

JAN 25 2023

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# A BILL FOR AN ACT

RELATING TO THE UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER  
PROTECTIVE ARRANGEMENTS ACT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the Uniform  
2   Guardianship and Protective Proceedings Act, enacted in Hawaii  
3   in 2004 and codified as article V of chapter 560, Hawaii Revised  
4   Statutes, was last comprehensively revised in 1997. The  
5   legislature further finds that the Uniform Guardianship,  
6   Conservatorship, and Other Protective Arrangements (UGCOPA) Act  
7   is the result of work by the drafting committee of the Uniform  
8   Law Commission to revise the Uniform Guardianship and Protective  
9   Proceedings Act. As revised, the UGCOPA has three overarching  
10  goals.

11           First, the UGCOPA reflects a more person-centered  
12  philosophy as endorsed by the Third National Guardianship  
13  Summit. In addition to rejecting outdated and offensive  
14  terminology, the revised language includes several new  
15  provisions that require individuals subject to a guardianship or  
16  conservatorship be given meaningful notice of their rights and



1 how to assert them; require the involvement of individuals  
2 subject to a guardianship or conservatorship in decisions about  
3 their lives; and require that guardians and conservators create  
4 person-centered plans and facilitate court monitoring of  
5 compliance with those plans.

6       Second, the UGCOPA advances key objectives embraced by the  
7 Third National Guardianship Summit regarding respecting and  
8 protecting the rights and interests of individuals alleged to  
9 need a guardian or conservator and individuals subject to  
10 guardianship or conservatorship. The UGCOPA includes provisions  
11 designed to ensure that the least restrictive means are used to  
12 protect an individual alleged to need a guardianship or  
13 conservatorship, provide better guidance to guardians and  
14 conservators, and help courts monitor guardians and  
15 conservators.

16       Finally, the UGCOPA advances rules and systems that make it  
17 easier for all persons involved in the guardianship and  
18 conservatorship process to meet these goals. The UGCOPA creates  
19 new petition requirements to ensure judges have the information  
20 needed to make appropriate decisions; creates an option for  
21 courts to enter orders instead of guardianship or



1 conservatorship where such less restrictive alternatives would  
2 meet a respondent's needs; and offers model forms to make it  
3 easier for petitioners to seek limited appointments instead of  
4 full ones.

5 The purpose of this Act is to adopt the Uniform  
6 Guardianship, Conservatorship, and Other Protective Arrangements  
7 Act to make the process of establishing a guardianship or  
8 conservatorship easier to understand for all individuals who  
9 need to comply with its directives.

10 SECTION 2. The Hawaii Revised Statutes is amended by  
11 adding a new chapter to be appropriately designated and to read  
12 as follows:

13 "CHAPTER

14 UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE

15 ARRANGEMENTS ACT

16 ARTICLE 1

17 GENERAL PROVISIONS

18 § -101 Short title. This chapter may be cited as the  
19 Uniform Guardianship, Conservatorship, and Other Protective  
20 Arrangements Act.



1           §    -102 **Definitions.** As used in this chapter, unless the  
2 context otherwise requires:

3           "Adult" means an individual at least eighteen years of age  
4 or an emancipated individual under eighteen years of age.

5           "Adult subject to conservatorship" means an adult for whom  
6 a conservator has been appointed under this chapter.

7           "Adult subject to guardianship" means an adult for whom a  
8 guardian has been appointed under this chapter.

9           "Claim" includes a claim against an individual or  
10 conservatorship estate, whether arising in contract, tort, or  
11 otherwise.

12           "Conservator" means a person appointed by a court to make  
13 decisions with respect to the property or financial affairs of  
14 an individual subject to conservatorship. "Conservator"  
15 includes a co-conservator.

16           "Conservatorship estate" means the property subject to  
17 conservatorship under this chapter.

18           "Full conservatorship" means a conservatorship that grants  
19 the conservator all powers available under this chapter.

20           "Full guardianship" means a guardianship that grants the  
21 guardian all powers available under this chapter.



1 "Guardian" means a person appointed by the court to make  
2 decisions with respect to the personal affairs of an individual.  
3 "Guardian" includes a co-guardian but does not include a  
4 guardian ad litem.

5 "Guardian ad litem" means a person appointed to inform the  
6 court about, and to represent, the needs and best interest of an  
7 individual.

8 "Individual subject to conservatorship" means an adult or  
9 minor for whom a conservator has been appointed under this  
10 chapter.

11 "Individual subject to guardianship" means an adult or  
12 minor for whom a guardian has been appointed under this chapter.

13 "Less restrictive alternative" means an approach to meeting  
14 an individual's needs that restricts fewer rights of the  
15 individual than would the appointment of a guardian or  
16 conservator. "Less restrictive alternative" includes supported  
17 decision-making, appropriate technological assistance,  
18 appointment of a representative payee, and appointment of an  
19 agent by the individual, including appointment under a power of  
20 attorney for health care or power of attorney for finances.



1 "Letters of office" means a record issued by a court  
2 certifying a guardian's or conservator's authority to act.

3 "Limited conservatorship" means a conservatorship that  
4 grants the conservator less than all powers available under this  
5 chapter, grants powers over only certain property, or otherwise  
6 restricts the powers of the conservator.

7 "Limited guardianship" means a guardianship that grants the  
8 guardian less than all powers available under this chapter or  
9 otherwise restricts the powers of the guardian.

10 "Minor" means an unemancipated individual under eighteen  
11 years of age.

12 "Minor subject to conservatorship" means a minor for whom a  
13 conservator has been appointed under this chapter.

14 "Minor subject to guardianship" means a minor for whom a  
15 guardian has been appointed under this chapter.

16 "Parent" does not include an individual whose parental  
17 rights have been terminated.

18 "Person" means an individual, estate, business or nonprofit  
19 entity, public corporation, government or governmental  
20 subdivision, agency, or instrumentality, or other legal entity.

21 "Property" includes tangible and intangible property.



1 "Protective arrangement instead of conservatorship" means a  
2 court order entered under section -503.

3 "Protective arrangement instead of guardianship" means a  
4 court order entered under section -502.

5 "Protective arrangement under article 5" means a court  
6 order entered under section -502 or -503.

7 "Record", used as a noun, means information that is  
8 inscribed on a tangible medium or that is stored in an  
9 electronic or other medium and is retrievable in perceivable  
10 form.

11 "Respondent" means an individual for whom appointment of a  
12 guardian or conservator or a protective arrangement instead of  
13 guardianship or conservatorship is sought.

14 "Sign" means, with present intent to authenticate or adopt  
15 a record:

- 16 (1) To execute or adopt a tangible symbol; or  
17 (2) To attach to or logically associate with the record an  
18 electronic symbol, sound, or process.

19 "Standby guardian" means a person appointed by the court  
20 under section -207.



1 "State" means a state of the United States, the District of  
2 Columbia, Puerto Rico, the United States Virgin Islands, or any  
3 territory or insular possession subject to the jurisdiction of  
4 the United States. "State" includes a federally recognized  
5 Indian tribe.

6 "Supported decision making" means assistance from one or  
7 more persons of an individual's choosing in understanding the  
8 nature and consequences of potential personal and financial  
9 decisions, which enables the individual to make the decisions,  
10 and in communicating a decision once made if consistent with the  
11 individual's wishes.

12 **§ -103 Supplemental principles of law and equity**  
13 **applicable.** Unless displaced by a particular provision of this  
14 chapter, the principles of law and equity supplement its  
15 provisions.

16 **§ -104 Subject-matter jurisdiction.** (a) Except to the  
17 extent jurisdiction is precluded by chapter 583A, a court of  
18 this State has jurisdiction over a guardianship for a minor  
19 domiciled or present in this State. The court has jurisdiction  
20 over a conservatorship or protective arrangement instead of



1 conservatorship for a minor domiciled or having property in this  
2 State.

3 (b) A court of this State has jurisdiction over a  
4 guardianship, conservatorship, or protective arrangement under  
5 article 5 for an adult as provided by chapter 583A.

6 (c) After notice is given in a proceeding for a  
7 guardianship, conservatorship, or protective arrangement under  
8 article 5 and until termination of the proceeding, the court in  
9 which the petition is filed has:

10 (1) Exclusive jurisdiction to determine the need for the  
11 guardianship, conservatorship, or protective  
12 arrangement;

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

18 (3) Nonexclusive jurisdiction to determine the validity of  
19 a claim against the respondent or property of the  
20 respondent or a question of title concerning the  
21 property; and



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

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

9           §    -105 **Transfer of proceeding.** (a) This section shall  
10          not apply to a guardianship or conservatorship for an adult that  
11          is subject to the transfer provisions of part III of chapter  
12          551G.

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

18          (c) If a proceeding for a guardianship or conservatorship  
19          is pending in another state or a foreign country and a petition  
20          for guardianship or conservatorship for the same individual is  
21          filed in a court in this State, the court shall notify the court



1 in the other state or foreign country and, after consultation  
2 with that court, assume or decline jurisdiction, whichever is in  
3 the best interest of the respondent.

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

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

20 (f) No later than fourteen days after appointment under  
21 subsection (e), the guardian or conservator shall give a copy of



1 the order of appointment to the individual subject to  
2 guardianship or conservatorship, if the individual is at least  
3 twelve years of age, and to all persons given notice of the  
4 hearing on the petition.

5 § -106 Venue. (a) Venue for a guardianship proceeding  
6 for a minor is in:

7 (1) The county in which the minor resides or is present at  
8 the time the proceeding commences; or

9 (2) The county in which another proceeding concerning the  
10 custody or parental rights of the minor is pending.

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

13 (1) The county in which the respondent resides;

14 (2) If the respondent has been admitted to an institution  
15 by court order, the county in which the court is  
16 located; or

17 (3) If the proceeding is for appointment of an emergency  
18 guardian for an adult, the county in which the  
19 respondent is present.

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



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

4           (2) If the respondent does not reside in this State, in  
5           any county in which property of the respondent is  
6           located.

7           (d) If proceedings under this chapter are brought in more  
8           than one county, the court of the county in which the first  
9           proceeding is brought has the exclusive right to proceed unless  
10          the court determines venue is properly in another court or the  
11          interest of justice otherwise requires transfer of the  
12          proceeding.

13          §   -107   **Practice in court.**   (a) Except as otherwise  
14          provided in this chapter, the rules of evidence and civil  
15          procedure, including rules concerning appellate review, govern a  
16          proceeding under this chapter.

17          (b) If proceedings for a guardianship, conservatorship, or  
18          protective arrangement under article 5 for the same individual  
19          are commenced or pending in the same court, the proceedings may  
20          be consolidated.



1           (c) A respondent may demand a jury trial in a proceeding  
2 under this chapter on the issue whether a basis exists for  
3 appointment of a guardian or conservator.

4           §   -108   **Letters of office.** (a) The court shall issue  
5 letters of office to a guardian on filing by the guardian of an  
6 acceptance of appointment.

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

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

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



1           §    -109   **Effect of acceptance of appointment.**   On  
2 acceptance of appointment, a guardian or conservator submits to  
3 personal jurisdiction of the court in this State in any  
4 proceeding relating to the guardianship or conservatorship.

5           §    -110   **Co-guardian; co-conservator.**   (a) The court at  
6 any time may appoint a co-guardian or co-conservator to serve  
7 immediately or when a designated event occurs.

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

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

13           (1) The event occurs; and

14           (2) That co-guardian or co-conservator complies with  
15 section    -108.

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

19           §    -111   **Judicial appointment of successor guardian or**  
20 **successor conservator.**   (a) The court at any time may appoint a



1 successor guardian or successor conservator to serve immediately  
2 or when a designated event occurs.

3 (b) A person entitled under section -202 or -302 to  
4 petition the court to appoint a guardian may petition the court  
5 to appoint a successor guardian. A person entitled under  
6 section -402 to petition the court to appoint a conservator  
7 may petition the court to appoint a successor conservator.

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

11 (1) The event occurs; and

12 (2) The successor complies with section -108.

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

15 **§ -112 Effect of death, removal, or resignation of**  
16 **guardian or conservator.** (a) Appointment of a guardian or

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

20 (b) A guardian or conservator must petition the court to  
21 resign. The petition may include a request that the court



1 appoint a successor. Resignation of a guardian or conservator  
2 is effective on the date the resignation is approved by the  
3 court.

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

- 7 (1) An action taken on behalf of the individual subject to  
8 guardianship or conservatorship; or
- 9 (2) The individual's funds or other property.

10 § -113 **Notice of hearing generally.** (a) Except as  
11 otherwise provided in sections -203, -207, -303, -  
12 403, and -505, if notice of a hearing under this chapter is  
13 required, the movant shall give notice of the date, time, and  
14 place of the hearing to the person to be notified unless  
15 otherwise ordered by the court for good cause. Except as  
16 otherwise provided in this chapter, notice must be given in  
17 compliance with the Hawaii rules of civil procedure at least  
18 fourteen days before the hearing.

19 (b) Proof of notice of a hearing under this chapter must  
20 be made before or at the hearing and filed in the proceeding.



1 (c) Notice of a hearing under this chapter must be in a  
2 font of at least sixteen-point type, in plain language, and, to  
3 the extent feasible, in a language in which the person to be  
4 notified is proficient.

5 § -114 **Waiver of notice.** (a) Except as otherwise  
6 provided in subsection (b), a person may waive notice under this  
7 chapter in a record signed by the person or person's attorney  
8 and filed in the proceeding.

9 (b) A respondent, individual subject to guardianship,  
10 individual subject to conservatorship, or individual subject to  
11 a protective arrangement under article 5 may not waive notice  
12 under this chapter.

13 § -115 **Guardian ad litem.** The court at any time may  
14 appoint a guardian ad litem for an individual if the court  
15 determines the individual's interest otherwise would not be  
16 adequately represented. If no conflict of interest exists, a  
17 guardian ad litem may be appointed to represent multiple  
18 individuals or interests. The guardian ad litem may not be the  
19 same individual as the attorney representing the respondent.  
20 The court shall state the duties of the guardian ad litem and  
21 the reasons for the appointment.



1           §    -116   **Request for notice.**   (a)   A person may file with  
2 the court a request for notice under this chapter if the person  
3 is:

- 4           (1)   Not otherwise entitled to notice; and  
5           (2)   Interested in the welfare of a respondent, individual  
6                   subject to guardianship or conservatorship, or  
7                   individual subject to a protective arrangement under  
8                   article 5.

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

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

17           §    -117   **Disclosure of bankruptcy or criminal history.**

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

- 20           (1)   Is or has been a debtor in a bankruptcy, insolvency,  
21                   or receivership proceeding; or



1 (2) Has been convicted of:

2 (A) A felony;

3 (B) A crime involving dishonesty, neglect, violence,  
4 or use of physical force; or

5 (C) Other crime relevant to the functions the  
6 individual would assume as guardian or  
7 conservator.

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

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

19 § -118 **Multiple nominations.** If a respondent or other  
20 person makes more than one nomination of a guardian or  
21 conservator, the latest in time governs.



