

D R A F T
FOR APPROVAL

UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
SAN DIEGO, CALIFORNIA
JULY 14 - JULY 20, 2017

UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT

Copyright © 2017
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

June 19, 2017

**DRAFTING COMMITTEE ON UNIFORM GUARDIANSHIP,
CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

DAVID M. ENGLISH, University of Missouri-Columbia School of Law, 203 Hulston Hall,
Columbia, MO 65211, *Chair*

MARY M. ACKERLY, 782 Bantam Rd., P.O. Box 815, Bantam, CT 06750-0815

WILLIAM W. BARRETT, 600 N. Emerson Ave., P.O. Box 405, Greenwood, IN 46142

WILLIAM S. DONALDSON, Alabama Court of Civil Appeals, 300 Dexter Ave., Tuscaloosa,
AL 36104

MARC S. FEINSTEIN, 431 N. Phillips Ave., Suite 301, Sioux Falls, SD 57104

LYLE W. HILLYARD, 595 S. Riverwoods Pkwy., Suite 100, Logan, UT 84321

THOMAS L. JONES, 907 Indian Hills Dr., Tuscaloosa, AL 35406-2226

PAUL M. KURTZ, 362 W. Cloverhurst Ave., Athens, GA 30606

JANICE L. PAULS, Kansas House, 101 E. 11th Ave., Hutchinson, KS 67501

WILLIAM J. QUINLAN, 233 S Wacker Dr., Suite 2210, Chicago, IL 60606-7147, Chicago, IL
60606-7147

V. LOWRY SNOW, 912 W. 1600 S., Bldg. B#200, St. George, UT 84770

KAREN R. WASHINGTON, 2214 Main St., Dallas, TX 75201

NINA A. KOHN, Syracuse University College of Law, 420 Dineen Hall, Syracuse, NY 13244,
Reporter

EX OFFICIO

RICHARD T. CASSIDY, 1233 Shelburne Rd., Suite D5, South Burlington, VT 05403-7753,
President

NORA WINKELMAN, Office of Chief Counsel, House Democratic Caucus, Pennsylvania
House of Representatives, Main Capitol Building, Room 620, Harrisburg, PA 17120,
Division Chair

AMERICAN BAR ASSOCIATION ADVISORS

CATHERINE A. SEAL, P.O. Box 2682, 90 S. Cascade Ave., Suite 480, Colorado Springs, CO
80901-2882, *ABA Advisor*

CHERYL CESARIO, 1004 Washington St., Evanston, IL 60202, *ABA Section Advisor*

KRISTIN B. GLEN, City University of New York School of Law, 2 Court Sq., Long Island, NY
11101-4356, *ABA Section Advisor*

CORY KALLHEIM, 2519 Connecticut Ave. NW, Washington, DC 20008, *ABA Section Advisor*

EDDIE J. VARON LEVY, 2276 Torrence Blvd., Torrence, CA 90501-2518, *ABA Section
Advisor*

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

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

TABLE OF CONTENTS

Prefatory Note	1
----------------------	---

**ARTICLE 1
GENERAL PROVISIONS**

SECTION 101. SHORT TITLE.	5
SECTION 102. DEFINITIONS.....	5
SECTION 103. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY APPLICABLE. ...	9
SECTION 104. SUBJECT-MATTER JURISDICTION.....	9
SECTION 105. TRANSFER OF PROCEEDING.....	11
SECTION 106. VENUE.....	12
SECTION 107. PRACTICE IN COURT.	14
SECTION 108. LETTERS OF OFFICE.....	14
SECTION 109. EFFECT OF ACCEPTANCE OF APPOINTMENT.....	15
SECTION 110. CO-GUARDIAN, CO-CONSERVATOR.....	16
SECTION 111. JUDICIAL APPOINTMENT OF SUCCESSOR GUARDIAN OR SUCCESSOR CONSERVATOR.....	16
SECTION 112. EFFECT OF DEATH, REMOVAL, OR RESIGNATION OF GUARDIAN OR CONSERVATOR.....	18
SECTION 113. NOTICE OF HEARING.....	19
SECTION 114. WAIVER OF NOTICE.....	20
SECTION 115. GUARDIAN AD LITEM.	20
SECTION 116. REQUEST FOR NOTICE.	21
SECTION 117. DISCLOSURE OF BANKRUPTCY OR CRIMINAL HISTORY.	21
SECTION 118. MULTIPLE APPOINTMENTS OR NOMINATIONS.....	22
SECTION 119. COMPENSATION AND EXPENSES; IN GENERAL.....	23
SECTION 120. COMPENSATION OF GUARDIAN OR CONSERVATOR.....	24
SECTION 121. LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP.....	26
SECTION 122. PETITION AFTER APPOINTMENT FOR INSTRUCTION OR RATIFICATION.....	26
SECTION 123. THIRD-PARTY ACCEPTANCE OF AUTHORITY OF GUARDIAN OR CONSERVATOR.....	27
SECTION 124. USE OF AGENT BY GUARDIAN OR CONSERVATOR.	29
SECTION 125. TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR.....	31
SECTION 126. REGISTRATION OF ORDER; EFFECT	33
SECTION 127. GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.....	35
[SECTION 128. DELEGATION BY PARENT.]	37

[ARTICLE] 2
GUARDIANSHIP OF MINOR

SECTION 201. BASIS FOR APPOINTMENT OF GUARDIAN FOR MINOR.....	38
SECTION 202. PETITION FOR APPOINTMENT OF GUARDIAN FOR MINOR.	38
SECTION 203. NOTICE AND HEARING.	40
SECTION 204. ATTORNEY FOR MINOR OR PARENT.....	42
SECTION 205. PRESENCE AT HEARING	43
SECTION 206. ORDER OF APPOINTMENT; PRIORITY OF NOMINEE; LIMITED GUARDIANSHIP FOR MINOR.	43
SECTION 207. STANDBY GUARDIAN FOR MINOR.	45
SECTION 208. EMERGENCY GUARDIAN FOR MINOR.	48
SECTION 209. DUTIES OF GUARDIAN FOR MINOR.....	49
SECTION 210. POWERS OF GUARDIAN FOR MINOR.....	50
SECTION 211. REMOVAL OF GUARDIAN FOR MINOR, TERMINATION OF GUARDIANSHIP; APPOINTMENT OF SUCCESSOR.	51

[ARTICLE] 3
GUARDIANSHIP OF ADULT

SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN FOR ADULT.....	53
SECTION 302. PETITION FOR APPOINTMENT OF GUARDIAN FOR ADULT.....	54
SECTION 303. NOTICE AND HEARING.	59
SECTION 304. APPOINTMENT OF [VISITOR].....	60
SECTION 305. APPOINTMENT AND ROLE OF ATTORNEY FOR ADULT.	63
SECTION 306. PROFESSIONAL EVALUATION.	64
SECTION 307. PRESENCE AND RIGHTS AT HEARING.	65
SECTION 308. CONFIDENTIALITY OF RECORDS.	66
SECTION 309. WHO MAY BE GUARDIAN OF ADULT: PRIORITIES.....	68
SECTION 310. ORDER OF APPOINTMENT.....	70
SECTION 311. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.	73
SECTION 312. EMERGENCY GUARDIAN.	74
SECTION 313. DUTIES OF GUARDIAN FOR ADULT.....	76
SECTION 314. POWERS OF GUARDIAN FOR ADULT.....	78
SECTION 315. SPECIAL LIMITATIONS ON GUARDIAN'S POWER.	81
SECTION 316. GUARDIAN'S PLAN.	82
SECTION 317. GUARDIAN'S REPORT; MONITORING OF GUARDIANSHIP.	84
SECTION 318. REMOVAL OF GUARDIAN FOR ADULT; APPOINTMENT OF SUCCESSOR.....	86
SECTION 319. TERMINATION OR MODIFICATION OF GUARDIANSHIP FOR ADULT.....	87

[ARTICLE] 4
CONSERVATORSHIP

SECTION 401. BASIS FOR APPOINTMENT OF CONSERVATOR.....	89
SECTION 402. PETITION FOR APPOINTMENT OF CONSERVATOR.....	90
SECTION 403. NOTICE AND HEARING.	94
SECTION 404. PROPERTY WHILE PROCEEDING IS PENDING.....	94
SECTION 405. APPOINTMENT AND ROLE OF [VISITOR].....	95
SECTION 406. APPOINTMENT AND ROLE OF ATTORNEY.....	97
SECTION 407. PROFESSIONAL EVALUATION.	98
SECTION 408. PRESENCE AND RIGHTS AT HEARING.	99
SECTION 409. CONFIDENTIALITY OF RECORDS.	101
SECTION 410. WHO MAY BE CONSERVATOR: PRIORITIES.	102
SECTION 411. ORDER OF APPOINTMENT.....	103
SECTION 412. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.	105
SECTION 413. EMERGENCY CONSERVATOR	106
SECTION 414. POWERS OF CONSERVATOR REQUIRING COURT APPROVAL.	107
SECTION 415. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.....	109
SECTION 416. BOND; ALTERNATIVE ASSET-PROTECTION ARRANGEMENT.	110
SECTION 417. TERMS AND REQUIREMENTS OF BOND.	111
SECTION 418. DUTIES OF CONSERVATOR.....	111
SECTION 419. CONSERVATOR’S PLAN.	114
SECTION 420. INVENTORY; RECORDS.....	116
SECTION 421. ADMINISTRATIVE POWERS OF CONSERVATOR NOT REQUIRING COURT APPROVAL.....	116
SECTION 422. DISTRIBUTION FROM CONSERVATORSHIP ESTATE.	120
SECTION 423. CONSERVATOR’S REPORT AND ACCOUNTING; MONITORING.	121
SECTION 424. ATTEMPTED TRANSFER OF PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.	124
SECTION 425. TRANSACTION INVOLVING CONFLICT OF INTEREST.	124
SECTION 426. PROTECTION OF PERSON DEALING WITH CONSERVATOR.....	125
SECTION 427. DEATH OF INDIVIDUAL SUBJECT TO CONSERVATORSHIP.....	125
SECTION 428. PRESENTATION AND ALLOWANCE OF CLAIM.	127
SECTION 429. PERSONAL LIABILITY OF CONSERVATOR.....	129
SECTION 430. REMOVAL OF CONSERVATOR; APPOINTMENT OF SUCCESSOR.	129
SECTION 431. TERMINATION OR MODIFICATION OF CONSERVATORSHIP.....	130
SECTION 432. TRANSFER FOR BENEFIT OF MINOR WITHOUT APPOINTMENT OF CONSERVATOR.	133

[ARTICLE] 5
OTHER PROTECTIVE ARRANGEMENTS

SECTION 501. AUTHORITY FOR PROTECTIVE ARRANGEMENT.	134
SECTION 502. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.	134
SECTION 503. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.	135
SECTION 504. PETITION.....	138
SECTION 505. NOTICE AND HEARING.	141
SECTION 506. APPOINTMENT OF [VISITOR].	141
SECTION 507. APPOINTMENT AND ROLE OF ATTORNEY.....	144
SECTION 508. PROFESSIONAL EVALUATION.	145
SECTION 509. PRESENCE AND RIGHTS AT HEARING.	146
SECTION 510. NOTICE OF ORDER.	147
SECTION 511. CONFIDENTIALITY OF RECORDS.	147
SECTION 512. APPOINTMENT OF [MASTER].	149

[ARTICLE] 6
FORMS

SECTION 601. USE OF FORMS.	149
SECTION 602. PETITION FOR GUARDIANSHIP FOR MINOR.....	149
SECTION 603. PETITION FOR GUARDIANSHIP OR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT, CONSERVATORSHIP OR PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.....	151
SECTION 604. ORDER DENYING GUARDIANSHIP OR CONSERVATORSHIP FOR ADULT.	155
SECTION 605. ORDER APPOINTING GUARDIAN OR CONSERVATOR FOR ADULT.	157
SECTION 606. NOTIFICATION OF RIGHTS FOR ADULT SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP.....	162

[ARTICLE] 7
MISCELLANEOUS PROVISIONS

SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	163
SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.	163
SECTION 703. APPLICABILITY.....	163
[SECTION 704. SEVERABILITY.]	164
SECTION 705. REPEALS; CONFORMING AMENDMENTS.	164
SECTION 706. EFFECTIVE DATE.....	164

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

3
4 **Prefatory Note**

5
6 The Act replaces the Uniform Guardianship and Protective Proceedings Act (UGPPA) approved
7 by the National Conference of Commissioners on Uniform State Laws in 1997. It may be
8 enacted either as a free-standing Act or as part of the Uniform Probate Code (UPC). States
9 enacting the Act as part of the UPC should consult Article V of the UPC for the official text of
10 the Act as conformed to the Code's definitions and general provisions.

11
12 The Act covers guardianships and conservatorships for both minors and adults, as well as
13 protective arrangements instead of guardianship for adults and protective arrangements instead
14 of conservatorship for both adults and minors. It consists of seven articles. Article 1 contains
15 definitions and general provisions applicable to guardianships, conservatorships, and protective
16 arrangements instead of guardianship and conservatorship. Article 2 governs guardianships for
17 minors. Article 3 governs guardianships for adults. Article 4 covers conservatorships for both
18 minors and adults. Article 5 governs protective arrangements instead of guardianship or
19 conservatorship. Article 6 contains optional forms that can be used by persons petitioning for
20 guardianship, conservatorship, or a protective arrangement instead of guardianship or
21 conservatorship. It also contains forms that courts can use to render orders as a result of such
22 petitions or to notify individuals subject to guardianship or conservatorship of their rights.
23 Article 7 contains an effective date provision and boilerplate provisions common to Uniform
24 Acts.

25
26 The revised Act is the result of the work of the Drafting Committee which, in consultation with a
27 broad range of observers representing numerous constituencies, was charged with revising
28 UGPPA to update the Act including by implementing some of the recommendations of the Third
29 National Guardianship Summit (NGS) held in 2011. The Drafting Committee's work built upon
30 two earlier versions of the Act: the 1982 UGPPA which significantly advanced guardianship law
31 by recognizing limited guardianship, and the 1997 UGPPA which further advanced the law by,
32 among other things, adopting a functional definition of capacity and emphasizing that
33 guardianship and conservatorship should be options of last resort. The 1982 UGPPA in turn
34 build upon the provisions of Article V of the UPC as originally approved in 1969.

35
36 The revised Act has three overarching aims.

37
38 First, it aims to reflect the person-centered philosophy endorsed by the NGS. This approach is
39 evidenced in the revised Act's updated terminology. The terms "ward" and "incapacitated
40 person," which were rejected by the NGS as demeaning and even offensive, are eliminated and
41 the terms "adult subject to guardianship" and "individual subject to conservatorship" used
42 instead. The person-centered approach is also evident in new provisions requiring that
43 individuals subject to guardianship or conservatorship be given meaningful notice of their rights
44 and how to assert them; provisions that require individuals subject to guardianship and
45 conservatorship be involved in decisions about their lives; the addition of requirements that
46 guardians create person-centered plans; and provisions to facilitate court monitoring of

1 compliance with these plans.

2
3 Second, it aims to create a set of legal rules that advance the key objectives embraced by the
4 NGS and that otherwise successfully address key challenges surrounding guardianships and
5 conservatorships. These objectives focus on protecting and respecting the rights and interests of
6 both individuals alleged to need a guardian or conservator and individuals subject to
7 guardianship or conservatorship. This includes ensuring that the least restrictive means are used
8 to protect an individual alleged to need a guardianship or conservatorship, providing better
9 guidance to guardians and conservators, and helping courts to do a better job monitoring
10 guardians and conservators.

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

21
22 With these overarching objectives in mind, there are a number of more specific changes that are
23 likely to be particularly noteworthy to those considering the Act’s adoption.

24
25 First, the revised Act includes clearer guidance to appointees, many of whom are lay people.
26 Specifically, the Act clarifies how appointees are to make decisions, including decisions about
27 particularly fraught issues such as medical treatment and residential placement. Notably, these
28 clarifications are consistent with the person-centered approach embraced by the Act in that
29 appointees are given specific guidance as to involving the individual in decisions.

30
31 Second, the revised Act recognizes the role of, and encourages the use of, less restrictive
32 alternatives, including supported decision-making and single-issue court orders instead of
33 guardianship and conservatorship. To this end, the revised Act provides that neither
34 guardianship nor conservatorship is appropriate where the person’s needs could be met with
35 technological assistance or supported decision-making. It also provides for protective
36 arrangements instead of guardianship or conservatorship; the 1997 version, by contrast, only
37 provided for such an arrangement as an alternative to conservatorship.

38
39 Third, the revised Act expands the procedural rights for respondents with the aim of ensuring
40 that respondents’ rights are fully respected and that guardianships and conservatorships are only
41 imposed when less restrictive alternatives are not feasible. In expanding these protections, the
42 Drafting Committee worked to strike a balance between the need to provide meaningful
43 procedural rights for individuals alleged to need a guardian or conservator, and the need not to
44 make the process for appointing a guardian or conservator overly complex or expensive. Key
45 revisions include narrowing the exception to the general rule that the respondent must be present
46 at the hearing, a requirement that explicit findings be made before certain fundamental rights are

1 removed, and the elimination of provisions that would have allowed appointment of a guardian
2 for an adult by will or writing without prior judicial approval.

3
4 Fourth, the revised Act provides for enhanced monitoring of guardians and conservators as a way
5 of ensuring that such appointees are conforming to their fiduciary duties and protecting against
6 exploitation of individuals subject to guardianship and conservatorship. One innovation in the
7 revised Act is to allow the court to identify people to who are to be given notice of certain key
8 changes or suspect actions, and who can therefore serve as an extra set of eyes and ears for the
9 court. Other revisions include a provision that makes bond a default option for conservators and
10 provisions that clarify factors relevant in determining the reasonableness of fees for guardians
11 and conservators.

12
13 Fifth, the revised Act provides enhanced procedural rights for individuals subject to guardianship
14 and conservatorship. Key revisions include a provision that the court provide such individuals
15 with plain-language notice of key rights, provisions for attorney representation of individuals
16 subject to guardianship and conservatorship, greater scrutiny of the guardian or conservator's
17 ability to charge fees to oppose the individual's efforts to alter the appointment, and additional
18 triggers for reconsideration of an appointment.

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

33
34 Seventh, the revised Act contains a variety of provisions designed to improve compliance with
35 the Act's prohibition on courts establishing a full guardianship or conservatorship if a limited
36 guardianship or conservatorship would meet the respondent's needs. The Drafting Committee
37 recognized that, despite the best efforts of previous Committees, there is a lack of compliance
38 with the prohibition even though it was included in the 1997 Act. In order to facilitate
39 compliance, the Drafting Committee has crafted a sample petition which makes it easier for a
40 petitioner to seek a limited order, and a sample order which makes it easier for a court to craft a
41 limited order. In addition, the revised Act requires petitioners seeking a full guardianship or
42 conservatorship to do more to justify that approach, and courts imposing a full guardianship to
43 provide findings to support that imposition.

44
45 Eighth, the revised Act modernizes and clarifies provisions related to minors subject to
46 guardianship. For example, consistent with modern trends in the law, the revised Act provides

1 for greater involvement of minors in decisions involving them. The age of involvement for a
2 minor has been lowered from 14 to 12, the decision-making standard for guardians now calls on
3 them to consider the minors' views, and an attorney must be appointed for a minor in certain
4 situations. The revised Act also provides greater guidance to those petitioning for guardianship
5 of a minor, to courts determining whether they had jurisdiction over guardianship for minors, and
6 to guardians making decisions on behalf of minors. In addition, in consideration of the U.S.
7 Supreme Court's ruling in *Troxel v. Granville*, 530 U.S. 57 (2000), the Act provides greater due
8 process protections for parents of minors

9
10 Ninth, the revised Act contains updated provisions to govern property management for
11 individuals subject to conservatorship. In updating property management protections, the
12 Drafting Committee looked to the Uniform Prudent Investor Act and the Uniform Trust Code,
13 among other sources of guidance.

14
15 Finally, the revised Act has been reorganized with the aim of making it easier to understand.
16 Ease of use is important as many of those who need to comply with its directives are not
17 attorneys, but are family members or friends responding to urgent or unstable circumstances, or
18 are individuals with limited resources and significant functional challenges.

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

3
4 **ARTICLE 1**

5 **GENERAL PROVISIONS**

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

8 **Comment**

9 The title of the Act has been changed from the “Uniform Guardianship and Protective
10 Proceedings Act” to better reflect the Act’s content. The inclusion of the word
11 “conservatorship” helps clarify that the Act covers both guardianship and conservatorship. The
12 use of the term “protective arrangement” reflects the fact that the Act authorizes the use of
13 protective arrangements instead of guardianship or conservatorship as a less restrictive
14 alternative. By avoiding the broad term “Protective Proceedings,” the new title signals that the
15 Act does not cover all “protective proceedings,” as that phrase is often understood (e.g., it does
16 not cover temporary restraining orders or other common orders used for protection from
17 domestic violence or elder abuse).

18
19 **SECTION 102. DEFINITIONS.** In this [act]:

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

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

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

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

28 (5) “Conservator” means a person appointed by a court to make decisions with respect to
29 the property or financial affairs of an individual subject to conservatorship.

30 (6) “Conservatorship estate” means the property subject to conservatorship under this

1 [act].

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

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

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

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

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

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

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

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

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

23 (16) “Limited guardianship” means a guardianship that grants the guardian less than all

1 powers available under this [act] or otherwise restricts the powers of the guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (28) “State” means a state of the United States, the District of Columbia, Puerto Rico, the

1 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
2 the United States.

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

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

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

10 **Comment**

11 In addition to clarifying terms used in the 1997 Act, the Act as revised includes several new
12 terms.

13
14 The Act replaces the term “ward,” which was used in prior versions of the Act, with the terms
15 “minor subject to guardianship,” “adult subject to guardianship,” “individual subject to
16 guardianship” and “individual subject to conservatorship.” This change reflects a modern
17 understanding that the word “ward” has pejorative implications, and implements the Third
18 National Guardianship Summit’s recommendation that the term be avoided in favor of person-
19 first language.

