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FOR DISCUSSION ONLY

# **UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT (199\_)**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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**October 24, 1995, Draft**

**UNIFORM GUARDIANSHIP AND PROTECTIVE  
PROCEEDINGS ACT (199\_)**

*Without Prefatory Note and Comments*

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# **UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**

**ACT (199\_)**

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# **ARTICLE 1**

## **GENERAL PROVISIONS AND DEFINITIONS**

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

**SECTION 102. DEFINITIONS.** In this [Act]:

(1) "Absentee" means an individual whose whereabouts are unknown, who is illegally detained, or who is in a foreign country and unable to return.

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

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

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

conservator.

(5) "Estate" includes the property of an individual whose affairs are subject to this [Act].

(6) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to parental or spousal nomination or court appointment. The term includes a limited guardian but not a guardian ad litem.

(7) "Incapacitated person" means an adult individual, or a minor who for reasons other than age, is unable to receive and evaluate information or make or communicate decisions to the extent the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

(8) "Legal representative" includes a representative payee, a guardian or conservator acting for a respondent in this State or elsewhere, and an agent designated under a power of attorney, whether for health care or property, of which the respondent is the principal.

(9) "Letters" includes letters of guardianship and letters of conservatorship.

(10) "Limited conservator" means a person appointed by the court who has only the responsibilities for managing the estate of a protected person which are specified in the order of appointment.

(11) "Limited guardian" means a person appointed by the court who has only the responsibilities for the personal                affairs of a minor or incapacitated person which are specified in the order or appointment.

(12) "Minor" means an individual who has not attained the age of [18] years.

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

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

(15) "Protected person" means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

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

(17) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of insular possession subject to the jurisdiction of the United States.

### **SECTION 103. FACILITY OF TRANSFER**

(a) If a person required to transfer money or personal property knows that a conservator has been appointed or proceedings for appointment of a conservator of the estate of a minor are pending, the person may make payment or delivery only to the conservator. Otherwise, a person required to transfer money or personal property to a minor may do so, as to an amount or value not exceeding [\$5,000] a year, by transferring it to:

(1) the minor if emancipated;

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

(3) a guardian of the minor; or

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

(b) A person, other than the minor or a financial institution, who receives money or property for a minor shall apply it to the support and education of the minor, but may only be reimbursed for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess must be preserved for future support and education of the minor and any balance must be transferred to the minor no later than when majority is attained. A person who transfers money or property in compliance with this section is not responsible for its proper application.

**SECTION 104. DELEGATION OF POWERS BY PARENT OR GUARDIAN.** A parent or guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding six months, any power regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.

**SECTION 105. SUBJECT MATTER JURISDICTION.** The [Act] applies to and the court has jurisdiction over guardianship and related proceedings for individuals domiciled in or present in this State, protective proceedings for individuals domiciled in or who have property located in this State, and property coming into the control of a guardian or conservator who is subject to the laws of this State.

**SECTION 106. VENUE.**

(a) Venue for guardianship proceedings for a minor is in the court in the [county] of this State where the minor resides or is present at the time the proceedings are commenced.

(b) Venue for guardianship proceedings for an incapacitated person is in the court in the [county] of this State where the incapacitated person resides and, if admitted to an institution by order of a court of competent jurisdiction, in the [county] in which that court is located. Venue for the appointment of a temporary guardian of an incapacitated person is also in the [county] in which the incapacitated person is present.

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

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

#### **SECTION 107. PRACTICE IN COURT.**

(a) Unless in conflict with this [Act], the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern proceedings under this [Act].

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

**SECTION 108. LETTERS OF OFFICE.** The court shall issue appropriate letters of guardianship upon the filing by the guardian of an acceptance of office. The court shall issue appropriate letters of conservatorship upon the filing by the conservator of an acceptance of office and any required bond. Letters of guardianship must indicate whether the guardian was appointed by court order or parental or spousal nomination. Any limitation on the powers of a guardian or conservator must be endorsed on the guardian's or conservator's letters.

**SECTION 109. EFFECT OF ACCEPTANCE OF APPOINTMENT.** By accepting appointment as guardian or conservator, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship which may be instituted by any interested person. The petitioner shall cause notice of any proceeding to be delivered or mailed to the guardian or conservator at the guardian's or conservator's address listed in the court records and to the address then known to the petitioner.

**SECTION 110. TERMINATION OF OR CHANGE IN GUARDIAN'S OR CONSERVATOR'S APPOINTMENT.**

(a) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. Termination of a guardian's or conservator's appointment does not alone affect the guardian's or conservator's liability for previous acts or the obligation to account for money and other assets of the ward or protected person. Resignation of a guardian or conservator does not terminate the guardian's or conservator's appointment until the resignation has been approved by the court. [A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding.]

(b) The ward or protected person or any person interested in the welfare of the ward or protected person may petition for removal of a guardian or conservator on the



ground that removal would be in the best interest of the ward or protected person or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.

(c) The court may appoint a successor guardian or conservator before or at the time of a vacancy. A successor guardian or conservator appointed before a vacancy may assume the duties of office immediately upon the termination of a predecessor's appointment and shall file an acceptance of office within 60 days after the appointment. A successor guardian or conservator succeeds to the predecessor's powers and, in the case of a conservator, to the predecessor's title to the protected person's assets.