1           §   -119   **Compensation and expenses; in general.**   (a)

2   Unless otherwise compensated or reimbursed, an attorney for a  
3   respondent in a proceeding under this chapter is entitled to  
4   reasonable compensation for services and reimbursement of  
5   reasonable expenses from the property of the respondent.

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

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

16          (d)   If the court dismisses a petition under this chapter  
17   and determines the petition was filed in bad faith, the court  
18   may assess the cost of any court-ordered professional evaluation  
19   or examination against the petitioner.

20           §   -120   **Compensation of guardian or conservator.**   (a)

21   Subject to court approval, a guardian is entitled to reasonable



1 compensation for services as guardian and to reimbursement for  
2 room, board, clothing, and other appropriate expenses advanced  
3 for the benefit of the individual subject to guardianship. If a  
4 conservator, other than the guardian or a person affiliated with  
5 the guardian, is appointed for the individual, reasonable  
6 compensation and reimbursement to the guardian may be approved  
7 and paid by the conservator without court approval.

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

12 (c) In determining reasonable compensation for a guardian  
13 or conservator, the court, or a conservator in determining  
14 reasonable compensation for a guardian as provided in subsection  
15 (a), shall consider:

- 16 (1) The necessity and quality of the services provided;  
17 (2) The experience, training, professional standing, and  
18 skills of the guardian or conservator;  
19 (3) The difficulty of the services performed, including  
20 the degree of skill and care required;



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

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

7           (6) The extent to which the services provided were or were  
8           not consistent with the guardian's plan under  
9           section     -316 or conservator's plan under  
10          section     -419; and

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

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

16          (e) If an individual subject to guardianship or  
17 conservatorship seeks to modify or terminate the guardianship or  
18 conservatorship or remove the guardian or conservator, the court  
19 may order compensation to the guardian or conservator for time  
20 spent opposing modification, termination, or removal only to the  
21 extent the court determines the opposition was reasonably



1 necessary to protect the interest of the individual subject to  
2 guardianship or conservatorship.

3       §   -121   **Liability of guardian or conservator for act of**  
4 **individual subject to guardianship or conservatorship.** A  
5 guardian or conservator is not personally liable to another  
6 person solely because of the guardianship or conservatorship for  
7 an act or omission of the individual subject to guardianship or  
8 conservatorship.

9       §   -122   **Petition after appointment for instruction or**  
10 **ratification.** (a) A guardian or conservator may petition the  
11 court for instruction concerning fiduciary responsibility or  
12 ratification of a particular act related to the guardianship or  
13 conservatorship.

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

17       §   -123   **Third-party acceptance of authority of guardian**  
18 **or conservator.** (a) A person must not recognize the authority  
19 of a guardian or conservator to act on behalf of an individual  
20 subject to guardianship or conservatorship if:



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

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

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

14           (1) The guardian's or conservator's proposed action would  
15           be inconsistent with this chapter; or

16           (2) The person makes, or has actual knowledge that another  
17           person has made, a report to the department of human  
18           services stating a good-faith belief that the  
19           individual subject to guardianship or conservatorship  
20           is subject to physical or financial abuse, neglect,  
21           exploitation, or abandonment by the guardian or



1 conservator or a person acting for or with the  
2 guardian or conservator.

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

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

12 § -124 Use of agent by guardian or conservator. (a)

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



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

4 (1) Selecting the agent;

5 (2) Establishing the scope and terms of the agent's work  
6 in accordance with the guardian's plan under  
7 section -316 or conservator's plan under  
8 section -419;

9 (3) Monitoring the agent's performance and compliance with  
10 the delegation; and

11 (4) Redressing an act or omission of the agent that would  
12 constitute a breach of the guardian's or conservator's  
13 duties if done by the guardian or conservator.

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

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

18 (1) Exercise reasonable care to comply with the terms of  
19 the delegation and use reasonable care in the  
20 performance of the power; and



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

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

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

13          **§ -125 Temporary substitute guardian or conservator.**

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

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

19          (2) The court finds a guardian is not effectively  
20           performing the guardian's duties and the welfare of  
21           the individual requires immediate action.



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

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

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

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

16          (d) The court shall give notice of appointment of a  
17 temporary substitute guardian or temporary substitute  
18 conservator, no later than five days after the appointment, to:

19           (1) The individual subject to guardianship or  
20 conservatorship;

21           (2) The affected guardian or conservator; and



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

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

8           §   -126   **Registration of order; effect.**   (a) If a  
9           guardian has been appointed in another state for an individual,  
10          and a petition for guardianship for the individual is not  
11          pending in this State, the guardian appointed in the other  
12          state, after giving notice to the appointing court, may register  
13          the guardianship order in this State by filing as a foreign  
14          judgment, in a court of an appropriate county of this State,  
15          certified copies of the order and letters of office.

16          (b) If a conservator has been appointed in another state  
17          for an individual, and a petition for conservatorship for the  
18          individual is not pending in this State, the conservator  
19          appointed for the individual in the other state, after giving  
20          notice to the appointing court, may register the conservatorship  
21          in this State by filing as a foreign judgment, in a court of a



1 county in which property belonging to the individual subject to  
2 conservatorship is located, certified copies of the order of  
3 conservatorship, letters of office, and any bond or other asset-  
4 protection arrangement required by the court.

5 (c) On registration under this section of a guardianship  
6 or conservatorship order from another state, the guardian or  
7 conservator may exercise in this State all powers authorized in  
8 the order except as prohibited by this chapter and law of this  
9 State other than this chapter. If the guardian or conservator  
10 is not a resident of this State, the guardian or conservator may  
11 maintain an action or proceeding in this State subject to any  
12 condition imposed by this State on an action or proceeding by a  
13 nonresident party.

14 (d) The court may grant any relief available under this  
15 chapter and law of this State other than this chapter to enforce  
16 an order registered under this section.

17 **§ -127 Grievance against guardian or conservator.** (a)  
18 An individual who is subject to guardianship or conservatorship,  
19 or person interested in the welfare of an individual subject to  
20 guardianship or conservatorship, that reasonably believes the  
21 guardian or conservator is breaching the guardian's or



1 conservator's fiduciary duty or otherwise acting in a manner  
2 inconsistent with this chapter may file a grievance in a record  
3 with the court.

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

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

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

12 (A) Removal of the guardian and appointment of a  
13 successor may be appropriate under  
14 section -318;

15 (B) Termination or modification of the guardianship  
16 may be appropriate under section -319;

17 (C) Removal of the conservator and appointment of a  
18 successor may be appropriate under  
19 section -430; or



- 1 (D) Termination or modification of the
- 2 conservatorship may be appropriate under
- 3 section -431; and
- 4 (3) May take any action supported by the evidence,
- 5 including:
  - 6 (A) Ordering the guardian or conservator to provide
  - 7 the court a report, accounting, inventory,
  - 8 updated plan, or other information;
  - 9 (B) Appointing a guardian ad litem;
  - 10 (C) Appointing an attorney for the individual subject
  - 11 to guardianship or conservatorship; or
  - 12 (D) Holding a hearing.

13 (c) The court may decline to act under subsection (b) if a  
14 similar grievance was filed within the six months preceding the  
15 filing of the current grievance and the court followed the  
16 procedures of subsection (b) in considering the earlier  
17 grievance.

18 § -128 **Delegation by parent.** A parent of a minor, by a  
19 power of attorney, may delegate to another person for a period  
20 not exceeding nine months any of the parent's powers regarding



1 care, custody, or property of the minor, other than power to  
2 consent to marriage or adoption.

3 **ARTICLE 2**

4 **GUARDIANSHIP OF A MINOR**

5 **§ -201 Basis for appointment of guardian for minor. (a)**

6 A person becomes a guardian for a minor only on appointment by  
7 the court.

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

11 (1) Each parent of the minor, after being fully informed  
12 of the nature and consequences of guardianship,  
13 consents;

14 (2) All parental rights have been terminated; or

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

18 **§ -202 Petition for appointment of guardian for minor.**

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



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

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

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

12 (3) The name and address, if known, of each person that  
13 had primary care or custody of the minor for at least  
14 sixty days during the two years immediately before the  
15 filing of the petition or for at least seven hundred  
16 thirty days during the five years immediately before  
17 the filing of the petition;

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

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



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

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

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

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

13 (10) Whether any other proceeding concerning the care or  
14 custody of the minor is pending in any court in this  
15 State or another jurisdiction.

16 § -203 Notice of hearing for appointment of guardian for  
17 minor. (a) If a petition is filed under section -202, the  
18 court shall schedule a hearing and the petitioner shall:

19 (1) Serve notice of the date, time, and place of the  
20 hearing, together with a copy of the petition,



1 personally on each of the following that is not the  
2 petitioner:

3 (A) The minor, if the minor will be twelve years of  
4 age or older at the time of the hearing;

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

8 (C) Any adult with whom the minor resides;

9 (D) Each person that had primary care or custody of  
10 the minor for at least sixty days during the two  
11 years immediately before the filing of the  
12 petition or for at least seven hundred thirty  
13 days during the five years immediately before the  
14 filing of the petition; and

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

17 (2) Give notice under section -113 of the date, time,  
18 and place of the hearing, together with a copy of the  
19 petition, to:

20 (A) Any person nominated as guardian by the minor, if  
21 the minor is twelve years of age or older;



- 1 (B) Any nominee of a parent;
- 2 (C) Each grandparent and adult sibling of the minor;
- 3 (D) Any guardian or conservator acting for the minor
- 4 in any jurisdiction; and
- 5 (E) Any other person the court determines.

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

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

14 (1) The minor, if the minor is twelve years of age or  
15 older; and

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

20 (d) If a petitioner is unable to serve notice under  
21 subsection (a)(1) on a parent of a minor or alleges that the



1 parent waived, in a record, the right to notice under this  
2 section, the court shall appoint an examiner who shall:

- 3 (1) Interview the petitioner and the minor;
- 4 (2) If the petitioner alleges the parent cannot be  
5 located, ascertain whether the parent cannot be  
6 located with due diligence; and
- 7 (3) Investigate any other matter relating to the petition  
8 the court directs.

9 **§ -204 Attorney for minor or parent.** (a) The court  
10 shall appoint an attorney to represent a minor who is the  
11 subject of a proceeding under section -202 if:

- 12 (1) Requested by the minor and the minor is twelve years  
13 of age or older;
- 14 (2) Recommended by a guardian ad litem; or
- 15 (3) The court determines the minor needs representation.

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

- 17 (1) Make a reasonable effort to ascertain the minor's  
18 wishes;
- 19 (2) Advocate for the minor's wishes to the extent  
20 reasonably ascertainable; and



1 (3) If the minor's wishes are not reasonably  
2 ascertainable, advocate for the minor's best interest.

3 (c) A minor who is the subject of a proceeding under  
4 section -202 may retain an attorney to represent the minor in  
5 the proceeding.

6 (d) A parent of a minor who is the subject of a proceeding  
7 under section -202 may retain an attorney to represent the  
8 parent in the proceeding.

9 § -205 Attendance and participation at hearing for  
10 appointment of guardian for minor. (a) The court shall require  
11 a minor who is the subject of a hearing under section -203 to  
12 attend the hearing and allow the minor to participate in the  
13 hearing unless the court determines, by clear and convincing  
14 evidence presented at the hearing or a separate hearing, that:

15 (1) The minor consistently and repeatedly refused to  
16 attend the hearing after being fully informed of the  
17 right to attend and, if the minor is twelve years of  
18 age or older, the potential consequences of failing to  
19 do so;

20 (2) There is no practicable way for the minor to attend  
21 the hearing;



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

3 (4) Attendance would be harmful to the minor.

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

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

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

15 § -206 **Order of appointment; priority of nominee;**  
16 **limited guardianship for minor.** (a) After a hearing under  
17 section -203, the court may appoint a guardian for a minor,  
18 if appointment is proper under section -201, dismiss the  
19 proceeding, or take other appropriate action consistent with  
20 this chapter or law of this State other than this chapter.



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

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

7 (2) If multiple parents have nominated different persons  
8 to serve as guardian, the court shall appoint the  
9 nominee whose appointment is in the best interest of  
10 the minor, unless the court finds that appointment of  
11 none of the nominees is in the best interest of the  
12 minor; and

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

20 (c) In the interest of maintaining or encouraging  
21 involvement by a minor's parent in the minor's life, developing



1 self-reliance of the minor, or for other good cause, the court,  
2 at the time of appointment of a guardian for the minor or later,  
3 on its own or on motion of the minor or other interested person,  
4 may create a limited guardianship by limiting the powers  
5 otherwise granted by this article to the guardian. Following  
6 the same procedure, the court may grant additional powers or  
7 withdraw powers previously granted.

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

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

- 15 (1) The guardian has delegated custody of the minor  
16 subject to guardianship;
- 17 (2) The court has modified or limited the powers of the  
18 guardian; or
- 19 (3) The court has removed the guardian.



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

4 § -207 **Standby guardian for minor.** (a) A standby  
5 guardian appointed under this section may act as guardian, with  
6 all duties and powers of a guardian under sections -209  
7 and -210, when no parent of the minor is willing or able to  
8 exercise the duties and powers granted to the guardian.

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

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

18 (1) Petition by a parent of the minor or a person  
19 nominated under subsection (b); and

20 (2) Finding that no parent of the minor likely will be  
21 able or willing to care for or make decisions with



1           respect to the minor no later than two years after the  
2           appointment.

3           (d) A petition under subsection (c)(1) must include the  
4 same information required under section     -202 for the  
5 appointment of a guardian for a minor.

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

8           (1) Serve a copy of the petition personally on:

9           (A) The minor, if the minor is twelve years of age or  
10           older, and the minor's attorney, if any;

11           (B) Each parent of the minor;

12           (C) The person nominated as standby guardian; and

13           (D) Any other person the court determines; and

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

20           (f) A person entitled to notice under subsection (e), no  
21 later than sixty days after service of the petition and



1 statement, may object to appointment of the standby guardian by  
2 filing an objection with the court and giving notice of the  
3 objection to each other person entitled to notice under  
4 subsection (e).

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

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

13 (1) The minor, if the minor is twelve years of age or  
14 older; and

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

19 (i) If a petitioner is unable to serve notice under  
20 subsection (e) on a parent of the minor or alleges that a parent



1 of the minor waived the right to notice under this section, the  
2 court shall appoint an examiner who shall:

- 3 (1) Interview the petitioner and the minor;
- 4 (2) If the petitioner alleges the parent cannot be located  
5 and served, ascertain whether the parent cannot be  
6 located with due diligence; and
- 7 (3) Investigate any other matter relating to the petition  
8 the court directs.

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

- 11 (1) The court shall appoint the person nominated under  
12 subsection (b) unless the court finds the appointment  
13 is contrary to the best interest of the minor; and
- 14 (2) If the parents have nominated different persons to  
15 serve as standby guardian, the court shall appoint the  
16 nominee whose appointment is in the best interest of  
17 the minor, unless the court finds that appointment of  
18 none of the nominees is in the best interest of the  
19 minor.



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

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

6 (2) The guardian delegates custody of the minor;

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

9 (4) The court removes the guardian.