20
21 The Act uses the term “less restrictive alternative.” The term is used to describe a variety of
22 arrangements that might meet an individual’s needs short of guardianship or conservatorship.
23 Whether a particular alternative will meet the person’s needs, as well as whether a particular
24 alternative is in fact “less restrictive,” will vary on a case-by-case basis.

25
26 The Act also includes the term “supported decision making.” The Act uses the term to apply to a
27 variety of arrangements in which an individual is assisted by one or more persons of the
28 individual’s choosing in making and communicating decisions. These arrangements may be
29 purely informal, or may be formalized by an agreement between the individual and the person or
30 persons providing assistance.

31
32 Although the term “supported decision making” has received much attention in recent years, the
33 underlying concept is not new. In other contexts, the fact that an individual may need help to
34 make decisions, or communicate decisions, is well-recognized. Indeed, entire professions (e.g.,
35 investment advisors, admissions counselors, etc.) have developed to provide others with support
36 in making decisions. The Act thus puts assistance with decision making in the same category as

1 other forms of assistance individuals may require (e.g., technological assistance or the use of an
2 interpreter) to meet their needs.

3
4 Notably, consistent with the recommendation of the Third National Guardianship Summit, the
5 Act does not use the term “incapacity.” The term is unnecessary because, instead of allowing a
6 guardianship or conservatorship to be imposed based on a finding of incapacity, the Act spells
7 out that a guardianship or conservatorship may only be established for an adult if the adult’s
8 needs cannot be met using less restrictive alternatives.

9
10 As in the 1997 Act, the term “parent” is not defined (other than as those whose parental rights
11 have not been terminated). The exact definition is left to other laws of the enacting state. A
12 parent whose parental rights have been terminated, however, is not a parent as so defined even if
13 the parent is allowed to inherit from the child under the enacting state’s probate code.

14 15 **SECTION 103. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY**

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

18 **Comment**

19 This section will be needed if the Act is enacted as a stand-alone act or as part of a state version
20 of the UPC. If enacted as part of a version of the UPC, the enacting state should place the
21 section number in brackets to preserve the numbering system: [SECTION 103. RESERVED].

22 23 **SECTION 104. SUBJECT-MATTER JURISDICTION.**

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

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

1 (c) After service of notice in a proceeding seeking a guardianship, conservatorship, or
2 protective arrangement instead of guardianship or conservatorship and until termination of the
3 proceeding, the court in which the petition is filed has:

4 (1) exclusive jurisdiction to determine the need for a guardianship,
5 conservatorship, or protective arrangement;

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

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

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

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

17 **Comment**

18 Subsection (a) of this Act recognizes that the Uniform Child Custody Jurisdiction and
19 Enforcement Act (1997) (UCCJEA) largely controls jurisdiction over guardianship for minors.
20 However, the UCCJEA does not apply to proceedings involving a minor's property. Therefore,
21 the specific provisions in this section apply to a protective proceeding over a minor's property.
22

23 Subsection (b) of this Act aligns subject matter jurisdiction for proceedings involving adults with
24 provisions found in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
25 (UAGPPJA), which was approved in 2007 and which is codified at Article 5A of the Uniform
26 Probate Code.
27

1 **SECTION 105. TRANSFER OF PROCEEDING.**

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

5 (b) After appointment of a guardian or conservator, the court that made the appointment
6 may transfer the proceeding to a court in another [county] in this state or to another state if
7 transfer will serve the best interest of the individual subject to the guardianship or
8 conservatorship.

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

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

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

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

Comment

Transfer of proceedings involving adults from one state to another are governed by Article 3 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), approved in 2007, which contains a detailed procedure for transferring an adult proceeding to another state. The specific provisions in this Section apply to transfer of an adult proceeding to another county and to transfers of a minor's proceeding, whether to another state or county. In the case of a guardianship for a minor under Article 2, the Uniform Child Custody Jurisdiction and Enforcement Act should be consulted for additional rules on when a case may be transferred and the procedures to be used when more than one court is involved in making these determinations.

This section, and Section 106, which addresses the appropriate venue for the appointment of a guardian or conservator, are designed to limit forum shopping and to assist the courts in keeping track of guardianships and conservatorships. Some guardians and conservators have attempted to thwart a court's authority by moving the individual subject to guardianship or conservatorship to another county, state, or foreign country.

The standard for transferring a guardianship or protective proceeding under this section is always the best interest of the individual, and courts should use care to avoid transfers to secure a more favorable venue for other reasons. In considering whether transfer is in the best interest of an adult, the court should consider the adult's preferences, opinions, and values, and actions consistent with the decision-making standards set forth in Section 313 and Section 418. In considering whether transfer is in the best interest of a minor, the court should consider the minor's preferences consistent with the decision-making standard in Section 209 and Section 210.

A court does not lose jurisdiction over a guardianship or conservatorship because of a change in location of the guardian or conservator or of the individual subject to guardianship or conservatorship.

SECTION 106. VENUE.

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

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

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

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

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

(2) if the respondent has been admitted to an institution by order of a court of competent jurisdiction, in the [county] in which the court is located; or

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

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

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

(2) if the respondent does not reside in this state, in any [county] of this state in which property of the respondent is located.

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

Comment

This section follows the venue provisions of the 1997 Act, which, in turn, largely followed those of the 1982 UGPPA. As set forth in the 1997 Act, appointment of a guardian or conservator (other than an emergency guardian or conservator) is only proper where the individual subject to guardianship or conservatorship resides. A court in the place where the individual is currently located but not a resident is not prohibited from taking action, however, such action is limited to the appointment of an emergency guardian or an emergency conservator.

1 This requirement that only a court in the place where the respondent resides may appoint a
2 guardian or conservator other than an emergency one applies both to proceedings brought in
3 different states, and to multiple proceedings brought in different counties in the same state.
4 Subsection (d) provides that when there is more than one proceeding brought within a state, the
5 first court decides where venue is appropriate. The first court does not automatically proceed; it
6 should decide where proper venue lies and enter an order accordingly.

8 **SECTION 107. PRACTICE IN COURT.**

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

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

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

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

19 **Comment**

20
21 Subsections (a) and (b) incorporate the enacting state's rules of procedure. It is critical that the
22 separate proceedings be consolidated when separate petitions for guardianship and
23 conservatorship or for a protective arrangement instead of guardianship or conservatorship are
24 filed. Consolidation serves to protect the respondent's rights and to provide continuity and
25 consistency.

26
27 Subsection (c) is new to this Act. It creates an option for states to give respondents the right to
28 demand a jury trial to determine whether the basis for appointment of a guardian or conservator
29 exists.

31 **SECTION 108. LETTERS OF OFFICE.**

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

34 (b) On a conservator's filing of an acceptance of appointment and filing of any required

1 bond or compliance with any other asset-protection arrangement required by the court, the court
2 shall issue appropriate letters of office.

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

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

10 **Comment**

11 A guardian must file an acceptance of office. A conservator must file an acceptance of office as
12 well as any required bond. The court is required to state any limitations on the powers of the
13 guardian or conservator in the letters of office so that the limitations may be recognized and
14 honored.

15
16 Language in the 1997 Act that required the letters of office to state whether a guardian was
17 appointed by a court, a parent, or a spouse has been omitted because the revised Act provides for
18 appointment by a court only. Provisions in Sections 301 and 302 of the 1997 Act that allowed
19 for a guardianship to be established for an adult without full due process in a court of law were
20 rejected by the Drafting Committee as inconsistent with adults' fundamental rights. Likewise,
21 under the revised Act, a court must appoint a guardian for a minor even if the person appointed
22 was nominated as guardian by the minor's parent.

23
24 **SECTION 109. EFFECT OF ACCEPTANCE OF APPOINTMENT.** A guardian or
25 conservator that accepts an appointment submits personally to the jurisdiction of the court in any
26 proceeding relating to the guardianship or conservatorship.

27 **Comment**

28 Once the guardian or conservator accepts the appointment, the court has jurisdiction over the
29 guardian or conservator in any proceeding relating to the guardianship or conservatorship.
30 Regardless of where the guardian or conservator may move, jurisdiction over the guardian or
31 conservator continues.
32

1 Unlike the previous version of this provision, Section 111 of the 1997 Act, this Section does not
2 state the procedure for giving notice to a guardian or conservator, instead leaving this issue to the
3 enacting state's rules of civil procedure.

4
5 **SECTION 110. CO-GUARDIAN, CO-CONSERVATOR.**

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

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

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

12 (1) the designated event occurs; and

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

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

16 **Comment**

17 This Section, new to the Act, clarifies the procedure for appointing co-guardians and co-
18 conservators, and the role of such appointees. Co-appointment may be useful when the court
19 determines that appointment of a particular person is desirable but recognizes that the person
20 may need help in caring out fiduciary duties, either at the current time or in the future. For
21 example, the court might appoint co-conservators in a situation where an elderly parent seeks to
22 become conservator for a developmentally disabled son (whose needs cannot be met by less
23 restrictive alternatives, and the court determines that the parent is the person most knowledgeable
24 about the son's needs and preferences but has significant health issues that may intermittently
25 hinder the parent's ability to perform needed functions or would benefit from help in making
26 financial decisions. In this situation, appointing another family member as co-conservator (such
27 as a sibling of the son) may best meet the son's needs.

28
29 **SECTION 111. JUDICIAL APPOINTMENT OF SUCCESSOR GUARDIAN OR**
30 **SUCCESSOR CONSERVATOR.**

31 (a) The court at any time may appoint a successor guardian or successor conservator to

1 serve immediately or when a designated future event occurs.

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

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

8 (1) the event occurs; and

9 (2) the successor files an acceptance of appointment.

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

12 **Comment**

13 This section is designed to create a comprehensive and clear set of rules to govern appointment
14 of successor guardians and conservators. It includes language previously found in Section 112
15 of the 1997 Act.

16
17 A court can appoint a successor guardian or conservator, effective either upon appointment or
18 upon a future contingency. A court can also appoint a successor guardian or conservator to fill
19 an existing or potential vacancy. The ability to appoint a guardian or conservator to act upon
20 some specified future event can be particularly useful in situations involving adults with
21 developmental disabilities. The initial guardian or conservator appointed will usually be a parent
22 of the individual subject to guardianship or conservatorship. The ability to appoint a successor
23 guardian or conservator at the time of the initial appointment can provide both the parent and the
24 individual with assurance of mind that upon the parent's death someone will be available to step
25 in and assure continuity of assistance.

26
27 The ability to appoint a successor or additional guardian to take office in the future is different
28 from Standby Guardians appointed under Article 2. Those types of appointments permit a
29 guardian to be appointed to take office in the future even though no guardian is currently in
30 office. Under this section, only the appointment of a successor or additional guardian or
31 conservator is allowed.
32

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

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

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

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

Comment

A guardian or conservator may submit a resignation at any time, but the resignation is not effective until approved by the court. Regardless of how the appointment ended, a guardian or conservator whose appointment has ended is still liable for previous breaches of the guardian's or conservator's fiduciary duty, and still has a duty to account for property of the individual subject to guardianship or conservatorship. In the event of a termination of appointment due to the death of the guardian or conservator, the duty to account is normally performed by the personal representative of the estate of the deceased guardian or conservator. In the event of the removal of a guardian or conservator due to the guardian's or conservator's own limitations, the duty to account may be performed by an agent acting under a power of attorney executed by the guardian or conservator or by a guardian or conservator appointed for the former guardian or conservator.

Section 112 of the 1997 Act, which included provisions paralleling those in this section, also included provisions governing the process for removing a guardian or conservator and provisions governing appointment of co-appointees and successor appointees. Provisions governing removal are now in Section 211, Section 318, and Section 430. Provisions governing co-appointees are now in Section 110. Provisions governing successor guardians are now in Section 111.

SECTION 114. WAIVER OF NOTICE.

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

Comment

This section parallels Section 114 of the 1997 Act. Waivers in this section include both specific and general waivers. Under no circumstances may the respondent, individual subject to guardianship or conservatorship, or individual for whom a protective arrangement instead of guardianship or conservatorship has been ordered, waive notice. In consequence, except as ordered by the court under Section 113 for good cause, a period of at least 14 days must elapse between the date of the notice and the hearing when notice has been ordered to a respondent, individual subject to guardianship or conservatorship, or individual subject to a protective arrangement instead of guardianship or conservatorship.

Comment

It is important that the court, when appointing a guardian ad litem, advise the guardian ad litem of his or her role. This section encourages such advice by requiring the court to record the duties of the guardian ad litem and its reasons for the appointment.

1 with advocating for the individual's wishes to the extent ascertainable (see Section 204, Section
2 305, Section 406, and Section 507). Appointing the same person to take on both roles is thus
3 incompatible with due process and does not advance the court's interest in fact-finding.

4
5 When appointing a guardian ad litem who is an attorney, the court should avoid appointing an
6 attorney who is associated with a firm in which another attorney represents a party to the
7 proceeding (e.g. the respondent or the petitioner). Such appointments can create a conflict of
8 interest and may be proscribed by the jurisdiction's rules of professional responsibility.

9
10 **SECTION 116. REQUEST FOR NOTICE.** A person that is interested in the welfare
11 of a respondent, individual subject to guardianship or conservatorship, or individual subject to a
12 protective arrangement instead of guardianship or conservatorship, and not otherwise entitled to
13 notice under this [act], may file a request with the court for notice. If the court approves the
14 request, the court shall give notice of the approval to the guardian or conservator if one has been
15 appointed, or the respondent if no guardian or conservator has been appointed. The request must
16 include a statement showing the interest of the person making it and the address of the person or
17 an attorney for the person to whom notice is to be given.

18 **Comment**

19 This section allows a person not otherwise entitled to notice to file a request for notice if the
20 person has an interest in the welfare of the respondent, individual subject to guardianship or
21 conservatorship, or individual subject to a protective arrangement instead of guardianship or
22 conservatorship. For a request for notice under this section to be effective, a statement of the
23 person's interest must be contained in the request.

24
25 Whether a particular person is considered a person interested in the welfare of the subject of a
26 proceeding must be determined in light of the issues involved in the proceeding. In a proceeding
27 regarding management of property, for example, the category might include a creditor, secured
28 or otherwise, or a government agency paying benefits to the individual who is the subject of the
29 proceeding. Under certain circumstances, it could also include a member of the media or a
30 "watch-dog" agency.

31
32 **SECTION 117. DISCLOSURE OF BANKRUPTCY OR CRIMINAL HISTORY.**

33 (a) Before accepting appointment as a guardian or conservator, an individual shall
34 disclose to the court whether the individual has been the subject of a bankruptcy proceeding,

1 been convicted of a felony, or been convicted of a crime involving dishonesty.

2 (b) A guardian or conservator that, at the time of appointment, anticipates engaging an
3 agent the guardian or conservator knows has been the subject of a bankruptcy proceeding or been
4 convicted of a felony or crime involving dishonesty shall disclose that knowledge to the court
5 prior to accepting appointment as guardian or conservator.

6 (c) A guardian or conservator that has engaged, or anticipates engaging, an agent who the
7 guardian or conservator knows has been the subject of a bankruptcy proceeding, been convicted
8 of a felony, or been convicted of a crime involving dishonesty shall disclose that knowledge to
9 the court in the guardian's or conservator's report.

10 **Comment**

11
12 This section, which is new to this Act, creates an affirmative duty for an individual to disclose to
13 the court if the individual has been the subject of a bankruptcy proceeding, convicted of a felony,
14 or convicted of a crime involving dishonesty prior to being appointed as a guardian or
15 conservator. Such disclosures not only help ensure that the court has adequate information to
16 determine not only whom to appoint, but also what bond or alternative asset protection
17 arrangement to impose, and what other monitoring provisions may be appropriate. In states that
18 require background checks for potential appointees, such disclosures may be redundant in many
19 cases. Even in those states, however, compliance with these provisions may provide the court
20 with relevant information that otherwise would not come to the court's attention.

21
22 The section also creates an affirmative duty for a guardian or conservator to disclose use of, or
23 plans to use, an agent whom the guardian or conservator knows has been the subject of a
24 bankruptcy proceeding, convicted of a felony, or convicted of a crime involving dishonesty.
25 Such disclosures can help the court monitor and guide the guardian or conservator.

26 **SECTION 118. MULTIPLE APPOINTMENTS OR NOMINATIONS.** If a

27
28 respondent or other person makes more than one appointment or nomination of a guardian or
29 conservator in a record, the latest in time governs.

30 **Comment**

31
32 This section parallels Section 117 of the 1997 Act. The most recent appointment or nomination
33 would be the one with the most recent date during the period when the respondent had the ability

1 to make the appointment or nomination. If the most recent appointment is determined invalid,
2 the prior appointment would control.

3
4 **SECTION 119. COMPENSATION AND EXPENSES; IN GENERAL.**

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

8 (b) Unless otherwise compensated for services rendered, an attorney or other person
9 whose services resulted in an order beneficial to an individual subject to guardianship or
10 conservatorship or beneficial to an individual for whom a protective arrangement instead of
11 guardianship or conservatorship was ordered is entitled to reasonable compensation and
12 reimbursement of reasonable expenses from the property of the individual.

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

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

18 **Comment**

19 Subsection (a) provides that an attorney for a respondent is entitled to reasonable compensation
20 and reimbursement of reasonable expenses. Thus, reasonable compensation is due to an attorney
21 who defends against an appointment even if the court ultimately determines that the appointment
22 is proper.

23
24 Subsections (b) and (c) provide for compensation and payment for expenses for an attorney or
25 other person whose services resulted in an order beneficial to an individual subject to
26 guardianship or conservatorship, or individual for whom a protective arrangement instead of
27 guardianship or conservatorship has been ordered. The compensation must be approved by the
28 court, but no approval is required before the services are provided. Such compensation,
29 especially of attorneys, is important to ensure access to counsel for those seeking to restore
30 rights. See Nina A. Kohn & Catheryn Koss, *Lawyers for Legal Ghosts: The Ethics and Legality*
31 *of Representing Persons Subject to Guardianship*, 91 WASH. L. REV. 581 (2016) (“having the

1 right to directly challenge the continued necessity or terms of the guardianship, including who
2 serves as guardian, is virtually meaningless without the accompanying right to legal
3 representation.”). Attorneys’ concerns about payment for their services are a significant barrier
4 to attorneys accepting representation of individuals subject to guardianship or conservatorship.
5 See Jenica Cassidy, *Restoration of Rights in the Termination of Adult Guardianship*, 23 ELDER L.
6 J. 83, 102 (2015).

7
8 Subsection (d) allows the court to assess certain costs against a person who, in bad faith,
9 unsuccessfully petitions for appointment of a guardian or conservator. This provision aims to
10 reduce the cost, including the cost to the state, of those who might abuse the system.

11 12 **SECTION 120. COMPENSATION OF GUARDIAN OR CONSERVATOR.**

13 (a) A guardian is entitled to reasonable compensation for services as guardian and to
14 reimbursement for room, board, and clothing provided by the guardian to the individual subject
15 to guardianship, subject to court approval. If a conservator, other than the guardian or a person
16 affiliated with the guardian, is appointed for an individual subject to conservatorship, reasonable
17 compensation and reimbursement to the guardian may be approved and paid by the conservator
18 without court approval.

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

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

- 23 (1) the necessity and quality of the services provided;
24 (2) the experience, training, professional standing, and skills of the guardian or
25 conservator;
26 (3) the difficulty of the services performed, including the degree of skill and care
27 required;
28 (4) the conditions and circumstances under which a service was performed,
29 including whether the service was provided outside of regular business hours or under dangerous

1 or extraordinary conditions;

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

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

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

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

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

15 **Comment**

16
17 Subsections (a) and (b) provide that guardians and conservators are entitled to reasonable
18 compensation, subject to court approval or, in the case of a guardian who is not the conservator,
19 with the approval of the conservator.

20
21 Subsection (c) sets forth factors for the court to consider in determining reasonable
22 compensation. This subsection reflects recommendations made by the Third National
23 Guardianship Summit. *See Third National Guardianship Summit Standards and*
24 *Recommendations*, 2012 UTAH L. REV. 1191, 1201-1202 (2012) (especially Recommendation
25 3.2). It also reflects Standard 22 of the National Guardianship Association Standards of Practice.
26 The factor listed in subsection (c)(7)—the fees customarily paid to persons who perform like
27 services in the community—is responsive to concerns about attorneys serving as guardian or
28 conservator unreasonably charging their standard hourly rates for all services performed. As set
29 forth in subsection (c)(7), when a lawyer who serves as guardian or conservator performs a
30 function that does not require or benefit from legal expertise, the hourly fee generally should be
31 lower. For example, attorneys generally should not receive their standard hourly rate to

1 accompany an individual subject to guardianship on a routine personal care appointment or to
2 grocery shop for the individual.

3
4 Subsection (d) states that guardians and conservators are not required to use their personal funds
5 to cover the expenses of those for whom they are appointed.

6
7 Subsection (e) provides that if a minor or adult subject to guardianship or conservatorship seeks
8 court intervention to modify or terminate the guardianship or conservatorship or to remove the
9 guardian or conservator, the guardian or conservator may be compensated only for time spent
10 opposing such effort to the extent that the court has determined that the involvement or
11 opposition is or was reasonably necessary to protect the interest of the individual subject to
12 guardianship or conservatorship. Subsection (e) is designed to address concerns about guardians
13 and conservators inappropriately opposing an individual who is seeking to restore rights. In such
14 situations, the guardian or conservator may have a conflict of interest as successful opposition
15 will preserve their control and continuation of fees. In formulating this approach, the Drafting
16 Committee considered Colorado Revised Statutes §15-14-318, which prohibits a guardian or
17 conservator from taking any action to oppose or interfere in the termination proceeding initiated
18 by the individual subject to guardianship or conservatorship with the exception that the guardian
19 or conservator may file a written report to the court or seek instruction from the court on any
20 matter relevant to the termination proceeding. The Drafting Committee declined to adopt this
21 approach in part because of concerns that it would limit the ability of guardians and conservators
22 to provide useful information to the court, and could prevent the guardian or conservator from
23 assisting with restoration of rights in situations where such assistance would be consistent with
24 the guardian or conservator's fiduciary duty.

