

D R A F T

FOR APPROVAL

**AMENDMENTS TO UNIFORM PROBATE CODE
ARTICLE 5 – GUARDIANSHIP**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-SEVENTH YEAR
CLEVELAND, OHIO

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**AMENDMENTS TO UNIFORM PROBATE CODE
ARTICLE 5 – GUARDIANSHIP**

WITH PREFATORY NOTE AND COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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**AMENDMENTS TO UNIFORM PROBATE CODE
ARTICLE 5 – GUARDIANSHIP**

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**AMENDMENTS TO UNIFORM PROBATE CODE
ARTICLE 5 – GUARDIANSHIP**

**CONFORMING AMENDMENTS TO UNIFORM PROBATE CODE
TO REFLECT APPROVAL OF UNIFORM GUARDIANSHIP AND
PROTECTIVE PROCEEDINGS ACT (1997)**

PREFATORY NOTE

The Uniform Guardianship and Protective Proceedings Act (UGPPA), last revised in 1997, is also codified at Article V, Parts 1-4 of the Uniform Probate Code. Reproduced below are the conforming amendments necessary to incorporate the 1997 UGPPA into the UPC. Amendment 5 is the text of the UGPPA (1997) but as revised for incorporation into the UPC as Article V, Parts 1-4. Amendments 1-4 conform the remainder of the UPC to the new provisions of Article V, Parts 1-4.

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AMENDMENTS TO UNIFORM PROBATE CODE
ARTICLE 5 – GUARDIANSHIP

CONFORMING AMENDMENTS TO UNIFORM PROBATE CODE
TO REFLECT APPROVAL OF UNIFORM GUARDIANSHIP AND
PROTECTIVE PROCEEDINGS ACT (1997)

Amendment 1 amends UPC Section 1-201 to conform for changes in terminology:

SECTION 1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent Articles that are applicable to specific Articles, parts, or sections, and unless the context otherwise requires, in this Code:

(1) “Agent” includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another’s health care, and an individual authorized to make decisions for another under a natural death act.

(2) “Application” means a written request to the Registrar for an order of informal probate or appointment under Part 3 of Article III.

(3) “Beneficiary,” as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a “beneficiary of a beneficiary designation,” refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a “beneficiary designated in a

1 governing instrument,” includes a grantee of a deed, a devisee, a trust beneficiary, a
2 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a
3 power of appointment, or a person in whose favor a power of attorney or a power
4 held in any individual, fiduciary, or representative capacity is exercised.

5 (4) “Beneficiary designation” refers to a governing instrument naming a
6 beneficiary of an insurance or annuity policy, of an account with POD designation,
7 of a security registered in beneficiary form (TOD), or of a pension, profit-sharing,
8 retirement, or similar benefit plan, or other nonprobate transfer at death.

9 (5) “Child” includes an individual entitled to take as a child under this Code
10 by intestate succession from the parent whose relationship is involved and excludes
11 a person who is only a stepchild, a foster child, a grandchild, or any more remote
12 descendant.

13 (6) “Claims,” in respect to estates of decedents and protected persons,
14 includes liabilities of the decedent or protected person, whether arising in contract,
15 in tort, or otherwise, and liabilities of the estate which arise at or after the death of
16 the decedent or after the appointment of a conservator, including funeral expenses
17 and expenses of administration. The term does not include estate or inheritance
18 taxes, or demands or disputes regarding title of a decedent or protected person to
19 specific assets alleged to be included in the estate.

20 (7) “Court” means the [. Court] or branch in this State
21 ~~having jurisdiction in matters relating to the affairs of decedents.~~

1 ~~(8)~~ (7) “Conservator” means a person who is appointed by a Court to
2 manage the estate of a protected person is as defined in Section 5-102.

3 (8) “Court” means the [..... Court] or branch in this State
4 having jurisdiction in matters relating to the affairs of decedents.

5 (9) “Descendant” of an individual means all of his [or her] descendants of all
6 generations, with the relationship of parent and child at each generation being
7 determined by the definition of child and parent contained in this Code.

8 (10) “Devise,” when used as a noun, means a testamentary disposition of
9 real or personal property and, when used as a verb, means to dispose of real or
10 personal property by will.

11 (11) “Devisee” means a person designated in a will to receive a devise. For
12 the purposes of Article II, in the case of a devise to an existing trust or trustee, or to
13 a trustee on trust described by will, the trust or trustee is the devisee and the
14 beneficiaries are not devisees.

15 ~~(12) “Disability” means cause for a protective order as described in Section~~
16 ~~5-401.~~

17 ~~(13)~~ (12) “Distributee” means any person who has received property of a
18 decedent from his [or her] personal representative other than as a creditor or
19 purchaser. A testamentary trustee is a distributee only to the extent of distributed
20 assets or increment thereto remaining in his [or her] hands. A beneficiary of a
21 testamentary trust to whom the trustee has distributed property received from a
22 personal representative is a distributee of the personal representative. For the

1 purposes of this provision, “testamentary trustee” includes a trustee to whom assets
2 are transferred by will, to the extent of the devised assets.

3 ~~(14)~~ (13) “Estate” includes the property of the decedent, trust, or other
4 person whose affairs are subject to this Code as originally constituted and as it exists
5 from time to time during administration.

6 ~~(15)~~ (14) “Exempt property” means that property of a decedent’s estate
7 which is described in Section 2-403.

8 ~~(16)~~ (15) “Fiduciary” includes a personal representative, guardian,
9 conservator, and trustee.

10 ~~(17)~~ (16) “Foreign personal representative” means a personal representative
11 appointed by another jurisdiction.

12 ~~(18)~~ (17) “Formal proceedings” means proceedings conducted before a
13 judge with notice to interested persons.

14 ~~(19)~~ (18) “Governing instrument” means a deed, will, trust, insurance or
15 annuity policy, account with POD designation, security registered in beneficiary
16 form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument
17 creating or exercising a power of appointment or a power of attorney, or a
18 dispositive, appointive, or nominative instrument of any similar type.

19 ~~(20)~~ (19) “Guardian” ~~means a person who has qualified as a guardian of a~~
20 ~~minor or incapacitated person pursuant to testamentary or court, but excludes one~~
21 ~~who is merely a guardian ad litem~~ is as defined in Section 5-102.

1 ~~(21)~~ (20) “Heirs,” except as controlled by Section 2-711, means persons,
2 including the surviving spouse and the state, who are entitled under the statutes of
3 intestate succession to the property of a decedent.

4 ~~(22)~~ (21) “Incapacitated person” means an individual described in Section
5 ~~5-103~~ 5-102.

6 ~~(23)~~ (22) “Informal proceedings” means those conducted without notice to
7 interested persons by an officer of the Court acting as a registrar for probate of a
8 will or appointment of a personal representative.

9 ~~(24)~~ (23) “Interested person” includes heirs, devisees, children, spouses,
10 creditors, beneficiaries, and any others having a property right in or claim against a
11 trust estate or the estate of a decedent, ward, or protected person. It also includes
12 persons having priority for appointment as personal representative, and other
13 fiduciaries representing interested persons. The meaning as it relates to particular
14 persons may vary from time to time and must be determined according to the
15 particular purposes of, and matter involved in, any proceeding.

16 ~~(25)~~ (24) “Issue” of a person means descendant as defined in ~~subsection~~
17 paragraph (9).

18 ~~(26)~~ (25) “Joint tenants with the right of survivorship” and “community
19 property with the right of survivorship” includes co-owners of property held under
20 circumstances that entitle one or more to the whole of the property on the death of
21 the other or others, but excludes forms of co-ownership registration in which the
22 underlying ownership of each party is in proportion to that party’s contribution.

1 ~~(27)~~ (26) “Lease” includes an oil, gas, or other mineral lease.

2 ~~(28)~~ (27) “Letters” includes letters testamentary, letters of guardianship,
3 letters of administration, and letters of conservatorship.

4 ~~(29)~~ (28) “Minor” ~~means a person who is under [21] years of age~~ is as
5 defined in Section 5-102.

6 ~~(30)~~ (29) “Mortgage” means any conveyance, agreement, or arrangement in
7 which property is encumbered or used as security.

8 ~~(31)~~ (30) “Nonresident decedent” means a decedent who was domiciled in
9 another jurisdiction at the time of his [or her] death.

10 ~~(32)~~ (31) “Organization” means a corporation, business trust, estate, trust,
11 partnership, joint venture, association, government or governmental subdivision or
12 agency, or any other legal or commercial entity.

13 ~~(33)~~ (32) “Parent” includes any person entitled to take, or who would be
14 entitled to take if the child died without a will, as a parent under this Code by
15 intestate succession from the child whose relationship is in question and excludes
16 any person who is only a stepparent, foster parent, or grandparent.

17 ~~(34)~~ (33) “Payor” means a trustee, insurer, business entity, employer,
18 government, governmental agency or subdivision, or any other person authorized or
19 obligated by law or a governing instrument to make payments.

20 ~~(35)~~ (34) “Person” means an individual or an organization.

21 ~~(36)~~ (35) “Personal representative” includes executor, administrator,
22 successor personal representative, special administrator, and persons who perform

1 substantially the same function under the law governing their status. “General
2 personal representative” excludes special administrator.

