

D R A F T

FOR DISCUSSION ONLY

REVISED UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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REVISED UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 6, 2016

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**REVISED UNIFORM GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS ACT**

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1 **REVISED UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

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

6 **SECTION 102. DEFINITIONS.** In this [act]:

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

11 (2) “Conservator” means a person who is appointed by a court to make decisions with
12 respect to the property and financial affairs of a person subject to conservatorship. The term
13 includes a limited conservator.

14 (3) “Court” means the [designate appropriate court].

15 (4) “Decision-making support” means that one or more persons of the individual’s
16 choosing assist the individual to understand the nature and consequences of potential personal
17 and financial decisions so that the individual can make such decisions and, where consistent with
18 the person’s wishes, assist the individual to communicate such decisions once made

19 (5) “Full conservatorship” means a conservatorship under which the conservator is
20 granted all powers available under state conservatorship law with no restriction except as
21 provided in this Act.

22 (6) “Full guardianship” means a guardianship under which the guardian is granted all
23 powers available under state guardianship law with no restriction except as provided in this Act.

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

6 (8) “Guardian ad litem” means a person appointed to inform the court about, and
7 represent, the needs and best interests of another person.

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

14 (10) “Letters” includes letters of guardianship and letters of conservatorship.

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

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

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

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

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

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

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

6 (18) “Person subject to guardianship” means an adult for whom a guardian has been
7 appointed.

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

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

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

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

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

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

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

22 (a) Except to the extent the guardianship is subject to the [insert citation to Uniform
23 Child Custody Jurisdiction and Enforcement Act], the court of this state has jurisdiction over

guardianship for minors domiciled or present in this state. The court of this state has jurisdiction over conservatorship for minors domiciled in or having property located in this state.

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

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

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

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

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

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

SECTION 105. TRANSFER OF PROCEEDINGS.

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

(1) After the appointment of a guardian or conservator or entry of protective order in lieu of guardianship or conservatorship, the court making the appointment or entering the order

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

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

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

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

SECTION 106. VENUE.

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

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

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

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

SECTION 107. PRACTICE IN COURT.

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

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

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

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

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

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

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

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

23 (c) The co-guardian, co-conservator, or successor guardian or conservator becomes

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

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

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

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

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

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

20 (d) Termination of the appointment of a guardian or conservator does not affect liability
21 for previous acts or the obligation to account for actions taken on behalf of the person subject to
22 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 person subject to guardianship, conservatorship, or protective order in lieu of guardianship or
12 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 person conservatorship or protective order in lieu of conservatorship is an interested person in a
7 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. COMPENSATION AND EXPENSES OF APPOINTEES,**
12 **LAWYERS, AND OTHER PERSONS IN GENERAL.** If not otherwise compensated for
13 services rendered, a lawyer whose services resulted in an order beneficial to the estate of a
14 person subject to guardianship, conservatorship, or protective order in lieu of guardianship or
15 conservatorship , a lawyer for the respondent or person subject to guardianship, conservatorship,
16 or protective order in lieu of guardianship or conservatorship , or any other person appointed by
17 the court is entitled to reasonable compensation from the estate and reimbursement of reasonable
18 expenses from the estate. Such fees and expenses must be approved by the court before
19 compensation is paid or reimbursement is made, but not prior to the provision of such services or
20 expenses being incurred.

21 **SECTION 118. PROTECTIVE ORDER IN LIEU OF GUARDIANSHIP OR**
22 **CONSERVATORSHIP.**

23 (a) If the court finds that the basis for appointment of a guardian or conservator exists,

1 the court, in lieu of appointing a conservator or a guardian, may:

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

5 (A) a particular medical treatment or refusal of a particular medical
6 treatment;

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

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

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

10 (E) purchase of an annuity;

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

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

15 (2) authorize, direct, or ratify any other contract, trust, will, or transaction relating
16 to the property and business affairs of the respondent, including a settlement of a claim, upon a
17 determination that it is in the best interest of the respondent.

18 (b) In deciding whether to approve under this section a protective arrangement or other
19 transaction related to the property or financial affairs of a respondent, the court shall consider the
20 factors described in Section 414(c).

21 (c) In deciding whether to approve under this section a protective arrangement or other
22 transaction related to the personal affairs of the adult respondent, the court shall consider the
23 factors described in Section 313(a), as well as the factors described in Section 315 if the decision

1 is related to medical treatment or other health care issues.

2 (d) In deciding whether to approve under this section a protective arrangement or other
3 transaction related to the personal affairs of a minor, the court shall consider the factors
4 described in Section 206.

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

8 **SECTION 118. REGISTRATION OF ORDERS.**

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

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

20 **SECTION 119. EFFECT OF REGISTRATION OF ORDERS.**

21 (a) On registration of a guardianship or conservatorship order from another state, the
22 guardian or conservator may exercise in this state all powers authorized in the order of
23 appointment except as prohibited under the law of this state other than this [act], including

maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

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

SECTION 120. FACILITY OF TRANSFERS TO MINOR.

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

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

(2) a guardian of the minor;

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

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

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

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

1 emancipation or attaining majority.

2 **ARTICLE 2**

3 **GUARDIANSHIP OF MINOR**

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

8 **SECTION 202. PARENTAL APPOINTMENT OF GUARDIAN OF MINOR.**

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

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

17 (c) Subject to Section 203, the appointment of a guardian becomes effective upon the
18 appointing parent's death, a judicial determination that the parent is unwilling or unable to
19 exercise parental rights, or a written determination by a physician who has examined the parent
20 that the parent is no longer able to care for the child, whichever first occurs.

21 (d) The guardian becomes eligible to act upon the filing of an acceptance of
22 appointment, which must be filed by the later of 30 days after the guardian's appointment
23 becomes effective or 10 days after the guardian learns of the event triggering the appointment.

1 The guardian shall:

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

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

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

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

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

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

1 the acceptance of the appointment.

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

5 **SECTION 203. OBJECTION BY MINOR OR OTHERS TO PARENTAL**

6 **APPOINTMENT.** Until the court has confirmed an appointee under Section 202, a minor who
7 is the subject of an appointment by a parent and who has attained 12 years of age, the other
8 parent, or a person other than a parent or guardian having care or custody of the minor may
9 prevent or terminate the appointment at any time by filing a written objection in the court in
10 which the appointing instrument is filed and giving notice of the objection to the guardian and
11 any other persons entitled to notice of the acceptance of the appointment. An objection may be
12 withdrawn, and if withdrawn is of no effect. The objection does not preclude judicial
13 appointment of the person selected by the parent. The court may treat the filing of an objection
14 as a petition for the appointment of an emergency or a temporary guardian under Section 204,
15 and proceed accordingly.

16 **SECTION 204. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR:**

17 **CONDITIONS FOR APPOINTMENT.**

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

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

22 (1) the parents consent;

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

1 (3) the parents are unwilling or unable to exercise their parental rights.

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

6 (d) If necessary and on petition or motion and whether or not the conditions of
7 subsection (b) have been established, the court may appoint a temporary guardian for a minor on
8 a showing that an immediate need exists and that the appointment would be in the best interest of
9 the minor. Notice in the manner provided in Section 112 must be given to the parents and to a
10 minor who has attained 12 years of age. Except as otherwise ordered by the court, the temporary
11 guardian has the authority of a full guardian, but the duration of the temporary guardianship may
12 not exceed nine months. Not later than seven days after the appointment, the temporary guardian
13 shall send or deliver a copy of the order to all individuals who would be entitled to notice of
14 hearing under Section 205.