25
26 **SECTION 121. LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT OF**
27 **INDIVIDUAL SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP.** A guardian
28 or conservator is not personally liable to a third person for the act of an individual subject to
29 guardianship or conservatorship solely by reason of the guardianship or conservatorship.

30 **Comment**

31 As this section indicates, appointment as a guardian or conservator does not itself cause the
32 appointee to assume personal liability for acts of the individual subject to guardianship or
33 conservatorship. The section does not preclude a guardian or conservator from being held
34 personally liable for acts of the individual subject to guardianship or conservatorship if those acts
35 are caused by the appointee's negligence or breach of fiduciary duty.

36
37 **SECTION 122. PETITION AFTER APPOINTMENT FOR INSTRUCTION OR**
38 **RATIFICATION.**

39 (a) A guardian or conservator may petition the court for instruction concerning fiduciary

responsibility or ratification of a particular act.

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

(c) An act of a guardian or conservator ratified by the court or done according to the court's instruction is presumed to be consistent with the guardian's or conservator's fiduciary duty if the guardian or conservator provided adequate disclosure to the court of all issues pertinent to the court order providing instruction or ratifying the act. The presumption is rebuttable. Failure to petition the court under subsection (a) is not evidence of a breach of the guardian's or conservator's fiduciary duty.

Comment

This section, which is new to the Act, provides an opportunity for guardians and conservators to obtain guidance from the court before acting, and to have an act ratified by the court after it is done.

Petitioning for instruction may be useful when guardians or conservators are unclear of whether a particular act falls within their existing authority. Petitioning for instruction or for ratification may be useful when guardians or conservators are concerned about another person subsequently challenging the propriety of a particular action and seek an instruction or ratification to make it clear that the action falls within their authority.

Subsection (c) address the consequences of a court instruction or ratification. Failure to petition for an instruction or ratification does not give rise to any presumption of impropriety nor is it evidence of it. By contrast, where a guardian or conservator acts according to the court's instruction, or has an act ratified, it creates a rebuttable presumption that the act was consistent with the guardian or conservator's fiduciary duties so long as the guardian or conservator provided adequate disclosure to the court at the time of the petition. This incentivizes the guardian or conservator to provide the court with broad disclosure about any issue that might be material to the court's decision at the time of the petition. Best practice includes fully and accurately disclosing anticipated objections or challenges to the act and the reasons for those objections or challenges.

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

(a) Except as otherwise provided in subsection (b) or (c), a person shall accept a decision

1 of a guardian or conservator made on behalf of the individual subject to guardianship or
2 conservatorship if the person is presented with a court order appointing the guardian or
3 conservator issued within the previous 60 days or letters of office issued within the previous 60
4 days which state the extent of, and limitations on, the guardian's or conservator's powers.

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

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

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

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

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

17 (2) the person makes, or has actual knowledge that another person has made, a
18 report to the [appropriate adult or child protective services office] stating a good faith belief that
19 the individual subject to guardianship or conservatorship is subject to physical or financial abuse,
20 neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or
21 with the guardian or conservator.

22 (d) A person that refuses to accept the authority of a guardian or conservator in accord
23 with subsection (b) may report the refusal and the reason for refusal to the court. The court on

1 receiving a report shall consider whether removal of the guardian or conservator or other action
2 is appropriate.

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

6 **Comment**

7
8 Subsection (a) is responsive to concerns about third parties refusing to accept the authority of a
9 duly appointed guardian or conservator, thus frustrating the underlying purpose of the
10 appointment and preventing the guardian or conservator from acting in the interest of the
11 individual subject to guardianship or conservatorship. The 60 day time period is derived from
12 Article 8 of the Uniform Commercial Code.

13
14 Subsection (b) specifies when a person must refuse to accept the authority of a guardian or
15 conservator. The exception is a deliberately narrow. Refusal is mandatory only when there is
16 knowledge or a reasonable good faith belief that the appointee lacks authority to act in the
17 particular way the appointee is attempting to act, or the person has actual knowledge that the
18 appointee or the agent of the appointee has abused, neglected, exploited, or abandoned the
19 individual subject to guardianship or conservatorship.

20
21 Subsection (c) states the circumstances under which a third party may refuse to accept the
22 authority of a guardian or conservator. It permits refusal if the appointee's action would be
23 inconsistent with the Act itself, or in certain situations in which a report of mistreatment has been
24 made to the appropriate governmental agency. In the case of minors this will typically be a child
25 protective services agency; in the case of adults, it will typically be an adult protective services
26 agency.

27
28 Subsections (d) and (e) set forth how the court may be alerted of refusals to accept the authority
29 of a guardian or conservator. Subsections (d) and (e) also require the court to consider taking
30 appropriate action in response. This action may include, among other things, removing the
31 appointee, providing instruction to the appointee, or ordering the third party to accept the
32 appointee's authority. These subsections thus provide an opportunity to correct a problem or
33 misunderstanding that led to the refusal.
34

35 **SECTION 124. USE OF AGENT BY GUARDIAN OR CONSERVATOR.**

36 (a) Except as otherwise provided in subsection (c), a guardian or conservator may
37 delegate a power to an agent that a prudent guardian or conservator of comparable skills could

1 prudently delegate under the circumstances if the delegation is consistent with the guardian's or
2 conservator's plan and fiduciary duty.

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

5 (1) selecting the agent;

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

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

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

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

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

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

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

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

23 (f) A guardian or conservator that delegates and monitors a power in compliance with this

section is not liable for the decisions or actions of the agent.

Comment

Subsection (a) sets forth general parameters for when a guardian or conservator may delegate a power to an agent. As a general matter, delegation may be proper and even desirable in situations where the agent's abilities or expertise will allow the guardian or conservator to better meet the needs of the individual subject to guardianship or conservatorship. This may be for a variety of reasons, including because the use of agents will be more economical (e.g., a guardian employs a third-party with a low hourly rate than the guardian to do grocery shopping for the individual) or the agent has expertise or skills that will help the appointee act or make decisions on behalf of the individual (e.g., a guardian employs a lawyer to represent the individual in a claim against a third party or a conservator employs an investment advisor to assist in the management of a large conservatorship estate).

A guardian or conservator may not delegate all powers to an agent. As noted in subsection (a), what a guardian or conservator may delegate will depend on the circumstances. At a minimum, and as subsection (b) and (f) indicate, the guardian or conservator may not delegate the duty to monitor the agent to ensure that needs of the individual subject to guardianship or conservatorship are being met in a manner that is consistent with this Act and the guardian or conservator's underlying fiduciary duty. Failure to do so may result in liability for the agent's wrongful conduct.

Subsection (d) is designed to make it clear not only that agents must use reasonable care, but also that use of an agent does not change the factors that are to be considered in making decisions on behalf of an individual subject to guardianship or conservatorship.

SECTION 125. TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR.

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

- (1) a proceeding to remove an existing guardian is pending; or
- (2) the court finds an existing guardian is not effectively performing the guardian's duties and the welfare of the individual requires immediate action.

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

- (1) a proceeding to remove an existing conservator is pending; or
- (2) the court finds that an existing conservator is not effectively performing the

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

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

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

(1) the individual subject to guardianship or conservatorship;

(2) the affected guardian or conservator; and

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

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

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

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

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

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

1 **Comment**

2 This section can be used when a guardian or conservator has been appointed, but a proceeding to
3 remove that appointee is pending or the appointee is not effectively discharging the functions of
4 the office. The role of the temporary substitute guardian or conservator, as the name implies, is
5 to fill in for the regular guardian, whose powers are suspended for the duration of the
6 appointment. An appointment under this section is limited to situations in which the individual's
7 welfare requires immediate action.

8
9 This Section builds on language in Section 313 of the 1997 Act, which allowed for appointment
10 of a temporary substitute guardian. The general approach of Section 313 is extended to
11 guardianships over minors as well as to conservatorships. This extension reflects a recognition
12 that the need for someone to fill-in can arise in the context of both guardianships and
13 conservatorships, whether the individual subject to guardianship or conservatorship is an adult or
14 a minor. Moreover, creating a mechanism for another person to assume responsibilities reduces
15 the barriers to removing a guardian or conservator when doing so is appropriate.

16
17 If, at the end of the six months, the individual still needs a guardian or conservator, the court
18 should appoint a regular guardian or conservator. A temporary substitute guardian does not
19 automatically have preference to be appointed as guardian or conservator in such cases.

20
21 In some cases, circumstances may dictate the appointment of the temporary substitute guardian
22 without prior notice being given to the guardian or conservator, or the individual subject to
23 guardianship or conservatorship. If that occurs, within five days of the appointment of the
24 temporary substitute guardian, the court must inform both. In addition, where the individual
25 subject to guardianship or conservatorship is a minor, the minor's parents must be provided with
26 notice. Notice to the regularly-appointed guardians and conservators is essential to ensure they
27 know that their authority has been suspended. Enacting states are free to enact a notice period of
28 less than five days but are encouraged to not enact a notice period of more than five days.

29
30 A temporary substitute guardian or conservator differs from an emergency guardian or
31 conservator. An emergency guardian or conservator is appointed in an urgent situation in which
32 there is no guardian or conservator but the needs of the individual demand action be taken. A
33 temporary substitute guardian also differs from a standby guardian. A standby guardian is
34 appointed under Section 207 to serve at some point in the future, most commonly upon the death
35 of the parent of a minor. A temporary substitute guardian, by contrast, is granted immediate
36 authority. Likewise, a temporary substitute guardian or conservator differs from a successor
37 guardian or successor conservator appointed under Section 111 in that the authority of the
38 previously appointed guardian or conservator is merely suspended, not terminated, and the
39 authority of the temporary substitute guardian or temporary substitute conservator is immediate.

40
41 **SECTION 126. REGISTRATION OF ORDER; EFFECT**

42 (a) If a guardian has been appointed for an individual in another state and a petition for
43 guardianship of the individual is not pending in this state, the guardian appointed in the other

1 state, after giving notice to the appointing court, may register the guardianship order in this state
2 by filing as a foreign judgment, in a court of an appropriate [county] of this state, certified copies
3 of the order and letters of office.

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

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

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

17 **Comment**

18 Subsections (a) and (b) parallel Sections 432 and 433 of the 1997 Act as revised in 2010 to
19 incorporate Section 401 and Section 402 of the Uniform Adult Guardianship and Protective
20 Proceedings Jurisdiction Act (2007) (UAGPPJA). However, unlike the UAGPPJA, which
21 applies only to adult proceedings, this section also applies to minors. As stated in the General
22 Comment to UAGPPJA Article 4, these provisions are designed to facilitate the enforcement of
23 guardianship and protective orders in other states. The UAGPPJA recognizes that many
24 problems could be avoided if guardianships and conservatorships established in one state were
25 entitled to recognition in other states. A key concept in the UAGPPJA is that of registration of
26 guardianship and conservatorship orders. As set forth in Section 129 of this Act, the registration
27 process allows a guardian or conservator to act in the other state without the need for a new court
28 proceeding.
29

Subsections (c) and (d) parallel Sections 434 of the 1997 Act as revised in 2010 to incorporate Section 403 of the UAGPPJA. These provisions state that following registration of the order in the appropriate county of the other state, and after giving notice to the appointing court of the intent to register the order in the other state, a guardian or conservator may exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.

SECTION 127. GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.

(a) An individual who is subject to guardianship or conservatorship, or person interested in the welfare of an individual subject to guardianship or conservatorship, who reasonably believes a guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with this [act] may file a grievance with the court. The grievance must be in a record.

(b) Subject to subsection (c), not later than 30 days after receiving a grievance under subsection (a), the court shall:

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

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

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

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

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

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

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

- (A) ordering the guardian or conservator to provide to the court a report, accounting, inventory, updated plan, or other information;
- (B) appointing a guardian ad litem;
- (C) appointing an attorney for the individual subject to guardianship or conservatorship; or
- (D) scheduling a hearing.

(c) The court may decline to proceed under subsection (b) if a similar grievance was made within the preceding six months and the court followed the procedures of subsection (b) in considering the grievance.

Comment

This section creates an accessible mechanism for bringing concerns about malfeasance by guardians or conservators to the attention of the court. The section is new to the Act, but has precedent in complaint processes enabled by statutes or court rules in a number of jurisdictions, including Indiana, Texas, Washington, Wyoming, and the District of Columbia. It is also consistent with National Probate Court Standard 3.3.18, which calls on probate courts to “establish a clear and easy-to-use process for communicating concerns about guardianships and conservatorships and the performance of guardians/conservators.”

The use of the term “grievance” instead of “complaint” or “petition” reflects the fact that the person filing the grievance need not request or seek any particular relief; the person needs only to present the court with information. Upon receipt of a grievance under this section, the court is required to consider the grievance if a similar grievance has not been filed in the past six months. The provision thus precludes the court from declining to consider information about potential malfeasance simply because it is not formalized as a motion or petition. The court is not required to do anything more than simply consider the grievance unless the grievance supports a reasonable belief that termination of a guardianship or conservatorship, or removal of a guardian or conservator, is appropriate. In that case, the grievance serves as a “communication” within the meaning of Sections 318, Section 319, Section 429, or Section 430 that triggers the processes outlined in those sections. Thus, this section does not require a court to do more than consider a grievance unless the court itself determines that further action is proper.

1 In drafting the provision, the Drafting Committee sought to strike a balance between facilitating
2 access to the court by non-attorneys, including individuals subject to guardianship or
3 conservatorship, and minimizing the burden on the court's resources. By allowing a person to
4 get the attention of the court without a formal petition or motion, the provision increases
5 access. By requiring the grievance be in a record, as recommended by National Probate
6 Standard 3.3.18, and allowing the court to decline consideration of a grievance if a similar one
7 was made in the prior six months, the provision discourages frivolous complaints and inefficient
8 uses of the court's time. In addition, the grievance mechanism has the potential to reduce the
9 administrative burden on courts by allowing courts to promptly address issues that would
10 otherwise fester unattended.

11
12 The inclusion of this provision reflects a recognition that improper and abusive conduct by
13 guardians and conservators, while not the norm, is a significant and ongoing problem. Although
14 there is no reliable estimate of the extent of such behavior, reports of abuse are not
15 uncommon. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-33, ELDER ABUSE: THE
16 EXTENT OF ABUSE BY GUARDIANS IS UNKNOWN, BUT SOME MEASURES EXIST
17 TO HELP PROTECT OLDER ADULTS, 6–11 (2016) (describing the state of knowledge); U.S.
18 GOV'T ACCOUNTABILITY OFF., GAO-10-1046, GUARDIANSHIPS: CASES OF
19 FINANCIAL EXPLOITATION, NEGLECT AND ABUSE OF SENIORS (2010) (concluding
20 that the GAO could not determine whether guardianship abuse is widespread, but identifying
21 hundreds of allegations during a 20 year period).

22
23 **[SECTION 128. DELEGATION BY PARENT.** A parent of a minor, by a power of
24 attorney, may delegate to another person for a period not exceeding [nine months], any of the
25 parent's powers regarding care, custody, or property of the minor, other than power to consent to
26 marriage or adoption.]

27 ***Legislative Note:** A version of Section 130 has appeared in the Uniform Probate Code since*
28 *1969 and has been enacted in some form by over 40 states. However, the Drafting Committee*
29 *believed the subject matter of this section was unrelated and would be more appropriately*
30 *included in a state's general family law statutes. Enacting states should review their existing*
31 *law to determine whether to include this section, and where it could be codified most*
32 *appropriately.*

33 34 **Comment**

35
36 This section provides for a temporary delegation of powers by the parent. Where a parent
37 requires assistance for a finite period of time, such temporary delegations may serve to avoid
38 imposition of guardianship and thus allow parents to retain the right to make decisions for their
39 children. For example, a single parent in the military called to a tour of duty could use this
40 provision to grant a power of attorney to allow a friend or relative to make decisions while the
41 parent is away. Should the tour of duty exceed the statutory maximum period for such
42 authorizations, the parent would need to renew the power.

1 Unlike Section 105 of the 1997 Act, this section only applies to parents of minors. It does not
2 allow a parent to delegate powers over an adult nor does it allow for delegation by a guardian.
3 The first change reflects a recognition that all adults, even those with very significant disabilities,
4 have the right to make decisions for themselves to the extent able and that the right to do so
5 should only be removed after full consideration and due process. The second change reflects a
6 recognition that guardians have some non-delegable duties as set forth in Section 124. A
7 guardian may employ agents to assist with the performance of the guardian's duties, but the
8 guardian retains a fiduciary duty that requires the guardian, at a minimum, to use care in
9 selecting and monitoring the agent.

10
11 This section does not create a guardianship nor does it allow a parent to grant powers the parent
12 does not possess. Thus, the ability to make a delegation under this section may be quite limited
13 for a parent who does not have all parental rights (e.g., a parent who does not have custody over
14 the child).

15
16 Although this section refers to a delegation of power over property, the application of this section
17 to property management is limited as parent's powers over the property of a minor are
18 themselves limited. When it is necessary to secure powers over a minor's property, a petition for
19 conservatorship will likely be appropriate.

20 21 **[ARTICLE] 2**

22 **GUARDIANSHIP OF MINOR**

23 **SECTION 201. BASIS FOR APPOINTMENT OF GUARDIAN FOR MINOR.**

24 (a) A person becomes a guardian for a minor on appointment by the court.

25 (b) The court may appoint a guardian for a minor who does not have a guardian if the
26 court finds the appointment is in the minor's best interest and:

27 (1) each parent of the minor, after being fully informed of the nature and
28 consequences of guardianship, consents;

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

30 (3) the court finds by clear-and-convincing evidence that all parents of the minor
31 are unwilling or unable to exercise the powers the court is granting the guardian.

32 **SECTION 202. PETITION FOR APPOINTMENT OF GUARDIAN FOR MINOR.**

33 (a) A person interested in the welfare of a minor, including the minor for whom the

1 appointment is sought, may petition for appointment of a guardian for the minor.

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

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

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

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

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

15 (5) the name and address of any proposed guardian and the reason the proposed
16 guardian should be selected;

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

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

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

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

SECTION 203. NOTICE AND HEARING.

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

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

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

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

(C) any adult with whom the minor resides;

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

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

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

(A) any person nominated as guardian by the minor if the minor is 12 years of age or older;

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

1 terminated;

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

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

5 (E) any other person the court determines.

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

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

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

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

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

19 (1) interview the petitioner and the minor;

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

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

23 **Legislative Note:** The term “visitor” is bracketed because some states use a different term for
24 the person appointed by the court to investigate and report on certain facts. A visitor must have

1 *training and experience sufficient to serve as the “eyes and ears” of the court. Often, a visitor is*
2 *a trained social work professional.*

3
4 **SECTION 204. ATTORNEY FOR MINOR OR PARENT.**

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

7 (1) requested by the minor if the minor is 12 years of age or older;

8 (2) recommended by a guardian ad litem; or

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

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

11 (1) make reasonable efforts to ascertain the minor’s wishes;

12 (2) advocate for the minor’s wishes to the extent reasonably ascertainable; and

13 (3) if the minor’s wishes are not reasonably ascertainable, advocate for the result
14 that is in the minor’s best interest.

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

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

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

21 (1) the parent objects to appointment of a guardian for the minor;

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

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

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

4
5 **SECTION 205. PRESENCE AT HEARING**

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

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

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

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

15 (4) attendance would be harmful to the minor.

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

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

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

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

25 (a) The court, after the hearing conducted under Section 203, may appoint a guardian for

1 a minor if appointment is proper under Section 201 or dismiss the proceeding.

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

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

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

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

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

20 (d) The court, as part of an order appointing a guardian for a minor, shall state rights
21 retained by any parents of the minor, which may include contact or visitation with the minor,
22 decision making regarding the minor's health care, education, or another matter, or access to a
23 record regarding the minor.

1 (e) The order granting a guardianship for a minor must state that each parent of the minor
2 is entitled to notice, and identify any other person entitled to notice, that:

3 (1) the guardian has delegated custody of the minor subject to guardianship;

4 (2) the court has modified or limited the powers of the guardian; or

5 (3) the court has removed the guardian.

6 **SECTION 207. STANDBY GUARDIAN FOR MINOR.**

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

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

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

14 and

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

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

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

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

21 (A) the minor, if the minor is 12 years of age or older;

22 (B) each parent of the minor;

23 (C) the person nominated as standby guardian; and

1 (D) any other person the court determines; and

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

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

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

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

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

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

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

1 (1) interview the petitioner and the minor;

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

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

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

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

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

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

16 (1) delegates custody of the minor;

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

18 (3) the court removes the guardian.

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

23 (l) Before assuming the duties and powers of standby guardian, the guardian must file an

1 acceptance of appointment, and give notice of the acceptance to:

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

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

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

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

10 **SECTION 208. EMERGENCY GUARDIAN FOR MINOR.**

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

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

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

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

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

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

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

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

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

SECTION 209. DUTIES OF GUARDIAN FOR MINOR.