3 ~~(37)~~ (36) “Petition” means a written request to the Court for an order after
4 notice.

5 ~~(38)~~ (37) “Proceeding” includes action at law and suit in equity.

6 ~~(39)~~ (38) “Property” includes both real and personal property or any interest
7 therein and means anything that may be the subject of ownership.

8 ~~(40)~~ (39) “Protected person” is as defined in Section ~~5-103~~ 5-102.

9 ~~(41)~~ (40) “Protective proceeding” means a proceeding ~~described in Section~~
10 ~~5-103~~ under the provisions of Part 4 of Article V.

11 ~~(42)~~ (41) “Registrar” refers to the official of the Court designated to
12 perform the functions of Registrar as provided in Section 1-307.

13 ~~(43)~~ (42) “Security” includes any note, stock, treasury stock, bond,
14 debenture, evidence of indebtedness, certificate of interest or participation in an oil,
15 gas, or mining title or lease or in payments out of production under such a title or
16 lease, collateral trust certificate, transferable share, voting trust certificate or, in
17 general, any interest or instrument commonly known as a security, or any certificate
18 of interest or participation, any temporary or interim certificate, receipt, or
19 certificate of deposit for, or any warrant or right to subscribe to or purchase, any of
20 the foregoing.

21 ~~(44)~~ (43) “Settlement,” in reference to a decedent’s estate, includes the full
22 process of administration, distribution, and closing.

1 ~~(45)~~ (44) “Special administrator” means a personal representative as
2 described by Sections 3-614 through 3-618.

3 ~~(46)~~ (45) “State” means a state of the United States, the District of
4 Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession
5 subject to the jurisdiction of the United States.

6 ~~(47)~~ (46) “Successor personal representative” means a personal
7 representative, other than a special administrator, who is appointed to succeed a
8 previously appointed personal representative.

9 ~~(48)~~ (47) “Successors” means persons, other than creditors, who are
10 entitled to property of a decedent under his [or her] will or this Code.

11 ~~(49)~~ (48) “Supervised administration” refers to the proceedings described in
12 Article III, Part 5.

13 ~~(50)~~ (49) “Survive” means that an individual has neither predeceased an
14 event, including the death of another individual, nor is deemed to have predeceased
15 an event under Section 2-104 or 2-702. The term includes its derivatives, such as
16 “survives,” “survived,” “survivor,” “surviving.”

17 ~~(51)~~ (50) “Testacy proceeding” means a proceeding to establish a will or
18 determine intestacy.

19 ~~(52)~~ (51) “Testator” includes an individual of either sex.

20 ~~(53)~~ (52) “Trust” includes an express trust, private or charitable, with
21 additions thereto, wherever and however created. The term also includes a trust
22 created or determined by judgment or decree under which the trust is to be

1 administered in the manner of an express trust. The term excludes other
2 constructive trusts and excludes resulting trusts, conservatorships, personal
3 representatives, trust accounts as defined in Article VI, custodial arrangements
4 pursuant to [each state should list its legislation, including that relating to [gifts]
5 [transfers] to minors, dealing with special custodial situations], business trusts
6 providing for certificates to be issued to beneficiaries, common trust funds, voting
7 trusts, security arrangements, liquidation trusts, and trusts for the primary purpose
8 of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee
9 benefits of any kind, and any arrangement under which a person is nominee or
10 escrowee for another.

11 ~~(54)~~ (53) “Trustee” includes an original, additional, or successor trustee,
12 whether or not appointed or confirmed by court.

13 ~~(55)~~ (54) “Ward” means an individual described in Section ~~5-103~~ 5-102.

14 ~~(56)~~ (55) “Will” includes codicil and any testamentary instrument that
15 merely appoints an executor, revokes or revises another will, nominates a guardian,
16 or expressly excludes or limits the right of an individual or class to succeed to
17 property of the decedent passing by intestate succession.

18 **[FOR ADOPTION IN COMMUNITY PROPERTY STATES]**

19 ~~(57)~~ (56) “Separate property” (if necessary, to be defined locally in
20 accordance with existing concept in adopting state).

21 ~~(58)~~ (57) “Community property” (if necessary, to be defined locally in
22 accordance with existing concept in adopting state).]

1 **Comment**

2 Definition of “disability” deleted because no longer a defined term in Article
3 V. Definitions of “conservator,” “guardian,” and “minor” revised to avoid any
4 inference that terms have different meaning here than as defined in Article V.
5 Definition of “protected person” revised to correct for a change in cross-reference.
6 Revision of definition of “protective proceeding” necessary because “protective
7 proceeding” no longer a defined term in Article V. Definitions of “conservator” and
8 “court” switched so that all definitions are in alphabetical order.

9 *Amendment 2 amends UPC Section 3-303 to correct for a change in cross-*
10 *reference:*

11 **SECTION 3-303. INFORMAL PROBATE; PROOF AND FINDINGS**
12 **REQUIRED.**

13 (a) In an informal proceeding for original probate of a will, the Registrar
14 shall determine whether:

15 (1) the application is complete;

16 (2) the applicant has made oath or affirmation that the statements
17 contained in the application are true to the best of his knowledge and belief;

18 (3) the applicant appears from the application to be an interested person
19 as defined in Section ~~1-201(20)~~ 1-201(23);

20 (4) on the basis of the statements in the application, venue is proper;

21 (5) an original, duly executed and apparently unrevoked will is in the
22 Registrar’s possession;

23 (6) any notice required by Section 3-204 has been given and that the
24 application is not within Section 3-304; and

1 (7) it appears from the application that the time limit for original probate
2 has not expired.

3 (b) The application shall be denied if it indicates that a personal
4 representative has been appointed in another [county] of this state or except as
5 provided in subsection (d) below, if it appears that this or another will of the
6 decedent has been the subject of a previous probate order.

7 (c) A will which appears to have the required signatures and which contains
8 an attestation clause showing that requirements of execution under Section 2-502,
9 2-503 or 2-506 have been met shall be probated without further proof. In other
10 cases, the Registrar may assume execution if the will appears to have been properly
11 executed, or he may accept a sworn statement or affidavit of any person having
12 knowledge of the circumstances of execution, whether or not the person was a
13 witness to the will.

14 (d) Informal probate of a will which has been previously probated elsewhere
15 may be granted at any time upon written application by any interested person,
16 together with deposit of an authenticated copy of the will and of the statement
17 probating it from the office or court where it was first probated.

18 (e) A will from a place which does not provide for probate of a will after
19 death and which is not eligible for probate under subsection (a) above, may be
20 probated in this state upon receipt by the Registrar of a duly authenticated copy of
21 the will and a duly authenticated certificate of its legal custodian that the copy filed

1 is a true copy and that the will has become operative under the law of the other
2 place.

3 *Amendment 3 amends UPC Section 3-308 to correct for a change in cross-*
4 *reference:*

5 **SECTION 3-308. INFORMAL APPOINTMENT PROCEEDINGS;**
6 **PROOF AND FINDINGS REQUIRED.**

7 (a) In informal appointment proceedings, the Registrar must determine
8 whether:

9 (1) the application for informal appointment of a personal representative
10 is complete;

11 (2) the applicant has made oath or affirmation that the statements
12 contained in the application are true to the best of his knowledge and belief;

13 (3) the applicant appears from the application to be an interested person
14 as defined in Section ~~1-201(20)~~ 1-201(23);

15 (4) on the basis of the statements in the application, venue is proper;

16 (5) any will to which the requested appointment relates has been formally
17 or informally probated; but this requirement does not apply to the appointment of a
18 special administrator;

19 (6) any notice required by Section 3-204 has been given;

20 (7) from the statements in the application, the person whose appointment
21 is sought has priority entitling him to the appointment.

1 (b) Unless Section 3-612 controls, the application must be denied if it
2 indicates that a personal representative who has not filed a written statement of
3 resignation as provided in Section 3-610(c) has been appointed in this or another
4 [county] of this state, that (unless the applicant is the domiciliary personal
5 representative or his nominee) the decedent was not domiciled in this state and that
6 a personal representative whose appointment has not been terminated has been
7 appointed by a Court in the state of domicile, or that other requirements of this
8 section have not been met.

9 *Amendment 4 amends UPC Section 3-915 to correct for a change in cross-*
10 *reference.*

11 **SECTION 3-915. DISTRIBUTION TO PERSON UNDER DISABILITY.**

12 (a) A personal representative may discharge his obligation to distribute to
13 any person under legal disability by distributing in a manner expressly provided in
14 the will.

15 (b) Unless contrary to an express provision in the will, the personal
16 representative may discharge his obligation to distribute to a minor or person under
17 other disability as authorized by Section ~~5-101~~ 5-104 or any other statute. If the
18 personal representative knows that a conservator has been appointed or that a
19 proceeding for appointment of a conservator is pending, the personal representative
20 is authorized to distribute only to the conservator.

1 (c) If the heir or devisee is under disability other than minority, the personal
2 representative is authorized to distribute to:

3 (1) an attorney in fact who has authority under a power of attorney to
4 receive property for that person; or

5 (2) the spouse, parent or other close relative with whom the person
6 under disability resides if the distribution is of amounts not exceeding [\$10,000] a
7 year, or property not exceeding [\$10,000] in value, unless the court authorizes a
8 larger amount or greater value.

