

UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT

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ON UNIFORM STATE LAWS

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ON UNIFORM STATE LAWS

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

Prefatory Note

The Act replaces the Uniform Guardianship and Protective Proceedings Act (UGPPA) which was last comprehensively revised in 1997. It may be enacted either as a free-standing Act or as part of the Uniform Probate Code (UPC). States enacting the Act as part of the UPC should consult Article V of the UPC for the official text of the Act as conformed to the UPC's definitions and general provisions.

The Act covers guardianships and conservatorships for both minors and adults, as well as protective arrangements instead of guardianship for adults and protective arrangements instead of conservatorship for both adults and minors. It consists of seven articles. Article 1 contains definitions and general provisions applicable to guardianships, conservatorships, and protective arrangements instead of guardianship and conservatorship. Article 2 governs guardianships for minors. Article 3 governs guardianships for adults. Article 4 covers conservatorships for both minors and adults. Article 5 governs protective arrangements instead of guardianship or conservatorship. Article 6 contains optional forms that can be used by persons petitioning for guardianship, conservatorship, or a protective arrangement under Article 5. It also contains a form that can be used to notify adults subject to guardianship or conservatorship of their rights. Article 7 contains an effective date provision and boilerplate provisions common to Uniform Acts.

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

The Drafting Committee worked in close consultation with a broad range of participants representing numerous constituencies. In addition to the American Bar Association advisors listed above, national organizations providing significant input included AARP, The ARC, the American College of Trust and Estate Counsel, the National Academy of Elder Law Attorneys, the National Association to Stop Guardianship Abuse, the National College of Probate Judges, the National Center for State Courts, the National Disability Rights Network, and the National Guardianship Association.

The Act has three overarching aims.

First, it aims to reflect the person-centered philosophy endorsed by the NGS. The person-centered approach is evidenced in the Act's updated terminology. The terms "ward" and "incapacitated person," which were rejected by the NGS as demeaning and even offensive, are

eliminated and the more precise terms “adult subject to guardianship,” “minor subject to guardianship,” and “individual subject to conservatorship” are used instead. The person-centered approach is also evident in new provisions requiring that individuals subject to guardianship or conservatorship be given meaningful notice of their rights and how to assert them; provisions that require involving individuals subject to guardianship and conservatorship in decisions about their lives; requirements that guardians and conservators create person-centered plans; and provisions to facilitate court monitoring of compliance with those plans.

Second, the Act aims to create legal rules that advance key objectives embraced by the NGS, including respecting and protecting the rights and interests of both individuals alleged to need a guardian or conservator and individuals subject to guardianship or conservatorship. These include provisions designed to ensure that the least restrictive means are used to protect an individual alleged to need a guardianship or conservatorship, to provide better guidance to guardians and conservators, and to help courts monitor guardians and conservators.

Third, the Act aims to advance rules and systems that make it easier for all persons involved in the process—whether they be petitioners, individuals subject to guardianship or conservatorship, guardians or conservators, or judges—to achieve these objectives. It does this in a number of ways. These include creating new petition requirements to ensure that judges have the information needed to make appropriate decisions; creating an option for courts to enter orders instead of guardianship or conservatorship where such less restrictive alternatives would meet a respondent’s need; and offering model forms to make it easier for petitioners to seek limited appointments instead of full ones.

With these overarching objectives in mind, a number of more specific changes are likely to be particularly noteworthy to those considering the Act.

First, the Act includes clearer guidance to guardians and conservators, many of whom are lay people. Specifically, the Act clarifies how appointees are to make decisions, including decisions about particularly fraught issues such as medical treatment and residential placement. These clarifications are consistent with the person-centered approach embraced by the Act in that appointees are given specific guidance on involving the individual in decisions.

Second, the Act recognizes the role of, and encourages the use of, less restrictive alternatives, including supported decision-making and single-issue court orders instead of guardianship and conservatorship. To this end, the Act provides that neither guardianship nor conservatorship is appropriate where an adult’s needs can be met with technological assistance or supported decision-making. It also provides for protective arrangements instead of guardianship or conservatorship; the 1997 version, by contrast, only provided for such an arrangement as an alternative to conservatorship. These alternative arrangements have the potential to reduce the extent to which individuals in need of protection are deprived of liberties. They can also reduce the time and cost associated with meeting individuals’ needs. Unlike a guardianship or conservatorship, long-term monitoring and reporting will generally be unnecessary.

Third, the Act expands the procedural rights for respondents with the aim of ensuring that respondents’ rights are fully respected and that guardianships and conservatorships are only

imposed when less restrictive alternatives are not feasible. In expanding these protections, the Act strikes a balance between the need to provide meaningful procedural rights for individuals alleged to need a guardian or conservator, and the need to avoid making the appointment process overly complex or expensive. Key revisions include narrowing the exception to the general rule that the respondent must be present at the hearing, a requirement that explicit findings be made before certain fundamental rights are removed, and the elimination of provisions that would have allowed appointment of a guardian for an adult by will or other writing without prior judicial approval.

Fourth, the Act provides for enhanced monitoring of guardians and conservators to ensure that such appointees are complying with their fiduciary duties and that individuals subject to guardianship and conservatorship are protected against exploitation. One innovation in the Act is to allow the court to identify people who are to be given notice of certain key changes or suspect actions, and who can therefore serve as an extra set of eyes and ears for the court. Other revisions include a provision that makes bond a default option for conservators and the addition of provisions that clarify factors relevant in determining the reasonableness of fees for guardians and conservators.

Fifth, the Act provides enhanced procedural rights for individuals subject to guardianship and conservatorship. Key changes from the 1997 Act include a provision that the court provide such individuals with plain-language notice of key rights, the addition of provisions for attorney representation of individuals subject to guardianship and conservatorship, greater scrutiny of the guardian or conservator's ability to charge fees to oppose the individual's efforts to alter the appointment, and additional triggers for reconsideration of an appointment.

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

Seventh, the Act creates a new mechanism for protecting individuals from exploitation. Section 503 of the Act allows a court, without imposing a guardianship or conservatorship or ruling on the individual's abilities, to restrict access to the respondent or the respondent's property by a specified person that the court finds by clear-and-convincing evidence: (1) through fraud, coercion, duress, or the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial harm to the respondent or the respondent's property; and (2) poses a serious risk of substantial financial harm to the respondent or the respondent's property.

This allows courts to create tailored orders to protect vulnerable individuals at risk of substantial exploitation even though the individual might not have the level of limitation in abilities necessary to impose a conservatorship or guardianship. At the same time, it discourages courts from imposing a guardianship or conservatorship if a limited order would meet an individual's needs.

Eighth, the Act contains a variety of provisions designed to improve compliance with the Act's prohibition on courts establishing a full guardianship or conservatorship if a limited guardianship or conservatorship would meet the respondent's needs. The Drafting Committee recognized that, despite the best efforts of previous Committees, there is a lack of compliance with the prohibition even though it was included in the 1997 Act. In order to facilitate compliance, the Act includes a sample petition which makes it easier for a petitioner to seek a limited order. In addition, the Act requires petitioners seeking a full guardianship or conservatorship to do more to justify that approach, and courts imposing a full guardianship to provide findings to support that imposition.

Ninth, the Act modernizes and clarifies provisions related to minors subject to guardianship. For example, consistent with modern trends in the law, the Act provides for greater involvement of minors in decisions involving them. The age of involvement for a minor has been lowered from 14 to 12, the decision-making standard for guardians now calls on them to consider the minor's views, and an attorney must be appointed for a minor in certain situations. The Act also provides greater guidance to those petitioning for guardianship of a minor, to courts determining whether they have jurisdiction over guardianship for minors, and to guardians making decisions on behalf of minors. In addition, in consideration of the U.S. Supreme Court's ruling in *Troxel v. Granville*, 530 U.S. 57 (2000), the Act provides greater due process protections for parents of minors

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

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

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

[ARTICLE] 1

GENERAL PROVISIONS

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

SECTION 102. DEFINITIONS. In this [act]:

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

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

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

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

(5) “Conservator” means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship. The term includes a co-conservator.

(6) “Conservatorship estate” means the property subject to conservatorship under this [act].

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

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

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

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

(11) “Individual subject to conservatorship” means an adult or minor for whom a conservator has been appointed under this [act].

(12) “Individual subject to guardianship” means an adult or minor for whom a guardian has been appointed under this [act].

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

(14) “Letters of office” means a record issued by a court certifying a guardian’s or conservator’s authority to act.

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

(16) “Limited guardianship” means a guardianship that grants the guardian less than all powers available under this [act] or otherwise restricts the powers of the guardian.

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

(18) “Minor subject to conservatorship” means a minor for whom a conservator has been

appointed under this [act].

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

(20) “Parent” does not include an individual whose parental rights have been terminated.

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

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

(23) “Protective arrangement instead of conservatorship” means a court order entered under Section 503.

(24) “Protective arrangement instead of guardianship” means a court order entered under Section 502.

(25) “Protective arrangement under [Article] 5” means a court order entered under Section 502 or 503.

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

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

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

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

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

(29) “Standby guardian” means a person appointed by the court under Section 207.

(30) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(31) “Supported decision making” means assistance from one or more persons of an individual’s choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual’s wishes.

Legislative Note: Unlike the 1997 act, this act does not use the term “incapacitated person.” Because this term may be used elsewhere in an enacting state’s law, the state should review its other law to determine whether conforming amendments are necessary.

SECTION 103. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY

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

SECTION 104. SUBJECT-MATTER JURISDICTION.

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

(b) The [designate appropriate court] has jurisdiction over a guardianship, conservatorship, or protective arrangement under [Article] 5 for an adult as provided in the [insert citation to Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act].

(c) After notice is given in a proceeding for a guardianship, conservatorship, or protective arrangement under [Article] 5 and until termination of the proceeding, the court in which the

petition is filed has:

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

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

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

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

(d) A court that appoints a guardian or conservator, or authorizes a protective arrangement under [Article] 5, has exclusive and continuing jurisdiction over the proceeding until the court terminates the proceeding or the appointment or protective arrangement expires by its terms.

SECTION 105. TRANSFER OF PROCEEDING.

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

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

(c) If a proceeding for a guardianship or conservatorship is pending in another state or a foreign country and a petition for guardianship or conservatorship for the same individual is filed

in a court in this state, the court shall notify the court in the other state or foreign country and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

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

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

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

SECTION 106. VENUE.

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

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

(2) the [county] in which another proceeding concerning the custody or parental

rights of the minor is pending.

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

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

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

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

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

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

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

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

SECTION 107. PRACTICE IN COURT.

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

(b) If proceedings for a guardianship, conservatorship, or protective arrangement under [Article] 5 for the same individual are commenced or pending in the same court, the proceedings

may be consolidated.

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

Legislative Note: States vary on whether a jury trial may be demanded in a guardianship or conservatorship case.

SECTION 108. LETTERS OF OFFICE.

(a) The court shall issue letters of office to a guardian on filing by the guardian of an acceptance of appointment.

(b) The court shall issue letters of office to a conservator on filing by the conservator of an acceptance of appointment and filing of any required bond or compliance with any other asset-protection arrangement required by the court.

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

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

SECTION 109. EFFECT OF ACCEPTANCE OF APPOINTMENT. On acceptance of appointment, a guardian or conservator submits to personal jurisdiction of the court in this state in any proceeding relating to the guardianship or conservatorship.

SECTION 110. CO-GUARDIAN; CO-CONSERVATOR.

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

(b) A co-guardian or co-conservator appointed to serve immediately may act when that co-guardian or co-conservator complies with Section 108.

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

(1) the event occurs; and

(2) that co-guardian or co-conservator complies with Section 108.

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

SECTION 111. JUDICIAL APPOINTMENT OF SUCCESSOR GUARDIAN OR SUCCESSOR CONSERVATOR.

(a) The court at any time may appoint a successor guardian or successor conservator to serve immediately or when a designated event occurs.

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

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

(1) the event occurs; and

(2) the successor complies with Section 108.

(d) A successor guardian or successor conservator has the predecessor's powers unless otherwise provided by the court.

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

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

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

(c) Death, removal, or resignation of a guardian or conservator does not affect liability for a previous act or the obligation to account for:

(1) an action taken on behalf of the individual subject to guardianship or conservatorship; or

(2) the individual's funds or other property.

SECTION 113. NOTICE OF HEARING GENERALLY.

(a) Except as otherwise provided in Sections 203, 207, 303, 403, and 505, if notice of a hearing under this [act] is required, the movant shall give notice of the date, time, and place of the hearing to the person to be notified unless otherwise ordered by the court for good cause. Except as otherwise provided in this [act], notice must be given in compliance with [insert citation to this state's rule of civil procedure] at least 14 days before the hearing.

(b) Proof of notice of a hearing under this [act] must be made before or at the hearing and filed in the proceeding.

(c) Notice of a hearing under this [act] must be in at least 16-point font, in plain language, and, to the extent feasible, in a language in which the person to be notified is proficient.

SECTION 114. WAIVER OF NOTICE.

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

(b) A respondent, individual subject to guardianship, individual subject to conservatorship, or individual subject to a protective arrangement under [Article] 5 may not waive notice under this [act].

