

DRAFT
FOR DISCUSSION ONLY

REVISED UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

October 14-15, 2016 Drafting Committee Meeting

CLEAN DRAFT

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October 10, 2016

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**UNIFORM GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS ACT**

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REVISED UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

Prefatory Note

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

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

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

The revised Act has three overarching aims.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 powers available under state guardianship law with no restriction except as provided in [this act].

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

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

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

13 (11) “Letters” includes letters of guardianship and letters of conservatorship.

14 (12) “Limited conservatorship” means a conservatorship under which a conservator is
15 granted less than all powers available under [state conservatorship law], is granted powers over
16 only certain assets, or the powers of the conservator are otherwise restricted.

17 (13) “Limited guardianship” means a guardianship under which the guardian is granted
18 less than all powers available under [state guardianship law] or the powers of the guardian are
19 otherwise restricted.

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

21 (15) “Minor subject to guardianship” means a minor for whom a guardian has been
22 appointed by a parent under Section 202 or by a court under Section 204.

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

(17) “Person” means an individual, estate, business or nonprofit entity, government, governmental subdivision, agency, or instrumentality, or other legal entity.

(18) “Person subject to conservatorship” means a minor or adult for whom a conservator has been appointed.

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

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

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

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

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

SECTION 103. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW

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

SECTION 104. SUBJECT-MATTER JURISDICTION.

(a) Except to the extent that jurisdiction is precluded by [insert citation to Uniform Child Custody Jurisdiction and Enforcement Act], the court of this state has jurisdiction over

1 guardianship for minors and protective orders in lieu of guardianship for minors domiciled or
2 present in this state. The court of this state has jurisdiction over conservatorship for minors
3 domiciled in or having property located in this state.

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

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

10 (1) exclusive jurisdiction to determine the need for a guardianship,
11 conservatorship, or protective order in lieu of guardianship or conservatorship;

12 (2) exclusive jurisdiction to determine how the estate of the respondent which is
13 subject to the laws of this state must be managed, expended, or distributed to or for the use of the
14 respondent, individuals who are dependent upon the respondent, or other claimants; and

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

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

21 **SECTION 105. TRANSFER OF PROCEEDINGS.**

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

23 (1) After the appointment of a guardian or conservator or entry of a protective

1 order in lieu of guardianship or conservatorship, the court making the appointment or entering
2 the order may transfer the proceeding to a court in another [county] in this state or to another
3 state if the court is satisfied that a transfer will serve the best interest of the individual subject to
4 the proceeding.

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

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

1 years of age, and to all persons given notice of the hearing on the petition.

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

6 **SECTION 106. VENUE.**

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

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

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

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

22 **SECTION 107. PRACTICE IN COURT.**

23 (a) Except as otherwise provided in this [act], the rules of evidence and the rules of civil

1 procedure, including the rules concerning appellate review, govern proceedings under this [act].

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

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

6 **SECTION 108. LETTERS OF OFFICE.** On the guardian's filing of an acceptance of
7 office, the court shall issue appropriate letters of guardianship. On the conservator's filing of an
8 acceptance of office and any required bond or compliance with any other required asset
9 protection arrangement, the court shall issue appropriate letters of conservatorship. Limitations
10 on the powers of a guardian or conservator or of the assets subject to a conservatorship shall be
11 stated on the guardian's or conservator's letters.

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

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

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

20 (b) A co-guardian, co-conservator, or successor guardian or conservator may file an
21 acceptance of appointment at any time after the appointment within the later of 30 days after the
22 occurrence of the vacancy or other designated event or 10 days after learning of the vacancy or
23 other designated event.

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

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

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

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

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

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

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

1 **SECTION 112. GENERAL NOTICE REQUIREMENTS.**

2 (a) Except as otherwise ordered by the court for good cause, if notice of a hearing on a
3 petition is required, other than a notice for which specific requirements are otherwise provided,
4 the petitioner shall give notice of the time and place of the hearing to the person to be notified.
5 Notice must be given in compliance with [insert the applicable rule of civil procedure], at least
6 14 days before the hearing.

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

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

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

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

19 **SECTION 115. REQUEST FOR NOTICE; INTERESTED PERSONS.**

20 (a) An interested person not otherwise entitled to notice who desires to be notified before
21 any order is made in a guardianship or conservatorship proceeding, including a proceeding after
22 the appointment of a guardian or conservator, may file a request for notice with the clerk of the
23 court in which the proceeding is pending. The clerk shall send or deliver a copy of the request to

1 the guardian and to the conservator if one has been appointed. A request is not effective unless it
2 contains a statement showing the interest of the person making it and the address of that person
3 or a lawyer to whom notice is to be given. The request is effective only as to proceedings
4 conducted after its filing.

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

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

11 **SECTION 117. PROTECTIVE ORDER IN LIEU OF GUARDIANSHIP OR**
12 **CONSERVATORSHIP.**

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

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

18 (A) a particular medical treatment or refusal of a particular medical
19 treatment;

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

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

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

23 (E) purchase of an annuity;

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

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

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

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

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

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

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

21 **SECTION 118. COMPENSATION AND EXPENSES OF APPOINTEES,**
22 **LAWYERS, AND OTHER PERSONS IN GENERAL.**

23 (a) If not otherwise compensated for services rendered, a lawyer for a respondent in a

1 proceeding brought under this act is entitled to reasonable compensation and reimbursement of
2 reasonable expenses from the estate of the respondent. Such fees and expenses must be
3 approved by the court before compensation is paid or reimbursement is made, but not before the
4 provision of such services or expenses being incurred.

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

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

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

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

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

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

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

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

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

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

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

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

13 (d) A guardian or conservator need not use the personal funds of the guardian or
14 conservator for the expenses of the minor subject to guardianship or minor or adult subject to
15 guardianship or conservatorship.

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

21 **SECTION 120. LIABILITY OF GUARDIAN, CONSERVATOR TO THIRD**

22 **PARITES.** A guardian or conservator is not liable to a third person for acts of a minor or adult

1 subject to guardianship or conservatorship solely by reason of the guardianship or
2 conservatorship.

3 **SECTION 121. PETITION FOR INSTRUCTION OR APPROVAL POST**

4 **APPOINTMENT**

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

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

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

14 **SECTION 122. REGISTRATION OF ORDERS.**

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

20 (b) If a conservator has been appointed in another state and a petition for a
21 conservatorship is not pending in this state, the conservator appointed in the other state, after
22 giving notice to the appointing court of an intent to register, may register the conservatorship in
23 this state by filing as a foreign judgment in a court of this state, in any [county] in which property

1 belonging to the person subject to conservatorship is located, certified copies of the order, letters
2 of office, and any bond.

3 **SECTION 123. EFFECT OF REGISTRATION OF ORDERS.**

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

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

11 **SECTION 124. FACILITY OF TRANSFERS TO MINOR.**

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

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

18 (2) a guardian of the minor;

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

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

23 (b) A person who transfers money or property in compliance with this section is not

1 responsible for its proper application.

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

8 **ARTICLE 2**

9 **GUARDIANSHIP OF MINOR**

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

14 **SECTION 202. PARENTAL APPOINTMENT OF STANDBY GUARDIAN.**

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

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

23 (c) A person appointed by a parent as a standby guardian pursuant to this section is

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

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

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

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

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

20 (f) Unless the appointment was previously confirmed by the court, not later than 30 days
21 after filing the notice and the appointing instrument, a standby guardian shall petition the court
22 for confirmation of the appointment, giving notice in the manner provided in Section 205(a).

23 (g) The appointment of a standby guardian by a parent does not supersede the parental

1 rights of either parent. If both parents are dead or have been adjudged unwilling or unable to
2 exercise their parental rights, an appointment by the last parent who died or was adjudged unable
3 or unwilling to exercise parental rights has priority. An appointment by a parent which is
4 effected by filing the standby guardian's acceptance under a will probated in the state of the
5 testator's domicile is effective in this state.

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

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

13 **SECTION 203. OBJECTION TO APPOINTMENT OF STANDBY GUARDIAN.**

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

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

18 (2) another parent of the minor,

19 (3) a person having primary care or custody of the minor for 60 or more days
20 during the two years preceding the filing of the petition or any person alleged to have had the
21 primary care and custody of the minor for at least 730 days during the five years preceding the
22 filing of the objection.

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

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

(c) If an objection is filed, the court shall hold a hearing to determine whether the standby guardian should be confirmed and, if not, whether another person should be appointed. The objection does not preclude judicial appointment of the person selected by the parent. The court may treat the filing of an objection as a petition for the appointment of an emergency or a temporary guardian under Section 204, and proceed accordingly.

(d) An objection made under this Section may be withdrawn, and if withdrawn is of no effect.

SECTION 204. BASIS FOR JUDICIAL APPOINTMENT OF GUARDIAN

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

(1) the parents consent;

(2) all parental rights have been terminated; or

(3) the court finds by clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights.

(b) If a guardian appointed by a parent pursuant to Section 202 fails to accept the appointment as required under Section 202(f) and the appointment has not been prevented or terminated under Section 203, the court may proceed and appoint a guardian for the minor. The person selected by the parent shall have priority for appointment by the court.

(c) If necessary and on petition or motion and whether or not the conditions of subsection (a) have been established, the court may appoint a temporary guardian for a minor on a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice must be given to the parents and to a minor who has attained 12 years of age.

1 Except as otherwise ordered by the court, the temporary guardian has the authority of a full
2 guardian, but the duration of the temporary guardianship may not exceed nine months. Not later
3 than seven days after the appointment, the temporary guardian shall send or deliver a copy of the
4 order to all individuals who would be entitled to notice of hearing under Section 205.

