

DRAFT
FOR DISCUSSION ONLY

UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

March 17-18, 2017 Committee Meeting

CLEAN DRAFT

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March 9, 2017

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**UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE
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1 conservatorships. These objectives focus on protecting and respecting the rights and interests of
2 both persons alleged to need a guardian or conservator and individuals subject to guardianship or
3 conservatorship. This includes ensuring that the least restrictive means are used to protect an
4 individual alleged to need a guardianship or conservatorship, providing better guidance to
5 guardians and conservators, and helping courts to do a better job monitoring guardians and
6 conservators.

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

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

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

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

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

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

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

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

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

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

1 of a minor, courts determining whether they had jurisdiction over guardianship for minors, and
2 guardians making decisions on behalf of minors.

3

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

1 financial decisions that enables the individual to make such decisions and, when consistent with
2 the individual’s wishes, assisting the individual in communicating decisions once made.

3 (9) “Full conservatorship” means a conservatorship under which the conservator is
4 granted all powers available under the law of this state.

5 (10) “Full guardianship” means a guardianship under which the guardian is granted all
6 powers available under the law of this state.

7 (11) “Guardian” means a person appointed by a court to make decisions with respect to
8 the personal affairs of an individual. The term includes a limited guardian, emergency guardian,
9 and temporary substitute guardian. The term does not include a guardian ad litem.

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

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

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

16 (15) “Less restrictive means” means approaches to meeting an individual’s needs that
17 remove fewer rights than would the appointment of a guardian or conservator. The term includes
18 appropriate decision-making support, appropriate technological assistance, the appointment of an
19 agent by the respondent including appointment under a [power of attorney for health-care] or
20 power of attorney for finances, and a protective arrangement under Section 118.

21 (16) “Letters of office” means letters of guardianship or letters of conservatorship.

22 (17) “Limited conservatorship” means a conservatorship under which the conservator is
23 granted less than all powers available under the law of this state, is granted powers over only

1 certain property, or the powers of the conservator are otherwise restricted.

2 (18) “Limited guardianship” means a guardianship under which the guardian is granted
3 less than all powers available under the law of this state or the powers of the guardian are
4 otherwise restricted.

5 (19) “Minor” means an unemancipated individual who has not attained [18] years of age.

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

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

10 (22) “Parent” means a parent whose parental rights have not been terminated.

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

14 (24) “Property” includes tangible and intangible property.

15 (25) “Protective arrangement instead of guardianship or conservatorship” means a court
16 order entered under Section 118. The term includes a court order authorizing a single
17 transaction.

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

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

21 (28) “State” means a state of the United States, the District of Columbia, Puerto Rico,
22 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
23 of the United States.

1 **SECTION 103. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW**

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

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

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

11 (b) The court of this state has jurisdiction over a guardianship, conservatorship, and
12 protective arrangement orders instead of guardianship or conservatorship for an adult as provided
13 in the [insert citation to Uniform Adult Guardianship and Protective Proceedings Jurisdiction
14 Act].

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

18 (1) exclusive jurisdiction to determine the need for a guardianship,
19 conservatorship, or protective arrangement instead of guardianship or conservatorship;

20 (2) exclusive jurisdiction to determine how the property of the respondent which
21 is subject to the laws of this state must be managed, expended, or distributed to or for the use of
22 the respondent, an individual who is dependent upon the respondent, or other claimant; and

23 (3) concurrent jurisdiction to determine the validity of a claim against the

1 respondent or property of the respondent and a question of title concerning the property.

2 (d) A court that has appointed a guardian or conservator, or authorized a protective
3 arrangement instead of guardianship or conservatorship consistent with this [act], has exclusive
4 and continuing jurisdiction over the proceeding until it is terminated by the court or the
5 appointment or protective arrangement expires by its terms.

6 **SECTION 105. TRANSFER OF PROCEEDINGS.** Except for a guardianship or
7 conservatorship for an adult that is subject to the transfer provisions of [insert citation to Article
8 3 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act], the following
9 rules apply:

10 (1) After the appointment of a guardian or conservator or entry of a protective
11 arrangement instead of guardianship or conservatorship, the court making the appointment or
12 authorizing the arrangement may transfer the proceeding to a court in another [county] in this
13 state or to another state if the court is satisfied that a transfer will serve the best interest of the
14 individual subject to the proceeding.

15 (2) If a proceeding for a guardianship, conservatorship, or protective arrangement instead
16 of guardianship or conservatorship is pending in another state or a foreign country and a petition
17 for guardianship, conservatorship, or protective arrangement instead of guardianship or
18 conservatorship is filed in a court in this state, the court in this state shall notify the original court
19 and, after consultation with the original court, assume or decline jurisdiction, whichever is in the
20 best interest of the respondent.

21 (3) A guardian, conservator, or fiduciary appointed in another state may petition the court
22 for appointment as a guardian or conservator in this state if venue in this state is or will be
23 established. The appointment may be made on proof of appointment in the other state and

1 presentation of a certified copy of the portion of the court record in the other state specified by
2 the court in this state. Notice of hearing on the petition, together with a copy of the petition,
3 must be given to the respondent, if the respondent has attained 12 years of age, and to the
4 persons who would be entitled to notice if the regular procedures for appointment of a guardian
5 or conservator under this [act] were applicable. The court shall make the appointment in this
6 state unless it concludes that the appointment would not be in the best interest of the respondent.
7 On the filing of an acceptance of office and any required bond, the court shall issue appropriate
8 letters of office. Not later than 14 days after appointment, the guardian or conservator shall send
9 or deliver a copy of the order of appointment to the individual subject to guardianship or
10 conservatorship, if the individual has attained 12 years of age, and to all persons given notice of
11 the hearing on the petition.

12 **SECTION 106. VENUE.**

13 (a) Venue for a guardianship proceeding for a minor or a protective arrangement instead
14 of guardianship for a minor is in the [county] of this state in which the minor resides or is present
15 at the time the proceeding commences, or the [county] where another proceeding concerning the
16 custody and parental rights of the minor is pending.

17 (b) Venue for a guardianship proceeding or a protective arrangement instead of
18 guardianship for an adult is in the [county] of this state in which the respondent resides and, if
19 the respondent has been admitted to an institution by order of a court of competent jurisdiction,
20 in the [county] in which the court is located. Venue for the appointment of an emergency or a
21 temporary substitute guardian of an adult is also in the [county] in which the respondent is
22 present.

23 (c) Venue for a conservatorship proceeding or a protective arrangement instead of

1 conservatorship is in the [county] of this state in which the respondent resides, whether or not a
2 guardian has been appointed in another place or, if the respondent does not reside in this state, in
3 any [county] of this state in which property of the respondent resides.

4 (d) If a proceeding under this [act] is brought in more than one [county] in this state, the
5 court of the [county] in which the proceeding is first brought has the exclusive right to proceed
6 unless the court determines that venue is properly in another court or that the interest of justice
7 otherwise requires the proceeding be transferred.

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

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

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

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

15 **SECTION 108. LETTERS OF OFFICE.**

16 (a) On the guardian's filing of an acceptance of office, the court shall issue appropriate
17 letters of guardianship. On the conservator's filing of an acceptance of office and any required
18 bond or compliance with any other asset-protection arrangement required by the court, the court
19 shall issue appropriate letters of conservatorship. Limitations on the powers of a guardian or
20 conservator or on the property subject to a conservatorship shall be stated on the guardian's or
21 conservator's letters.

22 (b) The court may limit at any time the powers of a guardian or conservator otherwise
23 conferred. In either event, the court shall issue new letters of office to reflect the limitation,

1 removal, or modification.

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

5 **SECTION 110. CO-APPOINTEES.**

6 (a) The court may appoint a co-guardian or co-conservator at any time, including at the
7 time of the initial order, to serve immediately or on some other designated event.

8 (b) A co-guardian or co-conservator may file an acceptance of appointment at any time
9 after the appointment within the later of 30 days after the designated event or 10 days after
10 learning of the designated event.

11 (c) The co-guardian or co-conservator becomes eligible to act on the occurrence of the
12 designated event or the filing of the acceptance of appointment, whichever last occurs.

13 **SECTION 111. JUDICIAL APPOINTMENT OF SUCCESSOR GUARDIAN OR**
14 **SUCCESSOR CONSERVATOR**

15 (a) A successor guardian may be appointed by the court at the same time the court
16 appoints a guardian, or at anytime during the existence of a guardianship, to serve immediately
17 or upon a future event.

18 (b) A successor conservator may be appointed by the court at the time the court appoints
19 a conservator, or at anytime during the existence of a conservatorship, to serve immediately or
20 upon a future event.

21 (c) Any person entitled to petition for a guardian under Section 202 or 302 may petition
22 the court to appoint a successor guardian. Any person entitled to petition the court to appoint a
23 conservator under Section 402 may petition the court to appoint a successor conservator.

1 (d) A successor guardian or standby conservator appointed by a court to serve upon a
2 future event becomes eligible to serve as guardian or conservator if:

3 (1) the guardian or conservator is unable or unwilling to perform the duties of the
4 guardian or conservator, or on such other event designated by the court; and

5 (2) the successor guardian or successor conservator files an acceptance of
6 appointment, which must be filed by the later of 30 days after the event triggering the
7 appointment or 10 days after the successor guardian learns of the event triggering the
8 appointment as guardian.

9 (e) Not later than 90 days after the filing of the acceptance of appointment, the court
10 shall issue an order confirming the appointment, hold a hearing on the petition, or do both.

11 (f) A successor guardian or successor conservator appointed by a court succeeds to the
12 predecessor's powers unless otherwise limited by the court.

13 (g) Acts of the successor guardian or conservator after the event triggering the
14 appointment, but before the satisfaction of the requirements of subsection (d)(2) have the same
15 effect as those that occurred after the filing of the acceptance of the appointment.

16 **SECTION 112. EFFECT OF REMOVAL, RESIGNATION, OR DEATH OF**
17 **APPOINTEE.**

18 (a) The appointment of a guardian or conservator terminates on the death, resignation, or
19 removal of the guardian or conservator.

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

1 (c) Resignation or removal of a guardian or conservator does not affect liability for
2 previous acts or the obligation to account for actions taken on behalf of the individual subject to
3 guardianship or conservatorship, or to account for the individual's money or other property.

4 **SECTION 113. GENERAL NOTICE REQUIREMENTS.**

5 (a) If notice of a hearing on a petition filed under this [act] is required, the petitioner
6 shall give notice of the time and place of the hearing to the person to be notified unless otherwise
7 ordered by the court for good cause. Notice must be given in compliance with [insert the
8 applicable rule of civil procedure], at least 14 days before the hearing unless this [act] provides
9 otherwise.

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

11 (c) Notice under this [act] must be given in plain language.

12 **SECTION 114. WAIVER OF NOTICE.** A person may waive notice under this [act]
13 by a writing signed by the person or the person's attorney and filed in the proceeding, except that
14 a respondent or individual subject to guardianship, an individual subject to conservatorship, or an
15 individual for whom a protective arrangement instead of guardianship or conservatorship has
16 been ordered, may not waive notice.

17 **SECTION 115. GUARDIAN AD LITEM.** At any stage of a proceeding, the court may
18 appoint a guardian ad litem if the court determines that representation of an individual's interest
19 otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem
20 may be appointed to represent several individuals or interests. The guardian ad litem may not be
21 the same individual as the attorney representing a respondent. The court shall state on the record
22 the duties of the guardian ad litem and its reasons for the appointment.

1 **SECTION 116. REQUEST FOR NOTICE; INTERESTED PERSONS.**

2 (a) An interested person not otherwise entitled to notice who desires to be notified before
3 any order is made in a proceeding under this [act], including a proceeding after the appointment
4 of a guardian or conservator, may file a request for notice with the clerk of the court in which the
5 proceeding is pending. The clerk shall send or deliver a copy of the request to the guardian and
6 to the conservator if one has been appointed. A request is not effective unless it contains a
7 statement showing the interest of the person making it and the address of that person or an
8 attorney to whom notice is to be given. The request is effective only as to proceedings
9 conducted after its filing.

10 (b) A governmental agency paying or planning to pay benefits to a respondent or an
11 individual subject to conservatorship or for whom a protective arrangement instead of
12 conservatorship has been ordered is an interested person in a proceeding under [Article 4].

13 **SECTION 117. MULTIPLE APPOINTMENTS OR NOMINATIONS.** If a
14 respondent or other person makes more than one written appointment or nomination of a
15 guardian or conservator, the most recent controls.

16 **SECTION 118. PROTECTIVE ARRANGEMENT INSTEAD OF**
17 **GUARDIANSHIP OR CONSERVATORSHIP.**

18 (a) If the court finds that the basis for appointment of a guardian for an adult exists after
19 following the procedures required by Sections 302 through 308, or the basis for appointment of a
20 guardian for a minor exists after following the procedures required by Sections 202 through 206,
21 the court instead of appointing a guardian, may:

22 (1) authorize or direct any transaction necessary to meet the respondent's need
23 for security, service, or care, including:

1 (A) a particular medical treatment or refusal of a particular medical
2 treatment;

3 (B) a move to specified place of residence; or

4 (C) visitation or supervised visitation between the respondent and another
5 person;

6 (2) restrict access to the respondent by a person whose access to the respondent
7 places the respondent at serious risk of physical or psychological harm; and

8 (3) make such other arrangements as may be appropriate on a limited basis.

9 (b) If the court finds that the basis for appointment of a conservator exists after following
10 the procedures required by Sections 402 through 409, the court instead of appointing a
11 conservator, may:

12 (1) authorize or direct any transaction necessary to protect the financial interest or
13 property of the respondent, including:

14 (A) actions to establish eligibility for benefits;

15 (B) payment, delivery, deposit, or retention of funds or property;

16 (C) sale, mortgage, lease, or other transfer of property;

17 (D) purchase of an annuity;

18 (E) entry into a contractual relationship, including a contract to provide for
19 personal care, supportive services, education, training, and employment;

20 (F) addition to or establishment of a suitable trust[, including a trust
21 created under the Uniform Custodial Trust Act];

22 (G) ratification a contract, trust, will, or other transaction, including one
23 related to the property or business affairs of the respondent; and

1 (H) settlement of a claim; and

2 (2) restrict access to the respondent's property by a person whose access to the
3 property places the respondent at serious risk of financial harm.

4 (c) After following the procedures required by either Sections 202 through 206 if the
5 respondent is a minor or Sections 302 through 308 if the respondent is an adult, the court may
6 restrict access to the respondent or the respondent's property by a person who the court finds:

7 (1) through fraud, coercion, duress, or the use of deception and control, caused the
8 respondent to suffer physical or psychological harm; and

9 (2) would otherwise pose a serious risk of substantial physical or psychological
10 harm to the respondent.

11 (d) After following the procedures required by Sections 402 through 409, a court may
12 restrict access to the respondent or the respondent's property by a person who the court finds:

13 (1) through fraud, coercion, duress, or the use of deception and control, caused the
14 respondent to suffer financial harm; and

15 (2) would otherwise pose a serious risk of substantial financial harm to the
16 respondent or the respondent's property.

17 (e) In deciding whether to make any order under this section for a minor, the court shall
18 consider the best interest of the minor, the preference of the minor's parent, and the preference of
19 the minor if the minor has reached the age of 12.

20 (f) In deciding whether to enter an order under this section related to the personal affairs
21 of an adult, the court shall consider the factors that a guardian must consider when making
22 decisions on behalf of an adult subject to guardianship.

23 (g) In deciding whether to enter an order under this section related to the property or

1 financial affairs of a respondent, the court shall consider the factors that a conservator must
2 consider when making decisions on behalf of an individual subject to conservatorship.

3 (h) The court may appoint a [master] to assist in the implementation of any protective
4 arrangement authorized under this section. The [master] has the authority conferred by the order
5 and shall serve until discharged by court order.

6 **SECTION 119. COMPENSATION AND EXPENSES IN GENERAL.**

7 (a) If not otherwise compensated for services rendered, an attorney for a respondent in a
8 proceeding brought under this [act] is entitled to reasonable compensation and reimbursement of
9 reasonable expenses from the property of the respondent.

10 (b) If not otherwise compensated for services rendered, an attorney or other person
11 whose services resulted in an order beneficial to an individual subject to guardianship or
12 conservatorship, or an attorney or other person whose services resulted in an order beneficial to
13 an individual for whom a protective arrangement instead of guardianship or conservatorship was
14 ordered, is entitled to reasonable compensation and reimbursement of reasonable expenses from
15 the property the individual.