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

(b) A guardian of a minor shall:

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

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

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

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

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

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

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

18 **SECTION 210. POWERS OF GUARDIAN FOR MINOR.**

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

21 (b) A guardian of a minor may:

22 (1) apply for and receive funds otherwise payable for the support of the minor to
23 the minor's parent, guardian, or custodian under a statutory system of benefits or insurance or

1 any private contract, devise, trust, conservatorship, or custodianship;

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

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

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

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

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

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

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

19
20 **SECTION 211. REMOVAL OF GUARDIAN FOR MINOR, TERMINATION OF**
21 **GUARDIANSHIP; APPOINTMENT OF SUCCESSOR.**

22 (a) A guardianship for a minor terminates:

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

24 (2) when the standard in Section 201 for appointment of a guardian is not satisfied
25 unless the court finds that:

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

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

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

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

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

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

17 (f) When terminating a guardianship for a minor under this Section, the court may enter
18 an order providing for transitional arrangements if such arrangements will assist the minor with a
19 transition of custody and are in the best interest of the child.

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

1 [ARTICLE] 3

2 GUARDIANSHIP OF ADULT

3 SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN FOR ADULT.

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

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

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

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

13 (2) with appropriate findings, treat the petition as one for a conservatorship under
14 [Article] 4 or a protective arrangement instead of guardianship or conservatorship under [Article]
15 5, enter any other appropriate order, or dismiss the proceeding.

16 (b) The court shall grant to a guardian appointed under subsection (a) only those powers
17 necessitated by the limitations and demonstrated needs of the respondent and enter orders that
18 will encourage the development of the respondent's maximum self-determination and
19 independence. The court may not establish a full guardianship if a limited guardianship,
20 protective arrangement instead of guardianship, or other less restrictive alternatives would meet
21 the needs of the respondent.

22 Comment

23 A guardian may only be appointed if the court finds by clear and convincing evidence that: (1)
24 the adult cannot meet essential requirements for physical health, safety, or self-care; (2)

guardianship is the less restrictive approach to meeting the adult's identified need; and (3) the adult cannot receive and evaluate information or make or communicate decisions even with appropriate supportive services, technological assistance, and supported decision making. Thus, if the adult's needs could be met by providing the individual with support for decision making, adaptive devices, caregiving services, or a wide variety of other interventions that remove fewer rights than guardianship, the court may not impose a guardianship.

Subsection (a)(2) allows the court, with appropriate findings, to treat a petition under this section as a petition for a protective arrangement instead of guardianship or conservatorship under Article 5, a petition under Article 4, or dismiss the Article 3 proceeding. To guarantee the respondent the maximum possible personal liberty, the court should proceed under this subsection whenever it concludes that court intervention is necessary and appropriate, but the respondent's needs can be met by the entry of orders with respect to the respondent's property without the need to limit the respondent's personal freedom.

As set forth under subsection (b), a guardian may never be granted powers that are not in fact required by the individuals' limitations and demonstrated needs. Thus, most guardianships should be limited, not full, as almost all respondents possess some ability to act or make decisions on their own behalf.

This Section replaces Section 311(a) and (b) of the 1997 Act. Placement of the basis for appointment at the start of Article 3 is designed to signal that this is a threshold question and to alert all involved as to when guardianship is properly imposed and when it is not. Unlike Section 311(a) and (b) of the 1997 Act, this Section does not speak of capacity and incapacity. Rather than being asked to assign a status ("incapacitated" or "has capacity") to the individual, the court is called upon to make particularized findings about what the individual needs in light of what the individual can and cannot do. This change is also consistent with the act's avoidance of the term "incapacitated person," which has been criticized as unnecessarily stigmatizing.

Notably, this Section provides the only grounds for appointment of a guardian for an adult. This is in contrast to the 1997 Act, which allowed for the appointment of a guardian of an adult by a will or other writing of the adult's spouse or parent. This Act eliminates these alternative grounds, which are at odds with the Act's overall commitment to due process and least restrictive alternatives.

Overall, as in the 1997 Act, the Section's emphasis on less restrictive alternatives, a high evidentiary standard, and the use of limited guardianship is consistent with the Act's philosophy that a guardian should be appointed only when necessary, only for as long as necessary, and with only those powers as are necessary.

SECTION 302. PETITION FOR APPOINTMENT OF GUARDIAN FOR ADULT.

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

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

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

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

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

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

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

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

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

(B) any attorney currently representing the respondent;

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

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

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

3 (F) the Veterans Administration fiduciary for the respondent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **Comment**

14 This section lists the information that must be contained in the petition for appointment of a
15 guardian. Although the section allows adults to petition for appointment of a guardian for
16 themselves, the court should scrutinize such petitions closely to confirm that they are truly
17 voluntary, and that petitioners fully understand the nature and consequences of petitioning.
18 Normally, where an adult seeks to obtain assistance, it is preferable for the adult to execute a
19 durable power of attorney, engage in supported decision making, or both.

20
21 Subsections (b)(2)-(3) require the listing in the petition of family members and others who may
22 have information useful to the court and to whom notice of the proceeding must be given under
23 Section 303. These persons will likely have the greatest interest in protecting the respondent and
24 in making certain that the proposed guardianship is appropriate.

25
26 Subsection (b)(2)(A) requires that the petition contain the name and address of the respondent's
27 spouse or domestic partner (if the enacting state uses the term) or, if none, then an adult with
28 whom the respondent has shared household responsibilities for more than six months before the
29 filing of the petition. This is a change from the 1997 Act, which omitted the term domestic
30 partner, and required notice to a person with whom the respondent resided for more than six
31 months before the filing of the petition. By requiring shared household responsibilities, and not
32 simply co-residence, the new language better captures the underlying intent of the provision:
33 providing notice to individuals with whom the respondent has a close personal relationship.

1 Subsection (b)(2)(B) requires that the petition contain the names and addresses of the
2 respondent's adult children or, if none, parents and adult brothers and sisters or, if none, a
3 relative of the nearest degree in which a relation can be found. However, if there are several
4 adults of equal degree of kinship to the respondent, the name and address of one is all that is
5 required, not the names and addresses of the members of the entire class.
6

7 Subsection (b)(2)(C) requires notice to adult stepchildren whom the respondent parented during
8 their minority and with whom the respondent has an ongoing relationship. This is an expansion
9 from the 1997 Act, which did not require notice to adult stepchildren, and is designed to better
10 reflect the diversity of family structures.
11

12 Subsection (b)(3) requires the petition to list a series of other persons who must be provided
13 notice, including existing agents, care providers, and decision making supporters. Notice to such
14 individuals, as required by Section 303, is especially critical for ascertaining whether a
15 guardianship is necessary. For example, the court may conclude that there is no need to appoint
16 a guardian if a guardian has already been appointed elsewhere, or the respondent has executed a
17 durable power of attorney for finances or health care.
18

19 Subsection (b)(4) emphasizes the importance of limited guardianship, the encouragement of
20 which is a major theme of the Act. The petitioner, when requesting an unlimited guardianship,
21 must state in the petition why a limited guardianship would not work. If a limited guardianship
22 is requested, the petition must set out the recommended powers to be granted to the guardian.
23 Subsection (b)(4) emphasizes that guardianship is a last resort and that less restrictive
24 alternatives are to be preferred. The petitioner is required to identify all less restrictive
25 alternatives for meeting that respondent's alleged needs that have been considered or
26 implemented, to justify any failure to pursue less restrictive alternatives, and to explain why less
27 restrictive alternatives would not meet the respondent's alleged needs. These requirements serve
28 to provide the court with important information relevant to whether guardianship is appropriate,
29 and to prompt would-be petitioners to explore less restrictive alternatives.
30

31 Subsections (b)(5)-(7) emphasize the importance of limited guardianship. The petitioner must
32 state whether the petitioner seeks a limited or full guardianship, or a protective arrangement
33 instead of guardianship. When requesting a full guardianship, the petition must state why a
34 limited guardianship or protective arrangement instead of guardianship would not meet the
35 respondent's needs. If a limited guardianship is requested, the petition must set out the
36 recommended powers to be granted to the guardian.
37

38 Section (b)(8) requires the petitioner to state any person with whom the petitioner seeks to limit
39 the respondent's contact. Similarly, Subsection (b)(1) requires the petitioner to state the address
40 of the dwelling in which it is proposed that the respondent will reside if the appointment is made
41 or the protective arrangement instead of guardianship is ordered. These provisions are designed
42 to alert the respondent, and others who receive notice of the petition, of potential consequences
43 of the guardianship that are especially likely to raise concerns. Giving the respondent, and those
44 entitled to a copy of the petition under Section 303, full information will enable them to make
45 more informed decisions about whether to oppose the petition or advocate, oppose appointment
46 of the petitioner as guardian, or seek to limit the powers granted to the guardian.

1 Subsection (b)(9) requires the petitioner to include a general statement of the respondent's
2 property, including an estimated value, insurance and pension information, and information
3 about other anticipated income or receipts. This information should be detailed to enable the
4 visitor to expeditiously complete the required report, see Section 304, and to enable the court to
5 determine whether a conservatorship is needed. An exception is made if the only property is
6 personal effects, which reflects a recognition that a conservator would not be needed in such a
7 situation.

8
9 Finally, subsection (b)(10), requires the petitioner to set forth respondent's need, if any, for an
10 interpreter, translator, or other form of support to effectively communicate with the court or
11 understand court proceedings. Thus, if the respondent uses another person to help the respondent
12 communicate or understand, the petitioner should include this information.

13 14 **SECTION 303. NOTICE AND HEARING.**

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

17 (b) A copy of a petition under Section 302 and notice of a hearing on the petition must be
18 served personally on the respondent. The notice must include a statement that the respondent
19 must be physically present at the hearing unless excused by the court under Section 307, inform
20 the respondent of the respondent's rights at the hearing, and include a description of the nature,
21 purpose, and consequences of granting the petition. Failure to serve the respondent with notice
22 substantially complying with this subsection precludes the court from granting the petition.

23 (c) In a proceeding on a petition under Section 302, notice of the hearing also must be
24 given to the persons listed in the petition and any other person interested in the respondent's
25 welfare the court determines. Failure to give notice under this subsection does not preclude the
26 court from appointing a guardian.

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

1 **Comment**

2 Personal service of the petition and notice of hearing on the respondent is required. A failure to
3 personally serve the respondent is jurisdictional, as is a notice that does not substantially comply
4 with the requirements of subsection (a). Notice of hearing must be given to the persons who are
5 listed in the petition, but failing to give notice to those listed (other than the respondent) is not
6 jurisdictional.

7
8 Subsection (d) addresses the notice requirements on hearings on petitions for orders subsequent
9 to the appointment of a guardian. The adult subject to guardianship, the guardian, and anyone
10 else the court directs, must be given copies of any notice of hearing and a copy of any petition.

11
12 Notice under this section is also governed by the general notice requirements for hearings under
13 Section 113.

14
15 **SECTION 304. APPOINTMENT OF [VISITOR].**

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

19 (b) A [visitor] appointed under subsection (a) shall interview the respondent in person
20 and in a manner the respondent is best able to understand:

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

24 (2) determine the respondent's views about the appointment, including views
25 about a proposed guardian, the guardian's proposed powers and duties, and the scope and
26 duration of the proposed guardianship;

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

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

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

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

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

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

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

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

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

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

17 (3) recommendations regarding the appropriateness of guardianship, including
18 whether a protective arrangement instead of guardianship or other less restrictive alternatives for
19 meeting the respondent's needs are available and, if a guardianship is recommended, whether it
20 should be full or limited and, if a limited guardianship, the powers to be granted to the guardian;

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

23 (5) a statement whether the proposed dwelling meets the respondent's needs and

1 whether the respondent has expressed a preference as to residence;

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

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

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

9 (9) any other matter the court directs.

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

14 15 **Comment**

16
17 Subsection (a) requires the court to appoint a visitor upon receipt of a petition under Section 302.
18 “Visitor” is bracketed in recognition that states use, and may wish to substitute, different words
19 to refer to this position.

20
21 Visitors may be selected from a variety of professions, and may include physicians,
22 psychologists, social workers, or nurses, among others. Regardless of the visitor's profession,
23 the visitor must have training or experience in the type of abilities and needs alleged. Thus, for
24 example, a visitor appointed for a respondent alleged to have Alzheimer's disease must have
25 training or experience in assessing the needs of those with Alzheimer's disease. As the
26 appropriate disposition of the petition may well depend on what services are available to the
27 respondent, the visitor should also be knowledgeable about less restrictive alternatives, including
28 supportive services in the respondent's community.

29
30 Under Subsection (b), the visitor is tasked with interviewing the respondent in person and
31 explaining to the respondent the nature and potential consequences of the petition and the
32 respondent's rights. The visitor must determine the respondent's views about the appointment or
33 order sought. This includes the respondent's views about any proposed guardian, as such views
34 will help the court to determine who—if anyone—to appoint consistent with Section 309(a)(4)
35 and (b).
36

1 Under subsection (c), the visitor is also tasked with interviewing the petitioner and the proposed
2 guardian, visiting the respondent's present dwelling and any dwelling in which it is reasonably
3 believed that the respondent will live if the appointment is made; obtain information from any
4 physician or other person who is known to have treated, advised, or assessed the respondent's
5 relevant physical or mental condition; and investigate the allegations in the petition and any other
6 matter relating to the petition the court directs.

7
8 The visitor, as set forth in subsection (d) is responsible for reporting to the court about a variety
9 of matters about which the court will need information to act on the petition. The visitor's report
10 must be in a record and include a list of recommendations or statements. For states enacting
11 Alternative A to subsection (b), if the visitor does not recommend that a lawyer be appointed, the
12 visitor should include in the report the reasons why a lawyer need not be appointed. States
13 enacting this Act should consider developing a checklist for the items enumerated in subsection
14 (e).

15
16 The visitor must individually meet with the respondent, the petitioner and the proposed guardian.
17 The visitor's report must contain information and recommendations to the court regarding the
18 appropriateness of the guardianship, whether lesser restrictive alternatives might meet the
19 respondent's needs, recommendations about further evaluations, powers to be given the
20 guardian, and the appointment of counsel.

21
22 The visitor must talk with the physician or other person who is known to have assessed, treated
23 or advised about the respondent's relevant physical or mental condition. This information is
24 crucial to the court in making a determination of whether to grant the petition since a
25 professional evaluation is not required in every case. If the physician or other healthcare or other
26 treating professional refuses to talk to the visitor, the visitor may need to seek from the
27 appointing court an order authorizing the release of the information.

28 29 **SECTION 305. APPOINTMENT AND ROLE OF ATTORNEY FOR ADULT.**

30 **Alternative A**

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

33 (1) requested by the respondent;

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

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

1 **Alternative B**

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

5 **End of Alternatives**

6 (b) An attorney representing the respondent in a proceeding under Section 302 shall:
7 (1) make reasonable efforts to ascertain the respondent's wishes;
8 (2) advocate for the respondent's wishes to the extent reasonably
9 ascertainable; and
10 (3) if the respondent's wishes are not reasonably ascertainable, advocate
11 for the result that is the least restrictive option in type, duration, and scope, consistent with the
12 respondent's interests.

13 **Legislative Note:** *A state that enacts Alternative B of subsection (a) should not enact Section*
14 *304(d)(1).*
15

16 **SECTION 306. PROFESSIONAL EVALUATION.**

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

19 (1) unless the court finds that it has sufficient information to determine the
20 respondent's needs and abilities without the evaluation; or
21 (2) if the respondent requests the evaluation.

22 (b) If the court orders an evaluation under subsection (a), the respondent must be
23 examined by a physician, psychologist, social worker, or other individual appointed by the court
24 who is qualified to evaluate the respondent's alleged cognitive and functional abilities and
25 limitations and will not be advantaged or disadvantaged by a decision to grant the petition. The

individual conducting the evaluation promptly shall file report in a record with the court. Unless otherwise directed by the court, the report must contain:

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

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

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

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

SECTION 307. PRESENCE AND RIGHTS AT HEARING.

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

(b) The court may excuse the respondent from attending the hearing conducted under Section 303 if the court finds by clear-and-convincing evidence that:

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

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

(c) The respondent may be assisted in a hearing under Section 303 by a person or

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

5 (d) The respondent has a right to be represented at a hearing conducted under Section 303
6 by an attorney of the respondent's choosing.

7 (e) At a hearing conducted under Section 303, the respondent may:

8 (1) present evidence and subpoena witnesses and documents;

9 (2) examine witnesses, including any court-appointed physician, psychologist, or
10 other individual qualified to evaluate the alleged cognitive and functional abilities and limitations
11 of the respondent, and the [visitor]; and

12 (3) otherwise participate in the hearing.

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

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

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

21 **SECTION 308. CONFIDENTIALITY OF RECORDS.**

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

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

3 (2) either:

4 (A) the petition for guardianship is dismissed; or

5 (B) the guardianship is terminated.

6 (b) An adult subject of a proceeding for a guardianship, whether or not a guardian is
7 appointed, any attorney designated by the adult, and a person entitled to notice under Section
8 310(e) are entitled to access court records of the proceeding and resulting guardianship,
9 including a guardian's report or plan. In addition, a person for good cause may petition the court
10 for access to court records of the guardianship, including an annual report or guardian's plan.
11 The court shall grant access if access is in the best interest of the respondent or adult subject to
12 guardianship, or furthers the public interest and does not endanger the welfare or financial
13 interest of the adult.

14 [(c) A report under Section 304 of a [visitor] or a professional evaluation under Section
15 306 is confidential and must be sealed on filing, but is available to:

16 (1) the court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **Comment**

12 This section gives top priority for appointment as guardian to existing guardians appointed
13 elsewhere, to the respondent's nominee for the position, and to the respondent's agent, in that
14 order. Existing guardians are granted a first priority for two reasons. First, many of these cases
15 will involve transfers of a guardianship from another state. To assure a smooth transition, the
16 currently appointed guardian, whether appointed in this state or another, should have priority for
17 appointment at the new location. Second, other cases will involve situations where a
18 guardianship appointment is sought despite the appointment in another place. Granting the
19 existing guardian priority will deter such forum shopping. If the existing guardian is
20 inappropriate for some reason, subsection (c) permits the court to pass over the existing guardian
21 and appoint another with or without priority. While an existing guardian is generally granted a
22 first priority for appointment, a temporary substitute guardian and an emergency guardian are
23 excluded from priority because of the short-term nature of their involvement and because their
24 appointment may have been made with a less thorough and inclusive process than that required
25 for a guardian appointed for an indefinite period.

26
27 A person nominated as guardian by the respondent has second priority. The nomination may
28 include anyone nominated orally at the hearing, if the respondent is able to express a preference.
29 The nomination may also be made by a separate document. While it is generally good practice
30 for an individual to nominate as the guardian the agent named in a power of attorney for
31 finances, the section grants such an agent a preference even in the absence of a specific
32 nomination. The agent is granted priority on the theory that the agent is the person the
33 respondent would most likely prefer to act. The nomination of the agent will also make it more
34 difficult for someone to use a guardianship to thwart the authority of the agent. To assure that
35 the agent will be in a position to assert this priority, Section 302 and Section 304 work together

1 to require that the agent receive notice of the proceeding.

2
3 A person named as an agent under a power of attorney for health care has third priority. This
4 priority is on the theory that such an agent has been entrusted by the respondent to make
5 important personal decisions on behalf of the respondent and is, therefore, likely someone whom
6 the respondent would prefer.

7
8 Subsection (a)(4) creates a final category of persons entitled to priority. Specifically, it gives
9 priority to a family member or other person who has exhibited special care and concern for the
10 respondent. This section represents a significant change from the 1997 Act, which created a
11 strict priority list among relatives based on familial relationship. The Drafting Committee's
12 decision to collapse the strict kinship hierarchy into a single category reflects a recognition that
13 the court should favor those who have shown care for and about the respondent, an
14 understanding that the Act should be sensitive to respondents' diverse family structures and
15 systems, and a concern that a strict hierarchy based on kinship may result in appointments that
16 are not in the best interest of respondents.

17
18 Subsection (b) provides the court with a framework for selecting among persons with equal
19 priority. This framework is especially important given that the collapse of the strict family
20 hierarchy into a single category in subsection (a)(4). Under subsection (b), a court shall choose
21 the best qualified person when selecting among those with equal priority. In determining who is
22 best qualified, the court is instructed to consider the potential guardian's relationship with the
23 respondent, the potential guardian's skills, the expressed wishes of the respondent, the extent to
24 which the potential guardian and the respondent have similar values and preferences, and the
25 likelihood that the potential guardian will be able to successfully satisfy the duties of a guardian.
26 Thus, whether a person is best qualified depends, in large part, on the quality of their relationship
27 with the respondent. Since surrogate decision makers typically make the decisions for others
28 that they would want made for themselves, requiring the court to consider the extent to which the
29 potential guardian and the respondent share values and preferences increases the likelihood that
30 the selected guardian will make the decision the individual subject to guardianship would have
31 made if able. *See Nina A. Kohn, Matched Values & Preferences: A New Approach to Selecting*
32 *Legal Surrogates*, 22 SAN DIEGO L. REV. 399 (2015).

33
34 Subsection (d) and (e) limit appointment as guardian of persons who provide paid services to
35 respondents, as well as the affiliates of those who provide paid services. Strict application of
36 these subsections is crucial to avoid a conflict of interest and to protect the individual subject to
37 guardianship. Each state enacting the Act needs to insert in subsection (e) the particular term or
38 terms used in the state for those facilities considered long-term care institutions.

39 40 **SECTION 310. ORDER OF APPOINTMENT.**

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

42 (1) include a finding that the identified needs of the respondent cannot be met by
43 a protective arrangement instead of guardianship or other less restrictive alternatives, including

1 use of appropriate supportive services, technological assistance, or supported decision making;

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

4 (3) state whether the adult subject to guardianship retains the right to vote and, if
5 the adult does not retain the right to vote, include findings that support removing that right
6 [which must include a finding that the adult cannot communicate, with or without support, a
7 specific desire to participate in the voting process]; and

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

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

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

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

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

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

22 (2) notice of a change in the primary residence of the adult subject to
23 guardianship;

(3) notice that the guardian has delegated:

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

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

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

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

(E) substantially all powers of the guardian.

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

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

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

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

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

(9) notice of the guardian's removal.