15 (e) If the court finds that following the procedures of this [article] will likely result in
16 substantial harm to a minor's health or safety and that no other person appears to have authority
17 to act in the circumstances, the court, on appropriate petition, may appoint an emergency
18 guardian for the minor. The duration of the guardian's authority may not exceed [30] days and
19 the guardian may exercise only the powers specified in the order. Reasonable notice of the time
20 and place of a hearing on the petition for appointment of an emergency guardian must be given
21 to the minor, if the minor has attained 12 years of age, to each living parent of the minor, and to a
22 person having care or custody of the minor, if other than a parent. The court may dispense with
23 the notice if it finds from affidavit or testimony that the minor will be substantially harmed

1 before a hearing can be held on the petition. If the guardian is appointed without notice, notice
2 of the appointment must be given not later than 48 hours after the appointment and a hearing on
3 the appropriateness of the appointment held not later than [five] days after the appointment.

4 **SECTION 205. JUDICIAL APPOINTMENT OF GUARDIAN OF MINOR:**
5 **PROCEDURE.**

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

9 (1) the minor, if the minor has attained 12 years of age and is not the petitioner;

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

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

16 (4) any person nominated as guardian by the minor if the minor has attained 12
17 years of age;

18 (5) any appointee of a parent whose appointment has not been prevented or
19 terminated under Section 203; and

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

22 (b) The court, on hearing, shall make the appointment if it finds that a qualified person
23 seeks appointment, venue is proper, the required notices have been given, the conditions of

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

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

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

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

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

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

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

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

20 **SECTION 207. DUTIES OF GUARDIAN OF PROTECTED MINOR.**

21 (a) Except as otherwise limited by the court, a guardian of a protected minor has the
22 duties and responsibilities of a parent regarding the protected minor's support, care, education,
23 health, and welfare. A guardian shall act at all times in the protected minor's best interest and

1 exercise reasonable care, diligence, and prudence.

2 (b) A guardian shall:

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

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

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

11 (4) conserve any excess money of the protected minor for the protected minor's
12 future needs, but if a conservator has been appointed for the estate of the protected minor, the
13 guardian shall pay the money at least quarterly to the conservator to be conserved for the
14 protected minor's future needs;

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

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

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

1 **SECTION 208. POWERS OF GUARDIAN OF PROTECTED MINOR.**

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

4 (b) A guardian may:

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

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

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

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

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

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

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

1 **SECTION 209. DELEGATION OF POWER BY PARENT OR GUARDIAN OF**
2 **PROTECTED MINOR.**

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

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

10 (1) selecting an agent;

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

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

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

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

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

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

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

1 **SECTION 210. COMPENSATION, RIGHTS, AND IMMUNITIES OF**
2 **GUARDIAN OF MINOR SUBJECT TO GUARDIANSHIP; LIMITATIONS.**

3 (a) A guardian is entitled to reasonable compensation for services as guardian and to
4 reimbursement for room, board, and clothing provided by the guardian to the minor subject to
5 guardianship, but only as approved by the court. If a conservator, other than the guardian or a
6 person who is affiliated with the guardian, has been appointed for the estate of the minor subject
7 to guardianship, reasonable compensation and reimbursement to the guardian may be approved
8 and paid by the conservator without order of the court. In determining the reasonableness of the
9 guardian's compensation, the court or conservator shall consider:

- 10 (1) the necessity and quality of the services provided;
- 11 (2) the guardian's experience, training, professional standing, and skills;
- 12 (3) the difficulty of tasks performed, including the degree of skill and care
13 required;
- 14 (4) the conditions and circumstances under which services were performed,
15 including whether they were provided outside of regular business hours or under dangerous or
16 extraordinary conditions;
- 17 (5) the effect of those services on the minor subject to guardianship; and
- 18 (6) the fees customarily paid to persons who perform like services in the
19 community.

20 (b) A guardian need not use the guardian's personal funds for the protected minor's
21 expenses. A guardian is not liable to a third person for acts of the protected minor solely by
22 reason of the guardianship. A guardian is not liable for injury to the protected minor resulting
23 from the negligence or act of a third person providing medical or other care, treatment, or service

1 for the protected minor except to the extent that a parent would be liable under the
2 circumstances.

3 **SECTION 211. TERMINATION OF GUARDIANSHIP OF PROTECTED**
4 **MINOR; OTHER PROCEEDINGS AFTER APPOINTMENT.**

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

7 (b) A guardian's appointment terminates upon the death, resignation, or removal of the
8 guardian. A resignation of a guardian is effective when approved by the court. Termination of a
9 guardian's appointment does not affect the guardian's liability for previous acts or the obligation
10 to account for actions taken on behalf of the protected minor.

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

15 **ARTICLE 3**

16 **GUARDIANSHIP OF AN ADULT**

17 **SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN.**

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

19 (1) appoint a limited or full guardian for a respondent who is an adult only if it
20 finds by clear and convincing evidence that:

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

23 (i) the respondent is unable to receive and evaluate information or

1 make or communicate decisions even with appropriate decision-making support and
2 technological assistance, or

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

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

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

9 (b) The court shall grant to a guardian only those powers necessitated by the limitations
10 and demonstrated needs of the person subject to guardianship and make appointive and other
11 orders that will encourage the development of the person's maximum self-determination and
12 independence. A full guardianship is not appropriate if a limited guardianship would meet the
13 needs of the person subject to guardianship.

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

15 (a) An individual or a person interested in the individual's welfare may petition for a
16 determination that the basis for appointment of a guardian exists and for the appointment of a
17 limited or full guardian for the individual.

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

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

1 appointment is made;

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

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

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

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

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

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

21 (6) the name and address of any person nominated as guardian by the
22 respondent's parent or spouse [or domestic partner] in a will or other signed writing;

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

1 proposed guardian should be selected;

2 (8) the name and address of any person known to have routinely provided the
3 individual with decision-making support within six months of the petition;

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

9 (10) if a full guardianship is requested, the reason why limited guardianship is
10 inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited
11 guardian;

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

15 (12) the respondent's need for an interpreter or translator if the respondent needs
16 an interpreter or translator in order to effectively communicate with the court or understand court
17 proceedings.

18 **SECTION 303. NOTICE.**

19 (a) A copy of a petition for guardianship and notice of the hearing on the petition must
20 be served personally on the respondent. The notice must be in plain language, in at least 16-point
21 font, and, to the extent feasible, in a language in which the respondent is proficient. The notice
22 must include a statement that the respondent must be physically present unless excused by the
23 court, inform the respondent of the respondent's rights at the hearing, and include a description

1 of the nature, purpose, and consequences of an appointment. A failure to serve the respondent
2 with a notice substantially complying with this subsection precludes the court from granting the
3 petition. The petitioner shall make reasonable efforts to provide the notice in a language in
4 which the respondent is proficient.