16 (c) Compensation and expenses payable under this section must be approved by the court
17 before compensation is paid or reimbursement is made. Approval is not required before the
18 services are provided or the expenses are incurred.

19 **SECTION 120. COMPENSATION OF GUARDIAN OR CONSERVATOR.**

20 (a) A guardian is entitled to reasonable compensation for services as guardian and to
21 reimbursement for room, board, and clothing provided by the guardian to the individual subject
22 to guardianship, subject to court approval. If a conservator, other than the guardian or a person
23 who is affiliated with the guardian, has been appointed for an individual subject to

1 conservatorship, reasonable compensation and reimbursement to the guardian may be approved
2 and paid by the conservator without order of the court.

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

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

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

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

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

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

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

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

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

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

23 (e) If a minor or adult subject to guardianship or conservatorship seeks court intervention

1 to modify or terminate the guardianship or conservatorship or to remove the guardian or
2 conservator, the guardian or conservator may be compensated only for time spent opposing such
3 effort to the extent that the court has determined that the involvement or opposition is or was
4 reasonably necessary to protect the interest of the individual subject to guardianship or
5 conservatorship.

6 **SECTION 121. IMMUNITIES OF GUARDIAN OR CONSERVATOR.**

7 (a) A guardian or conservator is not personally liable to a third person for acts of a minor
8 or adult subject to guardianship or conservatorship solely by reason of the guardianship or
9 conservatorship.

10 (b) A guardian who exercises reasonable care in choosing and monitoring a direct
11 service provider for an individual subject to guardianship, and who otherwise complies with
12 Section 125, is not liable for injury to the adult or minor subject to guardianship resulting from
13 the wrongful conduct of the provider.

14 (c) A conservator who exercises reasonable care in choosing and monitoring an agent to
15 perform a duty of the conservator, and who otherwise complies with Section 125, and is not
16 liable for injury to the individual subject to conservatorship resulting from the wrongful conduct
17 of the agent.

18 **SECTION 122. PETITION FOR INSTRUCTION OR RATIFICATION POST**
19 **APPOINTMENT.**

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

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

1 appropriate order.

2 (c) If the guardian or conservator acts according to the court's instruction or as ratified,
3 the guardian or conservator shall not be personally liable for an act covered by the instruction or
4 ratification. Failure to petition the court shall not be evidence of a breach of the guardian's or
5 conservator's fiduciary obligation.

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

8 (a) Except as provided in subsection (b), a person shall accept the decision of a guardian
9 or conservator made on behalf of an individual subject to conservatorship if presented with a
10 court order appointing the guardian or conservator which was certified within the past 60 days
11 months or presented with letters of office issued within the past 60 days that state the extent of,
12 and limitations on, the guardian's or conservator's powers.

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

15 (1) the guardian's or conservator's proposed action would be inconsistent with
16 state or federal law;

17 (2) the person has actual knowledge or a reasonable, good faith belief that the
18 guardian's or conservator's letters are invalid or that the conservator or guardian is exceeding or
19 improperly exercising authority granted by the court; or

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

1 guardian or conservator.

2 **SECTION 124. USE OF AGENTS BY GUARDIAN OR CONSERVATOR.**

3 (a) A guardian or conservator may delegate powers to agents of the guardian or
4 conservator if:

5 (1) such delegation is consistent with the guardian's or conservator's fiduciary
6 duty,

7 (2) the guardian or conservator exercises reasonable care, skill, and caution in:

8 (A) selecting the agent;

9 (B) establishing the scope and terms of the agent's work;

10 (C) reviewing the agent's performance; and

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

13 (b) Delegation of tasks by a guardian or conservator does not relieve the guardian or
14 conservator of duties or liabilities the guardian or conservator would otherwise have.

15 (c) A guardian or conservator may not delegate all powers to an agent, but may delegate
16 the performance of functions that a prudent guardian or conservator of comparable skills would
17 delegate under similar circumstances.

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

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

22 (f) A guardian or conservator may revoke the delegation of powers at any time.

1 **SECTION 125. TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR.**

2 (a) If the court finds that a guardian is not effectively performing the guardian’s duties
3 and that the welfare of the individual subject to guardianship requires immediate action, it may
4 appoint a temporary substitute guardian for the individual for a specified period not exceeding
5 six months.

6 (b) If a court finds that a conservator is not effectively performing the conservator’s
7 duties and that the welfare of the individual subject to conservatorship or of the conservatorship
8 estate requires immediate action, it may appoint a temporary substitute conservator for the
9 individual for a specified period not exceeding six months.

10 (c) Except as otherwise ordered by the court, a temporary substitute guardian or
11 temporary substitute conservator so appointed has the powers set forth in the previous order of
12 appointment. The authority of any guardian or conservator previously appointed by the court is
13 suspended as long as a temporary substitute guardian or conservator has authority.

14 (d) The court shall provide notice of appointment of a temporary substitute guardian or a
15 temporary substitute conservator or conservatorship no later than five days after the appointment
16 to:

17 (1) the individual subject to guardianship or conservatorship;

18 (2) the affected guardian or conservator; and

19 (3) in the case of a minor, all parents of the minor and any person currently
20 having custody or care of the minor unless the court finds such notice would not be in the best
21 interest of the minor.

22 (e) The court may remove a temporary substitute guardian or temporary substitute
23 conservator at any time. A temporary substitute guardian or temporary substitute conservator

1 shall make any report the court requires.

2 (f) Except as provided in this Section, the provisions of this [act] concerning guardians
3 for minors apply to a temporary substitute guardian for a minor, the provisions of this [act]
4 concerning guardians for adults apply to a temporary substitute guardian for an adult, and the
5 provisions of this [act] concerning conservators apply to a temporary substitute conservator.

6 **SECTION 126. REGISTRATION OF ORDER.**

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

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

18 **SECTION 127. EFFECT OF REGISTRATION OF ORDER.**

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

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

3 **SECTION 128. FACILITY OF TRANSFER TO MINOR.**

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

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

10 (2) a guardian of the minor;

11 (3) a custodian under the Uniform Transfers to Minors Act or custodial trustee
12 under the Uniform Custodial Trust Act; or

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

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

17 (c) A guardian or other person who receives money or property for a minor under
18 subsection (a)(1) or (2) may only apply it to the support, care, education, health, and welfare of
19 the minor, and may not derive a personal financial benefit, except for reimbursement for
20 necessary expenses. Funds in excess of those required to be so applied must be preserved for the
21 future support, care, education, health, and welfare of the minor. The balance, if any, must be
22 transferred to the minor when the minor becomes an adult.

1 requested:

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

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

6 (3) the name and address, if known, of any person responsible for care or custody
7 of the minor for 60 or more days during the two years preceding the filing of the petition or any
8 person alleged to have had the primary care and custody of the minor for at least 730 total days
9 during the five years preceding the filing of the petition;

10 (4) the reason guardianship [or a protective arrangement instead of guardianship]
11 is sought;

12 (5) the name and address of any proposed guardian and the reason why the
13 proposed guardian should be selected;

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

16 (7) the minor's need for an interpreter, translator, or other form of support to
17 effectively communicate with the court or understand court proceedings;

18 (8) if the minor has parents, the parents' needs for an interpreter, translator, or
19 other form of support in order to effectively communicate with the court or understand court
20 proceedings; and

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

1 **SECTION 203. NOTICE.**

2 (a) After a petition is filed under Section 202 of Section 207(f), the court shall schedule a
3 hearing and the petitioner shall:

4 (1) provide personal service of notice of the time and place of the hearing,
5 together with a copy of the petition to:

6 (A) the minor, if the minor has attained [12] years of age and is not the
7 petitioner;

8 (B) each parent of the minor or, if there are none, the adult nearest in
9 kinship that can be found;

10 (C) an adult with whom the minor resides;

11 (D) any person alleged to have had the primary care and custody of the
12 minor for 60 or more days during the two years preceding the filing of the petition or any person
13 alleged to have had the primary care and custody of the minor for at least 730 days during the
14 five years preceding the filing of the petition; and

15 (E) any other person whom the court determines should receive personal
16 service of notice.

17 (2) provide a notice of time and place of the hearing by personal service or
18 certified mail, together with a copy of the petition, to:

19 (A) any person nominated as guardian by the minor if the minor has
20 attained [12] years of age;

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

23 (C) the grandparents and adult siblings of the minor;

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

3 (E) any other person whom the court determines.

4 (b) The notice required in subsection (a) must be in plain language and in at least 16-
5 point font and, to the extent feasible, in a language in which each individual is proficient. The
6 notice must include a statement of the right to request appointment of an attorney for the minor,
7 the right to object to an appointment, and a description of the nature, purpose, and consequences
8 of an appointment.

9 (c) A failure to serve the parents of the minor and the minor if the minor has reached the
10 age of [12] with a notice substantially complying with subsections (a) and (b) precludes the court
11 from granting a petition for guardianship of the minor [or for a protective arrangement instead of
12 guardianship], but does not preclude the court from granting an emergency or temporary
13 guardianship for the minor.

14 **SECTION 204. APPOINTMENT OF ATTORNEY.**

15 (a) The court shall appoint an attorney to represent the minor who is the subject of a
16 proceeding under Section 204 if:

17 (1) requested by the minor who has attained [12] years of age;

18 (2) recommended by the guardian ad litem; or

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

20 (b) The attorney representing the minor shall make reasonable efforts to ascertain the
21 minor's wishes.

22 (c) The attorney representing the minor shall advocate for the minor's wishes to the
23 extent the wishes are reasonably ascertainable.

1 (d) If the minor's wishes are not reasonably ascertainable, the attorney representing the
2 minor shall advocate for the result that is the minor's best interest.

3 **SECTION 205. PRESENCE AT HEARING**

4 (a) The minor shall attend the hearing called under Section 204 unless the court finds by
5 clear and convincing evidence that:

6 (1) the minor consistently or repeatedly refuses to attend the hearing after having
7 been fully informed of the minor's right to attend the hearing;

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

9 (3) the minor is under the age of [12] and lacks the ability or maturity to
10 meaningfully participate in the hearing; or

11 (4) the minor is under the age of [12] and attendance would be harmful to the
12 minor.

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

15 (c) The parents of the minor shall have the right to attend the hearing.

16 (d) Any person may request permission to participate in the proceeding. The court may
17 grant the request, with or without hearing, on determining that the best interest of the minor will
18 be served. The court may attach appropriate conditions to the person's participation.

19 **SECTION 206. ORDER; PRIORITY OF NOMINEE; LIMITED**
20 **GUARDIANSHIP.**

21 (a) The court, on hearing, may appoint a guardian for the minor [or order a protective
22 arrangement instead of guardianship] if appointment is proper under Section 202 or dismiss the
23 proceeding.

1 (b) A court appointing a guardian under subsection (a) shall appoint a person designated
2 as standby guardian by the minor's parent as provided in Section 207 unless the court finds the
3 appointment will be contrary to the best interest of the minor. If the minor has multiple parents
4 who have designated different persons to serve as standby guardian, the court shall appoint the
5 designee whose appointment would be in the best interest of the minor unless the court finds that
6 appointment of none of the designees would be in the best interest of the minor. If no person has
7 been designated as standby guardian by the minor's parent or otherwise nominated by the
8 minor's parent, or the court finds that appointment of any person designated as standby guardian
9 by a parent of the minor parent is not in the best interest of the minor, the court shall appoint the
10 person nominated by the minor if the minor has attained [12] years of age unless the court finds
11 that appointment is contrary to the best interest of the minor. In such cases, the court shall
12 appoint as guardian a person whose appointment will be in the best interest of the minor. (c) In
13 the interest of maintaining or encouraging involvement by a minor's parent in the minor's life,
14 developing self-reliance of a minor, or for other good cause, the court, at the time of appointment
15 or later, on its own motion or on motion of the minor or other interested person, may limit the
16 powers of a guardian otherwise granted by this [article] and thereby create a limited
17 guardianship. Following the same procedure, the court may grant additional powers or withdraw
18 powers previously granted.

19 **SECTION 207. STANDBY GUARDIANSHIP.**

20 (a) A standby guardian for any minor child a parent has or may have in the future may be
21 appointed pursuant to a guardian nomination in a parent's will or by an appointment in another
22 writing. The appointment becomes effective upon an event specified in subsection (b) and the
23 standby guardian may begin acting following the filing of an acceptance as provided in

1 subsection (d). The authority of a standby guardian appointed under this section terminates upon
2 the first to occur of the appointment of a guardian by the court or the giving of written notice to
3 the standby guardian of the filing of an objection pursuant to Section 208.

4 (b) Subject to Section 208, the appointment of a standby guardian pursuant to a
5 nomination in a will becomes effective when the minor has no living parent or all parents of the
6 minor have been adjudged unable or unwilling to exercise parental rights.

7 (c) The appointment of a standby guardian by another writing becomes effective when:

8 (1) as provided in the writing, which may include the parent's death, an
9 adjudication that the parent is unwilling or unable to exercise parental rights, or a written
10 determination by a physician who has examined the parent that the parent is unable to exercise
11 parental rights; and

12 (2) either

13 (A) the minor has no parent other than the appointing parent; or

14 (B) any other parent of the minor has been adjudicated unwilling or unable
15 to exercise parental rights.

16 (d) Upon petition of an appointing parent and a finding that the appointing parent will
17 likely become unable to care for the child within [two] years and no other parent will be able to
18 care for the child, and after notice as provided in Section 208, the court, before the appointment
19 becomes effective, may confirm the parent's selection of a standby guardian and terminate the
20 rights of others to object.

21 (e) Before assuming the duties of standby guardian, the guardian must file an acceptance
22 of appointment. This acceptance must be filed within 30 days after the guardian's appointment
23 becomes effective. The guardian shall:

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

5 (2) give written notice of the acceptance of appointment to all parents of the
6 minor, the minor, if the minor has attained [12] years of age, and a person other than the parent
7 having care and custody of the minor.

8 (f) The notice given under subsection (d)(2) must include a statement of the right of
9 those notified to terminate the appointment by filing a written objection in the court as provided
10 in Section 208.

11 (g) Within 30 days after filing the notice and the appointing instrument, a guardian shall
12 petition the court for confirmation of the appointment, giving notice in the manner provided in
13 Section 203.

14 (h) The appointing will of other writing may specify desired limitations on the powers to
15 be given to the standby guardian. A parent may revoke or amend the appointment of a standby
16 guardian at any time before confirmation by the court.

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

22 (j) The powers of a standby guardian who timely complies with the requirements of
23 subsections (d) and (f) relate back to give acts by the guardian which are of benefit to the minor

1 and occurred on or after the date the appointment became effective the same effect as those that
2 occurred after the filing of the acceptance of the appointment.

3 **SECTION 208. OBJECTION BY MINOR OR OTHERS TO STANDBY**

4 **GUARDIAN APPOINTMENT.** Until the court has confirmed an appointee under Section 207,
5 a minor who is the subject of a standby appointment by a parent and who has attained [12] years
6 of age, the other parent, or a person other than a parent or guardian having care or custody of the
7 minor may prevent or terminate the appointment at any time by filing a written objection in the
8 court in which the appointing instrument is filed and giving notice of the objection to the standby
9 guardian and any other persons entitled to notice of the acceptance of the appointment. An
10 objection may be withdrawn, and if withdrawn is of no effect. The objection does not preclude
11 judicial appointment of the person selected by the parent. The court may treat the filing of an
12 objection as a petition for the appointment of an emergency guardian under Section 209, and
13 proceed accordingly.

14 **SECTION 209. EMERGENCY GUARDIAN.**

15 (a) If the court finds that following the procedures of this [article] will likely result in
16 substantial harm to a minor's health, safety or welfare, and that no other person appears to have
17 authority and willingness to act in the circumstances, the court, on petitioner by a person
18 interested in the minor's welfare or on its own motion, may appoint an emergency guardian for
19 the minor. The duration of the guardian's authority may not exceed [30] days and the guardian
20 may exercise only the powers specified in the order. Except as provide in subsection (b),
21 reasonable notice of the time and place of a hearing on the petition for appointment of an
22 emergency guardian must be given to the following:

- 23 (1) the minor, if the minor has attained [12] years of age;

- 1 (2) the lawyer appointed by the court under this subsection;
- 2 (3) each parent of the minor;
- 3 (4) a person having care or custody of the minor, if other than a parent; and
- 4 (5) any other person required by the court.

5 (b) An emergency guardian may be appointed without notice only if the court finds from
6 an affidavit or testimony that the minor will be substantially harmed before a hearing on the
7 appointment can be held. If the court appoints an emergency guardian without notice to the
8 minor and the minor’s attorney, notice of the appointment must be given to the individuals listed
9 in subsection (a) not later than 48 hours after the appointment. The court shall hold a hearing on
10 the appropriateness of the appointment not later than [five] days after the appointment.