9 Persons receiving money or property for the disabled person are obligated to
10 apply the money or property to the support of that person, but may not pay
11 themselves except by way of reimbursement for out-of-pocket expenses for goods
12 and services necessary for the support of the disabled person. Excess sums must be
13 preserved for future support of the disabled person. The personal representative is
14 not responsible for the proper application of money or property distributed pursuant
15 to this subsection.

1 *Amendment 5 deletes existing UPC Article V, Parts 1 through 4, and substitutes*
2 *Uniform Guardianship and Protective Proceedings Act (1997), modified as*
3 *follows:*

4 **ARTICLE PART 1**
5 **GENERAL PROVISIONS**

6 **SECTION ~~101~~ 5-101. SHORT TITLE.** This ~~[Act]~~ Parts 1-4 of this article
7 may be cited as the Uniform Guardianship and Protective Proceedings Act.

8 **SECTION ~~102~~ 5-102. DEFINITIONS.** In this ~~[Act]~~ Parts 1-4 of this article:

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

13 ~~(2)~~ (1) “Conservator” means a person who is appointed by a court to
14 manage the estate of a protected person. The term includes a limited conservator.

15 ~~(3)~~ (2) “Court” means the [designate appropriate court].

16 ~~(4)~~ (3) “Guardian” means a person who has qualified as a guardian of a
17 minor or incapacitated person pursuant to appointment by a parent or spouse, or by
18 the court. The term includes a limited, emergency, and temporary substitute
19 guardian but not a guardian ad litem.

20 ~~(5)~~ (4) “Incapacitated person” means an individual who, for reasons other
21 than being a minor, is unable to receive and evaluate information or make or
22 communicate decisions to such an extent that the individual lacks the ability to meet

1 essential requirements for physical health, safety, or self-care, even with appropriate
2 technological assistance.

3 ~~(6)~~ (5) “Legal representative” includes a representative payee, a guardian or
4 conservator acting for a respondent in this State or elsewhere, a trustee or custodian
5 of a trust or custodianship of which the respondent is a beneficiary, and an agent
6 designated under a power of attorney, whether for health care or property, in which
7 the respondent is identified as the principal.

8 ~~(7)~~ “Letters” includes letters of guardianship and letters of conservatorship.

9 ~~(8)~~ (6) “Minor” means an unemancipated individual who has not attained
10 [18] years of age.

11 ~~(9)~~ (7) “Parent” means a parent whose parental rights have not been
12 terminated.

13 ~~(10)~~ “Person” means an individual, corporation, business trust, estate, trust,
14 partnership, limited liability company, association, joint venture, government,
15 governmental subdivision, agency, or instrumentality, or any other legal or
16 commercial entity.

17 ~~(H)~~ (8) “Protected person” means a minor or other individual for whom a
18 conservator has been appointed or other protective order has been made.

19 ~~(I2)~~ (9) “Respondent” means an individual for whom the appointment of a
20 guardian or conservator or other protective order is sought.

1 (a) Unless a person required to transfer money or personal property to a
2 minor knows that a conservator has been appointed or that a proceeding for
3 appointment of a conservator of the estate of the minor is pending, the person may
4 do so, as to an amount or value not exceeding [\$5,000] a year, by transferring it to:

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

7 (2) a guardian of the minor;

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

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

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

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

1 **SECTION ~~105~~ 5-105. DELEGATION OF POWER BY PARENT OR**
2 **GUARDIAN.** A parent or guardian of a minor or incapacitated person, by a power
3 of attorney, may delegate to another person, for a period not exceeding six months,
4 any power regarding care, custody, or property of the minor or ward, except the
5 power to consent to marriage or adoption.

6 **SECTION ~~106~~ 5-106. SUBJECT-MATTER JURISDICTION.** This [Act
7 article] applies to, and the court has jurisdiction over, guardianship and related
8 proceedings for individuals domiciled or present in this State, protective proceedings
9 for individuals domiciled in or having property located in this State, and property
10 coming into the control of a guardian or conservator who is subject to the laws of
11 this State.

12 **SECTION ~~107~~ 5-107. TRANSFER OF JURISDICTION.**

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

18 (b) If a guardianship or protective proceeding is pending in another state or
19 a foreign country and a petition for guardianship or protective proceeding is filed in
20 a court in this State, the court in this State shall notify the original court and, after

1 consultation with the original court, assume or decline jurisdiction, whichever is in
2 the best interest of the ward or protected person.

3 (c) A guardian, conservator, or like fiduciary appointed in another State
4 may petition the court for appointment as a guardian or conservator in this State if
5 venue in this State is or will be established. The appointment may be made upon
6 proof of appointment in the other State and presentation of a certified copy of the
7 portion of the court record in the other State specified by the court in this State.
8 Notice of hearing on the petition, together with a copy of the petition, must be given
9 to the ward or protected person, if the ward or protected person has attained 14
10 years of age, and to the persons who would be entitled to notice if the regular
11 procedures for appointment of a guardian or conservator under this [~~Act~~ article]
12 were applicable. The court shall make the appointment in this State unless it
13 concludes that the appointment would not be in the best interest of the ward or
14 protected person. Upon the filing of an acceptance of office and any required bond,
15 the court shall issue appropriate letters of guardianship or conservatorship. Within
16 14 days after an appointment, the guardian or conservator shall send or deliver a
17 copy of the order of appointment to the ward or protected person, if the ward or
18 protected person has attained 14 years of age, and to all persons given notice of the
19 hearing on the petition.

20 **SECTION ~~108~~ 5-108. VENUE.**

1 (a) Venue for a guardianship proceeding for a minor is in the [county] of
2 this State in which the minor resides or is present at the time the proceeding is
3 commenced.

4 (b) Venue for a guardianship proceeding for an incapacitated person is in
5 the [county] of this State in which the respondent resides and, if the respondent has
6 been admitted to an institution by order of a court of competent jurisdiction, in the
7 [county] in which the court is located. Venue for the appointment of an emergency
8 or a temporary substitute guardian of an incapacitated person is also in the [county]
9 in which the respondent is present.

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

14 (d) If a proceeding under this [~~Act~~ article] is brought in more than one
15 [county] in this State, the court of the [county] in which the proceeding is first
16 brought has the exclusive right to proceed unless that court determines that venue is
17 properly in another court or that the interests of justice otherwise require that the
18 proceeding be transferred.

19 **[SECTION ~~109~~ 5-109. PRACTICE IN COURT.**

1 (a) Except as otherwise provided in this [~~Act~~ article], the rules of civil
2 procedure, including the rules concerning appellate review, govern proceedings
3 under this [~~Act~~ article].

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

6 **Comment**

7 Placed in brackets because duplicative of UPC Section 1-304 but retained in
8 Code to assure consistent numbering between UPC and UGPPA..

9 **SECTION ~~410~~ 5-110. LETTERS OF OFFICE.** Upon the guardian's filing of
10 an acceptance of office, the court shall issue appropriate letters of guardianship.
11 Upon the conservator's filing of an acceptance of office and any required bond, the
12 court shall issue appropriate letters of conservatorship. Letters of guardianship
13 must indicate whether the guardian was appointed by the court, a parent, or the
14 spouse. Any limitation on the powers of a guardian or conservator or of the assets
15 subject to a conservatorship must be endorsed on the guardian's or conservator's
16 letters.

17 **SECTION ~~411~~ 5-111. EFFECT OF ACCEPTANCE OF APPOINTMENT.**

18 By accepting appointment, a guardian or conservator submits personally to the
19 jurisdiction of the court in any proceeding relating to the guardianship or
20 conservatorship. The petitioner shall send or deliver notice of any proceeding to the

1 guardian or conservator at the guardian's or conservator's address shown in the
2 court records and at any other address then known to the petitioner.

3 **SECTION ~~42~~ 5-112. TERMINATION OF OR CHANGE IN**
4 **GUARDIAN'S OR CONSERVATOR'S APPOINTMENT.**

5 (a) The appointment of a guardian or conservator terminates upon the
6 death, resignation, or removal of the guardian or conservator or upon termination of
7 the guardianship or conservatorship. A resignation of a guardian or conservator is
8 effective when approved by the court. [A parental or spousal appointment as
9 guardian under an informally probated will terminates if the will is later denied
10 probate in a formal proceeding.] Termination of the appointment of a guardian or
11 conservator does not affect the liability of either for previous acts or the obligation
12 to account for money and other assets of the ward or protected person.

13 (b) A ward, protected person, or person interested in the welfare of a ward
14 or protected person may petition for removal of a guardian or conservator on the
15 ground that removal would be in the best interest of the ward or protected person or
16 for other good cause. A guardian or conservator may petition for permission to
17 resign. A petition for removal or permission to resign may include a request for
18 appointment of a successor guardian or conservator.