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

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

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

16 **SECTION 304. PRELIMINARIES TO HEARING: APPOINTMENT OF**
17 **[VISITOR].**

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

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

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

4 (2) determine the respondent's views about the proposed guardian, the proposed
5 guardian's powers and duties, and the scope and duration of the proposed guardianship;

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

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

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

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

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

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

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

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

19 (1) a recommendation whether a lawyer should be appointed to represent the
20 respondent;

21 (2) a summary of self-care and independent living tasks the respondent can
22 manage without assistance or with existing supports, could manage with the assistance of
23 supportive services or benefits, including use of appropriate technological assistance and

1 appropriate decision-making support, and cannot manage;

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

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

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

10 (6) a recommendation as to whether a professional evaluation or further
11 evaluation is necessary;

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

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

17 (9) any other matters the court directs.

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

20 **Alternative A**

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

22 (1) requested by the respondent;

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

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

2 **Alternative B**

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

5 **End of Alternatives**

6 (b) The lawyer representing the respondent in a guardianship proceeding shall make
7 reasonable efforts to ascertain the respondent's wishes.

8 (c) The lawyer representing the respondent in a guardianship proceeding shall advocate
9 for the respondent's wishes to the extent that those wishes are reasonably ascertainable.

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

13 ***Legislative Note:** Those states that enact Alternative B of subsection (a) which requires*
14 *appointment of counsel for the respondent in all proceedings for appointment of a guardian*
15 *should not enact Section 304(d) (1).*
16

17 **SECTION 306. PROFESSIONAL EVALUATION.**

18 (a) At or before a hearing under this [article], the court shall order a professional
19 evaluation of the respondent if the respondent so demands. The court shall also order a
20 professional evaluation unless the court finds that it has sufficient information to determine the
21 respondent's cognitive and functional abilities and limitations without such an evaluation.

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

1 The examiner promptly shall file a written report with the court. Unless otherwise directed by
2 the court, the report must contain:

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

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

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

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

10 **SECTION 307. CONFIDENTIALITY OF RECORDS.**

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

13 (1) the court;

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

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

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

18 (b) The person who has been the subject of a guardianship proceeding, whether or not a
19 guardian was appointed, the person's attorney, and any person entitled to notice under Section
20 310(d) are entitled to access court records pertaining to the guardianship or guardianship
21 proceeding, including the annual report and the guardian's plan. In addition, any person with an
22 interest in the welfare of the person subject to guardianship or other good cause may petition the
23 court for access to court records pertaining to a guardianship or guardianship proceeding,

1 including the annual report and the guardian's plan. The court shall grant access if access is in
2 the best interest of the respondent or person subject to guardianship, or would further the public
3 interest and not endanger the respondent or person subject to guardianship.

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

5 (a) The respondent shall attend the hearing unless the court finds by clear and convincing
6 evidence that:

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

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

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

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

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

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

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

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

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

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

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

15 (1) a guardian, other than a temporary or emergency guardian, currently acting for
16 the respondent in this state or elsewhere;

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

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

22 (4) the spouse [or domestic partner] of the respondent or an individual nominated
23 by will or other signed writing of a deceased spouse [or domestic partner];

1 (5) an adult child of the respondent;

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

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

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

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

11 (b) With respect to persons having equal priority, the court shall select the person it
12 considers best qualified. In determining who is best qualified, the court shall consider the
13 potential guardian's skills and relationship with the respondent, the expressed wishes of the
14 respondent, the extent to which the potential guardian and the respondent have similar values and
15 preferences, and the likelihood that the potential guardian will be able to successfully satisfy the
16 duties of a guardian.

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

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

22 **SECTION 310. ORDER OF APPOINTMENT.**

23 (a) A court order granting a guardianship shall clearly state:

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

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

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

11 (4) whether or not the person subject to guardianship retains the right to marry
12 and, if not, the court's findings that support removing that right; if no such statement is made, the
13 person subject to guardianship retains the right to marry.

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

17 (c) A court order granting a limited guardianship clearly shall state the powers granted to
18 the guardian.

19 (d) The court shall, as part of any order granting a guardianship, identify any persons
20 who shall subsequently be entitled to notice of the person's rights, a change in the primary
21 residence of the person subject to guardianship, a copy of the guardian's annual report and other
22 court records, or notice of the death of the person subject to guardianship or significant change in
23 the condition of the person subject to guardianship. The court shall grant the right to such notice

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

5 **SECTION 311. NOTIFICATION OF PERSON SUBJECT TO GUARDIANSHIP**
6 **OF ORDER; RIGHTS.**

7 (a) Not later than 14 days after an appointment, a guardian shall send or deliver to the
8 person subject to guardianship and to all other persons given notice of the hearing on the petition
9 a copy of the order of appointment, together with a notice of the right to request termination or
10 modification.

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

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

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

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

4 (4) be notified of a sale or surrender of the person's primary residence and the
5 right to be notified of a permanent move to a nursing home or other restrictive or secure facility
6 at least 14 days in advance unless the action is proposed in the guardian's plan or expressly
7 authorized by the court, and the right to contest and the process for contesting such sale,
8 surrender, or change in dwelling place;

9 (5) communicate, visit, or interact with other persons, including the right to
10 receive visitors, telephone calls, personal mail, or electronic communications, unless:

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

13 (B) a protective order is in effect that limits contact between the person
14 subject to guardianship and such other persons; or

15 (C) the guardian has good cause to believe the restriction is necessary
16 because interactions with another person poses a risk of significant physical, psychological, or
17 financial harm to the person subject to guardianship; and

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

19 **SECTION 312. EMERGENCY GUARDIAN.**

20 (a) If the court finds that compliance with the procedures of this [article] will likely
21 result in substantial harm to the respondent's health, safety, or welfare, and that no other person
22 appears to have authority and willingness to act in the circumstances, the court, on petition by a
23 person interested in the respondent's welfare or on its own motion, may appoint an emergency

1 guardian whose authority may not exceed [60] days and who may exercise only the powers
2 specified in the order. Immediately upon receipt of the petition for an emergency guardianship,
3 the court shall appoint a lawyer to represent the respondent in the proceeding. Except as
4 otherwise provided in subsection (b), reasonable notice of the time and place of a hearing on the
5 petition must be given to the respondent and any other persons as the court directs.

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

12 (c) Appointment of an emergency guardian, with or without notice, is not a
13 determination that the conditions required for appointment of a limited or full guardian under
14 Section 301 of this Act are satisfied.

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

18 **SECTION 313. TEMPORARY SUBSTITUTE GUARDIAN.**

19 (a) If the court finds that a guardian is not effectively performing the guardian's duties
20 and that the welfare of the person subject to guardianship requires immediate action, it may
21 appoint a temporary substitute guardian for the person for a specified period not exceeding six
22 months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed
23 has the powers set forth in the previous order of appointment. The authority of any full or

1 limited guardian previously appointed by the court is suspended as long as a temporary substitute
2 guardian has authority. If an appointment is made without previous notice to the person subject
3 to guardianship or the affected guardian, the court, not later than five days after the appointment,
4 shall inform the person subject to guardianship or guardian of the appointment.

