granted is currently excessive or insufficient or the
17 ability of the person subject to conservatorship to manage the estate and financial affairs has so
18 changed as to warrant the action; or

19 (f) granting other appropriate relief.

20 **SECTION 416. BOND; ALTERNATIVE ASSET PROTECTION**
21 **ARRANGEMENT.**

22 (a) The court shall require a conservator to furnish a bond with sureties as it may specify,
23 or require an alternative asset protection arrangement, conditioned on faithful discharge of all

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SECTION 415. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS.¶

. (a) If the court finds that the respondent is a person needing protection, the court, without appointing a conservator, may:¶
. (1) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:¶
. (A) payment, delivery, deposit, or retention of funds or property;¶
. (B) sale, mortgage, lease, or other transfer of property;¶
. (C) purchase of an annuity;¶
. (D) making a contract for life care, deposit contract, or contract for training and education; or¶
. (E) addition to or establishment of a suitable trust[, including a trust created under the Uniform Custodial Trust Act (1987)]; and¶
. (2) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.¶
. (b) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in Section 412(c).¶
. (c) The court may appoint a [master] to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The [master] has the authority conferred by the order and shall serve until discharged by order a ...

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1 duties of the conservatorship according to law. The court may waive this requirement only if the
2 court finds that such a bond or arrangement is not necessary to protect the interests of the person
3 subject to conservatorship. The court may not waive this requirement if the conservator is in the
4 business of serving as a conservator and is being paid for this service.

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

12 **SECTION 41~~7~~. TERMS AND REQUIREMENTS OF BOND.**

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13 (a) The following rules apply to the bond required under Section 41~~7~~:

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

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

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

23 (4) The bond of the conservator may be proceeded against until liability under the

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1 bond is exhausted.

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

4 **SECTION 418. GENERAL DUTIES OF CONSERVATOR.**

5 (a) A conservator, in relation to powers conferred by this [article] or implicit in the title
6 acquired by virtue of the proceeding, is a fiduciary and shall observe the standards of care
7 applicable to a trustee. A conservator at all times shall exercise reasonable care, diligence, and
8 prudence.

9 (b) A conservator shall promote the self-determination of the person subject to
10 conservatorship, and exercise authority only as necessitated by the person's limitations and, to the
11 extent possible, shall encourage the person to participate in decisions, act on the person's own
12 behalf, and develop or regain the capacity to manage the person's personal affairs.

13 (c) A conservator making a decision on behalf of the person subject to conservatorship
14 shall make the decision the conservator reasonably believes the person would make if the person
15 were able unless doing so would fail to preserve the resources needed to maintain the person's
16 well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or interests of
17 the person subject to conservatorship. To determine the decision the person would make if the
18 person were able, the conservator shall consider the person's prior or current directions,
19 preferences, opinions, values, and actions to the to the extent actually known or reasonably
20 ascertainable by the conservator.

21 (d) If the conservator does not know or cannot reasonably ascertain the decision that the
22 person subject to conservatorship probably would make if the person were able, or if the decision
23 the conservator believes the person would make would fail to the preserve the resources needed

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(1) the necessity and quality of the services provided;¶
(2) the conservator's experience, training, professional standing, and skills;¶
(3) the difficulty of tasks performed, including the degree of skill and care required; ¶
(4) the conditions and circumstances under which services were performed, including whether they were provided outside of regular business hours or under dangerous or extraordinary conditions;¶
(5) the effect of those services on the protected person; ¶
(6) the fees customarily paid for performing like services in the community; and¶
(7) the extent to which the services provided were or were not consistent with the conservator's plan.¶

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1 to maintain the person's well-being and lifestyle or would otherwise unreasonably harm or
2 endanger the welfare of the person subject to conservatorship, the conservator shall act in
3 accordance with the person's best interests. In determining the best interests of the person
4 subject to conservatorship, the conservator shall consider:

5 (1) information received from professionals and persons who demonstrate
6 sufficient interest in the welfare of the person subject to conservatorship,

7 (2) other information that the conservator believes the person would have
8 considered the person were able to act, and

9 (3) other factors that a reasonable person in the circumstances of the person
10 subject to conservatorship would consider, including consequences for others.

11 (e) Except where inconsistent with the conservator's duties under (b), (c), and (d) of
12 this Section, a conservator shall invest and manage the estate as a prudent investor would, by
13 considering the purposes, terms, distribution requirements, and other circumstances of the person
14 subject to conservatorship including:

15 (1) general economic conditions;

16 (2) the possible effect of inflation or deflation;

17 (3) the expected tax consequences of investment decisions or strategies;

18 (4) the role that each investment or course of action plays in relation to the estate as

19 a whole;

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

21 (6) needs for liquidity, regularity of income, and preservation or appreciation of
22 capital; and

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

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

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

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

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1 (7) an asset's special relationship or special value, if any, to the person subject to
2 conservatorship.

3 (f) A conservator shall make a reasonable effort to verify facts relevant to the
4 investment and management of estate assets.

5 (g) A conservator who has special skills or expertise, or is named conservator in
6 reliance upon the conservator's representation of special skills or expertise, has a duty to use
7 those special skills or expertise.

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

13 (i) A conservator shall maintain insurance on the person's real and personal property,
14 unless the estate lacks sufficient funds to pay for insurance or a court determines, and issues an
15 order finding:

16 (1) the property lacks sufficient equity,
17 (2) the property is uninsurable, or
18 (3) insuring the property would unreasonably dissipate the estate or otherwise not
19 be in the best interest of the person subject to conservatorship.

20 (j) A conservator, without authorization of the court, may not revoke a power of attorney
21 for finances [made pursuant to the Uniform Power of Attorney Act (2006)] which the person
22 subject to conservatorship executed before the conservator's appointment. If a power of attorney
23 for finances [made pursuant to the Uniform Power of Attorney Act (2006)] is in effect, absent an

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1 order of the court to the contrary, a decision by the agent that the agent is authorized to make
2 under the power of attorney for finances takes precedence over that of a conservator and the
3 conservator shall cooperate with the agent to the extent feasible.

4 **SECTION 419. CONSERVATOR'S PLAN**

5 (a) Not later than 60 days after appointment, and a least once every five years thereafter,
6 a conservator shall file with the appointing court a plan for protecting, managing, expending, and
7 distributing the assets of the estate of the person subject to conservatorship. The plan must be
8 based on the actual needs of the person subject to conservatorship and take into account the best
9 interest of the person as well as the person's preferences, values, and prior directions to the
10 extent known to the conservator or reasonably ascertainable by the conservator. The conservator
11 shall include in the plan steps to develop or restore the ability of the person subject to
12 conservatorship to manage the person's property, how the conservator will involve the person in
13 decisions about property management, an estimate of the duration of the conservatorship, and
14 projections of resources and expenses, including projections of any fees the conservator
15 anticipates charging to the person.