SECTION 115. GUARDIAN AD LITEM. The court at any time may appoint a guardian ad litem for an individual if the court determines the individual's interest otherwise would not be adequately represented. If no conflict of interest exists, a guardian ad litem may be appointed to represent multiple individuals or interests. The guardian ad litem may not be the same individual as the attorney representing the respondent. The court shall state the duties of the guardian ad litem and the reasons for the appointment.

SECTION 116. REQUEST FOR NOTICE.

(a) A person may file with the court a request for notice under this [act] if the person is:

(1) not otherwise entitled to notice; and

(2) interested in the welfare of a respondent, individual subject to guardianship or conservatorship, or individual subject to a protective arrangement under [Article] 5.

(b) A request under subsection (a) must include a statement showing the interest of the person making the request and the address of the person or an attorney for the person to whom notice is to be given.

(c) If the court approves a request under subsection (a), the court shall give notice of the approval to the guardian or conservator, if one has been appointed, or the respondent if no guardian or conservator has been appointed.

SECTION 117. DISCLOSURE OF BANKRUPTCY OR CRIMINAL HISTORY.

(a) Before accepting appointment as a guardian or conservator, a person shall disclose to the court whether the person:

(1) is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or

(2) been convicted of:

(A) a felony;

(B) a crime involving dishonesty, neglect, violence, or use of physical force; or

(C) other crime relevant to the functions the individual would assume as guardian or conservator.

(b) A guardian or conservator that engages or anticipates engaging an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence, or use of physical force, or other crime relevant to the functions the agent is being engaged to perform promptly shall disclose that knowledge to the court.

(c) If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding, the conservator promptly shall disclose that knowledge to the court.

SECTION 118. MULTIPLE NOMINATIONS. If a respondent or other person makes more than one nomination of a guardian or conservator, the latest in time governs.

SECTION 119. COMPENSATION AND EXPENSES; IN GENERAL.

(a) Unless otherwise compensated or reimbursed, an attorney for a respondent in a

proceeding under this [act] is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the respondent.

(b) Unless otherwise compensated or reimbursed, an attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or for whom a protective arrangement under [Article] 5 was ordered is entitled to reasonable compensation for services and reimbursement of reasonable expenses from the property of the individual.

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

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

SECTION 120. COMPENSATION OF GUARDIAN OR CONSERVATOR.

(a) Subject to court approval, a guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, clothing, and other appropriate expenses advanced for the benefit of the individual subject to guardianship. If a conservator, other than the guardian or a person affiliated with the guardian, is appointed for the individual, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without court approval.

(b) Subject to court approval, a conservator is entitled to reasonable compensation for services and reimbursement for appropriate expenses from the property of the individual subject to conservatorship.

(c) In determining reasonable compensation for a guardian or conservator, the court, or a

conservator in determining reasonable compensation for a guardian as provided in subsection (a), shall consider:

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

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

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

(4) the conditions and circumstances under which a service was performed, including whether the service was provided outside regular business hours or under dangerous or extraordinary conditions;

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

(6) the extent to which the services provided were or were not consistent with the guardian's plan under Section 316 or conservator's plan under Section 419; and

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

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

(e) If an individual subject to guardianship or conservatorship seeks to modify or terminate the guardianship or conservatorship or remove the guardian or conservator, the court may order compensation to the guardian or conservator for time spent opposing modification, termination, or removal only to the extent the court determines the opposition was reasonably necessary to protect the interest of the individual subject to guardianship or conservatorship.

SECTION 121. LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP. A guardian or conservator is not personally liable to another person solely because of the guardianship or conservatorship for an act or omission of the individual subject to guardianship or conservatorship.

SECTION 122. PETITION AFTER APPOINTMENT FOR INSTRUCTION OR RATIFICATION.

(a) A guardian or conservator may petition the court for instruction concerning fiduciary responsibility or ratification of a particular act related to the guardianship or conservatorship.

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

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

(a) A person must not recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

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

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

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

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

(2) the person makes, or has actual knowledge that another person has made, a report to the [government agency providing protective services to adults or children] stating a good-faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

(c) A person that refuses to accept the authority of a guardian or conservator in accordance with subsection (b) may report the refusal and the reason for refusal to the court. The court on receiving the report shall consider whether removal of the guardian or conservator or other action is appropriate.

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

SECTION 124. USE OF AGENT BY GUARDIAN OR CONSERVATOR.

(a) Except as otherwise provided in subsection (c), a guardian or conservator may delegate a power to an agent which a prudent guardian or conservator of comparable skills could delegate prudently under the circumstances if the delegation is consistent with the guardian's or conservator's fiduciary duties and the guardian's plan under Section 316 or conservator's plan under Section 419.

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

(1) selecting the agent;

(2) establishing the scope and terms of the agent's work in accordance with the guardian's plan under Section 316 or conservator's plan under Section 419;

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

(4) redressing an act or omission of the agent which would constitute a breach of the guardian's or conservator's duties if done by the guardian or conservator.

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

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

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

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

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

(f) A guardian or conservator that delegates and monitors a power in compliance with this section is not liable for the decision, act, or omission of the agent.

SECTION 125. TEMPORARY SUBSTITUTE GUARDIAN OR CONSERVATOR.

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

(1) a proceeding to remove a guardian for the individual is pending; or

(2) the court finds a guardian is not effectively performing the guardian's duties

and the welfare of the individual requires immediate action.

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

(1) a proceeding to remove a conservator for the individual is pending; or

(2) the court finds that a conservator for the individual is not effectively performing the conservator's duties and the welfare of the individual or the conservatorship estate requires immediate action.

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

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

(1) the individual subject to guardianship or conservatorship;

(2) the affected guardian or conservator; and

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

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

SECTION 126. REGISTRATION OF ORDER; EFFECT

(a) If a guardian has been appointed in another state for an individual, and a petition for

guardianship for the individual is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court, may register the guardianship order in this state by filing as a foreign judgment, in a court of an appropriate [county] of this state, certified copies of the order and letters of office.

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

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

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

SECTION 127. GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.

(a) An individual who is subject to guardianship or conservatorship, or person interested in the welfare of an individual subject to guardianship or conservatorship, that reasonably believes the guardian or conservator is breaching the guardian's or conservator's fiduciary duty

or otherwise acting in a manner inconsistent with this [act] may file a grievance in a record with the court.

(b) Subject to subsection (c), after receiving a grievance under subsection (a), the court:

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

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

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

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

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

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

(3) may take any action supported by the evidence, including:

(A) ordering the guardian or conservator to provide the court a report, accounting, inventory, updated plan, or other information;

(B) appointing a guardian ad litem;

(C) appointing an attorney for the individual subject to guardianship or conservatorship; or

(D) holding a hearing.

(c) The court may decline to act under subsection (b) if a similar grievance was filed

within the six months preceding the filing of the current grievance and the court followed the procedures of subsection (b) in considering the earlier grievance.

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

Legislative Note: A version of Section 128 has appeared in the Uniform Probate Code since 1969 and has been enacted in some form by more than 40 states. However, the subject matter of this section is more appropriately included in a state's general family law statutes. An enacting state should review its existing law to determine whether to include this section, and where it could be codified most appropriately.

[ARTICLE] 2

GUARDIANSHIP OF MINOR

SECTION 201. BASIS FOR APPOINTMENT OF GUARDIAN FOR MINOR.

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

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

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

(2) all parental rights have been terminated; or

(3) there is clear-and-convincing evidence that no parent of the minor is willing or able to exercise the powers the court is granting the guardian.

SECTION 202. PETITION FOR APPOINTMENT OF GUARDIAN FOR MINOR.

(a) A person interested in the welfare of a minor, including the minor, may petition for appointment of a guardian for the minor.

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

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

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

(3) the name and address, if known, of each person that had primary care or custody of the minor for at least 60 days during the two years immediately before the filing of the petition or for at least 730 days during the five years immediately before the filing of the petition;

(4) the name and address of any attorney for the minor and any attorney for each parent of the minor;

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

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

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

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

(9) whether any parent of the minor needs an interpreter, translator, or other form of support to communicate effectively with the court or understand court proceedings; and

(10) whether any other proceeding concerning the care or custody of the minor is pending in any court in this state or another jurisdiction.

SECTION 203. NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.

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

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

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

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

(C) any adult with whom the minor resides;

(D) each person that had primary care or custody of the minor for at least 60 days during the two years immediately before the filing of the petition or for at least 730 days during the five years immediately before the filing of the petition; and

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

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

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

(B) any nominee of a parent;

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

(D) any guardian or conservator acting for the minor in any jurisdiction;

and

(E) any other person the court determines.

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

(c) The court may not grant a petition for guardianship of a minor if notice substantially complying with subsection (a)(1) is not served on:

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

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

(d) If a petitioner is unable to serve notice under subsection (a)(1) on a parent of a minor or alleges that the parent waived, in a record, the right to notice under this section, the court shall appoint a [visitor] who shall:

(1) interview the petitioner and the minor;

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

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

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

SECTION 204. ATTORNEY FOR MINOR OR PARENT.

(a) The court shall appoint an attorney to represent a minor who is the subject of a

proceeding under Section 202 if:

- (1) requested by the minor and the minor is 12 years of age or older;
- (2) recommended by a guardian ad litem; or
- (3) the court determines the minor needs representation.

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

- (1) make a reasonable effort to ascertain the minor's wishes;
- (2) advocate for the minor's wishes to the extent reasonably ascertainable; and
- (3) if the minor's wishes are not reasonably ascertainable, advocate for the

minor's best interest.

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

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

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

- (1) the parent objects to appointment of a guardian for the minor;
- (2) the court determines that counsel is needed to ensure that consent to appointment of a guardian is informed; or
- (3) the court otherwise determines the parent needs representation.]

Legislative Note: Subsection (e) is in brackets because states have different policies regarding rights of parents in these cases.

SECTION 205. ATTENDANCE AND PARTICIPATION AT HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.

(a) The court shall require a minor who is the subject of a hearing under Section 203 to

attend the hearing and allow the minor to participate in the hearing unless the court determines, by clear-and-convincing evidence presented at the hearing or a separate hearing, that:

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

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

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

(4) attendance would be harmful to the minor.

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

(c) Each parent of a minor who is the subject of a hearing under Section 203 has the right to attend the hearing.

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

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

(a) After a hearing under Section 203, the court may appoint a guardian for a minor, if appointment is proper under Section 201, dismiss the proceeding, or take other appropriate action consistent with this [act] or law of this state other than this [act].

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

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

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

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

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

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

(e) An order granting a guardianship for a minor must state that each parent of the minor is entitled to notice that:

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

- (2) the court has modified or limited the powers of the guardian; or
- (3) the court has removed the guardian.

(f) An order granting a guardianship for a minor must identify any person in addition to a parent of the minor which is entitled to notice of the events listed in subsection (e).

SECTION 207. STANDBY GUARDIAN FOR MINOR.

(a) A standby guardian appointed under this section may act as guardian, with all duties and powers of a guardian under Sections 209 and 210, when no parent of the minor is willing or able to exercise the duties and powers granted to the guardian.

(b) A parent of a minor, in a signed record, may nominate a person to be appointed by the court as standby guardian for the minor. The parent, in a signed record, may state desired limitations on the powers to be granted the standby guardian. The parent, in a signed record, may revoke or amend the nomination at any time before the court appoints a standby guardian.

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

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

and

(2) finding that no parent of the minor likely will be able or willing to care for or make decisions with respect to the minor not later than [two years] after the appointment.

(d) A petition under subsection (c)(1) must include the same information required under Section 202 for the appointment of a guardian for a minor.

(e) On filing a petition under subsection (c)(1), the petitioner shall:

- (1) serve a copy of the petition personally on:

(A) the minor, if the minor is 12 years of age or older, and the minor's attorney, if any;

- (B) each parent of the minor;
- (C) the person nominated as standby guardian; and
- (D) any other person the court determines; and

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

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

(g) If an objection is filed under subsection (f), the court shall hold a hearing to determine whether a standby guardian should be appointed and, if so, the person that should be appointed. If no objection is filed, the court may make the appointment.

(h) The court may not grant a petition for a standby guardian of the minor if notice substantially complying with subsection (e) is not served on:

- (1) the minor, if the minor is 12 years of age or older; and
- (2) each parent of the minor, unless the court finds by clear-and-convincing evidence that the parent, in a record, waived the right to notice or cannot be located and served with due diligence.

(i) If a petitioner is unable to serve notice under subsection (e) on a parent of the minor or alleges that a parent of the minor waived the right to notice under this section, the court shall appoint a [visitor] who shall:

(1) interview the petitioner and the minor;

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

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

(j) If the court finds under subsection (c) that a standby guardian should be appointed, the following rules apply:

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

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

(k) An order appointing a standby guardian under this section must state that each parent of the minor is entitled to notice, and identify any other person entitled to notice, if:

(1) the standby guardian assumes the duties and powers of the guardian;

(2) the guardian delegates custody of the minor;

(3) the court modifies or limits the powers of the guardian; or

(4) the court removes the guardian.

(l) Before assuming the duties and powers of a guardian, a standby guardian must file with the court an acceptance of appointment as guardian and give notice of the acceptance to:

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

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

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

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

SECTION 208. EMERGENCY GUARDIAN FOR MINOR.

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

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

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

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

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

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

(2) any attorney appointed under Section 204;

(3) each parent of the minor;

- (4) any person, other than a parent, having care or custody of the minor; and
- (5) any other person the court determines.