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

8 **SECTION 314. DUTIES OF GUARDIAN.**

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

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

16 (1) become or remain personally acquainted with the person subject to
17 guardianship and
18 maintain sufficient contact, including regular visitation, with the person to know of the person's
19 abilities, limitations, needs, opportunities, and physical and mental health;

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

23 (3) make reasonable efforts to identify and facilitate supportive relationships and

1 services for the person subject to guardianship;

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

5 (1) take reasonable care of the personal effects of the person subject to
6 guardianship and bring a proceeding for a conservatorship or protective order in lieu of
7 conservatorship if necessary to protect the person's property;

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

10 (3) conserve any excess money of the person subject to guardianship for the
11 person's future needs, but if a conservator has been appointed for the estate of the protected
12 person, the guardian shall pay the money to the conservator, at least quarterly, to be conserved
13 for the person's future needs;

14 (4) monitor the quality of services, including long-term care services, provided to
15 the person subject to guardianship;

16 (d) A guardian making a decision on behalf of the person subject to guardianship shall
17 make the decision the guardian reasonably believes the person would make if able. To determine
18 what decision the person would make if able, the guardian shall consider such factors as the
19 person's prior or current directions, preferences, opinions, values, and actions to the to the extent
20 actually known or reasonably ascertainable by the guardian. If the guardian does not know or
21 cannot reasonably ascertain the decision that the person subject to guardian would probably
22 make if able, the guardian shall act in accordance with the person's best interests. In determining
23 the best interests of the person subject to guardianship, the guardian shall take into account

1 information received from professionals and persons who demonstrate sufficient interest in the
2 welfare of the person subject to guardianship, other information that the guardian believes the
3 person would have considered if able to act, and other factors that a reasonable person in the
4 circumstances of the person subject to guardianship would consider, including consequences for
5 others. Notwithstanding the foregoing, the guardian shall not make a decision that would
6 unreasonably harm or endanger the welfare or interests of the person subject to guardianship
7 even if the guardian believes the person would probably make that decision if able.

8 (e) A guardian shall immediately notify the court if the condition of the person subject to
9 guardianship has changed so that the person is capable of exercising rights previously removed
10 and of any change in the dwelling or address of the person subject to guardianship.

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

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

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

17 (2) if otherwise consistent with the terms of any order by a court of competent
18 jurisdiction relating to custody of the person subject to guardianship, take custody of the person
19 and establish the person's place of dwelling, however, the guardian must:

20 (A) select a residential setting that the guardian believes the person would
21 select if able in accordance with the decision-making standard set forth in Section 314(d) of this
22 Act. If the guardian does not know or cannot reasonably ascertain what setting the person
23 subject to guardianship would probably choose if able, the guardian shall choose a residential

1 setting that is consistent with the person's best interests in accordance with the decision-making
2 standard set forth in Section 314(d) of this Act;

3 (B) in selecting among residential settings, give priority to a residential
4 setting that is in a location that will allow the person subject to guardianship to interact with
5 persons important to the person and that meets the person's needs in the least restrictive manner
6 reasonably possible unless doing so would be inconsistent with decision-making standard set
7 forth in Section 314(d) of this Act; and

8 (C) within 30 days of a change in the dwelling of the person subject to
9 guardianship, provide notice of a change to the court, the person subject to guardianship, and any
10 persons identified as entitled to such notice in the court order appointing the guardian or in a
11 subsequent court order. The notice shall include the address and nature of the new dwelling and
12 state whether the person subject to guardianship received advance notification of the change and
13 whether the person objected to the change;

14 (D) only establish or move the permanent place of dwelling of a person
15 subject to guardianship to a nursing home or other restrictive or secure facility if such a move is
16 set forth in the guardian's plan, or upon express authorization of the court, or if notice of the
17 move is provided at least 14 days prior to such move to the person subject to guardianship and all
18 persons entitled to such notice pursuant to Section 310(d) of this Act;

19 (E) only establish or move the place of dwelling of a person subject to
20 guardianship outside this state upon express authorization of the court; and

21 (F) only take action that would result in the sale or surrender the person's primary residence if
22 that action is specifically set forth in the guardian's plan, or upon express authorization of the
23 court, or if notice of such action is provided to at least 14 days prior to such action to the person

1 subject to guardianship and all persons entitled to such notice pursuant to Section 310(d) of this
2 Act.

3 (3) if a conservator for the estate of the protected person has not been appointed
4 commence a proceeding, including an administrative proceeding, or take other appropriate action
5 to compel another person to support the person subject to guardianship or to pay money for the
6 benefit of the person subject to guardianship;

7 (4) consent to medical or other care, treatment, or service for the person subject to
8 guardianship if:

9 (A) the guardian involves the person subject to guardianship in health-care
10 decision-making to the extent reasonably feasible, including by encouraging and supporting the
11 person in understanding the risks and benefits of health care options where practicable;

12 (B) the guardian defers to decisions made pursuant to a valid [power of
13 attorney for health care] [made pursuant to the Uniform Health-Care Decisions Act (1993)]
14 executed by the person subject to guardianship prior to the appointment of the guardian and
15 cooperates to the extent feasible with the agent making such decisions; and

16 (C) when making health care decisions on behalf of the person subject to
17 guardianship, the guardian takes into account:

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

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

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

23 (6) receive the personally identifiable health-care information of the person

1 subject to guardianship.

2 (b) The court may specifically authorize the guardian to consent to the adoption of the
3 person subject to guardianship[; consent or deny consent to the marriage of the person if the
4 person has been stripped of the right to marry under Section 310 of this Act; consent or deny
5 consent to the divorce or annulment of the marriage of the person, or petition for divorce or
6 annulment of marriage of the person; petition for a declaration of invalidity of the person's
7 marriage or oppose such a petition]. In determining whether to authorize a power in this
8 subsection, the court shall consider whether the underlying act would be in accordance with the
9 person's preferences, values, and prior directions and whether the underlying act would be in the
10 person's best interest.

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

12 (a) A guardian, by power of attorney, may delegate to another person, any power
13 regarding care, custody, or property of the person subject to guardianship, except the power to
14 consent to marriage, adoption, or divorce. The guardian shall exercise reasonable care, skill, and
15 caution in:

- 16 (1) selecting an agent;
- 17 (2) establishing the scope and terms of a delegation, consistent with the purposes
18 and terms of the guardianship;
- 19 (3) periodically reviewing an agent's overall performance and compliance with
20 the terms of the delegation; and
- 21 (4) redressing an action or decision of an agent which would constitute a breach
22 of the guardian's duties if performed by the guardian.

23 (b) If the delegation of powers is for a period in excess of 30 days, the guardian may

1 delegate powers only if the guardian is unavailable to act or for other good cause.

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

7 (d) A guardian who complies with subsections (a), (b), and (c) is not liable to the person
8 subject to guardianship or to the estate of the person for the decisions or actions of the agent to
9 whom a function was delegated.

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

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

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

15 **SECTION 317. COMPENSATION OF GUARDIDAN.**

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

22 (b) In determining the reasonableness of the guardian's compensation, the court or
23 conservator shall consider:

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

(2) the guardian's experience, training, professional standing, and skills;

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

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

(5) the effect of those services on the person subject to guardianship; and

(6) the fees customarily paid to persons who perform like services in the community.

(c) If the person subject to guardianship seeks court intervention to modify or terminate the guardianship or to remove the guardian, the guardian may only be compensated for time spent opposing such efforts to the extent that the court has determined that guardian's opposition is or was necessary to protect the interests of the person subject to guardianship.