16 (b) The court shall review the conservator's plan to determine whether or not to approve
17 it. In deciding whether to approve the plan, the court shall consider whether the plan is
18 consistent with the conservator's duties set forth in this section.

19 (c) After the conservator's plan is approved by the court, the conservator shall provide a
20 copy of the conservator's plan to the person subject to conservatorship and such other persons as
21 the court directs.

22 **SECTION 420. INVENTORY; RECORDS.**

23 (a) Not later than 60 days after appointment, a conservator shall prepare and file with the

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1 appointing court a detailed inventory of the estate subject to the conservatorship, together with
2 an oath or affirmation that the inventory is believed to be complete and accurate as far as
3 information permits.

4 (b) A conservator shall keep records of the administration of the estate and make them
5 available for examination on reasonable request of the person subject to conservatorship or an
6 interested person.

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7 **SECTION 42~~1~~. POWERS OF CONSERVATOR IN ADMINISTRATION.**

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

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

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

16 (2) receive additions to the estate;

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

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

20 (5) invest assets of the estate;

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

23 (7) acquire or dispose of an asset of the estate, including real property in another

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1 state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange,
2 partition, change the character of, or abandon an asset of the estate;
3 (8) make ordinary or extraordinary repairs or alterations in buildings or other
4 structures, demolish any improvements, and raze existing or erect new party walls or buildings;
5 (9) subdivide, develop, or dedicate land to public use, make or obtain the vacation
6 of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving
7 or receiving consideration, and dedicate easements to public use without consideration;
8 (10) enter for any purpose into a lease as lessor or lessee, with or without option
9 to purchase or renew, for a term within or extending beyond the term of the conservatorship;
10 (11) enter into a lease or arrangement for exploration and removal of minerals or
11 other natural resources or enter into a pooling or unitization agreement;
12 (12) grant an option involving disposition of an asset of the estate and take an
13 option for the acquisition of any asset;
14 (13) vote a security, in person or by general or limited proxy;
15 (14) pay calls, assessments, and any other sums chargeable or accruing against or
16 on account of securities;
17 (15) sell or exercise stock subscription or conversion rights;
18 (16) consent, directly or through a committee or other agent, to the reorganization,
19 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
20 (17) hold a security in the name of a nominee or in other form without disclosure
21 of the conservatorship so that title to the security may pass by delivery;
22 (18) insure the assets of the estate against damage or loss and the conservator
23 against liability with respect to a third person;

1 (19) borrow money, with or without security, to be repaid from the estate or
2 otherwise and advance money for the protection of the estate or the person subject to
3 conservatorship and for all expenses, losses, and liability sustained in the administration of the
4 estate or because of the holding or ownership of any asset, for which the conservator has a lien
5 on the estate as against the person subject to conservatorship for advances so made;
6 (20) pay or contest any claim, settle a claim by or against the estate or the person
7 subject to conservatorship by compromise, arbitration, or otherwise, and release, in whole or in
8 part, any claim belonging to the estate to the extent the claim is uncollectible;
9 (21) pay taxes, assessments, compensation of the conservator and any guardian,
10 and other expenses incurred in the collection, care, administration, and protection of the estate;
11 (22) allocate items of income or expense to income or principal of the estate, as
12 provided by law of this state other than this Act, including creation of reserves out of income for
13 depreciation, obsolescence, or amortization or for depletion of minerals or other natural
14 resources;
15 (23) pay any sum distributable to a person subject to conservatorship or individual
16 who is in fact dependent on the person subject to conservatorship by paying the sum to the
17 distributee or by paying the sum for the use of the distributee:
18 (A) to the guardian of the distributee;
19 (B) to a distributee's custodian under [the Uniform Transfers to Minors
20 Act (1983/1986)] or custodial trustee under [the Uniform Custodial Trust Act (1987)]; or
21 (C) if there is no guardian, custodian, or custodial trustee, to a relative or
22 other person having physical custody of the distributee;
23 (24) prosecute or defend actions, claims, or proceedings in any jurisdiction for the

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1 protection of assets of the estate and of the conservator in the performance of fiduciary duties;
2 and

3 (25) structure the finances of the person subject to conservatorship to establish
4 eligibility for public benefits, including by making gifts in a way that is consistent with the
5 person's preferences, values, and prior directions, provided that the conservator's actions do not
6 jeopardize the welfare of the person subject to conservatorship, are otherwise consistent with the
7 conservator's fiduciary duty including the conservator's duty to act in compliance with Section
8 414 of this Act.

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

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11 **SECTION 422. DELEGATION BY CONSERVATOR.**

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

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

16 (1) selecting an agent;

17 (2) establishing the scope and terms of a delegation, consistent with the purposes
18 and terms of the conservatorship;

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

21 (4) redressing an action or decision of an agent which would constitute a breach
22 of fiduciary duties if performed by the conservator.

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

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1 subject to conservatorship or to the person's estate for the decisions or actions of the agent to
2 whom a function was delegated.

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

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

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

8 **SECTION 423. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.**

9 (a) Unless otherwise specified in the order of appointment and endorsed on the letters of
10 appointment or contrary to the plan filed pursuant to Section 420, a conservator may expend or
11 distribute income or principal of the estate of the person subject to conservatorship without
12 further court authorization or confirmation for the support, care, education, health, and welfare of
13 the person subject to conservatorship and individuals who are in fact dependent on the person
14 subject to conservatorship, including the payment of child or spousal support, in accordance with
15 the following rules:

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

21 (2) A conservator may not be surcharged for money paid to persons furnishing
22 support, care, education, or benefit to a person subject to conservatorship, or an individual who is
23 in fact dependent on the person subject to conservatorship, in accordance with the

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1 recommendations of a parent or guardian of the person subject to conservatorship unless the
2 conservator knows that the parent or guardian derives personal financial benefit therefrom,
3 including relief from any personal duty of support, or the recommendations are not in the best
4 interest of the person subject to conservatorship.

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

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

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9 (B) the accustomed standard of living of the person subject to
10 conservatorship and individuals who are in fact dependent on the person subject to
11 conservatorship;

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12 (C) other money or sources used for the support of the person subject to
13 conservatorship; and
14 (D) the preferences, values, and prior directions of the person subject to
15 conservatorship.