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

(e) Appointment of an emergency guardian under this section, with or without notice, is not a determination that a basis exists for appointment of a guardian under Section 201.

(f) The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires.

SECTION 209. DUTIES OF GUARDIAN FOR MINOR.

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

(b) A guardian for a minor shall:

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

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

(3) expend funds of the minor which have been received by the guardian for the minor's current needs for support, care, education, health, safety, and welfare;

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

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

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

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

SECTION 210. POWERS OF GUARDIAN FOR MINOR.

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

(b) Except as otherwise limited by court order, a guardian for a minor may:

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

(2) unless inconsistent with a court order entitled to recognition in this state, take

custody of the minor and establish the minor's place of dwelling and, on authorization of the court, establish or move the minor's dwelling outside this state;

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

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

(5) to the extent reasonable, delegate to the minor responsibility for a decision affecting the minor's well-being.

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

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

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

SECTION 211. REMOVAL OF GUARDIAN FOR MINOR; TERMINATION OF GUARDIANSHIP; APPOINTMENT OF SUCCESSOR.

(a) Guardianship under this [act] for a minor terminates:

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

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

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

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

the minor.

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

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

(d) The court shall follow the priorities in Section 206(b) when selecting a successor guardian for a minor.

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

(f) When terminating a guardianship for a minor under this section, the court may issue an order providing for transitional arrangements that will assist the minor with a transition of custody and is in the best interest of the minor.

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

[ARTICLE] 3

GUARDIANSHIP OF ADULT

SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN FOR ADULT.

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

(1) appoint a guardian for an adult if the court finds by clear-and-convincing

evidence that:

(A) the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and

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

(2) with appropriate findings, treat the petition as one for a conservatorship under [Article] 4 or protective arrangement under [Article] 5, issue any appropriate order, or dismiss the proceeding.

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

SECTION 302. PETITION FOR APPOINTMENT OF GUARDIAN FOR ADULT.

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

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

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

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

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

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

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

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

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

(B) any attorney currently representing the respondent;

(C) any representative payee appointed by the Social Security

Administration for the respondent;

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

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

(F) any fiduciary for the respondent appointed by the Department of

Veterans Affairs;

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

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

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

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

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

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

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

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

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

(C) if no protective arrangement instead of guardianship or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(D) the reason a protective arrangement instead of guardianship or other less restrictive alternative is insufficient to meet the respondent's alleged need;

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

(6) if the petitioner seeks a full guardianship, the reason a limited guardianship or protective arrangement instead of guardianship is not appropriate;

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

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

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

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

SECTION 303. NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR ADULT.

(a) On filing of a petition under Section 302 for appointment of a guardian for an adult, the court shall set a date, time, and place for hearing the petition.

(b) A copy of a petition under Section 302 and notice of a hearing on the petition must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the petition. The court may not grant the petition if notice substantially complying with this subsection is not served on the respondent.

(c) In a proceeding on a petition under Section 302, the notice required under subsection (b) must be given to the persons required to be listed in the petition under Section 302(b)(1)

through (3) and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from appointing a guardian.

(d) After the appointment of a guardian, notice of a hearing on a petition for an order under this [article], together with a copy of the petition, must be given to:

- (1) the adult subject to guardianship;
- (2) the guardian; and
- (3) any other person the court determines.

SECTION 304. APPOINTMENT AND ROLE OF [VISITOR].

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

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

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

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

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

(4) inform the respondent that all costs and expenses of the proceeding, including

respondent's attorney's fees, may be paid from the respondent's assets.

(c) The [visitor] appointed under subsection (a) shall:

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

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

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

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

(d) A [visitor] appointed under subsection (a) promptly shall file a report in a record with the court, which must include:

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

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

(3) a recommendation regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available and:

(A) if a guardianship is recommended, whether it should be full or limited;

and

(B) if a limited guardianship is recommended, the powers to be granted to

the guardian;

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

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

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

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

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

(9) any other matter the court directs.

Legislative Note: The term "visitor" is bracketed because some states use a different term for the person appointed by the court to investigate and report on certain facts.

SECTION 305. APPOINTMENT AND ROLE OF ATTORNEY FOR ADULT.

Alternative A

(a) The court shall appoint an attorney to represent the respondent in a proceeding for appointment of a guardian for an adult if:

(1) the respondent requests an appointment;

(2) the [visitor] recommends an appointment; or

(3) the court determines the respondent needs representation.

Alternative B

(a) Unless the respondent in a proceeding for appointment of a guardian for an adult is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the respondent's ability to pay.

End of Alternatives

(b) An attorney representing the respondent in a proceeding for appointment of a guardian for an adult shall:

(1) make reasonable efforts to ascertain the respondent's wishes;

(2) advocate for the respondent's wishes to the extent reasonably ascertainable;

and

(3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive in type, duration, and scope, consistent with the respondent's interests.

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

SECTION 306. PROFESSIONAL EVALUATION.

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

(1) if the respondent requests the evaluation; or

(2) in other cases, unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation.

(b) If the court orders an evaluation under subsection (a), the respondent must be examined by a licensed physician, psychologist, social worker, or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities

and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file report in a record with the court. Unless otherwise directed by the court, the report must contain:

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

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

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

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

(c) The respondent may decline to participate in an evaluation ordered under subsection (a).

SECTION 307. ATTENDANCE AND RIGHTS AT HEARING.

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

(b) A hearing under Section 303 may proceed without the respondent in attendance if the court finds by clear-and-convincing evidence that:

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

to do so; or

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

(c) The respondent may be assisted in a hearing under Section 303 by a person or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

(d) The respondent has a right to choose an attorney to represent the respondent at a hearing under Section 303.

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

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including any court-appointed evaluator and the [visitor];

and

(3) otherwise participate in the hearing.

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

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

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

SECTION 308. CONFIDENTIALITY OF RECORDS.

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

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

(2) either:

(A) the petition for guardianship is dismissed; or

(B) the guardianship is terminated.

(b) An adult subject to a proceeding for a guardianship, whether or not a guardian is appointed, an attorney designated by the adult, and a person entitled to notice under Section 310(e) or a subsequent order are entitled to access court records of the proceeding and resulting guardianship, including the guardian's plan under Section 316 and report under Section 317. A person not otherwise entitled to access court records under this subsection for good cause may petition the court for access to court records of the guardianship, including the guardian's report and plan. The court shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interests of the adult.

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

(1) the court;

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

(3) the petitioner, [visitor], and petitioner's and respondent's attorneys, for

purposes of the proceeding;

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

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

Legislative Note: Subsection (c) is bracketed in recognition that states have different policies and procedures regarding the sealing of court records.

SECTION 309. WHO MAY BE GUARDIAN FOR ADULT; ORDER OF PRIORITY.

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

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

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

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

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

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

(b) If two or more persons have equal priority under subsection (a), the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills,

the expressed wishes of the respondent, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a guardian successfully.

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

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

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

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

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

Legislative Note: Each state enacting the Act needs to insert in subsection (e) the particular term or terms used in the state or statutory references for facilities considered long-term care institutions.

SECTION 310. ORDER OF APPOINTMENT FOR GUARDIAN.

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

(1) include a specific finding that clear-and-convincing evidence established that the identified needs of the respondent cannot be met by a protective arrangement instead of

guardianship or other less restrictive alternative, including use of appropriate supportive services, technological assistance, or supported decision making;

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

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

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

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

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

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

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

(1) notice of the rights of the adult under Section 311(b);

(2) notice of a change in the primary dwelling of the adult;

(3) notice that the guardian has delegated:

- (A) the power to manage the care of the adult;
- (B) the power to make decisions about where the adult lives;
- (C) the power to make major medical decisions on behalf of the adult;
- (D) a power that requires court approval under Section 315; or
- (E) substantially all powers of the guardian;

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

(5) a copy of the guardian's plan under Section 316 and the guardian's report under Section 317;

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

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

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

(9) notice of the removal of the guardian.

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

Legislative Note: *The bracketed language may conflict with an enacting state's existing law relating to voting rights and a state should consider whether the language is consistent with the state's policy preference.*

SECTION 311. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.

(a) A guardian appointed under Section 309 shall give the adult subject to guardianship and all other persons given notice under Section 303 a copy of the order of appointment, together

with notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

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

(1) seek termination or modification of the guardianship, or removal of the guardian, and choose an attorney to represent the adult in these matters;

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

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

(4) be notified at least 14 days before a change in the adult's primary dwelling or permanent move to a nursing home, mental-health facility, or other facility that places restrictions on the individual's ability to leave or have visitors unless the change or move is proposed in the guardian's plan under Section 316 or authorized by the court by specific order;

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

(6) communicate, visit, or interact with others, including receiving visitors, and

making or receiving telephone calls, personal mail, or electronic communications, including through social media, unless:

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

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

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

(i) for a period of not more than seven business days if the person has a family or pre-existing social relationship with the adult; or

(ii) for a period of not more than 60 days if the person does not have a family or pre-existing social relationship with the adult;

(7) receive a copy of the guardian's plan under Section 316 and the guardian's report under Section 317; and

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

SECTION 312. EMERGENCY GUARDIAN FOR ADULT.

(a) On its own after a petition has been filed under Section 302, or on petition by a person interested in an adult's welfare, the court may appoint an emergency guardian for the adult if the court finds:

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

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

circumstances; and

(3) there is reason to believe that a basis for appointment of a guardian under Section 301 exists.

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

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

(d) The court may appoint an emergency guardian for an adult without notice to the adult and any attorney for the adult only if the court finds from an affidavit or testimony that the respondent's physical health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency guardian without giving notice under subsection (c), the court must:

(1) give notice of the appointment not later than 48 hours after the appointment to:

(A) the respondent;

(B) the respondent's attorney; and

(C) any other person the court determines; and

(2) hold a hearing on the appropriateness of the appointment not later than [five]

days after the appointment.

(e) Appointment of an emergency guardian under this section is not a determination that a basis exists for appointment of a guardian under Section 301.

(f) The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires.

SECTION 313. DUTIES OF GUARDIAN FOR ADULT.

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

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

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

(2) to the extent reasonably feasible, identify the values and preferences of the adult and involve the adult in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, or social interactions; and

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

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

the guardian shall:

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

(2) expend funds and other property of the adult received by the guardian for the adult's current needs for support, care, education, health, and welfare;

(3) conserve any funds and other property of the adult not expended under paragraph (2) for the adult's future needs, but if a conservator has been appointed for the adult, pay the funds and other property at least quarterly to the conservator to be conserved for the adult's future needs; and

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

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

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

interest of the adult, the guardian shall consider:

- (1) information received from professionals and persons that demonstrate sufficient interest in the welfare of the adult;
- (2) other information the guardian believes the adult would have considered if the adult were able to act; and
- (3) other factors a reasonable person in the circumstances of the adult would consider, including consequences for others.

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

SECTION 314. POWERS OF GUARDIAN FOR ADULT.

(a) Except as limited by court order, a guardian for an adult may:

- (1) apply for and receive funds and benefits for the support of the adult, unless a conservator is appointed for the adult and the application or receipt is within the powers of the conservator;
- (2) unless inconsistent with a court order, establish the adult's place of dwelling;
- (3) consent to health or other care, treatment, or service for the adult;
- (4) if a conservator for the adult has not been appointed, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel another person to support the adult or pay funds for the adult's benefit;
- (5) to the extent reasonable, delegate to the adult responsibility for a decision affecting the adult's well-being; and
- (6) receive personally identifiable health-care information regarding the adult.

(b) The court by specific order may authorize a guardian for an adult to consent to the

adoption of the adult.

[(c) The court by specific order may authorize a guardian for an adult to:

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

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

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

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

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

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

(2) in selecting among residential settings, give priority to a residential setting in a location that will allow the adult to interact with persons important to the adult and meet the adult's needs in the least restrictive manner reasonably feasible unless to do so would be

inconsistent with the decision-making standard in Section 313(d) and (e);

(3) not later than 30 days after a change in the dwelling of the adult:

(A) give notice of the change to the court, the adult, and any person identified as entitled to the notice in the court order appointing the guardian or a subsequent order; and

(B) include in the notice the address and nature of the new dwelling and state whether the adult received advance notice of the change and whether the adult objected to the change;

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

(A) the establishment or move is in the guardian's plan under Section 316;

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

(C) the guardian gives notice of the establishment or move at least 14 days before the establishment or move to the adult and all persons entitled to notice under Section 310(e)(2) or a subsequent order, and no objection is filed;

(5) establish or move the place of dwelling of the adult outside this state only if consistent with the guardian's plan and authorized by the court by specific order; and

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

(A) the action is specifically included in the guardian's plan under Section 316;

(B) the court authorizes the action by specific order; or

(C) notice of the action was given at least 14 days before the action to the adult and all persons entitled to the notice under Section 310(e)(2) or a subsequent order and no objection has been filed.

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

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

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

(3) take into account:

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

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

Legislative Note: Subsection (c) is bracketed because states have different policies with respect to a guardian's authority as to marriage and divorce.

SECTION 315. SPECIAL LIMITATIONS ON GUARDIAN'S POWER.