#### **SECTION 111. NOTICE.**

(a) Except as 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 or to the person's attorney. Notice must be given:

(1) by mailing a copy of the notice or by personal delivery of the notice upon the person to be notified at least 14 days before the hearing;

(2) or if the address or identity of any person is not and cannot be ascertained with reasonable diligence, by publication of the notice in compliance

with [here refer to local rule of civil procedure on publication of summons.]

(b) Proof of the giving of notice must be made not later than the hearing and filed in the proceeding.

**SECTION 112. WAIVER OF NOTICE.** A person, including a guardian, guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. An individual for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice.

**SECTION 113. GUARDIAN AD LITEM.** At any stage of a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor or other individual if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. The court as a part of the record of the proceeding shall set out its reasons for appointing a guardian ad litem.

**SECTION 114. REQUEST FOR NOTICE; INTERESTED PERSONS.** Upon payment of any required fee, an interested person who desires to be notified before any order is made in a guardianship proceeding, including a proceeding after the appointment of a guardian, or in a protective proceeding, may file a request for notice

with the clerk of the court in which the proceeding is pending. The clerk shall mail a copy of the request to the guardian and to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to proceedings conducted after the filing. Any governmental agency paying or planning to pay benefits to the respondent or protected person is an interested person in protective proceedings.

## **ARTICLE 2**

### **GUARDIANS OF UNEMANCIPATED MINORS**

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

#### **SECTION 202. PARENTAL APPOINTMENT OF GUARDIAN FOR MINOR.**

(a) The parent of an unemancipated minor may appoint a guardian for the minor by will or other writing signed by the parent.

(b) Subject to the right of the minor to object under Section 203, if both parents are dead or adjudged to be incapacitated or the surviving parent has no parental rights or has been adjudged to be incapacitated, a parental appointment becomes effective

when the guardian's acceptance is filed in the court in which a nominating instrument is probated, or, in the case of another nominating instrument, in the court in the [county] in which the minor resides or is present. If both parents are dead or adjudged incapacitated, an appointment by the parent who died or was adjudged incapacitated later in time has priority.

(c) A parental appointment which has been effected by filing the guardian's acceptance under a will probated in the State of the testator's domicile is effective in this State.

(d) Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor, if the minor has attained the age of 14 years, and to the person having custody or care of the minor or the minor's nearest adult relative.

**SECTION 203. OBJECTION BY MINOR TO PARENTAL APPOINTMENT.** A minor who is the subject of a parental appointment and who has attained the age of 14 years may prevent or terminate the parental appointment by filing in the court in which the nominating instrument is filed a written objection to the appointment before it is accepted or within 30 days after receiving notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court of the parental nominee or another suitable person.

**SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR;  
CONDITIONS FOR APPOINTMENT.**

(a) The court may appoint a guardian for an unemancipated minor if the parents consent or if all parental rights have been terminated or suspended by circumstances or previous court order. A guardian appointed pursuant to Section 202 whose appointment has not been prevented or terminated under Section 203 has priority over a guardian appointed by the court, but the court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

(b) If necessary, and on petition or motion, the court may appoint a temporary guardian of an unemancipated minor. Unless otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the authority of a temporary guardian may not exceed six months. The appointment of a temporary guardian for a minor may occur even if the conditions described in subsection (a) have not been met.

**SECTION 205. PROCEDURE FOR JUDICIAL APPOINTMENT OF GUARDIAN  
OF MINOR.**

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

(b) After the filing of a petition, the court shall set a date for hearing, and the petitioner shall give notice of the time and place of hearing of the petition, together with a copy of the petition, to:

(1) the minor, if the minor has attained the age of 14 years and is not the petitioner;

(2) any person alleged to have had the principal care and custody of the minor during the 60 days preceding the filing of the petition;

(3) each living parent of the minor, or if there are none, at least one of the nearest adult relatives, if any can be found;

(4) any person nominated as guardian by the minor if the minor has attained the age of 14 years;

(5) any parental appointee whose appointment has not been prevented or terminated under Section 203; and

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

(c) 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(a) have been met, and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interest of the minor.

(d) If the court determines at any stage of the proceeding, either before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor has attained the age of 14 years. An attorney appointed by the court to represent a minor may be granted the powers and duties of a guardian ad litem.

**SECTION 206. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR; QUALIFICATIONS; PRIORITY OF MINOR'S NOMINEE.** The court may appoint as guardian a person whose appointment would be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained the age of 14 years, unless the court finds the appointment contrary to the best interest of the minor.

**SECTION 207. POWERS AND DUTIES OF GUARDIAN OF MINOR.**

(a) Except as limited by the court, a guardian of a minor ward has the powers

and responsibilities of a parent regarding the ward's support, care, and education, but a guardian is not personally liable for the ward's expenses and is not liable to third persons by reason of the relationship for acts of the ward. A guardian shall at all times act in the ward's best interest and exercise reasonable care, diligence and prudence.

(b) A guardian shall:

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

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

(3) apply any available money of the ward to the ward's current needs for support, care, and education; and

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



(c) A guardian may:

(1) as appropriate, receive money payable for the support of the ward to the ward'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, and money or property of the ward transferred pursuant to Section 103;

(2) if consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the person of the ward and establish the ward's place of dwelling within or without this State;

(3) if no conservator for the estate of the ward has been appointed, bring a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(4) consent to medical or other care, treatment, or advice for the ward without liability by reason of the consent for injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

(5) consent to the marriage or adoption of the ward; and

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

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

(e) A guardian shall report the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the ward's welfare or as required by court rule.