11 (c) Appointment of an emergency guardian, with or without notice, is not a
12 determination that the conditions required for appointment of a guardian under Section 201(b)
13 have been satisfied.

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

17 **SECTION 210. DUTIES OF GUARDIAN.**

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

22 (b) A guardian shall:

- 23 (1) become or remain personally acquainted with the minor and maintain

1 sufficient contact with the minor to know of the minor’s capacities, limitations, needs,
2 opportunities, and physical and mental health;

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

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

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

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

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

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

17 **SECTION 211. POWERS OF GUARDIAN.**

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

20 (b) A guardian may:

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

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

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

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

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

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

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

14 **SECTION 212. REMOVAL OF GUARDIAN, TERMINATION OF**
15 **GUARDIANSHIP [OR PROTECTIVE ARRANGEMENT]; APPOINTMENT OF**
16 **SUCCESSOR; OTHER PROCEEDINGS AFTER APPOINTMENT.**

17 (a) A guardianship [or protective arrangement instead of guardianship] for a minor
18 terminates on the minor's death, adoption, emancipation, attainment of majority, or if the court
19 determines that the minor does not need a court-appointed guardian.

20 (b) A minor subject to guardianship or any person interested in the welfare of the minor
21 may petition the court for termination of the guardianship[or protective arrangement instead of
22 guardianship], modification of the guardianship[or protective arrangement], or removal of the
23 guardian and appointment of a successor guardian.

1 (c) A petitioner under subsection (b) shall give notice of the hearing on the petition to
2 the minor if the minor has attained [12] years of age and is not the petitioner, the guardian, the
3 parents of the minor, and any other person as ordered by the court.

4 (d) In selecting a successor guardian, the court shall follow the procedures set forth in
5 Section 206(b).

6 (e) Not later than 30 days after an appointment of a successor guardian, the court shall
7 send or deliver notice of the appointment to the minor subject to guardianship if the minor has
8 attained [12] years of age, the parents of the minor, any other person the court directs.

9 **ARTICLE 3**

10 **GUARDIANSHIP OF ADULT**

11 **SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN OF ADULT OR**
12 **PROTECTIVE ARRANGMENT INSTEAD OF GUARDIANSHIP**

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

14 (1) appoint a limited or full guardian or enter an order for protective arrangement
15 instead of guardianship for a respondent who is an adult only if it finds by clear and convincing
16 evidence that the respondent lacks the ability to meet essential requirements for physical health,
17 safety, or self-care because:

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

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

23 (2) with appropriate findings, treat the petition as one for a conservatorship under

1 Article 4, enter any other appropriate order, or dismiss the proceeding.

2 (b) The court shall grant to a guardian appointed under subsection (a) only those powers
3 necessitated by the limitations and demonstrated needs of the respondent and make appointive
4 and other orders that will encourage the development of the respondent's maximum self-
5 determination and independence. The court may not appoint a full guardian if a limited guardian
6 or less restrictive means would meet the needs of the respondent.

7 **SECTION 302. PETITION FOR APPOINTMENT OF GUARDIAN OR**
8 **PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP.**

9 (a) A person interested in an adult's welfare, including the adult for whom the order is
10 sought, may petition for the appointment of a limited or full guardian for the individual or for a
11 protective arrangement instead of guardianship.

12 (b) A petition filed under subsection (a) must set forth the petitioner's name, principal
13 residence and current street address, if different, the petitioner's relationship to the respondent
14 and the petitioner's interest in the appointment. The petition shall also, to the extent known,
15 state or contain the following with respect to the respondent and the relief requested:

16 (1) the respondent's name, age, principal residence and current street address, if
17 different, and, if different, the address of the dwelling in which it is proposed that the respondent
18 will reside if the appointment is made or the protective arrangement instead of guardianship is
19 ordered;

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

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

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

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

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

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

9 (B) any attorney currently representing the respondent

10 (C) the representative payee appointed by the Social Security

11 Administration,

12 (D) a guardian or conservator acting for a respondent in this state or in
13 another jurisdiction,

14 (E) a trustee or custodian of a trust or custodianship of which the
15 respondent is a beneficiary,

16 (F) the Veterans Administration fiduciary for the respondent,

17 (G) an agent designated under a [power of attorney for health care] in

18 which the respondent is identified as the principal,

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

21 (I) any person nominated as guardian by the respondent;

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

1 (K) any proposed guardian and the reason why the proposed guardian
2 should be selected; and

3 (L) any person known to have routinely provided the respondent with
4 decision-making support within six months of the petition;

5 (4) the reason why guardianship or protective arrangement instead of
6 guardianship is necessary, including a brief description of the following:

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

8 (B) all less restrictive means of meeting that respondent's alleged need
9 that have been considered or implemented,

10 (C) if no less restrictive means have been tried, the reason they have not
11 been tried, and

12 (D) the reason why less restrictive means are not sufficient to meet the
13 respondent's alleged needs;

14 (5) whether the petitioner seeks a limited guardianship, a full guardianship, or a
15 protective arrangement instead of guardianship;

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

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

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

22 (9) if the respondent has property other than personal effects, a general statement
23 of the respondent's property with an estimate of its value, including any insurance or pension,

1 and the source and amount of any other anticipated income or receipts; and

2 (10) the respondent's need for an interpreter, translator, or other form of support
3 to effectively communicate with the court or understand court proceedings.

4 **SECTION 303. NOTICE.**

5 (a) A copy of a petition for appointment filed under Section 302 and notice of the
6 hearing on the petition must be served personally on the respondent. The notice must be in plain
7 language and in at least 16-point font and, to the extent feasible, in a language in which the
8 respondent is proficient. The notice must include a statement that the respondent must be
9 physically present unless excused by the court, inform the respondent of the respondent's rights
10 at the hearing, and include a description of the nature, purpose, and consequences of an
11 appointment or protective arrangement. A failure to serve the respondent with a notice
12 substantially complying with this subsection precludes the court from granting the petition.

13 (b) In a proceeding on a petition filed under Section 302, notice of the hearing must also
14 be given to the persons listed in the petition and to other persons interested in the respondent's
15 welfare to whom the court has determined that notice must be given. Failure to give notice under
16 this subsection does not preclude the court from appointing a guardian or ordering a protective
17 arrangement instead of guardianship.

18 (c) Notice of a hearing on a petition for an order after appointment of a guardian or
19 protective arrangement instead of guardianship, together with a copy of the petition, must be
20 given to the adult subject to guardianship or subject to the protective arrangement, the guardian,
21 and any other person the court directs.

1 **SECTION 304. PRELIMINARIES TO HEARING: APPOINTMENT OF**
2 **[VISITOR].**

3 (a) On receipt of a petition to establish a guardianship or for a protective arrangement
4 instead of guardianship, the court shall set a date and time for hearing the petition and appoint a
5 [visitor]. The duties and reporting requirements of the [visitor] are limited to the relief requested
6 in the petition. The [visitor] must be an individual having training or experience in the type of
7 incapacity alleged.

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

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

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

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

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

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

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

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

1 reasonably believed that the respondent will live if the appointment is made;

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

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

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

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

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

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

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

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

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

22 (7) a statement as to the respondent's ability to attend a hearing at the location
23 court proceedings are typically conducted;

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

4 (9) any other matters the court directs.

5 **SECTION 305. PRELIMINARIES TO HEARING: APPOINTMENT AND ROLE**
6 **OF ATTORNEY.**

7 **Alternative A**

8 [(a) The court shall appoint an attorney to represent the respondent in the proceeding if:

9 (1) requested by the respondent;

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

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

12 **Alternative B**

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

15 **End of Alternatives**

16 (b) The attorney representing the respondent shall make reasonable efforts to ascertain
17 the respondent’s wishes.

18 (c) The attorney representing the respondent shall advocate for the respondent’s wishes
19 to the extent that the wishes are reasonably ascertainable.

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

23 *Legislative Note: Those states that enact Alternative B of subsection (a) which requires*
24 *appointment of counsel for the respondent in all proceedings for appointment of a guardian*

1 *should not enact Section 304(d)(1).*

2

3

SECTION 306. PROFESSIONAL EVALUATION.

4

(a) At or before a hearing on a petition filed under Section 302, the court shall order a professional evaluation of the respondent if the respondent so demands. The court shall also order a professional evaluation unless the court finds that it has sufficient information to determine the respondent's cognitive and functional abilities and limitations without the evaluation.

9

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

15

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

17

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

19

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

21

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

22

SECTION 307. CONFIDENTIALITY OF RECORDS.

23

[(a) The existence of a proceeding for a guardianship or for a protective arrangement instead of guardianship, and the existence of a guardianship or a protective arrangement instead

24

1 of guardianship, is a matter of public record.

2 (b) The written report of a [visitor] and any professional evaluation are confidential and
3 must be sealed on 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 attorneys, for
7 purposes of the proceeding;

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

11 (5) other persons when it would be in the public interest or for such purpose as the
12 court may order for good cause.

13 (c) The adult who has been the subject of a proceeding for a guardianship or protective
14 arrangement instead of guardianship, whether or not a guardian was appointed, any attorney
15 designated by the adult, and any person entitled to notice under Section 310(d) are entitled to
16 access court records pertaining to the proceeding and resulting guardianship or protective
17 arrangement instead of guardianship, including the annual report and the guardian's plan. In
18 addition, any person for other good cause may petition the court for access to court records
19 pertaining to the guardianship or protective arrangement instead of guardianship, including the
20 annual report and the guardian's plan. The court shall grant access if access is in the best interest
21 of the respondent or adult subject to guardianship or subject to a protective arrangement instead
22 of guardianship, or would further the public interest and not endanger the respondent or adult.]

1 **SECTION 308. PRESENCE AND RIGHTS AT HEARING.**

2 (a) The respondent shall attend the hearing conducted under Section 303 unless the court
3 finds by clear and convincing evidence that:

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

7 (2) there is no practicable way for the respondent to attend the hearing and the
8 respondent would have no ability to participate in the hearing even with the use of appropriate
9 supportive services, decision-making support, and technological assistance.

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

12 (c) If it is not reasonably feasible for the respondent to participate at the location court
13 proceedings are typically conducted, the court shall make reasonable efforts to hold the hearing
14 at an alternative location convenient to the respondent or to allow the respondent to participate in
15 the hearing by using real-time, audio-visual technology.

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

21 (e) The respondent has a right to be represented at the hearing by an attorney of the
22 respondent’s choosing.

23 (f) The respondent may:

- 1 (1) present evidence and subpoena witnesses and documents;
- 2 (2) examine witnesses, including any court-appointed physician, psychologist, or
- 3 other individual qualified to evaluate the alleged cognitive and functional limitations and
- 4 abilities, and the [visitor]; and
- 5 (3) otherwise participate in the hearing.

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

7 cause.

8 (h) Any person may request permission to participate in the proceeding. The court may

9 grant the request, with or without hearing, on determining that the best interest of the respondent

10 will be served. The court may attach appropriate conditions to the person's participation.

11 **SECTION 309. WHO MAY BE GUARDIAN: PRIORITIES.**

12 (a) Except as otherwise provided in subsection (c), the court in appointing a guardian

13 shall consider persons otherwise qualified in the following order of priority:

14 (1) a guardian, other than a temporary or emergency guardian, currently acting for

15 the respondent in this state or another jurisdiction;

16 (2) a person nominated as guardian by the respondent, including the respondent's

17 most recent nomination made in a power of attorney;

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

19 care]; and

20 (4) a family member or other person who has exhibited special care and concern

21 for the respondent.

22 (b) With respect to persons having equal priority, the court shall select the person the

23 court considers best qualified. In determining who is best qualified, the court shall consider the

1 potential guardian’s relationship with the respondent, the potential guardian’s skills, the
2 expressed wishes of the respondent, the extent to which the potential guardian and the
3 respondent have similar values and preferences, and the likelihood that the potential guardian
4 will be able to successfully satisfy the duties of a guardian.

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

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

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

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

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

17 **SECTION 310. ORDER OF APPOINTMENT.**

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

19 (1) the court’s finding that the identified needs of the respondent cannot be met by
20 less restrictive means, including use of appropriate technological supportive services and
21 technological assistance and decision-making support;

22 (2) the court’s finding that there is clear and convincing evidence that the
23 respondent was given proper notice of the hearing on the petition;

1 (3) whether or not the adult subject to guardianship retains the right to vote and, if
2 not, the court’s findings that support removing that right [including a finding that the adult
3 subject to guardianship cannot communicate, with or without support, a specific desire to
4 participate in the voting process]. If no such statement is made in the order, the adult subject to
5 guardianship retains the right to vote; and

6 (4) whether or not the adult subject to guardianship retains the right to marry and,
7 if not, the court’s findings that support removing that right. If no such statement is made, the
8 adult subject to guardianship retains the right to marry.

9 (b) A court order granting a full guardianship clearly shall state the basis for granting a
10 full guardianship and provide specific findings to support the conclusion that a limited
11 guardianship would not meet the functional needs of the adult subject to guardianship.

12 (c) A court order granting a limited guardianship must state clearly the powers granted to
13 the guardian.

14 (d) The court shall, as part of any order granting a guardianship, identify any person who
15 is subsequently entitled to:

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

17 (2) notice of a change in the primary residence of the adult subject to
18 guardianship,

19 (3) a copy of the guardian’s annual report and plan;

20 (4) access to court records pertaining to the guardianship; and

21 (5) notice of the death of the adult subject to guardianship or significant change in
22 the condition of the adult subject to guardianship.

23 (e) A person entitled to notice under subsection (d) shall include the spouse[, domestic

1 partner,] and adult children of the adult subject to guardianship unless the court determines that
2 such notice would be contrary to the preferences or prior directions of the adult subject to
3 guardianship or not in the best interest of the adult subject to guardianship.

4 **SECTION 311. NOTIFICATION OF ORDER OF APPOINTMENT; RIGHTS.**

5 (a) A guardian appointed under Section 310 shall send or deliver to the adult subject to
6 guardianship and to all other persons given notice of the hearing on the petition a copy of the
7 order of appointment, together with a notice of the right to request termination or modification.
8 The order and notice shall be sent or delivered not later than 14 days after the appointment.

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

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

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

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

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

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

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

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

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

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

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

15 (ii) the person with whom contact is restricted does not have a
16 family or social relationship with the individual subject to conservatorship; and

17 (6) receive a copy of the guardian’s report and the guardian’s plan.

18 **SECTION 312. EMERGENCY GUARDIAN.**

19 (a) If the court finds that compliance with the procedures of this [article] will likely
20 result in substantial harm to the respondent’s health, safety, or welfare, and that no other person
21 appears to have authority and willingness to act in the circumstances, the court, on petition by a
22 person interested in the respondent’s welfare or on its own motion, may appoint an emergency
23 guardian for the respondent. The duration of the guardian’s authority may not exceed [60] days

1 and the emergency guardian may exercise only the powers specified in the order. Immediately
2 on receipt of a petition for an emergency guardianship, the court shall appoint an attorney to
3 represent the respondent in the proceeding. Except as provided in subsection (b), reasonable
4 notice of the time and place of a hearing on the petition must be given to the respondent, the
5 respondent's attorney, and other persons as the court directs.

6 (b) The court may appoint an emergency guardian without notice and a hearing only if
7 the court finds from an affidavit or testimony that the respondent will be substantially harmed
8 before a hearing on the appointment can be held. If the court appoints an emergency guardian
9 without notice and a hearing respondent's attorney, the respondent, the respondent's lawyer, and
10 other persons as the court directs must be given notice of the appointment not later than 48 hours
11 after the appointment. The court shall hold a hearing on the appropriateness of the appointment
12 not later than [five] days after the appointment.

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

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

18 **SECTION 313. DUTIES OF GUARDIAN.**

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

22 (b) A guardian shall promote the self-determination of the adult subject to guardianship
23 and, to the extent possible, shall encourage the adult to participate in decisions, act on the adult's

1 own behalf, and develop or regain the capacity to manage the adult's personal affairs. In
2 furtherance of this duty, the guardian shall:

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

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

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

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

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

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

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

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

1 (d) A guardian making a decision on behalf of an adult subject to guardianship shall
2 make the decision the guardian reasonably believes the adult would make if the adult were able
3 unless doing so would unreasonably harm or endanger the welfare or interests of the adult. To
4 determine the decision the adult subject to guardianship would make if the adult were able, the
5 guardian shall consider the adult’s prior or current directions, preferences, opinions, values, and
6 actions to the extent actually known or reasonably ascertainable by the guardian.