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

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

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

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

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

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

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

9 (4) the name and address of any proposed guardian and the reason why the
10 proposed guardian should be selected;

11 (5) if the minor has property other than personal goods, a general statement of the
12 minor's property with an estimate of its value;

13 (6) if the minor is above the age of 12, the minor's need for an interpreter or
14 translator to effectively communicate with the court or understand court proceedings; and

15 (7) if the minor has parents, the parents' needs for an interpreter or translator if
16 the parents need an interpreter or translator in order to effectively communicate with the court or
17 understand court proceedings; and

18 (8) any other proceedings concerning the care or custody of the minor currently in
19 any court either in this state or in another jurisdiction.

20 **SECTION 206. JUDICIAL APPOINTMENT OF GUARDIAN: NOTICE**

21 (a) After a petition for appointment of a guardian is filed, the court shall schedule a
22 hearing and the petitioner shall:

23 (1) provide personal service of notice of the time and place of the hearing,

1 together with a copy of the petition to:

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

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

6 (2) provide a notice of time and place of the hearing by personal service, mail, or
7 any other reasonable means, together with a copy of the petition, to:

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

12 (B) any person nominated as guardian by the minor if the minor has
13 attained 12 years of age;

14 (C) any appointee of a parent whose appointment has not been prevented
15 or terminated under Section 203; and

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

18 (b) The notice required in subsection (a) must be in plain language and in at least 16-
19 point font and the petitioner must make reasonable efforts to provide notice to each person listed
20 in subsection (a) in a language in which the person is proficient. The notice must include a
21 statement of the right to request appointment of an attorney for the minor, the right to object to
22 an appointment, and a description of the nature, purpose, and consequences of an appointment.

23 (c) A failure to serve the parents of the minor and the minor if the minor has reached the

1 age of 12 with a notice substantially complying with this subsection precludes the court from
2 granting a petition for permanent guardianship of a minor, but does not preclude the court from
3 granting an emergency or temporary guardianship for a minor.

4 **SECTION 207. JUDICIAL APPOINTMENT OF GUARDIAN: APPOINTMENT**
5 **OF LAWYER.**

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

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

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

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

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

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

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

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

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

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

1 whose appointment will be in the best interest of the minor. The court shall appoint a person
2 nominated by the minor if the minor has attained 12 years of age, unless the court finds the
3 appointment will be contrary to the best interest of the minor.

4 (c) In the interest of developing self-reliance of a protected minor or for other good
5 cause, the court, at the time of appointment or later, on its own motion or on motion of the minor
6 or other interested person, may limit the powers of a guardian otherwise granted by this [article]
7 and thereby create a limited guardianship. Following the same procedure, the court may grant
8 additional powers or withdraw powers previously granted.

9 **SECTION 209. DUTIES OF GUARDIAN.**

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

14 (b) A guardian shall:

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

18 (2) take reasonable care of the protected minor's personal effects and bring a
19 conservatorship proceeding or proceeding for a protective order in lieu of conservatorship if
20 necessary to protect other property of the protected minor;

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

23 (4) conserve any excess money of the protected minor for the protected minor's

1 future needs, but if a conservator has been appointed for the estate of the protected minor, the
2 guardian shall pay the money at least quarterly to the conservator to be conserved for the
3 protected minor's future needs;

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

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

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

12 **SECTION 210. POWERS OF GUARDIAN.**

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

15 (b) A guardian may:

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

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

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

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

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

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

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

SECTION 211. DELEGATION OF POWER BY PARENT OR GUARDIAN.

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

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

(1) selecting an agent;

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

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

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

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

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

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

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

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

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

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

ARTICLE 3

GUARDIANSHIP OF ADULT

SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN OF ADULT.

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

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

1 and convincing evidence that:

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

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

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

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

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

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

18 **SECTION 302. ORIGINAL PETITION FOR APPOINTMENT OF GUARDIAN.**

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

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

1 residence, current street address if different, relationship to the respondent, and interest in the
2 appointment and, to the extent known, state or contain the following with respect to the
3 respondent and the relief requested:

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

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

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

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

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

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

19 (4) the name and address of any lawyer for the respondent, representative payee, a
20 guardian or conservator acting for a respondent in this state or elsewhere, trustee or custodian of
21 a trust or custodianship of which the respondent is a beneficiary, Veterans Administration
22 fiduciary for the respondent, an agent designated under a [power of attorney for health care] in
23 which the respondent is identified as the principal, and an agent designated under a power of

1 attorney for finances in which the respondent is identified as the principal;

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

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

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

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

6 proposed guardian should be selected;

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

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

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

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

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

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

13 respondent's needs;

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

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

16 guardian;

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

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

19 or receipts; and

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

21 communicate with the court or understand court proceedings.

22 **SECTION 303. NOTICE.**

23 (a) A copy of a petition for guardianship or for a protective order in lieu of guardianship

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

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

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

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

20 **SECTION 304. PRELIMINARIES TO HEARING: APPOINTMENT OF**
21 **[VISITOR].**

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (1) a recommendation whether a lawyer should be appointed to represent the
4 respondent;

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

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

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

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

17 (6) a recommendation as to whether a professional evaluation or further
18 evaluation is necessary;

19 (7) a statement as to the respondent's ability to attend a hearing at the location
20 court is typically held;

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

(9) any other matters the court directs.

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

Alternative A

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

(1) requested by the respondent;

(2) recommended by the [visitor]; or

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

Alternative B

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

End of Alternatives

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

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

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

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

SECTION 306. PROFESSIONAL EVALUATION.

(a) At or before a hearing under this [article], the court shall order a professional

1 evaluation of the respondent if the respondent so demands. The court shall also order a
2 professional evaluation unless the court finds that it has sufficient information to determine the
3 respondent's cognitive and functional abilities and limitations without such an evaluation.

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

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

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

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

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

17 **SECTION 307. CONFIDENTIALITY OF RECORDS.**

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

20 (1) the court;

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

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

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

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

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

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

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

18 (2) there is no practicable way for the respondent to attend the hearing and the
19 respondent would have no ability to participate in the hearing even with the use of appropriate
20 support and technological assistance.

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

23 (c) If it is not reasonably feasible for the respondent to participate at the location court is

1 typically held, the court shall make reasonable efforts to hold the hearing at an alternative
2 location convenient to the respondent or to allow the respondent to participate in the hearing
3 using real-time, audio-visual technology.

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

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

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

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

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

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

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

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

1 the respondent in this state or elsewhere;

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

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

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

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

11 (6) an adult child of the respondent;

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

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

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

19 (10) an adult who has exhibited special care and concern for the respondent and
20 who is familiar with the respondent's values and preferences.

21 (b) With respect to persons having equal priority, the court shall select the person it
22 considers best qualified. In determining who is best qualified, the court shall consider the
23 potential guardian's skills and relationship with the respondent, the expressed wishes of the

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

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

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

SECTION 310. ORDER OF APPOINTMENT.

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

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

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

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

(4) whether or not the adult subject to guardianship retains the right to marry and, if not, the court's findings that support removing that right; if no statement is made in the order as to whether the adult subject to guardianship retains the right to marry, the adult subject to

1 guardianship retains the right to marry.(b) A court order granting a full guardianship clearly
2 shall state the basis for granting a full guardianship and provide specific findings to support the
3 conclusion that a limited guardianship would not meet the functional needs of the adult subject to
4 guardianship.

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

7 (d) The court shall, as part of any order granting a guardianship, identify any persons
8 who are subsequently entitled to:

9 (1) notice of the rights of the person's rights of the adult subject to
10 conservatorship;

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

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

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

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

17 (e) The persons entitled to such notice under subsection (d) shall include the spouse[,
18 domestic partner,] and adult children of the adult subject to guardianship unless the court
19 determines that such notice would be contrary to the preferences or prior directions of the adult
20 subject to guardianship or not in the best interest of the adult subject to guardianship.

21 **SECTION 311. NOTIFICATION OF ADULT SUBJECT TO GUARDIANSHIP**
22 **OF ORDER; RIGHTS.**

23 (a) Not later than 14 days after an appointment, a guardian shall send or deliver to the

1 adult subject to guardianship and to all other persons given notice of the hearing on the petition a
2 copy of the order of appointment, together with a notice of the right to request termination or
3 modification.

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

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

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

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

19 (4) be notified of a change in the person's primary residence and the right to be
20 notified of a permanent move to a nursing home or other restrictive or secure facility at least 14
21 days in advance unless the action is proposed in the guardian's plan or expressly authorized by
22 the court, and of the right to contest such move and the process for contesting it;

23 (5) communicate, visit, or interact with other persons, including the right to

1 receive visitors, telephone calls, personal mail, or electronic communications, unless:

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

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

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

9 (6) receive a copy of the guardian's report and the guardian's plan.

10 **SECTION 312. EMERGENCY GUARDIAN.**

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

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

1 appointment not later than 48 hours after the appointment. The court shall hold a hearing on the
2 appropriateness of the appointment not later than [five] days after the appointment.

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

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

9 **SECTION 313. TEMPORARY SUBSTITUTE GUARDIAN.**

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

19 (b) The court may remove a temporary substitute guardian at any time. A temporary
20 substitute guardian shall make any report the court requires. In other respects, the provisions of
21 this [act] concerning guardians apply to a temporary substitute guardian.

22 **SECTION 314. DUTIES OF GUARDIAN.**

23 (a) Except as otherwise limited by the court, a guardian shall make decisions regarding

1 the support, care, education, health, and welfare of the adult subject to guardianship to the extent
2 necessitated by the person's limitations.