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

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

16 (2) The minor, if the minor is twelve years of age or  
17 older; and

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

20 (m) A person that receives notice under subsection (l) or  
21 any other person interested in the welfare of the minor may file



1 with the court an objection to the standby guardian's assumption  
2 of duties and powers of a guardian. The court shall hold a  
3 hearing if the objection supports a reasonable belief that the  
4 conditions for assumption of duties and powers have not been  
5 satisfied.

6 § -208 **Emergency guardian for minor.** (a) On its own,  
7 or on petition by a person interested in a minor's welfare, the  
8 court may appoint an emergency guardian for the minor if the  
9 court finds:

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

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

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



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

5 (1) The minor, if the minor is twelve years of age or  
6 older;

7 (2) Any attorney appointed under section -204;

8 (3) Each parent of the minor;

9 (4) Any person, other than a parent, having care or  
10 custody of the minor; and

11 (5) Any other person the court determines.

12 (d) The court may appoint an emergency guardian for a  
13 minor without notice under subsection (c) and a hearing only if  
14 the court finds from an affidavit or testimony that the minor's  
15 health, safety, or welfare will be substantially harmed before a  
16 hearing with notice on the appointment can be held. If the  
17 court appoints an emergency guardian without notice to an  
18 unrepresented minor or the attorney for a represented minor,  
19 notice of the appointment must be given no later than forty-  
20 eight hours after the appointment to the individuals listed in  
21 subsection (c). No later than five days after the appointment,



1 the court shall hold a hearing on the appropriateness of the  
2 appointment.

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

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

10 § -209 **Duties of guardian for minor.** (a) A guardian  
11 for a minor is a fiduciary. Except as otherwise limited by the  
12 court, a guardian for a minor has the duties and  
13 responsibilities of a parent regarding the minor's support,  
14 care, education, health, safety, and welfare. A guardian shall  
15 act in the minor's best interest and exercise reasonable care,  
16 diligence, and prudence.

17 (b) A guardian for a minor shall:

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



- 1           (2) Take reasonable care of the minor's personal effects  
2                   and bring a proceeding for a conservatorship or  
3                   protective arrangement instead of conservatorship if  
4                   necessary to protect other property of the minor;
- 5           (3) Expend funds of the minor that have been received by  
6                   the guardian for the minor's current needs for  
7                   support, care, education, health, safety, and welfare;
- 8           (4) Conserve any funds of the minor not expended under  
9                   paragraph (3) for the minor's future needs, but if a  
10                  conservator is appointed for the minor, pay the funds  
11                  at least quarterly to the conservator to be conserved  
12                  for the minor's future needs;
- 13          (5) Report the condition of the minor and account for  
14                  funds and other property of the minor in the  
15                  guardian's possession or subject to the guardian's  
16                  control, as required by court rule or ordered by the  
17                  court on application of a person interested in the  
18                  minor's welfare;
- 19          (6) Inform the court of any change in the minor's dwelling  
20                  or address; and



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

5           §   -210 Powers of guardian for minor. (a) Except as  
6 otherwise limited by court order, a guardian of a minor has the  
7 powers a parent otherwise would have regarding the minor's  
8 support, care, education, health, safety, and welfare.

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

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

17          (2) Unless inconsistent with a court order entitled to  
18 recognition in this State, take custody of the minor  
19 and establish the minor's place of dwelling and, on  
20 authorization of the court, establish or move the  
21 minor's dwelling outside this State;



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

6           (4) Consent to health or other care, treatment, or service  
 7           for the minor; or

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

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

14          (d) A guardian for a minor may consent to the marriage of  
 15 the minor subject to the requirements of section 572-2.

16          §   -211   **Removal of guardian for minor; termination of**  
 17 **guardianship; appointment of successor.** (a) Guardianship under  
 18 this chapter for a minor terminates:

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



1           (2) When the court finds that the standard in  
2           section     -201 for appointment of a guardian is not  
3           satisfied, unless the court finds that:

4           (A) Termination of the guardianship would be harmful  
5           to the minor; and

6           (B) The minor's interest in the continuation of the  
7           guardianship outweighs the interest of any parent  
8           of the minor in restoration of the parent's right  
9           to make decisions for the minor.

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

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



1 (d) The court shall follow the priorities in  
 2 section -206(b) when selecting a successor guardian for a  
 3 minor.

4 (e) No later than thirty days after appointment of a  
 5 successor guardian for a minor, the court shall give notice of  
 6 the appointment to the minor subject to guardianship, if the  
 7 minor is twelve years of age or older, each parent of the minor,  
 8 and any other person the court determines.

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

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

17 **ARTICLE 3**

18 **GUARDIANSHIP OF ADULT**

19 **§ -301 Basis for appointment of guardian for adult. (a)**  
 20 On petition and after notice and hearing, the court may:



1 (1) Appoint a guardian for an adult if the court finds by  
2 clear and convincing evidence that:

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

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

14 (2) With appropriate findings, treat the petition as one  
15 for a conservatorship under article 4 or protective  
16 arrangement under article 5, issue any appropriate  
17 order, or dismiss the proceeding.

18 (b) The court shall grant a guardian appointed under  
19 subsection (a) only those powers necessitated by the  
20 demonstrated needs and limitations of the respondent and issue  
21 orders that will encourage development of the respondent's



1 maximum self-determination and independence. The court may not  
2 establish a full guardianship if a limited guardianship,  
3 protective arrangement instead of guardianship, or other less  
4 restrictive alternatives would meet the needs of the respondent.

5       **§ -302 Petition for appointment of guardian for adult.**

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

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

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

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

20 (A) Spouse or domestic partner or, if the respondent  
21 has none, an adult with whom the respondent has



1 shared household responsibilities for more than  
2 six months in the twelve-month period immediately  
3 before the filing of the petition;

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

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

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

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

16 (B) Any attorney currently representing the  
17 respondent;

18 (C) Any representative payee appointed by the Social  
19 Security Administration for the respondent;



- 1 (D) A guardian or conservator acting for the
- 2 respondent in this State or in another
- 3 jurisdiction;
- 4 (E) A trustee or custodian of a trust or
- 5 custodianship of which the respondent is a
- 6 beneficiary;
- 7 (F) Any fiduciary for the respondent appointed by the
- 8 Department of Veterans Affairs;
- 9 (G) An agent designated under a power of attorney for
- 10 health care in which the respondent is identified
- 11 as the principal;
- 12 (H) An agent designated under a power of attorney for
- 13 finances in which the respondent is identified as
- 14 the principal;
- 15 (I) A person nominated as guardian by the respondent;
- 16 (J) A person nominated as guardian by the
- 17 respondent's parent, spouse, or domestic partner
- 18 in a will or other signed record;
- 19 (K) A proposed guardian and the reason the proposed
- 20 guardian should be selected; and



1 (L) A person known to have routinely assisted the  
2 respondent with decision making during the six  
3 months immediately before the filing of the  
4 petition;

5 (4) The reason a guardianship is necessary, including a  
6 brief description of:

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

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

13 (C) If no protective arrangement instead of  
14 guardianship or other less restrictive  
15 alternatives have been considered or implemented,  
16 the reason they have not been considered or  
17 implemented; and

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



- 1           (5) Whether the petitioner seeks a limited guardianship or
- 2           full guardianship;
- 3           (6) If the petitioner seeks a full guardianship, the
- 4           reason a limited guardianship or protective
- 5           arrangement instead of guardianship is not
- 6           appropriate;
- 7           (7) If a limited guardianship is requested, the powers to
- 8           be granted to the guardian;
- 9           (8) The name and current address, if known, of any person
- 10          with whom the petitioner seeks to limit the
- 11          respondent's contact;
- 12          (9) If the respondent has property other than personal
- 13          effects, a general statement of the respondent's
- 14          property, with an estimate of its value, including any
- 15          insurance or pension, and the source and amount of
- 16          other anticipated income or receipts; and
- 17          (10) Whether the respondent needs an interpreter,
- 18          translator, or other form of support to communicate
- 19          effectively with the court or understand court
- 20          proceedings.



1           §    -303   **Notice of hearing for appointment of guardian for**

2   **adult.**   (a)   On filing of a petition under section       -302 for  
3   appointment of a guardian for an adult, the court shall set a  
4   date, time, and place for hearing the petition.

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

14          (c)   In a proceeding on a petition under section       -302,  
15   the notice required under subsection (b) must be given to the  
16   persons required to be listed in the petition under  
17   section       -302(b)(1) through (3) and any other person  
18   interested in the respondent's welfare the court determines.  
19   Failure to give notice under this subsection does not preclude  
20   the court from appointing a guardian.



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

- 4 (1) The adult subject to guardianship;
- 5 (2) The guardian; and
- 6 (3) Any other person the court determines.

7 § -304 **Appointment and role of examiner.** (a) On  
8 receipt of a petition under section -302 for appointment of a  
9 guardian for an adult, the court shall appoint an examiner. The  
10 examiner must be an individual with training or experience in  
11 the type of abilities, limitations, and needs alleged in the  
12 petition.

13 (b) An examiner appointed under subsection (a) shall  
14 interview the respondent in person and, in a manner the  
15 respondent is best able to understand:

- 16 (1) Explain to the respondent the substance of the  
17 petition, the nature, purpose, and effect of the  
18 proceeding, the respondent's rights at the hearing on  
19 the petition, and the general powers and duties of a  
20 guardian;



- 1           (2) Determine the respondent's views about the appointment
- 2           sought by the petitioner, including views about a
- 3           proposed guardian, the guardian's proposed powers and
- 4           duties, and the scope and duration of the proposed
- 5           guardianship;
- 6           (3) Inform the respondent of the respondent's right to
- 7           employ and consult with an attorney at the
- 8           respondent's expense and the right to request a court-
- 9           appointed attorney; and
- 10          (4) Inform the respondent that all costs and expenses of
- 11          the proceeding, including respondent's attorney's
- 12          fees, may be paid from the respondent's assets.
- 13          (c) The examiner appointed under subsection (a) shall:
- 14          (1) Interview the petitioner and proposed guardian, if
- 15          any;
- 16          (2) Visit the respondent's present dwelling and any
- 17          dwelling in which it is reasonably believed the
- 18          respondent will live if the appointment is made;
- 19          (3) Obtain information from any physician or other person
- 20          known to have treated, advised, or assessed the



1           respondent's relevant physical or mental condition;  
2           and

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

6           (d) An examiner appointed under subsection (a) shall  
7 promptly file a report in a record with the court, which shall  
8 include:

9           (1) A recommendation whether an attorney should be  
10           appointed to represent the respondent;

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

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



- 1 (A) If a guardianship is recommended, whether it
- 2 should be full or limited; and
- 3 (B) If a limited guardianship is recommended, the
- 4 powers to be granted to the guardian;
- 5 (4) A statement of the qualifications of the proposed
- 6 guardian and whether the respondent approves or
- 7 disapproves of the proposed guardian;
- 8 (5) A statement whether the proposed dwelling meets the
- 9 respondent's needs and whether the respondent has
- 10 expressed a preference as to residence;
- 11 (6) A recommendation whether a professional evaluation
- 12 under section -306 is necessary;
- 13 (7) A statement whether the respondent is able to attend a
- 14 hearing at the location court proceedings typically
- 15 are held;
- 16 (8) A statement whether the respondent is able to
- 17 participate in a hearing and which identifies any
- 18 technology or other form of support that would enhance
- 19 the respondent's ability to participate; and
- 20 (9) Any other matter the court directs.



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1           §    **-305 Appointment and role of attorney for adult.**   (a)

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

- 4           (1)   The respondent requests an appointment;
- 5           (2)   The examiner recommends an appointment; or
- 6           (3)   The court determines the respondent needs  
7                representation.

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

- 10           (1)   Make reasonable efforts to ascertain the respondent's  
11                wishes;
- 12           (2)   Advocate for the respondent's wishes to the extent  
13                reasonably ascertainable; and
- 14           (3)   If the respondent's wishes are not reasonably  
15                ascertainable, advocate for the result that is the  
16                least restrictive in type, duration, and scope,  
17                consistent with the respondent's interests.

18           §    **-306 Professional evaluation.**   (a)   At or before a  
19   hearing on a petition for a guardianship for an adult, the court  
20   shall order a professional evaluation of the respondent:

- 21           (1)   If the respondent requests the evaluation; or



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

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

14           (1) A description of the nature, type, and extent of the  
15           respondent's cognitive and functional abilities and  
16           limitations;

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



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

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

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

8           §    -307   **Attendance and rights at hearing.**   (a) Except as  
9           otherwise provided in subsection (b), a hearing under  
10          section   -303 may not proceed unless the respondent attends  
11          the hearing. If it is not reasonably feasible for the  
12          respondent to attend a hearing at the location court proceedings  
13          typically are held, the court shall make reasonable efforts to  
14          hold the hearing at an alternative location convenient to the  
15          respondent or allow the respondent to attend the hearing using  
16          real-time audio-visual technology.

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

20          (1) The respondent consistently and repeatedly has refused  
21          to attend the hearing after having been fully informed



1 of the right to attend and the potential consequences  
2 of failing to do so; or

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

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

14 (d) The respondent has a right to choose an attorney to  
15 represent the respondent at a hearing under section -303.

16 (e) At a hearing held under section -303, the  
17 respondent may:

18 (1) Present evidence and subpoena witnesses and documents;

19 (2) Examine witnesses, including any court-appointed  
20 evaluator and the examiner; and

21 (3) Otherwise participate in the hearing.



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

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

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

10 § -308 **Confidentiality of records.** (a) The existence  
11 of a proceeding for or the existence of a guardianship for an  
12 adult is a matter of public record unless the court seals the  
13 record after:

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

16 (2) Either:

17 (A) The petition for guardianship is dismissed; or

18 (B) The guardianship is terminated.

19 (b) An adult subject to a proceeding for a guardianship,  
20 whether or not a guardian is appointed, an attorney designated  
21 by the adult, and a person entitled to notice under



1 section -310(e) or a subsequent order are entitled to access  
2 court records of the proceeding and resulting guardianship,  
3 including the guardian's plan under section -316 and report  
4 under section -317. A person not otherwise entitled to  
5 access court records under this subsection for good cause may  
6 petition the court for access to court records of the  
7 guardianship, including the guardian's report and plan. The  
8 court shall grant access if access is in the best interest of  
9 the respondent or adult subject to guardianship or furthers the  
10 public interest and does not endanger the welfare or financial  
11 interests of the adult.

12 (c) A report under section -304 of an examiner or a  
13 professional evaluation under section -306 is confidential  
14 and must be sealed on filing, but is available to:

- 15 (1) The court;
- 16 (2) The individual who is the subject of the report or  
17 evaluation, without limitation as to use;
- 18 (3) The petitioner, examiner, and petitioner's and  
19 respondent's attorneys, for purposes of the  
20 proceeding;



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

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

7 **§ -309 Who may be guardian for adult; order of priority.**

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

- 11 (1) A guardian, other than a temporary or emergency  
12 guardian, currently acting for the respondent in  
13 another jurisdiction;
- 14 (2) A person nominated as guardian by the respondent,  
15 including the respondent's most recent nomination made  
16 in a power of attorney;
- 17 (3) An agent appointed by the respondent under a power of  
18 attorney for health care;
- 19 (4) A spouse or domestic partner of the respondent; and
- 20 (5) A family member or other individual who has shown  
21 special care and concern for the respondent.