(f) In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor ward or other interested person, may limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Following the same procedure, additional powers may be granted or powers may be removed.

**SECTION 208. TERMINATION OF GUARDIANSHIP; OTHER PROCEEDINGS  
AFTER APPOINTMENT.**

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

(b) The court in the [county] in which the ward currently resides has jurisdiction over proceedings after appointment concurrent with the court that appointed the guardian or in which acceptance of a parental appointment was filed.

(c) If courts may exercise concurrent jurisdiction over a guardianship, the court in which proceedings after appointment are brought shall notify the other court, in this or another State, and after consultation with that court determine whether to assume jurisdiction, retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward.

(d) The ward or any person interested in the welfare of the ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained the age of 14 years and is not the petitioner, the guardian, and any other person as ordered by the court.

**ARTICLE 3  
GUARDIANS OF INCAPACITATED PERSONS**

## **SECTION 301. APPOINTMENT AND STATUS OF GUARDIAN OF**

**INCAPACITATED PERSON.** A person becomes a guardian of an incapacitated person upon appointment by a parent, spouse, or by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

## **SECTION 302. APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON BY WILL OR OTHER WRITING.**

(a) The parent of an unmarried individual who the parent believes is an incapacitated person may appoint by will, or other writing signed by the parent, a guardian of the alleged incapacitated person. If both parents are dead or adjudged incapacitated, a parental appointment becomes effective when, after giving 14 days prior written notice to the alleged incapacitated person, to the person responsible for the person's care or custody, and to the nearest adult relative, the guardian files acceptance of appointment in the court in the [county] in which the alleged incapacitated person resides. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by subsection (d). If both parents are dead or adjudged incapacitated, an effective appointment by the parent who died or was adjudged incapacitated later in time has priority.

(b) The spouse of an individual who the spouse believes is an incapacitated person may appoint by will or other writing signed by the spouse, a guardian of the alleged incapacitated person. If the spouse is dead or adjudged incapacitated, the

appointment becomes effective when, after giving 14 days' prior written notice to the alleged incapacitated person, to the person responsible for the person's care or custody, and to the nearest adult relative, the guardian files acceptance of appointment in the court in the [county] in which the alleged incapacitated person resides. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by subsection (d). An appointment by a spouse has priority over an appointment by a parent.

(c) An appointment effected by filing the guardian's acceptance under a will probated in the State of the decedent's domicile is effective in this State.

(d) Upon the filing in the court in which the guardian's written acceptance was filed of written objection to the appointment by the alleged incapacitated person or any other person interested in the alleged incapacitated person's welfare, the appointment is terminated. An objection does not prevent appointment by the court as guardian of the parental or spousal nominee or another suitable person.

(e) The appointment of a guardian under this section does not affect the capacity of an alleged incapacitated person.

### **SECTION 303. PROCEDURE FOR JUDICIAL APPOINTMENT OF GUARDIAN OF INCAPACITATED PERSON.**

(a) A person interested in an individual's welfare may petition for a finding of incapacity, in whole or in part, and appointment of a limited or unlimited guardian for the individual.

(b) The petition must set forth the petitioner's name, residence and current address, relationship to the respondent, and interest in the appointment, and, to the extent known, set forth 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) the name and address of the respondent's spouse, domestic partner, and adult children, or if none, the respondent's parents and adult brothers and sisters, or if none, at least one of respondent's nearest adult relatives, if any can be found;

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

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

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

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

(7) the reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;

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

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

(c) After the petition is filed, the court shall set a date for hearing, appoint an attorney to represent the respondent in the proceeding unless the respondent is represented by counsel of choice, and appoint a visitor to investigate the appropriateness of the relief requested.

(d) If possible, the court shall appoint as visitor a person with training or experience in the nature of the incapacity alleged. The visitor shall interview the respondent in person, the petitioner, and the proposed guardian, visit the respondent's present dwelling and the place it is proposed that the respondent will dwell if the appointment is made, and make such other investigations as the court directs. The visitor shall promptly file a report in writing to the court which must include:

(1) a summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage;

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

(3) a statement of the qualifications of the proposed guardian;

(4) a statement as to whether the proposed dwelling meets the respondent's individual needs;

(5) a recommendation as to whether a professional evaluation or further



evaluation is necessary; and

(6) such other matters as directed by the court.

(e) At or before the hearing, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders an evaluation, the respondent must be examined by a physician, psychologist, or similarly qualified person appointed by the court. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report must contain:

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

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

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

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

(f) Except as ordered by the court for good cause, a proposed guardian must attend the hearing. The respondent is entitled to be present at the hearing in person. The respondent may present evidence, subpoena and cross-examine witnesses, including any court-appointed physician, psychologist, or other examiner and the visitor [, and has a right to trial by jury]. The hearing may be closed [or without a jury] if the respondent or counsel for the respondent so requests.

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

#### **SECTION 304. NOTICE.**

(a) In a proceeding for the appointment of a guardian, the petitioner shall serve the petition and notice of the hearing on the respondent and on other persons listed in the petition. Notice of the hearing shall be served on the respondent in person, and a failure to give timely notice to the respondent, but not other persons, is jurisdictional. [The notice must be given in plain language and in large type, include a description of the nature, purpose, and consequences of an appointment, and inform the respondent of the respondent's rights at the hearing.]