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

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21 **SECTION 424. CONSERVATOR'S REPORTS AND ACCOUNTINGS;**
22 **APPOINTMENT OF [VISITOR]; MONITORING.**

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

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23 (a) A conservator shall report to the court for administration of the estate annually unless

1 the court otherwise directs, on resignation or removal, on termination of the conservatorship, and
2 at other times as the court directs. An order, after notice and hearing, allowing an intermediate
3 report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the
4 accounting. An order, after notice and hearing, allowing a final report adjudicates all previously
5 unsettled liabilities relating to the conservatorship.

6 (b) A report must state or contain:

7 (1) an accounting that contains a list of the assets of the estate under the
8 conservator's control and a list of the receipts, disbursements, and distributions during the period
9 for which the report is made;

10 (2) a list of the services provided to the person subject to conservatorship;

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

13 (4) any recommended changes in the plan for the conservatorship as well as a
14 recommendation as to the continued need for conservatorship and any recommended changes in
15 the scope of the conservatorship;

16 (5) to the extent feasible, copies of the most recent reasonably available financial
17 statements evidencing the status of the bank accounts, investment accounts, and mortgage or
18 other debts of the person subject to conservatorship;

19 _____ (6) anything of more than de minimis value that the conservator or an immediate
20 family member of the the conservator or an immediate family member of the conservator has
21 received from individuals providing goods or services to the person subject to conservatorship;

22 (7) any business relations that the conservator has with individuals providing
23 goods or services to the person subject to conservatorship, and

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1 (8) a copy of the conservator's previously approved plan and a statement as to
2 whether the conservator has deviated from the plan and, if so, the reason for that deviation;
3 (9) a recommendation as to the need for continued conservatorship
4 and any recommended changes in the scope of the conservatorship; and (10) whether the
5 successor conservator, if any, is alive and able to serve.

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6 (c) The court may appoint a [visitor] to review a report or plan, interview the person
7 subject to conservatorship or conservator, and make any other investigation the court directs. In
8 connection with a report, the court may order a conservator to submit the assets of the estate to
9 an appropriate examination to be made in a manner the court directs.

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10 (d) A copy of the conservator's report shall be provided to the person subject to
11 conservatorship and any other person entitled to such report as a result of the initial or
12 subsequent court order.

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13 (e) The court shall establish a system for monitoring a conservator's annual report and
14 plan, and shall review such report and plan no less than annually in order to determine whether:

15 (1) the report and plan provide sufficient information to establish that the
16 conservator has complied with the conservator's duties;

17 (2) the conservatorship should continue; and

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

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

22 (1) shall notify the conservator, the person subject to conservatorship, and any
23 other person entitled to such notification according to the initial court order or subsequent court

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1 order;

2 (2) shall require additional information from the conservator;

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3 (3) may appoint a [visitor] to interview the person subject to conservatorship or

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4 conservator, and make any other investigation the court directs; and

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5 (4) may hold a hearing to consider removal of the conservator, termination of the

6 conservatorship, a change in the powers granted to the conservator or other terms of the

7 conservatorship, or adjustment of fees if the court concludes that a hearing would help the court

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8 determine whether the conservator has complied with the conservator's duties, the

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9 conservatorship should continue, the scope of the conservator's powers or other terms of the

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10 conservatorship should be modified, or the requested fees are reasonable.

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11 **SECTION 425. TITLE BY APPOINTMENT.**

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

13 property of the protected person, or to the part thereof specified in the order, held at the time of

14 appointment or thereafter acquired. An order vesting title in the conservator to only a part of the

15 property of the protected person creates a conservatorship limited to assets specified in the order.

16 (b) Letters of conservatorship are evidence of vesting title of the protected person's

17 assets in the conservator. An order terminating a conservatorship transfers title to assets

18 remaining subject to the conservatorship, including any described in the order, to the formerly

19 protected person or the person's successors.

20 (c) Subject to the requirements of other statutes governing the filing or recordation of

21 documents of title to land or other property, letters of conservatorship and orders terminating

22 conservatorships may be filed or recorded to give notice of title as between the conservator and

23 the protected person.

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1 **SECTION 426. INTEREST OF PERSON SUBJECT TO CONSERVATORSHIP**

2 **INALIENABLE.**

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

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

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

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

18 **SECTION 427. SALE, ENCUMBRANCE, OR OTHER TRANSACTION**

19 **INVOLVING CONFLICT OF INTEREST.** Any transaction involving the conservatorship
20 estate which is affected by a substantial conflict between the conservator's fiduciary and
21 personal interests is voidable unless the transaction is expressly authorized by the court after
22 notice to interested persons. A transaction affected by a substantial conflict between personal
23 and fiduciary interests includes any sale, encumbrance, or other transaction involving the

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1 conservatorship estate entered into by the conservator, the spouse, [domestic partner,]
2 descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the
3 conservator has a substantial beneficial interest.

4 **SECTION 428. PROTECTION OF PERSON DEALING WITH CONSERVATOR.**

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5 (a) A person who assists or deals with a conservator in good faith and for value in any
6 transaction other than one requiring a court order under Section 411 or 413 is protected as though
7 the conservator properly exercised the power. That a person knowingly deals with a conservator
8 does not alone require the person to inquire into the existence of a power or the propriety of its
9 exercise, but restrictions on powers of conservators which are endorsed on letters as provided in
10 Section 108, or as provided by law, are effective as to third persons. A person who pays or
11 delivers assets to a conservator is not responsible for their proper application.

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

17 **SECTION 429. DEATH OF PERSON SUBJECT TO CONSERVATORSHIP.**

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

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23 [(b)] If a personal representative has not been appointed within 40 days after the death of

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1 a person subject to conservatorship and an application or petition for appointment is not before
2 the court, the conservator may apply to exercise the powers and duties of a personal
3 representative in order to administer and distribute the decedent's estate. On application for an
4 order conferring on the conservator the powers of a personal representative, after notice given by
5 the conservator to any person nominated as personal representative by any will of which the
6 applicant is aware, the court may grant the application on determining that there is no objection
7 and endorse the letters of conservatorship to note that the formerly person subject to
8 conservatorship is deceased and that the conservator has acquired all of the powers and duties of
9 a personal representative.

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10 (c) The issuance of an order under this section has the effect of an order of appointment
11 of a personal representative [as provided in Section 3-308 and Parts 6 through 10 of Article III of
12 the Uniform Probate Code]. However, the estate in the name of the conservator, after
13 administration, may be distributed to the decedent's successors without retransfer to the
14 conservator as personal representative.]