(a) Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend a [power of attorney for health care] or power of attorney for finances executed by the adult. If a [power of attorney for health care] is in effect, unless there is a court order to the contrary, a health-care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the

agent which the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

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

(c) A guardian for an adult may not restrict the ability of the adult to communicate, visit, or interact with others, including receiving visitors and making or receiving telephone calls, personal mail, or electronic communications, including through social media, or participating in social activities, unless:

(1) authorized by the court by specific order;

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

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

(A) for a period of not more than seven business days if the person has a family or pre-existing social relationship with the adult; or

(B) for a period of not more than 60 days if the person does not have a family or pre-existing social relationship with the adult.

SECTION 316. GUARDIAN'S PLAN.

(a) A guardian for an adult, not later than 60 days after appointment and when there is a significant change in circumstances, or the guardian seeks to deviate significantly from the guardian's plan, shall file with the court a plan for the care of the adult. The plan must be based

on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the guardian. The guardian shall include in the plan:

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

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

(3) any person with whom the adult has a close personal relationship or relationship involving regular visitation and any plan the guardian has for facilitating visits with the person;

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

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

(6) whether the adult has an existing plan and, if so, whether the guardian's plan is consistent with the adult's plan; and

(7) a statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

(b) A guardian shall give notice of the filing of the guardian's plan under subsection (a), together with a copy of the plan, to the adult subject to guardianship, a person entitled to notice under Section 310(e) or a subsequent order, and any other person the court determines. The notice must include a statement of the right to object to the plan and be given not later than 14 days after the filing.

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

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

(e) After the guardian's plan filed under this section is approved by the court, the guardian shall provide a copy of the plan to the adult subject to guardianship, a person entitled to notice under Section 310(e) or a subsequent order, and any other person the court determines.

SECTION 317. GUARDIAN'S REPORT; MONITORING OF GUARDIANSHIP.

(a) A guardian for an adult, not later than 60 days after appointment and at least annually thereafter, shall file with the court a report in a record regarding the condition of the adult and accounting for funds and other property in the guardian's possession or subject to the guardian's control.

(b) A report under subsection (a) must state or contain:

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

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

(3) a summary of the supported decision making, technological assistance, medical services, educational and vocational services, and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

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

(5) action taken on behalf of the adult;

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

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

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

(9) if the guardian delegated a power to an agent, the power delegated and the reason for the delegation;

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

(11) a copy of the guardian's most recently approved plan under Section 316 and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

(12) plans for future care and support of the adult;

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

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

(c) The court may appoint a [visitor] to review a report submitted under this section or a guardian's plan submitted under Section 316, interview the guardian or adult subject to

guardianship, or investigate any other matter involving the guardianship.

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

(e) The court shall establish procedures for monitoring a report submitted under this section and review each report at least annually to determine whether:

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

(2) the guardianship should continue; and

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

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

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

(2) may require additional information from the guardian;

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

(4) consistent with Sections 318 and 319, may hold a hearing to consider removal of the guardian, termination of the guardianship, or a change in the powers granted to the guardian or terms of the guardianship.

(g) If the court has reason to believe fees requested by a guardian for an adult are not

reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

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

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

SECTION 318. REMOVAL OF GUARDIAN FOR ADULT; APPOINTMENT OF SUCCESSOR.

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

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

(1) petition of the adult, guardian, or person interested in the welfare of the adult, which contains allegations that, if true, would support a reasonable belief that removal of the guardian and appointment of a successor guardian may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;

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

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

(c) Notice of a petition under subsection (b)(1) must be given to the adult subject to guardianship, the guardian, and any other person the court determines.

(d) An adult subject to guardianship who seeks to remove the guardian and have a successor guardian appointed has the right to choose an attorney to represent the adult in this matter. [If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 305.]The court shall award reasonable attorney's fees to the attorney for the adult as provided in Section 119.

(e) In selecting a successor guardian for an adult, the court shall follow the priorities under Section 309.

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

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

SECTION 319. TERMINATION OR MODIFICATION OF GUARDIANSHIP FOR ADULT.

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

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

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

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

(1) petition under subsection (a) which contains allegations that, if true, would

support a reasonable belief that termination or modification of the guardianship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;

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

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

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

(c) Notice of a petition under subsection (b)(1) must be given to the adult subject to guardianship, the guardian, and any other person the court determines.

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

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

(f) Unless the court otherwise orders for good cause, before terminating or modifying a guardianship for an adult, the court shall follow the same procedures to safeguard the rights of

the adult which apply to a petition for guardianship.

(g) An adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has the right to choose an attorney to represent the adult in the matter. [If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 305.]The court shall award reasonable attorney's fees to the attorney for the adult as provided in Section 119.

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

[ARTICLE] 4

CONSERVATORSHIP

SECTION 401. BASIS FOR APPOINTMENT OF CONSERVATOR.

(a) On petition and after notice and hearing, the court may appoint a conservator for the property or financial affairs of a minor if the court finds by a preponderance of evidence that appointment of a conservator is in the minor's best interest, and:

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

(2) either:

(A) the minor owns funds or other property requiring management or protection that otherwise cannot be provided;

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

(C) appointment is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor.

(b) On petition and after notice and hearing, the court may appoint a conservator for the

property or financial affairs of an adult if the court finds by clear-and-convincing evidence that:

(1) the adult is unable to manage property or financial affairs because:

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

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

(2) appointment is necessary to:

(A) avoid harm to the adult or significant dissipation of the property of the adult; or

(B) obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or of an individual entitled to the adult's support; and

(3) the respondent's identified needs cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternative.

(c) The court shall grant a conservator only those powers necessitated by demonstrated limitations and needs of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full conservatorship if a limited conservatorship, protective arrangement instead of conservatorship, or other less restrictive alternative would meet the needs of the respondent.

SECTION 402. PETITION FOR APPOINTMENT OF CONSERVATOR.

(a) The following may petition for the appointment of a conservator:

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

(2) a person interested in the estate, financial affairs, or welfare of the individual, including a person that would be adversely affected by lack of effective management of property

or financial affairs of the individual; or

(3) the guardian for the individual.

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

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

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

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

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

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

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

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

(B) any attorney currently representing the respondent;

(C) the representative payee appointed by the Social Security

Administration for the respondent;

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

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

(F) the fiduciary appointed for the respondent by the Department of Veterans Affairs;

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

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

(I) a person known to have routinely assisted the respondent with decision making in the six-month period immediately before the filing of the petition;

(J) any proposed conservator, including a person nominated by the respondent, if the respondent is 12 years of age or older; and

(K) if the individual for whom a conservator is sought is a minor:

(i) an adult not otherwise listed with whom the minor resides; and

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

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

receipts;

(5) the reason conservatorship is necessary, including a brief description of:

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

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

(C) any protective arrangement instead of conservatorship or other less restrictive alternative for meeting the respondent's alleged need which has been considered or implemented;

(D) if no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason it has not been considered or implemented; and

(E) the reason a protective arrangement or other less restrictive alternative is insufficient to meet the respondent's need;

(6) whether the petitioner seeks a limited conservatorship or a full conservatorship;

(7) if the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;

(8) if the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed;

(9) if the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any requested limitation on the authority of the conservator;

(10) whether the respondent needs an interpreter, translator, or other form of

support to communicate effectively with the court or understand court proceedings; and

(11) the name and address of an attorney representing the petitioner, if any.

SECTION 403. NOTICE AND HEARING FOR APPOINTMENT OF CONSERVATOR.

(a) On filing of a petition under Section 402 for appointment of a conservator, the court shall set a date, time, and place for a hearing on the petition.

(b) A copy of a petition under Section 402 and notice of a hearing on the petition must be served personally on the respondent. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by [substituted service] [or] [publication]. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the petition. The court may not grant a petition for appointment of a conservator if notice substantially complying with this subsection is not served on the respondent.

(c) In a proceeding on a petition under Section 402, the notice required under subsection (b) must be given to the persons required to be listed in the petition under Section 402(b)(1) through (3) and any other person interested in the respondent's welfare the court determines. Failure to give notice under this subsection does not preclude the court from appointing a conservator.

(d) After the appointment of a conservator, notice of a hearing on a petition for an order under this [article], together with a copy of the petition, must be given to:

(1) the individual subject to conservatorship, if the individual is 12 years of age or older and not missing, detained, or unable to return to the United States;

- (2) the conservator; and
- (3) any other person the court determines.

SECTION 404. ORDER TO PRESERVE OR APPLY PROPERTY WHILE

PROCEEDING PENDING. While a petition under Section 402 is pending, after preliminary hearing and without notice to others, the court may issue an order to preserve and apply property of the respondent as required for the support of the respondent or an individual who is in fact dependent on the respondent. The court may appoint a [master] to assist in implementing the order.

Legislative Note: The term “master” is bracketed in recognition that states have different terms for this role.

SECTION 405. APPOINTMENT AND ROLE OF [VISITOR].

(a) If the respondent in a proceeding to appoint a conservator is a minor, the court may appoint a [visitor] to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.

(b) If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a [visitor][unless the adult is represented by an attorney appointed by the court]. The duties and reporting requirements of the [visitor] are limited to the relief requested in the petition. The [visitor] must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.

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

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

(2) determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties, and the scope and duration of the proposed conservatorship;

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

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

(d) A [visitor] appointed under subsection (b) for an adult shall:

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

(2) review financial records of the respondent, if relevant to the [visitor's] recommendation under subsection (e)(2);

(3) investigate whether the respondent's needs could be met by a protective arrangement instead of conservatorship or other less restrictive alternative and, if so, identify the arrangement or other less restrictive alternative; and

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

(e) A [visitor] appointed under subsection (b) for an adult promptly shall file a report in a record with the court, which must include:

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

(2) a recommendation:

(A) regarding the appropriateness of conservatorship, or whether a protective arrangement instead of conservatorship or other less restrictive alternative for meeting

the respondent's needs is available;

(B) if a conservatorship is recommended, whether it should be full or limited; and

(C) if a limited conservatorship is recommended, the powers to be granted to the conservator, and the property that should be placed under the conservator's control;

(3) a statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator;

(4) a recommendation whether a professional evaluation under Section 407 is necessary;

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

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

(7) any other matter the court directs.

Legislative Note: The term "visitor" is bracketed because some states use a different term for the person appointed by the court to investigate and report on certain facts.

SECTION 406. APPOINTMENT AND ROLE OF ATTORNEY.

Alternative A

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

(1) the respondent requests an appointment;

(2) the [visitor] recommends an appointment; or

(3) the court determines the respondent needs representation.

Alternative B

(a) Unless the respondent in a proceeding for appointment of a conservator is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the respondent's ability to pay.

End of Alternatives

(b) An attorney representing the respondent in a proceeding for appointment of a conservator shall:

- (1) make reasonable efforts to ascertain the respondent's wishes;
- (2) advocate for the respondent's wishes to the extent reasonably ascertainable;

and

(3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least-restrictive in type, duration, and scope, consistent with the respondent's interests.

[(c) The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under Section 402 if:

- (1) the parent objects to appointment of a conservator;
- (2) the court determines that counsel is needed to ensure that consent to appointment of a conservator is informed; or
- (3) the court otherwise determines the parent needs representation.]

Legislative Note: A state that enacts Alternative B should not enact Section 405(e)(1).

Subsection (c) is in brackets because states have differing policies regarding the rights of parents in these cases.

SECTION 407. PROFESSIONAL EVALUATION.

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

(1) if the respondent requests the evaluation; or

(2) in other cases, unless the court finds it has sufficient information to determine the respondent's needs and abilities without the evaluation.

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

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

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

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

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

(c) A respondent may decline to participate in an evaluation ordered under subsection (a).

SECTION 408. ATTENDANCE AND RIGHTS AT HEARING.

(a) Except as otherwise provided in subsection (b), a hearing under Section 403 may not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

(b) A hearing under Section 403 may proceed without the respondent in attendance if the court finds by clear-and-convincing evidence that:

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

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

(3) the respondent is a minor who has received proper notice and attendance would be harmful to the minor.

(c) The respondent may be assisted in a hearing under Section 403 by a person or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

(d) The respondent has a right to choose an attorney to represent the respondent at a hearing under Section 403.

(e) At a hearing under Section 403, the respondent may:

- (1) present evidence and subpoena witnesses and documents;
- (2) examine witnesses, including any court-appointed evaluator and the [visitor];

and

- (3) otherwise participate in the hearing.

(f) Unless excused by the court for good cause, a proposed conservator shall attend a hearing under Section 403.

(g) A hearing under Section 403 must be closed on request of the respondent and a showing of good cause.

(h) Any person may request to participate in a hearing under Section 403. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

SECTION 409. CONFIDENTIALITY OF RECORDS.

(a) The existence of a proceeding for or the existence of conservatorship is a matter of public record unless the court seals the record after:

- (1) the respondent, the individual subject to conservatorship, or the parent of a minor subject to conservatorship requests the record be sealed; and

- (2) either:

- (A) the petition for conservatorship is dismissed; or

- (B) the conservatorship is terminated.

(b) An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed, an attorney designated by the individual, and a person entitled to notice under Section 411(e) or a subsequent order may access court records of the proceeding and

resulting conservatorship, including the conservator's plan under Section 419 and the conservator's report under Section 423. A person not otherwise entitled to access to court records under this section for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court shall grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

[(c) A report under Section 405 of a [visitor] or professional evaluation under Section 407 is confidential and must be sealed on filing, but is available to:

- (1) the court;
- (2) the individual who is the subject of the report or evaluation, without limitation as to use;
- (3) the petitioner, [visitor], and petitioner's and respondent's attorneys, for purposes of the proceeding;
- (4) unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal; and
- (5) any other person if it is in the public interest or for a purpose the court orders for good cause.]