7 (e) If the guardian does not know or cannot reasonably ascertain the decision that the
8 adult subject to guardianship probably would make if the adult were able, or making the decision
9 the guardian reasonably believes the adult would make would unreasonably harm or endanger
10 the welfare or interests of the adult, the guardian shall act in accordance with the best interest of
11 the adult. In determining the best interest of the adult subject to guardianship under this section,
12 the guardian shall take into account:

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

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

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

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

22 **SECTION 314. POWERS OF GUARDIAN.**

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

1 (1) apply for and receive money payable to the adult subject to guardianship or
2 the adult’s guardian or custodian for the support of the adult under the terms of any statutory
3 system of benefits or insurance or any private contract, devise, trust, conservatorship, or
4 custodianship;

5 (2) if otherwise consistent with the terms of any order by a court with jurisdiction
6 relating to custody of the adult subject to guardianship, take custody of the adult and establish
7 the adult’s place of dwelling;

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

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

13 (5) to the extent reasonable, delegate to the adult certain responsibilities for
14 decisions affecting the adult’s well-being; and

15 (6) receive the personally identifiable health-care information of the adult.

16 (b) The court may specifically authorize the guardian to consent to the adoption of the
17 adult subject to guardianship[, consent or deny consent to the marriage if the adult’s right to
18 marry has been removed under Section 310, consent or deny consent to the divorce, dissolution,
19 or annulment of the marriage of the adult, petition for divorce, dissolution, or annulment of
20 marriage of the adult, or petition for a declaration of invalidity of the adult’s marriage or oppose
21 such a petition]. In determining whether to authorize a power in this subsection, the court shall
22 consider whether the underlying act would be in accordance with the adult’s preferences, values,
23 and prior directions and whether the underlying act would be in the adult’s best interest.

1 (c) In exercising the guardian’s power to establish the dwelling of the person subject to
2 guardianship under subsection (a)(2), a guardian shall:

3 (1) select a residential setting that the guardian believes the adult subject to
4 guardianship would select if the adult were able in accordance with the decision-making standard
5 set forth in Section 314(d). If the guardian does not know or cannot reasonably ascertain what
6 setting the adult subject to guardianship probably would choose if the adult were able, the
7 guardian shall choose a residential setting that is consistent with the adult’s best interest in
8 accordance with the decision-making standard set forth in Section 314(d);

9 (2) in selecting among residential settings, give priority to a residential setting that
10 is in a location that will allow the adult subject to guardianship to interact with persons important
11 to the adult and that meets the adult’s needs in the least restrictive manner reasonably possible
12 unless doing so would be inconsistent with the decision-making standard set forth in Section
13 314(d);

14 (3) not later than 30 days after a change in the dwelling of the adult subject to
15 guardianship, provide notice of a change to the court, the adult subject to guardianship, and any
16 persons identified as entitled to such notice in the court order appointing the guardian or in a
17 subsequent court order. The notice shall include the address and nature of the new dwelling and
18 state whether the adult subject to guardianship received advance notification of the change and
19 whether the adult objected to the change;

20 (4) only establish or move the permanent place of dwelling of an adult subject to
21 guardianship to a nursing home or other restrictive or secure facility if such a move is set forth in
22 the guardian’s plan, or on express authorization of the court, or if notice of the move is provided
23 at least 14 days before the move to the adult subject to guardianship and all persons entitled to

1 such notice under Section 310(d) and no objection has been filed;

2 (5) only establish or move the place of dwelling of an adult subject to
3 guardianship outside this state on express authorization of the court; and

4 (6) only take action that would result in the sale of or surrender the lease to the
5 primary residence of the adult subject to guardianship if that action is specifically set forth in the
6 guardian's plan, or on express authorization of the court, or if notice of such action is provided at
7 least 14 days before such action to the adult subject to guardianship and all persons entitled to
8 such notice under Section 310(d) and no objection has been filed.

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

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

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

17 (3) take into account:

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

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

21 **SECTION 315. SPECIAL LIMITATIONS ON GUARDIAN'S POWER.**

22 (a) A guardian, without authorization of the court, does not have the power to revoke or
23 amend a valid [power of attorney for health care] or a valid power of attorney for finances

1 executed by the adult subject to guardianship. If a [power of attorney for health care] is in effect,
2 absent an order of the court to the contrary, a health-care decision of the agent takes precedence
3 over that of a guardian and the guardian shall cooperate with the agent to the extent feasible. If a
4 power of attorney for finances is in effect, absent an order of the court to the contrary, a decision
5 by the agent that the agent is authorized to make under the power of attorney for finances takes
6 precedence over that of a guardian and the guardian shall cooperate with the agent to the extent
7 feasible.

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

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

15 (1) specifically authorized by the court;

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

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

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

22 (B) the person with whom contact is restricted does not have a family or
23 social relationship with the individual subject to conservatorship.

1 **SECTION 316. GUARDIAN’S PLAN.**

2 (a) Not later than 60 days after appointment, and at least once every year thereafter, a
3 guardian shall submit a plan to the court identifying:

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

6 (2) social or educational activities the guardian expects to facilitate on behalf of
7 the adult subject to guardianship;

8 (3) persons, if any, with whom the adult subject to guardianship has a relationship
9 and any plans the guardian has for facilitating visits with those persons;

10 (4) the anticipated nature and frequency of the guardian’s visits and
11 communication with the adult subject to guardianship;

12 (5) goals for the adult subject to guardianship, including any goals related to the
13 restoration of the adult’s rights, and how the guardian anticipates achieving those goals; and

14 (6) whether the adult subject to guardianship already has a plan in place and, if so,
15 whether the guardian’s plan is consistent with the adult’s plan.

16 (b) The court shall review the guardian’s plan to determine whether or not to approve it.
17 In deciding whether to approve the plan, the court shall consider whether the plan is consistent
18 with the duties set forth in Section 314.

19 (c) After the guardian’s plan is approved by the court, the guardian shall provide a copy
20 of the guardian’s plan to the adult subject to guardianship and such other persons as the court
21 directs.

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

23 (a) Not later than 60 days after appointment, a guardian shall report to the court in

1 writing on the condition of the adult subject to guardianship and account for money and other
2 property in the guardian's possession or subject to the guardian's control. A guardian shall report
3 at least annually thereafter and whenever ordered by the court. A report must state or contain:

4 (1) the current mental, physical, and social condition of the adult subject to
5 guardianship;

6 (2) the living arrangements of the adult subject to guardianship during the
7 reporting period;

8 (3) the decision-making support, technological assistance, medical services,
9 educational and vocational services, and other supports and services provided to the adult subject
10 to guardianship and the guardian's opinion as to the adequacy of the adult's care;

11 (4) a summary of the guardian's visits with the adult subject to guardianship,
12 including the dates of the visits;

13 (5) actions taken on behalf of the adult subject to guardianship;

14 (6) the extent to which the adult subject to guardianship has participated in
15 decision-making;

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

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

1 guardianship;

2 (9) any business relations that the guardian has with a person who the guardian
3 has paid or has otherwise benefited using the property of the adult subject to guardianship;

4 (10) a copy of the guardian's previously approved plan and a statement as to
5 whether the guardian has deviated from the plan and, if so, how the guardian has deviated and
6 why;

7 (11) plans for future care and support;

8 (12) a recommendation as to the need for continued guardianship and any
9 recommended changes in the scope of the guardianship; and

10 (13) whether the standby guardian, if any, is alive and able to serve.

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

14 (c) A notice of the filing of the guardian's report, together with a copy of the report, shall
15 be provided to the adult subject to guardianship and any other person whom the court has
16 determined is entitled to the report. The notice and report must be delivered or sent not later than
17 14 days after the filing of the report.

18 (d) The court shall establish a system for monitoring annual reports and review such
19 reports at least annually in order to determine whether:

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

22 (2) the guardianship should continue; and

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

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

4 (1) shall notify the adult subject to guardianship, the guardian, and any other
5 person entitled to such notification according to the initial court order or a subsequent court
6 order;

7 (2) may require such additional information from the guardian as the court
8 determines;

9 (3) may appoint a [visitor] to interview the adult subject to guardianship or
10 guardian, and make investigate any other matter involving the guardianship the court directs; and

11 (4) may hold a hearing to consider removal of the guardian, termination of the
12 guardianship, a change in the powers granted to the guardian or other terms of the guardianship,
13 or adjustment of fees.

14 **SECTION 318. REMOVAL OF GUARDIAN; APPOINTMENT OF SUCCESSOR.**

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

17 (b) The court shall conduct a hearing to determine whether removal of a guardian and
18 appointment of a successor is appropriate on:

19 (1) petition of an adult subject to guardianship, a guardian, or a person interested
20 in the welfare of an adult subject to guardianship, except that the court shall have the discretion
21 not to hold a hearing if a similar petition has been filed within the preceding six months;

22 (2) communication from an adult subject to guardianship, a guardian, or a person
23 interested in the welfare of the adult subject to guardianship that suggests that removal of the

1 guardian and appointment of a successor may be appropriate; or

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

4 (c) An adult subject to guardianship seeking to remove a guardian and have a successor
5 appointed is entitled to be represented by an attorney of the adult's choosing. [If the adult is not
6 represented by an attorney, the court shall appoint an attorney under the conditions set forth in
7 Section 305.] The court shall award reasonable attorney's fees.

8 (d) In selecting a successor guardian, the court shall follow the procedures set forth in
9 Section 309.

10 (e) Not later than 30 days after an appointment of a successor guardian, the court shall
11 send or deliver notice of the appointment to the individual subject to guardianship and any other
12 person entitled to such notice under Section 310(d).

13 **SECTION 319. TERMINATION OR MODIFICATION OF GUARDIANSHIP.**

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

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

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

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

23 (1) petition of an adult subject to guardianship, guardian, or another person

1 interested in the welfare of an adult subject to guardianship, except that the court shall have the
2 discretion not to hold a hearing if such a similar petition has been filed within the preceding six
3 months;

4 (2) communication from an adult subject to guardianship, a guardian, or a person
5 interested in the welfare of an adult subject to guardianship that gives rise to a reasonable
6 suspicion that termination or modification of the guardianship may be appropriate;

7 (3) a report from a guardian or conservator that indicates that the functional needs,
8 supports, or services of the adult subject to guardianship have changed or that less restrictive
9 means for meeting the adult's needs are available such that termination or modification may be
10 appropriate; or

11 (4) the court's determination that a hearing would be in the best interest of the
12 adult subject to guardianship.

13 (c) On presentation by the petitioner of evidence establishing a prima facie case for
14 termination, the court shall order the termination unless it is proven that the basis for
15 appointment of a guardian set forth in Section 301 is satisfied.

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

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

22 (f) An adult subject to guardianship seeking to terminate or modify the terms of the
23 guardianship is entitled to be represented by an attorney of the adult's choosing. [If the adult is

1 not represented by an attorney, the court shall appoint an attorney under the conditions set forth
2 in Section 305.] The court shall award reasonable attorney's fees.

3 **ARTICLE 4**

4 **CONSERVATORSHIP**

5 **SECTION 401. BASIS FOR APPOINTMENT OF CONSERVATOR OR**
6 **PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP.**

7 (a) On petition and after notice and hearing, the court may appoint a limited or full
8 conservator or order a protective arrangement instead of conservatorship in relation to the
9 property and affairs of a minor, if the court determines that:

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

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

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

16 (B) either:

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

19 (ii) money is needed for the support, care, or education of the
20 minor and appointment of a conservator is necessary or desirable to obtain or provide such
21 money.

22 (b) On petition and after notice and hearing, the court may appoint a limited or full
23 conservator or order a protective arrangement instead of conservatorship in relation to the

1 property and affairs of an adult if the court determines that:

2 (1) by clear and convincing evidence, the adult is unable to manage property and
3 financial affairs because:

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

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

9 (2) by a preponderance of the evidence, the adult has property that is likely to be
10 wasted or dissipated unless management is provided, or money is needed for the support, care,
11 education, health, and welfare of the adult or an individual who is entitled to the adult's support
12 and protection is necessary or desirable to obtain or provide money for such purpose.

13 (c) The court shall grant to a conservator only those powers necessitated by the
14 limitations and demonstrated needs of the respondent and make appointive and other orders that
15 will encourage the development of the respondent's maximum self-determination and
16 independence. The court may not appoint a full conservator if a limited conservator or decision-
17 making support would meet the needs of the respondent.

18 (d) The conservatorship continues until terminated.

19 **SECTION 402. PETITION FOR APPOINTMENT OF CONSERVATOR OR**
20 **PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP.**

21 (a) The following may petition for the appointment of a conservator or for a protective
22 arrangement instead of conservatorship:

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

- 1 (2) a person interested in the estate, affairs, or welfare of the respondent;
- 2 (3) the guardian of the respondent; or
- 3 (4) a person who would be adversely affected by lack of effective management of
- 4 the property and financial affairs of the respondent.

5 (b) A petition under subsection (a) must set forth the petitioner's name, principal

6 residence and current street address, if different, the petitioner's relationship to the respondent,

7 and the petitioner's interest in the appointment or protective arrangement. The petition must also

8 state the following with respect to the respondent and the relief requested:

9 (1) the respondent's name, age, principal residence and current street address, if

10 different, and, if different, the address of the dwelling where it is proposed the respondent will

11 reside if the appointment is made or the protective arrangement instead of conservatorship is

12 ordered;

13 (2) if the petition alleges a limitation in the respondent's ability to receive and

14 evaluate information, a brief description of the nature and extent of the respondent's alleged

15 limitation;

16 (3) if the petition alleges that the respondent is missing, detained, or unable to

17 return to the United States, a statement of the relevant circumstances, including the time and

18 nature of the disappearance or detention and a description of any search or inquiry concerning

19 the respondent's whereabouts;

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

21 (A) spouse [or domestic partner] or, if the respondent has none, an adult

22 with whom the respondent has shared household responsibilities for more than six months before

23 the filing of the petition;

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

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

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

9 (6) the name and address of each of the following, if applicable:

10 (A) any attorney currently representing the respondent;

11 (B) a guardian or conservator acting for a respondent in this state or
12 another jurisdiction;

13 (C) a trustee or custodian of a trust or custodianship of which the
14 respondent is a beneficiary;

15 (D) the respondent's representative payee appointed by the Social Security
16 Administration;

17 (E) the respondent's Veterans Administration fiduciary; and

18 (F) an agent designated under a [power of attorney for health care] or
19 power of attorney for finances in which the respondent is identified as the principal.

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

22 (8) the reason why a conservatorship or protective arrangement instead of
23 conservatorship is necessary, including a brief description of the following:

1 (A) the nature and extent of the respondent's alleged need,
2 (B) all less restrictive means of meeting the respondent's alleged need that
3 have been considered or implemented,

4 (C) if no less restrictive means have been tried, the reason they have not
5 been tried, and

6 (D) the reason less restrictive means are insufficient to meet the
7 respondent's need; and

8 (9) the respondent's need for an interpreter, translator, or other form of support to
9 effectively communicate with the court or understand court proceedings.

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

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

14 (2) the name and address of any person nominated as conservator by the
15 respondent if the respondent has attained [12] years of age;

16 (3) whether the petitioner seeks a limited conservatorship or a full
17 conservatorship; and

18 (4) if the petitioner seeks a full conservatorship, the reason why a limited
19 conservatorship is not appropriate.

20 (d) A petition for a limited conservatorship shall include a description of the property to
21 be placed under the conservator's control and any other requested limitation on the authority of
22 the conservator.

1 **SECTION 403. NOTICE.**

2 (a) A copy of the petition filed under Section 402 and notice of the hearing on the
3 petition must be served personally on the respondent. If the respondent's whereabouts are
4 unknown or personal service cannot be made, service on the respondent must be made by
5 [substituted service] [or] [publication]. The notice must be in plain language, in at least 16-point
6 font, and, to the extent feasible, in a language in which the respondent is proficient. The notice
7 must include a statement that the respondent must be physically present unless excused by the
8 court, inform the respondent of the respondent's rights at the hearing, and, include a description
9 of the nature, purpose, and consequences of conservatorship or the proposed protective
10 arrangement instead of conservatorship. A failure to serve the respondent with a notice
11 substantially complying with this subsection precludes the court from granting the petition.

12 (b) In a proceeding on a petition filed under Section 402, notice of the hearing must also
13 be given to the persons listed in the petition, and to other persons interested in the respondent's
14 welfare to whom the court has determined that notice must be given. Failure to give notice under
15 this subsection does not preclude the court from appointing a conservator or ordering a protective
16 arrangement instead of conservatorship.