(b) A petitioner shall give to the ward, the guardian and any other person as ordered by the court, notice of the hearing on a petition for an order after appointment of a guardian and notice of the filing of a guardian's report, together with a copy of the petition or other document. Notice of the filing of a guardian's report shall be mailed no later than 14 days after the filing.

### **SECTION 305. WHO MAY BE GUARDIAN; PRIORITIES.**

(a) Persons not otherwise disqualified must be considered for appointment as guardian in the following order of priority:

(1) a guardian or conservator currently acting for the respondent in this State or elsewhere;

(2) a person nominated by the respondent, if at the time of the nomination the respondent had sufficient capacity to express a preference;

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

(4) the spouse of the respondent or a person nominated by will or other signed writing of a deceased spouse;

(5) an adult child of the respondent;

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

(7) any person with whom the respondent has resided for more than six months before the filing of the petition.

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

(c) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

#### **SECTION 306. FINDINGS; ORDER OF APPOINTMENT.**

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

(1) the respondent is an incapacitated person; and

(2) the respondent's identified needs cannot be met by any less restrictive means, including use of appropriate technological assistance.

(b) Alternatively, the court, on appropriate findings, may treat the petition as one for a protective order under Section 401, enter any other appropriate order, or dismiss the proceeding.

(c) The court, whenever feasible, shall grant a guardian only those powers as are necessitated by the incapacitated person's limitations and demonstrated needs, and shall make appointments and other orders so as to encourage the development of the incapacitated person's maximum self-reliance and independence.

(d) Within 14 days after an appointment, the court shall mail a copy of the order of appointment, together with a notice of the right to request termination or modification, to the ward and all other persons given notice of the petition. [The notice must be given in plain language and in large type and inform the respondent of the respondent's rights.]

#### **SECTION 307. TEMPORARY GUARDIANS.**

(a) If the court finds that adherence to the procedures specified in Section 203 may result in substantial harm to the respondent's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate

petition, and without the necessity of a pending petition for a regular appointment, may appoint a temporary guardian whose authority may not exceed [30] days and who may exercise only those powers specified in the order. Immediately upon receipt of the petition, the court shall appoint an attorney to represent the respondent in the proceeding. Reasonable notice of time and place of hearing must be given to the respondent and to such other persons as the court directs.

(b) If the court finds that an appointed guardian is not effectively performing duties and that the welfare of the ward requires immediate action, it may appoint, with or without prior notice, a temporary guardian for the ward for a specified period not to exceed six months. If an appointment is made without prior notice, the court shall promptly notify the ward of the appointment. Unless otherwise ordered by the court, a temporary guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary guardian has authority.

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

#### **SECTION 308. POWERS AND DUTIES OF GUARDIAN.**

(a) Except as limited by the court, a guardian of an incapacitated person shall

make decisions regarding the ward's support, care, and health. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, to act on the ward's own behalf and to develop or regain the capacity to manage personal affairs. A guardian, to the extent known, shall consider the expressed desires and personal values of the ward when making decisions, and shall otherwise act in the ward's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian shall:

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

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

(3) apply any available money of the ward to the ward's current needs for support and care; and

(4) conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward,

the guardian shall pay to the conservator, at least quarterly, money of the ward to be conserved for the ward's future needs.

(c) A guardian may:

(1) as appropriate, receive money payable for the support of the ward to the ward's 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 consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the person of the ward and establish the ward's place of dwelling within or without this State;

(3) if no conservator for the estate of the ward has been appointed, bring a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(4) consent to medical or other care, treatment, or advice for the ward without liability by reason of the consent for injury to the ward



resulting from the negligence or acts of third persons;

(5) consent to the marriage of the ward; and

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

(d) A guardian is not personally liable for the ward's expenses and is not liable to third persons by reason of the relationship for acts of the ward.

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

(f) A guardian, without prior express authorization of court, may not revoke a power of attorney for health care of which the ward is the principal. If a power of attorney for health care is in effect, absent a court order to the contrary, a health-care decision by the agent takes precedence over that of a guardian.

(g) A ward may only be admitted to a [mental health care institution] pursuant to an involuntary civil commitment order.

(h) The guardian must seek express authorization of the court to move the ward to another State and must notify the court whenever the guardian moves or changes address.

### **SECTION 309. REPORTS; MONITORING OF GUARDIANSHIP.**

(a) A guardian shall report in writing on the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control within 60 days after appointment, at least annually thereafter, and when otherwise ordered by the court. A report must briefly contain:

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

(2) the living arrangements as well as the current address during the reporting period;

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

(4) a summary of the guardian's visits with the ward and activities on the

ward's behalf and the extent to which the ward has participated in decision-making;

(5) if the ward is institutionalized, whether the guardian considers the current plan for care, treatment or habilitation to be in the ward's best interest;

(6) plans regarding future care; and

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

(b) The court may appoint a visitor to review a report, to interview the ward or guardian, and to make such other investigation as the court directs.

(c) The court shall establish a system for monitoring of guardianships, including the filing and review of annual reports.

#### **SECTION 310. TERMINATION OR MODIFICATION OF GUARDIANSHIP.**

(a) A guardianship of an incapacitated person terminates upon the death of the ward or order of the court.

(b) On petition of the ward, the guardian, or other person interested in the ward's

welfare, the court may terminate or modify the type of appointment or powers granted to the guardian if:

(1) the ward no longer needs the assistance or protection of a guardian;

(2) the extent of protection or assistance previously granted is either currently excessive or insufficient;

(3) the ward's capacity to provide for health, care or safety has so changed as to warrant such action; or

(4) no suitable guardian can be secured.