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

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

1 **SECTION 311. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.**

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

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

13 (1) seek termination or modification of the guardianship, or removal of the
14 guardian, and obtain an attorney of the adult's choosing to represent the adult in these matters;

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 312. EMERGENCY GUARDIAN.

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

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

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

1 circumstances.

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

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

11 (d) The court may appoint an emergency guardian for an adult without notice and a
12 hearing only if the court finds from an affidavit or testimony that the respondent will be
13 substantially harmed before a hearing on the appointment can be held. If the court appoints an
14 emergency guardian without notice and a hearing, not later than 48 hours after the appointment,
15 the court shall notify the respondent, the respondent's attorney, and any other person the court
16 determines of the appointment. The court shall conduct a hearing on the appropriateness of the
17 appointment not later than [five] days after the appointment.

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

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

1 **SECTION 313. DUTIES OF GUARDIAN FOR ADULT.**

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

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

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

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

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

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

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

23 (2) expend money of the adult subject to guardianship that has been received by

1 the guardian for the adult's current needs for support, care, education, health, and welfare;

2 (3) conserve any excess money of the adult subject to guardianship for the adult's
3 future needs, but if a conservator has been appointed for the adult, the guardian shall pay the
4 money to the conservator, at least quarterly, to be conserved for the adult's future needs; and

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

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

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

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

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

23 (3) other factors that a reasonable person in the circumstances of the adult would

1 consider, including consequences for others.

2 (f) A guardian for an adult immediately shall notify the court if the condition of the adult
3 subject to guardianship has changed so that the adult is capable of exercising rights previously
4 removed.

5 **SECTION 314. POWERS OF GUARDIAN FOR ADULT.**

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

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

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

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

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

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

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

19 (b) The court may specifically authorize a guardian for an adult to consent to the adoption
20 of the adult.

21 [(c) The court may specifically authorize a guardian for an adult to:

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

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

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

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

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

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

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

21 (3) not later than 30 days after a change in the dwelling of the adult subject to
22 guardianship, give notice of the change to the court, the adult subject to guardianship, and any
23 person identified as entitled to the notice in the court order appointing the guardian or a

subsequent order. The notice must include the address and nature of the new dwelling and state whether the adult subject to guardianship received advance notice of the change and whether the adult objected to the change;

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

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

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

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

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

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

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

(B) the court specifically authorizes the action; or

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

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

1 (1) involve the adult in decision making to the extent reasonably feasible,
2 including by encouraging and supporting the adult in understanding the risks and benefits of
3 health-care options when practicable;

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

7 (3) take into account:

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

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

11 **SECTION 315. SPECIAL LIMITATIONS ON GUARDIAN’S POWER.**

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

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

23 (c) A guardian for an adult may not restrict the ability of the adult to communicate, visit,

1 or interact with others, including receiving visitors or making or receiving telephone calls,
2 personal mail, or electronic communications including through social media, or participating in
3 social activities, unless:

4 (1) specifically authorized by the court;

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

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

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

11 (B) the person with whom contact is restricted does not have a family or
12 social relationship with the adult.

13 **SECTION 316. GUARDIAN'S PLAN.**

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

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

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

1 (3) any person with whom the adult has a relationship and any plan the guardian
2 has for facilitating visits with the person;

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

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

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

9 (7) an estimate of the total amount of fees the guardian anticipates charging per
10 year, and a statement or list of the amount the guardian proposes to charge for each service the
11 guardian anticipates providing to the adult.

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

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

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

22 (e) After a guardian's plan under this section is approved by the court, the guardian shall
23 provide a copy of the plan to the adult subject to guardianship, a person entitled to notice under

1 Section 310(e) or a subsequent order, and other persons the court determines.

2 **SECTION 317. GUARDIAN’S REPORT; MONITORING OF GUARDIANSHIP.**

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

7 (1) the mental, physical, and social condition of the adult;

8 (2) the living arrangements of the adult during the reporting period;

9 (3) the supported decision making, technological assistance, medical services,
10 educational and vocational service, and other supports and services provided to the adult and the
11 guardian’s opinion as to the adequacy of the adult’s care;

12 (4) a summary of the guardian’s visits with the adult, including the dates of the
13 visits;

14 (5) action taken on behalf of the adult;

15 (6) the extent to which the adult has participated in decision making;

16 (7) if the adult is living in a [mental health] facility or living in a facility that
17 provides the adult with health-care or other personal services, whether the guardian considers the
18 facility’s current plan for support, care, treatment, or habilitation consistent with the adult’s
19 preferences, values, prior directions, and best interest;

20 (8) anything of more than de minimis value that the guardian, any individual who
21 resides with the guardian, or the spouse,[domestic partner,] parent, child, or sibling of the
22 guardian has received from an individual providing goods or services to the adult;

23 (9) if the guardian has delegated powers to an agent, the powers delegated and the

1 reason for the delegation;

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

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

6 (12) plans for future care and support;

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

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

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

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

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

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

22 (2) the guardianship should continue; and

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

1 (e) If the court determines there is reason to believe a guardian for an adult has not
2 complied with the guardian's duties or the guardianship should be modified or terminated, the
3 court:

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

6 (2) may require additional information from the guardian;

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

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

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

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

17 **SECTION 318. REMOVAL OF GUARDIAN FOR ADULT; APPOINTMENT OF**
18 **SUCCESSOR.**

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

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

23 (1) petition of the adult, guardian, or person interested in the welfare of the adult,

1 but the court may decline to hold a hearing if a similar petition was filed within the preceding six
2 months;

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

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

8 (c) An adult subject to guardianship who seeks to remove the guardian and have a
9 successor appointed is entitled to be represented by an attorney of the adult's choosing. [If the
10 adult subject to guardianship is not represented by an attorney, the court shall appoint an attorney
11 under the same conditions as in Section 305.] The court shall award reasonable attorney's fees
12 to the attorney for the adult.

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

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

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

20
21 **SECTION 319. TERMINATION OR MODIFICATION OF GUARDIANSHIP**
22 **FOR ADULT.**

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

25 (1) termination of the guardianship on the ground that a basis for appointment

1 under Section 301 does not exist or termination would be in the best interest of the adult, or for
2 other good cause; or

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

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

7 (1) petition under subsection (a) but the court may decline to hold a hearing if a
8 similar petition was filed within the preceding six months;

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

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

17 (4) the court determines a hearing would be in the best interest of the adult.

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

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

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

4 (f) An adult subject to guardianship who seeks to terminate or modify the terms of the
5 guardianship is entitled to be represented by an attorney of the adult's choosing. [If the adult is
6 not represented by an attorney, the court shall appoint an attorney under the same conditions as
7 in Section 305.] The court shall award reasonable attorney's fees to the attorney for the adult.

8 ***Legislative Note:*** A state may make the policy decision to include the bracketed language in
9 subsection (c). This policy decision parallels Alternative A in Section 305.
10

11 [ARTICLE] 4

12 CONSERVATORSHIP

13 SECTION 401. BASIS FOR APPOINTMENT OF CONSERVATOR.

14 (a) On petition and after notice and hearing, the court may appoint a conservator for the
15 property or financial affairs of a minor, if the court finds by a preponderance of evidence that:

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

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

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

22 (B) either:

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

25 (ii) appointment is necessary or desirable to obtain or provide

1 money needed for the support, care, education, health, or welfare of the minor.

2 (b) On petition and after notice and hearing, the court may appoint a conservator for the
3 property or financial affairs of an adult if the court determines:

4 (1) by clear-and-convincing evidence, that the adult is unable to manage property
5 or financial affairs because:

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

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

10 (2) by a preponderance of evidence that:

11 (A) the adult has property likely to be wasted or dissipated unless
12 management is provided; or

13 (B) appointment is necessary to obtain or provide money needed for the
14 support, care, education, health, or welfare of the adult; and

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

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

21 **SECTION 402. PETITION FOR APPOINTMENT OF CONSERVATOR.**

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

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

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

4 (3) the guardian of the individual.

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

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

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

12 (A) spouse [or domestic partner] or, if the respondent has none, any adult
13 with whom the respondent has shared household responsibilities for more than six months in the
14 12-month period before the filing of the petition;

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

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

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

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

23 (B) any attorney currently representing the respondent;

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

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

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

7 (F) the Veterans Administration fiduciary for the respondent;

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

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

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

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

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

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

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

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

1 and the source and amount of other anticipated income or receipts;

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

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

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

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

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

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

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

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

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

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

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

1 the conservator.

2 **SECTION 403. NOTICE AND HEARING.**

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

5 (b) A copy of a petition under Section 402 and notice of a hearing on the petition must be
6 served personally on the respondent. If the respondent's whereabouts are unknown or personal
7 service cannot be made, service on the respondent must be made by [substituted service] [or]
8 [publication]. The notice must include a statement that the respondent must be physically
9 present at the hearing unless excused by the court under Section 408, inform the respondent of
10 the respondent's rights at the hearing, and, include a description of the nature, purpose, and
11 consequences of granting the petition. Failure to serve the respondent with notice substantially
12 complying with this subsection precludes the court from granting the petition.

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

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

22 **SECTION 404. PROPERTY WHILE PROCEEDING IS PENDING.** While a

23 petition under Section 402 is pending, after preliminary hearing and without notice to others, the

1 court may enter an order to preserve and apply property of the respondent as may be required for
2 the support of the respondent or an individual who is in fact dependent on the respondent. The
3 court may appoint a [master] to assist in implementation of the order.

4 **SECTION 405. APPOINTMENT AND ROLE OF [VISITOR].**

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

8 (b) If the respondent in a proceeding to appoint a conservator is an adult, the court shall
9 appoint a [visitor][unless the adult is represented by an attorney appointed by the court]. The
10 duties and reporting requirements of the [visitor] are limited to the relief requested in the
11 petition. The [visitor] must be an individual having training or experience in the type of abilities,
12 limitations, and needs alleged in the petition.

13 (c) A [visitor] appointed for an adult under subsection (b) shall interview the respondent
14 in person and in a manner the respondent is best able to understand:

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

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

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

23 (4) inform the respondent that all costs and expenses of the proceeding, including

respondent's attorney's fees, will be paid from the respondent's assets.

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

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

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

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

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

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

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

(2) a recommendation:

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

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

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

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

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

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

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

(7) any other matter the court directs.

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

SECTION 406. APPOINTMENT AND ROLE OF ATTORNEY.

Alternative A

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

(1) requested by the respondent;

(2) recommended by the [visitor]; or

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

Alternative B

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

1 **End of Alternatives**

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

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

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

5 and

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

9 [(c) The court shall appoint an attorney to represent a parent of a minor who is the subject
10 of a proceeding under Section 402 if:

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

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

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

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

18
19 **SECTION 407. PROFESSIONAL EVALUATION.**

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

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

24 (2) if the adult requests the evaluation.

25 (b) If the court orders an evaluation under subsection (a), the respondent must be

1 examined by a physician, psychologist, social worker, or other individual appointed by the court
2 who is qualified to evaluate the respondent's alleged cognitive and functional abilities and
3 limitations and will not be advantaged or disadvantaged by a decision to grant the petition. The
4 individual conducting the evaluation promptly shall file a report un a record with the court.

5 Unless otherwise directed by the court, the report must contain:

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

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

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

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

14 **SECTION 408. PRESENCE AND RIGHTS AT HEARING.**

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

20 (b) The court may excuse the respondent from attending the hearing conducted under
21 Section 403 if the court finds by clear-and-convincing evidence that:

22 (1) the respondent consistently and repeatedly has refused to attend the hearing
23 after having been fully informed of the right to attend the hearing and the potential

1 consequences of failing to do so;

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

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

6 (c) The respondent may be assisted in a hearing under Section 403 by a person or persons
7 of the respondent's choosing, assistive technology, or an interpreter or translator, or a
8 combination of these supports. If assistance would facilitate the respondent's participation in the
9 hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts
10 to provide it.

11 (d) The respondent has a right to be represented at a hearing conducted under Section 403
12 by an attorney of the respondent's choosing.

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

14 (1) present evidence and subpoena witnesses and documents;

15 (2) examine witnesses, including any court-appointed physician, psychologist, or
16 other individual qualified to evaluate the alleged cognitive and functional abilities and limitations
17 of the respondent, and the [visitor]; and

18 (3) otherwise participate in the hearing.

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

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

23 (h) Any person may request to participate in a hearing conducted under Section 403. The

1 court may grant the request, with or without hearing, on determining that the best interest of the
2 respondent will be served. The court may attach appropriate conditions to the person's
3 participation.

4 **SECTION 409. CONFIDENTIALITY OF RECORDS.**

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

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

9 (2) either:

10 (A) the petition for conservatorship is dismissed; or

11 (B) the conservatorship is terminated.

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

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

22 (1) the court;

23 (2) the individual who is the subject of the report or evaluation, without limitation

1 as to use;

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

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

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

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

10
11 **SECTION 410. WHO MAY BE CONSERVATOR: PRIORITIES.**

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

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

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

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

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

22 (b) With respect to persons having equal priority under subsection (a), the court shall
23 select as conservator the person the court considers best qualified. In determining the best
24 qualified person, the court shall consider the potential conservator's relationship with the
25 respondent, the potential conservator's skills, the expressed wishes of the respondent, the extent

1 to which the potential conservator and the respondent have similar values and preferences, and
2 the likelihood that the potential conservator will be able to satisfy the duties of a conservator
3 successfully.

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

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

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

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

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

18 **SECTION 411. ORDER OF APPOINTMENT.**

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

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

23 (1) the identified needs of the respondent cannot be met by a protective

1 arrangement instead of conservatorship or other less restrictive alternatives, including use of
2 appropriate supportive services, technological assistance, or supported decision making; and

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

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

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

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

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

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

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

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

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

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

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

23 (8) notice of the death or significant change in the condition of the individual

1 subject to conservatorship;

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

3 and

4 (10) notice of the conservator's removal.

5 (f) If an individual subject to conservatorship is an adult, the spouse[, domestic partner,]
6 and adult children of the adult subject to conservatorship are entitled under subsection (e) to
7 notice unless the court determines notice would be contrary to the preferences or prior directions
8 of the adult subject to conservatorship or not in the best interest of the adult subject to
9 conservatorship.

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

13 **SECTION 412. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.**

14 (a) A conservator appointed under Section 410 shall send or deliver to the individual
15 subject to conservatorship if the individual is 12 years of age or older and to all other persons
16 given notice under Section 403 a copy of the order of appointment, together with a notice of the
17 right to request termination or modification. The order and notice must be sent or delivered not
18 later than 14 days after the appointment.

19 (b) Not later than 30 days after appointment of a conservator under Section 410, the court
20 shall send or deliver to the individual subject to conservatorship, the conservator, and any other
21 person entitled to notice under Section 410(e) a statement of the rights of the individual subject
22 to conservatorship and procedures to seek relief if the individual is denied those rights. The
23 statement must be in at least 16-point font, in plain language, in at least 16-point font, and to the

1 extent feasible, in a language in which the individual subject to conservatorship is proficient.

2 The notice must notify the individual subject to conservatorship of the right to:

3 (1) seek termination or modification of the conservatorship, or removal of the
4 conservator, and obtain an attorney of the individual's choosing to represent the individual in
5 these matters;

6 (2) participate in decision making to the extent reasonably possible; and

7 (3) receive a copy of the conservator's inventory, plan, and report; and

8 (4) object to the conservator's inventory, report, or plan.

9 (c) If a conservator is appointed under Section 401(b)(1)(B) and the individual subject to
10 conservatorship is missing, notice under subsections (a) and (b) to the individual is not required.

11 **SECTION 413. EMERGENCY CONSERVATOR**

12 (a) On petition by a person interested in an individual's welfare or on its own, the court
13 may appoint an emergency conservator for the individual if the court finds:

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

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

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

22 (c) Immediately on receipt of a petition for an emergency conservator, the court shall
23 appoint an attorney to represent the respondent in the proceeding. Except as otherwise provided

1 in subsection (d), reasonable notice of the date, time, and place of a hearing on the petition must
2 be given to the respondent, the respondent's attorney, and any other person the court determines.

3 (d) The court may appoint an emergency conservator without notice and a hearing only if
4 the court finds from an affidavit or testimony that the respondent's property or financial interests
5 will be substantially and irreparably harmed before a hearing on the appointment can be held. If
6 the court appoints an emergency conservator without notice and a hearing, not later than 48
7 hours after the appointment, the court shall notify the respondent, the respondent's attorney, and
8 other person the court determines of the appointment. The court shall hold a hearing on the
9 appropriateness of the appointment not later than [five] days after the appointment.

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

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

15 **SECTION 414. POWERS OF CONSERVATOR REQUIRING COURT**

16 **APPROVAL.**

17 (a) A conservator must give notice to persons entitled to notice under Section 403(d) and
18 receive specific authorization by the court before the conservator may exercise with respect to
19 the conservatorship the power to:

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

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

23 (3) convey, release, or disclaim contingent or expectant interests in property,

1 including marital property and any right of survivorship incident to joint tenancy or tenancy by
2 the entireties;

3 (4) exercise or release a power of appointment;

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

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

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

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

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

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

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

ascertainable. The court also shall consider:

(1) the financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship for support, and the interest of creditors;

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

(3) eligibility for governmental assistance;

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

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

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

(7) any other relevant factors.

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

SECTION 415. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.

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

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

(2) requiring an accounting for the administration of the conservatorship estate ;

1 (3) directing distribution;

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

3 (5) modifying the type of appointment or powers granted to the conservator, if the extent
4 of protection or management previously granted is currently excessive or insufficient to meet the
5 individual's needs, including because the individual's abilities or supports have changed;

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

7 (7) granting other appropriate relief.

8 **SECTION 416. BOND; ALTERNATIVE ASSET-PROTECTION**
9 **ARRANGEMENT.**

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

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

1 **SECTION 417. TERMS AND REQUIREMENTS OF BOND.**

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

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

5 (2) By executing a bond provided by a conservator, a surety submits to the
6 jurisdiction of the court that issued letters of office to the conservator in a proceeding pertaining
7 to the duties of the conservator in which the surety is named as a party. Notice of the proceeding
8 must be sent or delivered to the surety at the address shown in the court records at the place
9 where the bond is filed and any other address of the surety then known to the person required to
10 provide the notice.

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

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

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

18 **SECTION 418. DUTIES OF CONSERVATOR.**

19 (a) A conservator is a fiduciary and has a duty of prudence and duty of loyalty to the
20 individual subject to conservatorship. A conservator shall at all times exercise reasonable care.

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

1 personal affairs.

2 (c) In making a decision on behalf of the individual subject to conservatorship, the
3 conservator shall make the decision the conservator reasonably believes the individual would
4 make if able, unless doing so would fail to preserve the resources needed to maintain the
5 individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or
6 personal or financial interests of the individual. To determine the decision the individual would
7 make if able, the conservator shall consider the individual's prior or current directions,
8 preferences, opinions, values, and actions to the extent actually known or reasonably
9 ascertainable by the conservator.

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

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

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

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

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

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

6 (2) general economic conditions;

7 (3) the possible effect of inflation or deflation;

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

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

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

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

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

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

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

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

1 (i) In investing, selecting specific property for distribution, and invoking a power of
2 revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a
3 conservator shall consider any estate plan of the individual known to the conservator and may
4 examine the will or other donative, nominative, or other appointive instrument of the individual.

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

8 (1) the property lacks sufficient equity; or

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

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

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

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

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

20 (a) A conservator, not later than 60 days after appointment and when there is a significant
21 change in circumstances or when the conservator seeks to deviate significantly from the
22 conservator's plan, shall file with the court a plan for protecting, managing, expending, and
23 distributing the assets of the conservatorship estate. The plan must be based on the needs of the

1 individual subject to conservatorship and take into account the best interest of the individual as
2 well as the individual's preferences, values, and prior directions, to the extent known to or
3 reasonably ascertainable by the conservator. The conservator shall include in the plan:

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

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

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

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

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

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

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

23 (e) After a conservator's plan under this section is approved by the court, the conservator

1 shall provide a copy of the plan to the individual subject to conservatorship, a person entitled to
2 notice under Section 411(e) or a subsequent order, and other persons the court determines.

3 **SECTION 420. INVENTORY; RECORDS.**

4 (a) Not later than 60 days after appointment, a conservator shall prepare and file with the
5 appointing court a detailed inventory of the conservatorship estate, together with an oath or
6 affirmation that the inventory is believed to be complete and accurate as far as information
7 permits.

8 (b) A conservator shall give notice of the filing of an inventory to the individual subject
9 to conservatorship, a person entitled to notice under Section 411(e) or a subsequent order, and
10 other persons the court determines. The notice must be delivered or sent not later than 14 days
11 after the filing.

12 (c) A conservator shall keep records of the administration of the conservatorship estate
13 and make them available for examination on reasonable request of the individual subject to
14 conservatorship, a guardian of the individual, or any person the conservator or the court
15 determines.

16 **SECTION 421. ADMINISTRATIVE POWERS OF CONSERVATOR NOT**
17 **REQUIRING COURT APPROVAL**

18 (a) Except as otherwise provided in Section 414 or qualified or limited in the court's
19 order of appointment and stated in the letters of office, a conservator has all powers granted in
20 this section and any additional powers granted to a trustee by law of this state other than this
21 [act].