3 (b) A guardian shall promote the self-determination of the adult subject to guardianship
4 and, to the extent possible, shall encourage the person to participate in decisions, act on the
5 person's own behalf, and develop or regain the capacity to manage the person's personal affairs.
6 As part of this duty, the guardian shall:

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

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

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

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

19 (1) take reasonable care of the personal effects of the adult subject to guardianship
20 and bring a proceeding for a conservatorship or protective order in lieu of conservatorship if
21 necessary to protect the adult's property;

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

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

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

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

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

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

21 (2) other information the guardian believes the adult subject to guardianship
22 would have considered if the adult were able to act, and (3) other factors that a reasonable
23 person in the circumstances of the adult subject to guardianship would consider, including

1 consequences for others.

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

5 **SECTION 315. SCOPE OF POWERS OF GUARDIAN.**

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

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

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

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

20 (B) in selecting among residential settings, give priority to a residential
21 setting that is in a location that will allow the adult subject to guardianship to interact with
22 persons important to the person and that meets the person's needs in the least restrictive manner
23 reasonably possible unless doing so would be inconsistent with decision-making standard set

1 forth in Section 314(d); and

2 (C) not later than 30 days after a change in the dwelling of the adult
3 subject to guardianship, provide notice of a change to the court, the adult subject to guardianship,
4 and any persons identified as entitled to such notice in the court order appointing the guardian or
5 in a subsequent court order. The notice shall include the address and nature of the new dwelling
6 and state whether the adult subject to guardianship received advance notification of the change
7 and whether the person objected to the change;

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

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

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

20 (3) if a conservator for the estate of the protected person has not been appointed
21 commence a proceeding, including an administrative proceeding, or take other appropriate action
22 to compel another person to support the adult subject to guardianship or to pay funds for the
23 person's benefit;

(4) consent to medical or other care, treatment, or service for the adult subject to guardianship. When making health care decisions for the adult subject to guardianship, the guardian must:

(A) involve the person in health-care decision-making to the extent reasonably feasible, including by encouraging and supporting the person in understanding the risks and benefits of health care options where practicable;

(B) defer to decisions made pursuant to a valid [power of attorney for health care made pursuant to the Uniform Health-Care Decisions Act (1993)] executed by the adult subject to guardianship before the appointment of the guardian and cooperate to the extent feasible with the agent making such decisions; and

(C) take into account:

(i) the risks and benefits of treatment options; and

(ii) the current and previous wishes and values of the adult subject to guardianship if known to the guardian or reasonably ascertainable by the guardian;

(5) to the extent reasonable, delegate to the adult subject to guardianship certain responsibilities for decisions affecting the person's well-being; and

(6) receive the personally identifiable health-care information of the adult subject to guardianship.

(b) The court may specifically authorize the guardian to consent to the adoption of the adult subject to guardianship[; consent or deny consent to the marriage if the person's right to marry has been removed under Section 310; consent or deny consent to the divorce, dissolution, or annulment of the marriage of the person, or petition for divorce, dissolution, or annulment of marriage of the person; petition for a declaration of invalidity of the person's marriage or oppose

1 such a petition]. In determining whether to authorize a power in this subsection, the court shall
2 consider whether the underlying act would be in accordance with the person's preferences,
3 values, and prior directions and whether the underlying act would be in the person's best interest.

4 **SECTION 316. DELEGATION OF POWER BY GUARDIAN.**

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

9 (1) selecting an agent;

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

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

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

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

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

23 (d) A guardian who complies with subsections (a), (b), and (c) is not liable to the adult

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

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

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

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

8 **SECTION 317. IMMUNITIES OF GUARDIAN; SPECIAL LIMITATIONS ON**
9 **GUARDIAN'S POWER**

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

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

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

Attorney Act (2006)] is in effect, absent an order of the court to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

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

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

(1) specifically authorized by the court;

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

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

SECTION 318. GUARDIAN'S PLAN.

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

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

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

1 the adult subject to guardianship;

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

4 (4) the anticipated nature and frequency of the guardian's visits and
5 communication with the adult subject to guardianship;

6 (5) goals for the adult subject to guardianship, including any goals related to the
7 restoration of the person's rights, and how the guardian anticipates achieving those goals; and

8 (6) whether the adult subject to guardianship already has a plan in place and, if so,
9 whether the guardian's plan is consistent with the person's plan.

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

11 In deciding whether to approve the plan, the court shall consider whether the plan is consistent
12 with the duties set forth in Section 312.

13 (c) After the guardian's plan is approved by the court, the guardian shall provide a copy
14 of the guardian's plan to the adult subject to guardianship and such other persons as the court
15 directs.

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

17 (a) Not later than 30 days after appointment, a guardian shall report to the court in
18 writing on the condition of the adult subject to guardianship and account for money and other
19 assets in the guardian's possession or subject to the guardian's control. A guardian shall report at
20 least annually thereafter and whenever ordered by the court. A report must state or contain:

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

23 (2) the living arrangements of the adult subject to guardianship during the

1 reporting period;

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

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

7 (5) activities on behalf of the adult subject to guardianship;

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

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

15 (8) anything of more than de minimis value that the guardian or an immediate
16 family member of the guardian has received from individuals providing goods or services to the
17 adult subject to guardianship;

18 (9) any business relations that the guardian has with a person who the guardian
19 has paid or has otherwise benefited using the assets of the adult subject to guardianship, and

20 (10) a copy of the guardian's previously approved plan and a statement as to
21 whether the guardian has deviated from the plan and, if so, the reason for that deviation;

22 (11) plans for future care and support;

23 (12) a recommendation as to the need for continued guardianship and any

1 recommended changes in the scope of the guardianship; and

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

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

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

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

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

11 (2) the guardianship should continue; and

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

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

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

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

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

21 (4) may hold a hearing to consider removal of the guardian, termination of the
22 guardianship, a change in the powers granted to the guardian or other terms of the guardianship,
23 or adjustment of fees if the court concludes that a hearing would help the court determine

1 whether the guardian has complied with the guardian's duties, the guardianship should continue,
2 the scope of the guardian's powers or other terms of the guardianship should be modified, or the
3 requested fees are reasonable.

4 **SECTION 320. REMOVAL OF GUARDIAN.**

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

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

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

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

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

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

21 (d) An adult subject to guardianship seeking to remove a guardian is entitled to be
22 represented by counsel of the person's choosing. [If the person is not represented by counsel, the
23 court shall appoint a counsel under the conditions set forth in Section 305.] The court shall

award counsel reasonable attorney's fees for such representation if the legal services benefited the adult subject to guardianship or were reasonably necessary to protect the person's interests.

SECTION 321. TERMINATION OR MODIFICATION OF GUARDIANSHIP.

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

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

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

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

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

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

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

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

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

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

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

13 (f) An adult subject to guardianship seeking to terminate or modify the terms of the
14 person's guardianship is entitled to be represented by counsel of the person's choosing. [If the
15 person is not represented by counsel, the court shall appoint counsel under the conditions set
16 forth in Section 305.] The court shall award counsel reasonable attorney's fees for such
17 representation if the legal services benefited the adult subject to guardianship or were reasonably
18 necessary to protect the person's interests.

19 **ARTICLE 4**

20 **CONSERVATORSHIP AND PROTECTION OF PROPERTY**

21 **SECTION 401. BASIS FOR APPOINTMENT OF CONSERVATOR;** 22 **PROTECTIVE ORDER.**

23 (a) On petition and after notice and hearing, the court may appoint a limited or full

conservator or make a protective order in lieu of conservatorship as provided in Section 118 in relation to the estate and affairs of:

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

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

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

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

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

(iii) the individual is missing, detained, or unable to return to the United States; and

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

1 (b) The court shall grant to a conservator only those powers necessitated by the
2 limitations and demonstrated needs of the person subject to conservatorship and make appointive
3 and other orders that will encourage the development of the person's maximum self-
4 determination and independence.

5 (c) The conservatorship continues until terminated, without regard to the location of the
6 conservator or the person subject to conservatorship.

7 **SECTION 402. ORIGINAL PETITION FOR APPOINTMENT OF**
8 **CONSERVATOR OR PROTECTIVE ORDER.**

9 (a) The following may petition for the appointment of a conservator or for a protective
10 order in lieu of conservatorship:

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

12 (2) an individual interested in the estate, affairs, or welfare of the person to be
13 protected, including a parent, spouse, [domestic partner,] child, grandchild, or guardian of the
14 protected person; or

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

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

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

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

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

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

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

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

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

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

20 (6) the name and address of any lawyer for the respondent, representative payee, a
21 guardian or conservator acting for a respondent in this state or elsewhere, trustee or custodian of
22 a trust or custodianship of which the respondent is a beneficiary, Veterans Administration
23 fiduciary for the respondent, or an agent designated under a power of attorney, whether for

1 health care or property, in which the respondent is identified as the principal;

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

5 (8) the reason why a conservatorship or other protective order is necessary,
6 including a brief description of the nature and extent of the respondent's need, all alternative
7 means of meeting that need that have been considered or implemented, if no alternative means
8 have been tried the reason they have not been tried, and the reason alternative means are
9 insufficient to meet the respondent's need; and

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

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

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

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

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

20 **SECTION 403. NOTICE.**

21 (a) A copy of the petition and the notice of hearing on a petition for conservatorship or
22 other protective order must be served personally on the respondent, but if the respondent's
23 whereabouts is unknown or personal service cannot be made, service on the respondent must be

1 made by [substituted service] [or] [publication]. The notice must be in plain language, in at least
2 16-point font, and, to the extent feasible, in a language in which the respondent is proficient.
3 The notice must include a statement that the respondent must be physically present unless
4 excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the
5 appointment of a conservator is requested, include a description of the nature, purpose, and
6 consequences of an appointment. A failure to serve the respondent with a notice substantially
7 complying with this subsection precludes the court from granting the petition.