Legislative Note: Subsection (c) is bracketed in recognition that states have different policies and procedures regarding the sealing of court records.

SECTION 410. WHO MAY BE CONSERVATOR; ORDER OF PRIORITY.

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

- (1) a conservator, other than a temporary or emergency conservator, currently

acting for the respondent in another jurisdiction;

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

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

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

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

(b) If two or more persons have equal priority under subsection (a), the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a conservator successfully.

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

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

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

(2) the court finds by clear-and-convincing evidence that the person is the best

qualified person available for appointment and the appointment is in the best interest of the respondent.

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

Legislative Note: Each state enacting the Act needs to insert in subsection (e) the particular term or terms used in the state or statutory references for facilities considered long-term care institutions.

SECTION 411. ORDER OF APPOINTMENT OF CONSERVATOR.

(a) A court order appointing a conservator for a minor must include findings to support appointment of a conservator and, if a full conservatorship is granted, the reason a limited conservatorship would not meet the identified needs of the minor.

(b) A court order appointing a conservator for an adult must:

(1) include a specific finding that clear-and-convincing evidence has established that the identified needs of the respondent cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternative, including use of appropriate supportive services, technological assistance, or supported decision making; and

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

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

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

(e) The court, as part of an order establishing a conservatorship, shall identify any person that subsequently is entitled to:

(1) notice of the rights of the individual subject to conservatorship under Section 412(b);

(2) notice of a sale of or surrender of a lease to the primary dwelling of the individual;

(3) notice that the conservator has delegated a power that requires court approval under Section 414 or substantially all powers of the conservator;

(4) notice that the conservator will be unavailable to perform the conservator's duties for more than one month;

(5) a copy of the conservator's plan under Section 419 and the conservator's report under Section 423;

(6) access to court records relating to the conservatorship;

(7) notice of a transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

(8) notice of the death or significant change in the condition of the individual;

(9) notice that the court has limited or modified the powers of the conservator;

and

(10) notice of the removal of the conservator.

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

(g) If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under subsection (e) to notice unless the court determines notice would not be in the best interest of the minor.

SECTION 412. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.

(a) A conservator appointed under Section 411 shall give to the individual subject to conservatorship and to all other persons given notice under Section 403 a copy of the order of appointment, together with notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

(b) Not later than 30 days after appointment of a conservator under Section 411, the court shall give to the individual subject to conservatorship, the conservator, and any other person entitled to notice under Section 411(e) a statement of the rights of the individual subject to conservatorship and procedures to seek relief if the individual is denied those rights. The statement must be in plain language, in at least 16-point font, and to the extent feasible, in a language in which the individual subject to conservatorship is proficient. The statement must notify the individual subject to conservatorship of the right to:

- (1) seek termination or modification of the conservatorship, or removal of the conservator, and choose an attorney to represent the individual in these matters;
- (2) participate in decision making to the extent reasonably feasible;
- (3) receive a copy of the conservator's plan under Section 419, the conservator's inventory under Section 420, and the conservator's report under Section 423; and
- (4) object to the conservator's inventory, plan, or report.

(c) If a conservator is appointed for the reasons stated in Section 401(b)(1)(B) and the individual subject to conservatorship is missing, notice under this section to the individual is not

required.

SECTION 413. EMERGENCY CONSERVATOR.

(a) On its own or on petition by a person interested in an individual's welfare after a petition has been filed under Section 402, the court may appoint an emergency conservator for the individual if the court finds:

(1) appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the individual's property or financial interests;

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

(3) there is reason to believe that a basis for appointment of a conservator under Section 401 exists.

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

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

(d) The court may appoint an emergency conservator without notice to the respondent and any attorney for the respondent only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a

hearing with notice on the appointment can be held. If the court appoints an emergency conservator without giving notice under subsection (c), the court must give notice of the appointment not later than 48 hours after the appointment to:

- (1) the respondent;
- (2) the respondent's attorney; and
- (3) any other person the court determines.

(e) Not later than [five] days after the appointment, the court shall hold a hearing on the appropriateness of the appointment.

(f) Appointment of an emergency conservator under this section is not a determination that a basis exists for appointment of a conservator under Section 401.

(g) The court may remove an emergency conservator appointed under this section at any time. The emergency conservator shall make any report the court requires.

SECTION 414. POWERS OF CONSERVATOR REQUIRING COURT APPROVAL.

(a) Except as otherwise ordered by the court, a conservator must give notice to persons entitled to notice under Section 403(d) and receive specific authorization by the court before the conservator may exercise with respect to the conservatorship the power to:

- (1) make a gift, except a gift of de minimis value;
- (2) sell, encumber an interest in, or surrender a lease to the primary dwelling of the individual subject to conservatorship;
- (3) convey, release, or disclaim a contingent or expectant interest in property, including marital property and any right of survivorship incident to joint tenancy or tenancy by the entireties;

(4) exercise or release a power of appointment;

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

(6) exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;

(7) exercise a right to an elective share in the estate of a deceased spouse[or domestic partner] of the individual subject to conservatorship or renounce or disclaim a property interest; [and]

(8) grant a creditor priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to conservatorship and preferential treatment otherwise would be impermissible under Section 428(e); and

(9) make, modify, amend, or revoke the will of the individual subject to conservatorship in compliance with [the state's statute for executing a will]].

(b) In approving a conservator's exercise of a power listed in subsection (a), the court shall consider primarily the decision the individual subject to conservatorship would make if able, to the extent the decision can be ascertained.

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

(1) the financial needs of the individual subject to conservatorship and individuals

who are in fact dependent on the individual subject to conservatorship for support, and the interests of creditors of the individual;

- (2) possible reduction of income, estate, inheritance, or other tax liabilities;
- (3) eligibility for governmental assistance;
- (4) the previous pattern of giving or level of support provided by the individual;
- (5) any existing estate plan or lack of estate plan of the individual;
- (6) the life expectancy of the individual and the probability the conservatorship

will terminate before the individual's death; and

- (7) any other relevant factor.

(d) A conservator may not revoke or amend a power of attorney for finances executed by the individual subject to conservatorship. If a power of attorney for finances is in effect, a decision of the agent takes precedence over that of the conservator, unless the court orders otherwise.

Legislative Note: Language in subsection (a)(9) is bracketed to allow an enacting state to reference its statute on will execution.

SECTION 415. PETITION FOR ORDER AFTER APPOINTMENT. An individual subject to conservatorship or a person interested in the welfare of the individual may petition for an order:

- (1) requiring the conservator to furnish a bond or collateral or additional bond or collateral or allowing a reduction in a bond or collateral previously furnished;
- (2) requiring an accounting for the administration of the conservatorship estate;
- (3) directing distribution;
- (4) removing the conservator and appointing a temporary or successor conservator;
- (5) modifying the type of appointment or powers granted to the conservator, if the extent

of protection or management previously granted is excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed;

(6) rejecting or modifying the conservator's plan under Section 419, the conservator's inventory under Section 420, or the conservator's report under Section 423; or

(7) granting other appropriate relief.

SECTION 416. BOND; ALTERNATIVE ASSET-PROTECTION ARRANGEMENT.

(a) Except as otherwise provided in subsection (c), the court shall require a conservator to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. Except as otherwise provided in subsection (c), the court may not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service.

(b) Unless the court directs otherwise, the bond required under this section must be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under an arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

(c) [A regulated financial-service institution qualified to do trust business] in this state is not required to give a bond under this section.

Legislative Note: Each state enacting the Act can insert in subsection (c) the particular term or terms used in the state or statutory reference for such an institution or, alternatively, use the language provided.

SECTION 417. TERMS AND REQUIREMENTS OF BOND.

(a) The following rules apply to the bond required under Section 416:

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

(2) By executing a bond provided by a conservator, the surety submits to the personal jurisdiction of the court that issued letters of office to the conservator in a proceeding relating to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the records of the court in which the bond is filed and any other address of the surety then known to the person required to provide the notice.

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

(4) A proceeding against the bond may be brought until liability under the bond is exhausted.

(b) A proceeding may not be brought under this section against a surety of a bond on a matter as to which a proceeding against the conservator is barred.

(c) If a bond under Section 416 is not renewed by the conservator, the surety or sureties immediately shall give notice to the court and the individual subject to conservatorship.

SECTION 418. DUTIES OF CONSERVATOR.

(a) A conservator is a fiduciary and has duties of prudence and loyalty to the individual

subject to conservatorship.

(b) A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf, and develop or regain the capacity to manage the individual's personal affairs.

(c) In making a decision for an individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current directions, preferences, opinions, values, and actions, to the extent actually known or reasonably ascertainable by the conservator.

(d) If a conservator cannot make a decision under subsection (c) because the conservator does not know and cannot reasonably determine the decision the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual, the conservator shall act in accordance with the best interest of the individual. In determining the best interest of the individual, the conservator shall consider:

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

(2) other information the conservator believes the individual would have

considered if the individual were able to act; and

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

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

(1) the circumstances of the individual subject to conservatorship and the conservatorship estate;

(2) general economic conditions;

(3) the possible effect of inflation or deflation;

(4) the expected tax consequences of an investment decision or strategy;

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

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

(7) the need for liquidity, regularity of income, and preservation or appreciation of capital; and

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

(f) The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

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

(h) A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

(i) In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative, or appointive instrument of the individual.

(j) A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds:

(1) the property lacks sufficient equity; or

(2) insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual.

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

(l) A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by [the Revised Uniform Fiduciary Access to Digital Assets Act] or court order.

(m) A conservator for an adult shall notify the court if the condition of the adult has changed so that the adult is capable of exercising rights previously removed. The notice must be given immediately on learning of the change.

SECTION 419. CONSERVATOR'S PLAN.

(a) A conservator, not later than 60 days after appointment and when there is a significant change in circumstances or the conservator seeks to deviate significantly from the conservator's plan, shall file with the court a plan for protecting, managing, expending, and distributing the assets of the conservatorship estate. The plan must be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the conservator. The conservator shall include in the plan:

(1) a budget containing projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual;

(2) how the conservator will involve the individual in decisions about management of the conservatorship estate;

(3) any step the conservator plans to take to develop or restore the ability of the individual to manage the conservatorship estate; and

(4) an estimate of the duration of the conservatorship.

(b) A conservator shall give notice of the filing of the conservator's plan under subsection (a), together with a copy of the plan, to the individual subject to conservatorship, a person entitled to notice under Section 411(e) or a subsequent order, and any other person the court determines. The notice must include a statement of the right to object to the plan and be given not later than 14 days after the filing.

(c) An individual subject to conservatorship and any person entitled under subsection (b)

to receive notice and a copy of the conservator's plan may object to the plan.

(d) The court shall review the conservator's plan filed under subsection (a) and determine whether to approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider an objection under subsection (c) and whether the plan is consistent with the conservator's duties and powers. The court may not approve the plan until [30] days after its filing.

(e) After a conservator's plan under this section is approved by the court, the conservator shall provide a copy of the plan to the individual subject to conservatorship, a person entitled to notice under Section 411(e) or a subsequent order, and any other person the court determines.

SECTION 420. INVENTORY; RECORDS.

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

(b) A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, a person entitled to notice under Section 411(e) or a subsequent order, and any other person the court determines. The notice must be given not later than 14 days after the filing.

(c) A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian for the individual, or any other person the conservator or the court determines.

SECTION 421. ADMINISTRATIVE POWERS OF CONSERVATOR NOT REQUIRING COURT APPROVAL.

(a) Except as otherwise provided in Section 414 or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional power granted to a trustee by law of this state other than this [act].

(b) A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the conservatorship, without specific court authorization or confirmation, may with respect to the conservatorship estate:

(1) collect, hold, and retain property, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;

(2) receive additions to the conservatorship estate;

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

(4) acquire an undivided interest in property in which the conservator, in a fiduciary capacity, holds an undivided interest;

(5) invest assets;

(6) deposit funds or other property in a financial institution, including one operated by the conservator;

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

(8) make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze an existing or erect a new party wall or building;

(9) subdivide or develop land, dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange or partition land by giving or receiving consideration, and dedicate an easement to public use without consideration;

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

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

(12) grant an option involving disposition of property or accept or exercise an option for the acquisition of property;

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

(14) pay a call, assessment, or other sum chargeable or accruing against or on account of a security;

(15) sell or exercise a stock subscription or conversion right;

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

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

(18) insure:

(A) the conservatorship estate, in whole or in part, against damage or loss in accordance with Section 418(j); and

(B) the conservator against liability with respect to a third person;

(19) borrow funds, with or without security, to be repaid from the conservatorship estate or otherwise;

(20) advance funds for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses, and liability sustained in the administration of the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate;

(21) pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration, or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible;

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

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

(A) to the guardian for the distributee;

(B) to the custodian of the distributee under [the Uniform Transfers to Minors Act] or custodial trustee under [the Uniform Custodial Trust Act]; or

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

(24) bring or defend an action, claim, or proceeding in any jurisdiction for the protection of the conservatorship estate or the conservator in the performance of the

conservator's duties;

(25) structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the individual's preferences, values, and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and

(26) execute and deliver any instrument that will accomplish or facilitate the exercise of a power of the conservator.