SECTION 318. IMMUNITIES OF GUARDIAN; SPECIAL LIMITATIONS ON GUARDIAN'S POWER

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

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

(c) A guardian, without authorization of the court, may not revoke a [power of attorney

1 for health care] [made pursuant to the Uniform Health-Care Decisions Act (1993)] or a power of
2 attorney for finances [made pursuant to the Uniform Power of Attorney Act (2006)] which the
3 person subject to guardianship executed prior to the guardian's appointment. If a [power of
4 attorney for health care] [made pursuant to the Uniform Health-Care Decisions Act (1993)] is in
5 effect, absent an order of the court to the contrary, a health-care decision of the agent takes
6 precedence over that of a guardian and a guardian shall cooperate with the agent to the extent
7 feasible. If a power of attorney for finances [made pursuant to the Uniform Power of Attorney
8 Act (2006)] is in effect, absent an order of the court to the contrary, a decision by the agent that
9 the agent is authorized to make under the power of attorney for finances takes precedence over
10 that of a guardian and the guardian shall cooperate with the agent to the extent feasible.

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

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

18 (1) specifically authorized to do so by the court;

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

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

1 **SECTION 319. GUARDIAN’S PLAN.**

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

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

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

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

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

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

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

16 (b) The court shall review the guardian’s plan to determine whether or not to approve it.
17 In deciding whether to approve the plan, the court shall consider whether the plan is consistent
18 with the duties set forth in Section 312.

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

22 **SECTION 320. GUARDIAN’S REPORTS; MONITORING OF GUARDIANSHIP.**

23 (a) Not later than 30 days after appointment, a guardian shall report to the court in

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

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

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

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

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

13 (5) activities on behalf of the person subject to guardianship;

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

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

21 (8) anything of more than de minimis value that the guardian or an immediate
22 family member of the guardian has received from individuals providing goods or services to the
23 person subject to guardianship;

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

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

6 (11) plans for future care and support;

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

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

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

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

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

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

18 (2) the guardianship should continue; and

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

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

23 (1) shall notify the person subject to guardianship and any other person entitled to

1 such notification according to the initial court order or a subsequent court order;

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

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

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

11 **SECTION 321. REMOVAL OF A GUARDIAN.**

12 (a) A court may remove a guardian for failure to perform the guardian's duties, for other
13 good cause.

14 . (b) A person subject to guardianship, guardian, or person interested in the welfare of a
15 person subject to conservatorship may petition for removal of the guardian and appointment of a
16 successor guardian.

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

19 (1) a petition of a person subject to guardianship, guardian, or another person
20 interested in welfare of a person subject to guardianship if such a petition has not been made
21 within the preceding six months;

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

of the guardian may be appropriate; or

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

(d) A person subject to guardianship seeking to remove a guardian is entitled to be represented by counsel of the person's choosing. [If the person is not represented by counsel, the Court shall appoint a counsel under the conditions set forth in Section 305 of this Act.] The court shall award such counsel reasonable attorney's fees for such representation if the legal services benefited the person subject to guardianship or were reasonably necessary to protect the person's interests.

SECTION 322. TERMINATION OR MODIFICATION OF GUARDIANSHIP.

(a) A guardianship terminates upon the death of the person subject to guardianship or upon order of the court.

(b) A person subject to guardianship, guardian, or person interested in the welfare of a person 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 of this Act does not exist, that termination would be in the best interest of the person 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; or

(c) 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 a person subject to guardianship, guardian, or another person

1 interested in the protected person's welfare if such a petition has not been made within the
2 preceding six months;

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

6 (3) a report from a guardian or conservator that the functional needs of the person
7 subject to guardianship have changed that suggests that termination or modification may be
8 appropriate; or

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

11 (d) On presentation by the petitioner of evidence establishing a prima facie case for
12 termination, the court shall order the termination unless it is proven that continuation of the
13 guardianship is in the best interest of the person subject to guardianship and necessary to meet
14 the person's needs.

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

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

21 (g) A person subject to guardianship seeking to terminate or modify the terms of the
22 person's guardianship is entitled to be represented by counsel of the person's choosing. [If the
23 person is not represented by counsel, the Court shall appoint a counsel under the conditions set

1 forth in Section 305 of this Act.] The court shall award such counsel reasonable attorney's fees
2 for such representation if the legal services benefited the person subject to guardianship or were
3 reasonably necessary to protect the person's interests.

4 **ARTICLE 4**

5 **CONSERVATORSHIP AND PROTECTION OF PROPERTY**

6 **SECTION 401. BASIS FOR APPOINTMENT OF CONSERVATOR;** 7 **PROTECTIVE ORDER.**

8 (a) On petition and after notice and hearing, the court may appoint a limited or full
9 conservator or make a protective order in lieu of conservatorship as provided in Section 118 in
10 relation to the estate and affairs of:

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

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

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

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

23 (ii) the person's own will has been overcome by deception and

1 control exerted by another person, or

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

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

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

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

15 **SECTION 402. ORIGINAL PETITION FOR APPOINTMENT OR**
16 **PROTECTIVE ORDER.**

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

19 (1) the person to be protected;

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

23 (3) a custodian appointed for the person to be protected under the Uniform

Transfers To Minors Act; or

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

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

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

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

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

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

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

(B) adult children or, if the respondent has none, the respondent's parents and adult brothers and sisters or, if the respondent has none, at least one of the adults nearest in

1 kinship to the respondent who can be found; and

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

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

7 (6) the name and address of any lawyer for the respondent, representative payee, a
8 guardian or conservator acting for a respondent in this state or elsewhere, trustee or custodian of
9 a trust or custodianship of which the respondent is a beneficiary, Veterans Administration
10 fiduciary for the respondent, or an agent designated under a power of attorney, whether for
11 health care or property, in which the respondent is identified as the principal;

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

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

20 (9) the respondent's need for an interpreter or translator if the respondent would
21 need an interpreter or translator to effectively communicate with the court or understand court
22 proceedings.

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

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

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

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

8 **SECTION 403. NOTICE.**

9 (a) A copy of the petition and the notice of hearing on a petition for conservatorship or
10 other protective order must be served personally on the respondent, but if the respondent's
11 whereabouts is unknown or personal service cannot be made, service on the respondent must be
12 made by [substituted service] [or] [publication]. The notice must be in plain language, in at least
13 16-point font, and, to the extent feasible, in a language in which the respondent is proficient.
14 The notice must include a statement that the respondent must be physically present unless
15 excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the
16 appointment of a conservator is requested, include a description of the nature, purpose, and
17 consequences of an appointment. A failure to serve the respondent with a notice substantially
18 complying with this subsection precludes the court from granting the petition.

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

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

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

11 **SECTION 404. PRELIMINARIES TO HEARING ON PROPOSED**
12 **CONSERVATORSHIP FOR MINOR.**

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

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

1 **SECTION 405. PRELIMINARIES TO HEARING ON PROPOSED**
2 **CONSERVATORSHIP FOR PERSON ALLEGED TO NEED PROTECTION:**
3 **APPOINTMENT OF [VISITOR].**

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

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

12 (1) explain to the respondent the substance of the petition and the nature, purpose,
13 and effect of the proceeding;

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

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

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

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

1 (1) interview the petitioner and the proposed conservator, if any; and
2 (2) make any other investigation the court directs.