(c) A request for an order may also be made informally to the court and any person who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court. Except as ordered by the court for good cause, before terminating a guardianship the court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court must order such termination unless the guardian proves that continuation of the guardianship is in the best interest of the ward.

## **SECTION 311. PROCEEDINGS SUBSEQUENT TO APPOINTMENT; VENUE.**

(a) The court in the [county] in which the ward currently resides has jurisdiction over proceedings after appointment concurrent with the court that appointed the guardian or in which acceptance of a parental or spousal appointment is filed.

(b) If courts may exercise concurrent jurisdiction over a guardianship, the court in which proceedings after appointment are brought shall notify the other court, in this or another State, and after consultation with that court, determine whether to assume jurisdiction, retain jurisdiction, or transfer the proceedings to the other court, whichever is in the best interest of the ward.

## **ARTICLE 4**

### **PROTECTION OF PROPERTY**

#### **SECTION 401. PROTECTIVE PROCEEDINGS.**

(a) Upon petition and after notice and hearing, the court may appoint a conservator or make any other protective order as provided in this section.

(b) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that the minor owns money or property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be jeopardized or prevented due to 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.

(c) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of an adult individual, or of a minor for reasons other than age, if the court determines that:

(1) the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance, or because the individual is an absentee; and

(2) the person has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, and welfare of the individual or those entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.

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

(1) exclusive jurisdiction to determine the need for a conservator or

other protective order;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person, the protected person's dependents, or other claimants; and

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

#### **SECTION 403. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER.**

(a) An individual or any person interested in the individual's estate, affairs, or welfare, including a parent, guardian, custodian, or any person who would be adversely affected by lack of effective management of the individual's property and business affairs, may petition for the appointment of a conservator for the individual or other appropriate protective order.

(b) The petition must set forth the petitioner's name, residence and current address, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state 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 is being brought because of an alleged impairment in the respondent's ability to receive and evaluate information, a brief description of the nature and extent of the respondent's alleged impairment;

(3) if the petition alleges that the respondent is an absentee, 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 spouse, domestic partner, and adult children, or if none, the respondent's parents and adult brothers and sisters, or if none, at least one of the respondent's nearest adult relatives, if any can be found;

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



(6) the name and address of any legal representative for the respondent;

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

(8) the reason why appointment of a conservator or other protective order is in the best interest of the respondent.

(c) If the appointment of a conservator is requested, the petition must also set forth to the extent known:

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

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

(3) the type of conservatorship requested, and if an unlimited conservatorship, the reason why limited conservatorship is inappropriate, and if a limited conservatorship, the powers to be granted to the limited conservator or property to be placed under the conservator's control.

#### **SECTION 404. NOTICE.**

(a) In a proceeding for the appointment of a conservator or other protective order, the petitioner shall serve the petition and notice of the hearing on the respondent, if the respondent has attained the age of 14 years and is not the petitioner, and on other persons listed in the petition. Failure to give notice to the respondent, but not other persons, is jurisdictional. [The notice must be given in plain language and in large type, inform the respondent of the respondent's rights at the hearing, and if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment.]

(b) A petitioner shall serve notice of hearing on a petition for appointment of a conservator or other protective order on the respondent in person, but if the respondent's whereabouts are unknown or personal service is otherwise impossible, notice to the respondent must be given by publication.

(c) A petitioner shall give the protected person, if the protected person has attained the age of 14 years and is not an absentee, any conservator of the protected person's estate, and any other person as ordered by the court, notice of the hearing on a petition for an order after appointment of a conservator or other protective order and notice of the filing of an inventory, accounting, or plan of conservatorship, together with a copy of the petition or other document. Notice of the filing of an inventory, accounting, or plan of conservatorship shall be mailed no later than 14 days after the

filing.

**SECTION 405. PROCEDURE CONCERNING HEARING AND ORDER ON ORIGINAL PETITION.**

(a) Upon receipt of a petition for appointment of a conservator or other protective order for the reason that the respondent is a minor, the court shall set a date for hearing. If the court determines at any stage of the proceeding, either before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor has attained the age of 14 years. An attorney appointed by the court to represent a minor may be granted the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for an adult individual, or for a minor for reasons other than age, the court shall (1) set a date for hearing, and (2) appoint an attorney to represent the respondent in the proceeding unless the respondent is represented by counsel of choice.

(c) If the petition is filed because of an alleged impairment in the ability of the respondent to receive and evaluate information or communicate decisions, the court shall determine whether the appointment of a visitor and examination of the respondent

by a physician, psychologist, or similarly qualified person is necessary to enable the court [or jury] to make an informed decision on the petition. If possible, the court shall appoint as visitor a person with training or experience in the type of impairment alleged. The visitor shall interview the respondent in person, the petitioner, and the proposed conservator, if any, and visit the respondent's present dwelling and the place it is proposed that the respondent will dwell if the appointment is made, and make such other investigations as the court directs.

(d) Except as ordered by the court for good cause, a proposed conservator must attend the hearing. The respondent is entitled to be present at the hearing in person. The respondent may present evidence, subpoena and cross-examine witnesses, including any court-appointed physician, psychologist, or other examiner and any visitor [, and has the right to trial by jury]. The hearing may be closed [or without a jury] if the respondent or counsel for the respondent so requests.