17 (c) Notice of a hearing on a petition for an order after appointment of a conservator or
18 lieu of conservatorship, together with a copy of the petition, must be given to the person subject
19 to conservatorship if the individual has attained [12] years of age and is not missing, detained, or
20 unable to return to the United States, the conservator appointed for the individual, if applicable, ,
21 and any person the court directs.

1 **SECTION 404. PRELIMINARIES TO HEARING ON PETITION INVOLVING**
2 **MINOR.**

3 (a) On the filing of a petition to appoint a conservator or order a protective arrangement
4 instead of conservatorship for a minor, the court shall schedule a hearing. If the court determines
5 at any stage of the proceeding that the interests of the minor are or may be inadequately
6 represented, the court shall appoint an attorney to represent the minor, giving consideration to the
7 choice of the minor if the minor has attained [12] years of age.

8 (b) While a petition under subsection (a) is pending, after preliminary hearing and
9 without notice to others, the court may enter orders to preserve and apply the property of the
10 minor as may be required for the support of the minor or individuals who are in fact dependent
11 on the minor. The court may appoint a [master] to assist in the implementation of the orders.

12 **SECTION 405. PRELIMINARIES TO HEARING INVOLVING ADULT;**
13 **APPOINTMENT OF [VISITOR].**

14 (a) On the filing of a petition for appointment of a conservator or for a protective
15 arrangement instead of conservatorship for an adult, the court shall schedule a hearing. The
16 court shall appoint a [visitor] unless the petition does not request the appointment of a
17 conservator and the respondent is represented by an attorney. The duties and reporting
18 requirements of the [visitor] are limited to the relief requested in the petition. The [visitor] must
19 be an individual having training or experience in the type of incapacity alleged.

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

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

1 duties of a conservator;

2 (2) determine the respondent's views about the appointment or protective
3 arrangement sought by the petitioner including, if the petition is for a conservatorship, any views
4 about any proposed conservator, the conservator's proposed powers, and the scope and duration
5 of the proposed conservatorship;

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

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

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

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

12 (2) investigate any other matter regarding relating to the petition the court directs.

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

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

16 (2) recommendations regarding the appropriateness of a conservatorship,
17 including whether less restrictive means are available, the type of conservatorship, and, if a
18 limited conservatorship, the powers to be granted to the conservator, and the property that should
19 be placed under the conservator's control;

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

22 (4) a recommendation whether a professional evaluation is necessary;

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

1 court proceedings are typically conducted;

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

5 (7) any other matters the court directs.

6 (e) While a petition filed under Section 402 is pending, after preliminary hearing and
7 without notice to others, the court may enter orders to preserve and apply the property of the
8 respondent as may be required for the support of the respondent or individuals who are in fact
9 dependent on the respondent. The court may appoint a [master] to assist in implementing the
10 orders.

11 **SECTION 406. PRELIMINARIES TO HEARING: APPOINTMENT AND ROLE**
12 **OF ATTORNEY.**

13 **Alternative A**

14 [(a) The court shall appoint an attorney to represent the respondent in the proceeding if:

15 (1) requested by the respondent;

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

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

18 **Alternative B**

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

22 **End of Alternatives**

23 (b) The attorney representing the respondent shall make reasonable efforts to ascertain

1 the respondent's wishes.

2 (c) The attorney representing the respondent shall advocate for the respondent's wishes
3 to the extent reasonably ascertainable.

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

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

10

11 **SECTION 407. PROFESSIONAL EVALUATION.**

12 (a) At or before a hearing on a petition filed under Section 402, the court shall order a
13 professional evaluation of the respondent if the respondent so demands. The court shall also
14 order a professional evaluation unless the court finds that the court has sufficient information to
15 determine the respondent's needs and abilities without the evaluation.

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

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

25 (2) an evaluation of the respondent's mental and physical condition and, if

1 appropriate, educational potential, adaptive behavior, and social skills;

2 (3) prognosis for improvement with regard to the ability to manage the

3 respondent's property and financial affairs; and

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

5 **SECTION 408. CONFIDENTIALITY OF RECORDS.**

6 [(a) The existence of a proceeding for conservatorship or for a protective arrangement

7 instead of a conservatorship, and the existence of a conservatorship or protective arrangement

8 instead of conservatorship, is a matter of public record.

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

11 (1) the court;

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

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

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

17 (5) other persons when it would be in the public interest or for a purpose as the
18 court may order for good cause.

19 (c) The individual who has been the subject of a proceeding for a conservatorship or
20 protective arrangement instead of conservatorship, whether or not a conservator was appointed,
21 any attorney designated by the individual, and any person entitled to notice under Section 411(e)
22 are entitled to access court records pertaining to the proceeding and any resulting
23 conservatorship or protective arrangement, including the annual report and the conservator's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **SECTION 410. WHO MAY BE CONSERVATOR: PRIORITIES.**

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

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

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

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

1 under a power of attorney for finances; and

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

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

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

13 (d) A person who provides paid services to the respondent, is employed by a person that
14 provides paid services to the respondent, or is the spouse, [domestic partner,]parent, or child of a
15 person who provides paid services to the respondent, may not be appointed conservator unless:

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

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

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

1 **SECTION 411. ORDER OF APPOINTMENT.**

2 (a) A court order granting a conservatorship for a minor clearly must state the court’s
3 finding supporting appointment of a conservator, whether the conservatorship is full or limited,
4 and, if the conservatorship is limited, the powers granted to the conservator and the property
5 placed under the conservator’s control.

6 (b) A court order granting a conservatorship for an adult clearly must state:

7 (1) the court’s finding that the respondent’s identified needs cannot be met by less
8 restrictive means, including use of appropriate supportive services, technological assistance, and
9 decision-making support; and

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

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

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

17 (e) The court shall, as part of any order granting a conservatorship, identify any persons
18 who shall subsequently be entitled to:

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

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

22 (3) a copy of the conservator’s annual report and plan;

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

1 (5) notice of the death of the individual subject to conservatorship or significant
2 change in the person's condition.

3 (f) If the individual subject to conservatorship is an adult, the persons entitled to notice
4 under subsection (e) shall include the spouse[, domestic partner,] and adult children of the adult
5 subject to conservatorship unless the court determines that notice would be contrary to the
6 preferences or prior directions of the adult subject to conservatorship or not in the best interest of
7 the adult subject to conservatorship.

8 (g) If the individual subject to conservatorship is a minor, the persons entitled to notice
9 under subsection (e) shall include the parents of the minor and adult siblings of the minor unless
10 the court determines that notice would not be in the best interest of the minor subject to
11 conservatorship.

12 **SECTION 412. NOTIFICATION OF ORDER OF APPOINTMENT; RIGHTS.**

13 (a) A conservator appointed under Section 411 shall send or deliver a copy of the order
14 of appointment, together with a notice of the right to request termination or modification, to the
15 individual subject to conservatorship if the person has attained [12] years of age, and to all other
16 persons given notice of the hearing on the petition. The order and notice shall be sent or
17 delivered no later than 14 days after the appointment is made.

18 (b) Not later than 30 days after an appointment under Section 411, the court shall send or
19 deliver to the individual subject to conservatorship, the conservator, and any other person
20 entitled to such notice under Section 411(e) a statement of the rights of the individual subject to
21 conservatorship and how to seek relief if the individual is denied those rights. The statement
22 shall be in plain language, in at least 16-point font, and, to the extent feasible, in a language in
23 which the individual subject to conservatorship is proficient. The notice must notify the

1 individual subject to conservatorship of the right to:

2 (1) seek termination or modification of the conservatorship, seek removal of a
3 conservator, and obtain an attorney of the individual's choosing to represent the individual in
4 these matters;

5 (2) participate in decision-making to the extent possible; and

6 (3) receive a copy of the conservator's inventory, report, and plan of
7 conservatorship.

8 (c) If the conservator is appointed under Section 401(b)(1)(B) and the individual subject
9 to conservatorship is missing, notice under subsection (a) and (b) to the individual is not
10 required.

11 **SECTION 413. EMERGENCY CONSERVATOR**

12 (a) If the court finds that compliance with the procedures of this [article] will likely
13 result in substantial and irreparable harm to the respondent's property, financial interests, or
14 both, and that no other person appears to have authority and willingness to act in the
15 circumstances, the court, on petition by a person interested in the respondent's welfare or on its
16 own motion, may appoint an emergency conservator for the respondent. The duration of the
17 emergency conservator's authority may not exceed [60] days and the emergency conservator
18 may exercise only the powers specified in the order. Immediately on receipt of a petition for an
19 emergency conservator, the court shall appoint an attorney to represent the respondent in the
20 proceeding. Except as otherwise provided in subsection (b), reasonable notice of the time and
21 place of a hearing on the appointment of a conservator under this subsection must be given to the
22 respondent, the respondent's attorney, and other person as the court directs.

23 (b) The court may appoint an emergency conservator without notice and a hearing only

1 if the court finds from affidavit or testimony that the respondent's property or financial interests
2 will be substantially and irreparably harmed before a hearing on the appointment can be held. If
3 the court appoints an emergency conservator without notice and a hearing, the respondent, the
4 respondent's attorney, and other persons as the court directs must be given notice of the
5 appointment not later than 48 hours after the appointment. The court shall hold a hearing on the
6 appropriateness of the appointment not later than [five] days after the appointment under this
7 section.

8 (c) Appointment of an emergency conservator is not a determination that the conditions
9 required for appointment of a limited or full conservator under Section 401 have been satisfied.

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

13 **SECTION 414. POWERS OF COURT AFTER APPOINTMENT OF**
14 **CONSERVATOR.** After appointing a conservator, the court has the following powers, which
15 may be exercised directly or through the conservator:

16 (1) with respect to a minor, all the powers over the property and financial affairs of the
17 minor which may be necessary for the best interest of the minor and members of the minor's
18 immediate family; and

19 (2) with respect to an adult, for the benefit of the adult subject to conservatorship and
20 individuals who are in fact dependent on the adult for support, all the powers over the property
21 and financial affairs of the adult which the adult could exercise if present and not subject to
22 conservatorship.

1 **SECTION 415. POWERS OF CONSERVATOR REQUIRING COURT**

2 **APPROVAL.**

3 (a) A conservator may exercise the following powers with respect to the conservatorship
4 estate only after notice to interested persons and express authorization of the court:

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

6 (2) the power to sell real property, encumber an interest in real property, or
7 surrender a lease to the primary residence of an individual subject to conservatorship;

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

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

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

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

18 (7) the power to exercise any right to an elective share in the estate of the
19 deceased spouse [or domestic partner] of the individual subject to conservatorship and to
20 renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos;

21 [and]

22 (8) the power to grant a creditor a priority for payment over creditors of the same
23 or higher class if the creditor is providing property or services used to meet the basic living and

1 care needs of the individual subject to conservatorship and such preferential treatment would be
2 otherwise impermissible under Section 431(e)[; and

3 (9) the power to make, modify, amend, or revoke the will of the individual subject
4 to conservatorship. A conservator, in making, amending, or revoking the will of an individual
5 subject to conservatorship, shall comply with [the state's statute for executing wills]].

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

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

13 (1) the financial needs of the individual subject to conservatorship and of
14 individuals who are dependent on the individual subject to conservatorship for support, and the
15 interest of creditors;

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

17 (3) eligibility for governmental assistance;

18 (4) the previous pattern of giving or level of support provided by the individual
19 subject to conservatorship;

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

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

23 (7) any other factors the court considers relevant.

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

5 **SECTION 416. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.**

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

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

10 (2) requiring an accounting for the administration of the conservatorship estate ;

11 (3) directing distribution;

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

13 (5) modifying the type of appointment or powers granted to the conservator if the extent
14 of protection or management previously granted is currently excessive or insufficient to meet the
15 individual's needs, including because the individual's abilities or supports have changed; or

16 (6) granting other appropriate relief.

17 **SECTION 417. BOND; ALTERNATIVE ASSET-PROTECTION**

18 **ARRANGEMENT.**

19 (a) The court shall require a conservator to furnish a bond with a surety as it may
20 specify, or require an alternative asset-protection arrangement, conditioned on faithful discharge
21 of all duties of the conservator under this [act]. The court may waive this requirement only if the
22 court finds that a bond or other asset-protection arrangement is not necessary to protect the
23 interests of the individual subject to conservatorship. The court may not waive this requirement

1 if the conservator is in the business of serving as a conservator and is being paid for the
2 conservator's service.

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

10 **SECTION 418. TERMS AND REQUIREMENTS OF BOND.**

11 (a) The following rules apply to the bond required under Section 417:

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

14 (2) By executing a bond provided by a conservator under Section 417, a surety
15 submits to the jurisdiction of the court that issued letters of office to the conservator in any
16 proceeding pertaining to the duties of the conservator in which the surety is named as a party.

17 Notice of any proceeding must be sent or delivered to the surety at the address shown in the court
18 records at the place where the bond is filed and to any other address then known to the person
19 required to provide the notice.

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

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

23 (b) A proceeding may not be brought against a surety on any matter as to which an

1 action or proceeding against the conservator is barred.

2 **SECTION 419. GENERAL DUTIES OF CONSERVATOR.**

3 (a) A conservator is a fiduciary and shall observe the standards of care applicable to a
4 trustee. A conservator at all times shall exercise reasonable care, diligence, and prudence.

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

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

18 (d) If the conservator does not know or cannot reasonably ascertain the decision that the
19 individual subject to conservatorship probably would make if the individual were able, or if the
20 decision the conservator believes the individual would make would fail to the preserve resources
21 needed to maintain the individual's well-being and lifestyle or would otherwise unreasonably
22 harm or endanger the welfare of the individual subject to conservatorship, the conservator shall
23 act in accordance with the individual's best interest. In determining the best interest of the

1 individual subject to conservatorship, the conservator shall consider:

2 (1) information received from professionals and persons who demonstrate
3 sufficient interest in the welfare of the individual,

4 (2) other information that the conservator believes the individual would have
5 considered if able to act, and

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

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

11 (1) the circumstances of the individual subject to conservatorship and the
12 conservatorship estate:

13 (2) general economic conditions;

14 (3) the possible effect of inflation or deflation;

15 (4) the expected tax consequences of investment decisions or strategies;

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

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

19 (7) needs for liquidity, regularity of income, and preservation or appreciation of
20 capital; and

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

1 (f) A conservator’s investment and management of the property of the individual subject
2 to conservatorship is determined in light of the facts and circumstances existing at the time of a
3 conservator’s decision or action and not by hindsight.

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

6 (h) A conservator who has special skills or expertise, or is named conservator in reliance
7 on the conservator’s representation of special skills or expertise, has a duty to use those special
8 skills or expertise in carrying out the conservator’s duties.

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

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

17 (1) the property lacks sufficient equity;

18 (2) the property is uninsurable; or

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

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

23 (l) A conservator has access to and authority over a digital asset of the individual subject

1 to conservatorship to the extent provided by [the Revised Uniform Fiduciary Access to Digital
2 Assets Act] or by order of court.

3 **SECTION 420. CONSERVATOR’S PLAN.**

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

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

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

21 (d) A conservator shall give notice of the filing of the conservator’s inventory, report,
22 and plan of conservatorship, together with a copy of the inventory, report, and plan of
23 conservatorship to the individual subject to conservatorship and any other person the court

1 directs. The notice must be delivered or sent not later than 14 days after the filing of the
2 inventory, report, or plan of conservatorship.

3 **SECTION 421. INVENTORY; RECORDS.**

4 (a) Not later than 60 days after appointment, a conservator shall prepare and file with the
5 appointing court a detailed inventory of the conservatorship estate, together with an oath or
6 affirmation that the inventory is believed to be complete and accurate as far as information
7 permits.

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

11 **SECTION 422. POWERS OF CONSERVATOR IN ADMINISTRATION.**

12 (a) Except as otherwise qualified or limited by the court in its order of appointment and
13 stated in the letters of office, a conservator has all of the powers granted in this section and any
14 additional powers granted to a trustee in this state by law of this state other than this [act].