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

13 (c) Notice of the hearing on a petition for an order after appointment of a conservator or
14 protective order in lieu of conservatorship, together with a copy of the petition, must be given to
15 the person subject to conservatorship if the person has attained 12 years of age and is not
16 missing, detained, or unable to return to the United States, any conservator of the protected
17 person's estate, and any other person as ordered by the court.

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

1 **SECTION 404. PRELIMINARIES TO HEARING ON PROPOSED**
2 **CONSERVATORSHIP FOR MINOR.**

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

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

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

15 (a) On the filing of a petition for a conservatorship or other a protective order in lieu of
16 conservatorship for a respondent for reasons other than being a minor, the court shall set a date
17 for hearing. The court shall appoint a [visitor] unless the petition does not request the
18 appointment of a conservator and the respondent is represented by a lawyer. The duties and
19 reporting requirements of the [visitor] are limited to the relief requested in the petition. The
20 [visitor] must be an individual having training or experience in the type of incapacity alleged.

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

23 (1) explain to the respondent the substance of the petition and the nature, purpose,

1 and effect of the proceeding, the respondent's rights at the hearing, and the general powers and
2 duties of a conservator;

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

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

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

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

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

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

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

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

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

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

23 (4) a recommendation whether a professional evaluation or further evaluation is

1 necessary;

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

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

7 (7) any other matters the court directs.

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

13 **SECTION 406. PRELIMINARIES TO HEARING: APPOINTMENT AND ROLE**
14 **OF LAWYER.**

15 **Alternative A**

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

17 (1) requested by the respondent;

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

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

20 **Alternative B**

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

23 **End of Alternatives**

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

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

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

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

11
12 **SECTION 407. PROFESSIONAL EVALUATION.**

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

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

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

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

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

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

6 **SECTION 408. CONFIDENTIALITY OF RECORDS.**

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

9 (1) the court;

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

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

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

14 (b) The person who has been the subject of a proceeding for a conservatorship or
15 protective order in lieu of conservator, whether or not a conservator was appointed, the person's
16 attorney, and any person entitled to notice under Section 411(d) are entitled to access court
17 records pertaining to the proceeding and any resulting conservatorship, including the annual
18 report and the conservator's plan. In addition, any person with an interest in the welfare of the
19 person subject to conservatorship for other good cause may petition the court for access to court
20 records pertaining to a conservatorship or conservatorship proceeding, including the annual
21 report and conservator's plan. The court shall grant access if access is in the best interest of the
22 person subject to conservatorship or would further the public interest and not endanger the
23 welfare of the respondent or person subject to conservatorship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) an agent appointed by the respondent to manage the respondent's property
19 under a power of attorney for finances;

20 (4) a guardian, other than a temporary or emergency guardian, or like fiduciary
21 currently acting for the respondent in this state or elsewhere;

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

23 (6) an adult child of the respondent;

1 (7) a parent of the respondent;

2 (8) a person appointed as a trustee of a trust established by the respondent for the
3 benefit of the respondent or the respondent's estate;

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

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

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

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

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

15 (c) With respect to persons having equal priority, the court shall select the one it
16 considers best qualified. In determining who is best qualified, the court shall consider the
17 potential conservator's skills and relationship with the respondent, the likelihood that the
18 potential conservator will be able to successfully satisfy the duties of a conservator, and the
19 preferences, values, and prior directions of the respondent.

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

23 (e) An owner, operator, or employee of [a long-term care institution] at which the

respondent is receiving care may not be appointed as conservator unless related to the respondent by blood, marriage, or adoption.

SECTION 411. ORDER OF APPOINTMENT.

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

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

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

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

(c) If a proceeding is brought for reasons other than that the respondent is a minor, after a hearing on the petition, on finding that the basis for appointing a conservator exists, the court shall make the least restrictive order consistent with its findings. The court shall make orders necessitated by the limitations and demonstrated needs of the person subject to conservatorship, including appointive and other orders that will encourage the development of maximum self-determination and independence of the person subject to conservatorship.

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

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

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

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

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

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

(e) The persons entitled to notice under subsection (d) shall include the spouse[, domestic partner,] and adult children of the person subject to conservatorship unless the court determines that such notice would be contrary to the preferences or prior directions of the person subject to conservatorship or not in the best interest of the person subject to conservatorship.

SECTION 412. NOTIFICATION OF PERSON SUBJECT TO CONSERVATORSHIP OF ORDER; RIGHTS.

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

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

conservatorship of the right to:

(1) seek termination or modification of the conservatorship, seek removal of a conservator, and obtain counsel of the person subject to conservatorship's choosing to represent the person in these matters;

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

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

SECTION 413. POWERS OF COURT.

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

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

(2) with respect to an adult, or to a minor for whom an appointment has been made for reasons other than age, for the benefit of the person subject to conservatorship and individuals who are in fact dependent on the person subject to conservatorship for support, all the powers over the estate and financial affairs of the person subject to conservatorship which the person could exercise if the person were an adult, present, and not subject to conservatorship or other protective order.

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

1 **SECTION 414. POWERS REQUIRING COURT APPROVAL.**

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

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 a person subject to conservatorship

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

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

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

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

20 (8) the power to grant a creditor a priority for payment over creditors of the same
21 or higher class if the creditor is providing property or services used to meet the basic living and
22 care need of the person subject to conservatorship and such preferential treatment would be
23 otherwise impermissible under Section 431(e); and

1 [(8) the power to make, modify, amend, or revoke the will of the person subject to
2 conservatorship.

3 (b) A conservator, in making, amending, or revoking the will of a person subject to
4 conservatorship, shall comply with [the state's statute for executing wills].

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

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

11 (1) the financial needs of the person subject to conservatorship and the needs of
12 individuals who are dependent on the person subject to conservatorship for support and the
13 interest of creditors;

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

15 (3) eligibility for governmental assistance;

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

18 (5) the existing estate plan;

19 (6) the life expectancy of the person subject to conservatorship and the probability
20 that the conservatorship will terminate before the person's death; and

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

22 (d) Without authorization of the court, a conservator may not revoke or amend a power
23 of attorney for finances that the person subject to conservatorship executed before the

conservator's appointment. If a power of attorney for finances is in effect, absent a court order to the contrary, a decision of the agent takes precedence over that of a conservator.

SECTION 415. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.

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

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

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

(c) directing distribution;

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

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

(f) granting other appropriate relief.

SECTION 416. BOND; ALTERNATIVE ASSET PROTECTION ARRANGEMENT.

(a) The court shall require a conservator to furnish a bond with sureties as it may specify, or require an alternative asset protection arrangement, conditioned on faithful discharge of all duties of the conservatorship according to law. The court may waive this requirement only if the court finds that such a bond or arrangement is not necessary to protect the interests of the person subject to conservatorship. The court may not waive this requirement if the conservator is in the business of serving as a conservator and is being paid for this service.

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

SECTION 417. TERMS AND REQUIREMENTS OF BOND.

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

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

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

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

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

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

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

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

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

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

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

1 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 person subject to conservatorship,

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

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

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

12 (1) general economic conditions;

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

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

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

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

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

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

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

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

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

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

12 (1) the property lacks sufficient equity,

13 (2) the property is uninsurable, or

14 (3) insuring the property would unreasonably dissipate the estate or otherwise not
15 be in the best interest of the person subject to conservatorship.

16 (j) A conservator, without authorization of the court, may not revoke a power of attorney
17 for finances [made pursuant to the Uniform Power of Attorney Act (2006)] which the person
18 subject to conservatorship executed before the conservator's appointment. If a power of attorney
19 for finances [made pursuant to the Uniform Power of Attorney Act (2006)] is in effect, absent an
20 order of the court to the contrary, a decision by the agent that the agent is authorized to make
21 under the power of attorney for finances takes precedence over that of a conservator and the
22 conservator shall cooperate with the agent to the extent feasible.

1 **SECTION 419. CONSERVATOR’S PLAN.**

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

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

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

19 **SECTION 420. INVENTORY; RECORDS.**

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

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

4 **SECTION 421. POWERS OF CONSERVATOR IN ADMINISTRATION.**

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

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

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

13 (2) receive additions to the estate;

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

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

17 (5) invest assets of the estate;

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

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

23 (8) make ordinary or extraordinary repairs or alterations in buildings or other

1 structures, demolish any improvements, and raze existing or erect new party walls or buildings;

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

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

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

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

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

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

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

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

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

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

21 (19) borrow money, with or without security, to be repaid from the estate or
22 otherwise and advance money for the protection of the estate or the person subject to
23 conservatorship and for all expenses, losses, and liability sustained in the administration of the

1 estate or because of the holding or ownership of any asset, for which the conservator has a lien
2 on the estate as against the person subject to conservatorship for advances so made;

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

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

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

12 (23) pay any sum distributable to a person subject to conservatorship or individual
13 who is in fact dependent on the person subject to conservatorship by paying the sum to the
14 distributee or by paying the sum for the use of the distributee:

15 (A) to the guardian of the distributee;

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

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

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

22 and

23 (25) structure the finances of the person subject to conservatorship to establish

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

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

8 **SECTION 422. DELEGATION BY CONSERVATOR.**

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

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

13 (1) selecting an agent;

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

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

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

20 (c) A conservator who complies with subsections (a) and (b) is not liable to the person
21 subject to conservatorship or to the person's estate for the decisions or actions of the agent to
22 whom a function was delegated.