19 (c) The court may appoint an additional guardian or conservator at any
20 time, to serve immediately or upon some other designated event, and may appoint a
21 successor guardian or conservator in the event of a vacancy or make the

1 appointment in contemplation of a vacancy, to serve if a vacancy occurs. An
2 additional or successor guardian or conservator may file an acceptance of
3 appointment at any time after the appointment, but not later than 30 days after the
4 occurrence of the vacancy or other designated event. The additional or successor
5 guardian or conservator becomes eligible to act on the occurrence of the vacancy or
6 designated event, or the filing of the acceptance of appointment, whichever last
7 occurs. A successor guardian or conservator succeeds to the predecessor's powers,
8 and a successor conservator succeeds to the predecessor's title to the protected
9 person's assets.

10 **SECTION ~~43~~ 5-113. NOTICE.**

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

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

18 (c) A notice under this [~~Act~~ article] must be given in plain language.

19 **SECTION ~~44~~ 5-114. WAIVER OF NOTICE.** A person may waive notice
20 by a writing signed by the person or the person's attorney and filed in the

1 proceeding. However, a respondent, ward, or protected person may not waive
2 notice.

3 **SECTION ~~115~~ 5-115. GUARDIAN AD LITEM.** At any stage of a
4 proceeding, a court may appoint a guardian ad litem if the court determines that
5 representation of the interest otherwise would be inadequate. If not precluded by a
6 conflict of interest, a guardian ad litem may be appointed to represent several
7 individuals or interests. The court shall state on the record the duties of the
8 guardian ad litem and its reasons for the appointment.

9 **SECTION ~~116~~ 5-116. REQUEST FOR NOTICE; INTERESTED**
10 **PERSONS.** An interested person not otherwise entitled to notice who desires to be
11 notified before any order is made in a guardianship proceeding, including a
12 proceeding after the appointment of a guardian, or in a protective proceeding, may
13 file a request for notice with the clerk of the court in which the proceeding is
14 pending. The clerk shall send or deliver a copy of the request to the guardian and to
15 the conservator if one has been appointed. A request is not effective unless it
16 contains a statement showing the interest of the person making it and the address of
17 that person or a lawyer to whom notice is to be given. The request is effective only
18 as to proceedings conducted after its filing. A governmental agency paying or
19 planning to pay benefits to the respondent or protected person is an interested
20 person in a protective proceeding.

1 **SECTION ~~117~~ 5-117. MULTIPLE APPOINTMENTS OR**
2 **NOMINATIONS.** If a respondent or other person makes more than one written
3 appointment or nomination of a guardian or a conservator, the most recent controls.

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ARTICLE PART 2
GUARDIANSHIP OF MINOR

SECTION ~~201~~ 5-201. APPOINTMENT AND STATUS OF GUARDIAN.

A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

SECTION ~~202~~ 5-202. PARENTAL APPOINTMENT OF GUARDIAN.

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

(b) Upon petition of an appointing parent and a finding that the appointing parent will likely become unable to care for the child within [two] years, and after notice as provided in Section ~~205(a)~~ 5-205(a), the court, before the appointment becomes effective, may confirm the parent's selection of a guardian and terminate the rights of others to object.

(c) Subject to Section ~~203~~ 5-203, the appointment of a guardian becomes effective upon the appointing parent's death, an adjudication that the parent is an incapacitated person, or a written determination by a physician who has examined

1 the parent that the parent is no longer able to care for the child, whichever first
2 occurs.

3 (d) The guardian becomes eligible to act upon the filing of an acceptance of
4 appointment, which must be filed within 30 days after the guardian's appointment
5 becomes effective. The guardian shall:

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

11 (2) give written notice of the acceptance of appointment to the
12 appointing parent, if living, the minor, if the minor has attained 14 years of age, and
13 a person other than the parent having care and custody of the minor.

14 (e) Unless the appointment was previously confirmed by the court, the
15 notice given under subsection (d)(2) must include a statement of the right of those
16 notified to terminate the appointment by filing a written objection in the court as
17 provided in Section ~~203~~ 5-203.

18 (f) Unless the appointment was previously confirmed by the court, within 30
19 days after filing the notice and the appointing instrument, a guardian shall petition
20 the court for confirmation of the appointment, giving notice in the manner provided
21 in Section ~~205(a)~~ 5-205(a).

1 (g) The appointment of a guardian by a parent does not supersede the
2 parental rights of either parent. If both parents are dead or have been adjudged
3 incapacitated persons, an appointment by the last parent who died or was adjudged
4 incapacitated has priority. An appointment by a parent which is effected by filing
5 the guardian's acceptance under a will probated in the State of the testator's
6 domicile is effective in this State.

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

12 (i) The authority of a guardian appointed under this section terminates upon
13 the first to occur of the appointment of a guardian by the court or the giving of
14 written notice to the guardian of the filing of an objection pursuant to Section ~~203~~
15 5-203.

16 **SECTION ~~203~~ 5-203. OBJECTION BY MINOR OR OTHERS TO**
17 **PARENTAL APPOINTMENT.** Until the court has confirmed an appointee under
18 Section ~~202~~ 5-202, a minor who is the subject of an appointment by a parent and
19 who has attained 14 years of age, the other parent, or a person other than a parent
20 or guardian having care or custody of the minor may prevent or terminate the
21 appointment at any time by filing a written objection in the court in which the

1 appointing instrument is filed and giving notice of the objection to the guardian and
2 any other persons entitled to notice of the acceptance of the appointment. An
3 objection may be withdrawn, and if withdrawn is of no effect. The objection does
4 not preclude judicial appointment of the person selected by the parent. The court
5 may treat the filing of an objection as a petition for the appointment of an emergency
6 or a temporary guardian under Section ~~204~~ 5-204, and proceed accordingly.

7 **SECTION ~~204~~ 5-204. JUDICIAL APPOINTMENT OF GUARDIAN:**
8 **CONDITIONS FOR APPOINTMENT.**

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

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

13 (i) the parents consent;

14 (ii) all parental rights have been terminated; or

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

16 (c) If a guardian is appointed by a parent pursuant to Section ~~202~~ 5-202 and
17 the appointment has not been prevented or terminated under Section ~~203~~ 5-203, that
18 appointee has priority for appointment. However, the court may proceed with
19 another appointment upon a finding that the appointee under Section ~~202~~ 5-202 has
20 failed to accept the appointment within 30 days after notice of the guardianship
21 proceeding.

1 (d) If necessary and on petition or motion and whether or not the conditions
2 of subsection (b) have been established, the court may appoint a temporary guardian
3 for a minor upon a showing that an immediate need exists and that the appointment
4 would be in the best interest of the minor. Notice in the manner provided in Section
5 ~~43~~ 5-113 must be given to the parents and to a minor who has attained 14 years of
6 age. Except as otherwise ordered by the court, the temporary guardian has the
7 authority of an unlimited guardian, but the duration of the temporary guardianship
8 may not exceed six months. Within five days after the appointment, the temporary
9 guardian shall send or deliver a copy of the order to all individuals who would be
10 entitled to notice of hearing under Section ~~205~~ 5-205.

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

1 within 48 hours after the appointment and a hearing on the appropriateness of the
2 appointment held within [five] days after the appointment.

3 **SECTION ~~205~~ 5-205. JUDICIAL APPOINTMENT OF GUARDIAN:**
4 **PROCEDURE.**

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

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

10 (2) any person alleged to have had the primary care and custody of the
11 minor during the 60 days before the filing of the petition;

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

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

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

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

20 (b) The court, upon hearing, shall make the appointment if it finds that a
21 qualified person seeks appointment, venue is proper, the required notices have been

1 given, the conditions of Section ~~204(b)~~ 5-204(b) have been met, and the best
2 interest of the minor will be served by the appointment. In other cases, the court
3 may dismiss the proceeding or make any other disposition of the matter that will
4 serve the best interest of the minor.

5 (c) If the court determines at any stage of the proceeding, before or after
6 appointment, that the interests of the minor are or may be inadequately represented,
7 it may appoint a lawyer to represent the minor, giving consideration to the choice of
8 the minor if the minor has attained 14 years of age.

9 **SECTION ~~206~~ 5-206. JUDICIAL APPOINTMENT OF GUARDIAN:**
10 **PRIORITY OF MINOR'S NOMINEE; LIMITED GUARDIANSHIP.**

11 (a) The court shall appoint as guardian a person whose appointment will be
12 in the best interest of the minor. The court shall appoint a person nominated by the
13 minor, if the minor has attained 14 years of age, unless the court finds the
14 appointment will be contrary to the best interest of the minor.

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

1 **SECTION ~~207~~ 5-207. DUTIES OF GUARDIAN.**

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

6 (b) A guardian shall:

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

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

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

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

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

1 (6) inform the court of any change in the ward's custodial dwelling or
2 address.

3 **SECTION 208 5-208. POWERS OF GUARDIAN.**

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

7 (b) A guardian may:

8 (1) apply for and receive money for the support of the ward otherwise
9 payable to the ward's parent, guardian, or custodian under the terms of any
10 statutory system of benefits or insurance or any private contract, devise, trust,
11 conservatorship, or custodianship;

12 (2) if otherwise consistent with the terms of any order by a court of
13 competent jurisdiction relating to custody of the ward, take custody of the ward and
14 establish the ward's place of custodial dwelling, but may only establish or move the
15 ward's custodial dwelling outside the State upon express authorization of the court;

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

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

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

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

3 (c) The court may specifically authorize the guardian to consent to the
4 adoption of the ward.