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

17 (1) collect, hold, and retain property included in the conservatorship estate,
18 including property in which the conservator has a personal interest and real property in another
19 state, until the conservator considers that disposition of the property should be made;

20 (2) receive additions to the conservatorship estate;

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

22 (4) acquire an undivided interest in property included in the conservatorship estate
23 in which the conservator, in any fiduciary capacity, holds an undivided interest;

- 1 (5) invest assets of the conservatorship estate;
- 2 (6) deposit money of the conservatorship estate in a financial institution, including
3 one operated by the conservator;
- 4 (7) acquire or dispose of property of the conservatorship estate, including real
5 property in another state, for cash or on credit, at public or private sale, and manage, develop,
6 improve, exchange, partition, change the character of, or abandon property included in the
7 conservatorship estate;
- 8 (8) make ordinary or extraordinary repairs or alterations in buildings or other
9 structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- 10 (9) subdivide, develop, or dedicate land to public use, make or obtain the vacation
11 of plats and adjust boundaries, adjust differences in valuation, exchange or partition land by
12 giving or receiving consideration, and dedicate easements to public use without consideration;
- 13 (10) enter for any purpose into a lease as lessor or lessee, with or without option
14 to purchase or renew, for a term within or extending beyond the term of the conservatorship;
- 15 (11) enter into a lease or arrangement for exploration and removal of minerals or
16 other natural resources or enter into a pooling or unitization agreement;
- 17 (12) grant an option involving disposition of property included in the
18 conservatorship estate and accept or exercise an option for the acquisition of property;
- 19 (13) vote a security, in person or by general or limited proxy;
- 20 (14) pay calls, assessments, and any other sums chargeable or accruing against or
21 on account of securities;
- 22 (15) sell or exercise stock subscription or conversion rights;
- 23 (16) consent, directly or through a committee or other agent, to the reorganization,

1 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

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

4 (18) insure the conservatorship estate against damage or loss and the conservator
5 against liability with respect to a third person in accordance with Section 419(i);

6 (19) borrow money, with or without security, to be repaid from the
7 conservatorship estate or otherwise and advance money for the protection of the conservatorship
8 estate or the individual subject to conservatorship and for all expenses, losses, and liability
9 sustained in the administration of the conservatorship estate or because of the holding of any
10 property, for which the conservator has a lien on the conservatorship estate as against the
11 individual subject to conservatorship for advances so made;

12 (20) pay or contest any claim, settle a claim by or against the conservatorship
13 estate or the individual subject to conservatorship by compromise, arbitration, or otherwise, and
14 release, in whole or in part, any claim belonging to the conservatorship estate to the extent the
15 claim is uncollectible;

16 (21) pay a tax, assessment, compensation of the conservator and any guardian,
17 and other expense incurred in the collection, care, administration, and protection of the
18 conservatorship estate;

19 (22) allocate items of income or expense to income or principal of the
20 conservatorship estate, as provided by law of this state other than this [act], including creation of
21 reserves out of income for depreciation, obsolescence, or amortization or for depletion of
22 minerals or other natural resources;

23 (23) pay any sum distributable to an individual subject to conservatorship or

1 individual who is in fact dependent on the individual subject to conservatorship by paying the
2 sum to the distributee or by paying the sum for the use of the distributee:

3 (A) to the guardian of the distributee;

4 (B) to a distributee’s custodian under [the Uniform Transfers to Minors
5 Act (1983/1986)] or custodial trustee under [the Uniform Custodial Trust Act (1987)]; or

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

8 (24) prosecute or defend actions, claims, or proceedings in any jurisdiction for the
9 protection of the conservatorship estate and of the conservator in the performance of the
10 conservator’s duties;

11 (25) structure the finances of the individual subject to conservatorship to establish
12 eligibility for public benefits, including by making gifts in a way that is consistent with the
13 individual’s preferences, values, and prior directions, if the conservator’s actions do not
14 jeopardize the individual’s welfare and are otherwise consistent with the conservator’s duties
15 including the duty to seek court approval when required by Section 415; and

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

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

19 (a) Unless otherwise specified in the order of appointment and stated in the letters of
20 office or unless contrary to the plan filed under Section 420, a conservator may expend or
21 distribute income or principal of the conservatorship estate without further court authorization or
22 confirmation for the support, care, education, health, and welfare of the individual subject to
23 conservatorship and an individual who is in fact dependent on the individual subject to

1 conservatorship, including the payment of child or spousal support, in accordance with the
2 following rules:

3 (1) A conservator shall consider recommendations relating to the appropriate
4 standard of support, care, education, health, and welfare for the individual subject to
5 conservatorship or an individual who is in fact dependent on the individual subject to
6 conservatorship made by a guardian, if any, and, if the individual subject to conservatorship is a
7 minor, the conservator shall consider recommendations made by a parent of the minor.

8 (2) A conservator may not be surcharged for money paid to persons furnishing
9 support, care, education, or benefit to an individual subject to conservatorship, or an individual
10 who is in fact dependent on the individual subject to conservatorship, in accordance with the
11 recommendations of a parent or guardian of the individual subject to conservatorship unless the
12 conservator knows that the parent or guardian derives personal financial benefit from the
13 payment of the money, including relief from any personal duty of support, or the
14 recommendations are not in the best interest of the individual subject to conservatorship.

15 (3) In making expenditures or distributions under this subsection, the conservator
16 shall consider:

17 (A) the size of the conservatorship estate, the estimated duration of the
18 conservatorship, and the likelihood that the individual subject to conservatorship, at some future
19 time, may be fully self-sufficient and able to manage the individual's financial affairs and the
20 conservatorship estate;

21 (B) the accustomed standard of living of the individual subject to
22 conservatorship and an individual who is in fact dependent on the individual subject to
23 conservatorship;

1 (C) other money or sources used for the support of the individual subject
2 to conservatorship; and

3 (D) the preferences, values, and prior directions of the individual subject
4 to conservatorship.

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

11 **SECTION 424. CONSERVATOR'S REPORT AND ACCOUNTING;**
12 **APPOINTMENT OF [VISITOR]; MONITORING.**

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

20 (b) A report must state or contain:

21 (1) an accounting that contains a list of the property included in the
22 conservatorship estate and a list of the receipts, disbursements, and distributions during the
23 period for which the report is made;

1 (2) a list of the services provided to the individual subject to conservatorship;

2 (3) a copy of the conservator's previously approved plan and a statement as to
3 whether the conservator has deviated from the plan and, if so, how the conservator has deviated
4 and why;

5 (4) any recommended changes in the plan for the conservatorship, including its
6 scope, and whether there is a need to continue the conservatorship;

7 (5) to the extent feasible, copies of the most recent reasonably available financial
8 statements evidencing the status of bank accounts, investment accounts, and mortgage or other
9 debts of the individual subject to conservatorship;

10 (6) anything of more than de minimis value that the conservator, any person who
11 resides with the conservator, or the spouse, [domestic partner,]parent, child, or sibling of the
12 conservator has received from individuals providing goods or services to the individual subject
13 to conservatorship;

14 (7) any business relations that the conservator has with a person providing goods
15 or services to the individual subject to conservatorship, and

16 (8) any business relations that the conservator has with a person who the
17 conservator has paid or has otherwise benefited using the property of the individual subject to
18 conservatorship; and

19 (9) whether the standby conservator, if any, is alive and able to serve.

20 (c) The court may appoint a [visitor] to review a report or conservator's plan, interview
21 the individual subject to conservatorship or conservator, and investigate any other matter
22 involving the conservatorship the court directs. In connection with a report, the court may order
23 a conservator to submit the conservatorship estate to an appropriate examination in a manner the

1 court directs.

2 (d) A notice of the filing of the conservator's report, together with a copy of the report,
3 shall be provided to the individual subject to conservatorship and any other person whom the
4 court has determined is entitled to the report. The notice and report must be delivered or sent not
5 later than 14 days after the filing of the report.

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

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

10 (2) the conservatorship should continue; and

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

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

15 (1) shall notify the conservator, the individual subject to conservatorship, and any
16 other person entitled to such notification according to the initial court order or subsequent court
17 order;

18 (2) may require such additional information from the conservator as the court
19 determines;

20 (3) may appoint a [visitor] to interview the individual subject to conservatorship
21 or conservator, and investigate any other matter involving the conservatorship the court directs;
22 and

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

1 conservatorship, a change in the powers granted to the conservator or other terms of the
2 conservatorship, or adjustment of fees.

3 **SECTION 425. EFFECT OF CONTRACT ENTERED INTO BY INDIVIDUAL**
4 **SUBJECT TO CONSERVATORSHIP; FILING AND RECORDING OF DOCUMENTS.**

5 (a) If an individual subject to conservatorship enters into a contract after having the right
6 to enter into that contract removed by the court, the contract is void against the individual and the
7 individual's property, but enforceable against the person who contracted with the individual
8 subject to conservatorship.

9 (b) Subject to the requirements of other statutes governing the filing or recordation of
10 documents of title to land or other property, letters of conservatorship and orders terminating
11 conservatorships may be filed or recorded.

12 **SECTION 426. INTEREST OF INDIVIDUAL SUBJECT TO**
13 **CONSERVATORSHIP INALIENABLE.**

14 (a) Except as otherwise provided in subsections (c) and (d), the interest of an individual
15 subject to conservatorship in property included in the conservatorship estate is not transferrable
16 or assignable by the individual subject to conservatorship. An attempted transfer or assignment
17 by the individual subject to conservatorship, although ineffective to affect property rights, may
18 give rise to a claim against the individual subject to conservatorship for restitution or damages.

19 (b) The interest of an individual subject to conservatorship in property included in the
20 conservatorship estate is not subject to levy, garnishment, or similar process for claims against
21 the individual unless allowed under Section 430.

22 (c) A person without knowledge of a conservatorship who in good faith and for value
23 receives delivery from an individual subject to conservatorship of tangible personal property of a

1 type normally transferred by delivery of possession, is protected as if the individual subject to
2 conservatorship had the power to transfer the property.

3 (d) A third party who deals with the individual subject to conservatorship with respect to
4 property included in the conservatorship estate is entitled to any protection provided in law other
5 than this [act].

6 **SECTION 427. SALE, ENCUMBRANCE, OR OTHER TRANSACTION**

7 **INVOLVING CONFLICT OF INTEREST.** Any transaction involving the conservatorship
8 estate which is affected by a substantial conflict between the conservator’s fiduciary and
9 personal interests is voidable unless the transaction is expressly authorized by the court after
10 notice to interested persons. A transaction affected by a substantial conflict between personal
11 and fiduciary interests includes any sale, encumbrance, or other transaction involving the
12 conservatorship estate entered into by the conservator, a person with whom the conservator
13 resides, the spouse, [domestic partner,] descendant, sibling, agent, or attorney of a conservator, or
14 a corporation or other enterprise in which the conservator has a substantial beneficial interest.

15 **SECTION 428. PROTECTION OF PERSON DEALING WITH CONSERVATOR.**

16 (a) A person who assists or deals with a conservator in good faith and for value in any
17 transaction other than one requiring a court order under Section 415 is protected as though the
18 conservator properly exercised the power in question. That a person knowingly deals with a
19 conservator does not alone require the person to inquire into the existence of the authority of the
20 conservator or the propriety of the conservator’s exercise of such authority, but restrictions on
21 the authority of the conservator that are stated in letters of office, or as provided by law, are
22 effective as to third persons. A person who pays or delivers property to a conservator is not
23 responsible for proper application of the property.

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

6 **SECTION 429. DEATH OF INDIVIDUAL SUBJECT TO CONSERVATORSHIP.**

7 [(a)] If an individual subject to conservatorship dies, the conservator shall deliver to the
8 court for safekeeping any will of the individual which may have come into the conservator's
9 possession, inform the personal representative or beneficiary named in the will of the delivery,
10 and retain the conservatorship estate for delivery to the personal representative of the decedent or
11 to another person entitled to it.

12 [(b) If a personal representative has not been appointed within 40 days after the death of
13 an individual subject to conservatorship and an application or petition for appointment is not
14 before the court, the conservator may apply to exercise the powers and duties of a personal
15 representative in order to administer and distribute the decedent's estate. On application for an
16 order conferring on the conservator the powers of a personal representative, after notice given by
17 the conservator to any person nominated as personal representative by any will of which the
18 conservator is aware, the court may grant the application on determining that there is no
19 objection and endorse the letters of office to note that the individual formerly subject to
20 conservatorship is deceased and that the conservator has acquired all of the powers and duties of
21 a personal representative.

22 (c) The issuance of an order under this section has the effect of an order of appointment
23 of a personal representative [as provided in Section 3-308 and Parts 6 through 10 of Article III of

1 the Uniform Probate Code].

2 (d) On the death of an individual subject to conservatorship, the conservator shall
3 conclude the administration of the estate by distribution to the person's successors. The
4 conservator shall file a final report and petition for discharge not later than [30] days after
5 distribution.

6 **SECTION 430. PRESENTATION AND ALLOWANCE OF CLAIM.**

7 (a) A conservator may pay, or secure by encumbering property included in the
8 conservatorship estate, a claim against the conservatorship estate or against the individual subject
9 to conservatorship arising before or during the conservatorship on presentation and allowance in
10 accordance with the priorities stated in subsection (d). A claimant may present a claim by:

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

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

15 (b) A claim is deemed presented on receipt of the written statement of claim by the
16 conservator or the filing of the claim with the court, whichever first occurs. A presented claim is
17 allowed if it is not disallowed by written statement sent or delivered by the conservator to the
18 claimant not later than 60 days after its presentation. The conservator before payment may
19 change an allowance to a disallowance in whole or in part, but not after allowance under a court
20 order or judgment or an order directing payment of the claim. The presentation of a claim tolls
21 the running of any statute of limitations that has not already expired relating to the claim until 30
22 days after its disallowance.

23 (c) A claimant whose claim has not been paid may petition the court for determination of

1 the claim at any time before it is barred by a statute of limitations and, on due proof, procure an
2 order for its allowance, payment, or security by encumbering property included in the
3 conservatorship estate. If a proceeding is pending against an individual subject to
4 conservatorship at the time of appointment of a conservator or is initiated against the individual
5 subject to conservatorship thereafter, the moving party shall give to the conservator notice of any
6 proceeding that could result in creating a claim against the conservatorship estate.

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

- 10 (1) costs and expenses of administration;
- 11 (2) claims of the federal or state government having priority under law other than
12 this [act];
- 13 (3) claims incurred by the conservator for support, care, education, health, and
14 welfare previously provided to the individual subject to conservatorship or an individual who is
15 in fact dependent on the individual subject to conservatorship;
- 16 (4) a claim arising before the conservatorship; and
- 17 (5) all other claims.

18 (e) Preference may not be given in the payment of a claim over any other claim of the
19 same class, and a claim due and payable may not be preferred over a claim not due unless:

- 20 (1) doing so would leave the conservatorship estate without sufficient funds to
21 pay the basic living and health care expenses of the individual subject to conservatorship; and
- 22 (2) the court authorizes such preference under Section 415(a)(8).

23 (f) If assets of the conservatorship estate are adequate to meet all existing claims, the

1 court, acting in the best interest of the individual subject to conservatorship, may order the
2 conservator to grant a security interest in the conservatorship estate for payment of any or all
3 claims at a future date.

4 **SECTION 431. PERSONAL LIABILITY OF CONSERVATOR.**

5 (a) Except as otherwise agreed by the conservator, a conservator is not personally liable
6 on a contract properly entered into in a fiduciary capacity in the course of administration of the
7 conservatorship estate unless the conservator fails to reveal in the contract the representative
8 capacity.

9 (b) A conservator is personally liable for an obligation arising from control of property
10 of the conservatorship estate or for an act or omission occurring in the course of administration
11 of the conservatorship estate only if the conservator has breached the conservator's fiduciary
12 duty.

13 (c) A claim based on a contract entered into by a conservator in a fiduciary capacity, an
14 obligation arising from control of property included in the conservatorship estate, and a claim
15 based on a tort committed in the course of administration of the conservatorship estate, may be
16 asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary
17 capacity, whether or not the conservator is personally liable therefor.

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

21 **SECTION 432. REMOVAL OF CONSERVATOR; APPOINTMENT OF**
22 **SUCCESSOR**

23 (a) A court may remove a conservator for failure to perform the conservator's duties or

1 for other good cause and appoint a successor.

2 (b) The court shall conduct a hearing to determine whether removal of a conservator and
3 appointment of a successor is appropriate on:

4 (1) a petition of an individual subject to conservatorship, conservator, or person
5 interested in welfare of an individual subject to conservatorship if a similar petition has not been
6 made within the preceding six months;

7 (2) a communication from an individual subject to conservatorship, conservator,
8 or person interested in the welfare of the individual subject to conservatorship that suggests that
9 removal of the conservator and appointment of a successor may be appropriate; or

10 (3) the court's determination that a hearing would be in the best interest of the
11 individual subject to conservatorship.