15 **SECTION 430. PRESENTATION AND ALLOWANCE OF CLAIMS.**

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16 (a) A conservator may pay, or secure by encumbering assets of the estate, claims against
17 the estate or against the person subject to conservatorship arising before or during the
18 conservatorship on their presentation and allowance in accordance with the priorities stated in
19 subsection (d). A claimant may present a claim by:

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

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

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

9 (c) A claimant whose claim has not been paid may petition the court for determination of
10 the claim at any time before it is barred by a statute of limitations and, on due proof, procure an
11 order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding
12 is pending against a person subject to conservatorship at the time of appointment of a
13 conservator or is initiated against the person subject to conservatorship thereafter, the moving
14 party shall give to the conservator notice of any proceeding that could result in creating a claim
15 against the estate.

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

- 19 (1) costs and expenses of administration;
20 (2) claims of the federal or state government having priority under other law;
21 (3) claims incurred by the conservator for support, care, education, health, and
22 welfare previously provided to the person subject to conservatorship or individuals who are in
23 fact dependent on the person subject to conservatorship;

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(4) claims arising before the conservatorship; and

(5) all other claims.

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

(1) doing so would leave the estate without sufficient funds to pay the basic living and health care expenses of the person subject to conservatorship; and

(2) the court authorizes such preference pursuant to Section 413(a)(8).

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

SECTION 431. PERSONAL LIABILITY OF CONSERVATOR.

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

(b) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if breached the conservator's fiduciary duties as set forth in this Act.

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

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

[(e) A conservator is not personally liable for any environmental condition on or injury resulting from any environmental condition on land solely by reason of an acquisition of title under Section 426.]

SECTION 432. REMOVAL OF CONSERVATOR

(a) A court may remove a conservator for failure to perform the conservator's duties or for other good cause.

(b) A person subject to conservatorship, conservator, or person interested in the welfare of a person subject to conservatorship may petition for removal of a conservator and appointment of a successor conservator.

(c) The court shall engage in fact-finding and may conduct a hearing to determine whether removal of a conservator is appropriate on:

(1) a petition of a person subject to conservatorship, conservator, or another person interested in welfare of a person subject to conservatorship if such a petition has not been made within the preceding six months;

(2) a communication from a person subject to conservatorship, conservator, or other person interested in the welfare of the person subject to conservatorship that suggests that removal of the conservator may be appropriate; or

(3) the court's determination that such a hearing would be in the interest of the person subject to conservatorship.

(d) A person subject to conservatorship seeking to remove a conservator is entitled to be

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1 represented by counsel of the person's choosing. [If the person is not represented by counsel, the
2 Court shall appoint counsel under the conditions set forth in Section 406.] The court shall award
3 counsel reasonable attorney's fees for such representation if the legal services benefited the
4 person subject to conservatorship or were reasonably necessary to protect the person's interests.

5 **SECTION 433. TERMINATION OR MODIFICATION OF CONSERVATORSHIP.**

6 (a) A conservatorship terminates on the death of the person subject to conservatorship or
7 on order of the court. Unless created for reasons other than that the person subject to
8 conservatorship is a minor, a conservatorship created for a minor also terminates when the
9 person subject to conservatorship attains majority or is emancipated. On the death of a person
10 subject to conservatorship, the conservator shall conclude the administration of the estate by
11 distribution to the person's successors. The conservator shall file a final report and petition for
12 discharge not later than [30] days after distribution.

13 (b) A person subject to conservatorship, conservator, or person interested in the welfare
14 of a person subject to conservatorship may petition for:

15 (1) termination of the conservatorship on the grounds that the basis for appointing
16 a conservator no longer exists or for other good cause; or
17 (2) modification of the conservatorship on the grounds that the extent of
18 protection or assistance previously granted is no longer appropriate of for other good cause.

19 (c) The court shall engage in fact-finding to determine whether termination or
20 modification of a conservatorship is appropriate on:

21 (1) a petition of a person subject to conservatorship, conservator, or another
22 person interested in the welfare of the person subject conservatorship if such a petition has not
23 been made within the preceding six months;

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. (3) removal of the conservator for failure to perform the conservator's duties or other good cause or on the grounds that the conservator wishes to resign; or¶
(4) appointment of a successor conservator.

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1 (2) a communication from a person subject to conservatorship, conservator, or
2 another person interested in the welfare of a person subject to conservatorship that gives rise to a
3 reasonable suspicion that termination or modification of the conservatorship is appropriate; or

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4 (3) a report from a guardian or conservator that the functional needs of the person
5 subject to conservatorship have changed that gives rise to a reasonable suspicion that termination
6 or modification is appropriate.

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7 (d) On presentation by the petitioner of evidence establishing a prima facie case for
8 termination, the court shall order termination unless it is proven that the continuation of the
9 conservatorship is in the best interest of the person subject to conservatorship and necessary to
10 meet the person's needs. Termination of the conservatorship does not affect a conservator's
11 liability for previous acts or the obligation to account for funds and assets of the person subject
12 to conservatorship.

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13 (e) The court shall modify the powers granted to the conservator if the powers are, either
14 excessive or inadequate due to changes in the abilities or limitations of the person subject to
15 conservatorship, the person's supports, or other circumstances.

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16 (f) Except as otherwise ordered by the court for good cause, before terminating a
17 conservatorship, the court shall follow the same procedures to safeguard the rights of the person
18 subject to conservatorship that apply to a petition for conservatorship.

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19 (g) A person subject to conservatorship seeking to terminate or modify the terms of the person's
20 conservatorship is entitled to be represented by counsel of the person's choice for that purpose.

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21 If the person is not represented by counsel, the Court shall appoint counsel under the conditions
22 set forth in Section 406.1. The court shall award counsel reasonable attorney's fees for such good
23 faith representation if the legal services benefited the person subject to conservatorship or were

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1 reasonably necessary to protect the person's interests.

2 (h) On termination of a conservatorship and whether or not formally distributed by the
3 conservator, title to assets of the estate passes to the formerly person subject to conservatorship

4 or the person's successors. The order of termination must provide for expenses of administration
5 and direct the conservator to execute appropriate instruments to evidence the transfer of title or
6 confirm a distribution previously made and to file a final report and a petition for discharge on
7 approval of the final report.

8 (j) The court shall enter a final order of discharge on the approval of the final report and
9 satisfaction by the conservator of any other conditions placed by the court on the conservator's
10 discharge.