5 **SECTION ~~209~~ 5-209. RIGHTS AND IMMUNITIES OF GUARDIAN.**

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

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

18 **SECTION ~~210~~ 5-210. TERMINATION OF GUARDIANSHIP; OTHER**
19 **PROCEEDINGS AFTER APPOINTMENT.**

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

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

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ARTICLE PART 3

GUARDIANSHIP OF INCAPACITATED PERSON

SECTION ~~301~~ 5-301. APPOINTMENT AND STATUS OF GUARDIAN.

A person becomes a guardian of an incapacitated person by a parental or spousal appointment or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

SECTION ~~302~~ 5-302. APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING.

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

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

(c) The incapacitated person, the person having care or custody of the incapacitated person if other than the appointing parent or spouse, or the adult nearest in kinship to the incapacitated person may file a written objection to an appointment, unless the court has confirmed the appointment under subsection (d). The filing of the written objection terminates the appointment. An objection may be

1 withdrawn and, if withdrawn, is of no effect. The objection does not preclude
2 judicial appointment of the person selected by the parent or spouse. Notice of the
3 objection must be given to the guardian and any other person entitled to notice of
4 the acceptance of the appointment. The court may treat the filing of an objection as
5 a petition for the appointment of an emergency guardian under Section ~~312~~ 5-312 or
6 for the appointment of a limited or unlimited guardian under Section ~~304~~ 5-304 and
7 proceed accordingly.

8 (d) Upon petition of the appointing parent or spouse, and a finding that the
9 appointing parent or spouse will likely become unable to care for the incapacitated
10 person within [two] years, and after notice as provided in this section, the court,
11 before the appointment becomes effective, may confirm the appointing parent's or
12 spouse's selection of a guardian and terminate the rights of others to object.

13 **SECTION ~~303~~ 5-303. APPOINTMENT OF GUARDIAN BY WILL OR**
14 **OTHER WRITING: EFFECTIVENESS; ACCEPTANCE;**
15 **CONFIRMATION.**

16 (a) The appointment of a guardian under Section ~~302~~ 5-302 becomes
17 effective upon the death of the appointing parent or spouse, the adjudication of
18 incapacity of the appointing parent or spouse, or a written determination by a
19 physician who has examined the appointing parent or spouse that the appointing
20 parent or spouse is no longer able to care for the incapacitated person, whichever
21 first occurs.

1 (b) A guardian appointed under Section ~~302~~ 5-302 becomes eligible to act
2 upon the filing of an acceptance of appointment, which must be filed within 30 days
3 after the guardian's appointment becomes effective. The guardian shall:

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

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

13 (c) Unless the appointment was previously confirmed by the court, the
14 notice given under subsection (b)(2) must include a statement of the right of those
15 notified to terminate the appointment by filing a written objection as provided in
16 Section ~~302~~ 5-302.

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

19 (e) Unless the appointment was previously confirmed by the court, within
20 30 days after filing the notice and the appointing instrument, a guardian appointed
21 under Section ~~302~~ 5-302 shall file a petition in the court for confirmation of the

1 appointment. Notice of the filing must be given in the manner provided in Section
2 ~~309~~ 5-309.

3 (f) The authority of a guardian appointed under Section ~~302~~ 5-302
4 terminates upon the appointment of a guardian by the court or the giving of written
5 notice to the guardian of the filing of an objection pursuant to Section ~~302~~ 5-302,
6 whichever first occurs.

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

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

14 **SECTION ~~304~~ 5-304. JUDICIAL APPOINTMENT OF GUARDIAN:**
15 **PETITION.**

16 (a) An individual or a person interested in the individual's welfare may
17 petition for a determination of incapacity, in whole or in part, and for the
18 appointment of a limited or unlimited guardian for the individual.

19 (b) The petition must set forth the petitioner's name, residence, current
20 address if different, relationship to the respondent, and interest in the appointment

1 and, to the extent known, state or contain the following with respect to the
2 respondent and the relief requested:

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

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

7 (A) spouse, or if the respondent has none, an adult with whom the
8 respondent has resided for more than six months before the filing of the petition; and

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

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

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

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

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

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

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

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

7 **SECTION ~~305~~ 5-305. JUDICIAL APPOINTMENT OF GUARDIAN:**
8 **PRELIMINARIES TO HEARING.**

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

14 **ALTERNATE PROVISIONS ON APPOINTMENT OF A LAWYER**

15 [ALTERNATIVE 1]

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

18 (1) requested by the respondent;

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

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

21 [ALTERNATIVE 2]

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

3 **END OF ALTERNATE PROVISIONS**

4 (c) The [visitor] shall interview the respondent in person and, to the extent
5 that the respondent is able to understand:

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

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

12 (3) inform the respondent of the right to employ and consult with a
13 lawyer at the respondent’s own expense and the right to request a court-appointed
14 lawyer; and

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

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

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

19 (2) visit the respondent’s present dwelling and any dwelling in which the
20 respondent will live if the appointment is made;

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

4 (4) make any other investigation the court directs.

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

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

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

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

16 (4) a statement of the qualifications of the proposed guardian, together
17 with a statement as to whether the respondent approves or disapproves of the
18 proposed guardian, and the powers and duties proposed or the scope of the
19 guardianship;

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

1 (6) a recommendation as to whether a professional evaluation or further
2 evaluation is necessary; and

3 (7) any other matters the court directs.

4 **SECTION 306 ~~5-306~~. JUDICIAL APPOINTMENT OF GUARDIAN:**

5 **PROFESSIONAL EVALUATION.** At or before a hearing under this [~~article~~
6 part], the court may order a professional evaluation of the respondent and shall
7 order the evaluation if the respondent so demands. If the court orders the
8 evaluation, the respondent must be examined by a physician, psychologist, or other
9 individual appointed by the court who is qualified to evaluate the respondent's
10 alleged impairment. The examiner shall promptly file a written report with the
11 court. Unless otherwise directed by the court, the report must contain:

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

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

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

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

1 **SECTION ~~307~~ 5-307. CONFIDENTIALITY OF RECORDS.** The written
2 report of a [visitor] and any professional evaluation are confidential and must be
3 sealed upon filing, but are available to:

- 4 (1) the court;
- 5 (2) the respondent without limitation as to use;
- 6 (3) the petitioner, the [visitor], and the petitioner's and respondent's
7 lawyers, for purposes of the proceeding; and
- 8 (4) other persons for such purposes as the court may order for good cause.

9 **SECTION ~~308~~ 5-308. JUDICIAL APPOINTMENT OF GUARDIAN:**
10 **PRESENCE AND RIGHTS AT HEARING.**

11 (a) Unless excused by the court for good cause, the proposed guardian shall
12 attend the hearing. The respondent shall attend and participate in the hearing, unless
13 excused by the court for good cause. The respondent may present evidence and
14 subpoena witnesses and documents; examine witnesses, including any court-
15 appointed physician, psychologist, or other individual qualified to evaluate the
16 alleged impairment, and the [visitor]; and otherwise participate in the hearing. The
17 hearing may be held in a location convenient to the respondent and may be closed
18 upon the request of the respondent and a showing of good cause.

19 (b) Any person may request permission to participate in the proceeding.
20 The court may grant the request, with or without hearing, upon determining that the

1 best interest of the respondent will be served. The court may attach appropriate
2 conditions to the participation.

3 **SECTION 309 5-309. NOTICE.**

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

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

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

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

1 **SECTION 310 ~~5-310~~. WHO MAY BE GUARDIAN: PRIORITIES.**

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

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

6 (2) a person nominated as guardian by the respondent, including the
7 respondent's most recent nomination made in a durable power of attorney, if at the
8 time of the nomination the respondent had sufficient capacity to express a
9 preference;

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

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

14 (5) an adult child of the respondent;

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

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

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

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

4 **SECTION ~~311~~ 5-311. FINDINGS; ORDER OF APPOINTMENT.**

5 (a) The court may:

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

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

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

11 (2) with appropriate findings, treat the petition as one for a protective
12 order under Section ~~401~~ 5-401, enter any other appropriate order, or dismiss the
13 proceeding.

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

18 (c) Within 14 days after an appointment, a guardian shall send or deliver to
19 the ward and to all other persons given notice of the hearing on the petition a copy
20 of the order of appointment, together with a notice of the right to request
21 termination or modification.

1 **SECTION ~~312~~ 5-312. EMERGENCY GUARDIAN.**

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

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

19 (c) Appointment of an emergency guardian, with or without notice, is not a
20 determination of the respondent's incapacity.

21 (d) The court may remove an emergency guardian at any time. An
22 emergency guardian shall make any report the court requires. In other respects, the

1 provisions of this [~~Act~~ article] concerning guardians apply to an emergency
2 guardian.

3 **SECTION ~~313~~ 5-313. TEMPORARY SUBSTITUTE GUARDIAN.**

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

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

18 **SECTION ~~314~~ 5-314. DUTIES OF GUARDIAN.**

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

1 exercise authority only as necessitated by the ward's limitations and, to the extent
2 possible, shall encourage the ward to participate in decisions, act on the ward's own
3 behalf, and develop or regain the capacity to manage the ward's personal affairs. A
4 guardian, in making decisions, shall consider the expressed desires and personal
5 values of the ward to the extent known to the guardian. A guardian at all times shall
6 act in the ward's best interest and exercise reasonable care, diligence, and prudence.