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

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

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

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



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

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

9           §   -310   **Order of appointment for guardian.** (a) A court  
10          order appointing a guardian for an adult must:

11          (1) Include a specific finding that clear and convincing  
12          evidence established that the identified needs of the  
13          respondent cannot be met by a protective arrangement  
14          instead of guardianship or other less restrictive  
15          alternative, including use of appropriate supportive  
16          services, technological assistance, or supported  
17          decision making;

18          (2) Include a specific finding that clear and convincing  
19          evidence established the respondent was given proper  
20          notice of the hearing on the petition;



1           (3) State whether the adult subject to guardianship  
2           retains the right to vote and, if the adult does not  
3           retain the right to vote, include findings that  
4           support removing that right which must include a  
5           finding that the adult cannot communicate, with or  
6           without support, a specific desire to participate in  
7           the voting process; and

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

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

18          (c) A court order establishing a full guardianship for an  
19          adult must state the basis for granting a full guardianship and  
20          include specific findings that support the conclusion that a



1 limited guardianship would not meet the functional needs of the  
2 adult subject to guardianship.

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

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

8 (1) Notice of the rights of the adult under  
9 section -311(b);

10 (2) Notice of a change in the primary dwelling of the  
11 adult;

12 (3) Notice that the guardian has delegated:

13 (A) The power to manage the care of the adult;

14 (B) The power to make decisions about where the adult  
15 lives;

16 (C) The power to make major medical decisions on  
17 behalf of the adult;

18 (D) A power that requires court approval under  
19 section -315; or

20 (E) Substantially all powers of the guardian;



- 1           (4) Notice that the guardian will be unavailable to visit
- 2                   the adult for more than two months or unavailable to
- 3                   perform the guardian's duties for more than one month;
- 4           (5) A copy of the guardian's plan under section       -316
- 5                   and the guardian's report under section       -317;
- 6           (6) Access to court records relating to the guardianship;
- 7           (7) Notice of the death or significant change in the
- 8                   condition of the adult;
- 9           (8) Notice that the court has limited or modified the
- 10                   powers of the guardian; and
- 11           (9) Notice of the removal of the guardian.
- 12           (f) A spouse, domestic partner, and adult children of an
- 13           adult subject to guardianship are entitled to notice under
- 14           subsection (e) unless the court determines notice would be
- 15           contrary to the preferences or prior directions of the adult
- 16           subject to guardianship or not in the best interest of the
- 17           adult.
- 18           §   -311   **Notice of order of appointment; rights.** (a) A
- 19           guardian appointed under section       -309 shall give the adult
- 20           subject to guardianship and all other persons given notice under
- 21           section       -303 a copy of the order of appointment, together



1 with notice of the right to request termination or modification.  
2 The order and notice must be given no later than fourteen days  
3 after the appointment.

4 (b) No later than thirty days after appointment of a  
5 guardian under section -309, the court shall give to the  
6 adult subject to guardianship, the guardian, and any other  
7 person entitled to notice under section -310(e) or a  
8 subsequent order a statement of the rights of the adult subject  
9 to guardianship and procedures to seek relief if the adult is  
10 denied those rights. The statement must be in at least sixteen  
11 point type, in plain language, and, to the extent feasible, in a  
12 language in which the adult subject to guardianship is  
13 proficient. The statement must notify the adult subject to  
14 guardianship of the right to:

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

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



- 1           (3) Be involved in health care decision making to the  
2           extent reasonably feasible and supported in  
3           understanding the risks and benefits of health care  
4           options to the extent reasonably feasible;
- 5           (4) Be notified at least fourteen days before a change in  
6           the adult's primary dwelling or permanent move to a  
7           nursing home, mental-health facility, or other  
8           facility that places restrictions on the individual's  
9           ability to leave or have visitors unless the change or  
10          move is proposed in the guardian's plan under  
11          section     -316 or authorized by the court by specific  
12          order;
- 13          (5) Object to a change or move described in paragraph (4)  
14          and the process for objecting;
- 15          (6) Communicate, visit, or interact with others, including  
16          receiving visitors, and making or receiving telephone  
17          calls, personal mail, or electronic communications,  
18          including through social media, unless:
  - 19               (A) The guardian has been authorized by the court by  
20               specific order to restrict communications,  
21               visits, or interactions;



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

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

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

13 (ii) For a period of not more than sixty days if  
14 the person does not have a family or pre-  
15 existing social relationship with the adult;

16 (7) Receive a copy of the guardian's plan under  
17 section -316 and the guardian's report under  
18 section -317; and

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

20 § -312 **Emergency guardian for adult.** (a) On its own  
21 after a petition has been filed under section -302, or on



1 petition by a person interested in an adult's welfare, the court  
2 may appoint an emergency guardian for the adult if the court  
3 finds:

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

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

9 (3) There is reason to believe that a basis for  
10 appointment of a guardian under section -301  
11 exists.

12 (b) The duration of authority of an emergency guardian for  
13 an adult may not exceed sixty days, and the emergency guardian  
14 may exercise only the powers specified in the order of  
15 appointment. The emergency guardian's authority may be extended  
16 once for not more than sixty days if the court finds that the  
17 conditions for appointment of an emergency guardian in  
18 subsection (a) continue.

19 (c) Immediately on filing of a petition for appointment of  
20 an emergency guardian for an adult, the court shall appoint an  
21 attorney to represent the respondent in the proceeding. Except



1 as otherwise provided in subsection (d), reasonable notice of  
2 the date, time, and place of a hearing on the petition must be  
3 given to the respondent, the respondent's attorney, and any  
4 other person the court determines.

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

13 (1) Give notice of the appointment no later than forty-  
14 eight hours after the appointment to:

15 (A) The respondent;

16 (B) The respondent's attorney; and

17 (C) Any other person the court determines; and

18 (2) Hold a hearing on the appropriateness of the  
19 appointment no later than five days after the  
20 appointment.



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

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

7 § -313 **Duties of guardian for adult.** (a) A guardian  
8 for an adult is a fiduciary. Except as otherwise limited by the  
9 court, a guardian for an adult shall make decisions regarding  
10 the support, care, education, health, and welfare of the adult  
11 subject to guardianship to the extent necessitated by the  
12 adult's limitations.

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

19 (1) Become or remain personally acquainted with the adult  
20 and maintain sufficient contact with the adult,  
21 including through regular visitation, to know the



1 adult's abilities, limitations, needs, opportunities,  
2 and physical and mental health;

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

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

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

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

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



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

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

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

19          (e) If a guardian for an adult cannot make a decision  
20          under subsection (d) because the guardian does not know and  
21          cannot reasonably determine the decision the adult probably



1 would make if able, or the guardian reasonably believes the  
2 decision the adult would make would unreasonably harm or  
3 endanger the welfare or personal or financial interests of the  
4 adult, the guardian shall act in accordance with the best  
5 interest of the adult. In determining the best interest of the  
6 adult, the guardian shall consider:

7 (1) Information received from professionals and persons  
8 that demonstrate sufficient interest in the welfare of  
9 the adult;

10 (2) Other information the guardian believes the adult  
11 would have considered if the adult were able to act;  
12 and

13 (3) Other factors a reasonable person in the circumstances  
14 of the adult would consider, including consequences  
15 for others.

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

19 § -314 Powers of guardian for adult. (a) Except as  
20 limited by court order, a guardian for an adult may:



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- 1           (1) Apply for and receive funds and benefits for the
- 2                   support of the adult, unless a conservator is
- 3                   appointed for the adult and the application or receipt
- 4                   is within the powers of the conservator;
- 5           (2) Unless inconsistent with a court order, establish the
- 6                   adult's place of dwelling;
- 7           (3) Consent to health or other care, treatment, or service
- 8                   for the adult;
- 9           (4) If a conservator for the adult has not been appointed,
- 10                   commence a proceeding, including an administrative
- 11                   proceeding, or take other appropriate action to compel
- 12                   another person to support the adult or pay funds for
- 13                   the adult's benefit;
- 14           (5) To the extent reasonable, delegate to the adult
- 15                   responsibility for a decision affecting the adult's
- 16                   well-being; and
- 17           (6) Receive personally identifiable health care
- 18                   information regarding the adult.
- 19           (b) The court by specific order may authorize a guardian
- 20                   for an adult to consent to the adoption of the adult.



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

3 (1) Consent or withhold consent to the marriage of the  
4 adult if the adult's right to marry has been removed  
5 under section -310;

6 (2) Petition for divorce, dissolution, or annulment of  
7 marriage of the adult or a declaration of invalidity  
8 of the adult's marriage; or

9 (3) Support or oppose a petition for divorce, dissolution,  
10 or annulment of marriage of the adult or a declaration  
11 of invalidity of the adult's marriage.

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

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

20 (1) Select a residential setting the guardian believes the  
21 adult would select if the adult were able, in



1           accordance with the decision-making standard in  
2           section     -313(d) and (e); provided that if the  
3           guardian does not know and cannot reasonably determine  
4           what setting the adult subject to guardianship  
5           probably would choose if able, or the guardian  
6           reasonably believes the decision the adult would make  
7           would unreasonably harm or endanger the welfare or  
8           personal or financial interests of the adult, the  
9           guardian shall choose in accordance with  
10          section     -313(e) a residential setting that is  
11          consistent with the adult's best interest;

12        (2) In selecting among residential settings, give priority  
13        to a residential setting in a location that will allow  
14        the adult to interact with persons important to the  
15        adult and meet the adult's needs in the least  
16        restrictive manner reasonably feasible unless to do so  
17        would be inconsistent with the decision-making  
18        standard in section     -313(d) and (e);

19        (3) No later than thirty days after a change in the  
20        dwelling of the adult:



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- 1           (A) Give notice of the change to the court, the
- 2           adult, and any person identified as entitled to
- 3           the notice in the court order appointing the
- 4           guardian or a subsequent order; and
- 5           (B) Include in the notice the address and nature of
- 6           the new dwelling and state whether the adult
- 7           received advance notice of the change and whether
- 8           the adult objected to the change;
- 9           (4) Establish or move the permanent place of dwelling of
- 10          the adult to a nursing home, mental-health facility,
- 11          or other facility that places restrictions on the
- 12          adult's ability to leave or have visitors only if:
- 13          (A) The establishment or move is in the guardian's
- 14          plan under section       -316;
- 15          (B) The court authorizes the establishment or move;
- 16          or
- 17          (C) The guardian gives notice of the establishment or
- 18          move at least fourteen days before the
- 19          establishment or move to the adult and all
- 20          persons entitled to notice under



- 1 section -310(e)(2) or a subsequent order, and  
2 no objection is filed;
- 3 (5) Establish or move the place of dwelling of the adult  
4 outside this State only if consistent with the  
5 guardian's plan and authorized by the court by  
6 specific order; and
- 7 (6) Take action that would result in the sale of or  
8 surrender of the lease to the primary dwelling of the  
9 adult only if:
- 10 (A) The action is specifically included in the  
11 guardian's plan under section -316;
- 12 (B) The court authorizes the action by specific  
13 order; or
- 14 (C) Notice of the action was given at least fourteen  
15 days before the action to the adult and all  
16 persons entitled to the notice under  
17 section -310(e)(2) or a subsequent order and  
18 no objection has been filed.
- 19 (f) In exercising a guardian's power under subsection  
20 (a)(3) to make health care decisions, the guardian shall:



- 1           (1) Involve the adult in decision making to the extent
- 2                   reasonably feasible, including, when practicable, by
- 3                   encouraging and supporting the adult in understanding
- 4                   the risks and benefits of health care options;
- 5           (2) Defer to a decision by an agent under a power of
- 6                   attorney for health care executed by the adult and
- 7                   cooperate to the extent feasible with the agent making
- 8                   the decision; and
- 9           (3) Take into account:
- 10                   (A) The risks and benefits of treatment options; and
- 11                   (B) The current and previous wishes and values of the
- 12                   adult, if known or reasonably ascertainable by
- 13                   the guardian.

14           §   -315   **Special limitations on guardian's power.**   (a)

15   Unless authorized by the court by specific order, a guardian for

16   an adult does not have the power to revoke or amend a power of

17   attorney for health care or power of attorney for finances

18   executed by the adult.  If a power of attorney for health care

19   is in effect, unless there is a court order to the contrary, a

20   health care decision of an agent takes precedence over that of

21   the guardian and the guardian shall cooperate with the agent to



1 the extent feasible. If a power of attorney for finances is in  
2 effect, unless there is a court order to the contrary, a  
3 decision by the agent that the agent is authorized to make under  
4 the power of attorney for finances takes precedence over that of  
5 the guardian and the guardian shall cooperate with the agent to  
6 the extent feasible.

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

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

- 17 (1) Authorized by the court by specific order;
- 18 (2) A protective order or a protective arrangement instead  
19 of guardianship is in effect that limits contact  
20 between the adult and a person; or



1           (3) The guardian has good cause to believe restriction is  
2           necessary because interaction with a specified person  
3           poses a risk of significant physical, psychological,  
4           or financial harm to the adult and the restriction is:  
5           (A) For a period of not more than seven business days  
6           if the person has a family or pre-existing social  
7           relationship with the adult; or  
8           (B) For a period of not more than sixty days if the  
9           person does not have a family or pre-existing  
10          social relationship with the adult.

11          §   -316 **Guardian's plan.** (a) A guardian for an adult,  
12 no later than sixty days after appointment and when there is a  
13 significant change in circumstances, or the guardian seeks to  
14 deviate significantly from the guardian's plan, shall file with  
15 the court a plan for the care of the adult. The plan must be  
16 based on the needs of the adult and take into account the best  
17 interest of the adult as well as the adult's preferences,  
18 values, and prior directions, to the extent known to or  
19 reasonably ascertainable by the guardian. The guardian shall  
20 include in the plan:



- 1           (1) The living arrangement, services, and supports the  
2           guardian expects to arrange, facilitate, or continue  
3           for the adult;
- 4           (2) Social and educational activities the guardian expects  
5           to facilitate on behalf of the adult;
- 6           (3) Any person with whom the adult has a close personal  
7           relationship or relationship involving regular  
8           visitation and any plan the guardian has for  
9           facilitating visits with the person;
- 10          (4) The anticipated nature and frequency of the guardian's  
11          visits and communication with the adult;
- 12          (5) Goals for the adult, including any goal related to the  
13          restoration of the adult's rights, and how the  
14          guardian anticipates achieving the goals;
- 15          (6) Whether the adult has an existing plan and, if so,  
16          whether the guardian's plan is consistent with the  
17          adult's plan; and
- 18          (7) A statement or list of the amount the guardian  
19          proposes to charge for each service the guardian  
20          anticipates providing to the adult.