11 **ARTICLE 5**

12 **MISCELLANEOUS PROVISIONS**

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

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

22 **SECTION 503. SEVERABILITY CLAUSE.** If any provision of this [act] or its
23 application to any person or circumstances is held invalid, the invalidity does not affect other

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Deleted: [(k) The following provisions apply in a proceeding to terminate a conservatorship that is initiated by the protected person.¶
· (1) The conservator may file a written report to the court regarding any matter relevant to the proceeding;¶
(2) The conservator may file a motion for instructions regarding any relevant matter, including whether the conservator may be involved in the termination proceeding; ¶
(3) Except for the actions authorized in paragraphs (1) and (2) of this subsection, or as otherwise ordered by the court, the conservator may not take any action to oppose or interfere in the termination proceeding; and ¶
(4) Unless ordered by the court, the conservator shall have no duty to participate in the termination proceeding.]¶

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1 provisions or applications of the [act] which can be given effect without the invalid provision or
2 application, and to this end the provisions of this [act] are severable.

3 **SECTION 504. REPEALS; CONFORMING AMENDMENTS.**

4 (a)

5 (b)

6 (c)

7 **SECTION 505. APPLICATION TO EXISTING GUARDIANSHIPS,**

8 **CONSERVATORSHIPS**

9 (a) This Act applies to all proceedings for the appointment of a guardian or conservator
10 commenced on or after [effective date] and all guardianship and conservatorships created on or
11 after [effective date].

12 (b) This Act applies to all proceedings commenced prior to [effective date] and all
13 guardianships and conservatorships in existence on [effective date] unless the court finds that
14 application of a particular provision of this Act would substantially interfere with the effective
15 conduct of judicial proceedings or prejudice the rights of the parties, in which case the particular
16 provision of this Act does not apply and the superseded law applies.

17 **SECTION 506. EFFECTIVE DATE.**

18 This [act] takes effect

19 **ARTICLE 6**

20 **FORMS**

21 **SECTION 601. USE OF MODEL FORMS.** Use of the forms contained in this
22 Section is optional. Failure to use these forms shall not prejudice any party.

23

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SECTION 602. MODEL PETITION FOR GUARDIANSHIP OF MINOR

[Form to be drafted subsequent to discussion of relevant provisions at the October 2016 Drafting Committee Meeting]

SECTION 603. MODEL PETITION FOR GUARDIANSHIP OF ADULT,

CONSERVATORSHIP OF ADULT OR MINOR. This form may, but need not be, used to petition for guardianship of an adult or conservatorship, or to petition for an order in lieu of guardianship or conservatorship for an adult.

Petition for Guardianship of an Adult and/or Conservatorship of Adult or 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, conservator, or both, or a protective order in lieu of either a guardianship or conservatorship.

A court may appoint a guardian or issue a protective order in lieu of guardianship if a person lacks the ability to meet essential requirements for physical health, safety, or self-care because (1) the person is unable to receive and evaluate information or make or communicate decisions even with appropriate decision-making support and technological assistance, or (2) because the person's own will has been overcome by deception and control exerted by another person; and the respondent's identified needs cannot be met by less restrictive means.

A court may appoint a conservator or issue a protective order in lieu of conservatorship if a person 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 appropriate technological assistance and appropriate decision-making support, (2) the person's own will has been overcome by deception and control exerted by another person, or (3) the person is missing, detained, or unable to return to the United States; and the individual has property that is likely to be wasted or dissipated unless management is provided, or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money for such purpose.

1. Information about the person filing this petition ("the petitioner").

a. Name:

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- 1 b. Principal residence:
2 c. Current street address (if different):
3 d. Relationship to respondent:
4 e. Interest in the petition:
5 e. How, if at all, would the protective arrangement sought benefit the petitioner?
6 f. Telephone number (optional):
7
8 **2. Information about the person alleged to need protection (“the respondent”). Provide**
9 **the following information to the extent known.**
10 a. Name:
11 b. Age:
12 c. Principal residence:
13 d. Current street address (if different):
14 e. If petitioner anticipates the respondent moving, or seeks to move the respondent,
15 proposed new address:
16 f. Does the respondent need an interpreter or translator to communicate with the
17 court or understand court proceedings?
18 g. Telephone number (optional):
19
20 **3. People who are required to be notified of this petition. Provide the name and address**
21 **of any of the people listed in Appendix A.**
22
23 **4. Existing agents.** Provide the name and address of any person who has been appointed as
24 an agent pursuant to a [power of attorney for finances] or [power of attorney for health
25 care] that the person has not revoked.
26
27 **5. Powers requested.** State the powers that petitioner requests the court grant to a guardian
28 or conservator, or the protective order sought.
29
30 **6. State why the protective arrangement sought is necessary.** Include a description of
31 the nature and extent of the respondent’s alleged need.
32
33 **7. Explain why alternative means are not sufficient to meet the respondent’s alleged**
34 **need.**
35
36 **8. State all alternative means of meeting the respondent’s alleged need that have been**
37 **considered or implemented.** If no alternative means have been tried, state the reason
38 they have not been tried.
39
40 **9. Provide a general statement of the respondent’s property with an estimate of its**
41 **value.** Include any insurance or pension, and the source and amount of any other
42 anticipated income or receipts.
43
44 **10. State the address at which the petitioner proposes the respondent will live if this**
45 **petition is granted.**
46 **11. For petitions seeking appointment of a conservator:**

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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 (ie., a "limited conservatorship") or other protective order is inappropriate.

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b. If seeking a limited conservatorship, state the property the 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 why the proposed conservator should be selected.

d. State the name and address of any person nominated as conservator by the respondent if the respondent has attained 12 years of age.

e. If the petition alleges a limitation in the respondent's ability to receive and evaluate information, provide brief description of the nature and extent of the respondent's alleged limitation;

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f. If the petition alleges that the 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 the respondent's whereabouts.

13. For petitions seeking 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 (ie., a "limited guardianship") or other protective order is inappropriate.

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b. If seeking a limited guardianship, state the powers the petitioner requests be granted to the guardian.

c. State the name and address of any proposed guardian and the reason why the proposed guardian should be selected.

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

14. Lawyer. If petitioner is represented by a lawyer in this matter, state the name, address, and telephone number of the lawyer.

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VERIFICATION AND ACKNOWLEDGMENT

I declare under penalty of perjury under the laws of this state that the information above is true and correct to the best of my knowledge.

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Signature of Petitioner Date

Signature of Petitioner's Attorney if Date
Petitioner is Represented by Counsel

APPENDIX A:

People whose name and address must be listed in Section 3 of this petition.

- The respondent's spouse [or domestic partner], or the respondent is not married [and does not have a domestic partner], any adult with whom the respondent has shared household responsibilities in the past six months;
- The respondent's adult children, or, if the respondent has none, the respondent's parents and adult brothers and sisters, or if the respondent has none, one or more adults nearest in kinship to the respondent who can be found;
- The respondent's 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 of the petition;
- Any person responsible for the care or custody of the respondent;
- Any lawyer for the respondent, representative payee, a guardian or conservator acting for a respondent in this state or elsewhere, trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, Veterans Administration fiduciary for the respondent, or an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal;
- Any person known to have routinely provided the individual with decision-making support within six months of the petition.
- Any person nominated as guardian or conservator by the respondent.