12 (c) An individual subject to conservatorship seeking to remove a conservator is entitled
13 to be represented by an attorney of the individual's choosing. [If the individual is not
14 represented by an attorney, the court shall appoint an attorney under the conditions set forth in
15 Section 406.] The court shall award reasonable attorney's fees.

16 (d) In selecting a successor conservator, the court shall follow the procedures set forth in
17 Section 410.

18 (e) Not later than 30 days after an appointment of a successor conservator, the court shall
19 send or deliver notice of the appointment to the individual subject to conservatorship and any
20 other person entitled to such notice under Section 411(e).

21 **SECTION 433. TERMINATION OR MODIFICATION OF**
22 **CONSERVATORSHIP.**

23 (a) A conservatorship granted over a minor terminates on order of the court or when the

1 minor subject to conservatorship attains majority, is emancipated, or dies.

2 (b) A conservatorship granted over an adult terminates on order of the court or when the
3 adult dies.

4 (c) An individual subject to conservatorship, a conservator, or a person interested in the
5 welfare of an individual subject to conservatorship may petition for:

6 (1) termination of the conservatorship on the ground that the basis for
7 appointment of a conservator set forth in Section 401 does not exist, that termination would be in
8 the best interest of the individual, or for other good cause; or

9 (2) modification of the conservatorship on the ground that the extent of protection
10 or assistance previously granted is not appropriate or for other good cause.

11 (d) The court shall hold a hearing to determine whether termination or modification of a
12 conservatorship is appropriate on:

13 (1) petition of an individual subject to conservatorship, conservator, or person
14 interested in the welfare of the individual subject conservatorship if a similar petition has not
15 been filed within the preceding six months;

16 (2) communication from an individual subject to conservatorship, conservator, or
17 person interested in the welfare of an individual subject to conservatorship that suggests that
18 termination or modification of the conservatorship may be appropriate; or

19 (3) a report from a guardian or conservator that indicates that the functional needs,
20 services, or supports of the individual subject to conservatorship have changed or that less
21 restrictive means for meeting the individual's needs are available such that termination or
22 modification may be appropriate.

23 (e) On presentation by the petitioner of evidence establishing a prima facie case for

1 termination, the court shall order termination unless it is proven that the basis for appointment of
2 a conservator set forth in Section 401 is satisfied. Termination of the conservatorship does not
3 affect a conservator's liability for previous acts or the obligation to account for the
4 conservatorship estate.

5 (f) The court shall modify the powers granted to the conservator if the powers are either
6 excessive or inadequate due to changes in the abilities or limitations of the individual subject to
7 conservatorship, the individual's supports, or other circumstances.

8 (g) Except as otherwise ordered by the court for good cause, before terminating a
9 conservatorship, the court shall follow the same procedures to safeguard the rights of the
10 individual subject to conservatorship that apply to a petition for the appointment of a
11 conservator.

12 (h) An individual subject to conservatorship seeking to terminate or modify the terms of
13 the conservatorship is entitled to be represented by an attorney of the individual's choosing for
14 that purpose. [If the person is not represented by an attorney, the court shall appoint an attorney
15 under the conditions set forth in Section 406.] The court shall award reasonable attorney's fees.

16 (i) On termination of a conservatorship and whether or not formally distributed by the
17 conservator, property of the conservatorship estate passes to the individual formerly subject to
18 conservatorship or the individual's heirs, successors, or assigns. The order of termination must
19 provide for expenses of administration and direct the conservator to file a final report and
20 petition for discharge on approval of the final report.

21 (j) The court shall enter a final order of discharge on the approval of the final report and
22 satisfaction by the conservator of any other conditions placed by the court on the conservator's
23 discharge.

1 **ARTICLE 5**

2 **MISCELLANEOUS PROVISIONS**

3 **SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

4 applying and construing this uniform act, consideration must be given to the need to promote
5 uniformity of the law with respect to its subject matter among states that enact it.

6 **SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**

7 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
8 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
9 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
10 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
11 U.S.C. Section 7003(b).

12 **SECTION 503. APPLICABILITY.**

13 (a) This [act] applies to all proceedings for the appointment of a guardian or conservator
14 commenced on or after [effective date] and all guardianships and conservatorships created on or
15 after the effective date of this [act].

16 (b) This [act] applies to all proceedings for appointment of a guardian, conservator, or
17 protective arrangement instead of guardianship or conservatorship prior to [effective date] and all
18 guardianships, conservatorships, and protective arrangements instead of guardianship or
19 conservatorship in existence on [effective date] unless the court finds that application of a
20 particular provision of this [act] would substantially interfere with the effective conduct of
21 judicial proceedings or prejudice the rights of the parties, in which case the particular provision
22 of this [act] does not apply and the superseded law applies.

1 **Note to petitioner:** *This form can be used to petition for a guardian [or protective*
2 *arrangement instead of either a guardianship] for a minor. A court may appoint a*
3 *guardian for a minor who does not have a guardian [or a protective arrangement instead*
4 *of guardianship] if the court finds the appointment [or arrangement] is in the minor's*
5 *best interest, and: (1) the parents, after being fully informed of the nature and*
6 *consequences of guardianship [or protective arrangement], provide consent; (2) all*
7 *parental rights have been terminated; or (3) the court finds by clear and convincing*
8 *evidence that the parents are unwilling or unable to exercise their parental rights.*

9
10 **1. Information about the person filing this petition (the “petitioner”).**

- 11 a. Name:
12 b. Principal residence:
13 c. Current street address (if different):
14 d. Relationship to minor:
15 e. Interest in this petition:
16 e. How, if at all, would the protective arrangement sought benefit the petitioner?
17 f. Telephone number (optional):
18

19 **2. Information about the minor alleged to need protection.**

20 Provide the following information to the extent known.

- 21 a. Name:
22 b. Age:
23 c. Principal residence:
24 d. Current street address (if different):
25 e. If petitioner anticipates the minor moving, or seeks to move the minor,
26 proposed new address:
27 f. Does the minor need an interpreter, translator, or other form of support to
28 communicate with the court or understand court proceedings? If so, please
29 explain.
30 g. Telephone number (optional):
31

32 **3. Information about the minor’s parent(s).**

- 33 a. Name(s) of living parent(s):
34 b. Principal residence(s) of living parent(s):
35 c. Current street address(es) of living parent(s) (if different):
36 d. Does any parent need an interpreter, translator, or other form of support to
37 communicate with the court or understand court proceedings? If so, please
38 explain.
39

40 **4. People who are required to be notified of this petition.** State the name and address of
41 any of the people listed in Appendix A.

42
43 **5. Action requested.** State whether the petitioner is seeking appointment of a guardian[or
44 a protective arrangement instead of an appointment].
45

- 1 **[6a. Order requested.** If seeking a protective arrangement instead of an appointment, state
 2 the transaction or other action you would want the court to order. (Skip this section if
 3 seeking an appointment).]
 4
- 5 **6[b]. Appointment requested.** If seeking appointment of a guardian, state the the name and
 6 address of any proposed guardian and the reason why the proposed guardian should be
 7 selected;
 8
- 9 **7. State why the petitioner seeks the appointment or protective arrangement.** Include a
 10 description of the nature and extent of the minor’s alleged need.
 11
- 12 **8. Property.** If the minor has property other than personal effects, state the minor’s
 13 property with an estimate of its value.
 14
- 15 **9. Other proceedings.** If there are any other proceedings concerning the care or custody of
 16 the minor currently pending in any court in this state or another jurisdiction, please
 17 describe them.
 18
- 19 **10. Attorney(s).** If minor or the minor’s parent is represented by an attorney in this matter,
 20 state the name, address, and telephone number of the attorney(s) involved.
 21

22 **VERIFICATION AND ACKNOWLEDGMENT**

23
 24 I declare under penalty of perjury under the laws of this state that the information above is true
 25 and correct to the best of my knowledge.
 26

27 _____
 28 Signature of Petitioner Date

29 _____
 30 Signature of Petitioner’s Attorney if Date
 31 Petitioner is Represented by Counsel
 32

33 **APPENDIX A:**

34 **People whose name and address must be listed in Section 4 of this petition.**

- 35 • The minor, if the minor has attained [12] years of age and is not the petitioner;
 36 • Each parent of the minor or, if there are none, the adult nearest in kinship that can be found;
 37 • An adult with whom the minor resides;
 38 • Any person alleged to have had the primary care and custody of the minor for 60 or more
 39 days during the two years preceding the filing of the petition or any person alleged to have
 40 had the primary care and custody of the minor for at least 730 days during the five years
 41 preceding the filing of the petition; and
 42 • Any person nominated as guardian by the minor if the minor has attained [12] years of age;
 43 • Any appointee of a parent if the appointment has not been prevented or terminated;
 44 • The grandparents of the minor
 45 • Adult siblings of the minor;
 46 • Any guardian or conservator currently acting for the minor in this state or another

1 jurisdiction.

2
3 **SECTION 603. MODEL PETITION FOR GUARDIANSHIP OF ADULT,**
4 **CONSERVATORSHIP OF ADULT OR MINOR, OR ORDER INSTEAD OF**
5 **GUARDIANSHIP OR CONSERVATORSHIP FOR ADULT.** This form may, but need not
6 be, used to petition for guardianship of an adult or conservatorship, or to petition for a protective
7 arrangement instead of guardianship or conservatorship for an adult.

8 **Petition for Guardianship or Protective Arrangement Instead of Guardianship for Adult,**
9 **or for a Conservatorship or Protective Arrangement Instead of Conservatorship for Minor**
10 **or Adult**

11 **State of:**

12 **County of:**

13 **Name and address of attorney representing petitioner, if applicable:**
14

15 *Note to petitioner: This form can be used to petition for a guardian, conservator, or*
16 *both, or a protective arrangement instead of either a guardianship or conservatorship.*
17 *A court may appoint a guardian or order a protective arrangement instead of*
18 *guardianship if an individual lacks the ability to meet essential requirements for physical*
19 *health, safety, or self-care because (1) the individual is unable to receive and evaluate*
20 *information or make or communicate decisions even with appropriate decision-making*
21 *support and technological assistance, or (2) because the individual's own will has been*
22 *overcome by deception and control exerted by another person; and the individual's*
23 *identified needs cannot be met by less restrictive means.*

24
25 *A court may appoint a conservator or order a protective arrangement instead of*
26 *conservatorship if an individual is unable to manage property and financial affairs*
27 *because (1) of a limitation in the ability to receive and evaluate information or make or*
28 *communicate decisions even with the use of appropriate technological assistance and*
29 *appropriate decision-making support, (2) the individual's own will has been overcome by*
30 *deception and control exerted by another person, or (3) the individual is missing,*
31 *detained, or unable to return to the United States; and the individual has property that is*
32 *likely to be wasted or dissipated unless management is provided, or money is needed for*
33 *the support, care, education, health, and welfare of the individual or of individuals who*
34 *are entitled to the individual's support and that protection is necessary or desirable to*
35 *obtain or provide money for such purpose.*

36
37 *A court may also order a protective arrangement restricting access to an individual or an*
38 *individual's property by a person who the court finds: (1) through fraud, coercion,*

1 *duress, or the use of deception and control, caused the individual to suffer physical,*
2 *psychological, or financial harm; and (2) would otherwise pose a serious risk of*
3 *substantial physical, psychological, or financial harm to the individual or the*
4 *individual's property.*

5
6 **1. Information about the person filing this petition (the “petitioner”).**

- 7 a. Name:
8 b. Principal residence:
9 c. Current street address (if different):
10 d. Relationship to respondent:
11 e. Interest in this petition:
12 e. How, if at all, would the protective arrangement sought benefit the petitioner?
13 f. Telephone number (optional):
14

15 **2. Information about the individual alleged to need protection (the “respondent”).**

16 Provide the following information to the extent known.

- 17 a. Name:
18 b. Age:
19 c. Principal residence:
20 d. Current street address (if different):
21 e. If petitioner anticipates the respondent moving, or seeks to move the respondent,
22 proposed new address:
23 f. Does the respondent need an interpreter, translator, or other form of support to
24 communicate with the court or understand court proceedings? If so, please
25 explain.
26 g. Telephone number (optional):
27

28 **3. People who are required to be notified of this petition.** State the name and address of
29 any of the people listed in Appendix A.
30

31 **4. Existing agents.** State the name and address of any person who has been appointed as an
32 agent under to a power of attorney for finances or [power of attorney for health care] that
33 the individual has not revoked, or who has been appointed as the individual’s
34 representative for payment of benefits.
35

36 **5. Action requested.** State whether the petitioner is seeking appointment of a guardian or
37 conservator or a protective arrangement instead of an appointment.
38

39 **6a. Order requested.** If seeking a protective arrangement instead of an appointment, state
40 the transaction or other action you would want the court to order. [Skip this section if
41 seeking an appointment].
42

43 **6b. Appointment requested.** If seeking appointment of a guardian or conservator, state the
44 powers that petitioner requests the court grant to a guardian or conservator. [Skip this
45 section if not seeking an appointment].
46

- 1 **7. State why the appointment or protective arrangement sought is necessary.** Include a
2 description of the nature and extent of the respondent’s alleged need.
3
- 4 **8. State all less restrictive approaches to meeting the respondent’s alleged need that**
5 **have been considered or implemented.** Less restrictive approaches could include
6 decision-making support, technological assistance, or the appointment of an agent by the
7 respondent including appointment under a [power of attorney for health-care] or power of
8 attorney for finances. If no alternatives have been tried, state the reason why not.
9
- 10 **9. Explain why less restrictive approaches will not meet the respondent’s alleged need.**
- 11
- 12 **10. Provide a general statement of the respondent’s property and an estimate of its**
13 **value.** Include any real property such as a house or land, insurance or pension, and the
14 source and amount of any other anticipated income or receipts. As part of this statement,
15 indicate, if known, how the property is held (for example, is it jointly owned?).
16
- 17 **11. For petitions seeking appointment of a conservator:** (skip this section if not asking for
18 appointment of a conservator)
- 19 a. If seeking appointment of a conservator with all powers permissible under this
20 state’s law, explain why appointment of a conservator with fewer powers (ie., a
21 “limited conservatorship”) or other protective arrangement instead of
22 conservatorship will not meet the individual’s alleged needs.
23
- 24 b. If seeking a limited conservatorship, state the property the petitioner requests be
25 placed under the conservator’s control and any proposed limitation on the
26 conservator’s powers and duties.
27
- 28 c. State the name and address of any proposed conservator and the reason why the
29 proposed conservator should be selected.
30
- 31 d. State the name and address of any person nominated as conservator by the
32 respondent if the respondent has attained [12] years of age.
33
- 34 e. If alleging a limitation in the respondent’s ability to receive and evaluate
35 information, provide a brief description of the nature and extent of the
36 respondent’s alleged limitation.
37
- 38 f. If alleging that the respondent is missing, detained, or unable to return to the
39 United States, state the relevant circumstances, including the time and nature of
40 the disappearance or detention and a description of any search or inquiry
41 concerning the respondent’s whereabouts.
42
- 43 **12. For petitions seeking appointment of a guardian:** (skip this section if not asking for
44 **appointment of a guardian)**
- 45 a. If seeking appointment of a guardian with all powers permissible under this
46 state’s law, explain why appointment of a guardian with fewer powers (ie., a

1 “limited guardianship”) or other protective order is inappropriate.

- 2
- 3 b. If seeking a limited guardianship, state the powers the petitioner requests be
- 4 granted to the guardian.
- 5
- 6 c. State the name and address of any proposed guardian and the reason why the
- 7 proposed guardian should be selected.
- 8
- 9 d. State the name and address of any person nominated as guardian by the
- 10 respondent, or by the respondent’s parent or spouse [or domestic partner] in a will
- 11 or other signed writing.
- 12

- 13 **13. Attorney.** If petitioner is represented by an attorney in this matter, state the name,
- 14 address, and telephone number of the attorney.
- 15

16 **VERIFICATION AND ACKNOWLEDGMENT**

17

18 I declare under penalty of perjury under the laws of this state that the information above is true

19 and correct to the best of my knowledge.