7 (b) A guardian shall:

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

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

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

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

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

21 (6) inform the court of any change in the ward's custodial dwelling or
22 address.

1 **SECTION 315 5-315. POWERS OF GUARDIAN.**

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

3 (1) apply for and receive money payable to the ward or the ward's
4 guardian or custodian for the support of the ward under the terms of any statutory
5 system of benefits or insurance or any private contract, devise, trust,
6 conservatorship, or custodianship;

7 (2) if otherwise consistent with the terms of any order by a court of
8 competent jurisdiction relating to custody of the ward, take custody of the ward and
9 establish the ward's place of custodial dwelling, but may only establish or move the
10 ward's place of dwelling outside this State upon express authorization of the court;

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

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

16 (5) consent to the marriage [or divorce] of the ward; and

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

19 (b) The court may specifically authorize the guardian to consent to the
20 adoption of the ward.

1 **SECTION 316 5-316. RIGHTS AND IMMUNITIES OF GUARDIAN;**
2 **LIMITATIONS.**

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

9 (b) A guardian need not use the guardian's personal funds for the ward's
10 expenses. A guardian is not liable to a third person for acts of the ward solely by
11 reason of the relationship. A guardian who exercises reasonable care in choosing a
12 third person providing medical or other care, treatment, or service for the ward is
13 not liable for injury to the ward resulting from the wrongful conduct of the third
14 party.

15 (c) A guardian, without authorization of the court, may not revoke a power
16 of attorney for health care [made pursuant to the Uniform Health-Care Decisions
17 Act] of which the ward is the principal. If a power of attorney for health care [made
18 pursuant to the Uniform Health-Care Decisions Act] is in effect, absent an order of
19 the court to the contrary, a health-care decision of the agent takes precedence over
20 that of a guardian.

1 (d) A guardian may not initiate the commitment of a ward to a [mental
2 health-care] institution except in accordance with the State's procedure for
3 involuntary civil commitment.

4 **SECTION ~~317~~ 5-317. REPORTS; MONITORING OF GUARDIANSHIP.**

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

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

11 (2) the living arrangements for all addresses of the ward during the
12 reporting period;

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

15 (4) a summary of the guardian's visits with the ward and activities on the
16 ward's behalf and the extent to which the ward has participated in decision-making;

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

19 (6) plans for future care; and

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

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

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

5 **SECTION 318 5-318. TERMINATION OR MODIFICATION OF**
6 **GUARDIANSHIP.**

7 (a) A guardianship terminates upon the death of the ward or upon order of
8 the court.

9 (b) On petition of a ward, a guardian, or another person interested in the
10 ward's welfare, the court may terminate a guardianship if the ward no longer needs
11 the assistance or protection of a guardian. The court may modify the type of
12 appointment or powers granted to the guardian if the extent of protection or
13 assistance previously granted is currently excessive or insufficient or the ward's
14 capacity to provide for support, care, education, health, and welfare has so changed
15 as to warrant that action.

16 (c) Except as otherwise ordered by the court for good cause, the court,
17 before terminating a guardianship, shall follow the same procedures to safeguard the
18 rights of the ward as apply to a petition for guardianship. Upon presentation by the
19 petitioner of evidence establishing a prima facie case for termination, the court shall
20 order the termination unless it is proven that continuation of the guardianship is in
21 the best interest of the ward.

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ARTICLE PART 4

PROTECTION OF PROPERTY OF PROTECTED PERSON

SECTION ~~401~~ 5-401. PROTECTIVE PROCEEDING. Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this [~~article~~ part] in relation to the estate and affairs of:

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

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

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

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

1 are entitled to the individual's support and that protection is necessary or desirable
2 to obtain or provide money.

3 **SECTION ~~402~~ 5-402. JURISDICTION OVER BUSINESS AFFAIRS OF**
4 **PROTECTED PERSON.** After the service of notice in a proceeding seeking a
5 conservatorship or other protective order and until termination of the proceeding,
6 the court in which the petition is filed has:

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

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

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

16 **SECTION ~~403~~ 5-403. ORIGINAL PETITION FOR APPOINTMENT OR**
17 **PROTECTIVE ORDER.**

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

20 (1) the person to be protected;

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

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

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

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

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

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

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

20 (A) spouse or, if the respondent has none, an adult with whom the
21 respondent has resided for more than six months before the filing of the petition; and

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

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

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

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

10 (8) the reason why a conservatorship or other protective order is in the
11 best interest of the respondent.

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

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

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

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

1 **SECTION ~~404~~ 5-404. NOTICE.**

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

12 (b) In a proceeding to establish a conservatorship or for another protective
13 order, notice of the hearing must be given to the persons listed in the petition.
14 Failure to give notice under this subsection does not preclude the appointment of a
15 conservator or the making of another protective order.

16 (c) Notice of the hearing on a petition for an order after appointment of a
17 conservator or making of another protective order, together with a copy of the
18 petition, must be given to the protected person, if the protected person has attained
19 14 years of age and is not missing, detained, or unable to return to the United
20 States, any conservator of the protected person's estate, and any other person as
21 ordered by the court.

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

6 **SECTION ~~405~~ 5-405. ORIGINAL PETITION: MINORS;**
7 **PRELIMINARIES TO HEARING.**

8 (a) Upon the filing of a petition to establish a conservatorship or for another
9 protective order for the reason that the respondent is a minor, the court shall set a
10 date for hearing. If the court determines at any stage of the proceeding that the
11 interests of the minor are or may be inadequately represented, it may appoint a
12 lawyer to represent the minor, giving consideration to the choice of the minor if the
13 minor has attained 14 years of age.

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

19 **SECTION ~~406~~ 5-406. ORIGINAL PETITION: PRELIMINARIES TO**
20 **HEARING.**

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

8 **ALTERNATE PROVISIONS ON APPOINTMENT OF A LAWYER**

9 [ALTERNATIVE 1]

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

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

15 [ALTERNATIVE 2]

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

18 **END OF ALTERNATE PROVISIONS**

19 (c) The [visitor] shall interview the respondent in person and, to the extent
20 that the respondent is able to understand:

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

1 (2) if the appointment of a conservator is requested, inform the
2 respondent of the general powers and duties of a conservator and determine the
3 respondent's views regarding the proposed conservator, the proposed conservator's
4 powers and duties, and the scope and duration of the proposed conservatorship;

5 (3) inform the respondent of the respondent's rights, including the right
6 to employ and consult with a lawyer at the respondent's own expense, and the right
7 to request a court-appointed lawyer; and

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

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

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

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

13 (e) The [visitor] shall promptly file a report with the court, which must
14 include:

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

17 (2) recommendations regarding the appropriateness of a conservatorship,
18 including whether less restrictive means of intervention are available, the type of
19 conservatorship, and, if a limited conservatorship, the powers and duties to be
20 granted the limited conservator, and the assets over which the conservator should be
21 granted authority;

1 (3) a statement of the qualifications of the proposed conservator,
2 together with a statement as to whether the respondent approves or disapproves of
3 the proposed conservator, and a statement of the powers and duties proposed or the
4 scope of the conservatorship;

5 (4) a recommendation as to whether a professional evaluation or further
6 evaluation is necessary; and

7 (5) any other matters the court directs.

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

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

16 **SECTION ~~407~~ 5-407. CONFIDENTIALITY OF RECORDS.** The written
17 report of a [visitor] and any professional evaluation are confidential and must be
18 sealed upon filing, but are available to:

19 (1) the court;

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

- 1 (3) the petitioner, the [visitor], and the petitioner's and respondent's
2 lawyers, for purposes of the proceeding; and
3 (4) other persons for such purposes as the court may order for good cause.

4 **SECTION ~~408~~ 5-408. ORIGINAL PETITION: PROCEDURE AT**
5 **HEARING.**

6 (a) Unless excused by the court for good cause, a proposed conservator
7 shall attend the hearing. The respondent shall attend and participate in the hearing,
8 unless excused by the court for good cause. The respondent may present evidence
9 and subpoena witnesses and documents, examine witnesses, including any court-
10 appointed physician, psychologist, or other individual qualified to evaluate the
11 alleged impairment, and the [visitor], and otherwise participate in the hearing. The
12 hearing may be held in a location convenient to the respondent and may be closed
13 upon request of the respondent and a showing of good cause.

14 (b) Any person may request permission to participate in the proceeding.
15 The court may grant the request, with or without hearing, upon determining that the
16 best interest of the respondent will be served. The court may attach appropriate
17 conditions to the participation.

18 **SECTION ~~409~~ 5-409. ORIGINAL PETITION: ORDERS.**

19 (a) If a proceeding is brought for the reason that the respondent is a minor,
20 after a hearing on the petition, upon finding that the appointment of a conservator or

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

3 (b) If a proceeding is brought for reasons other than that the respondent is a
4 minor, after a hearing on the petition, upon finding that a basis exists for a
5 conservatorship or other protective order, the court shall make the least restrictive
6 order consistent with its findings. The court shall make orders necessitated by the
7 protected person's limitations and demonstrated needs, including appointive and
8 other orders that will encourage the development of maximum self-reliance and
9 independence of the protected person.