SECTION 604. MODEL ORDER DENYING GUARDIANSHIP OF ADULT,

CONSERVATORSHIP OF ADULT. This form may, but need not be, used by the court to deny a petition for a guardian or conservator for an adult.

Order Denying Guardianship and/or Conservatorship of Adult

State of:

County of:

Court:

File Number:

Date:

In the Matter of:

Judge:

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1 This is a matter is before the court on a petition for an appointment of a
2 [GUARDIAN/CONSERVATOR/GUARDIAN AND CONSERVATOR] for [RESPONDENT'S
3 NAME]. The court has read the petition and held a hearing to determine whether the court
4 should enter the order requested in the petition.

5
6 **NOTICE.**

7 There is clear and convincing evidence that the respondent was given proper notice of the
8 hearing on the petition.

9 There is not clear and convincing evidence that the respondent was given proper notice of
10 the hearing on the petition.

11
12 **HEARING.**

13 A hearing was held on:

14
15 At the hearing, respondent was:

16 present, in person

17 present, through the use of audio-visual technology

18 not present and there was clear and convincing evidence that respondent refused to attend
19 the hearing

20 not present and there was clear and convincing evidence that it was (1) either impossible
21 or impracticable for respondent to attend, and (2) that respondent would have no ability
22 to participate in the hearing

23
24 At the hearing, respondent was:

25 represented by the following

26 counsel:

27 not represented by counsel

28
29 **VENUE, JURISDICTION, and NOTICE.**

30 This court finds that it has jurisdiction over Respondent and over this issue, that this court is a
31 proper venue, and that notice was properly served.

32
33 **COURT'S FINDINGS AS TO RESPONDENT'S ABILITIES AND NEEDS.**

34 This court reviewed the following evidence with regard to the Respondent's abilities and needs:

35 [LIST]

36
37 Based on this evidence, this Court finds that there is clear and convincing evidence to support an
38 appointment. Specifically, this Court finds that:

39 [PROVIDE A DETAILED EXPLANATION OF THE PERSON'S FUNCTIONAL
40 ABILITIES AND LIMITATIONS AND THE EVIDENCE AS TO THOSE ABILITIES
41 AND LIMITATIONS]

42
43 **APPOINTMENT.**

44 This court appoints _____ to serve as guardian and directs
45 issuance of letters of guardianship.

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This court appoints _____ to serve as conservator and directs issuance of letters of conservatorship.

FOR ORDERS APPOINTING A GUARDIAN: LIMITATIONS AND POWERS.

This guardianship is:

Limited, and the appointee is granted the following powers:

make decisions about the respondent's custody and residence

make decisions about the respondent's training and education

consent to medical or other professional care, counsel, treatment, or service

other:

Full, meaning that the appointee is granted all powers permissible under state law except those required specific court authorization unless that authorization is granted below. [Under this state's law, a plenary guardian does not have the authority to _____.]

Special authorizations. In addition to the powers granted above, the appointee may:

[List any powers to be granted that require specific court authorization such as the power to move the protected person outside the state or consent to adoption]:

Right to marry.

Respondent retains the right to marry.

Respondent does not have the right to marry. The court's decision to remove the respondent's right to marry is supported by the following findings:

Right to vote.

Respondent retains the right to vote.

Respondent does not have the right to vote. The court's decision to remove the respondent's right to vote is supported by the following findings":

FOR ORDERS APPOINTING A CONSERVATOR.

This conservatorship is:

Limited, and the appointee is granted the following powers:

institute and maintain proceedings to compel another person to support

respondent

institute and maintain proceedings to protect respondent's property

apply for, receive, and manage the respondent's money and property

apply for, receive, and manage the respondent's money and property with

the exception of: _____ [specify particular property or

accounts or a monthly amount of income]

other:

1
2 Full, meaning that the appointee is granted all powers permissible under state law
3 except those required specific court authorization unless that authorization is granted
4 below. [Under this state's law, a plenary guardian does not have the authority to
5 _____.]

6
7 **Special authorizations. In addition to the powers granted above, the appointee may:**

8
9 [List any powers to be granted that require specific court authorization such as (1) the
10 ability to make gifts other than those of de minimus value; (2) sell real property,
11 encumber an interest in real property, or surrender the primary residence of a person
12 subject to conservatorship; (3) convey, release, or disclaim contingent and expectant
13 interests in property, including marital property rights and any right of survivorship
14 incident to joint tenancy or tenancy by the entireties; (4) exercise or release a power
15 of appointment; (5) create a revocable or irrevocable trust of property of the estate,
16 whether or not the trust extends beyond the duration of the conservatorship, or revoke or
17 amend a trust revocable by the person subject to conservatorship; (6) exercise rights to
18 elect options and change beneficiaries under insurance policies and annuities or surrender
19 the policies and annuities for their cash value; 7) exercise any right to an elective share in
20 the estate of the deceased spouse [or domestic partner] of the person subject to
21 conservatorship and to renounce or disclaim any interest by testate or intestate succession
22 or by transfer inter vivos; (8) give preferential treatment to creditors that provide
23 property or services used to meet the basic living and care need of the person subject to
24 conservatorship where such preferential treatment would be otherwise impermissible
25 under Section 431(d); and (9) make, modify, amend, or revoke the will of the person
26 subject to conservatorship.as the power to move the protected person outside the state or
27 consent to adoption]

28
29 **BOND.**

30 _____ Before the issuance of letters, the appointee must file a bond in the amount of: \$ _____

31
32 _____ Before the issuance of letters, the appointee must: _____

33
34 _____ This Court finds that no bond or other or special arrangement is necessary to protect the
35 interests of the protected person.

36
37 **INVENTORY AND PLAN.**

38 If the appointee is appointed as a Conservator, the appointee is instructed to:

- 39 • Within 60 days after appointment, file with this court a plan for protecting, managing,
40 expending, and distributing the assets of the protected person's estate.
41 • Within 60 days after appointment, file with this court a detailed inventory of the estate
42 subject to the conservatorship, together with an oath or affirmation that the inventory is
43 believed to be complete and accurate as far as information permits.