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

(f) If the petition was brought for the reason that the respondent is a minor, after the hearing, upon finding that the appointment of a conservator or other protective

order is in the best interest of the minor, the court shall make an appointment or other appropriate protective order.

(g) If the petition was brought for an adult individual, or for a minor for reasons other than age, after a hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established by clear and convincing evidence, and that the respondent's need for protection cannot be met by any less restrictive means, the court shall make an appointment or other appropriate protective order.

(h) Within 14 days after an appointment, the court shall mail a copy of the order of appointment, together with a statement of the right to seek termination or modification to the protected person, if the protected person has attained the age of 14 years and is not an absentee, and to all other persons given notice of the petition. [The notice must be given in plain language and in large type and inform the respondent of the respondent's rights.]

(i) A determination that a basis for appointment of a conservator or other protective order exists does not affect the capacity of the protected person.

#### **SECTION 406. PERMISSIBLE COURT ORDERS.**

(a) The court has the following powers that may be exercised directly or through

a conservator in respect to the estate and business affairs of a protected person:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court may take steps to preserve and apply the property of the respondent as may be required for the support of the respondent or respondent's dependents, and may appoint a special conservator to assist in that task.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor for reasons of age, the court has all those powers over the estate and business affairs of the minor which are or may be necessary for the best interest of the minor and members of the minor's immediate family.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an adult individual, or of a minor for reasons other than age, the court, for the benefit of the protected person and members of the protected person's immediate family, has all the powers over the estate and business affairs which the protected person could exercise if present and not under conservatorship or other protective order, except the power to make a

will. Those powers include the power:

(i) to make gifts;

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

(iii) to exercise or release powers held by the protected person as trustee, personal representative, custodian for a minor, conservator, or donee of a power of appointment;

(iv) to enter into contracts;

(v) to create revocable or irrevocable trusts of property of the estate which may extend beyond the disability or life of the protected person;

(vi) to exercise options of the protected person to purchase securities or other property;

(vii) to exercise rights to elect options and change beneficiaries

under insurance policies and annuities and to surrender the policies and annuities for their cash value; and

(viii) to exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

(b) The court, in exercising any of the powers in subsection(a)(3), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The court shall also consider the financial needs of the protected person and the needs of legal dependents for support, possible reduction of income, estate, inheritance or other tax liabilities, eligibility for governmental assistance, the protected person's previous pattern of giving or level of support, the existing estate plan, the protected person's probable life expectancy, the probability that the conservatorship will terminate before the protected person's death, and any other factors which the court considers relevant.

#### **SECTION 407. PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS AUTHORIZED.**

(a) If it is established that a basis exists for an appointment or other protective order with respect to an individual, the court, without appointing a conservator, may 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. Protective arrangements include payment, delivery, deposit, or retention of money or property; sale, mortgage, lease, or other transfer of property; purchase of an annuity; contracting for life care, a deposit contract, or a contract for training and education; or addition to or establishment of a suitable trust [, including a trust created under the Uniform Custodial Trust Act].

(b) If it is established that a basis exists for an appointment or other protective order with respect to the individual, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's property and business affairs if the court determines that the transaction is in the best interest of the protected person.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The special conservator has the authority conferred by the order and shall serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

## **SECTION 408. WHO MAY BE CONSERVATOR; PRIORITIES.**

(a) Persons not otherwise disqualified must be considered for appointment in the following order of priority:

(1) a conservator, guardian, or other like fiduciary currently acting for the respondent in this State or elsewhere;

(2) a person nominated by the respondent if the respondent has attained the age of 14 years and at the time of the nomination had sufficient capacity to express a preference;

(3) an agent appointed by the respondent under a durable power of attorney;

(4) the spouse of the respondent or a person nominated by will or other signed writing of a deceased spouse;

(5) an adult child of the respondent;

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

(7) any person with whom the respondent has resided for more than six months before the filing of the petition.

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

(c) A person having priority (1), (4), (5), or (6) may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute. With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the protected person, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

**SECTION 409. BOND.** The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation of power, lacks power to sell or convey without the court's authorization. The court, in lieu of sureties on a bond, may accept

other collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

#### **SECTION 410. TERMS AND REQUIREMENTS OF BONDS.**

(a) The following requirements and provisions apply to any bond required under Section 409:

(1) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party respondent. Notice of any proceeding must be delivered to the surety or mailed by registered or certified mail to the address listed with the court at the place where the bond is filed and to any other address as then known to the petitioner.

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

(4) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

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

**SECTION 411. COMPENSATION AND EXPENSES.** If not otherwise compensated for services rendered, any visitor, attorney, physician, conservator, or special conservator appointed in a protective proceeding and any attorney whose services resulted in a protective order or in an order that was beneficial to a protected person's estate is entitled to reasonable compensation from the estate.

**SECTION 412. PETITIONS FOR ORDERS SUBSEQUENT TO APPOINTMENT.**

(a) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

(1) requiring bond or collateral or additional bond or collateral, or reducing bond;

(2) requiring an accounting for the administration of the protected

person's estate;

(3) directing distribution;

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

(5) granting other appropriate relief.

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

#### **SECTION 413. GENERAL DUTY OF COURT AND CONSERVATOR.**

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

(b) A conservator shall exercise authority only as necessitated by the protected  
person's limitations, and, to the extent possible, shall encourage the protected person  
to participate in decisions, to act in the protected person's own behalf, and to develop  
or regain the ability to manage the protected person's estate and business affairs. A

conservator shall consider to the extent known, the expressed desires and personal values of the protected person when making decisions, and shall otherwise act as a fiduciary and observe the standards of care applicable to a fiduciary.