SECTION 422. DISTRIBUTION FROM CONSERVATORSHIP ESTATE. Except as otherwise provided in Section 414 or qualified or limited in the court's order of appointment and stated in the letters of office, and unless contrary to a conservator's plan under Section 419, the conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health, or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with the following rules:

(1) The conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health, or welfare for the individual subject to conservatorship or individual who is dependent on the individual subject to conservatorship, made by a guardian for the individual subject to conservatorship, if any, and, if the individual subject to conservatorship is a minor, a recommendation made by a parent of the minor.

(2) The conservator acting in compliance with the conservator's duties under Section 418 is not liable for an expenditure or distribution made based on a recommendation under paragraph (1) unless the conservator knows the expenditure or distribution is not in the best interest of the

individual subject to conservatorship.

(3) In making an expenditure or distribution under this section, the conservator shall consider:

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

(B) the accustomed standard of living of the individual subject to conservatorship and individual who is dependent on the individual subject to conservatorship;

(C) other funds or source used for the support of the individual subject to conservatorship; and

(D) the preferences, values, and prior directions of the individual subject to conservatorship.

(4) Funds expended or distributed under this section may be paid by the conservator to any person, including the individual subject to conservatorship, as reimbursement for expenditures the conservator might have made, or in advance for services to be provided to the individual subject to conservatorship or individual who is dependent on the individual subject to conservatorship if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances.

**SECTION 423. CONSERVATOR'S REPORT AND ACCOUNTING;
MONITORING.**

(a) A conservator shall file with the court a report in a record regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or

removal, on termination of the conservatorship, and at any other time the court directs.

(b) A report under subsection (a) must state or contain:

(1) an accounting that lists property included in the conservatorship estate and the receipts, disbursements, liabilities, and distributions during the period for which the report is made;

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

(3) a copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how the conservator has deviated and why;

(4) a recommendation as to the need for continued conservatorship and any recommended change in the scope of the conservatorship;

(5) to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts, and mortgages or other debts of the individual subject to conservatorship with [all but the last four digits of the]account numbers and Social Security number redacted;

(6) anything of more than de minimis value which the conservator, any individual who resides with the conservator, or the spouse, [domestic partner,]parent, child, or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

(7) any business relation the conservator has with a person the conservator has paid or that has benefited from the property of the individual subject to conservatorship; and

(8) whether any co-conservator or successor conservator appointed to serve when a designated event occurs is alive and able to serve.

(c) The court may appoint a [visitor] to review a report under this section or conservator's plan under Section 419, interview the individual subject to conservatorship or conservator, or investigate any other matter involving the conservatorship. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

(d) Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, a person entitled to notice under Section 411(e) or a subsequent order, and other persons the court determines. The notice and report must be given not later than 14 days after filing.

(e) The court shall establish procedures for monitoring a report submitted under this section and review each report at least annually to determine whether:

- (1) the reports provide sufficient information to establish the conservator has complied with the conservator's duties;
- (2) the conservatorship should continue; and
- (3) the conservator's requested fees, if any, should be approved.

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

- (1) shall notify the individual subject to conservatorship, the conservator, and any other person entitled to notice under Section 411(e) or a subsequent order;
- (2) may require additional information from the conservator;
- (3) may appoint a [visitor] to interview the individual subject to conservatorship or conservator or investigate any matter involving the conservatorship; and
- (4) consistent with Sections 430 and 431, may hold a hearing to consider removal

of the conservator, termination of the conservatorship, or a change in the powers granted to the conservator or terms of the conservatorship.

(g) If the court has reason to believe fees requested by a conservator are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

(h) A conservator may petition the court for approval of a report filed under this section. The court after review may approve the report. If the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

(i) An order, after notice and hearing, approving an interim report of a conservator filed under this Section adjudicates liabilities concerning a matter adequately disclosed in the report, as to a person given notice of the report or accounting.

(j) An order, after notice and hearing, approving a final report filed under this Section discharges the conservator from all liabilities, claims, and causes of action by a person given notice of the report and the hearing as to a matter adequately disclosed in the report.

Legislative Note: *The brackets in subsection (b) are included so that an enacting state may make a policy choice as to whether to require full or partial redaction of Social Security numbers and account numbers.*

The term “visitor” is bracketed because some states use a different term for the person appointed by the court to investigate and report on certain facts.

SECTION 424. ATTEMPTED TRANSFER OF PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.

(a) The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferrable or assignable by the individual and is not subject to levy, garnishment, or similar process for claims against the individual unless allowed under Section 428.

(b) If an individual subject to conservatorship enters into a contract after having the right

to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.

(c) A person other than the conservator that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of this state other than this [act].

SECTION 425. TRANSACTION INVOLVING CONFLICT OF INTEREST. A transaction involving a conservatorship estate which is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by court order after notice to persons entitled to notice under Section 411(e) or a subsequent order. A transaction affected by a substantial conflict includes a sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, an individual with whom the conservator resides, the spouse, [domestic partner,]descendant, sibling, agent, or attorney of the conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

SECTION 426. PROTECTION OF PERSON DEALING WITH CONSERVATOR.

(a) A person that assists or deals with a conservator in good faith and for value in any transaction, other than a transaction requiring a court order under Section 414, is protected as though the conservator properly exercised any power in question. Knowledge by a person that the person is dealing with a conservator alone does not require the person to inquire into the existence of authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority stated in letters of office, or otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.

(b) Protection under subsection (a) extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and does not substitute for protection for a person that assists or deals with a conservator provided by comparable provisions in law of this state other than this [act] relating to a commercial transaction or simplifying a transfer of securities by a fiduciary.

SECTION 427. DEATH OF INDIVIDUAL SUBJECT TO CONSERVATORSHIP.

(a) If an individual subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual in the conservator's possession and inform the personal representative named in the will if feasible, or if not feasible, a beneficiary named in the will, of the delivery.

[(b) If 40 days after the death of an individual subject to conservatorship no personal representative has been appointed and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The conservator shall give notice to a person nominated as personal representative by a will of the decedent of which the conservator is aware. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator has acquired the powers and duties of a personal representative.

(c) Issuance of an order under this section has the effect of an order of appointment of a personal representative under [Section 3-308 and Parts 6 through 10 of Article III of the Uniform Probate Code]].

(d) On the death of an individual subject to conservatorship, the conservator shall conclude the administration of the conservatorship estate as provided in Section 431.

***Legislative Note:** Subsections (b) and (c) are bracketed for several reasons. First, the enacting jurisdiction's probate code already may address the right of the conservator to petition for appointment as personal representative or the right of the conservator to distribute the conservatorship assets directly to the estate beneficiaries. Second, subsections (b) and (c) are not essential and may be omitted if the enacting jurisdiction chooses. Finally, subsection (b) is specifically tailored for a state, such as one that has enacted the Uniform Probate Code, which allows appointment of a personal representative without prior notice to estate beneficiaries. A state that requires notice to interested persons before appointment of a personal representative should modify subsection (b) accordingly.*

SECTION 428. PRESENTATION AND ALLOWANCE OF CLAIM.

(a) A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the individual subject to conservatorship arising before or during the conservatorship, on presentation and allowance in accordance with the priorities under subsection (d). A claimant may present a claim by:

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

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

(b) A claim under subsection (a) is presented on receipt by the conservator of the statement of the claim or the filing with the court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed in whole or in part by the conservator in a record sent or delivered to the claimant not later than 60 days after its presentation. Before payment, the conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a claim tolls until 30 days after disallowance of the claim the running of a statute of limitations that has not expired relating to the claim.

(c) A claimant whose claim under subsection (a) has not been paid may petition the court

to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment, or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

(d) If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

- (1) costs and expenses of administration;
- (2) a claim of the federal or state government having priority under law other than this [act];
- (3) a claim incurred by the conservator for support, care, education, health, or welfare previously provided to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship;
- (4) a claim arising before the conservatorship; and
- (5) all other claims.

(e) Preference may not be given in the payment of a claim under subsection (d) over another claim of the same class. A claim due and payable may not be preferred over a claim not due unless:

- (1) doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health-care expenses of the individual subject to conservatorship; and
- (2) the court authorizes the preference under Section 414(a)(8).

(f) If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the individual subject to conservatorship, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date.

SECTION 429. PERSONAL LIABILITY OF CONSERVATOR.

(a) Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the conservator fails to reveal the conservator's representative capacity in the contract or before entering into the contract.

(b) A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.

(c) A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate, or a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

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

SECTION 430. REMOVAL OF CONSERVATOR; APPOINTMENT OF SUCCESSOR.

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

(b) The court shall hold a hearing to determine whether to remove a conservator and appoint a successor on:

(1) petition of the individual subject to conservatorship, conservator, or person interested in the welfare of the individual which contains allegations that, if true, would support a reasonable belief that removal of the conservator and appointment of a successor may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed during the preceding six months;

(2) communication from the individual subject to conservatorship, conservator, or person interested in the welfare of the individual which supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

(3) determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.

(c) Notice of a petition under subsection (b)(1) must be given to the individual subject to conservatorship, the conservator, and any other person the court determines.

(d) An individual subject to conservatorship who seeks to remove the conservator and have a successor appointed has the right to choose an attorney to represent the individual in this matter. [If the individual is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 406.]The court shall award reasonable attorney's fees to the attorney as provided in Section 119.

(e) In selecting a successor conservator, the court shall follow the priorities under Section 410.

(f) Not later than 30 days after appointing a successor conservator, the court shall give notice of the appointment to the individual subject to conservatorship and any person entitled to

notice under Section 411(e) or a subsequent order.

Legislative Note: A state may make the policy decision to include the bracketed language in subsection (d). This policy decision parallels Alternative A in Section 405.

**SECTION 431. TERMINATION OR MODIFICATION OF
CONSERVATORSHIP.**

(a) A conservatorship for a minor terminates on the earliest of:

(1) a court order terminating the conservatorship;

(2) the minor becoming an adult or, if the minor consents or the court finds by clear-and-convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining 21 years of age;

(3) emancipation of the minor; or

(4) death of the minor.

(b) A conservatorship for an adult terminates on order of the court or when the adult dies.

(c) An individual subject to conservatorship, the conservator, or a person interested in the welfare of the individual may petition for:

(1) termination of the conservatorship on the ground that a basis for appointment under Section 401 does not exist or termination would be in the best interest of the individual or for other good cause; or

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

(d) The court shall hold a hearing to determine whether termination or modification of a conservatorship is appropriate on:

(1) petition under subsection (c) which contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be

appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding six months;

(2) a communication from the individual subject to conservatorship, conservator, or person interested in the welfare of the individual which supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because the functional needs of the individual or supports or services available to the individual have changed;

(3) a report from a guardian or conservator which indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual have changed or a protective arrangement instead of conservatorship or other less restrictive alternative is available; or

(4) a determination by the court that a hearing would be in the best interest of the individual.

(e) Notice of a petition under subsection (c) must be given to the individual subject to conservatorship, the conservator, and any such other person the court determines.

(f) On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless it is proven that a basis for appointment of a conservator under Section 401 exists.

(g) The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports, or other circumstances.

(h) Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the

individual subject to conservatorship which apply to a petition for conservatorship.

(i) An individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship has the right to choose an attorney to represent the individual in this matter. [If the individual is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 406.]The court shall award reasonable attorney's fees to the attorney as provided in Section 119.

(j) On termination of a conservatorship other than by reason of the death of the individual subject to conservatorship, property of the conservatorship estate passes to the individual. The order of termination must direct the conservator to file a final report and petition for discharge on approval by the court of the final report.

(k) On termination of a conservatorship by reason of the death of the individual subject to conservatorship, the conservator promptly shall file a final report and petition for discharge on approval by the court of the final report. On approval of the final report, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual's estate or as otherwise ordered by the court. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be made.

(l) The court shall issue a final order of discharge on the approval by the court of the final report and satisfaction by the conservator of any other condition the court imposed on the conservator's discharge.

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

SECTION 432. TRANSFER FOR BENEFIT OF MINOR WITHOUT APPOINTMENT OF CONSERVATOR.

(a) Unless a person required to transfer funds or other property to a minor knows that a

conservator for the minor has been appointed or a proceeding is pending for conservatorship, the person may transfer an amount or value not exceeding \$[15,000] in a 12-month period to:

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

(2) a guardian for the minor;

(3) a custodian under [the Uniform Transfers to Minors Act or Uniform Gifts to Minors Act]; or

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

(b) A person that transfers funds or other property under this section is not responsible for its proper application.

(c) A person that receives funds or other property for a minor under subsection (a)(1) or (2) may apply it only to the support, care, education, health, or welfare of the minor, and may not derive a personal financial benefit from it, except for reimbursement for necessary expenses. Funds not applied for these purposes must be preserved for the future support, care, education, health, or welfare of the minor, and the balance, if any, transferred to the minor when the minor becomes an adult or otherwise is emancipated.

[ARTICLE] 5

OTHER PROTECTIVE ARRANGEMENTS

SECTION 501. AUTHORITY FOR PROTECTIVE ARRANGEMENT.

(a) Under this [article], a court:

(1) on receiving a petition for a guardianship for an adult may order a protective arrangement instead of guardianship as a less restrictive alternative to guardianship; and

(2) on receiving a petition for a conservatorship for an individual may order a protective arrangement instead of conservatorship as a less restrictive alternative to conservatorship.