20

21 _____

22 Signature of Petitioner

Date

23 _____

24 Signature of Petitioner’s Attorney if

25 Petitioner is Represented by Counsel

26

Date

27 **APPENDIX A:**

28 **People whose name and address must be listed in Section 3 of this petition.**

- 29 • The respondent’s spouse [or domestic partner], or if the respondent is not married [and does
- 30 not have a domestic partner], any adult with whom the respondent has shared household
- 31 responsibilities in the past six months;
- 32 • The respondent’s adult children, or, if the respondent has none, the respondent’s parents and
- 33 adult brothers and sisters, or if the respondent has none, one or more adults nearest in kinship
- 34 to the respondent who can be found;
- 35 • The respondent’s adult stepchildren whom the respondent actively parented during the
- 36 stepchildren’s minor years and with whom the respondent had an ongoing relationship within
- 37 two years of this petition;
- 38 • Any person responsible for the care or custody of the respondent;
- 39 • Any attorney currently representing the respondent;
- 40 • Any representative payee for the respondent appointed by the Social Security
- 41 Administration;
- 42 • Any guardian or conservator acting for a respondent in this state or another jurisdiction;
- 43 • Any trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;
- 44 • Any Veterans Administration fiduciary for the respondent;
- 45 • Any person that the respondent has designated as agent under a power of attorney for
- 46 finances;

- 1 • Any person that the respondent has designated as agent under a [power of attorney for health
- 2 care];
- 3 • Any person known to have routinely provided the individual with decision-making support
- 4 within six months of this petition.
- 5 • Any person nominated as guardian or conservator by the respondent; and
- 6 • Any person nominated as guardian by the respondent’s parent or spouse [or domestic
- 7 partner]in a will or other signed writing.
- 8

9 **SECTION 604. MODEL ORDER DENYING GUARDIANSHIP OF ADULT,**

10 **CONSERVATORSHIP OF ADULT.** This form may, but need not be, used by the court to
 11 deny a petition for a guardian or conservator for an adult.

12 **Order Denying Guardianship or Conservatorship of Adult**

13 State of:

14 County of:

15 Court:

16 File Number:

17 Date:

18 In the Matter of:

19 Judge:

20 This is a matter is before the court on a petition for an appointment of a
 21 [GUARDIAN/CONSERVATOR/GUARDIAN AND CONSERVATOR] for [RESPONDENT’S
 22 NAME]. The court has read the petition and held a hearing to determine whether the court
 23 should enter the order requested in the petition.

24
 25 **VENUE, JURISDICTION, and NOTICE.**

26 This court finds:

27 ___ it has jurisdiction over Respondent and over this issue, that this court is a proper venue, and
 28 that notice was properly served.

29 ___ it does not have jurisdiction over Respondent.

30 ___ this court is not a proper venue.

31 ___ notice was not properly served.

32
 33
 34 **HEARING.**

35 ___ No hearing was held.

36 ___ A hearing was held on: _____

37
 38 At the hearing, respondent was:

39 ___ present, in person.

40 ___ present, through the use of audio-visual technology.

41 ___ not present and there was clear and convincing evidence that respondent refused to attend
 42 the hearing.

1 ___ not present and there was clear and convincing evidence that (1) it was impossible or
2 impracticable for respondent to attend, and (2) the respondent would have no ability to
3 participate in the hearing.
4

5 At the hearing, respondent was:
6 ___ represented by the following attorney: _____.
7 ___ not represented by an attorney.
8
9

10 **COURT’S FINDINGS AS TO RESPONDENT’S ABILITIES AND NEEDS.**

11 This court reviewed the following evidence with regard to the Respondent’s abilities and needs:
12 [LIST]
13

14 Based on this evidence, this Court finds that there is not clear and convincing evidence to
15 support an appointment.
16

17 **COSTS.**

18 Costs are:
19 ___ Waived
20 ___ Taxed to petitioner
21 ___ Taxed to respondent
22
23

24 **SIGNATURE.**

25 Signed:
26 Date:
27

28 **SECTION 605. MODEL ORDER APPOINTING GUARDIAN OF ADULT,**
29 **CONSERVATORSHIP OF ADULT.** This form may, but need not be, used by the court to
30 appoint a guardian for an adult or conservator.

31 **Order for Guardianship or Conservatorship of Adult**

32 State of:
33 County of:
34 Court:
35 File Number:
36 Date:
37 In the Matter of:
38 Judge:
39

40 This is a matter before the court on a petition for an adjudication that a
41 [GUARDIAN/CONSERVATOR/GUARDIAN AND CONSERVATOR] be appointed for

1 [RESPONDENT]. The court has read the petition and held a hearing to determine whether the
2 court should enter the order requested in the petition.

3
4 **NOTICE.**

5 ___ There is clear and convincing evidence that the respondent was given proper notice of the
6 hearing on the petition.

7
8 **HEARING.**

9 A hearing was held on: _____

10
11 At the hearing, respondent was:

12 ___ present, in person.

13 ___ present, through the use of audio-visual technology.

14 ___ not present and there was clear and convincing evidence that respondent refused to attend
15 the hearing.

16 ___ not present and there was clear and convincing evidence that (1) it was impossible or
17 impracticable for respondent to attend, and (2) that respondent would have no ability to
18 participate in the hearing.

19
20 At the hearing, respondent was:

21 ___ represented by the following attorney: _____

22 ___ not represented by an attorney.

23
24 The following other people participated in this case:

25 ___ the following guardian ad litem: _____

26 ___ the following professional evaluator: _____

27 ___ other: _____

28
29 **VENUE, JURISDICTION, and NOTICE.**

30 This court finds that it has jurisdiction over Respondent and over this issue, that this court is a
31 proper venue, and that notice was properly served.

32
33 **COURT'S FINDINGS AS TO RESPONDENT'S ABILITIES AND NEEDS.**

34 This court reviewed the following evidence with regard to the Respondent's abilities and needs:

35 [LIST]

36
37 Based on this evidence, this Court finds that there is clear and convincing evidence to support an
38 appointment. Specifically, this Court finds that:

39 [PROVIDE A DETAILED EXPLANATION OF THE PERSON'S FUNCTIONAL
40 ABILITIES AND LIMITATIONS AND THE EVIDENCE AS TO THOSE ABILITIES
41 AND LIMITATIONS]

42
43 **SPECIFIC FINDINGS SUPPORTING FULL APPOINTMENT, IF APPLICABLE.**

44 [IF THE APPOINTMENT IS OF A FULL GUARDIAN OR FULL CONSERVATOR,
45 CLEARLY STATE THE BASIS FOR THAT APPOINTMENT AND EXPLAIN WHY

1 A LIMITED APPOINTMENT WOULD NOT MEET THE FUNCTIONAL NEEDS OF
2 THE RESPONDENT].

3
4 **APPOINTMENT.**

5 _____ This court appoints _____ to serve as guardian and directs
6 issuance of letters of guardianship. This appointment shall continue unless and until the court
7 enters an order terminating the guardianship or revoking the appointment.

8
9 _____ This court appoints _____ to serve as conservator and
10 directs issuance of letters of conservatorship. This appointment shall continue unless and until
11 the court determines that a basis for the appointment does not exist. This appointment shall
12 continue unless and until the court enters an order terminating the conservatorship or revoking
13 the appointment.

14
15 **FOR ORDERS APPOINTING A GUARDIAN: LIMITATIONS AND POWERS.**

16
17 **This guardianship is:**

18 _____ **Limited**, and the appointee is granted the following powers:

19 _____ make decisions about the respondent's custody and residence

20 _____ make decisions about the respondent's training and education

21 _____ consent to medical or other professional care, counsel, treatment, or
22 service

23 _____ other: _____

24
25
26 _____ **Full**, meaning that the appointee is granted all powers permissible under state law
27 except those that require specific court authorization unless that authorization is
28 granted below. [Under this state's law, a full guardian does not have the authority
29 to _____.]

30
31 **Special authorizations. In addition to the powers granted above, the appointee may:**

32
33 [List any powers to be granted that require specific court authorization such as the power
34 to move the adult subject to guardianship or individual subject to conservatorship outside
35 the state or consent to adoption]:

36
37 **Right to marry.**

38 _____ Respondent retains the right to marry.

39 _____ Respondent does not retain the right to marry. The court's decision to remove the
40 respondent's right to marry is supported by the following findings:

41
42 **Right to vote.**

43 _____ Respondent retains the right to vote.

44 _____ Respondent does not retain the right to vote. The court's decision to remove the
45 respondent's right to vote is supported by the following findings:

1 **FOR ORDERS APPOINTING A CONSERVATOR.**

2 **This conservatorship is:**

- 3 **Limited**, and the appointee is granted the following powers:
- 4 institute and maintain proceedings to compel another person to support
- 5 respondent
- 6 institute and maintain proceedings to protect respondent’s property
- 7 apply for, receive, and manage the respondent’s money and property
- 8 apply for, receive, and manage the respondent’s money and property with
- 9 the exception of: _____ [specify particular property or
- 10 accounts or a monthly amount of income]
- 11 other: _____

12

13 **Full**, meaning that the appointee is granted all powers permissible under state law

14 except those that require specific court authorization unless that authorization is granted

15 below. [Under this state’s law, a full guardian does not have the authority to

16 _____.]

17

18 **Special authorizations. In addition to the powers granted above, the appointee may:**

19

20 [List any powers to be granted that require specific court authorization such as (1) the

21 ability to make gifts other than those of de minimus value; (2) sell real property,

22 encumber an interest in real property, or surrender the primary residence of a individual

23 subject to conservatorship; (3) convey, release, or disclaim contingent and expectant

24 interests in property, including marital property rights and any right of survivorship

25 incident to joint tenancy or tenancy by the entirety; (4) exercise or release a power of

26 appointment; (5) create a revocable or irrevocable trust of property of the estate, whether

27 or not the trust extends beyond the duration of the conservatorship, or revoke or amend a

28 trust revocable by the individual subject to conservatorship; (6) exercise rights a right to

29 elect options and change a beneficiary under an insurance policy and annuity or surrender

30 the policy and annuity for cash value; (7) exercise any right to an elective share in the

31 estate of the deceased spouse [or domestic partner] of the individual subject to

32 conservatorship and renounce or disclaim any interest by testate or intestate succession or

33 by transfer inter vivos; (8) give preferential treatment to creditors that provide property

34 or services used to meet the basic living and care need of the individual subject to

35 conservatorship when such preferential treatment would be otherwise impermissible

36 under Section 431(d); and [(9) make, modify, amend, or revoke the will of the individual

37 subject to conservatorship]

38

39 **BOND.**

- 40 Before the issuance of letters, the appointee must file a bond in the amount of: \$_____
- 41 Before the issuance of letters, the appointee must: _____

42

43 This Court finds that no bond or other or special arrangement is necessary to protect the

44 interests of the adult subject to guardianship or individual subject to conservatorship.

1 **INVENTORY AND PLAN.**

2 If the appointee is appointed as a Conservator, the appointee is instructed to:

- 3 • Not later than 60 days after appointment, file with this court a plan for protecting,
- 4 managing, expending, and distributing the assets of the estate of the person subject to
- 5 conservatorship.
- 6 • Not later than 60 days after appointment, file with this court a detailed inventory of the
- 7 estate subject to the conservatorship, together with an oath or affirmation that the
- 8 inventory is believed to be complete and accurate as far as information permits.

9
10 If the appointee is appointed as Guardian, the appointed is instructed to:

- 11 • Within 90 days after appointment, file with this court a plan identifying: (1) the living
- 12 arrangement, services, and supports the guardian expects to arrange, facilitate, or
- 13 continue for the adult subject to guardianship; (2) social or educational activities the
- 14 guardian expects to facilitate on behalf of the adult subject to guardianship; (3) persons, if
- 15 any, with whom the adult subject to guardianship has a relationship and any plans the
- 16 guardian has for facilitating visits with those persons; (4) the anticipated nature and
- 17 frequency of the guardian’s visits and communication with the adult subject to
- 18 guardianship; (5) goals for the adult subject to guardianship, including any goals related
- 19 to the restoration of the individual’s rights, and how the guardian anticipates achieving
- 20 those goals; and (6) whether the adult subject to guardianship already has a plan in place
- 21 and, if so, whether the guardian’s plan is consistent with the adult’s plan.

22
23 **NOTIFICATION OF THE COURT.**

24 The appointee shall immediately notify the court in writing of:

- 25 • Any change in the appointee’s address.
- 26 • Any change in the custodial dwelling or address of the adult subject to guardianship or
- 27 individual subject to conservatorship.
- 28 • Any change in the condition of the adult subject to guardianship that shows that the adult
- 29 is capable of exercising rights previously removed.

30
31 **NOTIFICATION OF THIRD PARTIES.**

32 _____ The appointee shall notify the following individuals of any change in the primary
33 residence of the adult subject to guardianship or individual subject to conservatorship:

34
35 _____ The appointee shall provide copies of the annual report to the following people:

36
37 _____ The appointee shall provide copies of the inventory of the property of the adult subject to
38 guardianship or individual subject to conservatorship to the following people:

39
40 _____ The appointee shall notify the following individuals of the death of the adult subject to
41 guardianship or individual subject to conservatorship or a significant change in the
42 individual’s condition.

43
44 **REVIEW.**

45 The appointee shall file an annual report with this court.

1 ____ In addition the annual review, this matter is set for review within ____ days to determine:
2 ____ Compliance with the inventory and plan
3 ____ Possible changes in the abilities of the adult subject to guardianship or individual
4 subject to conservatorship
5 ____ Other:
6
7 ____ No review beyond the annual review is required at this time.

8
9 **COSTS.**

10 Costs are:
11 ____ Waived
12 ____ Taxed to petitioner
13 ____ Taxed to respondent
14

15 **CAUTION TO APPOINTEE.**

16
17 The appointee is bound to exercise all granted powers in accordance with his or her fiduciary
18 duty to the adult subject to guardianship or conservatorship. Among other things, the appointee
19 is required exercise authority only as necessitated by the individual's limitations and to
20 encourage the individual to develop maximum self-reliance and independence including by
21 participating in decisions to the extent feasible. Failure to act according to the appointee's
22 fiduciary duty may result in personal liability.
23

24 **SIGNATURE.**

25 Signed:
26 Date:
27

28 **SECTION 606. MODEL NOTIFICATION OF RIGHTS FOR ADULT SUBJECT TO**

29 **GUARDIANSHIP, CONSERVATORSHIP.** This form may, but need not be, used by to
30 notify an adult subject to guardianship or conservatorship of the adult's rights under Sections 311
31 and 412.

32 **Notification of Rights**

33
34 You are getting this notice because a guardian, conservator, or both has been appointed for you.
35 It tells you about some important rights you have. It does not tell you about all your rights. If
36 you have questions about your rights, you can ask an attorney or another person, including your
37 guardian or conservator, to help you understand your rights.
38

39 **General rights:**

40 You have the right to exercise any right the court has not given to your guardian or conservator.
41
42 You also have the right to ask the court to:

- 1 • end your guardianship, conservatorship, or both;
- 2 • increase or decrease the powers granted to your guardian, conservator, or both;
- 3 • make other changes that affect what your guardian or conservator can do or how they
- 4 do it; and
- 5 • replace the person who was appointed with someone else.

6 You also have a right to hire an attorney to help you do any of these things.

7
8 Additional rights for persons for whom a guardian has been appointed:

9 As an adult subject to guardianship, you have a right to:

- 10 (1) be involved in decisions affecting you, including decisions about your care, where you live,
- 11 your activities, and your social interactions, to the extent reasonably possible;
- 12 (2) be involved in decisions about your health care to the extent reasonably feasible, and to have
- 13 other people help you understand the risks and benefits of health care options where practicable;
- 14 (3) be notified of change in where you live or a permanent move to a nursing home or other
- 15 restrictive or secure facility at least 14 days in advance unless the guardian has proposed this
- 16 change in their plan or the court has expressly authorized it;
- 17 (4) ask the court to prevent your guardian from changing where you live or selling or
- 18 surrendering your primary residence by [insert process for asking the court to such a move];
- 19 (5) vote and get married unless the court unless the court order appointing your guardian states
- 20 that you cannot do so;
- 21 (6) receive a copy of your guardian’s report and your guardian’s plan; and
- 22 (7) communicate, visit, or interact with other people (this includes the right to have visitors, to
- 23 make and get telephone calls, personal mail, or electronic communications) unless:
 - 24 • your guardian has been specifically authorized by the court to restrict such
 - 25 communications, visits, or interactions;
 - 26 • a protective order is in effect that limits contact between you and other people; or
 - 27 • your guardian is restricting you from interacting with someone with whom you do not
 - 28 have a social or family relationship, the restriction is for 60 days or less, and your
 - 29 guardian has good cause to believe the restriction is needed to protect you from
 - 30 significant physical, psychological, or financial harm.

31
32 Additional rights for persons for whom a conservator has been appointed:

33 As an adult subject to conservatorship, you have a right to:

- 34 (1) participate in decisions about how your property is managed to the extent possible; and
- 35 (2) receive a copy of your conservator’s inventory, report, and plan.