44
45 If the appointee is appointed as Guardian, the appointed is instructed to:

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- 1 • Within 90 days after appointment, file with this court a plan shall submit a plan to the
2 court identifying: (1) the living arrangement, services, and supports the guardian expects
3 to arrange, facilitate, or continue for the person subject to guardianship; (2) social or
4 educational activities the guardian expects to facilitate on behalf of the person subject to
5 guardianship; (3) persons, if any, with whom the person subject to guardianship has a
6 relationship and any plans the guardian has for facilitating visits with those persons; (4)
7 the anticipated nature and frequency of the guardian's visits and communication with the
8 person subject to guardianship; (5) goals for the person subject to guardianship, including
9 any goals related to the restoration of the person's rights, and how the guardian
10 anticipates achieving those goals; and (6) whether the person subject to guardianship
11 already has a plan in place and, if so, whether the guardian's plan is consistent with the
12 person's plan.

13
14 **NOTIFICATION OF THE COURT.**

15 The appointee shall immediately notify the court in writing of:

- 16 • Any change in his/own address.
17 • Any change in the protected person's custodial dwelling or address.
18 • Any change in the protected person's condition such that the protected person is capable
19 of exercising rights previously removed.

20
21 **NOTIFICATION OF THIRD PARTIES.**

22 The appointee shall notify the following people of any change in the protected person's
23 primary residence:

24
25 The appointee shall provide copies of his/her annual report to the following people:

26
27 The appointee shall provide copies of his/her inventory of the protected persons assets to
28 the following people:

29
30 The appointee shall notify the following people of the death of the protected person or a
31 significant change in the protected person's condition.

32
33 **REVIEW.**

34 The appointee shall file an annual report with this court.

35
36 In addition the annual review, this matter is set for review within _____ days to determine:

37 Compliance with the inventory and plan

38 Possible changes in the protected person's abilities

39 Other:

40
41 No review beyond the annual review is required at this time.

42
43 **COSTS.**

44 Costs are:

45 Waived

46 Taxed to petitioner

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Taxed to respondent

CAUTION TO APPOINTEE.

The appointee is bound to exercise all granted powers in accordance with his or her fiduciary duty to the person subject to guardianship or conservatorship. Among other things, the appointee is required exercise authority only as necessitated by the person's limitations and to encourage the person to develop maximum self-reliance and independence including by participating in decisions to the extent feasible. Failure to act according to the appointee's fiduciary duty may result in personal liability.

SIGNATURE.

Signed:

Date:

SECTION 605. MODEL ORDER APPOINTING GUARDIANSHIP OF ADULT,

CONSERVATORSHIP OF ADULT This form may, but need not be, used by the court to

appoint a guardian for an adult or a conservator

Order for Guardianship and/or Conservatorship of Adult

State of:

County of:

Court:

File Number:

Date:

In the Matter of:

Judge:

This is a matter is before the court on a petition for an adjudication that a [GUARDIAN/CONSERVATOR/GUARDIAN AND CONSERVATOR] be appointed for [RESPONDENT]. The court has read the petition and held a hearing to determine whether the court should enter the order requested in the petition.

NOTICE.

There is clear and convincing evidence that the respondent was given proper notice of the hearing on the petition.

HEARING.

A hearing was held on: _____

At the hearing, respondent was:

present, in person

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1 present, through the use of audio-visual technology
2 not present and there was clear and convincing evidence that respondent refused to attend
3 the hearing
4 not present and there was clear and convincing evidence that it was (1) either impossible
5 or impracticable for respondent to attend, and (2) that respondent would have no ability
6 to participate in the hearing

7
8 At the hearing, respondent was:
9 represented by the following
10 counsel:
11 not represented by counsel

12
13 **VENUE, JURISDICTION, and NOTICE.**

14 This court finds that it has jurisdiction over Respondent and over this issue, that this court is a
15 proper venue, and that notice was properly served.

16
17 **COURT'S FINDINGS AS TO RESPONDENT'S ABILITIES AND NEEDS.**

18 This court reviewed the following evidence with regard to the Respondent's abilities and needs:
19 [LIST]

20
21 Based on this evidence, this Court finds that there is clear and convincing evidence to support an
22 appointment. Specifically, this Court finds that:

23 [PROVIDE A DETAILED EXPLANATION OF THE PERSON'S FUNCTIONAL
24 ABILITIES AND LIMITATIONS AND THE EVIDENCE AS TO THOSE ABILITIES
25 AND LIMITATIONS]

26
27 **APPOINTMENT.**

28 This court appoints _____ to serve as guardian and directs
29 issuance of letters of guardianship.

30 This court appoints _____ to serve as conservator and
31 directs issuance of letters of conservatorship.

32
33 **FOR ORDERS APPOINTING A GUARDIAN: LIMITATIONS AND POWERS.**

34
35 **This guardianship is:**

36 Limited, and the appointee is granted the following powers:
37 make decisions about the respondent's custody and residence
38 make decisions about the respondent's training and education
39 consent to medical or other professional care, counsel, treatment, or
40 service
41 other: _____

42
43 Full, meaning that the appointee is granted all powers permissible under state law
44 except those required specific court authorization unless that authorization is
45 granted below. [Under this state's law, a plenary guardian does not have the
46 authority to _____].

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1 **Special authorizations. In addition to the powers granted above, the appointee may:**
2
3 [List any powers to be granted that require specific court authorization such as the power
4 to move the protected person outside the state or consent to adoption]:

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5
6 **Right to marry.**
7 Respondent retains the right to marry.
8 Respondent does not have the right to marry. The court's decision to remove the
9 respondent's right to marry is supported by the following findings:

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10
11 **Right to vote.**
12 Respondent retains the right to vote.
13 Respondent does not have the right to vote. The court's decision to remove the
14 respondent's right to vote is supported by the following findings":

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15
16 **FOR ORDERS APPOINTING A CONSERVATOR.**
17 **This conservatorship is:**

18 Limited, and the appointee is granted the following powers:
19 institute and maintain proceedings to compel another person to support
20 respondent
21 institute and maintain proceedings to protect respondent's property
22 apply for, receive, and manage the respondent's money and property
23 apply for, receive, and manage the respondent's money and property with
24 the exception of: [specify particular property or
25 accounts or a monthly amount of income]
26 other:

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27
28
29 Full, meaning that the appointee is granted all powers permissible under state law
30 except those required specific court authorization unless that authorization is granted
31 below. [Under this state's law, a plenary guardian does not have the authority to
32 _____].