1           (b) A guardian shall give notice of the filing of the  
2 guardian's plan under subsection (a), together with a copy of  
3 the plan, to the adult subject to guardianship, a person  
4 entitled to notice under section     -310(e) or a subsequent  
5 order, and any other person the court determines. The notice  
6 must include a statement of the right to object to the plan and  
7 be given no later than fourteen days after the filing.

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

11          (d) The court shall review the guardian's plan filed under  
12 subsection (a) and determine whether to approve the plan or  
13 require a new plan. In deciding whether to approve the plan,  
14 the court shall consider an objection under subsection (c) and  
15 whether the plan is consistent with the guardian's duties and  
16 powers under sections     -313 and     -314. The court may not  
17 approve the plan until thirty days after its filing.

18          (e) After the guardian's plan filed under this section is  
19 approved by the court, the guardian shall provide a copy of the  
20 plan to the adult subject to guardianship, a person entitled to



1 notice under section -310(e) or a subsequent order, and any  
2 other person the court determines.

3 § -317 Guardian's report; monitoring of guardianship.

4 (a) A guardian for an adult, no later than sixty days after  
5 appointment and at least annually thereafter, shall file with  
6 the court a report in a record regarding the condition of the  
7 adult and accounting for funds and other property in the  
8 guardian's possession or subject to the guardian's control.

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

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

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

14 (3) A summary of the supported decision making,  
15 technological assistance, medical services,  
16 educational and vocational services, and other  
17 supports and services provided to the adult and the  
18 guardian's opinion as to the adequacy of the adult's  
19 care;

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



- 1           (5) Action taken on behalf of the adult;
- 2           (6) The extent to which the adult has participated in
- 3           decision making;
- 4           (7) If the adult is living in a mental health facility or
- 5           living in a facility that provides the adult with
- 6           health care or other personal services, whether the
- 7           guardian considers the facility's current plan for
- 8           support, care, treatment, or habilitation consistent
- 9           with the adult's preferences, values, prior
- 10          directions, and best interest;
- 11          (8) Anything of more than de minimis value that the
- 12          guardian, any individual who resides with the
- 13          guardian, or the spouse, domestic partner, parent,
- 14          child, or sibling of the guardian has received from an
- 15          individual providing goods or services to the adult;
- 16          (9) If the guardian delegated a power to an agent, the
- 17          power delegated and the reason for the delegation;
- 18          (10) Any business relation the guardian has with a person
- 19          the guardian has paid or that has benefited from the
- 20          property of the adult;



1 (11) A copy of the guardian's most recently approved plan  
2 under section -316 and a statement whether the  
3 guardian has deviated from the plan and, if so, how  
4 the guardian has deviated and why;

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

6 (13) A recommendation as to the need for continued  
7 guardianship and any recommended change in the scope  
8 of the guardianship; and

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

12 (c) The court may appoint an examiner to review a report  
13 submitted under this section or a guardian's plan submitted  
14 under section -316, interview the guardian or adult subject  
15 to guardianship, or investigate any other matter involving the  
16 guardianship.

17 (d) Notice of the filing under this section of a  
18 guardian's report, together with a copy of the report, must be  
19 given to the adult subject to guardianship, a person entitled to  
20 notice under section -310(e) or a subsequent order, and any



1 other person the court determines. The notice and report must  
2 be given no later than fourteen days after the filing.

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

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

9 (2) The guardianship should continue; and

10 (3) The guardian's requested fees, if any, should be  
11 approved.

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

16 (1) Shall notify the adult, the guardian, and any other  
17 person entitled to notice under section -310(e) or  
18 a subsequent order;

19 (2) May require additional information from the guardian;



1           (3) May appoint an examiner to interview the adult or  
2           guardian or investigate any matter involving the  
3           guardianship; and

4           (4) Consistent with sections       -318 and       -319, may hold  
5           a hearing to consider removal of the guardian,  
6           termination of the guardianship, or a change in the  
7           powers granted to the guardian or terms of the  
8           guardianship.

9           (g) If the court has reason to believe fees requested by a  
10          guardian for an adult are not reasonable, the court shall hold a  
11          hearing to determine whether to adjust the requested fees.

12          (h) A guardian for an adult may petition the court for  
13          approval of a report filed under this section. The court after  
14          review may approve the report. If the court approves the  
15          report, there is a rebuttable presumption the report is accurate

16          §   -318   **Removal of guardian for adult; appointment of**

17          **successor.** (a) The court may remove a guardian for an adult  
18          for failure to perform the guardian's duties or for other good  
19          cause and appoint a successor guardian to assume the duties of  
20          guardian.



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

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

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

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

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



1 (d) An adult subject to guardianship who seeks to remove  
2 the guardian and have a successor guardian appointed has the  
3 right to choose an attorney to represent the adult in this  
4 matter. If the adult is not represented by an attorney, the  
5 court shall appoint an attorney under the same conditions as in  
6 section -305. The court shall award reasonable attorney's  
7 fees to the attorney for the adult as provided in  
8 section -119.

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

11 (f) No later than thirty days after appointing a successor  
12 guardian, the court shall give notice of the appointment to the  
13 adult subject to guardianship and any person entitled to notice  
14 under section -310(e) or a subsequent order.

15 **§ -319 Termination or modification of guardianship for**

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

19 (1) Termination of the guardianship on the ground that a  
20 basis for appointment under section -301 does not



1 exist or termination would be in the best interest of  
2 the adult or for other good cause; or

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

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

9 (1) Petition under subsection (a) that contains  
10 allegations that, if true, would support a reasonable  
11 belief that termination or modification of the  
12 guardianship may be appropriate, but the court may  
13 decline to hold a hearing if a petition based on the  
14 same or substantially similar facts was filed during  
15 the preceding six months;

16 (2) Communication from the adult, guardian, or person  
17 interested in the welfare of the adult that supports a  
18 reasonable belief that termination or modification of  
19 the guardianship may be appropriate, including because  
20 the functional needs of the adult or supports or  
21 services available to the adult have changed;



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

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

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

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

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



1 (f) Unless the court otherwise orders for good cause,  
2 before terminating or modifying a guardianship for an adult, the  
3 court shall follow the same procedures to safeguard the rights  
4 of the adult which apply to a petition for guardianship.

5 (g) An adult subject to guardianship who seeks to  
6 terminate or modify the terms of the guardianship has the right  
7 to choose an attorney to represent the adult in the matter. If  
8 the adult is not represented by an attorney, the court shall  
9 appoint an attorney under the same conditions as in  
10 section -305. The court shall award reasonable attorney's  
11 fees to the attorney for the adult as provided in  
12 section -119.

13 **ARTICLE 4**

14 **CONSERVATORSHIP**

15 **§ -401 Basis for appointment of conservator.** (a) On  
16 petition and after notice and hearing, the court may appoint a  
17 conservator for the property or financial affairs of a minor if  
18 the court finds by a preponderance of evidence that appointment  
19 of a conservator is in the minor's best interest, and:



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

4 (2) Either:

5 (A) The minor owns funds or other property requiring  
6 management or protection that otherwise cannot be  
7 provided;

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

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

15 (b) On petition and after notice and hearing, the court  
16 may appoint a conservator for the property or financial affairs  
17 of an adult if the court finds by clear and convincing evidence  
18 that:

19 (1) The adult is unable to manage property or financial  
20 affairs because:



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

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

8 (2) Appointment is necessary to:

9 (A) Avoid harm to the adult or significant  
10 dissipation of the property of the adult; or

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

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

18 (c) The court shall grant a conservator only those powers  
19 necessitated by demonstrated limitations and needs of the  
20 respondent and issue orders that will encourage development of  
21 the respondent's maximum self-determination and independence.



1 The court may not establish a full conservatorship if a limited  
2 conservatorship, protective arrangement instead of  
3 conservatorship, or other less restrictive alternative would  
4 meet the needs of the respondent.

5       **§ -402 Petition for appointment of conservator.** (a)

6 The following may petition for the appointment of a conservator:

- 7       (1) The individual for whom the order is sought;
- 8       (2) A person interested in the estate, financial affairs,  
9       or welfare of the individual, including a person that  
10       would be adversely affected by lack of effective  
11       management of property or financial affairs of the  
12       individual; or
- 13       (3) The guardian for the individual.

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

- 19       (1) The respondent's name, age, principal residence,  
20       current street address, if different, and, if  
21       different, address of the dwelling in which it is



1 proposed the respondent will reside if the petition is  
2 granted;

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

4 (A) Spouse or domestic partner or, if the respondent  
5 has none, an adult with whom the respondent has  
6 shared household responsibilities for more than  
7 six months in the twelve month period before the  
8 filing of the petition;

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

13 (C) Adult stepchildren whom the respondent actively  
14 parented during the stepchildren's minor years  
15 and with whom the respondent had an ongoing  
16 relationship during the two years immediately  
17 before the filing of the petition;

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

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



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- 1 (B) Any attorney currently representing the
- 2 respondent;
- 3 (C) The representative payee appointed by the Social
- 4 Security Administration for the respondent;
- 5 (D) A guardian or conservator acting for the
- 6 respondent in this State or another jurisdiction;
- 7 (E) A trustee or custodian of a trust or
- 8 custodianship of which the respondent is a
- 9 beneficiary;
- 10 (F) The fiduciary appointed for the respondent by the
- 11 Department of Veterans Affairs;
- 12 (G) An agent designated under a power of attorney for
- 13 health care in which the respondent is identified
- 14 as the principal;
- 15 (H) An agent designated under a power of attorney for
- 16 finances in which the respondent is identified as
- 17 the principal;
- 18 (I) A person known to have routinely assisted the
- 19 respondent with decision making in the six-month
- 20 period immediately before the filing of the
- 21 petition;



- 1           (J) Any proposed conservator, including a person
- 2                   nominated by the respondent, if the respondent is
- 3                   twelve years of age or older; and
- 4           (K) If the individual for whom a conservator is
- 5                   sought is a minor:
- 6                   (i) An adult not otherwise listed with whom the
- 7                           minor resides; and
- 8                   (ii) Each person not otherwise listed that had
- 9                           primary care or custody of the minor for at
- 10                           least sixty days during the two years
- 11                           immediately before the filing of the
- 12                           petition or for at least seven hundred
- 13                           thirty days during the five years
- 14                           immediately before the filing of the
- 15                           petition;
- 16           (4) A general statement of the respondent's property with
- 17                   an estimate of its value, including any insurance or
- 18                   pension, and the source and amount of other
- 19                   anticipated income or receipts;
- 20           (5) The reason conservatorship is necessary, including a
- 21                   brief description of:



- 1 (A) The nature and extent of the respondent's alleged  
2 need;
- 3 (B) If the petition alleges the respondent is  
4 missing, detained, or unable to return to the  
5 United States, the relevant circumstances,  
6 including the time and nature of the  
7 disappearance or detention and any search or  
8 inquiry concerning the respondent's whereabouts;
- 9 (C) Any protective arrangement instead of  
10 conservatorship or other less restrictive  
11 alternative for meeting the respondent's alleged  
12 need that has been considered or implemented;
- 13 (D) If no protective arrangement or other less  
14 restrictive alternatives have been considered or  
15 implemented, the reason it has not been  
16 considered or implemented; and
- 17 (E) The reason a protective arrangement or other less  
18 restrictive alternative is insufficient to meet  
19 the respondent's need;
- 20 (6) Whether the petitioner seeks a limited conservatorship  
21 or a full conservatorship;



1 (7) If the petitioner seeks a full conservatorship, the  
2 reason a limited conservatorship or protective  
3 arrangement instead of conservatorship is not  
4 appropriate;

5 (8) If the petition includes the name of a proposed  
6 conservator, the reason the proposed conservator  
7 should be appointed;

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

12 (10) Whether the respondent needs an interpreter,  
13 translator, or other form of support to communicate  
14 effectively with the court or understand court  
15 proceedings; and

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

18 **§ -403 Notice and hearing for appointment of**

19 **conservator.** (a) On filing of a petition under section -402  
20 for appointment of a conservator, the court shall set a date,  
21 time, and place for a hearing on the petition.



1 (b) A copy of a petition under section -402 and notice  
2 of a hearing on the petition must be served personally on the  
3 respondent. If the respondent's whereabouts are unknown or  
4 personal service cannot be made, service on the respondent must  
5 be made by certified or registered mail or by publication  
6 pursuant to section 560:1-401(a)(3). The notice must inform the  
7 respondent of the respondent's rights at the hearing, including  
8 the right to an attorney and to attend the hearing. The notice  
9 must include a description of the nature, purpose, and  
10 consequences of granting the petition. The court may not grant  
11 a petition for appointment of a conservator if notice  
12 substantially complying with this subsection is not served on  
13 the respondent.

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



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

4 (1) The individual subject to conservatorship, if the  
5 individual is twelve years of age or older and not  
6 missing, detained, or unable to return to the United  
7 States;

8 (2) The conservator; and

9 (3) Any other person the court determines.

10 § -404 Order to preserve or apply property while

11 proceeding pending. While a petition under section -402 is  
12 pending, after preliminary hearing and without notice to others,  
13 the court may issue an order to preserve and apply property of  
14 the respondent as required for the support of the respondent or  
15 an individual who is in fact dependent on the respondent. The  
16 court may appoint a master to assist in implementing the order.

17 § -405 Appointment and role of examiner. (a) If the  
18 respondent in a proceeding to appoint a conservator is a minor,  
19 the court may appoint an examiner to investigate a matter  
20 related to the petition or inform the minor or a parent of the  
21 minor about the petition or a related matter.



1 (b) If the respondent in a proceeding to appoint a  
2 conservator is an adult, the court shall appoint an examiner  
3 unless the adult is represented by an attorney appointed by the  
4 court. The duties and reporting requirements of the examiner  
5 are limited to the relief requested in the petition. The  
6 examiner must be an individual with training or experience in  
7 the type of abilities, limitations, and needs alleged in the  
8 petition.

9 (c) An examiner appointed under subsection (b) for an  
10 adult shall interview the respondent in person and in a manner  
11 the respondent is best able to understand:

12 (1) Explain to the respondent the substance of the  
13 petition, the nature, purpose, and effect of the  
14 proceeding, the respondent's rights at the hearing on  
15 the petition, and the general powers and duties of a  
16 conservator;

17 (2) Determine the respondent's views about the appointment  
18 sought by the petitioner, including views about a  
19 proposed conservator, the conservator's proposed  
20 powers and duties, and the scope and duration of the  
21 proposed conservatorship;



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

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

8           (d) An examiner appointed under subsection (b) for an  
9 adult shall:

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

12          (2) Review financial records of the respondent, if  
13          relevant to the examiner's recommendation under  
14          subsection (e) (2);

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



1           (4) Investigate the allegations in the petition and any  
2           other matter relating to the petition the court  
3           directs.