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

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

17 **SECTION ~~410~~ 5-410. POWERS OF COURT.**

18 (a) After hearing and upon determining that a basis for a conservatorship or
19 other protective order exists, the court has the following powers, which may be
20 exercised directly or through a conservator:

1 (1) with respect to a minor for reasons of age, all the powers over the
2 estate and business affairs of the minor which may be necessary for the best interest
3 of the minor and members of the minor's immediate family; and

4 (2) with respect to an adult, or to a minor for reasons other than age, for
5 the benefit of the protected person and individuals who are in fact dependent on the
6 protected person for support, all the powers over the estate and business affairs of
7 the protected person which the person could exercise if the person were an adult,
8 present, and not under conservatorship or other protective order.

9 (b) Subject to Section ~~410~~ 5-110 requiring endorsement of limitations on
10 the letters of office, the court may limit at any time the powers of a conservator
11 otherwise conferred and may remove or modify any limitation.

12 **SECTION ~~411~~ 5-411. REQUIRED COURT APPROVAL.**

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

15 (1) make gifts, except as otherwise provided in Section ~~427(b)~~ 5-427(b);

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

19 (3) exercise or release a power of appointment;

1 (4) create a revocable or irrevocable trust of property of the estate,
2 whether or not the trust extends beyond the duration of the conservatorship, or
3 revoke or amend a trust revocable by the protected person;

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

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

10 (7) make, amend, or revoke the protected person's will.

11 (b) A conservator, in making, amending, or revoking the protected person's
12 will, shall comply with [the State's statute for executing wills].

13 (c) The court, in exercising or in approving a conservator's exercise of the
14 powers listed in subsection (a), shall consider primarily the decision that the
15 protected person would have made, to the extent that the decision can be
16 ascertained. The court shall also consider:

17 (1) the financial needs of the protected person and the needs of
18 individuals who are in fact dependent on the protected person for support and the
19 interest of creditors;

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

22 (3) eligibility for governmental assistance;

- 1 (4) the protected person's previous pattern of giving or level of support;
2 (5) the existing estate plan;
3 (6) the protected person's life expectancy and the probability that the
4 conservatorship will terminate before the protected person's death; and
5 (7) any other factors the court considers relevant.

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

10 **SECTION ~~412~~ 5-412. PROTECTIVE ARRANGEMENTS AND SINGLE**
11 **TRANSACTIONS.**

12 (a) If a basis is established for a protective order with respect to an
13 individual, the court, without appointing a conservator, may:

14 (1) authorize, direct, or ratify any transaction necessary or desirable to
15 achieve any arrangement for security, service, or care meeting the foreseeable needs
16 of the protected person, including:

17 (A) payment, delivery, deposit, or retention of funds or property;

18 (B) sale, mortgage, lease, or other transfer of property;

19 (C) purchase of an annuity;

20 (D) making a contract for life care, deposit contract, or contract for
21 training and education; or

1 (E) addition to or establishment of a suitable trust[, including a trust
2 created under the Uniform Custodial Trust Act]; and

3 (2) authorize, direct, or ratify any other contract, trust, will, or
4 transaction relating to the protected person's property and business affairs, including
5 a settlement of a claim, upon determining that it is in the best interest of the
6 protected person.

7 (b) In deciding whether to approve a protective arrangement or other
8 transaction under this section, the court shall consider the factors described in
9 Section ~~411(e)~~ 5-411(c).

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

14 **SECTION ~~413~~ 5-413. WHO MAY BE CONSERVATOR: PRIORITIES.**

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

18 (1) a conservator, guardian of the estate, or other like fiduciary
19 appointed or recognized by an appropriate court of any other jurisdiction in which
20 the protected person resides;

1 (2) a person nominated as conservator by the respondent, including the
2 respondent's most recent nomination made in a durable power of attorney, if the
3 respondent has attained 14 years of age and at the time of the nomination had
4 sufficient capacity to express a preference;

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

7 (4) the spouse of the respondent;

8 (5) an adult child of the respondent;

9 (6) a parent of the respondent; and

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

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

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

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

1 **SECTION ~~414~~ 5-414. PETITION FOR ORDER SUBSEQUENT TO**
2 **APPOINTMENT.**

3 (a) A protected person or a person interested in the welfare of a protected
4 person may file a petition in the appointing court for an order:

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

7 (2) requiring an accounting for the administration of the protected
8 person's estate;

9 (3) directing distribution;

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

12 (5) modifying the type of appointment or powers granted to the
13 conservator if the extent of protection or management previously granted is
14 currently excessive or insufficient or the protected person's ability to manage the
15 estate and business affairs has so changed as to warrant the action; or

16 (6) granting other appropriate relief.

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

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

1 **SECTION 415 5-415. BOND.** The court may require a conservator to furnish
2 a bond conditioned upon faithful discharge of all duties of the conservatorship
3 according to law, with sureties as it may specify. Unless otherwise directed by the
4 court, the bond must be in the amount of the aggregate capital value of the property
5 of the estate in the conservator's control, plus one year's estimated income, and
6 minus the value of assets deposited under arrangements requiring an order of the
7 court for their removal and the value of any real property that the fiduciary, by
8 express limitation, lacks power to sell or convey without court authorization. The
9 court, in place of sureties on a bond, may accept collateral for the performance of
10 the bond, including a pledge of securities or a mortgage of real property.

11 **SECTION 416 5-416. TERMS AND REQUIREMENTS OF BOND.**

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

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

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

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

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

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

8 **SECTION ~~417~~ 5-417. COMPENSATION AND EXPENSES.** If not
9 otherwise compensated for services rendered, a guardian, conservator, lawyer for
10 the respondent, lawyer whose services resulted in a protective order or in an order
11 beneficial to a protected person's estate, or any other person appointed by the court
12 is entitled to reasonable compensation from the estate. Compensation may be paid
13 and expenses reimbursed without court order. If the court determines that the
14 compensation is excessive or the expenses are inappropriate, the excessive or
15 inappropriate amount must be repaid to the estate.

1 **SECTION 418 5-418. GENERAL DUTIES OF CONSERVATOR; PLAN.**

2 (a) A conservator, in relation to powers conferred by this [~~article~~ part] or
3 implicit in the title acquired by virtue of the proceeding, is a fiduciary and shall
4 observe the standards of care applicable to a trustee.

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

9 (c) Within 60 days after appointment, a conservator shall file with the
10 appointing court a plan for protecting, managing, expending, and distributing the
11 assets of the protected person's estate. The plan must be based on the actual needs
12 of the person and take into consideration the best interest of the person. The
13 conservator shall include in the plan steps to develop or restore the person's ability
14 to manage the person's property, an estimate of the duration of the conservatorship,
15 and projections of expenses and resources.

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

1 **SECTION ~~419~~ 5-419. INVENTORY; RECORDS.**

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

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

8 **SECTION ~~420~~ 5-420. REPORTS; APPOINTMENT OF [VISITOR];**
9 **MONITORING.**

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

17 (b) A report must state or contain:

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

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

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

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

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

11 **SECTION ~~421~~ 5-421. TITLE BY APPOINTMENT.**

12 (a) The appointment of a conservator vests title in the conservator as trustee
13 to all property of the protected person, or to the part thereof specified in the order,
14 held at the time of appointment or thereafter acquired. An order vesting title in the
15 conservator to only a part of the property of the protected person creates a
16 conservatorship limited to assets specified in the order.

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

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

5 **SECTION ~~422~~ 5-422. PROTECTED PERSON'S INTEREST**
6 **INALIENABLE.**

7 (a) Except as otherwise provided in subsections (c) and (d), the interest of a
8 protected person in property vested in a conservator is not transferable or assignable
9 by the protected person. An attempted transfer or assignment by the protected
10 person, although ineffective to affect property rights, may give rise to a claim
11 against the protected person for restitution or damages which, subject to
12 presentation and allowance, may be satisfied as provided in Section ~~429~~ 5-429.

13 (b) Property vested in a conservator by appointment and the interest of the
14 protected person in that property are not subject to levy, garnishment, or similar
15 process for claims against the protected person unless allowed under Section ~~429~~
16 5-429.

17 (c) A person without knowledge of the conservatorship who in good faith
18 and for security or substantially equivalent value receives delivery from a protected
19 person of tangible personal property of a type normally transferred by delivery of
20 possession, is protected as if the protected person or transferee had valid title.

1 (d) A third party who deals with the protected person with respect to
2 property vested in a conservator is entitled to any protection provided in other law.

3 **SECTION ~~423~~ 5-423. SALE, ENCUMBRANCE, OR OTHER**
4 **TRANSACTION INVOLVING CONFLICT OF INTEREST.** Any transaction
5 involving the conservatorship estate which is affected by a substantial conflict
6 between the conservator's fiduciary and personal interests is voidable unless the
7 transaction is expressly authorized by the court after notice to interested persons. A
8 transaction affected by a substantial conflict between personal and fiduciary interests
9 includes any sale, encumbrance, or other transaction involving the conservatorship
10 estate entered into by the conservator, the spouse, descendant, agent, or lawyer of a
11 conservator, or a corporation or other enterprise in which the conservator has a
12 substantial beneficial interest.