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33
34 **Special authorizations. In addition to the powers granted above, the appointee may:**

35
36 [List any powers to be granted that require specific court authorization such as (1) the
37 ability to make gifts other than those of de minimus value; (2) sell real property,
38 encumber an interest in real property, or surrender the primary residence of a person
39 subject to conservatorship; (3) convey, release, or disclaim contingent and expectant
40 interests in property, including marital property rights and any right of survivorship
41 incident to joint tenancy or tenancy by the entireties; (4) (4) exercise or release a power
42 of appointment; (5) create a revocable or irrevocable trust of property of the estate,
43 whether or not the trust extends beyond the duration of the conservatorship, or revoke or
44 amend a trust revocable by the person subject to conservatorship; (6) exercise rights to
45 elect options and change beneficiaries under insurance policies and annuities or surrender
46 the policies and annuities for their cash value; 7) exercise any right to an elective share in

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the estate of the deceased spouse [or domestic partner] of the person subject to conservatorship and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; (8) give preferential treatment to creditors that provide property or services used to meet the basic living and care need of the person subject to conservatorship where such preferential treatment would be otherwise impermissible under Section 431(d); and [(9) make, modify, amend, or revoke the will of the person subject to conservatorship.as the power to move the protected person outside the state or consent to adoption]

BOND.

Before the issuance of letters, the appointee must file a bond in the amount of: \$

Before the issuance of letters, the appointee must:

This Court finds that no bond or other or special arrangement is necessary to protect the interests of the protected person.

INVENTORY AND PLAN.

If the appointee is appointed as a Conservator, the appointee is instructed to:

- Within 60 days after appointment, file with this court a plan for protecting, managing, expending, and distributing the assets of the protected person's estate.
- Within 60 days after appointment, file with this court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

If the appointee is appointed as Guardian, the appointed is instructed to:

- Within 90 days after appointment, file with this court a plan shall submit a plan to the court identifying: (1) the living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue for the person subject to guardianship; (2) social or educational activities the guardian expects to facilitate on behalf of the person subject to guardianship; (3) persons, if any, with whom the person subject to guardianship has a relationship and any plans the guardian has for facilitating visits with those persons; (4) the anticipated nature and frequency of the guardian's visits and communication with the person subject to guardianship; (5) goals for the person subject to guardianship, including any goals related to the restoration of the person's rights, and how the guardian anticipates achieving those goals; and (6) whether the person subject to guardianship already has a plan in place and, if so, whether the guardian's plan is consistent with the person's plan.

NOTIFICATION OF THE COURT.

The appointee shall immediately notify the court in writing of:

- Any change in his/her own address.
- Any change in the protected person's custodial dwelling or address.
- Any change in the protected person's condition such that the protected person is capable of exercising rights previously removed.

NOTIFICATION OF THIRD PARTIES.

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1 The appointee shall notify the following people of any change in the protected person's
2 primary residence:

3
4 The appointee shall provide copies of his/her annual report to the following people:

5
6 The appointee shall provide copies of his/her inventory of the protected persons assets to
7 the following people:

8
9 The appointee shall notify the following people of the death of the protected person or a
10 significant change in the protected person's condition.

11
12 **REVIEW.**

13 The appointee shall file an annual report with this court.

14
15 In addition the annual review, this matter is set for review within days to determine:

16 Compliance with the inventory and plan

17 Possible changes in the protected person's abilities

18 Other:

19
20 No review beyond the annual review is required at this time.

21
22 **COSTS.**

23 Costs are:

24 Waived

25 Taxed to petitioner

26 Taxed to respondent

27
28 **CAUTION TO APPOINTEE.**

29
30 The appointee is bound to exercise all granted powers in accordance with his or her fiduciary
31 duty to the person subject to guardianship or conservatorship. Among other things, the appointee
32 is required exercise authority only as necessitated by the person's limitations and to encourage
33 the person to develop maximum self-reliance and independence including by participating in
34 decisions to the extent feasible. Failure to act according to the appointee's fiduciary duty may
35 result in personal liability.

36
37
38 **SIGNATURE.**

39 Signed:

40 Date:

41
42 **SECTION 606. MODEL NOTIFICATION OF RIGHTS FOR ADULT SUBJECT**

43 **TO GUARDIANSHIP, CONSERVATORSHIP.** This form may, but need not be, used by to

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1 notify a person subject to guardianship or conservatorship of the person's rights pursuant to
2 Section 311 and Section 412.

3 4 **Notification of Rights**

5
6 You are receiving this notice because a guardian and/or conservator has been appointed for you.
7 This notice tells you about some of the important rights you have. It does not tell you about all
8 of the rights you have. If you have questions about your rights, you have the right to ask an
9 attorney to explain your rights to you. You also have the right to ask other people, including
10 your guardian or conservator, to help you understand your rights.

11 General rights:

12 You have the right to exercise any rights that the court has not granted to your guardian and/or
13 conservator.

14
15
16 You also have the right to request the court:

- 17 • end your guardianship and/or conservatorship;
- 18 • increase or decrease the powers granted to your guardian and/or conservator, or make
19 other changes to the terms of this person's appointment, and
- 20 • replace the person who was appointed with someone else.

21
22 You also have a right to hire an attorney to represent you in any of the matters listed above.

23 Additional rights for persons for whom a guardian has been appointed:

24 As a person subject to guardianship, you have a right to:

- 25 (1) be involved in decisions affecting you, including decisions about your care, where you live,
26 your activities, and your social interactions, to the extent reasonably possible;
- 27 (2) be involved in decisions about your health care to the extent reasonably feasible, and to have
28 other people help you understand the risks and benefits of health care options where practicable;
- 29 (3) be notified of change in your primary residence or a permanent move to a nursing home or
30 other restrictive or secure facility at least 14 days in advance unless the guardian has proposed
31 this change in their plan or the court has expressly authorized it;
- 32 (4) ask the court to not allow your guardian to change where you live or to sell or surrender your
33 primary residence by [insert process for asking the court to such a move];
- 34 (5) vote and get married unless the court unless the court order appointing your guardian states
35 that you cannot do so;
- 36 (6) receive a copy of the guardian's report and the guardian's plan; and
- 37 (7) communicate, visit, or interact with other persons (this includes the right to have visitors and
38 the right to make or receive telephone calls, personal mail, or electronic communications) unless:
39
 - 40 • your guardian has been specifically authorized by the court to restrict such
41 communications, visits, or interactions;
 - 42 • a protective order is in effect that limits contact between you and other persons; or
 - 43 • your guardian has good cause to believe the restriction is necessary because interactions
44 with a specified person poses a risk of significant physical, psychological, or financial

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1 harm to you.

2
3 Additional rights for persons for whom a conservator has been appointed:

4 As a person subject to conservatorship, you have a right to:

5 (1) participate in decision-making about the management of your property to the extent possible;

6 and

7 (2) receive a copy of the conservator's inventory, report, and plan of conservatorship.

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