23 (d) In performing a delegated function, an agent shall exercise reasonable care to comply

1 with the terms of the delegation and reasonable care in the performance of delegated powers.

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

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

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

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

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

18 (2) A conservator may not be surcharged for money paid to persons furnishing
19 support, care, education, or benefit to a person subject to conservatorship, or an individual who is
20 in fact dependent on the person subject to conservatorship, in accordance with the
21 recommendations of a parent or guardian of the person subject to conservatorship unless the
22 conservator knows that the parent or guardian derives personal financial benefit therefrom,
23 including relief from any personal duty of support, or the recommendations are not in the best

1 interest of the person subject to conservatorship.

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

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

6 (B) the accustomed standard of living of the person subject to
7 conservatorship and individuals who are in fact dependent on the person subject to
8 conservatorship;

9 (C) other money or sources used for the support of the person subject to
10 conservatorship; and

11 (D) the preferences, values, and prior directions of the person subject to
12 conservatorship.

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

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

20 (a) A conservator shall report to the court for administration of the estate annually unless
21 the court otherwise directs, on resignation or removal, on termination of the conservatorship, and
22 at other times as the court directs. An order, after notice and hearing, allowing an intermediate
23 report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the

1 accounting. An order, after notice and hearing, allowing a final report adjudicates all previously
2 unsettled liabilities relating to the conservatorship.

3 (b) A report must state or contain:

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

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

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

10 (4) any recommended changes in the plan for the conservatorship as well as a
11 recommendation as to the continued need for conservatorship and any recommended changes in
12 the scope of the conservatorship;

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

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

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

21 (8) a copy of the conservator's previously approved plan and a statement as to
22 whether the conservator has deviated from the plan and, if so, the reason for that deviation;

23 (9) a recommendation as to the need for continued conservatorship and any

recommended changes in the scope of the conservatorship; and (10) whether the successor conservator, if any, is alive and able to serve.

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

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

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

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

(2) the conservatorship should continue; and

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

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

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

(2) shall require additional information from the conservator;

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

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

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

8 **SECTION 425. TITLE BY APPOINTMENT.**

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

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

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

21 **SECTION 426. INTEREST OF PERSON SUBJECT TO CONSERVATORSHIP** 22 **INALIENABLE.**

23 (a) Except as otherwise provided in subsections (c) and (d), the interest of a person

1 subject to conservatorship in property vested in a conservator is not transferrable or assignable
2 by the person subject to conservatorship. An attempted transfer or assignment by the person
3 subject to conservatorship, although ineffective to affect property rights, may give rise to a claim
4 against the person subject to conservatorship for restitution or damages which, subject to
5 presentation and allowance, may be satisfied as provided in Section 429.

6 (b) Property vested in a conservator by appointment and the interest of the person subject
7 to conservatorship in that property are not subject to levy, garnishment, or similar process for
8 claims against the person subject to conservatorship unless allowed under Section 429.

9 (c) A person without knowledge of the conservatorship who in good faith and for value
10 receives delivery from a person subject to conservatorship of tangible personal property of a type
11 normally transferred by delivery of possession, is protected as if the person subject to
12 conservatorship or transferee had valid title.

13 (d) A third party who deals with the person subject to conservatorship with respect to
14 property vested in a conservator is entitled to any protection provided in other law.

15 **SECTION 427. SALE, ENCUMBRANCE, OR OTHER TRANSACTION**
16 **INVOLVING CONFLICT OF INTEREST.** Any transaction involving the conservatorship
17 estate which is affected by a substantial conflict between the conservator's fiduciary and
18 personal interests is voidable unless the transaction is expressly authorized by the court after
19 notice to interested persons. A transaction affected by a substantial conflict between personal
20 and fiduciary interests includes any sale, encumbrance, or other transaction involving the
21 conservatorship estate entered into by the conservator, the spouse, [domestic partner,]
22 descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the
23 conservator has a substantial beneficial interest.

1 **SECTION 428. PROTECTION OF PERSON DEALING WITH CONSERVATOR.**

2 (a) A person who assists or deals with a conservator in good faith and for value in any
3 transaction other than one requiring a court order under Section 411 or 413 is protected as though
4 the conservator properly exercised the power. That a person knowingly deals with a conservator
5 does not alone require the person to inquire into the existence of a power or the propriety of its
6 exercise, but restrictions on powers of conservators which are endorsed on letters as provided in
7 Section 108, or as provided by law, are effective as to third persons. A person who pays or
8 delivers assets to a conservator is not responsible for their proper application.

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

14 **SECTION 429. DEATH OF PERSON SUBJECT TO CONSERVATORSHIP.**

15 [(a)] If a person subject to conservatorship dies, the conservator shall deliver to the court
16 for safekeeping any will of the person subject to conservatorship which may have come into the
17 conservator's possession, inform the personal representative or beneficiary named in the will of
18 the delivery, and retain the estate for delivery to the personal representative of the decedent or to
19 another person entitled to it.

20 [(b) If a personal representative has not been appointed within 40 days after the death of
21 a person subject to conservatorship and an application or petition for appointment is not before
22 the court, the conservator may apply to exercise the powers and duties of a personal
23 representative in order to administer and distribute the decedent's estate. On application for an

1 order conferring on the conservator the powers of a personal representative, after notice given by
2 the conservator to any person nominated as personal representative by any will of which the
3 applicant is aware, the court may grant the application on determining that there is no objection
4 and endorse the letters of conservatorship to note that the formerly person subject to
5 conservatorship is deceased and that the conservator has acquired all of the powers and duties of
6 a personal representative.

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

12 **SECTION 430. PRESENTATION AND ALLOWANCE OF CLAIMS.**

13 (a) A conservator may pay, or secure by encumbering assets of the estate, claims against
14 the estate or against the person subject to conservatorship arising before or during the
15 conservatorship on their presentation and allowance in accordance with the priorities stated in
16 subsection (d). A claimant may present a claim by:

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

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

21 (b) A claim is deemed presented on receipt of the written statement of claim by the
22 conservator or the filing of the claim with the court, whichever first occurs. A presented claim is
23 allowed if it is not disallowed by written statement sent or delivered by the conservator to the

1 claimant not later than 60 days after its presentation. The conservator before payment may
2 change an allowance to a disallowance in whole or in part, but not after allowance under a court
3 order or judgment or an order directing payment of the claim. The presentation of a claim tolls
4 the running of any statute of limitations that has not already expired relating to the claim until 30
5 days after its disallowance.

6 (c) A claimant whose claim has not been paid may petition the court for determination of
7 the claim at any time before it is barred by a statute of limitations and, on due proof, procure an
8 order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding
9 is pending against a person subject to conservatorship at the time of appointment of a
10 conservator or is initiated against the person subject to conservatorship thereafter, the moving
11 party shall give to the conservator notice of any proceeding that could result in creating a claim
12 against the estate.

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

- 16 (1) costs and expenses of administration;
- 17 (2) claims of the federal or state government having priority under other law;
- 18 (3) claims incurred by the conservator for support, care, education, health, and
19 welfare previously provided to the person subject to conservatorship or individuals who are in
20 fact dependent on the person subject to conservatorship;
- 21 (4) claims arising before the conservatorship; and
- 22 (5) all other claims.

23 (e) Preference may not be given in the payment of a claim over any other claim of the

1 same class, and a claim due and payable may not be preferred over a claim not due unless:

2 (1) doing so would leave the estate without sufficient funds to pay the basic living
3 and health care expenses of the person subject to conservatorship; and

4 (2) the court authorizes such preference pursuant to Section 413(a)(8).

5 (f) If assets of the conservatorship are adequate to meet all existing claims, the court,
6 acting in the best interest of the person subject to conservatorship, may order the conservator to
7 grant a security interest in the conservatorship estate for payment of any or all claims at a future
8 date.

9 **SECTION 431. PERSONAL LIABILITY OF CONSERVATOR.**

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

13 (b) A conservator is personally liable for obligations arising from ownership or control
14 of property of the estate or for other acts or omissions occurring in the course of administration
15 of the estate only if breached the conservator's fiduciary duties as set forth in this Act.

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

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

1 [(e) A conservator is not personally liable for any environmental condition on or injury
2 resulting from any environmental condition on land solely by reason of an acquisition of title
3 under Section 426.]

4 **SECTION 432. REMOVAL OF CONSERVATOR**

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

7 . (b) A person subject to conservatorship, conservator, or person interested in the welfare
8 of a person subject to conservatorship may petition for removal of a conservator and appointment
9 of a successor conservator.

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

12 (1) a petition of a person subject to conservatorship, conservator, or another
13 person interested in welfare of a person subject to conservatorship if such a petition has not been
14 made within the preceding six months;

15 (2) a communication from a person subject to conservatorship, conservator, or
16 other person interested in the welfare of the person subject to conservatorship that suggests that
17 removal of the conservator may be appropriate; or

18 (3) the court's determination that such a hearing would be in the interest of the
19 person subject to conservatorship.

20 (d) A person subject to conservatorship seeking to remove a conservator is entitled to be
21 represented by counsel of the person's choosing. [If the person is not represented by counsel, the
22 Court shall appoint counsel under the conditions set forth in Section 406.] The court shall award
23 counsel reasonable attorney's fees for such representation if the legal services benefited the

1 person subject to conservatorship or were reasonably necessary to protect the person's interests.