22 (b) A conservator, acting reasonably and consistent with the fiduciary duties of the
23 conservator to accomplish the purpose of the appointment, without specific court authorization

1 or confirmation, may:

2 (1) collect, hold, and retain property included in the conservatorship estate,
3 including property in which the conservator has a personal interest and real property in another
4 state, until the conservator determines disposition of the property should be made;

5 (2) receive additions to the conservatorship estate;

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

7 (4) acquire an undivided interest in property included in the conservatorship estate
8 in which the conservator, in a fiduciary capacity, holds an undivided interest;

9 (5) invest assets of the conservatorship estate;

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

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

16 (8) make ordinary or extraordinary repairs or alterations in a building or other
17 structure, demolish any improvement, or raze existing or erect a new party wall or building;

18 (9) subdivide, develop, or dedicate land to public use, make or obtain the vacation
19 of a plat and adjust a boundary, adjust a difference in valuation, exchange or partition land by
20 giving or receiving consideration, and dedicate an easement to public use without consideration;

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

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

3 (12) grant an option involving disposition of property included in the
4 conservatorship estate or accept or exercise an option for the acquisition of property;

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

6 (14) pay a call, assessment, or other sum chargeable or accruing against or on
7 account of a security;

8 (15) sell or exercise a stock subscription or conversion right;

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

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

13 (18) insure the conservatorship estate against damage or loss in accordance with
14 Section 418(j) and the conservator against liability with respect to a third person;

15 (19) borrow money, with or without security, to be repaid from the
16 conservatorship estate or otherwise;

17 (20) advance money for the protection of the conservatorship estate or the
18 individual subject to conservatorship and all expenses, losses, and liability sustained in the
19 administration of the conservatorship estate or because of holding any property for which the
20 conservator has a lien on the conservatorship estate as against the individual subject to
21 conservatorship for the advances;

22 (21) pay or contest a claim, settle a claim by or against the conservatorship estate
23 or the individual subject to conservatorship by compromise, arbitration, or otherwise, or release,

1 in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is
2 uncollectible;

3 (22) pay a tax, assessment, compensation of the conservator or any guardian, and
4 other expense incurred in the collection, care, administration, and protection of the
5 conservatorship estate;

6 (23) pay a sum distributable to an individual subject to conservatorship or
7 individual who is in fact dependent on the individual subject to conservatorship by paying the
8 sum to the distributee or for the use of the distributee:

9 (A) to the guardian of the distributee;

10 (B) to a distributee's custodian under [the Uniform Transfers to Minors
11 Act] or custodial trustee under [the Uniform Custodial Trust Act]; or

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

14 (24) prosecute or defend an action, claim, or proceeding in any jurisdiction for the
15 protection of the conservatorship estate or of the conservator in the performance of the
16 conservator's duties;

17 (25) structure the finances of the individual subject to conservatorship to establish
18 eligibility for a public benefit, including by making gifts consistent with the individual's
19 preferences, values, and prior directions, if the conservator's action does not jeopardize the
20 individual's welfare and otherwise is consistent with the conservator's duties; and

21 (26) execute and deliver any instrument that will accomplish or facilitate the
22 exercise of a power vested in the conservator.

1 **SECTION 422. DISTRIBUTION FROM CONSERVATORSHIP ESTATE.** Except

2 as otherwise provided in Section 414 or qualified or limited in the court's order of appointment
3 and stated in the letters of office, and unless contrary to a conservator's plan filed under Section
4 419, a conservator may expend or distribute income or principal of the conservatorship estate
5 without specific court authorization or confirmation for the support, care, education, health, or
6 welfare of the individual subject to conservatorship or an individual who is in fact dependent on
7 the individual subject to conservatorship, including the payment of child or spousal support, in
8 accordance with the following rules:

9 (1) A conservator shall consider a recommendation relating to the appropriate standard of
10 support, care, education, health, or welfare for the individual subject to conservatorship, or an
11 individual who is in fact dependent on the individual subject to conservatorship, made by a
12 guardian of the individual subject to conservatorship, if any, and, if the individual subject to
13 conservatorship is a minor, a recommendation made by a guardian or parent of the minor.

14 (2) A conservator acting in compliance with the conservator's duties under Section 418 is
15 not liable for a distribution made based on a recommendation under paragraph (1) unless the
16 conservator knows the distribution is not in the best interest of the individual subject to
17 conservatorship.

18 (3) In making an expenditure or distribution under this subsection, the conservator shall
19 consider:

20 (A) the size of the conservatorship estate, the estimated duration of the
21 conservatorship, and the likelihood the individual subject to conservatorship, at some future
22 time, may be fully self-sufficient and able to manage the individual's financial affairs and the
23 conservatorship estate;

1 (B) the accustomed standard of living of the individual subject to conservatorship
2 and an individual who is in fact dependent on the individual subject to conservatorship;

3 (C) other money or source used for the support of the individual subject to
4 conservatorship; and

5 (D) the preferences, values, and prior directions of the individual subject to
6 conservatorship.

7 (4) Money expended or distributed under this subsection may be paid by the conservator
8 to any person, including the individual subject to conservatorship, as reimbursement for
9 expenditures the conservator might have made, or in advance for services to be rendered to the
10 individual subject to conservatorship if it is reasonable to expect the services will be performed
11 and advance payment is customary or reasonably necessary under the circumstances.

12 **SECTION 423. CONSERVATOR'S REPORT AND ACCOUNTING;**
13 **MONITORING.**

14 (a) A conservator shall file a report in a record with the court regarding the administration
15 of the conservatorship estate annually unless the court otherwise directs, on resignation or
16 removal, on termination of the conservatorship, and at any other time the court directs.

17 (b) A report under subsection (a) must state or contain:

18 (1) an accounting that contains a list of property included in the conservatorship
19 estate and of the receipts, disbursements, liabilities, and distributions during the period for which
20 the report is made;

21 (2) a list of the services provided to the individual subject to conservatorship;

22 (3) a copy of the conservator's most recently approved plan and a statement
23 whether the conservator has deviated from the plan and, if so, how and why the conservator has

1 deviated;

2 (4) any recommended change in the conservatorship, including its scope and
3 whether the conservatorship needs to continue;

4 (5) to the extent feasible, a copy of the most recent reasonably available financial
5 statements evidencing the status of bank accounts, investment accounts, and mortgages or other
6 debts of the individual subject to conservatorship;

7 (6) anything of more than de minimis value which the conservator, any individual
8 who resides with the conservator, or the spouse, [domestic partner,]parent, child, or sibling of the
9 conservator has received from a person providing goods or services to the individual subject to
10 conservatorship;

11 (7) any business relation the conservator has with a person providing goods or
12 services to the individual subject to conservatorship;

13 (8) any business relation the conservator has with a person the conservator has
14 paid or a person that has benefited from the property of the individual subject to conservatorship;
15 and

16 (9) whether any co-conservator or successor conservator appointed to serve when
17 a designated future event occurs is alive and able to serve.

18 (c) The court may appoint a [visitor] to review a report under this section or conservator's
19 plan under Section 419, interview the individual subject to conservatorship or conservator, and
20 investigate any matter involving the conservatorship the court directs. In connection with the
21 report, the court may order the conservator to submit the conservatorship estate to appropriate
22 examination in a manner the court directs.

23 (d) Notice of the filing under this section of a conservator's report, together with a copy

1 of the report, must be provided to the individual subject to conservatorship, a person entitled to
2 notice under Section 411(e) or a subsequent order, and a person the court determines is entitled
3 to the report. The notice and report must be delivered or sent not later than 14 days after filing.

4 (e) The court shall establish procedures for monitoring a conservator's plan and report
5 and review the plan and report not less than annually to determine whether:

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

8 (2) the conservatorship should continue; and

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

10 (f) If the court determines there is reason to believe the conservator has not complied
11 with the conservator's duties or the conservatorship should not continue, the court:

12 (1) shall notify the conservator, the individual subject to conservatorship, and any
13 other person entitled to notice under Section 411(e) or a subsequent order;

14 (2) may require additional information from the conservator;

15 (3) may appoint a [visitor] to interview the individual subject to conservatorship
16 or conservator and investigate any matter involving the conservatorship the court directs; and

17 (4) may, consistent with Sections 430 and 431, hold a hearing to consider removal
18 of the conservator, termination of the conservatorship, or a change in the powers granted to the
19 conservator or terms of the conservatorship.

20 (g) If the court determines there is reason to believe a conservator's requested fees are not
21 reasonable, the court shall hold a hearing to adjust the fees.

22 (h) A conservator may petition the court for approval of a report or accounting filed
23 under this section. The court after review may approve the report or accounting. If the court

1 approves the report or accounting, there is a rebuttable presumption the report or accounting is
2 accurate as to a matter adequately disclosed in the report or accounting. An order, after notice
3 and hearing, approving an intermediate report of a conservator adjudicates liabilities concerning
4 a matter adequately disclosed in the accounting included in the report. An order, after notice and
5 hearing, approving a final report adjudicates all previously unsettled liabilities relating to the
6 conservatorship.

7 **SECTION 424. ATTEMPTED TRANSFER OF PROPERTY BY INDIVIDUAL**
8 **SUBJECT TO CONSERVATORSHIP.**

9 (a) The interest of an individual subject to conservatorship in property included in the
10 conservatorship estate is not transferrable or assignable by the individual and is not subject to
11 levy, garnishment, or similar process for claims against the individual unless allowed under
12 Section 429.

13 (b) If an individual subject to conservatorship enters into a contract after having the right
14 to enter the contract removed by the court, the contract is void against the individual and the
15 individual's property but is enforceable against the person that contracted with the individual.

16 (c) An attempted transfer or assignment by an individual subject to conservatorship may
17 give rise to a claim for unjust enrichment by a person that acted in good faith and had neither
18 actual nor constructive knowledge that the individual lacked the ability to effect the transaction.

19 (d) A third party that deals with an individual subject to conservatorship with respect to
20 property included in the conservatorship estate is entitled to protection provided by law of this
21 state other than this [act].

22 **SECTION 425. TRANSACTION INVOLVING CONFLICT OF INTEREST. A**
23 transaction involving a conservatorship estate which is affected by a substantial conflict between

1 the conservator's fiduciary duties and personal interests is voidable unless the transaction is
2 specifically authorized by the court after notice to a person entitled to notice under Section
3 411(e) or a subsequent order. A transaction affected by a substantial conflict between fiduciary
4 duties and personal interests includes a sale, encumbrance, or other transaction involving the
5 conservatorship estate entered into by the conservator, an individual with whom the conservator
6 resides, the spouse, [domestic partner,]descendant, sibling, agent, or attorney of the conservator,
7 or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

8 **SECTION 426. PROTECTION OF PERSON DEALING WITH CONSERVATOR.**

9 (a) A person that assists or deals with a conservator in good faith and for value in any
10 transaction, other than one requiring a court order under Section 414, is protected as though the
11 conservator properly exercised the power in question. Knowledge by a person that the person is
12 dealing with a conservator does not alone require the person to inquire into the existence of the
13 authority of the conservator or the propriety of the conservator's exercise of authority, but
14 restrictions on authority that are stated in letters of office, or as otherwise provided by law, are
15 effective as to the person. A person that pays or delivers property to a conservator is not
16 responsible for proper application of the property.

17 (b) Protection under subsection (a) extends to a procedural irregularity or jurisdictional
18 defect in the proceeding leading to the issuance of letters of office and is not a substitute for
19 protection provided to a person that assists or deals with a conservator by comparable provisions
20 in law of this state other than this [act] relating to commercial transactions or simplifying
21 transfers of securities by fiduciaries.

22 **SECTION 427. DEATH OF INDIVIDUAL SUBJECT TO CONSERVATORSHIP.**

23 (a) If an individual subject to conservatorship dies, the conservator shall deliver to the

1 court for safekeeping any will of the individual in the conservator's possession, inform the
2 personal representative named in the will if feasible, or if not feasible a beneficiary named in the
3 will, of the delivery.

4 [(b) If 40 days after the death of an individual subject to conservatorship no personal
5 representative has been appointed and an application or petition for appointment is not before the
6 court, the conservator may apply to exercise the powers and duties of a personal representative to
7 administer and distribute the decedent's estate. The conservator shall give notice to a person
8 nominated as personal representative by a will of the decedent of which the conservator is aware.
9 The court may grant the application if there is no objection and endorse the letters of office to
10 note that the individual formerly subject to conservatorship is deceased and the conservator has
11 acquired the powers and duties of a personal representative.

12 (c) Issuance of an order under this section has the effect of an order of appointment of a
13 personal representative [under Section 3-308 and Parts 6 through 10 of Article III of the Uniform
14 Probate Code]].

15 (d) On the death of an individual subject to conservatorship, the conservator shall
16 conclude the administration of the conservatorship estate by distributing property subject to
17 conservatorship to the individual's successors. Not later than [30] days after distribution, the
18 conservator shall file a final report and petition for discharge.

19 **Legislative Note:** These subsections are bracketed for several reasons. First, the enacting
20 jurisdiction's probate code may already specifically address the right of the conservator to
21 petition for appointment as personal representative or the right of the conservator to distribute
22 the conservatorship assets directly to the estate beneficiaries. Second, subsections (b) and (c) are
23 not essential and may be omitted if the enacting jurisdiction chooses. Even though the state's
24 statute may not specifically authorize a conservator to petition for appointment as personal
25 representative, a conservator, like any other holder of a decedent's assets, may eventually take
26 action to effect a distribution. Finally, subsection (b) is specifically tailored for states, such as
27 those that have enacted the Uniform Probate Code, which allow the appointment of a personal
28 representative without prior notice to the estate beneficiaries. States which require notice to

1 *interested persons prior to the appointment of a personal representative should modify*
2 *subsection (b) accordingly.*

3
4 **SECTION 428. PRESENTATION AND ALLOWANCE OF CLAIM.**

5 (a) A conservator may pay, or secure by encumbering property included in the
6 conservatorship estate, a claim against the conservatorship estate or the individual subject to
7 conservatorship arising before or during the conservatorship on presentation and allowance in
8 accordance with the priorities under subsection (d). A claimant may present a claim by:

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

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

13 (b) A claim under subsection (a) is presented on receipt by the conservator of the
14 statement of claim by the conservator or the filing with the court of the claim, whichever first
15 occurs. A presented claim is allowed if it is not disallowed by the conservator in a record sent or
16 delivered to the claimant not later than 60 days after its presentation. Before payment the
17 conservator may change an allowance of the claim to a disallowance in whole or in part, but not
18 after allowance under a court order or order directing payment of the claim. Presentation of a
19 claim tolls the running of a statute of limitations that has not expired relating to the claim until 30
20 days after its disallowance.

21 (c) A claimant whose claim under subsection (a) has not been paid may petition the court
22 to determine the claim at any time before it is barred by a statute of limitations, and the court
23 may order its allowance, payment, or security by encumbering property included in the
24 conservatorship estate. If a proceeding is pending against the individual subject to
25 conservatorship at the time of appointment of the conservator or is initiated thereafter, the

1 moving party shall give the conservator notice of the proceeding if it could result in creating a
2 claim against the conservatorship estate.

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

6 (1) costs and expenses of administration;

7 (2) a claim of the federal or state government having priority under law other than
8 this [act];

9 (3) a claim incurred by the conservator for support, care, education, health, or
10 welfare previously provided to the individual subject to conservatorship or an individual who is
11 in fact dependent on the individual subject to conservatorship;

12 (4) a claim arising before the conservatorship; and

13 (5) all other claims.

14 (e) Preference may not be given in the payment of a claim under subsection (d) over
15 another claim of the same class. A claim due and payable may not be preferred over a claim not
16 due unless:

17 (1) doing so would leave the conservatorship estate without sufficient funds to
18 pay the basic living and health-care expenses of the individual subject to conservatorship; and

19 (2) the court authorizes the preference under Section 414(a)(8).

20 (f) If assets of a conservatorship estate are adequate to meet all existing claims, the court,
21 acting in the best interest of the individual subject to conservatorship, may order the conservator
22 to grant a security interest in the conservatorship estate for payment of a claim at a future date.

1 **SECTION 429. PERSONAL LIABILITY OF CONSERVATOR.**

2 (a) Except as otherwise agreed by a conservator, the conservator is not personally liable
3 on a contract properly entered into in a fiduciary capacity in the course of administration of the
4 conservatorship estate unless the conservator fails to reveal in the contract or before entering into
5 the contract the conservator's representative capacity.

6 (b) A conservator is personally liable for an obligation arising from control of property of
7 the conservatorship estate or an act or omission occurring in the course of administration of the
8 conservatorship estate only if the conservator is personally at fault.

9 (c) A claim based on a contract entered into by a conservator in a fiduciary capacity, an
10 obligation arising from control of property included in the conservatorship estate, or a claim
11 based on a tort committed in the course of administration of the conservatorship estate may be
12 asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary
13 capacity, whether or not the conservator is personally liable for the claim.

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

17 **SECTION 430. REMOVAL OF CONSERVATOR; APPOINTMENT OF**
18 **SUCCESSOR.**

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

21 (b) The court shall conduct a hearing to determine whether to remove a conservator and
22 appoint a successor on:

23 (1) petition of the individual subject to conservatorship, conservator, or person

1 interested in the welfare of the individual, but the court may decline to hold a hearing if a similar
2 petition was filed within the preceding six months;

3 (2) communication from the individual subject to conservatorship, conservator, or
4 person interested in the welfare of the individual which supports a reasonable belief that removal
5 of the conservator and appointment of a successor may be appropriate; or

6 (3) determination by the court that a hearing would be in the best interest of the
7 individual subject to conservatorship.

8 (c) An individual subject to conservatorship who seeks to remove the conservator and
9 have a successor appointed is entitled to be represented by an attorney of the individual's
10 choosing. [If the individual subject to conservatorship is not represented by an attorney, the
11 court shall appoint an attorney under the same conditions as in Section 406.] The court shall
12 award reasonable attorney's fees to the attorney for the individual.

13 (d) In selecting a successor conservator, the court shall follow the procedures under
14 Section 410.

15 (e) Not later than 30 days after appointing a successor conservator, the court shall give
16 notice of the appointment to the individual subject to conservatorship and any person entitled to
17 the notice under Section 411(e) or a subsequent order.

18 **SECTION 431. TERMINATION OR MODIFICATION OF**
19 **CONSERVATORSHIP.**

20 (a) A conservatorship for a minor terminates on the earlier of:

21 (1) an order of the court;

22 (2) the minor becomes an adult or, if the minor consents or the court finds by
23 clear-and-convincing evidence that substantial harm to the minor's interests is otherwise likely,

1 attaining age 21;

2 (3) emancipation of the minor; or

3 (4) death of the minor.

4 (b) A conservatorship for an adult terminates on order of the court or when the adult dies.

5 (c) An individual subject to conservatorship, the conservator, or a person interested in the
6 welfare of the individual may petition for:

7 (1) termination of the conservatorship on the ground that a basis for appointment
8 under Section 401 does not exist or termination would be in the best interest of the individual, or
9 for other good cause; or

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

12 (d) The court shall conduct a hearing to determine whether termination or modification of
13 a conservatorship is appropriate on:

14 (1) petition under subsection (c), but the court may decline to hold a hearing if a
15 similar petition was filed within the preceding six months;

16 (2) a communication from the individual subject to conservatorship, conservator,
17 or person interested in the welfare of the individual which supports a reasonable belief that
18 termination or modification of the conservatorship may be appropriate, including because of a
19 change in the functional needs of the individual or in the supports or services available to the
20 individual;

21 (3) a report from a guardian or conservator which indicates that termination or
22 modification may be appropriate because the functional needs or supports or services available to
23 the individual subject to conservatorship have changed or a protective arrangement of

1 conservatorship or other less restrictive alternatives are available; or

2 (4) the court determines a hearing would be in the best interest of the individual.

3 (e) On presentation of prima facie evidence for termination of a conservatorship, the
4 court shall order termination unless a basis for appointment of a conservator under Section 401 is
5 satisfied.

6 (f) The court shall modify the powers granted to a conservator if the powers are excessive
7 or inadequate due to a change in the abilities or limitations of the individual subject to
8 conservatorship, the individual's supports, or other circumstances.

9 (g) Unless the court otherwise orders for good cause, before terminating a
10 conservatorship, the court shall follow the same procedures to safeguard the rights of the
11 individual subject to conservatorship which apply to a petition for conservatorship.

12 (h) An individual subject to conservatorship who seeks to terminate or modify the terms
13 of the conservatorship is entitled to be represented by an attorney of the individual's choosing.
14 [If the individual is not represented by an attorney, the court shall appoint an attorney under the
15 same conditions in Section 406.] The court shall award reasonable attorney's fees to the
16 individual's attorney.

17 (i) On termination of a conservatorship and whether or not formally distributed by the
18 conservator, property of the conservatorship estate passes to the individual formerly subject to
19 conservatorship or the individual's heirs, successors, or assigns. The order of termination must
20 provide for expenses of administration and direct the conservator to file a final report and
21 petition for discharge on approval of the final report.

22 (j) The court shall enter a final order of discharge on the approval of the final report and
23 satisfaction by the conservator of any other condition placed by the court on the conservator's

1 discharge.

2 (k) On the death of an individual subject to conservatorship or other event terminating or
3 partially terminating the conservatorship, the conservator shall proceed expeditiously to
4 distribute the conservatorship estate to the individual or other persons entitled to it. The
5 conservator may take reasonable measures necessary to preserve the conservatorship estate until
6 distribution can be effected.

7 **SECTION 432. TRANSFER FOR BENEFIT OF MINOR WITHOUT**
8 **APPOINTMENT OF CONSERVATOR.**

9 (a) Unless a person required to transfer money or personal property to a minor knows that
10 a conservator has been appointed or a proceeding is pending for conservatorship for the minor,
11 the person may transfer an amount or value not exceeding \$[14,000] in a 12-month period to:

12 (1) a person that has the care or custody of the minor and with whom the minor
13 resides;

14 (2) a guardian of the minor;

15 (3) a custodian under [the Uniform Transfers to Minors Act or Uniform Gifts to
16 Minors Act]; or

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

19 (b) A person that transfers money or property under this section is not responsible for its
20 proper application.

21 (c) A person that receives money or property for a minor under subsection (a)(1) or (2)
22 may apply it only to the support, care, education, health, and welfare of the minor, and may not
23 derive a personal financial benefit from it, except for reimbursement for necessary expenses.

1 Funds in excess of those required to be so applied must be preserved for the future support, care,
2 education, health, or welfare of the minor, and the balance, if any, transferred to the minor when
3 the minor becomes an adult or is otherwise emancipated.