3 (d) The [visitor] promptly shall file a report with the court, which must include:
4 (1) a recommendation as to whether a lawyer should be appointed to represent the
5 respondent;
6 (2) recommendations regarding the appropriateness of a conservatorship,
7 including whether less restrictive means of intervention are available, the type of
8 conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited
9 conservator, and the assets over which the conservator should be granted authority;
10 (3) a statement of the qualifications of the proposed conservator, together with a
11 statement whether the respondent approves or disapproves of the proposed conservator;
12 (4) a recommendation whether a professional evaluation or further evaluation is
13 necessary;
14 (5) a statement as to the respondent's ability to attend a hearing at the location
15 court is typically held;
16 (6) a statement as to the respondent's ability to participate in a hearing that
17 identifies any technology or other form of support that would enhance the respondent's ability to
18 participate; and
19 (7) any other matters the court directs.

20 (e) While a petition to establish a conservatorship or for a protective order in lieu of
21 conservatorship is pending, after preliminary hearing and without notice to others, the court may
22 issue orders to preserve and apply the property of the respondent as may be required for the
23 support of the respondent or individuals who are in fact dependent on the respondent. The court

1 may appoint a [master] to assist in that task.

2 **SECTION 406. PRELIMINARIES TO HEARING: APPOINTMENT AND ROLE**
3 **OF LAWYER.**

4 **Alternative A**

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

6 (1) requested by the respondent;

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

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

9 **Alternative B**

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

12 **End of Alternatives**

13 (b) The lawyer representing the respondent in a guardianship proceeding shall make
14 reasonable efforts to ascertain the respondent's wishes.

15 (c) The lawyer representing the respondent in a conservatorship proceeding shall
16 advocate for the respondent's wishes to the extent those wishes are reasonably ascertainable.

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

20 ***Legislative Note:*** *Those states that enact Alternative B of subsection (a) which requires*
21 *appointment of counsel for the respondent in all conservatorship proceedings should not enact*
22 *Section 405(d)(1).*
23

24 **SECTION 407. PROFESSIONAL EVALUATION.** At or before a hearing on a
25 proposed conservatorship for an adult respondent, the court shall order a professional evaluation

1 of the respondent if the respondent so demands. The court shall also order a professional
2 evaluation unless the court finds that the court has sufficient information to determine the
3 respondent's needs and abilities without such evaluation. If the court orders the evaluation, the
4 respondent must be examined by a physician, psychologist, social worker, or other individual
5 appointed by the court who is qualified to evaluate the respondent's alleged cognitive and
6 functional limitations and abilities and who will not be advantaged or disadvantaged by a
7 decision to grant the petition. The examiner promptly shall file a written report with the court.
8 Unless otherwise directed by the court, the report must contain:

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

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

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

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

17 **SECTION 408. 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 conservatorship proceeding, whether or not
3 a conservator was appointed, the person's attorney, and any person entitled to notice under
4 Section 411(d) are entitled to access court records pertaining to the conservatorship or
5 conservatorship proceeding, including the annual report and the conservator's plan. In addition,
6 any person with an interest in the welfare of the person subject to conservatorship or other good
7 cause may petition the court for access to court records pertaining to a conservatorship or
8 conservatorship proceeding, including the annual report and conservator's plan. The court shall
9 grant access if access is in the best interest of the person subject to conservatorship or would
10 further the public interest and not endanger the welfare of the respondent or person subject to
11 conservatorship.

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

13 (a) The respondent shall attend the hearing called pursuant to Section 405 unless the
14 court finds by clear and convincing evidence that:

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

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

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

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

1 court is typically held, the court shall make reasonable efforts to hold the hearing at an
2 alternative location convenient to the respondent or allow the respondent to participate in the
3 hearing by 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 in 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, social worker, or
13 other individual qualified to evaluate the alleged cognitive and functional limitations and
14 abilities, and the [visitor], and otherwise participate in the hearing.

15 (g) The hearing shall be closed on 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 410. WHO MAY BE CONSERVATOR: PRIORITIES.**

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

23 (1) a conservator, guardian of the estate, or other like fiduciary appointed by a

1 court to act for the respondent;

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

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

7 (4) the spouse [or domestic partner] of the respondent;

8 (5) an adult child of the respondent;

9 (6) a parent of the respondent;

10 (7) a person appointed as a trustee of a trust established by the respondent for the
11 benefit of the respondent or the respondent's estate;

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

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

16 (10) 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 (11) an adult who has exhibited special care and concern for the person and who
20 is familiar with the person's values and preferences.

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

23 (c) With respect to persons having equal priority, the court shall select the one it

1 considers best qualified. In determining who is best qualified, the court shall consider the
2 potential conservator's skills and relationship with the respondent, the likelihood that the
3 potential conservator will be able to successfully satisfy the duties of a conservator, and the
4 preferences, values, and prior directions of the respondent .

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

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

11 **SECTION 411. ORDER OF APPOINTMENT.**

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

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

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

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

23 (c) If a proceeding is brought for reasons other than that the respondent is a minor, after

1 a hearing on the petition, on finding that the basis for appointing a conservator exists, the court
2 shall make the least restrictive order consistent with its findings. The court shall make orders
3 necessitated by the limitations and demonstrated needs of the person subject to conservatorship,
4 including appointive and other orders that will encourage the development of maximum self-
5 determination and independence of the person subject to conservatorship.

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

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

9 (2) notice of a sale or relinquishment of the primary residence of the person
10 subject to conservatorship;

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

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

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

15 (e) The court shall grant the right to such notice in subsection (d) of this Section to the
16 spouse[, domestic partner,] and adult children of the person subject to conservatorship unless the
17 court determines that such notice would be contrary to the preferences or prior directions of the
18 person subject to conservatorship or not in the best interest of the person subject to
19 conservatorship.

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

22 (a) Not later than 14 days after an appointment, the conservator shall deliver or send a
23 copy of the order of appointment, together with a statement of the right to request termination or

1 modification, to the person subject to conservatorship, if the person has attained 12 years of age
2 and is not missing, detained, or unable to return to the United States, and to all other persons
3 given notice of the petition.

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

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

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

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

17 **SECTION 413. POWERS OF COURT.**

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

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

23 (2) with respect to an adult, or to a minor for whom an appointment has been

1 made for reasons other than age, for the benefit of the person subject to conservatorship and
2 individuals who are in fact dependent on the person subject to conservatorship for support, all the
3 powers over the estate and financial affairs of the person subject to conservatorship which the
4 person could exercise if the person were an adult, present, and not subject to conservatorship or
5 other protective order.

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

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

10 (a) After notice to interested persons and on express authorization of the court, a
11 conservator may:

- 12 (1) make gifts, except as otherwise provided in Section 422(b);
- 13 (2) convey, release, or disclaim contingent and expectant interests in property,
14 including marital property rights and any right of survivorship incident to joint tenancy or
15 tenancy by the entireties
- 16 (3) exercise or release a power of appointment;
- 17 (4) create a revocable or irrevocable trust of property of the estate, whether or not
18 the trust extends beyond the duration of the conservatorship, or revoke or amend a trust
19 revocable by the person subject to conservatorship;
- 20 (5) exercise rights to elect options and change beneficiaries under insurance
21 policies and annuities or surrender the policies and annuities for their cash value;
- 22 (6) exercise any right to an elective share in the estate of the deceased spouse [or
23 domestic partner] of the person subject to conservatorship and to renounce or disclaim any

1 interest by testate or intestate succession or by transfer inter vivos; and

2 (7) make, amend, or revoke the will of the person subject to 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 have made, to the extent that the decision can be ascertained. The court shall also
8 consider:

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

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

13 (3) eligibility for governmental assistance;

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

16 (5) the existing estate plan;

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

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

20 (d) Without authorization of the court, a conservator may not revoke or amend a durable
21 power of attorney of which the person subject to conservatorship executed prior to the
22 conservator's appointment. If a durable power of attorney is in effect, absent a court order to the
23 contrary, a decision of the agent takes precedence over that of a conservator.