4           (e) An examiner appointed under subsection (b) for an  
5 adult promptly shall file a report in a record with the court,  
6 which must include:

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

9           (2) A recommendation:

10           (A) Regarding the appropriateness of conservatorship,  
11           or whether a protective arrangement instead of  
12           conservatorship or other less restrictive  
13           alternative for meeting the respondent's needs is  
14           available;

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

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



- 1           (3) A statement of the qualifications of the proposed
- 2           conservator and whether the respondent approves or
- 3           disapproves of the proposed conservator;
- 4           (4) A recommendation whether a professional evaluation
- 5           under section     -407 is necessary;
- 6           (5) A statement whether the respondent is able to attend a
- 7           hearing at the location court proceedings typically
- 8           are held;
- 9           (6) A statement whether the respondent is able to
- 10          participate in a hearing and that identifies any
- 11          technology or other form of support that would enhance
- 12          the respondent's ability to participate; and
- 13          (7) Any other matter the court directs.
- 14          §    -406   **Appointment and role of attorney.**   (a) The court
- 15          shall appoint an attorney to represent the respondent in a
- 16          proceeding to appoint a conservator if:
- 17               (1) The respondent requests an appointment;
- 18               (2) The examiner recommends an appointment; or
- 19               (3) The court determines the respondent needs
- 20          representation.



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

3 (1) Make reasonable efforts to ascertain the respondent's  
4 wishes;

5 (2) Advocate for the respondent's wishes to the extent  
6 reasonably ascertainable; and

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

11 § -407 **Professional evaluation.** (a) At or before a  
12 hearing on a petition for conservatorship for an adult, the  
13 court shall order a professional evaluation of the respondent:

14 (1) If the respondent requests the evaluation; or

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

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



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

- 7 (1) A description of the nature, type, and extent of the  
8 respondent's cognitive and functional abilities and  
9 limitations with regard to the management of the  
10 respondent's property and financial affairs;
- 11 (2) An evaluation of the respondent's mental and physical  
12 condition and, if appropriate, educational potential,  
13 adaptive behavior, and social skills;
- 14 (3) A prognosis for improvement with regard to the ability  
15 to manage the respondent's property and financial  
16 affairs; and
- 17 (4) The date of the examination on which the report is  
18 based.
- 19 (c) A respondent may decline to participate in an  
20 evaluation ordered under subsection (a).



1           §   -408   **Attendance and rights at hearing.**   (a)   Except as  
2 otherwise provided in subsection (b), a hearing under  
3 section   -403 may not proceed unless the respondent attends  
4 the hearing.  If it is not reasonably feasible for the  
5 respondent to attend a hearing at the location court proceedings  
6 typically are held, the court shall make reasonable efforts to  
7 hold the hearing at an alternative location convenient to the  
8 respondent or allow the respondent to attend the hearing using  
9 real-time audio-visual technology.

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

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

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



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

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

10 (d) The respondent has a right to choose an attorney to  
11 represent the respondent at a hearing under section -403.

12 (e) At a hearing under section -403, the respondent  
13 may:

14 (1) Present evidence and subpoena witnesses and documents;

15 (2) Examine witnesses, including any court-appointed  
16 evaluator and the examiner; and

17 (3) Otherwise participate in the hearing.

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

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



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

6 § -409 Confidentiality of records. (a) The existence  
7 of a proceeding for or the existence of conservatorship is a  
8 matter of public record unless the court seals the record after:

9 (1) The respondent, the individual subject to

10 conservatorship, or the parent of a minor subject to  
11 conservatorship requests the record be sealed; and

12 (2) Either:

13 (A) The petition for conservatorship is dismissed; or

14 (B) The conservatorship is terminated.

15 (b) An individual subject to a proceeding for a  
16 conservatorship, whether or not a conservator is appointed, an  
17 attorney designated by the individual, and a person entitled to  
18 notice under section -411(e) or a subsequent order may access  
19 court records of the proceeding and resulting conservatorship,  
20 including the conservator's plan under section -419 and the  
21 conservator's report under section -423. A person not



1 otherwise entitled to access to court records under this section  
2 for good cause may petition the court for access to court  
3 records of the conservatorship, including the conservator's plan  
4 and report. The court shall grant access if access is in the  
5 best interest of the respondent or individual subject to  
6 conservatorship or furthers the public interest and does not  
7 endanger the welfare or financial interests of the respondent or  
8 individual.

9 (c) A report under section -405 of an examiner or  
10 professional evaluation under section -407 is confidential  
11 and must be sealed on filing, but is available to:

- 12 (1) The court;
- 13 (2) The individual who is the subject of the report or  
14 evaluation, without limitation as to use;
- 15 (3) The petitioner, examiner, and petitioner's and  
16 respondent's attorneys, for purposes of the  
17 proceeding;
- 18 (4) Unless the court directs otherwise, an agent appointed  
19 under a power of attorney for finances in which the  
20 respondent is identified as the principal; and



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

3 § -410 Who may be conservator; order of priority. (a)

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

7 (1) A conservator, other than a temporary or emergency  
8 conservator, currently acting for the respondent in  
9 another jurisdiction;

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

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

16 (4) A spouse or domestic partner of the respondent; and

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

19 (b) If two or more persons have equal priority under  
20 subsection (a), the court shall select as conservator the person  
21 the court considers best qualified. In determining the best



1 qualified person, the court shall consider the person's  
2 relationship with the respondent, the person's skills, the  
3 expressed wishes of the respondent, the extent to which the  
4 person and the respondent have similar values and preferences,  
5 and the likelihood the person will be able to perform the duties  
6 of a conservator successfully.

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

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

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

19 (2) The court finds by clear and convincing evidence that  
20 the person is the best qualified person available for



1            appointment and the appointment is in the best  
2            interest of the respondent.

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

7            **§ -411 Order of appointment of conservator.** (a) A  
8 court order appointing a conservator for a minor must include  
9 findings to support appointment of a conservator and, if a full  
10 conservatorship is granted, the reason a limited conservatorship  
11 would not meet the identified needs of the minor.

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

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



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

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

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

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

15           (1) Notice of the rights of the individual subject to  
16           conservatorship under section     -412(b);

17           (2) Notice of a sale of or surrender of a lease to the  
18           primary dwelling of the individual;

19           (3) Notice that the conservator has delegated a power that  
20           requires court approval under section     -414 or  
21           substantially all powers of the conservator;



- 1           (4) Notice that the conservator will be unavailable to
- 2           perform the conservator's duties for more than one
- 3           month;
- 4           (5) A copy of the conservator's plan under section       -419
- 5           and the conservator's report under section       -423;
- 6           (6) Access to court records relating to the
- 7           conservatorship;
- 8           (7) Notice of a transaction involving a substantial
- 9           conflict between the conservator's fiduciary duties
- 10          and personal interests;
- 11          (8) Notice of the death or significant change in the
- 12          condition of the individual;
- 13          (9) Notice that the court has limited or modified the
- 14          powers of the conservator; and
- 15          (10) Notice of the removal of the conservator.
- 16          (f) If an individual subject to conservatorship is an
- 17          adult, the spouse, domestic partner, and adult children of the
- 18          adult subject to conservatorship are entitled under subsection
- 19          (e) to notice unless the court determines notice would be
- 20          contrary to the preferences or prior directions of the adult



1 subject to conservatorship or not in the best interest of the  
2 adult.

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

7 § -412 **Notice of order of appointment; rights.** (a) A  
8 conservator appointed under section -411 shall give to the  
9 individual subject to conservatorship and to all other persons  
10 given notice under section -403 a copy of the order of  
11 appointment, together with notice of the right to request  
12 termination or modification. The order and notice must be given  
13 no later than fourteen days after the appointment.

14 (b) No later than thirty days after appointment of a  
15 conservator under section -411, the court shall give to the  
16 individual subject to conservatorship, the conservator, and any  
17 other person entitled to notice under section -411(e) a  
18 statement of the rights of the individual subject to  
19 conservatorship and procedures to seek relief if the individual  
20 is denied those rights. The statement must be in plain  
21 language, in at least 16-point font, and to the extent feasible,



1 in a language in which the individual subject to conservatorship  
2 is proficient. The statement must notify the individual  
3 subject to conservatorship of the right to:

4 (1) Seek termination or modification of the  
5 conservatorship, or removal of the conservator, and  
6 choose an attorney to represent the individual in  
7 these matters;

8 (2) Participate in decision making to the extent  
9 reasonably feasible;

10 (3) Receive a copy of the conservator's plan under  
11 section -419, the conservator's inventory under  
12 section -420, and the conservator's report under  
13 section -423; and

14 (4) Object to the conservator's inventory, plan, or  
15 report.

16 (c) If a conservator is appointed for the reasons stated  
17 in section -401(b)(1)(B) and the individual subject to  
18 conservatorship is missing, notice under this section to the  
19 individual is not required.

20 § -413 **Emergency conservator.** (a) On its own or on  
21 petition by a person interested in an individual's welfare after



1 a petition has been filed under section -402, the court may  
2 appoint an emergency conservator for the individual if the court  
3 finds:

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

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

9 (3) There is reason to believe that a basis for  
10 appointment of a conservator under section -401  
11 exists.

12 (b) The duration of authority of an emergency conservator  
13 may not exceed sixty days and the emergency conservator may  
14 exercise only the powers specified in the order of appointment.  
15 The emergency conservator's authority may be extended once for  
16 not more than sixty days if the court finds that the conditions  
17 for appointment of an emergency conservator under subsection (a)  
18 continue.

19 (c) Immediately on filing of a petition for an emergency  
20 conservator, the court shall appoint an attorney to represent  
21 the respondent in the proceeding. Except as otherwise provided



1 in subsection (d), reasonable notice of the date, time, and  
2 place of a hearing on the petition must be given to the  
3 respondent, the respondent's attorney, and any other person the  
4 court determines.

5 (d) The court may appoint an emergency conservator without  
6 notice to the respondent and any attorney for the respondent  
7 only if the court finds from an affidavit or testimony that the  
8 respondent's property or financial interests will be  
9 substantially and irreparably harmed before a hearing with  
10 notice on the appointment can be held. If the court appoints an  
11 emergency conservator without giving notice under subsection  
12 (c), the court must give notice of the appointment no later than  
13 forty-eight hours after the appointment to:

- 14 (1) The respondent;  
15 (2) The respondent's attorney; and  
16 (3) Any other person the court determines.

17 (e) No later than five days after the appointment, the  
18 court shall hold a hearing on the appropriateness of the  
19 appointment.



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

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

7 **§ -414 Powers of conservator requiring court approval.**

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

- 13 (1) Make a gift, except a gift of de minimis value;
- 14 (2) Sell, encumber an interest in, or surrender a lease to  
15 the primary dwelling of the individual subject to  
16 conservatorship;
- 17 (3) Convey, release, or disclaim a contingent or expectant  
18 interest in property, including marital property and  
19 any right of survivorship incident to joint tenancy or  
20 tenancy by the entirety;
- 21 (4) Exercise or release a power of appointment;



- 1           (5) Create a revocable or irrevocable trust of property of  
2           the conservatorship estate, whether or not the trust  
3           extends beyond the duration of the conservatorship, or  
4           revoke or amend a trust revocable by the individual  
5           subject to conservatorship;
- 6           (6) Exercise a right to elect an option or change a  
7           beneficiary under an insurance policy or annuity or  
8           surrender the policy or annuity for its cash value;
- 9           (7) Exercise a right to an elective share in the estate of  
10          a deceased spouse or domestic partner of the  
11          individual subject to conservatorship or renounce or  
12          disclaim a property interest;
- 13          (8) Grant a creditor priority for payment over creditors  
14          of the same or higher class if the creditor is  
15          providing property or services used to meet the basic  
16          living and care needs of the individual subject to  
17          conservatorship and preferential treatment otherwise  
18          would be impermissible under section       -428(e); and
- 19          (9) Make, modify, amend, or revoke the will of the  
20          individual subject to conservatorship in compliance  
21          with section 560:2-502.



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

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

11 (1) The financial needs of the individual subject to  
12 conservatorship and individuals who are in fact  
13 dependent on the individual subject to conservatorship  
14 for support, and the interests of creditors of the  
15 individual;

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

18 (3) Eligibility for governmental assistance;

19 (4) The previous pattern of giving or level of support  
20 provided by the individual;



1 (5) Any existing estate plan or lack of estate plan of the  
2 individual;

3 (6) The life expectancy of the individual and the  
4 probability the conservatorship will terminate before  
5 the individual's death; and

6 (7) Any other relevant factor.

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

12 § -415 **Petition for order after appointment.** An  
13 individual subject to conservatorship or a person interested in  
14 the welfare of the individual may petition for an order:

15 (1) Requiring the conservator to furnish a bond or  
16 collateral or additional bond or collateral or  
17 allowing a reduction in a bond or collateral  
18 previously furnished;

19 (2) Requiring an accounting for the administration of the  
20 conservatorship estate;

21 (3) Directing distribution;



1 (4) Removing the conservator and appointing a temporary or  
2 successor conservator;

3 (5) Modifying the type of appointment or powers granted to  
4 the conservator, if the extent of protection or  
5 management previously granted is excessive or  
6 insufficient to meet the individual's needs, including  
7 because the individual's abilities or supports have  
8 changed;

9 (6) Rejecting or modifying the conservator's plan under  
10 section -419, the conservator's inventory under  
11 section -420, or the conservator's report under  
12 section -423; or

13 (7) Granting other appropriate relief.

14 **§ -416 Bond; alternative asset-protection arrangement.**

15 (a) Except as otherwise provided in subsection (c), the court  
16 shall require a conservator to furnish a bond with a surety the  
17 court specifies, or require an alternative asset-protection  
18 arrangement, conditioned on faithful discharge of all duties of  
19 the conservator. The court may waive the requirement only if  
20 the court finds that a bond or other asset-protection  
21 arrangement is not necessary to protect the interests of the



1 individual subject to conservatorship. Except as otherwise  
2 provided in subsection (c), the court may not waive the  
3 requirement if the conservator is in the business of serving as  
4 a conservator and is being paid for the conservator's service.

5 (b) Unless the court directs otherwise, the bond required  
6 under this section must be in the amount of the aggregate  
7 capital value of the conservatorship estate, plus one year's  
8 estimated income, less the value of property deposited under an  
9 arrangement requiring a court order for its removal and real  
10 property the conservator lacks power to sell or convey without  
11 specific court authorization. The court, in place of surety on  
12 a bond, may accept collateral for the performance of the bond,  
13 including a pledge of securities or a mortgage of real property.

14 (c) A regulated financial institution qualified to do  
15 trust business in this State is not required to give a bond  
16 under this section.

17 § -417 Terms and requirements of bond. (a) The  
18 following rules shall apply to the bond required under  
19 section -416:

20 (1) Except as otherwise provided by the bond, the surety  
21 and the conservator are jointly and severally liable;



- 1           (2) By executing a bond provided by a conservator, the  
2           surety submits to the personal jurisdiction of the  
3           court that issued letters of office to the conservator  
4           in a proceeding relating to the duties of the  
5           conservator in which the surety is named as a party.  
6           Notice of the proceeding must be given to the surety  
7           at the address shown in the records of the court in  
8           which the bond is filed and any other address of the  
9           surety then known to the person required to provide  
10          the notice;
- 11          (3) On petition of a successor conservator or person  
12          affected by a breach of the obligation of the bond, a  
13          proceeding may be brought against the surety for  
14          breach of the obligation of the bond; and
- 15          (4) A proceeding against the bond may be brought until  
16          liability under the bond is exhausted.
- 17          (b) A proceeding may not be brought under this section  
18          against a surety of a bond on a matter as to which a proceeding  
19          against the conservator is barred.
- 20          (c) If a bond under section       -416 is not renewed by the  
21          conservator, the surety or sureties immediately shall give



1 notice to the court and the individual subject to  
2 conservatorship.