13 **SECTION ~~424~~ 5-424. PROTECTION OF PERSON DEALING WITH**
14 **CONSERVATOR.**

15 (a) A person who assists or deals with a conservator in good faith and for
16 value in any transaction other than one requiring a court order under Section ~~410~~
17 5-410 or ~~411~~ 5-411 is protected as though the conservator properly exercised the
18 power. That a person knowingly deals with a conservator does not alone require
19 the person to inquire into the existence of a power or the propriety of its exercise,
20 but restrictions on powers of conservators which are endorsed on letters as provided

1 in Section ~~110~~ 5-110 are effective as to third persons. A person who pays or
2 delivers assets to a conservator is not responsible for their proper application.

3 (b) Protection provided by this section extends to any procedural
4 irregularity or jurisdictional defect that occurred in proceedings leading to the
5 issuance of letters and is not a substitute for protection provided to persons assisting
6 or dealing with a conservator by comparable provisions in other law relating to
7 commercial transactions or to simplifying transfers of securities by fiduciaries.

8 **SECTION ~~425~~ 5-425. POWERS OF CONSERVATOR IN**
9 **ADMINISTRATION.**

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

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

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

19 (2) receive additions to the estate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (23) pay any sum distributable to a protected person or individual who is
9 in fact dependent on the protected person by paying the sum to the distributee or by
10 paying the sum for the use of the distributee:

11 (A) to the guardian of the distributee;

12 (B) to a distributee’s custodian under [the Uniform Transfers to
13 Minors Act] or custodial trustee under [the Uniform Custodial Trust Act]; or

14 (C) if there is no guardian, custodian, or custodial trustee, to a
15 relative or other person having physical custody of the distributee;

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

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

21 **SECTION 426 5-426. DELEGATION.**

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

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

6 (1) selecting an agent;

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

9 (3) periodically reviewing an agent’s overall performance and compliance
10 with the terms of the delegation; and

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

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

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

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

20 **SECTION ~~427~~ 5-427. PRINCIPLES OF DISTRIBUTION BY**
21 **CONSERVATOR.**

1 (a) Unless otherwise specified in the order of appointment and endorsed on
2 the letters of appointment or contrary to the plan filed pursuant to Section ~~418~~
3 5-418, a conservator may expend or distribute income or principal of the estate of
4 the protected person without further court authorization or confirmation for the
5 support, care, education, health, and welfare of the protected person and individuals
6 who are in fact dependent on the protected person, including the payment of child or
7 spousal support, in accordance with the following rules:

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

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

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

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

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

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

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

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

19 **SECTION ~~428~~ 5-428. DEATH OF PROTECTED PERSON.**

20 [(a)] If a protected person dies, the conservator shall deliver to the court for
21 safekeeping any will of the protected person which may have come into the

1 conservator's possession, inform the personal representative or beneficiary named in
2 the will of the delivery, and retain the estate for delivery to the personal
3 representative of the decedent or to another person entitled to it.

4 [(b) If a personal representative has not been appointed within 40 days after
5 the death of a protected person and an application or petition for appointment is not
6 before the court, the conservator may apply to exercise the powers and duties of a
7 personal representative in order to administer and distribute the decedent's estate.
8 Upon application for an order conferring upon the conservator the powers of a
9 personal representative, after notice given by the conservator to any person
10 nominated as personal representative by any will of which the applicant is aware, the
11 court may grant the application upon determining that there is no objection and
12 endorse the letters of conservatorship to note that the formerly protected person is
13 deceased and that the conservator has acquired all of the powers and duties of a
14 personal representative.

15 (c) The issuance of an order under this section has the effect of an order of
16 appointment of a personal representative [as provided in Section 3-308 and Parts 6
17 through 10 of Article III of the ~~Uniform Probate Code~~]. However, the estate in the
18 name of the conservator, after administration, may be distributed to the decedent's
19 successors without retransfer to the conservator as personal representative.]

20 **SECTION ~~429~~ 5-429. PRESENTATION AND ALLOWANCE OF**
21 **CLAIMS.**

1 (a) A conservator may pay, or secure by encumbering assets of the estate,
2 claims against the estate or against the protected person arising before or during the
3 conservatorship upon their presentation and allowance in accordance with the
4 priorities stated in subsection (d). A claimant may present a claim by:

5 (1) sending or delivering to the conservator a written statement of the
6 claim, indicating its basis, the name and address of the claimant, and the amount
7 claimed; or

8 (2) filing a written statement of the claim, in a form acceptable to the
9 court, with the clerk of court and sending or delivering a copy of the statement to
10 the conservator.

11 (b) A claim is deemed presented on receipt of the written statement of claim
12 by the conservator or the filing of the claim with the court, whichever first occurs.

13 A presented claim is allowed if it is not disallowed by written statement sent or
14 delivered by the conservator to the claimant within 60 days after its presentation.

15 The conservator before payment may change an allowance to a disallowance in
16 whole or in part, but not after allowance under a court order or judgment or an
17 order directing payment of the claim. The presentation of a claim tolls the running
18 of any statute of limitations relating to the claim until 30 days after its disallowance.

19 (c) A claimant whose claim has not been paid may petition the court for
20 determination of the claim at any time before it is barred by a statute of limitations
21 and, upon due proof, procure an order for its allowance, payment, or security by
22 encumbering assets of the estate. If a proceeding is pending against a protected

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

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

7 (1) costs and expenses of administration;

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

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

13 (4) claims arising before the conservatorship; and

14 (5) all other claims.

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

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

1 **SECTION ~~430~~ 5-430. PERSONAL LIABILITY OF CONSERVATOR.**

2 (a) Except as otherwise agreed, a conservator is not personally liable on a
3 contract properly entered into in a fiduciary capacity in the course of administration
4 of the estate unless the conservator fails to reveal in the contract the representative
5 capacity and identify the estate.

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

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

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

17 [(e) A conservator is not personally liable for any environmental condition
18 on or injury resulting from any environmental condition on land solely by reason of
19 an acquisition of title under Section ~~421~~ 5-421.]

20 **SECTION ~~431~~ 5-431. TERMINATION OF PROCEEDINGS.**

1 (a) A conservatorship terminates upon the death of the protected person or
2 upon order of the court. Unless created for reasons other than that the protected
3 person is a minor, a conservatorship created for a minor also terminates when the
4 protected person attains majority or is emancipated.

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

9 (c) On petition of a protected person, a conservator, or another person
10 interested in a protected person's welfare, the court may terminate the
11 conservatorship if the protected person no longer needs the assistance or protection
12 of a conservator. Termination of the conservatorship does not affect a
13 conservator's liability for previous acts or the obligation to account for funds and
14 assets of the protected person.

15 (d) Except as otherwise ordered by the court for good cause, before
16 terminating a conservatorship, the court shall follow the same procedures to
17 safeguard the rights of the protected person that apply to a petition for
18 conservatorship. Upon the establishment of a prima facie case for termination, the
19 court shall order termination unless it is proved that continuation of the
20 conservatorship is in the best interest of the protected person.

21 (e) Upon termination of a conservatorship and whether or not formally
22 distributed by the conservator, title to assets of the estate passes to the formerly

1 protected person or the person’s successors. The order of termination must provide
2 for expenses of administration and direct the conservator to execute appropriate
3 instruments to evidence the transfer of title or confirm a distribution previously
4 made and to file a final report and a petition for discharge upon approval of the final
5 report.

6 (f) The court shall enter a final order of discharge upon the approval of the
7 final report and satisfaction by the conservator of any other conditions placed by the
8 court on the conservator’s discharge.

9 **SECTION ~~432~~ 5-432. PAYMENT OF DEBT AND DELIVERY OF**
10 **PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL**
11 **PROCEEDING.**

12 (a) A person who is indebted to or has the possession of tangible or
13 intangible property of a protected person may pay the debt or deliver the property to
14 a foreign conservator, guardian of the estate, or other court-appointed fiduciary of
15 the State of residence of the protected person. Payment or delivery may be made
16 only upon proof of appointment and presentation of an affidavit made by or on
17 behalf of the fiduciary stating that a protective proceeding relating to the protected
18 person is not pending in this State and the foreign fiduciary is entitled to payment or
19 to receive delivery.

1 (b) Payment or delivery in accordance with subsection (a) discharges the
2 debtor or possessor, absent knowledge of any protective proceeding pending in this
3 State.

4 **SECTION ~~433~~ 5-433. FOREIGN CONSERVATOR: PROOF OF**
5 **AUTHORITY; BOND; POWERS.** If a conservator has not been appointed in
6 this State and a petition in a protective proceeding is not pending in this State, a
7 conservator appointed in the State in which the protected person resides may file in
8 a court of this State, in a [county] in which property belonging to the protected
9 person is located, authenticated copies of letters of appointment and of any bond.
10 Thereafter, the conservator may exercise all powers of a conservator appointed in
11 this State as to property in this State and may maintain actions and proceedings in
12 this State subject to any conditions otherwise imposed upon nonresident parties.

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ARTICLE 5
MISCELLANEOUS PROVISIONS

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

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

~~**SECTION 503. EFFECTIVE DATE.** This [Act] takes effect~~

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

- ~~(1)~~
- ~~(2)~~
- ~~(3)~~