#### **SECTION 414. INVENTORY; CONSERVATORSHIP PLAN; RECORDS.**

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

(b) Within 60 days after appointment, a conservator shall file a plan with the appointing court setting forth the services necessary to manage the estate of the protected person, and any plans for investment or expenditure of money.

(c) The conservator shall keep suitable records of the administration of the estate, and with the approval of the court, exhibit the same on request of any interested person.

#### **SECTION 415. ACCOUNTS; APPOINTMENT OF VISITOR; MONITORING.**

(a) A conservator shall account to the court for administration of the estate not less than annually unless the court directs otherwise, upon resignation or removal, upon termination of the conservatorship, and at other times as the court directs.

Subject to appeal or vacation within the time permitted, an order after notice and hearing allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered. An order, after notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical examination of the estate, to be made in any manner the court directs.

(b) An accounting must contain:

(1) a listing of the estate under the conservator's control and a listing of the receipts, disbursements, and distributions during the reporting period;

(2) the services provided to the protected person; and

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

(c) The court may appoint a visitor to review an accounting or conservatorship plan, interview the protected person or conservator, and make such other investigation as the court directs.



(d) The court shall establish a system for monitoring of conservatorships, including the filing and review of conservator's accountings.

#### **SECTION 416. CONSERVATORS; TITLE BY APPOINTMENT.**

(a) The appointment of a conservator vests in the conservator title as trustee to all property of the protected person, or to the part thereof specified in the order, held at the time of appointment or thereafter acquired.

(b) The interest of the protected person in property vested in a conservator by this section is not transferrable or assignable by the protected person. An attempted transfer or assignment by the protected person, though ineffective to affect property rights, may generate a claim for restitution or damages which, subject to presentation and allowance, may be satisfied as provided in Section 423.

(c) Property vested in a conservator by this section and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed pursuant to Section 423.

#### **SECTION 417. RECORDING OF CONSERVATOR'S LETTERS.**

(a) Letters of conservatorship are evidence of transfer of all assets of a protected person to the conservator or the part thereof specified in the letters. An

order terminating a conservatorship is evidence of transfer of all assets subjected to the conservatorship from the conservator to the protected person, or to successors of the protected person.

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

**SECTION 418. SALE, ENCUMBRANCE, OR TRANSACTION INVOLVING CONFLICT OF INTEREST.** Any sale or encumbrance of property subject to a conservatorship to a conservator, the spouse, agent, attorney of a conservator, or any organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator which is affected by a substantial conflict between fiduciary and personal interests is voidable unless the transaction is approved by the court after notice as directed by the court.

**SECTION 419. PROTECTION OF PERSONS DEALING WITH CONSERVATORS.**

(a) A person who in good faith either assists or deals with a conservator for value in any transaction other than those requiring a court order as provided in Section 406 is protected as if the conservator properly exercised the power. The fact that a

person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters as provided in Section 108 are effective as to third persons. A person is not bound to see to the proper application of assets of the estate paid or delivered to a conservator.

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

#### **SECTION 420. POWERS OF CONSERVATOR IN ADMINISTRATION.**

(a) Except as limited by the court, a conservator has all of the powers conferred in this section and any additional powers conferred by law on trustees in this State. In addition, a conservator of the estate of an unemancipated minor, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 207 until the minor attains majority or is emancipated, but the parental rights so conferred do not preclude the appointment of a guardian.

(b) A conservator, acting reasonably in efforts to accomplish the purpose of the appointment, may act without court authorization or confirmation, to

(1) collect, hold, and retain assets of the estate including real property in another state, until the conservator judges that disposition of an asset should be made, and the assets may be retained even if they include an asset in which the conservator is personally interested;

(2) receive additions to the estate;

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

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

(5) invest and reinvest funds and assets of the estate as would a trustee;

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

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

abandon an estate asset;

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

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

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

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

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

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

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

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

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

(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

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

(19) borrow money to be repaid from the estate or otherwise; advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration

of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;

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

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

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

(23) pay any sum distributable to a protected person or dependent of the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee to the guardian of the distributee, or, if there is no guardian, to a relative or other person having custody of the

distributee;

(24) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties; act upon their recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

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

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

#### **SECTION 421. DISTRIBUTIVE DUTIES AND POWERS OF CONSERVATOR.**

(a) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and dependents in accordance with the following principles:

(1) The conservator shall consider recommendations relating to



the appropriate standard of support, education, and benefit for the protected person or dependent made by a guardian, if any, and if the protected person is an unemancipated minor, the conservator shall consider recommendations made by a parent. The conservator may not be surcharged for sums paid to persons furnishing support, education, or care to the protected person or a dependent pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support or the recommendations are clearly not in the best interest of the protected person.

(2) The conservator shall expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person and dependents with due regard to:

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

(ii) the accustomed standard of living of the protected person and

dependents; and

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

(3) The conservator may expend money of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.

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

(b) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts that do not exceed in total for any year 20 percent of the income from the estate.

(c) Unless the conservatorship was created for reasons other than age, when a minor attains majority, the conservator, after meeting all claims and expenses of administration, shall pay over and distribute all money and other property to the formerly protected person as soon as possible.

(d) If satisfied that the impairment of an adult protected person has ceased, the conservator, after meeting all claims and expenses of administration, shall pay over and distribute all money and other property to the formerly protected person as soon as possible.