3       §   -418.   **Duties of conservator.**   (a)  A conservator is a  
4 fiduciary and has duties of prudence and loyalty to the  
5 individual subject to conservatorship.

6       (b)  A conservator shall promote the self-determination of  
7 the individual subject to conservatorship and, to the extent  
8 feasible, encourage the individual to participate in decisions,  
9 act on the individual's own behalf, and develop or regain the  
10 capacity to manage the individual's personal affairs.

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



1 (d) If a conservator cannot make a decision under  
2 subsection (c) because the conservator does not know and cannot  
3 reasonably determine the decision the individual subject to  
4 conservatorship probably would make if able, or the conservator  
5 reasonably believes the decision the individual would make would  
6 fail to preserve resources needed to maintain the individual's  
7 well-being and lifestyle or otherwise unreasonably harm or  
8 endanger the welfare or personal or financial interests of the  
9 individual, the conservator shall act in accordance with the  
10 best interest of the individual. In determining the best  
11 interest of the individual, the conservator shall consider:

12 (1) Information received from professionals and persons  
13 that demonstrate sufficient interest in the welfare of  
14 the individual;

15 (2) Other information the conservator believes the  
16 individual would have considered if the individual  
17 were able to act; and

18 (3) Other factors a reasonable person in the circumstances  
19 of the individual would consider, including  
20 consequences for others.



1 (e) Except when inconsistent with the conservator's duties  
2 under subsections (a) through (d), a conservator shall invest  
3 and manage the conservatorship estate as a prudent investor  
4 would, by considering:

- 5 (1) The circumstances of the individual subject to  
6 conservatorship and the conservatorship estate;
- 7 (2) General economic conditions;
- 8 (3) The possible effect of inflation or deflation;
- 9 (4) The expected tax consequences of an investment  
10 decision or strategy;
- 11 (5) The role of each investment or course of action in  
12 relation to the conservatorship estate as a whole;
- 13 (6) The expected total return from income and appreciation  
14 of capital;
- 15 (7) The need for liquidity, regularity of income, and  
16 preservation or appreciation of capital; and
- 17 (8) The special relationship or value, if any, of specific  
18 property to the individual subject to conservatorship.

19 (f) The propriety of a conservator's investment and  
20 management of the conservatorship estate is determined in light



1 of the facts and circumstances existing when the conservator  
2 decides or acts and not by hindsight.

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

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

11 (i) In investing, selecting specific property for  
12 distribution, and invoking a power of revocation or withdrawal  
13 for the use or benefit of the individual subject to  
14 conservatorship, a conservator shall consider any estate plan of  
15 the individual known or reasonably ascertainable to the  
16 conservator and may examine the will or other donative,  
17 nominative, or appointive instrument of the individual.

18 (j) A conservator shall maintain insurance on the  
19 insurable real and personal property of the individual subject  
20 to conservatorship, unless the conservatorship estate lacks  
21 sufficient funds to pay for insurance or the court finds:



1 (1) The property lacks sufficient equity; or

2 (2) Insuring the property would unreasonably dissipate the  
3 conservatorship estate or otherwise not be in the best  
4 interest of the individual.

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

8 (l) A conservator has access to and authority over a  
9 digital asset of the individual subject to conservatorship to  
10 the extent provided by chapter 556A or court order.

11 (m) A conservator for an adult shall notify the court if  
12 the condition of the adult has changed so that the adult is  
13 capable of exercising rights previously removed. The notice  
14 must be given immediately on learning of the change.

15 § -419 **Conservator's plan.** (a) A conservator, no later  
16 than sixty days after appointment and when there is a  
17 significant change in circumstances or the conservator seeks to  
18 deviate significantly from the conservator's plan, shall file  
19 with the court a plan for protecting, managing, expending, and  
20 distributing the assets of the conservatorship estate. The plan  
21 must be based on the needs of the individual subject to



1 conservatorship and take into account the best interest of the  
2 individual as well as the individual's preferences, values, and  
3 prior directions, to the extent known to or reasonably  
4 ascertainable by the conservator. The conservator shall include  
5 in the plan:

6 (1) A budget containing projected expenses and resources,  
7 including an estimate of the total amount of fees the  
8 conservator anticipates charging per year and a  
9 statement or list of the amount the conservator  
10 proposes to charge for each service the conservator  
11 anticipates providing to the individual;

12 (2) How the conservator will involve the individual in  
13 decisions about management of the conservatorship  
14 estate;

15 (3) Any step the conservator plans to take to develop or  
16 restore the ability of the individual to manage the  
17 conservatorship estate; and

18 (4) An estimate of the duration of the conservatorship.

19 (b) A conservator shall give notice of the filing of the  
20 conservator's plan under subsection (a), together with a copy of  
21 the plan, to the individual subject to conservatorship, a person



1 entitled to notice under section -411(e) or a subsequent  
2 order, and any other person the court determines. The notice  
3 must include a statement of the right to object to the plan and  
4 be given no later than fourteen days after the filing.

5 (c) An individual subject to conservatorship and any  
6 person entitled under subsection (b) to receive notice and a  
7 copy of the conservator's plan may object to the plan.

8 (d) The court shall review the conservator's plan filed  
9 under subsection (a) and determine whether to approve the plan  
10 or require a new plan. In deciding whether to approve the plan,  
11 the court shall consider an objection under subsection (c) and  
12 whether the plan is consistent with the conservator's duties and  
13 powers. The court may not approve the plan until thirty days  
14 after its filing.

15 (e) After a conservator's plan under this section is  
16 approved by the court, the conservator shall provide a copy of  
17 the plan to the individual subject to conservatorship, a person  
18 entitled to notice under section -411(e) or a subsequent  
19 order, and any other person the court determines.

20 § -420 **Inventory; records.** (a) No later than sixty  
21 days after appointment, a conservator shall prepare and file



1 with the appointing court a detailed inventory of the  
2 conservatorship estate, together with an oath or affirmation  
3 that the inventory is believed to be complete and accurate as  
4 far as information permits.

5 (b) A conservator shall give notice of the filing of an  
6 inventory to the individual subject to conservatorship, a person  
7 entitled to notice under section -411(e) or a subsequent  
8 order, and any other person the court determines. The notice  
9 must be given no later than fourteen days after the filing.

10 (c) A conservator shall keep records of the administration  
11 of the conservatorship estate and make them available for  
12 examination on reasonable request of the individual subject to  
13 conservatorship, a guardian for the individual, or any other  
14 person the conservator or the court determines.

15 § -421 **Administrative powers of conservator not**  
16 **requiring court approval.** (a) Except as otherwise provided in  
17 section -414 or qualified or limited in the court's order of  
18 appointment and stated in the letters of office, a conservator  
19 has all powers granted in this section and any additional power  
20 granted to a trustee by law of this State other than this  
21 chapter.



1 (b) A conservator, acting reasonably and consistent with  
2 the fiduciary duties of the conservator to accomplish the  
3 purpose of the conservatorship, without specific court  
4 authorization or confirmation, may with respect to the  
5 conservatorship estate:

6 (1) Collect, hold, and retain property, including property  
7 in which the conservator has a personal interest and  
8 real property in another state, until the conservator  
9 determines disposition of the property should be made;

10 (2) Receive additions to the conservatorship estate;

11 (3) Continue or participate in the operation of a business  
12 or other enterprise;

13 (4) Acquire an undivided interest in property in which the  
14 conservator, in a fiduciary capacity, holds an  
15 undivided interest;

16 (5) Invest assets;

17 (6) Deposit funds or other property in a financial  
18 institution, including one operated by the  
19 conservator;

20 (7) Acquire or dispose of property, including real  
21 property in another state, for cash or on credit, at



- 1 public or private sale, and manage, develop, improve,  
2 exchange, partition, change the character of, or  
3 abandon property;
- 4 (8) Make ordinary or extraordinary repairs or alterations  
5 in a building or other structure, demolish any  
6 improvement, or raze an existing or erect a new party  
7 wall or building;
- 8 (9) Subdivide or develop land, dedicate land to public  
9 use, make or obtain the vacation of a plat and adjust  
10 a boundary, adjust a difference in valuation of land,  
11 exchange or partition land by giving or receiving  
12 consideration, and dedicate an easement to public use  
13 without consideration;
- 14 (10) Enter for any purpose into a lease of property as  
15 lessor or lessee, with or without an option to  
16 purchase or renew, for a term within or extending  
17 beyond the term of the conservatorship;
- 18 (11) Enter into a lease or arrangement for exploration and  
19 removal of minerals or other natural resources or a  
20 pooling or unitization agreement;



- 1       (12) Grant an option involving disposition of property or
- 2             accept or exercise an option for the acquisition of
- 3             property;
- 4       (13) Vote a security, in person or by general or limited
- 5             proxy;
- 6       (14) Pay a call, assessment, or other sum chargeable or
- 7             accruing against or on account of a security;
- 8       (15) Sell or exercise a stock subscription or conversion
- 9             right;
- 10       (16) Consent, directly or through a committee or agent, to
- 11            the reorganization, consolidation, merger,
- 12            dissolution, or liquidation of a corporation or other
- 13            business enterprise;
- 14       (17) Hold a security in the name of a nominee or in other
- 15            form without disclosure of the conservatorship so that
- 16            title to the security may pass by delivery;
- 17       (18) Insure:
- 18            (A) The conservatorship estate, in whole or in part,
- 19            against damage or loss in accordance with
- 20            section       -418(j); and



- 1           (B) The conservator against liability with respect to
- 2                 a third person;
- 3       (19) Borrow funds, with or without security, to be repaid
- 4                 from the conservatorship estate or otherwise;
- 5       (20) Advance funds for the protection of the
- 6                 conservatorship estate or the individual subject to
- 7                 conservatorship and all expenses, losses, and
- 8                 liability sustained in the administration of the
- 9                 conservatorship estate or because of holding any
- 10                property for which the conservator has a lien on the
- 11                conservatorship estate;
- 12       (21) Pay or contest a claim, settle a claim by or against
- 13                the conservatorship estate or the individual subject
- 14                to conservatorship by compromise, arbitration, or
- 15                otherwise, or release, in whole or in part, a claim
- 16                belonging to the conservatorship estate to the extent
- 17                the claim is uncollectible;
- 18       (22) Pay a tax, assessment, compensation of the conservator
- 19                or any guardian, and other expense incurred in the
- 20                collection, care, administration, and protection of
- 21                the conservatorship estate;



- 1           (23) Pay a sum distributable to the individual subject to  
2           conservatorship or an individual who is in fact  
3           dependent on the individual subject to conservatorship  
4           by paying the sum to the distributee or for the use of  
5           the distributee:
- 6           (A) To the guardian for the distributee;
- 7           (B) To the custodian of the distributee under chapter  
8           553A or custodial trustee under chapter 554B; or
- 9           (C) If there is no guardian, custodian, or custodial  
10          trustee, to a relative or other person having  
11          physical custody of the distributee;
- 12          (24) Bring or defend an action, claim, or proceeding in any  
13          jurisdiction for the protection of the conservatorship  
14          estate or the conservator in the performance of the  
15          conservator's duties;
- 16          (25) Structure the finances of the individual subject to  
17          conservatorship to establish eligibility for a public  
18          benefit, including by making gifts consistent with the  
19          individual's preferences, values, and prior  
20          directions, if the conservator's action does not



1           jeopardize the individual's welfare and otherwise is  
2           consistent with the conservator's duties; and

3       (26)   Execute and deliver any instrument that will  
4           accomplish or facilitate the exercise of a power of  
5           the conservator.

6       §   -422   **Distribution from conservatorship estate.**   Except  
7   as otherwise provided in section   -414 or qualified or limited  
8   in the court's order of appointment and stated in the letters of  
9   office, and unless contrary to a conservator's plan under  
10   section   -419, the conservator may expend or distribute income  
11   or principal of the conservatorship estate without specific  
12   court authorization or confirmation for the support, care,  
13   education, health, or welfare of the individual subject to  
14   conservatorship or an individual who is in fact dependent on the  
15   individual subject to conservatorship, including the payment of  
16   child or spousal support, in accordance with the following  
17   rules:

18       (1)   The conservator shall consider a recommendation  
19           relating to the appropriate standard of support, care,  
20           education, health, or welfare for the individual  
21           subject to conservatorship or individual who is



1 dependent on the individual subject to  
2 conservatorship, made by a guardian for the individual  
3 subject to conservatorship, if any, and, if the  
4 individual subject to conservatorship is a minor, a  
5 recommendation made by a parent of the minor;

6 (2) The conservator acting in compliance with the  
7 conservator's duties under section -418 is not  
8 liable for an expenditure or distribution made based  
9 on a recommendation under paragraph (1) unless the  
10 conservator knows the expenditure or distribution is  
11 not in the best interest of the individual subject to  
12 conservatorship;

13 (3) In making an expenditure or distribution under this  
14 section, the conservator shall consider:

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



- 1 (B) The accustomed standard of living of the
- 2 individual subject to conservatorship and
- 3 individual who is dependent on the individual
- 4 subject to conservatorship;
- 5 (C) Other funds or source used for the support of the
- 6 individual subject to conservatorship; and
- 7 (D) The preferences, values, and prior directions of
- 8 the individual subject to conservatorship; and
- 9 (4) Funds expended or distributed under this section may
- 10 be paid by the conservator to any person, including
- 11 the individual subject to conservatorship, as
- 12 reimbursement for expenditures the conservator might
- 13 have made, or in advance for services to be provided
- 14 to the individual subject to conservatorship or
- 15 individual who is dependent on the individual subject
- 16 to conservatorship if it is reasonable to expect the
- 17 services will be performed and advance payment is
- 18 customary or reasonably necessary under the
- 19 circumstances.

20 § -423 Conservator's report and accounting; monitoring.

21 (a) A conservator shall file with the court a report in a

1 record regarding the administration of the conservatorship  
2 estate annually unless the court otherwise directs, on  
3 resignation or removal, on termination of the conservatorship,  
4 and at any other time the court directs.

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

6 (1) An accounting that lists property included in the  
7 conservatorship estate and the receipts,  
8 disbursements, liabilities, and distributions during  
9 the period for which the report is made;

10 (2) A list of the services provided to the individual  
11 subject to conservatorship;

12 (3) A copy of the conservator's most recently approved  
13 plan and a statement whether the conservator has  
14 deviated from the plan and, if so, how the conservator  
15 has deviated and why;

16 (4) A recommendation as to the need for continued  
17 conservatorship and any recommended change in the  
18 scope of the conservatorship;

19 (5) To the extent feasible, a copy of the most recent  
20 reasonably available financial statements evidencing  
21 the status of bank accounts, investment accounts, and



1 mortgages or other debts of the individual subject to  
2 conservatorship with all but the last four digits of  
3 the account numbers and Social Security number  
4 redacted;

5 (6) Anything of more than de minimis value which the  
6 conservator, any individual who resides with the  
7 conservator, or the spouse, domestic partner parent,  
8 child, or sibling of the conservator has received from  
9 a person providing goods or services to the individual  
10 subject to conservatorship;

11 (7) Any business relation the conservator has with a  
12 person the conservator has paid or that has benefited  
13 from the property of the individual subject to  
14 conservatorship; and

15 (8) Whether any co-conservator or successor conservator  
16 appointed to serve when a designated event occurs is  
17 alive and able to serve.