4 **[ARTICLE] 5**

5 **OTHER PROTECTIVE ARRANGEMENTS**

6 **SECTION 501. AUTHORITY FOR PROTECTIVE ARRANGEMENT.**

7 (a) Under this [article], a court:

8 (1) upon receiving a petition for a guardianship for an adult may order a
9 protective arrangement instead of guardianship; and

10 (2) upon receiving a petition for a conservatorship for an individual, may order a
11 protective arrangement instead of conservatorship.

12 (b) A person interested in an adult's welfare, including the adult or a conservator for the
13 adult, may under this [article] petition for a protective arrangement instead of guardianship.

14 (c) The following persons may under this [article] petition for a protective arrangement
15 instead of conservatorship:

16 (1) the individual for whom the protective arrangement is sought;

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

20 (3) the guardian of the individual.

21 **SECTION 502. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF** 22 **GUARDIANSHIP FOR ADULT.**

23 (a) If, after the hearing conducted under Section 505 on a petition filed under Section

1 501(a)(1) or (b), the court finds by clear-and-convincing evidence that the respondent lacks the
2 ability to meet essential requirements for physical health, safety, or self care because the
3 respondent is unable to receive and evaluate information or make or communicate decisions,
4 even with appropriate supportive services, technological assistance, or supported decision
5 making, the court, instead of appointing a guardian, may:

6 (1) authorize or direct a transaction necessary to meet the respondent's need for
7 health, safety, or care, including:

8 (A) a particular medical treatment or refusal of a particular medical
9 treatment;

10 (B) a move to a specified place of residence; or

11 (C) visitation or supervised visitation between the respondent and another
12 person;

13 (2) restrict access to the respondent by a person whose access places the
14 respondent at serious risk of physical or psychological harm; and

15 (3) order other arrangements on a limited basis that are appropriate.

16 (b) In deciding whether to enter an order under this section, the court shall consider the
17 factors under Sections 313 and 314 which a guardian must consider when making a decision on
18 behalf of an adult subject to guardianship.

19 **SECTION 503. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF**
20 **CONSERVATORSHIP FOR ADULT OR MINOR.**

21 (a) After the hearing conducted under Section 505 on a petition under Section 501(a)(2)
22 or (c) for a respondent who is an adult, the court may enter an order for a protective arrangement
23 instead of conservatorship under subsection (c) for the respondent if the court finds:

1 (1) by clear-and-convincing evidence that the respondent is unable to manage
2 property or financial affairs because of a limitation in the ability to receive and evaluate
3 information or make or communicate decisions, even with the use of appropriate supportive
4 services, technological assistance, or supported decision making, or the adult is missing,
5 detained, or unable to return to the United States; and

6 (2) by a preponderance of the evidence that:

7 (A) the respondent has property likely to be wasted or dissipated unless
8 management is provided; or

9 (B) the order under subsection (c) is necessary or desirable to obtain or
10 provide money needed for the support, care, education, health, or welfare of the adult or an
11 individual who is entitled to the respondent's support and protection.

12 (b) After the hearing conducted under Section 505 on a petition under Section 501(a)(2)
13 or (c) for a respondent who is a minor, the court may enter an order for a protective arrangement
14 instead of conservatorship under subsection (c) for the respondent if the court finds by a
15 preponderance of evidence the minor owns money or property requiring management or
16 protection that cannot be provided otherwise and:

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

19 (2) the order under subsection (c) is necessary or desirable to obtain or provide
20 money needed for the support, care, education, health, or welfare of the minor.

21 (c) If the court makes the findings under subsection (a) or (b), the court, instead of
22 appointing a conservator, may:

23 (1) authorize or direct a transaction necessary to protect the financial interest or

1 property of the respondent, including:

2 (A) an action to establish eligibility for benefits;

3 (B) payment, delivery, deposit, or retention of funds or property;

4 (C) sale, mortgage, lease, or other transfer of property;

5 (D) purchase of an annuity;

6 (E) entry into a contractual relationship, including a contract to provide for
7 personal care, supportive services, education, training, or employment;

8 (F) addition to or establishment of a trust;

9 (G) ratification or invalidation of a contract, trust, will, or other
10 transaction, including a transaction related to the property or business affairs of the respondent;

11 or

12 (H) settlement of a claim; or

13 (2) restrict access to the respondent's property by a person whose access to the
14 property places the respondent at serious risk of financial harm.

15 (d) If, after the hearing conducted under Section 505 on a petition under Section
16 501(a)(2) or (c), a court may enter an order to restrict access to the respondent or the
17 respondent's property by a person that the court finds by clear-and-convincing evidence:

18 (1) through fraud, coercion, duress, or the use of deception and control, caused or
19 attempted to cause an action that would have resulted in financial harm to the respondent; and

20 (2) poses a serious risk of substantial financial harm to the respondent or the
21 respondent's property.

22 (e) In deciding whether to enter an order under subsections (c) or (d), the court shall
23 consider the factors under Section 418 a conservator must consider when making a decision on

1 behalf of an individual subject to conservatorship.

2 (f) In deciding whether to enter an order under subsection (c) or (d) for a respondent who
3 is a minor, the court also shall consider the best interest of the respondent, the preference of the
4 parents of the respondent, and the preference of the respondent if the minor is 12 years of age or
5 older.

6 **SECTION 504. PETITION.**

7 (a) A petition for a protective arrangement instead of guardianship or conservatorship
8 must set forth the petitioner's name, principal residence, current street address, if different,
9 relationship to the respondent, interest in the protective arrangement, and state or contain the
10 following to the extent known:

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

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

15 (A) spouse [or domestic partner], or if the respondent has none, any adult
16 with whom the respondent has shared household responsibilities for more than six months in the
17 12-month period before the filing of the petition;

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

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

- 1 (3) the name and current address of each of the following, if applicable:
- 2 (A) a person responsible for care or custody of the respondent;
- 3 (B) any attorney currently representing the respondent;
- 4 (C) the representative payee appointed by the Social Security
- 5 Administration for the respondent;
- 6 (D) a guardian or conservator acting for the respondent in this state or in
- 7 another jurisdiction;
- 8 (E) a trustee or custodian of a trust or custodianship of which the
- 9 respondent is a beneficiary;
- 10 (F) the Veterans Administration fiduciary for the respondent;
- 11 (G) an agent designated under a [power of attorney for health care] in
- 12 which the respondent is identified as the principal;
- 13 (H) an agent designated under a power of attorney for finances in which
- 14 the respondent is identified as the principal;
- 15 (I) a person nominated as guardian or conservator by the respondent;
- 16 (J) a person nominated as guardian by the respondent's parent or spouse
- 17 [or domestic partner] in a will or other signed record;
- 18 (K) a proposed guardian and the reason the proposed guardian should be
- 19 selected;
- 20 (L) a person known to have routinely assisted the respondent with decision
- 21 making within the six months before the filing of the petition; and
- 22 (M) if the respondent is a minor:
- 23 (i) an adult with whom the respondent resides if not otherwise

1 listed; and

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

6 (4) the nature of the protective arrangement sought;

7 (5) the reason a protective arrangement sought is necessary, including a brief
8 description of:

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

10 (B) any less restrictive alternatives for meeting the respondent's alleged
11 need that have been considered or implemented and, if none, the reason they have not been
12 considered or implemented, and

13 (C) the reason other less restrictive alternatives are insufficient to meet the
14 respondent's alleged need;

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

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

19 (8) if a protective arrangement instead of conservatorship is sought , a general
20 statement of the respondent's property with an estimate of its value, including any insurance or
21 pension, and the source and amount of other anticipated income or receipts; and

22 (9) if a protective arrangement instead of guardianship is sought and the
23 respondent has property other than personal effects, a general statement of the respondent's

1 property with an estimate of its value, including any insurance or pension, and the source and
2 amount of any other anticipated income or receipts.

3 **SECTION 505. NOTICE AND HEARING.**

4 (a) On receipt of a petition under Section 501, the court shall set a date, time, and place
5 for hearing on the petition.

6 (b) A copy of a petition under Section 501 and notice of the hearing under subsection (a)
7 must be served personally on the respondent. The notice must include a statement that the
8 respondent must be physically present at the hearing unless excused by the court under Section
9 509, inform the respondent of the respondent's rights at the hearing, and include a description of
10 the nature, purpose, and consequences of granting the petition. Failure to serve the respondent
11 with notice substantially complying with this subsection precludes the court from granting the
12 petition.

13 (c) In a hearing under subsection (a), notice of the hearing also must be given to the
14 persons listed in the petition and any other person interested in the respondent's welfare the court
15 determines. Failure to give notice under this subsection does not preclude the court from
16 granting the petition.

17 (d) Notice of a hearing on a petition filed under this [act] after the court has ordered a
18 protective arrangement under this [article], together with a copy of the petition, must be given to
19 the respondent and any other person the court determines.

20 **SECTION 506. APPOINTMENT OF [VISITOR].**

21 (a) On receipt of a petition for protective arrangement instead of guardianship under
22 Section 501, the court shall appoint a [visitor]. A [visitor] appointed under this subsection must
23 be an individual having training or experience in the type of abilities, limitations, and needs

1 alleged in the petition.

2 (b) On receipt of a petition for a protective order instead of conservatorship for a minor
3 under Section 501, the court may appoint a [visitor] to investigate a matter related to the petition
4 or to inform the respondent or a parent of the respondent about the petition or a related matter.

5 (c) On receipt of a petition for a protective order instead of conservatorship for an adult
6 under Section 501, the court shall appoint a [visitor][unless the respondent is represented by an
7 attorney appointed by the court].

8 (d) A [visitor] appointed under subsection (a) or (c) shall interview the respondent in
9 person and, in a manner the 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, and the respondent's rights at the hearing;

12 (2) determine the respondent's views with respect to the order sought;

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

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 assets;

17 (5) if the petitioner seeks an order related to the dwelling of the respondent, visit
18 the respondent's present dwelling and any dwelling in which it is reasonably believed the
19 respondent will live if the order is granted;

20 (6) if a protective arrangement instead of guardianship is sought, obtain
21 information from any physician or other person known to have treated, advised, or assessed the
22 respondent's relevant physical or mental condition;

23 (7) if a protective arrangement instead of conservatorship is sought, review

1 financial records of the respondent if relevant to the [visitor's] recommendation under subsection
2 (e)(3); and

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

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

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

9 (2) to the extent relevant to the order sought, a summary of self care, independent-
10 living tasks, and financial management tasks the respondent can manage without assistance or
11 with existing supports, could manage with the assistance of appropriate supportive services,
12 technological assistance, or supported decision making, and cannot manage;

13 (3) recommendations regarding the appropriateness of the protective arrangement
14 sought and whether less restrictive alternatives for meeting the respondent's needs are available;

15 (4) if the petition seeks to change the physical location of the dwelling of the
16 respondent, a statement whether the proposed dwelling meets the respondent's needs and
17 whether the respondent has expressed a preference as to the respondent's dwelling;

18 (5) a recommendation whether a professional evaluation under Section 508 is
19 necessary;

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

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

1 ability to participate; and

2 (8) any other matter the court directs.

3 **SECTION 507. APPOINTMENT AND ROLE OF ATTORNEY.**

4 **Alternative A**

5 (a) The court shall appoint an attorney to represent the respondent in a proceeding under
6 this [article] if:

7 (1) requested by the respondent;

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

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

10 **Alternative B**

11 (a) Unless the respondent in a proceeding under this [article] is represented by an
12 attorney, the court shall appoint an attorney to represent the respondent, regardless of the
13 respondent's ability to pay.

14 **End of Alternatives**

15 (b) An attorney representing the respondent in a proceeding under this [article] shall:

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

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

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

22 [(c) The court shall appoint an attorney to represent a parent of a minor who is the subject
23 of a proceeding under this [article] if:

1 (1) the parent objects to the entry of an order for a protective arrangement instead
2 of guardianship or conservatorship;

3 (2) the court determines that counsel is needed to ensure that consent to the entry
4 of an order for a protective arrangement is informed; or

5 (3) the court otherwise determines the parent needs representation.]
6

7 **Legislative Note:** *The Drafting Committee believed that subsection (c) is important and should*
8 *be included, but recognized that some states have different policies regarding rights of parents in*
9 *these cases.*
10

11 **SECTION 508. PROFESSIONAL EVALUATION.**

12 (a) At or before a hearing on a petition for a protective order instead of guardianship
13 under this [article], the court shall order a professional evaluation of the respondent:

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

16 (2) if the respondent requests the evaluation.

17 (b) If the court orders an evaluation under subsection (a), the respondent must be
18 examined by a physician, psychologist, social worker, or other individual appointed by the court
19 who is qualified to evaluate the respondent's cognitive and functional abilities and alleged
20 limitations and will not be advantaged or disadvantaged by a decision to grant the petition. The
21 individual conducting the evaluation promptly shall file a report in a record with the court.

22 Unless otherwise directed by the court, the report must contain:

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

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

1 (3) a prognosis for improvement and recommendation for the appropriate
2 treatment, support, or habilitation plan; and

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

4 **SECTION 509. PRESENCE AND RIGHTS AT HEARING.**

5 (a) Except as otherwise provided in subsection (b), the court shall require the respondent
6 to attend the hearing under this [article]. If it is not reasonably feasible for the respondent to
7 attend a hearing at the location court proceedings typically are conducted, the court shall make
8 reasonable efforts to hold the hearing at an alternative location convenient to the respondent or
9 allow the respondent to attend the hearing using real-time audio-visual technology.

10 (b) The court may excuse the respondent from attending the hearing conducted under
11 Section 502 if the court finds by clear-and-convincing evidence that:

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

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

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

19 (c) The respondent may be assisted in a hearing under this [article] by a person or
20 persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a
21 combination of these supports. If assistance would facilitate the respondent's participation in the
22 hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts
23 to provide it.

1 (d) The respondent has a right to be represented at a hearing conducted under this
2 [article] by an attorney of the respondent's choosing.

3 (e) At a hearing conducted under [this article], the respondent may:

4 (1) present evidence and subpoena witnesses and documents;

5 (2) examine witnesses, including any court-appointed physician, psychologist, or
6 other individual qualified to evaluate the cognitive and functional abilities and alleged limitations
7 of the respondent, and the [visitor]; and

8 (3) otherwise participate in the hearing.

9 (f) A hearing conducted under this [article] shall be closed on request of the respondent
10 and a showing of good cause.

11 (g) Any person may request to participate in a hearing conducted under [this article]. The
12 court may grant the request, with or without hearing, on determining that the best interest of the
13 respondent will be served. The court may attach appropriate conditions to the person's
14 participation.

15 **SECTION 510. NOTICE OF ORDER.** The court shall give notice of an order under
16 this [article] to the individual who is the subject of the protective arrangement instead of
17 guardianship or conservatorship, a person whose access to the respondent is restricted by the
18 order, and any other person the court determines.

19 **SECTION 511. CONFIDENTIALITY OF RECORDS.**

20 (a) The existence of a proceeding for or the existence of a protective arrangement instead
21 of a guardianship or conservatorship is a matter of public record unless the court seals the record
22 after:

23 (1) the respondent, the individual subject to the protective arrangement, or the

1 parent of a minor subject to the protective arrangement requests the record be sealed; and

2 (2) either:

3 (1) the proceeding is dismissed;

4 (2) the protective arrangement is no longer in effect; or

5 (3) any act authorized by the order granting the protective arrangement has
6 been completed.

7 (b) A respondent, an individual subject to a proceeding for a protective arrangement
8 instead of guardianship or conservatorship, an attorney designated by the respondent or
9 individual, a parent of a minor subject to a protective arrangement, and any other person the
10 court determines are entitled to access court records of the proceeding and resulting protective
11 arrangement. A person not otherwise entitled to access to court records under this subsection
12 may petition the court for access. The court shall grant access if access is in the best interest of
13 the respondent or individual subject to the protective arrangement or furthers the public interest
14 and does not endanger the welfare or financial interests of the respondent or individual.

15 [(c) A report of a [visitor] or professional evaluation generated in the course of a
16 proceeding under this [article] must be sealed on filing, but is available to:

17 (1) the court;

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

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

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

(5) if the order is for a protective arrangement instead of guardianship and unless the court directs otherwise, an agent appointed under a [power of attorney for health care] in which the respondent is identified as the principal; and

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

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

SECTION 512. APPOINTMENT OF [MASTER]. The court may appoint a [master] to assist in implementing a protective arrangement under this [article]. The [master] has the authority conferred by the order of appointment and serves until discharged by court order.

[ARTICLE] 6

FORMS

SECTION 601. USE OF FORMS. Use of the forms contained in this [article] is optional. Failure to use these forms does not prejudice any party.

SECTION 602. PETITION FOR GUARDIANSHIP FOR MINOR. This form may, but need not be, used to petition for guardianship of a minor.

Petition for Guardianship for Minor

State of:

County of:

Name and address of attorney representing Petitioner, if applicable:

Note to Petitioner: This form can be used to petition for a guardian for a minor. A court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest, and: (1) the parents, after being fully informed of the nature and consequences of guardianship, provide consent; (2) all parental rights have been terminated; or (3) the court finds by clear-and-convincing evidence that the parents are unwilling or unable to exercise their parental rights.

1. Information about the person filing this petition (the "Petitioner").

a. Name:

- b. Principal residence:
- c. Current street address (if different):
- d. Relationship to minor:
- e. Interest in this petition:
- f. Telephone number (optional):

2. Information about the minor alleged to need a guardian.

Provide the following information to the extent known.

- a. Name:
- b. Age:
- c. Principal residence:
- d. Current street address (if different):
- e. If Petitioner anticipates the minor moving, or seeks to move the minor, proposed new address:
- f. Does the minor need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain.
- g. Telephone number (optional):

3. Information about the minor's parent(s).

- a. Name(s) of living parent(s):
- b. Principal residence(s) of living parent(s):
- c. Current street address(es) of living parent(s) (if different):
- d. Does any parent need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain.

4. People who are required to be notified of this petition. State the name and current address of any of the people listed in Appendix A.

5. Appointment requested. State the name and address of any proposed guardian and the reason the proposed guardian should be selected;

6. State why Petitioner seeks the appointment. Include a description of the nature and extent of the minor's alleged need.

7. Property. If the minor has property other than personal effects, state the minor's property with an estimate of its value.

8. Other proceedings. If there are any other proceedings concerning the care or custody of the minor currently pending in any court in this state or another jurisdiction, please describe them.

9. Attorney(s). If the minor or the minor's parent is represented by an attorney in this matter, state the name, address, telephone number, and email address of the attorney(s).

SIGNATURE

Signature of Petitioner

Date

Signature of Petitioner's Attorney if
Petitioner is Represented by Counsel

Date

APPENDIX A:

People whose name and address must be listed in Section 4 of this petition if they are not the Petitioner.

- The minor, if the minor is 12 years of age or older;
- Each parent of the minor or, if there are none, the adult nearest in kinship that can be found;
- An adult with whom the minor resides;
- Any person that had primary care or custody of the minor for 60 or more days during the two years preceding the filing of the petition or any person that had had the primary care or custody of the minor for at least 730 days during the five years preceding the filing of the petition;
- If the minor is 12 years of age or older, any person nominated as guardian by the minor;
- Any person nominated as guardian by a parent of the minor;
- The grandparents of the minor;
- Adult siblings of the minor;
- Any current guardian or conservator of the minor appointed in this state or another jurisdiction.

SECTION 603. PETITION FOR GUARDIANSHIP OR PROTECTIVE

ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT,

CONSERVATORSHIP OR PROTECTIVE ARRANGEMENT INSTEAD OF

CONSERVATORSHIP FOR ADULT OR MINOR. This form may, but need not be, used to

petition for: (1) guardianship for an adult; (2) conservatorship for an adult or a minor, (3) a

protective arrangement instead of guardianship for an adult; or (4) a protective arrangement

instead of conservatorship for an adult or a minor.