1 (e) Without authorization of the court, the conservator may not sell or surrender the
2 primary residence of the person subject to guardianship unless such sale or surrender is
3 specifically set forth in the conservator's plan or notice of the sale or surrender is provided to the
4 person subject to conservatorship and all persons entitled to such notice pursuant to Section
5 411(d) of this Act at least 14 days prior to such sale or surrender.

6 **SECTION 415. PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.**

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

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

10 (2) requiring an accounting for the administration of the estate of the person
11 subject to conservatorship;

12 (3) directing distribution;

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

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

19 (6) granting other appropriate relief.

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

22 (c) On notice and hearing the petition, the court may give appropriate instructions and
23 make any appropriate order.

1 **SECTION 416. BOND; ALTERNATIVE ASSET PROTECTION**

2 **ARRANGMENT.**

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

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

16 **SECTION 417. TERMS AND REQUIREMENTS OF BOND.**

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

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

20 (2) By executing the bond of a conservator, a surety submits to the jurisdiction of
21 the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary
22 duties of the conservator in which the surety is named as a party. Notice of any proceeding must
23 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.

SECTION 418. COMPENSATION OF CONSERVATOR.

(a) A conservator is entitled to reasonable compensation from the estate of the person subject to conservatorship. In determining the reasonableness of compensation to be paid for services performed by a conservator, the court shall consider:

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

(2) the conservator's experience, training, professional standing, and skills;

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

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

(5) the effect of those services on the person subject to conservatorship;

(6) the fees customarily paid to persons who perform like services in the community; and

(7) the extent to which the services provided were or were not consistent with the conservator's plan.

1 (b) If the person subject to conservatorship seeks court intervention to modify or
2 terminate the conservatorship or to remove the conservator, the conservator may only be
3 compensated for time spent opposing such efforts to the extent that the court has determined that
4 conservator's opposition is or was necessary to protect the interests of the person subject to
5 conservatorship.

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

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

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

15 (c) A conservator making a decision on behalf of the person subject to conservatorship
16 shall make the decision the conservator reasonably believes the person would make if able. To
17 determine what decision the person would make if able, the conservator shall consider such
18 factors as the person's prior or current directions, preferences, opinions, values, and actions to
19 the to the extent actually known or reasonably ascertainable by the conservator. If the
20 conservator does not know or cannot reasonably ascertain the decision that the person subject to
21 conservatorship would probably make if able, or if the decision the conservator believes the
22 person would make would fail to the preserve the resources needed to maintain the person's
23 well-being and lifestyle, the conservator shall act in accordance with the person's best interests.

1 In determining the best interests of the person subject to conservatorship, the conservator shall
2 consider information received from professionals and persons who demonstrate sufficient
3 interest in the welfare of the person subject to conservatorship, other information that the
4 conservator believes the person would have considered if able to act, and other factors that a
5 reasonable person in the circumstances of the person subject to conservatorship would consider,
6 including consequences for others. Notwithstanding the foregoing, the conservator shall not
7 make decisions that would unreasonably harm or endanger the welfare or interests of the person
8 subject to conservatorship even if the conservator believes the person would probably make that
9 decision if able.

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

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

22 **SECTION 420. CONSERVATOR'S PLAN.**

23 (a) Not later than 60 days after appointment, , and a least once every five years

1 thereafter, a conservator shall file with the appointing court a plan for protecting, managing,
2 expending, and distributing the assets of the estate of the person subject to conservatorship. The
3 plan must be based on the actual needs of the person subject to conservatorship and take into
4 account the best interest of the person as well as the person's preferences, values, and prior
5 directions to the extent known to the conservator or reasonably ascertainable by the conservator.
6 The conservator shall include in the plan steps to develop or restore the ability of the person
7 subject to conservatorship to manage the person's property, how the conservator will involve the
8 person in decisions about property management, an estimate of the duration of the
9 conservatorship, and projections of resources and expenses, including projections of any fees the
10 conservator anticipates charging to the person.

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

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

17 **SECTION 421. INVENTORY; RECORDS.**

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

22 (b) A conservator shall keep records of the administration of the estate and make them
23 available for examination on reasonable request of the person subject to conservatorship or an

1 interested person.

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

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

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

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

11 (2) receive additions to the estate;

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

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

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

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

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

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

23 (9) subdivide, develop, or dedicate land to public use, make or obtain the vacation

1 of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving
2 or receiving consideration, and dedicate easements to public use without consideration;

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

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

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

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

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

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

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

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

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

19 (19) borrow money, with or without security, to be repaid from the estate or
20 otherwise and advance money for the protection of the estate or the person subject to
21 conservatorship and for all expenses, losses, and liability sustained in the administration of the
22 estate or because of the holding or ownership of any asset, for which the conservator has a lien
23 on the estate as against the person subject to conservatorship for advances so made;

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

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

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

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

13 (A) to the guardian of the distributee;

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

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

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

21 (25) structure the finances of the person subject to conservatorship to establish
22 eligibility for public benefits, including by making gifts in a way that is consistent with the
23 person's preferences, values, and prior directions, provided that the conservator's actions do not

1 jeopardize the welfare of the person subject to conservatorship and are otherwise consistent with
2 the conservator's fiduciary duty;

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

5 **SECTION 423. DELEGATION BY CONSERVATOR.**

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

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

10 (1) selecting an agent;

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

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

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

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

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

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

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

2 **SECTION 424. PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.**

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

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

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

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

23 (A) the size of the estate, the estimated duration of the conservatorship,

1 and the likelihood that the person subject to conservatorship, at some future time, may be fully
2 self-sufficient and able to manage financial affairs and the estate;

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

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

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

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

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

19 **SECTION 425. CONSERVATOR'S REPORTS AND ACCOUNTINGS;**
20 **APPOINTMENT OF [VISITOR]; MONITORING.**

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

1 report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the
2 accounting. An order, after notice and hearing, allowing a final report adjudicates all previously
3 unsettled liabilities relating to the conservatorship.

4 (b) A report must state or contain:

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

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

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

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

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

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

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

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

1 (9) a recommendation as to the need for continued conservatorship and any
2 recommended changes in the scope of the conservatorship; and(10) whether the successor
3 conservator, if any, is alive and able to serve.

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

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

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

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

15 (2) the conservatorship should continue; and

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

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

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

23 (2) shall require additional information from the conservator;

1 (3) may appoint a [visitor] to interview the person subject to conservatorship or
2 conservator, and make any other investigation the court directs; and

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

9 **SECTION 426. TITLE BY APPOINTMENT.**

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

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

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

1 **SECTION 427. INTEREST OF PERSON SUBJECT TO CONSERVATORSHIP**
2 **INALIENABLE.**

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

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

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

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

18 **SECTION 428. SALE, ENCUMBRANCE, OR OTHER TRANSACTION**
19 **INVOLVING CONFLICT OF INTEREST.** Any transaction involving the conservatorship
20 estate which is affected by a substantial conflict between the conservator's fiduciary and
21 personal interests is voidable unless the transaction is expressly authorized by the court after
22 notice to interested persons. A transaction affected by a substantial conflict between personal
23 and fiduciary interests includes any sale, encumbrance, or other transaction involving the

1 conservatorship estate entered into by the conservator, the spouse, [domestic partner,]
2 descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the
3 conservator has a substantial beneficial interest.