2 **SECTION 433. TERMINATION OR MODIFICATION OF**
3 **CONSERVATORSHIP.**

4 (a) A conservatorship terminates on the death of the person subject to conservatorship or
5 on order of the court. Unless created for reasons other than that the person subject to
6 conservatorship is a minor, a conservatorship created for a minor also terminates when the
7 person subject to conservatorship attains majority or is emancipated. On the death of a person
8 subject to conservatorship, the conservator shall conclude the administration of the estate by
9 distribution to the person's successors. The conservator shall file a final report and petition for
10 discharge not later than [30] days after distribution.

11 . (b) A person subject to conservatorship, conservator, or person interested in the welfare
12 of a person subject to conservatorship may petition for:

13 (1) termination of the conservatorship on the grounds that the basis for appointing
14 a conservator no longer exists or for other good cause; or

15 (2) modification of the conservatorship on the grounds that the extent of
16 protection or assistance previously granted is no longer appropriate of for other good cause.

17 (c) The court shall engage in fact-finding to determine whether termination or
18 modification of a conservatorship is appropriate on:

19 (1) a petition of a person subject to conservatorship, conservator, or another
20 person interested in the welfare of the person subject conservatorship if such a petition has not
21 been made within the preceding six months;

22 (2) a communication from a person subject to conservatorship, conservator, or
23 another person interested in the welfare of a person subject to conservatorship that gives rise to a

1 reasonable suspicion that termination or modification of the conservatorship is appropriate; or
2 (3) a report from a guardian or conservator that the functional needs of the person
3 subject to conservatorship have changed that gives rise to a reasonable suspicion that termination
4 or modification is appropriate.

5 (d) On presentation by the petitioner of evidence establishing a prima facie case for
6 termination, the court shall order termination unless it is proven that the continuation of the
7 conservatorship is in the best interest of the person subject to conservatorship and necessary to
8 meet the person's needs. Termination of the conservatorship does not affect a conservator's
9 liability for previous acts or the obligation to account for funds and assets of the person subject
10 to conservatorship.

11 (e) The court shall modify the powers granted to the conservator if the powers are either
12 excessive or inadequate due to changes in the abilities or limitations of the person subject to
13 conservatorship, the person's supports, or other circumstances.

14 (f) Except as otherwise ordered by the court for good cause, before terminating a
15 conservatorship, the court shall follow the same procedures to safeguard the rights of the person
16 subject to conservatorship that apply to a petition for conservatorship.

17 (g) A person subject to conservatorship seeking to terminate or modify the terms of the
18 person's conservatorship is entitled to be represented by counsel of the person's choice for that
19 purpose. [If the person is not represented by counsel, the Court shall appoint counsel under the
20 conditions set forth in Section 406.] The court shall award counsel reasonable attorney's fees for
21 such good faith representation if the legal services benefited the person subject to
22 conservatorship or were reasonably necessary to protect the person's interests.

23 (h) On termination of a conservatorship and whether or not formally distributed by the

1 conservator, title to assets of the estate passes to the formerly person subject to conservatorship
2 or the person's successors. The order of termination must provide for expenses of administration
3 and direct the conservator to execute appropriate instruments to evidence the transfer of title or
4 confirm a distribution previously made and to file a final report and a petition for discharge on
5 approval of the final report.

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

9 **ARTICLE 5**

10 **MISCELLANEOUS PROVISIONS**

11 **SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
12 applying and construing this uniform act, consideration must be given to the need to promote
13 uniformity of the law with respect to its subject matter among states that enact it.

14 **SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
15 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
16 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
17 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
18 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
19 U.S.C. Section 7003(b).

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

SECTION 504. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

**SECTION 505. APPLICATION TO EXISTING GUARDIANSHIPS,
CONSERVATORSHIPS**

(a) This Act applies to all proceedings for the appointment of a guardian or conservator commenced on or after [effective date] and all guardianship and conservatorships created on or after [effective date].

(b) This Act applies to all proceedings commenced prior to [effective date] and all guardianships and conservatorships in existence on [effective date] unless the court finds that application of a particular provision of this Act would substantially interfere with the effective conduct of judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this Act does not apply and the superseded law applies.

SECTION 506. EFFECTIVE DATE. This [act] takes effect . . .

ARTICLE 6

FORMS

SECTION 601. USE OF MODEL FORMS. Use of the forms contained in this Section is optional. Failure to use these forms shall not prejudice any party.

SECTION 602. MODEL PETITION FOR GUARDIANSHIP OF MINOR. [Form to be drafted subsequent to discussion of relevant provisions at the October 2016 Drafting Committee Meeting]

**SECTION 603. MODEL PETITION FOR GUARDIANSHIP OF ADULT,
CONSERVATORSHIP OF ADULT OR MINOR.** This form may, but need not be, used to
petition for guardianship of an adult or conservatorship, or to petition for an order in lieu of
guardianship or conservatorship for an adult.

Petition for Guardianship of an Adult and/or Conservatorship of Adult or Minor

State of:

County of:

Name and address of attorney representing petitioner, if applicable:

***Note to petitioner:** This form can be used to petition for a guardian, conservator, or both, or a protective order in lieu of either a guardianship or conservatorship.*

A court may appoint a guardian or issue a protective order in lieu of guardianship if a person lacks the ability to meet essential requirements for physical health, safety, or self-care because (1) the person is unable to receive and evaluate information or make or communicate decisions even with appropriate decision-making support and technological assistance, or (2) because the person's own will has been overcome by deception and control exerted by another person; and the respondent's identified needs cannot be met by less restrictive means.

A court may appoint a conservator or issue a protective order in lieu of conservatorship if a person is unable to manage property and financial affairs because (1) of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appropriate technological assistance and appropriate decision-making support, (2) the person's own will has been overcome by deception and control exerted by another person, or (3) the person is missing, detained, or unable to return to the United States; and the individual has property that is likely to be wasted or dissipated unless management is provided, or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money for such purpose.

1. Information about the person filing this petition ("the petitioner").

- a. Name:
- b. Principal residence:
- c. Current street address (if different):
- d. Relationship to respondent:
- e. Interest in the petition:
- e. How, if at all, would the protective arrangement sought benefit the petitioner?
- f. Telephone number (optional):

- 1 **2. Information about the person alleged to need protection (“the respondent”).** Provide
2 the following information to the extent known.
 - 3 a. Name:
 - 4 b. Age:
 - 5 c. Principal residence:
 - 6 d. Current street address (if different):
 - 7 e. If petitioner anticipates the respondent moving, or seeks to move the respondent,
8 proposed new address:
 - 9 f. Does the respondent need an interpreter or translator to communicate with the
10 court or understand court proceedings?
 - 11 g. Telephone number (optional):
- 12
- 13 **3. People who are required to be notified of this petition.** Provide the name and address
14 of any of the people listed in Appendix A.
15
- 16 **4. Existing agents.** Provide the name and address of any person who has been appointed as
17 an agent pursuant to a [power of attorney for finances] or [power of attorney for health
18 care] that the person has not revoked.
19
- 20 **5. Powers requested.** State the powers that petitioner requests the court grant to a guardian
21 or conservator, or the protective order sought.
22
- 23 **6. State why the protective arrangement sought is necessary.** Include a description of
24 the nature and extent of the respondent’s alleged need.
25
- 26 **7. Explain why alternative means are not sufficient to meet the respondent’s alleged**
27 **need.**
28
- 29 **8. State all alternative means of meeting the respondent’s alleged need that have been**
30 **considered or implemented.** If no alternative means have been tried, state the reason
31 they have not been tried.
32
- 33 **9. Provide a general statement of the respondent’s property with an estimate of its**
34 **value.** Include any insurance or pension, and the source and amount of any other
35 anticipated income or receipts.
36
- 37 **10. State the address at which the petitioner proposes the respondent will live if this**
38 **petition is granted.**
39
- 40 **11. For petitions seeking appointment of a conservator:**
 - 41 a. If seeking appointment of a conservator with all powers permissible under this
42 State’s law, explain why appointment of a conservator with fewer powers (ie., a
43 “limited conservatorship”) or other protective order is inappropriate.
44
 - 45 b. If seeking a limited conservatorship, state the property the petitioner requests be
46 placed under the conservator’s control and any proposed limitation on the

conservator's powers and duties.

- c. State the name and address of any proposed conservator and the reason why the proposed conservator should be selected.
- d. State the name and address of any person nominated as conservator by the respondent if the respondent has attained 12 years of age.
- e. If the petition alleges a limitation in the respondent's ability to receive and evaluate information, provide brief description of the nature and extent of the respondent's alleged limitation;
- f. If the petition alleges that the respondent is missing, detained, or unable to return to the United States, state the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts.

13. For petitions seeking appointment of a guardian:

- a. If seeking appointment of a guardian with all powers permissible under this State's law, explain why appointment of a guardian with fewer powers (ie., a "limited guardianship") or other protective order is inappropriate.
- b. If seeking a limited guardianship, state the powers the petitioner requests be granted to the guardian.
- c. State the name and address of any proposed guardian and the reason why the proposed guardian should be selected.
- d. State the name and address of any person nominated as guardian by the respondent, or by the respondent's parent or spouse [or domestic partner] in a will or other signed writing;

- 14. Lawyer.** If petitioner is represented by a lawyer in this matter, state the name, address, and telephone number of the lawyer.

VERIFICATION AND ACKNOWLEDGMENT

I declare under penalty of perjury under the laws of this state that the information above is true and correct to the best of my knowledge.