Petition for Guardianship or Protective Arrangement Instead of Guardianship for Adult,

or for Conservatorship or Protective Arrangement Instead of Conservatorship for Minor

or Adult

1 **State of:**

2 **County of:**

3 **Name and address of attorney representing Petitioner, if applicable:**

4
5 ***Note to Petitioner:** This form can be used to petition for a guardian, conservator, or*
6 *both, or for a protective arrangement instead of either a guardianship or*
7 *conservatorship.*

8
9 *The court may appoint a guardian or order a protective arrangement instead of*
10 *guardianship for an adult if the adult lacks the ability to meet essential requirements for*
11 *physical health, safety, or self care because (1) the adult is unable to receive and*
12 *evaluate information or make or communicate decisions even with the use of supportive*
13 *services, technological assistance, and supported decision-making, and (2) the adult's*
14 *identified needs cannot be met by less-restrictive alternatives.*

15
16 *The court may appoint a conservator or order a protective arrangement instead of*
17 *conservatorship for an adult if the adult is unable to manage property and financial*
18 *affairs because (1) of a limitation in the ability to receive and evaluate information or*
19 *make or communicate decisions even with the use of supportive services, technological*
20 *assistance, and supported decision making or the adult is missing, detained, or unable to*
21 *return to the United States, and (2) the adult has property that is likely to be wasted or*
22 *dissipated unless management is provided, or money is needed for the support, care,*
23 *education, health, and welfare of the adult or of individuals who are entitled to the*
24 *adult's support and that protection is necessary or desirable to provide money for such*
25 *purpose.*

26
27 *The court may appoint a conservator or order a protective arrangement instead of*
28 *conservatorship for a minor if (1) the minor owns money or property requiring*
29 *management or protection that cannot otherwise be provided; or (2) it would be in the*
30 *minor's best interest, and the minor has or may have financial affairs that may be put at*
31 *unreasonable risk or because of the minor's age or money is needed for the support,*
32 *care, or education of the minor and appointment of a conservator is necessary or*
33 *desirable to provide such money.*

34
35 *The court may also order a protective arrangement instead of conservatorship restricting*
36 *access to an individual or an individual's property by a person that the court finds: (1)*
37 *through fraud, coercion, duress, or the use of deception and control, caused the*
38 *individual to suffer physical, psychological, or financial harm; and (2) poses a serious*
39 *risk of substantial financial harm to the individual or the individual's property.*

40
41 **1. Information about the person filing this petition (the "Petitioner").**

- 42 a. Name:
- 43 b. Principal residence:
- 44 c. Current street address (if different):
- 45 d. Relationship to Respondent:
- 46 e. Interest in this petition:

- 1 f. Telephone number (optional):
2
- 3 **2. Information about the individual alleged to need protection (the “Respondent”).**
4 Provide the following information to the extent known.
5 a. Name:
6 b. Age:
7 c. Principal residence:
8 d. Current street address (if different):
9 e. If Petitioner anticipates Respondent moving, or seeks to move Respondent,
10 proposed new address:
11 f. Does Respondent need an interpreter, translator, or other form of support to
12 communicate with the court or understand court proceedings? If so, please
13 explain.
14 g. Telephone number (optional):
15
- 16 **3. People who are required to be notified of this petition.** State the name and address of
17 any of the people listed in Appendix A.
18
- 19 **4. Existing agents.** State the name and address of any person appointed as an agent under a
20 power of attorney for finances or [power of attorney for health care], or who has been
21 appointed as the individual’s representative for payment of benefits.
22
- 23 **5. Action requested.** State whether Petitioner is seeking appointment of a guardian, a
24 conservator, or a protective arrangement instead of an appointment.
25
- 26 **6. Order requested or appointment requested.** If seeking a protective arrangement
27 instead of a guardianship or conservator, state the transaction or other action you would
28 want the court to order. If seeking appointment of a guardian or conservator, state the
29 powers Petitioner requests the court grant to a guardian or conservator.
30
- 31 **7. State why the appointment or protective arrangement sought is necessary.** Include a
32 description of the nature and extent of Respondent’s alleged need.
33
- 34 **8. State all less-restrictive alternatives to meeting Respondent’s alleged need that have**
35 **been considered or implemented.** Less-restrictive alternatives could include supported
36 decision making, technological assistance, or the appointment of an agent by Respondent
37 including appointment under a [power of attorney for health care] or power of attorney
38 for finances. If no alternatives have been considered or implemented, state the reason
39 why not.
40
- 41 **9. Explain why less-restrictive alternatives will not meet Respondent’s alleged need.**
42
- 43 **10. Provide a general statement of Respondent’s property and an estimate of its value.**
44 Include any real property such as a house or land, insurance or pension, and the source
45 and amount of any other anticipated income or receipts. As part of this statement,
46 indicate, if known, how the property is titled (for example, is it jointly owned?).

- 1 **11. For petitions seeking appointment of a conservator:** (skip this section if not asking for
2 appointment of a conservator)
- 3 a. If seeking appointment of a conservator with all powers permissible under this
4 state's law, explain why appointment of a conservator with fewer powers (i.e., a
5 "limited conservatorship") or other protective arrangement instead of
6 conservatorship will not meet the individual's alleged needs.
7
- 8 b. If seeking a limited conservatorship, state the property Petitioner requests be
9 placed under the conservator's control and any proposed limitation on the
10 conservator's powers and duties.
11
- 12 c. State the name and address of any proposed conservator and the reason the
13 proposed conservator should be selected.
14
- 15 d. If Respondent is 12 years of age or older, state the name and address of any
16 person Respondent nominates as conservator.
17
- 18 e. If alleging a limitation in Respondent's ability to receive and evaluate
19 information, provide a brief description of the nature and extent of Respondent's
20 alleged limitation.
21
- 22 f. If alleging that Respondent is missing, detained, or unable to return to the United
23 States, state the relevant circumstances, including the time and nature of the
24 disappearance or detention and a description of any search or inquiry concerning
25 Respondent's whereabouts.
26
- 27 **12. For petitions seeking appointment of a guardian: (skip this section if not asking for**
28 **appointment of a guardian)**
- 29 a. If seeking appointment of a guardian with all powers permissible under this
30 state's law, explain why appointment of a guardian with fewer powers (i.e., a
31 "limited guardianship") or other protective order is inappropriate.
32
- 33 b. If seeking a limited guardianship, state the powers Petitioner requests be granted
34 to the guardian.
35
- 36 c. State the name and address of any proposed guardian and the reason the proposed
37 guardian should be selected.
38
- 39 d. State the name and address of any person nominated as guardian by Respondent,
40 or by Respondent's parent or spouse [or domestic partner] in a will or other
41 signed writing or other record.
42
- 43 **13. Attorney.** If Petitioner, Respondent, or, if Respondent is a minor, Respondent's parent is
44 represented by an attorney in this matter, state the name, address, telephone number, and
45 email address of the attorney(s).
46

1 **SIGNATURE**

2
3 _____
4 Signature of Petitioner

_____ Date

5
6 _____
7 Signature of Petitioner's Attorney if
8 Petitioner is Represented by Counsel

_____ Date

9 **APPENDIX A:**

10 **People whose name and address must be listed in Section 3 of this petition.**

- 11 • Respondent's spouse [or domestic partner], or if Respondent is not married [and does not
12 have a domestic partner], any adult with whom Respondent has shared household
13 responsibilities in the past six months;
14 • Respondent's adult children, or, if Respondent has none, Respondent's parents and adult
15 brothers and sisters, or if Respondent has none, one or more adults nearest in kinship to
16 Respondent who can be found;
17 • Respondent's adult stepchildren whom Respondent actively parented during the
18 stepchildren's minor years and with whom Respondent had an ongoing relationship within
19 two years of this petition;
20 • Any person responsible for the care or custody of Respondent;
21 • Any attorney currently representing Respondent;
22 • Any representative payee for Respondent appointed by the Social Security Administration;
23 • Any current guardian or conservator for Respondent appointed in this state or another
24 jurisdiction;
25 • Any trustee or custodian of a trust or custodianship of which Respondent is a beneficiary;
26 • Any Veterans Administration fiduciary for Respondent;
27 • Any person Respondent has designated as agent under a power of attorney for finances;
28 • Any person Respondent has designated as agent under a [power of attorney for health care];
29 • Any person known to have routinely assisted the individual with decision making in the
30 previous six months.
31 • Any person Respondent nominates as guardian or conservator; and
32 • Any person nominated as guardian by Respondent's parent or spouse [or domestic partner] in
33 a will or other signed writing or other record.
34

35 **SECTION 604. ORDER DENYING GUARDIANSHIP OR CONSERVATORSHIP**

36 **FOR ADULT.** This form may, but need not be, used by the court to deny a petition for a
37 guardian or conservator for an adult.

38 **Order Denying Guardianship for Conservatorship of Adult**

39 State of:

40 County of:

41 Court:

42 File Number:

1 Date:

2 In the Matter of:

3 Judge:

4 This is a matter before the court on a petition for an appointment of a
5 [GUARDIAN/CONSERVATOR/GUARDIAN AND CONSERVATOR] for [RESPONDENT'S
6 NAME]. The court has read the petition and held a hearing to determine whether the court
7 should enter the order requested in the petition.

8
9 **VENUE, JURISDICTION, and NOTICE.**

10 This court finds:

11 ___ it has jurisdiction over Respondent and over this issue, that this court is a proper venue, and
12 that notice was properly served.

13 ___ it does not have jurisdiction over Respondent.

14 ___ this court is not a proper venue.

15 ___ notice was not properly served.

16
17
18 **HEARING.**

19 ___ No hearing was held.

20 ___ A hearing was held on:_____

21
22 At the hearing, Respondent was:

23 ___ present, in person.

24 ___ present, through the use of audio-visual technology.

25 ___ not present and there was clear-and-convincing evidence Respondent refused to attend
26 the hearing.

27 ___ not present and there was no possible way for Respondent to attend and participate in the
28 hearing even with appropriate supportive services and technological assistance.

29
30 At the hearing, Respondent was:

31 ___ represented by the following attorney:_____.

32 ___ not represented by an attorney.

33
34 **COURT'S FINDINGS AS TO RESPONDENT'S ABILITIES AND NEEDS.**

35 This court reviewed the following evidence with regard to Respondent's abilities and needs:
36 [LIST]

37
38 Based on this evidence, this Court finds that there is not clear-and-convincing evidence to
39 support an appointment.

40
41 **COSTS.**

42 Costs are:

43 ___ Waived

44 ___ Taxed to Petitioner

45 ___ Taxed to Respondent

1 **SIGNATURE.**

2 Signed:

3 Date:

4
5 **SECTION 605. ORDER APPOINTING GUARDIAN OR CONSERVATOR FOR**

6 **ADULT.** This form may, but need not be, used by the court to appoint a guardian for an adult or
7 conservator.

8 **Order for Guardianship or Conservatorship for Adult**

9 State of:

10 County of:

11 Court:

12 File Number:

13 Date:

14 In the Matter of:

15 Judge:

16
17 This is a matter before the court on a petition for an adjudication that a
18 [GUARDIAN/CONSERVATOR/GUARDIAN AND CONSERVATOR] be appointed for
19 [RESPONDENT]. The court has read the petition and held a hearing to determine whether the
20 court should enter the order requested in the petition.

21
22 **NOTICE.**

23 ____ There is clear-and-convincing evidence that Respondent was given proper notice of the
24 hearing on the petition.

25
26 **HEARING.**

27 A hearing was held on: _____

28
29 At the hearing, Respondent was:

30 ____ present, in person.

31 ____ present, through the use of audio-visual technology.

32 ____ not present and there was clear-and-convincing evidence Respondent refused to attend
33 the hearing.

34 ____ not present and there was no possible way for Respondent to attend and participate in the
35 hearing even with appropriate supportive services and technological assistance.

36
37 At the hearing, Respondent was:

38 ____ represented by the following attorney: _____

39 ____ not represented by an attorney.

40
41 The following other people participated in this case:

42 ____ guardian ad litem: _____

1 ___ professional evaluator: _____
2 ___ other: _____
3

4 **VENUE, JURISDICTION, and NOTICE.**

5 This court finds that it has jurisdiction over Respondent and over this issue, that this court is a
6 proper venue, and that notice was properly served.
7

8 **COURT’S FINDINGS AS TO RESPONDENT’S ABILITIES AND NEEDS.**

9 This court reviewed the following evidence with regard to Respondent’s abilities and needs:
10 [LIST]
11

12 Based on this evidence, this Court finds that there is clear-and-convincing evidence to support an
13 appointment. Specifically, this Court finds that:

14 [PROVIDE A DETAILED EXPLANATION OF THE RESPONDEN’S FUNCTIONAL
15 ABILITIES AND LIMITATIONS AND THE EVIDENCE AS TO THOSE ABILITIES
16 AND LIMITATIONS. ALSO PROVIDE AN EXPANATION OF WHY A
17 PROTECTIVE ARRANGMENT INSTEAD OF THE GUARDIANSHIP OR
18 CONSERVATORSHIP OR OTHER LESS RESTRICTIVE ALTERNATIVES WOULD
19 NOT MEET THE RESPONDENT’S IDENTIFIED NEEDS.]
20

21 **SPECIFIC FINDINGS SUPPORTING FULL APPOINTMENT, IF APPLICABLE.**

22 [IF THE ORDER ESTABLISHES A FULL GUARDIANSHIP OR FULL
23 CONSERVATORSHIP, CLEARLY STATE THE BASIS FOR THAT APPOINTMENT
24 AND EXPLAIN WHY A LIMITED APPOINTMENT WOULD NOT MEET THE
25 FUNCTIONAL NEEDS OF RESPONDENT].
26

27 **APPOINTMENT.**

28 ___ This court appoints _____ to serve as guardian and directs
29 issuance of letters of office. This appointment shall continue unless and until the court enters an
30 order terminating the guardianship or revoking the appointment.
31

32 ___ This court appoints _____ to serve as conservator and
33 directs issuance of letters of office. This appointment shall continue unless and until the court
34 determines that a basis for the appointment does not exist. This appointment shall continue
35 unless and until the court enters an order terminating the conservatorship or revoking the
36 appointment.
37

38 **FOR ORDERS APPOINTING A GUARDIAN: LIMITATIONS AND POWERS.**

39
40 **This guardianship is:**

41 ___ **Limited**, and the appointee is granted the following powers:
42 ___ make decisions about Respondent’s custody and residence
43 ___ make decisions about Respondent’s training and education
44 ___ consent to medical or other professional care, counsel, treatment, or
45 service
46 ___ other: _____

1 ___ **Full**, meaning that the appointee is granted all powers permissible under state law
2 except those that require specific court authorization unless that authorization is
3 granted below. [Under this state's law, a guardian does not have the authority to
4 _____.]
5

6 **Special authorizations. In addition to the powers granted above, the appointee may:**
7

8 [List any powers to be granted that require specific court authorization such as the power
9 to move Respondent outside the state or consent to adoption]:
10

11 **Right to marry.**

12 ___ Respondent retains the right to marry.

13 ___ Respondent does not retain the right to marry. The court's decision to remove
14 Respondent's right to marry is supported by the following findings:
15

16 **Right to vote.**

17 ___ Respondent retains the right to vote.

18 ___ Respondent does not retain the right to vote. The court's decision to remove
19 Respondent's right to vote is supported by the following findings:
20

21 **FOR ORDERS APPOINTING A CONSERVATOR.**

22 **This conservatorship is:**

23 ___ **Limited**, and the appointee is granted the following powers:

24 ___ institute and maintain proceedings to compel another person to support
25 Respondent

26 ___ institute and maintain proceedings to protect Respondent's property

27 ___ apply for, receive, and manage Respondent's money and property

28 ___ apply for, receive, and manage Respondent's money and property with the
29 exception of: _____ [specify particular property or
30 accounts or a monthly amount of income]

31 ___ other: _____
32

33 ___ **Full**, meaning that the appointee is granted all powers permissible under state law
34 except those that require specific court authorization unless that authorization is granted
35 below. [Under this state's law, a conservator does not have the authority to
36 _____.]
37

38 **Special authorizations. In addition to the powers granted above, the appointee may:**
39

40 [List any powers to be granted that require specific court authorization such as (1) the
41 ability to make gifts other than those of de minimis value; (2) sell real property,
42 encumber an interest in real property, or surrender the primary residence of an adult
43 subject to conservatorship; (3) convey, release, or disclaim contingent and expectant
44 interests in property, including marital property rights and any right of survivorship
45 incident to joint tenancy or tenancy by the entirety; (4) exercise or release a power of
46 appointment; (5) create a revocable or irrevocable trust of property of the conservatorship

estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the adult subject to conservatorship; (6) exercise a right to elect options and change a beneficiary under an insurance policy and annuity or surrender the policy and annuity for cash value; (7) exercise any right to an elective share in the estate of the deceased spouse [or domestic partner] of the adult subject to conservatorship and 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 needs of the adult subject to conservatorship when such preferential treatment would be otherwise impermissible under [Section 428(d) of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act]; and [(9) make, modify, amend, or revoke the will of the adult subject to conservatorship]

BOND.

____ Before the issuance of letters of office, the appointee must file a bond in the amount of: \$____

____ Before the issuance of letters of office, the appointee must:_____

____ This Court finds that no bond or other or special arrangement is necessary to protect the interests of Respondent.

INVENTORY AND PLAN.

If the appointee is appointed as a Conservator, the appointee is instructed to:

- Not later than 60 days after appointment, file with this court a plan for protecting, managing, expending, and distributing the assets of the conservatorship estate.
- Not later than 60 days after appointment, file with this court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

If the appointee is appointed as Guardian, the appointed is instructed to:

- Not later than 90 days after appointment, file with this court a plan identifying: (1) the living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue for the adult subject to guardianship; (2) social or educational activities the guardian expects to facilitate on behalf of the adult subject to guardianship; (3) persons, if any, with whom the adult 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 adult subject to guardianship; (5) goals for the adult subject to guardianship, including any goals related to the restoration of the adult's rights, and how the guardian anticipates achieving those goals; and (6) whether the adult subject to guardianship already has a plan in place and, if so, whether the guardian's plan is consistent with the adult's plan.

NOTIFICATION OF THE COURT.

The appointee shall immediately notify the court in writing of:

- Any change in the appointee's address.

- Any change in the custodial dwelling or address of the adult subject to guardianship or adult subject to conservatorship.
- Any change in the condition of the adult subject to guardianship that shows that the adult is capable of exercising rights previously removed.

NOTIFICATION OF THIRD PARTIES.

____ The appointee shall notify the following individuals of any change in the primary residence of the adult subject to guardianship or conservatorship:

____ The appointee shall provide copies of the guardian's report to the following people:

____ The appointee shall provide copies of the inventory of the property of the adult subject to guardianship or conservatorship to the following people:

____ The appointee shall notify the following individuals of the death of the adult subject to guardianship or conservatorship or a significant change in the adult's condition.

REVIEW.

The appointee shall file an annual report with this court.

____ In addition to the annual review, this matter is set for review within ____ days to determine:

____ Compliance with the inventory and plan

____ Possible changes in the abilities of the adult subject to guardianship or conservatorship

____ Other:

____ No review beyond the annual review is required at this time.

COSTS.

Costs are:

____ Waived

____ Taxed to Petitioner

____ 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 adult subject to guardianship or conservatorship. Among other things, the appointee is required exercise authority only as necessitated by the adult's limitations and to encourage the adult 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 legal liability.

1 **SIGNATURE.**

2 Signed:

3 Date:

4
5 **SECTION 606. NOTIFICATION OF RIGHTS FOR ADULT SUBJECT TO**

6 **GUARDIANSHIP OR CONSERVATORSHIP.** This form may, but need not be, used by to

7 notify an adult subject to guardianship or conservatorship of the adult's rights under Sections 311

8 and 412.

9 **Notification of Rights**

10
11 You are getting this notice because a guardian, conservator, or both has been appointed for you.
12 It tells you about some important rights you have. It does not tell you about all your rights. If
13 you have questions about your rights, you can ask an attorney or another person, including your
14 guardian or conservator, to help you understand your rights.

15 **General rights:**

16 You have the right to exercise any right the court has not given to your guardian or conservator.

17
18 You also have the right to ask the court to:

- 19 • end your guardianship, conservatorship, or both;
- 20 • increase or decrease the powers granted to your guardian, conservator, or both;
- 21 • make other changes that affect what your guardian or conservator can do or how they
- 22 do it; and
- 23 • replace the person that was appointed with someone else.

24 You also have a right to hire an attorney to help you do any of these things.

25
26 **Additional rights for persons for whom a guardian has been appointed:**

27 As an adult subject to guardianship, you have a right to:

- 28 (1) be involved in decisions affecting you, including decisions about your care, where you live,
29 your activities, and your social interactions, to the extent reasonably feasible;
- 30 (2) be involved in decisions about your health care to the extent reasonably feasible, and to have
31 other people help you understand the risks and benefits of health-care options;
- 32 (3) be notified at least 14 days in advance of a change in where you live or a permanent move to
33 a nursing home, mental-health facility, or other facility that places restrictions on your ability to
34 leave or have visitors, unless the guardian has proposed this change in the guardian's plan or the
35 court has expressly authorized it;
- 36 (4) ask the court to prevent your guardian from changing where you live or selling or
37 surrendering your primary residence by [insert process for asking the court to prevent such a
38 move];
- 39 (5) vote and get married, unless the court unless the court order appointing your guardian states
40 that you cannot do so;
- 41 (6) receive a copy of your guardian's report and your guardian's plan; and
- 42 (7) communicate, visit, or interact with other people (this includes the right to have visitors, to

1 make and get telephone calls, personal mail, or electronic communications) unless:
2 • your guardian has been specifically authorized by the court to restrict such
3 communications, visits, or interactions;
4 • a protective order is in effect that limits contact between you and other people; or
5 • your guardian is restricting you from interacting with someone with whom you do not
6 have a social or family relationship, the restriction is for 60 days or less, and your
7 guardian has good cause to believe the restriction is needed to protect you from
8 significant physical, psychological, or financial harm.
9

10 Additional rights for persons for whom a conservator has been appointed:

11 As an adult subject to conservatorship, you have a right to:

- 12 (1) participate in decisions about how your property is managed to the extent feasible; and
13 (2) receive a copy of your conservator's inventory, report, and plan.
14

15 **[ARTICLE] 7**

16 **MISCELLANEOUS PROVISIONS**

17 **SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

18 applying and construing this uniform act, consideration must be given to the need to promote
19 uniformity of the law with respect to its subject matter among states that enact it.

20 **SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**

21 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
22 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
23 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
24 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
25 U.S.C. Section 7003(b).

26 **SECTION 703. APPLICABILITY.** This [act] applies to a proceeding for appointment
27 of a guardian, conservator, or protective arrangement instead of guardianship or conservatorship
28 commenced before [the effective date of this [act]] and a guardianship, conservatorship, or
29 protective arrangement instead of guardianship or conservatorship in existence on [the effective
30 date of this [act]] unless the court finds application of a particular provision of this [act] would

1 substantially interfere with the effective conduct of the proceeding or prejudice the rights of a
2 party, in which case the particular provision of this [act] does not apply and the superseded law
3 applies.

4 **[SECTION 704. SEVERABILITY.** If any provision of this [act] or its application to
5 any person or circumstance is held invalid, the invalidity does not affect other provisions or
6 applications of this [act] which can be given effect without the invalid provision or application,
7 and to this end the provisions of this [act] are severable.]

8 ***Legislative Note:** Include this section only if this state lacks a general severability statute or a*
9 *decision by the highest court of this state stating a general rule of severability.*

10
11 **SECTION 705. REPEALS; CONFORMING AMENDMENTS.**

12 (a)

13 (b)

14 (c)

15 **SECTION 706. EFFECTIVE DATE.** This [act] takes effect