(b) A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this [article] for a protective arrangement instead of guardianship.

(c) The following persons may petition under this [article] for a protective arrangement instead of conservatorship:

(1) the individual for whom the protective arrangement is sought;

(2) a person interested in the property, financial affairs, or welfare of the individual, including a person that would be affected adversely by lack of effective management of property or financial affairs of the individual; and

(3) the guardian for the individual.

SECTION 502. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.

(a) After the hearing on a petition under Section 302 for a guardianship or under Section 501(b) for a protective arrangement instead of guardianship, the court may issue an order under subsection (b) for a protective arrangement instead of guardianship if the court finds by clear-and-convincing evidence that:

(1) the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and

(2) the respondent's identified needs cannot be met by a less restrictive

alternative.

(b) If the court makes the findings under subsection (a), the court, instead of appointing a guardian, may:

(1) authorize or direct a transaction necessary to meet the respondent's need for health, safety, or care, including:

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

(B) a move to a specified place of dwelling; or

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

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

(3) order other arrangements on a limited basis that are appropriate.

(c) In deciding whether to issue an order under this section, the court shall consider the factors under Sections 313 and 314 which a guardian must consider when making a decision on behalf of an adult subject to guardianship.

SECTION 503. BASIS FOR PROTECTIVE ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.

(a) After the hearing on a petition under Section 402 for conservatorship for an adult or under Section 501(c) for a protective arrangement instead of conservatorship for an adult, the court may issue an order under subsection (c) for a protective arrangement instead of conservatorship for the adult if the court finds by clear-and-convincing evidence that:

(1) the adult is unable to manage property or financial affairs because:

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

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

(2) an order under subsection (c) is necessary to:

(A) avoid harm to the adult or significant dissipation of the property of the adult; or

(B) obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult or an individual entitled to the adult's support; and

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

(b) After the hearing on a petition under Section 402 for conservatorship for a minor or under Section 501(c) for a protective arrangement instead of conservatorship for a minor, the court may issue an order under subsection (c) for a protective arrangement instead of conservatorship for the respondent if the court finds by a preponderance of the evidence that the arrangement is in the minor's best interest, and:

(1) if the minor has a parent, the court gives weight to any recommendation of the parent whether an arrangement is in the minor's best interest;

(2) either:

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

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

(C) the arrangement is necessary or desirable to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the minor; and

(3) the order under subsection (c) is necessary or desirable to obtain or provide money needed for the support, care, education, health, or welfare of the minor.

(c) If the court makes the findings under subsection (a) or (b), the court, instead of appointing a conservator, may:

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

(A) an action to establish eligibility for benefits;

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

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

(D) purchase of an annuity;

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

(F) addition to or establishment of a trust;

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

or

(H) settlement of a claim; or

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

(d) After the hearing on a petition under Section 501(a)(2) or (c), whether or not the court makes the findings under subsection (a) or (b), the court may issue an order to restrict

access to the respondent or the respondent's property by a specified person that the court finds by clear-and-convincing evidence:

(1) through fraud, coercion, duress, or the use of deception and control caused or attempted to cause an action that would have resulted in financial harm to the respondent or the respondent's property; and

(2) poses a serious risk of substantial financial harm to the respondent or the respondent's property.

(e) Before issuing an order under subsection (c) or (d), the court shall consider the factors under Section 418 a conservator must consider when making a decision on behalf of an individual subject to conservatorship.

(f) Before issuing an order under subsection (c) or (d) for a respondent who is a minor, the court also shall consider the best interest of the minor, the preference of the parents of the minor, and the preference of the minor, if the minor is 12 years of age or older.

SECTION 504. PETITION FOR PROTECTIVE ARRANGEMENT. A petition for a protective arrangement instead of guardianship or conservatorship must state the petitioner's name, principal residence, current street address, if different, relationship to the respondent, interest in the protective arrangement, the name and address of any attorney representing the petitioner, and, to the extent known, the following:

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

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

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

with whom the respondent has shared household responsibilities for more than six months in the 12-month period before the filing of the petition;

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

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

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

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

(B) any attorney currently representing the respondent;

(C) the representative payee appointed by the Social Security

Administration for the respondent;

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

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

(F) the fiduciary appointed for the respondent by the Department of Veterans Affairs;

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

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

(I) a person nominated as guardian or conservator by the respondent if the respondent is 12 years of age or older;

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

(K) a person known to have routinely assisted the respondent with decision making in the six-month period immediately before the filing of the petition; and

(L) if the respondent is a minor:

(i) an adult not otherwise listed with whom the respondent resides;

and

(ii) each person not otherwise listed that had primary care or custody of the respondent for at least 60 days during the two years immediately before the filing of the petition or for at least 730 days during the five years immediately before the filing of the petition;

(4) the nature of the protective arrangement sought;

(5) the reason the protective arrangement sought is necessary, including a brief description of:

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

(B) any less restrictive alternative for meeting the respondent's alleged need which has been considered or implemented;

(C) if no less restrictive alternative has been considered or implemented, the reason less restrictive alternatives have not been considered or implemented; and

(D) the reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;

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

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

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

(9) if a protective arrangement instead of conservatorship is sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts.

SECTION 505. NOTICE AND HEARING.

(a) On filing of a petition under Section 501, the court shall set a date, time, and place for a hearing on the petition.

(b) A copy of a petition under Section 501 and notice of a hearing on the petition must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must include a description of the nature, purpose, and consequences of granting the petition. The court may not grant the petition if notice substantially complying with this subsection is not served on the respondent.

(c) In a proceeding on a petition under Section 501, the notice required under subsection (b) must be given to the persons required to be listed in the petition under Section 504(1) through (3) and any other person interested in the respondent's welfare the court determines. Failure to

give notice under this subsection does not preclude the court from granting the petition.

(d) After the court has ordered a protective arrangement under this [article], notice of a hearing on a petition filed under this [act], together with a copy of the petition, must be given to the respondent and any other person the court determines.

SECTION 506. APPOINTMENT AND ROLE OF [VISITOR].

(a) On filing of a petition under Section 501 for a protective arrangement instead of guardianship, the court shall appoint a [visitor]. The [visitor] must be an individual with training or experience in the type of abilities, limitations, and needs alleged in the petition.

(b) On filing of a petition under Section 501 for a protective arrangement instead of conservatorship for a minor, the court may appoint a [visitor] to investigate a matter related to the petition or inform the minor or a parent of the minor about the petition or a related matter.

(c) On filing of a petition under Section 501 for a protective arrangement instead of conservatorship for an adult, the court shall appoint a [visitor][unless the respondent is represented by an attorney appointed by the court]. The [visitor] must be an individual with training or experience in the types of abilities, limitations, and needs alleged in the petition.

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

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

(2) determine the respondent's views with respect to the order sought;

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

(4) inform the respondent that all costs and expenses of the proceeding, including

respondent's attorney's fees, may be paid from the respondent's assets;

(5) if the petitioner seeks an order related to the dwelling of the respondent, visit the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;

(6) if a protective arrangement instead of guardianship is sought, obtain information from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition;

(7) if a protective arrangement instead of conservatorship is sought, review financial records of the respondent, if relevant to the [visitor's] recommendation under subsection (e)(3); and

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

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

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

(2) to the extent relevant to the order sought, a summary of self-care, independent-living tasks, and financial-management tasks the respondent:

(A) can manage without assistance or with existing supports;

(B) could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making; and

(C) cannot manage;

(3) a recommendation regarding the appropriateness of the protective arrangement

sought and whether a less restrictive alternative for meeting the respondent's needs is available;

(4) if the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;

(5) a recommendation whether a professional evaluation under Section 508 is necessary;

(6) a statement whether the respondent is able to attend a hearing at the location court proceedings typically are held;

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

(8) any other matter the court directs.

Legislative Note: The term "visitor" is bracketed because some states use a different term for the person appointed by the court to investigate and report on certain facts.

SECTION 507. APPOINTMENT AND ROLE OF ATTORNEY.

Alternative A

(a) The court shall appoint an attorney to represent the respondent in a proceeding under this [article] if:

- (1) the respondent requests the appointment;
- (2) the [visitor] recommends the appointment; or
- (3) the court determines the respondent needs representation.

Alternative B

(a) Unless the respondent in a proceeding under this [article] is represented by an attorney, the court shall appoint an attorney to represent the respondent, regardless of the

respondent's ability to pay.

End of Alternatives

(b) An attorney representing the respondent in a proceeding under this [article] shall:

- (1) make reasonable efforts to ascertain the respondent's wishes;
- (2) advocate for the respondent's wishes to the extent reasonably ascertainable;

and

(3) if the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive alternative in type, duration, and scope, consistent with the respondent's interests.

[(c) The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under this [article] if:

- (1) the parent objects to the entry of an order for a protective arrangement instead of guardianship or conservatorship;
- (2) the court determines that counsel is needed to ensure that consent to the entry of an order for a protective arrangement is informed; or
- (3) the court otherwise determines the parent needs representation.]

Legislative Note: Subsection (c) is in brackets because some states have different policies regarding rights of parents in these cases.

SECTION 508. PROFESSIONAL EVALUATION.

(a) At or before a hearing on a petition under this [article] for a protective arrangement, the court shall order a professional evaluation of the respondent:

- (1) if the respondent requests the evaluation; or
- (2) or in other cases, unless the court finds that it has sufficient information to

determine the respondent's needs and abilities without the evaluation.

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

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

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

(3) a prognosis for improvement, including with regard to the ability to manage the respondent's property and financial affairs if a limitation in that ability is alleged, and recommendation for the appropriate treatment, support, or habilitation plan; and

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

(c) The respondent may decline to participate in an evaluation ordered under subsection (a).

SECTION 509. ATTENDANCE AND RIGHTS AT HEARING.

(a) Except as otherwise provided in subsection (b), a hearing under this [article] may not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are held, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audio-visual technology.

(b) A hearing under this [article] may proceed without the respondent in attendance if the court finds by clear-and-convincing evidence that:

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

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

(3) the respondent is a minor who has received proper notice and attendance would be harmful to the minor.

(c) The respondent may be assisted in a hearing under this [article] by a person or persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a combination of these supports. If assistance would facilitate the respondent's participation in the hearing, but is not otherwise available to the respondent, the court shall make reasonable efforts to provide it.

(d) The respondent has a right to choose an attorney to represent the respondent at a hearing under this [article].

(e) At a hearing under this [article], the respondent may:

(1) present evidence and subpoena witnesses and documents;

(2) examine witnesses, including any court-appointed evaluator and the [visitor];

and

(3) otherwise participate in the hearing.

(f) A hearing under this [article] must be closed on request of the respondent and a showing of good cause.

(g) Any person may request to participate in a hearing under this [article]. The court may grant the request, with or without a hearing, on determining that the best interest of the respondent will be served. The court may impose appropriate conditions on the person's participation.

SECTION 510. NOTICE OF ORDER. The court shall give notice of an order under this [article] to the individual who is subject to the protective arrangement instead of guardianship or conservatorship, a person whose access to the individual is restricted by the order, and any other person the court determines.

SECTION 511. CONFIDENTIALITY OF RECORDS.

(a) The existence of a proceeding for or the existence of a protective arrangement instead of guardianship or conservatorship is a matter of public record unless the court seals the record after:

(1) the respondent, the individual subject to the protective arrangement, or the parent of a minor subject to the protective arrangement requests the record be sealed; and

(2) either:

(A) the proceeding is dismissed;

(B) the protective arrangement is no longer in effect; or

(C) an act authorized by the order granting the protective arrangement has been completed.

(b) A respondent, an individual subject to a protective arrangement instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to a protective arrangement, and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person

not otherwise entitled to access to court records under this subsection for good cause may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangement or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

[(c) A report of a [visitor] or professional evaluation generated in the course of a proceeding under this [article] must be sealed on filing but is available to:

- (1) the court;
- (2) the individual who is the subject of the report or evaluation, without limitation as to use;
- (3) the petitioner[, visitor,] and petitioner's and respondent's attorneys, for purposes of the proceeding;
- (4) unless the court orders otherwise, an agent appointed under a power of attorney for finances in which the respondent is the principal;
- (5) if the order is for a protective arrangement instead of guardianship and unless the court orders otherwise, an agent appointed under a [power of attorney for health care] in which the respondent is identified as the principal; and
- (6) any other person if it is in the public interest or for a purpose the court orders for good cause.]

Legislative Note: Subsection (c) is bracketed in recognition that states have different policies and procedures regarding the sealing of court records.

SECTION 512. APPOINTMENT OF [MASTER]. The court may appoint a [master] to assist in implementing a protective arrangement under this [article]. The [master] has the authority conferred by the order of appointment and serves until discharged by court order.

Legislative Note: The term “master” is bracketed in recognition that states have different terms for this role.

[[ARTICLE] 6

FORMS

SECTION 601. USE OF FORMS. Use of the forms contained in this [article] is optional. Failure to use these forms does not prejudice any party.

Legislative note: An enacting state may wish to modify a form in this article to best reflect state practice. The Appendix to this act includes sample orders that a court may use to deny or grant a guardianship, conservatorship, or protective arrangement instead of guardianship or conservatorship for an adult in accordance with this act.

SECTION 602. PETITION FOR GUARDIANSHIP FOR MINOR. This form may be used to petition for guardianship for a minor.