Signature of Petitioner

Date

Signature of Petitioner's Attorney if
Petitioner is Represented by Counsel

Date

1 **APPENDIX A:**

2 **People whose name and address must be listed in Section 3 of this petition.**

- 3 • The respondent's spouse [or domestic partner], or the respondent is not married [and does not
4 have a domestic partner], any adult with whom the respondent has shared household
5 responsibilities in the past six months;
6 • The respondent's adult children, or, if the respondent has none, the respondent's parents and
7 adult brothers and sisters, or if the respondent has none, one or more adults nearest in kinship
8 to the respondent who can be found;
9 • The respondent's adult stepchildren whom the respondent actively parented during the
10 stepchildren's minor years and with whom the respondent had an ongoing relationship within
11 two years of the petition;
12 • Any person responsible for the care or custody of the respondent;
13 • Any lawyer for the respondent, representative payee, a guardian or conservator acting for a
14 respondent in this state or elsewhere, trustee or custodian of a trust or custodianship of which
15 the respondent is a beneficiary, Veterans Administration fiduciary for the respondent, or an
16 agent designated under a power of attorney, whether for health care or property, in which the
17 respondent is identified as the principal;
18 • Any person known to have routinely provided the individual with decision-making support
19 within six months of the petition.
20 • Any person nominated as guardian or conservator by the respondent.

21 **SECTION 604. MODEL ORDER DENYING GUARDIANSHIP OF ADULT,**

22 **CONSERVATORSHIP OF ADULT.** This form may, but need not be, used by the court to
23 deny a petition for a guardian or conservator for an adult.
24

25 **Order Denying Guardianship and/or Conservatorship of Adult**

26 State of:

27 County of:

28 Court:

29 File Number:

30 Date:

31 In the Matter of:

32 Judge:

33 This is a matter is before the court on a petition for an appointment of a
34 [GUARDIAN/CONSERVATOR/GUARDIAN AND CONSERVATOR] for [RESPONDENT'S
35 NAME]. The court has read the petition and held a hearing to determine whether the court
36 should enter the order requested in the petition.
37

38 **NOTICE.**

39 ____ There is clear and convincing evidence that the respondent was given proper notice of the
40 hearing on the petition.

41 ____ There is not clear and convincing evidence that the respondent was given proper notice of
42 the hearing on the petition.

1 **HEARING.**

2 A hearing was held on: _____

3
4 At the hearing, respondent was:

5 ____ present, in person

6 ____ present, through the use of audio-visual technology

7 ____ not present and there was clear and convincing evidence that respondent refused to attend
8 the hearing

9 ____ not present and there was clear and convincing evidence that it was (1) either impossible
10 or impracticable for respondent to attend, and (2) that respondent would have no ability
11 to participate in the hearing

12
13 At the hearing, respondent was:

14 ____ represented by the following

15 counsel: _____

16 ____ not represented by counsel

17
18 **VENUE, JURISDICTION, and NOTICE.**

19 This court finds that it has jurisdiction over Respondent and over this issue, that this court is a
20 proper venue, and that notice was properly served.

21
22 **COURT'S FINDINGS AS TO RESPONDENT'S ABILITIES AND NEEDS.**

23 This court reviewed the following evidence with regard to the Respondent's abilities and needs:
24 [LIST]

25
26 Based on this evidence, this Court finds that there is clear and convincing evidence to support an
27 appointment. Specifically, this Court finds that:

28 [PROVIDE A DETAILED EXPLANATION OF THE PERSON'S FUNCTIONAL
29 ABILITIES AND LIMITATIONS AND THE EVIDENCE AS TO THOSE ABILITIES
30 AND LIMITATIONS]

31
32 **APPOINTMENT.**

33 ____ This court appoints _____ to serve as guardian and directs
34 issuance of letters of guardianship.

35 ____ This court appoints _____ to serve as conservator and
36 directs issuance of letters of conservatorship.

37
38 **FOR ORDERS APPOINTING A GUARDIAN: LIMITATIONS AND POWERS.**

39
40 **This guardianship is:**

41 ____ **Limited**, and the appointee is granted the following powers:

42 ____ make decisions about the respondent's custody and residence

43 ____ make decisions about the respondent's training and education

44 ____ consent to medical or other professional care, counsel, treatment, or
45 service

46 ____ other: _____

1 ___ **Full**, meaning that the appointee is granted all powers permissible under state law
2 except those required specific court authorization unless that authorization is
3 granted below. [Under this state's law, a plenary guardian does not have the
4 authority to _____.]
5

6 **Special authorizations. In addition to the powers granted above, the appointee may:**
7

8 [List any powers to be granted that require specific court authorization such as the power
9 to move the protected person outside the state or consent to adoption]:
10

11 **Right to marry.**

12 ___ Respondent retains the right to marry.

13 ___ Respondent does not have the right to marry. The court's decision to remove the
14 respondent's right to marry is supported by the following findings:
15

16 **Right to vote.**

17 ___ Respondent retains the right to vote.

18 ___ **Respondent does not have the right to vote. The court's decision to remove the**
19 **respondent's right to vote is supported by the following findings":**
20

21 **FOR ORDERS APPOINTING A CONSERVATOR.**

22 **This conservatorship is:**

23 ___ **Limited**, and the appointee is granted the following powers:

24 ___ institute and maintain proceedings to compel another person to support
25 respondent

26 ___ institute and maintain proceedings to protect respondent's property

27 ___ apply for, receive, and manage the respondent's money and property

28 ___ apply for, receive, and manage the respondent's money and property with
29 the exception of:_____ [specify particular property or
30 accounts or a monthly amount of income]

31 ___ other:_____
32

33 ___ **Full**, meaning that the appointee is granted all powers permissible under state law
34 except those required specific court authorization unless that authorization is granted
35 below. [Under this state's law, a plenary guardian does not have the authority to
36 _____.]
37

38 **Special authorizations. In addition to the powers granted above, the appointee may:**
39

40 [List any powers to be granted that require specific court authorization such as (1) the
41 ability to make gifts other than those of de minimus value; (2) sell real property,
42 encumber an interest in real property, or surrender the primary residence of a person
43 subject to conservatorship; (3) convey, release, or disclaim contingent and expectant
44 interests in property, including marital property rights and any right of survivorship
45 incident to joint tenancy or tenancy by the entireties; (4) (4) exercise or release a power
46 of appointment; (5) create a revocable or irrevocable trust of property of the estate,

whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the person subject to conservatorship; (6) exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value; 7) exercise any right to an elective share in the estate of the deceased spouse [or domestic partner] of the person subject to conservatorship and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; (8) give preferential treatment to creditors that provide property or services used to meet the basic living and care need of the person subject to conservatorship where such preferential treatment would be otherwise impermissible under Section 431(d); and [(9) make, modify, amend, or revoke the will of the person subject to conservatorship.as the power to move the protected person outside the state or consent to adoption]

BOND.

____ Before the issuance of letters, the appointee must file a bond in the amount of: \$____

____ Before the issuance of letters, the appointee must:_____

____ This Court finds that no bond or other or special arrangement is necessary to protect the interests of the protected person.

INVENTORY AND PLAN.

If the appointee is appointed as a Conservator, the appointee is instructed to:

- Within 60 days after appointment, file with this court a plan for protecting, managing, expending, and distributing the assets of the protected person's estate.
- Within 60 days after appointment, file with this court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

If the appointee is appointed as Guardian, the appointed is instructed to:

- Within 90 days after appointment, file with this court a plan shall submit a plan to the court identifying: (1) the living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue for the person subject to guardianship; (2) social or educational activities the guardian expects to facilitate on behalf of the person subject to guardianship; (3) persons, if any, with whom the person subject to guardianship has a relationship and any plans the guardian has for facilitating visits with those persons; (4) the anticipated nature and frequency of the guardian's visits and communication with the person subject to guardianship; (5) goals for the person subject to guardianship, including any goals related to the restoration of the person's rights, and how the guardian anticipates achieving those goals; and (6) whether the person subject to guardianship already has a plan in place and, if so, whether the guardian's plan is consistent with the person's plan.

NOTIFICATION OF THE COURT.

The appointee shall immediately notify the court in writing of:

- Any change in his/own address.

- Any change in the protected person's custodial dwelling or address.
- Any change in the protected person's condition such that the protected person is capable of exercising rights previously removed.

NOTIFICATION OF THIRD PARTIES.

____ The appointee shall notify the following people of any change in the protected person's primary residence:

____ The appointee shall provide copies of his/her annual report to the following people:

____ The appointee shall provide copies of his/her inventory of the protected persons assets to the following people:

____ The appointee shall notify the following people of the death of the protected person or a significant change in the protected person's condition.

REVIEW.

The appointee shall file an annual report with this court.

____ In addition the annual review, this matter is set for review within ____ days to determine:

____ Compliance with the inventory and plan

____ Possible changes in the protected person's abilities

____ Other:

____ No review beyond the annual review is required at this time.

COSTS.

Costs are:

____ Waived

____ Taxed to petitioner

____ Taxed to respondent

CAUTION TO APPOINTEE.

The appointee is bound to exercise all granted powers in accordance with his or her fiduciary duty to the person subject to guardianship or conservatorship. Among other things, the appointee is required exercise authority only as necessitated by the person's limitations and to encourage the person to develop maximum self-reliance and independence including by participating in decisions to the extent feasible. Failure to act according to the appointee's fiduciary duty may result in personal liability.

SIGNATURE.

Signed:

Date:

SECTION 605. MODEL ORDER APPOINTING GUARDIANSHIP OF ADULT, CONSERVATORSHIP OF ADULT. This form may, but need not be, used by the court to appoint a guardian for an adult or a conservator.

Order for Guardianship and/or Conservatorship of Adult

State of:
County of:
Court:
File Number:
Date:
In the Matter of:
Judge:

This is a matter is before the court on a petition for an adjudication that a [GUARDIAN/CONSERVATOR/GUARDIAN AND CONSERVATOR] be appointed for [RESPONDENT]. The court has read the petition and held a hearing to determine whether the court should enter the order requested in the petition.