(e) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the executor or beneficiary named in the will of the delivery, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If a personal representative has not been appointed within 40 days after the death of the protected person and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative in order to be able to proceed to administer and distribute the decedent's estate. Upon application for an order granting the powers of a personal representative to a conservator, after notice given by the conservator to any person nominated personal representative by any will of which the applicant is aware, the court may grant the application upon

determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section has the effect of an order of appointment of a personal representative [as provided in Section 3-308 and Parts 6 through 10 of Article III of the Uniform Probate Code], but the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without retransfer to the conservator as personal representative.

#### **SECTION 422. PRESERVATION OF ESTATE PLAN; RIGHT TO EXAMINE.**

(a) In investing the estate, selecting assets of the estate for distribution, and utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, the conservator and the court shall take into account any estate plan of the protected person known to them, and may examine the will and any other governing instrument of the protected person.

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

#### **SECTION 423. CLAIMS AGAINST PROTECTED PERSON.**

(a) A conservator may pay or secure from the estate claims against the estate or against the protected person arising before or after the conservatorship upon their presentation and allowance in accordance with the priorities stated in subsection (d).

A claim may be presented by either of the following methods:

(1) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and mailing address of the claimant, and the amount claimed; or

(2) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of court and deliver or mail a copy of the statement to the conservator.

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

(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitation and, upon due proof, procure an order for its allowance, payment, or security from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party shall give notice of the proceeding to the conservator if the proceeding could result in creating a claim against the estate.

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

(1) costs and expenses of administration;

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

(3) claims incurred by the conservator for care, maintenance, and education previously provided to the protected person or the protected person's dependents;

(4) claims arising before the conservatorship; and

(5) all other claims.

(e) No preference may be given in the payment of any claim over any other claim of the same class, and a claim due and payable is not entitled to a preference over claims not due, but if it appears that the assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to give a mortgage or other security on the conservatorship estate to secure payment at some future date of any or all claims in class 5.

#### **SECTION 424. PERSONAL LIABILITY OF CONSERVATOR.**

(a) Unless otherwise provided in the contract, 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 the representative capacity and identify the estate in the contract.

(b) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if personally at fault.

(c) Claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate or torts committed

in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

(d) Any 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.

#### **SECTION 425. TERMINATION OR MODIFICATION OF PROCEEDINGS.**

(a) A conservatorship terminates upon the death of the protected person or order of the court. Unless the conservatorship was created for reasons other than age, a conservatorship created for a minor also terminates upon the protected person's attainment of majority.

(b) On petition of the protected person, the conservator, or other person interested in the protected person's welfare, the court may terminate or modify the type of appointment or powers granted to the conservator if:

(1) the protected person no longer needs the assistance or protection of a conservator;

(2) the extent of protection or management previously granted is either



currently excessive or insufficient;

(3) the protected person's ability to manage the estate and business affairs has so changed as to warrant such action; or

(4) no suitable conservator can be secured.

(c) A request for an order may also be made informally to the court and any person who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court. Except as ordered by the court for good cause, before terminating a conservatorship the court shall follow the same procedures to safeguard the rights of the protected person as apply to an original petition for a protective order. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order termination unless the conservator proves that continuation of the conservatorship is in the best interest of the protected person.

(d) Upon termination, title to assets of the estate passes to the former protected person or to successors. The order of termination must provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer.

## **SECTION 426. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO**

## **FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDINGS.**

(a) A person indebted to a protected person or having possession of property or of an instrument evidencing a debt, stock, or other claim belonging to a protected person may pay or deliver it to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person upon being presented with proof of appointment and an affidavit made by or on behalf of the fiduciary stating:

(1) that a protective proceeding relating to the protected person is not pending in this State; and

(2) that the foreign fiduciary is entitled to payment or to receive delivery.

(b) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

**SECTION 427. FOREIGN CONSERVATOR; PROOF OF AUTHORITY; BOND; POWERS.** If a conservator has not been appointed in this State and a petition in a protective proceeding is not pending in this State, a conservator appointed in the State in which the protected person resides may file in a court of this State in a [county] in

which property belonging to the protected person is located, authenticated copies of letters of appointment and of any bond. Thereafter, the domiciliary foreign conservator may exercise as to assets in this State all powers of a conservator appointed in this State and may maintain actions and proceedings in this State subject to any conditions imposed upon non-resident parties generally.

## **ARTICLE 5**

### **MISCELLANEOUS PROVISIONS**

**SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This [Act] shall be applied and construed to make uniform the law with respect to the subject of this [Act] among States enacting it.

**SECTION 502. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.** Unless displaced by the particular provisions of this [Act], the principles of law and equity supplement its provisions.

**SECTION 503. SEVERABILITY.** If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**SECTION 504. CONSTRUCTION AGAINST IMPLIED REPEAL.** This [Act] is a general act intended as a unified coverage of its subject matter and no subsequent legislation shall be construed to repeal by implication any part of this [Act] if that construction reasonably can be avoided.

**SECTION 505. EFFECTIVE DATE.** This Act takes effect \_\_\_\_\_.

**SECTION 506. REPEAL.** The following acts and parts of acts are repealed:

(1)

(2)

(3)

**SECTION 507. SAVING AND TRANSITIONAL PROVISIONS.**

**SECTION 508. APPLICATION TO EXISTING RELATIONSHIPS.**