4 **SECTION 429. PROTECTION OF PERSON DEALING WITH CONSERVATOR.**

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

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

17 **SECTION 430. DEATH OF PERSON SUBJECT TO CONSERVATORSHIP.**

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

23 [(b) If a personal representative has not been appointed within 40 days after the death of

1 a person subject to conservatorship and an application or petition for appointment is not before
2 the court, the conservator may apply to exercise the powers and duties of a personal
3 representative in order to administer and distribute the decedent's estate. On application for an
4 order conferring on the conservator the powers of a personal representative, after notice given by
5 the conservator to any person nominated as personal representative by any will of which the
6 applicant is aware, the court may grant the application on determining that there is no objection
7 and endorse the letters of conservatorship to note that the formerly person subject to
8 conservatorship is deceased and that the conservator has acquired all of the powers and duties of
9 a personal representative.

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

15 **SECTION 431. PRESENTATION AND ALLOWANCE OF CLAIMS.**

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

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

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

1 (b) A claim is deemed presented on receipt of the written statement of claim by the
2 conservator or the filing of the claim with the court, whichever first occurs. A presented claim is
3 allowed if it is not disallowed by written statement sent or delivered by the conservator to the
4 claimant not later than 60 days after its presentation. The conservator before payment may
5 change an allowance to a disallowance in whole or in part, but not after allowance under a court
6 order or judgment or an order directing payment of the claim. The presentation of a claim tolls
7 the running of any statute of limitations that has not already expired relating to the claim until 30
8 days after its disallowance.

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

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

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

1 (4) claims arising before the conservatorship; and

2 (5) all other claims.

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

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 432. 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 personally at fault.

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 433. REMOVAL OF A CONSERVATOR**

5 (a) A court may remove a conservator for failure to perform the conservator's duties, for
6 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 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 a counsel under the conditions set forth in Section 406 of this Act.] The
23 court shall award such counsel reasonable attorney's fees for such representation if the legal

1 services benefited the person subject to conservatorship or were reasonably necessary to protect
2 the person's interests.

3 **SECTION 434. TERMINATION OR MODIFICATION OF**
4 **CONSERVATORSHIP.**

5 (a) A conservatorship terminates on the death of the person subject to conservatorship or
6 on order of the court. Unless created for reasons other than that the person subject to
7 conservatorship is a minor, a conservatorship created for a minor also terminates when the
8 person subject to conservatorship attains majority or is emancipated. On the death of a person
9 subject to conservatorship, the conservator shall conclude the administration of the estate by
10 distribution to the person's successors. The conservator shall file a final report and petition for
11 discharge not later than [30] days after distribution.

12 . (b) A person subject to conservatorship, conservator, or person interested in the welfare
13 of a person subject to conservatorship may petition for:

14 (1) termination of the conservatorship on the grounds that the basis for appointing
15 a conservator no longer exists or for other good cause; or

16 (2) modification of the conservatorship on the grounds that the extent of
17 protection or assistance previously granted is no longer appropriate or for other good cause;

18 (c) The court shall engage in fact-finding to determine whether termination or
19 modification of a conservatorship is appropriate on:

20 (1) a petition of a person subject to conservatorship, conservator, or another
21 person interested in the welfare of the person subject conservatorship if such a petition has not
22 been made within the preceding six months;

23 (2) a communication from a person subject to conservatorship, conservator, or

1 another person interested in the welfare of a person subject to conservatorship that gives rise to a
2 reasonable suspicion that termination or modification of the conservatorship is appropriate; or

3 (3) a report from a guardian or conservator that the functional needs of the person
4 subject to conservatorship have changed that gives rise to a reasonable suspicion that termination
5 or modification is appropriate.

6 (d) On presentation by the petitioner of evidence establishing a prima facie case for
7 termination, the court shall order termination unless it is proven that the continuation of the
8 conservatorship is in the best interest of the person subject to conservatorship and necessary to
9 meet the needs of the person subject to conservatorship. Termination of the conservatorship
10 does not affect a conservator's liability for previous acts or the obligation to account for funds
11 and assets of the person subject to conservatorship.

12 (e) The court shall modify the powers granted to the conservator if the powers are either
13 excessive or inadequate due to changes in the abilities or limitations of the person subject to
14 conservatorship, the person's supports, or other circumstances.

15 (f) Except as otherwise ordered by the court for good cause, before terminating a
16 conservatorship, the court shall follow the same procedures to safeguard the rights of the person
17 subject to conservatorship that apply to a petition for conservatorship.

18 (g) A person subject to conservatorship seeking to terminate or modify the terms of the
19 person's conservatorship is entitled to be represented by counsel of the person's choice for that
20 purpose. [If the person is not represented by counsel, the Court shall appoint a counsel under the
21 conditions set forth in Section 406 of this Act.] The court shall award such counsel reasonable
22 attorney's fees for such good faith representation if the legal services benefited the person
23 subject to conservatorship or were reasonably necessary to protect the person's interests.

1 (h) On termination of a conservatorship and whether or not formally distributed by the
2 conservator, title to assets of the estate passes to the formerly person subject to conservatorship
3 or the person's successors. The order of termination must provide for expenses of administration
4 and direct the conservator to execute appropriate instruments to evidence the transfer of title or
5 confirm a distribution previously made and to file a final report and a petition for discharge on
6 approval of the final report.

7 (i) The court shall enter a final order of discharge on the approval of the final report and
8 satisfaction by the conservator of any other conditions placed by the court on the conservator's
9 discharge.

10 **ARTICLE 5**

11 **MISCELLANEOUS PROVISIONS**

12 **SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
13 applying and construing this uniform act, consideration must be given to the need to promote
14 uniformity of the law with respect to its subject matter among states that enact it.

15 **SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
16 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
17 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
18 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
19 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
20 U.S.C. Section 7003(b).

21 **SECTION 503. SEVERABILITY CLAUSE.** If any provision of this [act] or its
22 application to any person or circumstances is held invalid, the invalidity does not affect other
23 provisions or applications of the [act] which can be given effect without the invalid provision or

1 application, and to this end the provisions of this [act] are severable.

2 **SECTION 504. REPEALS; CONFORMING AMENDMENTS.**

3 (a)

4 (b)

5 (c)

6 **SECTION 505. APPLICATION TO EXISTING GUARDIANSHIPS,**
7 **CONSERVATORSHIPS**

8 (a) This Act applies to all proceedings for the appointment of a guardian or conservator
9 commenced on or after [effective date] and all guardianship and conservatorships created on or
10 after [effective date].

11 (b) This Act applies to all proceedings commenced prior to [effective date] and all
12 guardianships and conservatorships in existence on [effective date] unless the court finds that
13 application of a particular provision of this Act would substantially interfere with the effective
14 conduct of judicial proceedings or prejudice the rights of the parties, in which case the particular
15 provision of this Act does not apply and the superseded law applies.

16 **SECTION 506. EFFECTIVE DATE.** This [act] takes effect