NOTICE.

___ There is clear and convincing evidence that the respondent was given proper notice of the hearing on the petition.

HEARING.

A hearing was held on:_____

At the hearing, respondent was:

- ___ present, in person
___ present, through the use of audio-visual technology
___ not present and there was clear and convincing evidence that respondent refused to attend the hearing
___ not present and there was clear and convincing evidence that it was (1) either impossible or impracticable for respondent to attend, and (2) that respondent would have no ability to participate in the hearing

At the hearing, respondent was:

- ___ represented by the following
counsel:_____
___ not represented by counsel

VENUE, JURISDICTION, and NOTICE.

This court finds that it has jurisdiction over Respondent and over this issue, that this court is a proper venue, and that notice was properly served.

1 **COURT’S FINDINGS AS TO RESPONDENT’S ABILITIES AND NEEDS.**

2 This court reviewed the following evidence with regard to the Respondent’s abilities and needs:
3 [LIST]
4

5 Based on this evidence, this Court finds that there is clear and convincing evidence to support an
6 appointment. Specifically, this Court finds that:

7 [PROVIDE A DETAILED EXPLANATION OF THE PERSON’S FUNCTIONAL
8 ABILITIES AND LIMITATIONS AND THE EVIDENCE AS TO THOSE ABILITIES
9 AND LIMITATIONS]
10

11 **APPOINTMENT.**

12 ____ This court appoints _____ to serve as guardian and directs
13 issuance of letters of guardianship.

14 ____ This court appoints _____ to serve as conservator and
15 directs issuance of letters of conservatorship.
16

17 **FOR ORDERS APPOINTING A GUARDIAN: LIMITATIONS AND POWERS.**

18
19 **This guardianship is:**

20 ____ **Limited**, and the appointee is granted the following powers:

21 ____ make decisions about the respondent’s custody and residence

22 ____ make decisions about the respondent’s training and education

23 ____ consent to medical or other professional care, counsel, treatment, or
24 service

25 ____ other: _____
26
27

28 ____ **Full**, meaning that the appointee is granted all powers permissible under state law
29 except those required specific court authorization unless that authorization is
30 granted below. [Under this state’s law, a plenary guardian does not have the
31 authority to _____.]
32

33 **Special authorizations. In addition to the powers granted above, the appointee may:**
34

35 [List any powers to be granted that require specific court authorization such as the power
36 to move the protected person outside the state or consent to adoption]:
37

38 **Right to marry.**

39 ____ Respondent retains the right to marry.

40 ____ Respondent does not have the right to marry. The court’s decision to remove the
41 respondent’s right to marry is supported by the following findings:
42

43 **Right to vote.**

44 ____ Respondent retains the right to vote.

45 ____ **Respondent does not have the right to vote. The court’s decision to remove the**
46 **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 required specific court authorization unless that authorization is granted

15 below. [Under this state's law, a plenary 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 person

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 entireties; (4) (4) exercise or release a power

26 of appointment; (5) create a revocable or irrevocable trust of property of the estate,

27 whether or not the trust extends beyond the duration of the conservatorship, or revoke or

28 amend a trust revocable by the person subject to conservatorship; (6) exercise rights to

29 elect options and change beneficiaries under insurance policies and annuities or surrender

30 the policies and annuities for their cash value; 7) exercise any right to an elective share in

31 the estate of the deceased spouse [or domestic partner] of the person subject to

32 conservatorship and to renounce or disclaim any interest by testate or intestate succession

33 or by transfer inter vivos; (8) give preferential treatment to creditors that provide

34 property or services used to meet the basic living and care need of the person subject to

35 conservatorship where such preferential treatment would be otherwise impermissible

36 under Section 431(d); and [(9) make, modify, amend, or revoke the will of the person

37 subject to conservatorship.as the power to move the protected person outside the state or

38 consent to adoption]

39

40 **BOND.**

41 ___ Before the issuance of letters, the appointee must file a bond in the amount of: \$___

42 ___ Before the issuance of letters, the appointee must: _____

43

44 ___ This Court finds that no bond or other or special arrangement is necessary to protect the

45 interests of the protected person.

46

1 **INVENTORY AND PLAN.**

2 If the appointee is appointed as a Conservator, the appointee is instructed to:

- 3 • Within 60 days after appointment, file with this court a plan for protecting, managing,
4 expending, and distributing the assets of the protected person's estate.
5 • Within 60 days after appointment, file with this court a detailed inventory of the estate
6 subject to the conservatorship, together with an oath or affirmation that the inventory is
7 believed to be complete and accurate as far as information permits.
8

9 If the appointee is appointed as Guardian, the appointed is instructed to:

- 10 • Within 90 days after appointment, file with this court a plan shall submit a plan to the
11 court identifying: (1) the living arrangement, services, and supports the guardian expects
12 to arrange, facilitate, or continue for the person subject to guardianship; (2) social or
13 educational activities the guardian expects to facilitate on behalf of the person subject to
14 guardianship; (3) persons, if any, with whom the person subject to guardianship has a
15 relationship and any plans the guardian has for facilitating visits with those persons; (4)
16 the anticipated nature and frequency of the guardian's visits and communication with the
17 person subject to guardianship; (5) goals for the person subject to guardianship, including
18 any goals related to the restoration of the person's rights, and how the guardian
19 anticipates achieving those goals; and (6) whether the person subject to guardianship
20 already has a plan in place and, if so, whether the guardian's plan is consistent with the
21 person's plan.
22

23 **NOTIFICATION OF THE COURT.**

24 The appointee shall immediately notify the court in writing of:

- 25 • Any change in his/own address.
26 • Any change in the protected person's custodial dwelling or address.
27 • Any change in the protected person's condition such that the protected person is capable
28 of exercising rights previously removed.
29

30 **NOTIFICATION OF THIRD PARTIES.**

31 ____ The appointee shall notify the following people of any change in the protected person's
32 primary residence:
33

34 ____ The appointee shall provide copies of his/her annual report to the following people:
35

36 ____ The appointee shall provide copies of his/her inventory of the protected persons assets to
37 the following people:
38

39 ____ The appointee shall notify the following people of the death of the protected person or a
40 significant change in the protected person's condition.
41

42 **REVIEW.**

43 The appointee shall file an annual report with this court.
44

45 ____ In addition the annual review, this matter is set for review within ____ days to determine:
46 ____ Compliance with the inventory and plan

_____ Possible changes in the protected person's abilities

_____ Other:

_____ No review beyond the annual review is required at this time.

COSTS.

Costs are:

_____ Waived

_____ Taxed to petitioner

_____ Taxed to respondent

CAUTION TO APPOINTEE.

The appointee is bound to exercise all granted powers in accordance with his or her fiduciary duty to the person subject to guardianship or conservatorship. Among other things, the appointee is required exercise authority only as necessitated by the person's limitations and to encourage the person to develop maximum self-reliance and independence including by participating in decisions to the extent feasible. Failure to act according to the appointee's fiduciary duty may result in personal liability.

SIGNATURE.

Signed:

Date:

SECTION 606. MODEL NOTIFICATION OF RIGHTS FOR ADULT SUBJECT

TO GUARDIANSHIP, CONSERVATORSHIP. This form may, but need not be, used by to

notify a person subject to guardianship or conservatorship of the person's rights pursuant to

Section 311 and Section 412.

Notification of Rights

You are receiving this notice because a guardian and/or conservator has been appointed for you. This notice tells you about some of the important rights you have. It does not tell you about all of the rights you have. If you have questions about your rights, you have the right to ask an attorney to explain your rights to you. You also have the right to ask other people, including your guardian or conservator, to help you understand your rights.

General rights:

You have the right to exercise any rights that the court has not granted to your guardian and/or conservator.

You also have the right to request the court:

- end your guardianship and/or conservatorship;
- increase or decrease the powers granted to your guardian and/or conservator, or make other changes to the terms of this person's appointment, and
- replace the person who was appointed with someone else.

You also have a right to hire an attorney to represent you in any of the matters listed above.

Additional rights for persons for whom a guardian has been appointed:

As a person subject to guardianship, you have a right to:

- (1) be involved in decisions affecting you, including decisions about your care, where you live, your activities, and your social interactions, to the extent reasonably possible;
- (2) be involved in decisions about your health care to the extent reasonably feasible, and to have other people help you understand the risks and benefits of health care options where practicable;
- (3) be notified of change in your primary residence or a permanent move to a nursing home or other restrictive or secure facility at least 14 days in advance unless the guardian has proposed this change in their plan or the court has expressly authorized it;
- (4) ask the court to not allow your guardian to change where you live or to sell or surrender your primary residence by [insert process for asking the court to such a move];
- (5) vote and get married unless the court order appointing your guardian states that you cannot do so;
- (6) receive a copy of the guardian's report and the guardian's plan; and
- (7) communicate, visit, or interact with other persons (this includes the right to have visitors and the right to make or receive telephone calls, personal mail, or electronic communications) unless:
 - your guardian has been specifically authorized by the court to restrict such communications, visits, or interactions;
 - a protective order is in effect that limits contact between you and other persons; or
 - your guardian has good cause to believe the restriction is necessary because interactions with a specified person poses a risk of significant physical, psychological, or financial harm to you.

Additional rights for persons for whom a conservator has been appointed:

As a person subject to conservatorship, you have a right to:

- (1) participate in decision-making about the management of your property to the extent possible; and
- (2) receive a copy of the conservator's inventory, report, and plan of conservatorship.