Petition for Guardianship for Minor

State of:

[County] of:

Name and address of attorney representing Petitioner, if applicable:

Note to Petitioner: This form can be used to petition for a guardian for a minor. A court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor’s best interest, and: (1) the parents, after being fully informed of the nature and consequences of guardianship, consent; (2) all parental rights have been terminated; or (3) the court finds by clear-and-convincing evidence that the parents are unwilling or unable to exercise their parental rights.

1. Information about the person filing this petition (the “Petitioner”).

- a. Name:
- b. Principal residence:
- c. Current street address (if different):
- d. Relationship to minor:
- e. Interest in this petition:
- f. Telephone number (optional):
- h. Email address (optional):

2. Information about the minor alleged to need a guardian.

Provide the following information to the extent known.

- a. Name:
- b. Age:

- c. Principal residence:
- d. Current street address (if different):
- e. If Petitioner anticipates the minor moving, or seeks to move the minor, proposed new address:
- f. Does the minor need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain.
- g. Telephone number (optional):
- h. Email address (optional):

3. Information about the minor’s parent(s).

- a. Name(s) of living parent(s):
- b. Current street address(es) of living parent(s):
- d. Does any parent need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain.

4. People who are required to be notified of this petition. State the name and current address of the people listed in Appendix A.

5. Appointment requested. State the name and address of any proposed guardian and the reason the proposed guardian should be selected.

6. State why Petitioner seeks the appointment. Include a description of the nature and extent of the minor’s alleged need.

7. Property. If the minor has property other than personal effects, state the minor’s property with an estimate of its value.

8. Other proceedings. If there are any other proceedings concerning the care or custody of the minor currently pending in any court in this state or another jurisdiction, please describe them.

9. Attorney(s). If the minor or the minor’s parent is represented by an attorney in this matter, state the name, [telephone number, email address,]and address of the attorney(s).

SIGNATURE

Signature of Petitioner

Date

Signature of Petitioner’s Attorney if
Petitioner is Represented by Counsel

Date

APPENDIX A:

People whose name and address must be listed in Section 4 of this petition if they are not the Petitioner.

- The minor, if the minor is 12 years of age or older;
 - Each parent of the minor or, if there are none, the adult nearest in kinship that can be found;
 - An adult with whom the minor resides;
 - Each person that had primary care or custody of the minor for at least 60 days during the two years immediately before the filing of the petition or for at least 730 days during the five years immediately before the filing of the petition;
 - If the minor is 12 years of age or older, any person nominated as guardian by the minor;
 - Any person nominated as guardian by a parent of the minor;
 - The grandparents of the minor;
 - Adult siblings of the minor; and
- Any current guardian or conservator for the minor appointed in this state or another jurisdiction.

SECTION 603. PETITION FOR GUARDIANSHIP, CONSERVATORSHIP, OR

PROTECTIVE ARRANGEMENT. This form may be used to petition for:

- (1) guardianship for an adult;
- (2) conservatorship for an adult or minor;
- (3) a protective arrangement instead of guardianship for an adult; or
- (4) a protective arrangement instead of conservatorship for an adult or minor.

Petition for Guardianship, Conservatorship, or Protective Arrangement

State of:

[County] of:

Name and address of attorney representing Petitioner, if applicable:

Note to Petitioner: This form can be used to petition for a guardian, conservator, or both, or for a protective arrangement instead of either a guardianship or conservatorship. This form should not be used to petition for guardianship for a minor.

The court may appoint a guardian or order a protective arrangement instead of guardianship for an adult if the adult lacks the ability to meet essential requirements for physical health, safety, or self-care because (1) the adult is unable to receive and evaluate information or make or communicate decisions even with the use of supportive services, technological assistance, and supported decision-making, and (2) the adult's identified needs cannot be met by a less restrictive alternative.

The court may appoint a conservator or order a protective arrangement instead of conservatorship for an adult if (1) the adult is unable to manage property and financial

affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of supportive services, technological assistance, and supported decision making or the adult is missing, detained, or unable to return to the United States, and (2) appointment is necessary to avoid harm to the adult or significant dissipation of the property of the adult, or to obtain or provide funds or other property needed for the support, care, education, health, or welfare of the adult, or of an individual who is entitled to the adult's support, and protection is necessary or desirable to provide funds or other property for that purpose.

The court may appoint a conservator or order a protective arrangement instead of conservatorship for a minor if (1) the minor owns funds or other property requiring management or protection that cannot otherwise be provided; or (2) it would be in the minor's best interest, and the minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age, or appointment is necessary or desirable to provide funds or other property needed for the support, care, education, health, or welfare of the minor.

The court may also order a protective arrangement instead of conservatorship that restricts access to an individual or an individual's property by a person that the court finds: (1) through fraud, coercion, duress, or the use of deception and control, caused, or attempted to cause, an action that would have resulted in financial harm to the individual or the individual's property; and (2) poses a serious risk of substantial financial harm to the individual or the individual's property.

- 1. Information about the person filing this petition (the "Petitioner").**
 - a. Name:
 - b. Principal residence:
 - c. Current street address (if different):
 - d. Relationship to Respondent:
 - e. Interest in this petition:
 - f. Telephone number (optional):
 - g. Email address (optional):

- 2. Information about the individual alleged to need protection (the "Respondent").**

Provide the following information to the extent known.

 - a. Name:
 - b. Age:
 - c. Principal residence:
 - d. Current street address (if different):
 - e. If Petitioner anticipates Respondent moving, or seeks to move Respondent, proposed new address:
 - f. Does Respondent need an interpreter, translator, or other form of support to communicate with the court or understand court proceedings? If so, please explain.
 - g. Telephone number (optional):
 - h. Email address (optional):

3. **People who are required to be notified of this petition.** State the name and address of the people listed in Appendix A.
4. **Existing agents.** State the name and address of any person appointed as an agent under a power of attorney for finances or [power of attorney for health care], or who has been appointed as the individual's representative for payment of benefits.
5. **Action requested.** State whether Petitioner is seeking appointment of a guardian, a conservator, or a protective arrangement instead of an appointment.
6. **Order requested or appointment requested.** If seeking a protective arrangement instead of a guardianship or conservatorship, state the transaction or other action you want the court to order. If seeking appointment of a guardian or conservator, state the powers Petitioner requests the court grant to a guardian or conservator.
7. **State why the appointment or protective arrangement sought is necessary.** Include a description of the nature and extent of Respondent's alleged need.
8. **State all less restrictive alternatives to meeting Respondent's alleged need that have been considered or implemented.** Less restrictive alternatives could include supported decision making, technological assistance, or the appointment of an agent by Respondent including appointment under a [power of attorney for health care] or power of attorney for finances. If no alternative has been considered or implemented, state the reason why not.
9. **Explain why less restrictive alternatives will not meet Respondent's alleged need.**
10. **Provide a general statement of Respondent's property and an estimate of its value.** Include any real property such as a house or land, insurance or pension, and the source and amount of any other anticipated income or receipts. As part of this statement, indicate, if known, how the property is titled (for example, is it jointly owned?).
11. **For a petition seeking appointment of a conservator.** (skip this section if not asking for appointment of a conservator)
 - a. If seeking appointment of a conservator with all powers permissible under this state's law, explain why appointment of a conservator with fewer powers (i.e., a "limited conservatorship") or other protective arrangement instead of conservatorship will not meet the individual's alleged needs.
 - b. If seeking a limited conservatorship, state the property Petitioner requests be placed under the conservator's control and any proposed limitation on the conservator's powers and duties.
 - c. State the name and address of any proposed conservator and the reason the proposed conservator should be selected.

- d. If Respondent is 12 years of age or older, state the name and address of any person Respondent nominates as conservator.
- e. If alleging a limitation in Respondent’s ability to receive and evaluate information, provide a brief description of the nature and extent of Respondent’s alleged limitation.
- f. If alleging that Respondent is missing, detained, or unable to return to the United States, state the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning Respondent’s whereabouts.

12. For a petition seeking appointment of a guardian. (skip this section if not asking for appointment of a guardian)

- a. If seeking appointment of a guardian with all powers permissible under this state’s law, explain why appointment of a guardian with fewer powers (i.e., a “limited guardianship”) or other protective arrangement instead of guardianship will not meet the individual’s alleged needs.
- b. If seeking a limited guardianship, state the powers Petitioner requests be granted to the guardian.
- c. State the name and address of any proposed guardian and the reason the proposed guardian should be selected.
- d. State the name and address of any person nominated as guardian by Respondent, or, in a will or other signed writing or other record, by Respondent’s parent or spouse[or domestic partner].

13. Attorney. If Petitioner, Respondent, or, if Respondent is a minor, Respondent’s parent is represented by an attorney in this matter, state the name, [telephone number, email address, and] address of the attorney(s).

SIGNATURE

Signature of Petitioner

Date

Signature of Petitioner’s Attorney if
Petitioner is Represented by Counsel

Date

APPENDIX A:

People whose name and address must be listed in Section 3 of this petition, if they are not the Petitioner.

- Respondent’s spouse[or domestic partner], or if Respondent has none, any adult with whom Respondent has shared household responsibilities in the past six months;
- Respondent’s adult children, or, if Respondent has none, Respondent’s parents and adult

siblings, or if Respondent has none, one or more adults nearest in kinship to Respondent who can be found with reasonable diligence;

- Respondent's adult stepchildren whom Respondent actively parented during the stepchildren's minor years and with whom Respondent had an ongoing relationship within two years of this petition;
- Any person responsible for the care or custody of Respondent;
- Any attorney currently representing Respondent;
- Any representative payee for Respondent appointed by the Social Security Administration;
- Any current guardian or conservator for Respondent appointed in this state or another jurisdiction;
- Any trustee or custodian of a trust or custodianship of which Respondent is a beneficiary;
- Any Veterans Administration fiduciary for Respondent;
- Any person Respondent has designated as agent under a power of attorney for finances;
- Any person Respondent has designated as agent under a [power of attorney for health care];
- Any person known to have routinely assisted the individual with decision making in the previous six months;
- Any person Respondent nominates as guardian or conservator; and
- Any person nominated as guardian by Respondent's parent or spouse [or domestic partner]in a will or other signed writing or other record.

SECTION 604. NOTIFICATION OF RIGHTS FOR ADULT SUBJECT TO

GUARDIANSHIP OR CONSERVATORSHIP. This form may be used to notify an adult

subject to guardianship or conservatorship of the adult's rights under Sections 311 and 412.

Notification of Rights

You are getting this notice because a guardian, conservator, or both have been appointed for you. It tells you about some important rights you have. It does not tell you about all your rights. If you have questions about your rights, you can ask an attorney or another person, including your guardian or conservator, to help you understand your rights.

General rights:

You have the right to exercise any right the court has not given to your guardian or conservator.

You also have the right to ask the court to:

- end your guardianship, conservatorship, or both;
- increase or decrease the powers granted to your guardian, conservator, or both;
- make other changes that affect what your guardian or conservator can do or how they do it; and
- replace the person that was appointed with someone else.

You also have a right to hire an attorney to help you do any of these things.

Additional rights for persons for whom a guardian has been appointed:

As an adult subject to guardianship, you have a right to:

- (1) be involved in decisions affecting you, including decisions about your care, where you live, your activities, and your social interactions, to the extent reasonably feasible;
- (2) be involved in decisions about your health care to the extent reasonably feasible, and to have other people help you understand the risks and benefits of health-care options;
- (3) be notified at least 14 days in advance of a change in where you live or a permanent move to a nursing home, mental-health facility, or other facility that places restrictions on your ability to leave or have visitors, unless the guardian has proposed this change in the guardian's plan or the court has expressly authorized it;
- (4) ask the court to prevent your guardian from changing where you live or selling or surrendering your primary dwelling by [insert process for asking the court to prevent such a move];
- (5) vote and get married unless the court order appointing your guardian states that you cannot do so;
- (6) receive a copy of your guardian's report and your guardian's plan; and
- (7) communicate, visit, or interact with other people (this includes the right to have visitors, to make and receive telephone calls, personal mail, or electronic communications) unless:
 - your guardian has been authorized by the court by specific order to restrict these communications, visits, or interactions;
 - a protective order is in effect that limits contact between you and other people; or
 - your guardian has good cause to believe the restriction is needed to protect you from significant physical, psychological, or financial harm and the restriction is for not more than seven business days if the person has a family or pre-existing social relationship with you or not more than 60 days if the person does not have that kind of relationship with you.

Additional rights for persons for whom a conservator has been appointed:

As an adult subject to conservatorship, you have a right to:

- (1) participate in decisions about how your property is managed to the extent feasible; and
- (2) receive a copy of your conservator's inventory, report, and plan.]

[ARTICLE] 7

MISCELLANEOUS PROVISIONS

SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but

does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 703. APPLICABILITY. This [act] applies to:

(1) a proceeding for appointment of a guardian or conservator or for a protective arrangement instead of guardianship or conservatorship commenced after [the effective date of this [act]]; and

(2) a guardianship, conservatorship, or protective arrangement instead of guardianship or conservatorship in existence on [the effective date of this [act]] unless the court finds application of a particular provision of this [act] would substantially interfere with the effective conduct of the proceeding or prejudice the rights of a party, in which case the particular provision of this [act] does not apply and the superseded law applies.

[SECTION 704. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 705. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

SECTION 706. EFFECTIVE DATE. This [act] takes effect