18 (c) The court may appoint an examiner to review a report  
19 under this section or conservator's plan under section -419,  
20 interview the individual subject to conservatorship or  
21 conservator, or investigate any other matter involving the



1 conservatorship. In connection with the report, the court may  
2 order the conservator to submit the conservatorship estate to  
3 appropriate examination in a manner the court directs.

4 (d) Notice of the filing under this section of a  
5 conservator's report, together with a copy of the report, must  
6 be provided to the individual subject to conservatorship, a  
7 person entitled to notice under section -411(e) or a  
8 subsequent order, and other persons the court determines. The  
9 notice and report must be given no later than fourteen days  
10 after filing.

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

- 14 (1) The reports provide sufficient information to  
15 establish the conservator has complied with the  
16 conservator's duties;
- 17 (2) The conservatorship should continue; and
- 18 (3) The conservator's requested fees, if any, should be  
19 approved.



1 (f) If the court determines there is reason to believe a  
2 conservator has not complied with the conservator's duties or  
3 the conservatorship should not continue, the court:

4 (1) Shall notify the individual subject to  
5 conservatorship, the conservator, and any other person  
6 entitled to notice under section -411(e) or a  
7 subsequent order;

8 (2) May require additional information from the  
9 conservator;

10 (3) May appoint an examiner to interview the individual  
11 subject to conservatorship or conservator or  
12 investigate any matter involving the conservatorship;  
13 and

14 (4) Consistent with sections -430 and -431, may hold  
15 a hearing to consider removal of the conservator,  
16 termination of the conservatorship, or a change in the  
17 powers granted to the conservator or terms of the  
18 conservatorship.

19 (g) If the court has reason to believe fees requested by a  
20 conservator are not reasonable, the court shall hold a hearing  
21 to determine whether to adjust the requested fees.



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

6 (i) An order, after notice and hearing, approving an  
7 interim report of a conservator filed under this section  
8 adjudicates liabilities concerning a matter adequately disclosed  
9 in the report, as to a person given notice of the report or  
10 accounting.

11 (j) An order, after notice and hearing, approving a final  
12 report filed under this section discharges the conservator from  
13 all liabilities, claims, and causes of action by a person given  
14 notice of the report and the hearing as to a matter adequately  
15 disclosed in the report.

16 § -424 **Attempted transfer of property by individual**  
17 **subject to conservatorship.** (a) The interest of an individual  
18 subject to conservatorship in property included in the  
19 conservatorship estate is not transferrable or assignable by the  
20 individual and is not subject to levy, garnishment, or similar

1 process for claims against the individual unless allowed under  
2 section -428.

3 (b) If an individual subject to conservatorship enters  
4 into a contract after having the right to enter the contract  
5 removed by the court, the contract is void against the  
6 individual and the individual's property but is enforceable  
7 against the person that contracted with the individual.

8 (c) A person other than the conservator that deals with an  
9 individual subject to conservatorship with respect to property  
10 included in the conservatorship estate is entitled to protection  
11 provided by law of this State other than this chapter.

12 § -425 **Transaction involving conflict of interest.** A  
13 transaction involving a conservatorship estate that is affected  
14 by a substantial conflict between the conservator's fiduciary  
15 duties and personal interests is voidable unless the transaction  
16 is authorized by court order after notice to persons entitled to  
17 notice under section -411(e) or a subsequent order. A  
18 transaction affected by a substantial conflict includes a sale,  
19 encumbrance, or other transaction involving the conservatorship  
20 estate entered into by the conservator, an individual with whom  
21 the conservator resides, the spouse, domestic partner



1 descendant, sibling, agent, or attorney of the conservator, or a  
2 corporation or other enterprise in which the conservator has a  
3 substantial beneficial interest.

4       **§ -426 Protection of person dealing with conservator.**

5 (a) A person that assists or deals with a conservator in good  
6 faith and for value in any transaction, other than a transaction  
7 requiring a court order under section -414, is protected as  
8 though the conservator properly exercised any power in question.  
9 Knowledge by a person that the person is dealing with a  
10 conservator alone does not require the person to inquire into  
11 the existence of authority of the conservator or the propriety  
12 of the conservator's exercise of authority, but restrictions on  
13 authority stated in letters of office, or otherwise provided by  
14 law, are effective as to the person. A person that pays or  
15 delivers property to a conservator is not responsible for proper  
16 application of the property.

17 (b) Protection under subsection (a) extends to a  
18 procedural irregularity or jurisdictional defect in the  
19 proceeding leading to the issuance of letters of office and does  
20 not substitute for protection for a person that assists or deals  
21 with a conservator provided by comparable provisions in law of



1 this State other than this chapter relating to a commercial  
2 transaction or simplifying a transfer of securities by a  
3 fiduciary.

4       **§ -427. Death of individual subject to conservatorship.**

5 (a) If an individual subject to conservatorship dies, the  
6 conservator shall deliver to the court for safekeeping any will  
7 of the individual in the conservator's possession and inform the  
8 personal representative named in the will if feasible, or if not  
9 feasible, a beneficiary named in the will, of the delivery.

10 (b) If forty days after the death of an individual subject  
11 to conservatorship no personal representative has been appointed  
12 and no application or petition for appointment is before the  
13 court, the conservator may apply to exercise the powers and  
14 duties of a personal representative to administer and distribute  
15 the decedent's estate. The conservator shall give notice to a  
16 person nominated as personal representative by a will of the  
17 decedent of which the conservator is aware. The court may grant  
18 the application if there is no objection and endorse the letters  
19 of office to note that the individual formerly subject to  
20 conservatorship is deceased and the conservator has acquired the  
21 powers and duties of a personal representative.



1 (c) Issuance of an order under this section has the effect  
2 of an order of appointment of a personal representative under  
3 section 560:3-308 and parts 6 through 10 of article III of  
4 chapter 560.

5 (d) On the death of an individual subject to  
6 conservatorship, the conservator shall conclude the  
7 administration of the conservatorship estate as provided in  
8 section -431.

9 § -428 **Presentation and allowance of claim.** (a) A  
10 conservator may pay, or secure by encumbering property included  
11 in the conservatorship estate, a claim against the  
12 conservatorship estate or the individual subject to  
13 conservatorship arising before or during the conservatorship, on  
14 presentation and allowance in accordance with the priorities  
15 under subsection (d). A claimant may present a claim by:

16 (1) Sending or delivering to the conservator a statement  
17 in a record of the claim, indicating its basis, the  
18 name and address of the claimant, and the amount  
19 claimed; or



1           (2) Filing the claim with the court, in a form acceptable  
2           to the court, and sending or delivering a copy of the  
3           claim to the conservator.

4           (b) A claim under subsection (a) is presented on receipt  
5 by the conservator of the statement of the claim or the filing  
6 with the court of the claim, whichever first occurs. A  
7 presented claim is allowed if it is not disallowed in whole or  
8 in part by the conservator in a record sent or delivered to the  
9 claimant no later than sixty days after its presentation.  
10 Before payment, the conservator may change an allowance of the  
11 claim to a disallowance in whole or in part, but not after  
12 allowance under a court order or order directing payment of the  
13 claim. Presentation of a claim tolls until thirty days after  
14 disallowance of the claim the running of a statute of  
15 limitations that has not expired relating to the claim.

16           (c) A claimant whose claim under subsection (a) has not  
17 been paid may petition the court to determine the claim at any  
18 time before it is barred by a statute of limitations, and the  
19 court may order its allowance, payment, or security by  
20 encumbering property included in the conservatorship estate. If  
21 a proceeding is pending against the individual subject to



1 conservatorship at the time of appointment of the conservator or  
2 is initiated thereafter, the moving party shall give the  
3 conservator notice of the proceeding if it could result in  
4 creating a claim against the conservatorship estate.

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

9 (1) Costs and expenses of administration;

10 (2) A claim of the federal or state government having  
11 priority under law other than this chapter;

12 (3) A claim incurred by the conservator for support, care,  
13 education, health, or welfare previously provided to  
14 the individual subject to conservatorship or an  
15 individual who is in fact dependent on the individual  
16 subject to conservatorship;

17 (4) A claim arising before the conservatorship; and

18 (5) All other claims.

19 (e) Preference may not be given in the payment of a claim  
20 under subsection (d) over another claim of the same class. A



1 claim due and payable may not be preferred over a claim not due  
2 unless:

3 (1) Doing so would leave the conservatorship estate  
4 without sufficient funds to pay the basic living and  
5 health care expenses of the individual subject to  
6 conservatorship; and

7 (2) The court authorizes the preference under  
8 section -414(a)(8).

9 (f) If assets of a conservatorship estate are adequate to  
10 meet all existing claims, the court, acting in the best interest  
11 of the individual subject to conservatorship, may order the  
12 conservator to grant a security interest in the conservatorship  
13 estate for payment of a claim at a future date.

14 § -429 **Personal liability of conservator.** (a) Except  
15 as otherwise agreed by a conservator, the conservator is not  
16 personally liable on a contract properly entered into in a  
17 fiduciary capacity in the course of administration of the  
18 conservatorship estate unless the conservator fails to reveal  
19 the conservator's representative capacity in the contract or  
20 before entering into the contract.



1 (b) A conservator is personally liable for an obligation  
2 arising from control of property of the conservatorship estate  
3 or an act or omission occurring in the course of administration  
4 of the conservatorship estate only if the conservator is  
5 personally at fault.

6 (c) A claim based on a contract entered into by a  
7 conservator in a fiduciary capacity, an obligation arising from  
8 control of property included in the conservatorship estate, or a  
9 tort committed in the course of administration of the  
10 conservatorship estate may be asserted against the  
11 conservatorship estate in a proceeding against the conservator  
12 in a fiduciary capacity, whether or not the conservator is  
13 personally liable for the claim.

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

18 **§ -430 Removal of conservator; appointment of successor.**

19 (a) The court may remove a conservator for failure to perform  
20 the conservator's duties or other good cause and appoint a  
21 successor conservator to assume the duties of the conservator.



1 (b) The court shall hold a hearing to determine whether to  
2 remove a conservator and appoint a successor on:

3 (1) Petition of the individual subject to conservatorship,  
4 conservator, or person interested in the welfare of  
5 the individual that contains allegations that, if  
6 true, would support a reasonable belief that removal  
7 of the conservator and appointment of a successor may  
8 be appropriate, but the court may decline to hold a  
9 hearing if a petition based on the same or  
10 substantially similar facts was filed during the  
11 preceding six months;

12 (2) Communication from the individual subject to  
13 conservatorship, conservator, or person interested in  
14 the welfare of the individual that supports a  
15 reasonable belief that removal of the conservator and  
16 appointment of a successor may be appropriate; or

17 (3) Determination by the court that a hearing would be in  
18 the best interest of the individual subject to  
19 conservatorship.



1 (c) Notice of a petition under subsection (b)(1) must be  
2 given to the individual subject to conservatorship, the  
3 conservator, and any other person the court determines.

4 (d) An individual subject to conservatorship who seeks to  
5 remove the conservator and have a successor appointed has the  
6 right to choose an attorney to represent the individual in this  
7 matter. If the individual is not represented by an attorney,  
8 the court shall appoint an attorney under the same conditions as  
9 in section -406. The court shall award reasonable attorney's  
10 fees to the attorney as provided in section -119.

11 (e) In selecting a successor conservator, the court shall  
12 follow the priorities under section -410.

13 (f) No later than thirty days after appointing a successor  
14 conservator, the court shall give notice of the appointment to  
15 the individual subject to conservatorship and any person  
16 entitled to notice under section -411(e) or a subsequent  
17 order.

18 **§ -431 Termination or modification of conservatorship.**

19 (a) A conservatorship for a minor terminates on the earliest  
20 of:

21 (1) A court order terminating the conservatorship;



1           (2) The minor becoming an adult or, if the minor consents  
2                    or the court finds by clear and convincing evidence  
3                    that substantial harm to the minor's interests is  
4                    otherwise likely, attaining 21 years of age;

5           (3) Emancipation of the minor; or

6           (4) Death of the minor.

7           (b) A conservatorship for an adult terminates on order of  
8 the court or when the adult dies.

9           (c) An individual subject to conservatorship, the  
10 conservator, or a person interested in the welfare of the  
11 individual may petition for:

12           (1) Termination of the conservatorship on the ground that  
13                    a basis for appointment under section       -401 does not  
14                    exist or termination would be in the best interest of  
15                    the individual or for other good cause; or

16           (2) Modification of the conservatorship on the ground that  
17                    the extent of protection or assistance granted is not  
18                    appropriate or for other good cause.

19           (d) The court shall hold a hearing to determine whether  
20 termination or modification of a conservatorship is appropriate  
21 on:



- 1           (1) Petition under subsection (c) which contains  
2                   allegations that, if true, would support a reasonable  
3                   belief that termination or modification of the  
4                   conservatorship may be appropriate, but the court may  
5                   decline to hold a hearing if a petition based on the  
6                   same or substantially similar facts was filed within  
7                   the preceding six months;
- 8           (2) A communication from the individual subject to  
9                   conservatorship, conservator, or person interested in  
10                  the welfare of the individual that supports a  
11                  reasonable belief that termination or modification of  
12                  the conservatorship may be appropriate, including  
13                  because the functional needs of the individual or  
14                  supports or services available to the individual have  
15                  changed;
- 16          (3) A report from a guardian or conservator that indicates  
17                  that termination or modification may be appropriate  
18                  because the functional needs or supports or services  
19                  available to the individual have changed or a  
20                  protective arrangement instead of conservatorship or  
21                  other less restrictive alternative is available; or



1           (4) A determination by the court that a hearing would be  
2           in the best interest of the individual.

3           (e) Notice of a petition under subsection (c) must be  
4 given to the individual subject to conservatorship, the  
5 conservator, and any such other person the court determines.

6           (f) On presentation of prima facie evidence for  
7 termination of a conservatorship, the court shall order  
8 termination unless it is proven that a basis for appointment of  
9 a conservator under section     -401 exists.

10          (g) The court shall modify the powers granted to a  
11 conservator if the powers are excessive or inadequate due to a  
12 change in the abilities or limitations of the individual subject  
13 to conservatorship, the individual's supports, or other  
14 circumstances.

15          (h) Unless the court otherwise orders for good cause,  
16 before terminating a conservatorship, the court shall follow the  
17 same procedures to safeguard the rights of the individual  
18 subject to conservatorship which apply to a petition for  
19 conservatorship.

20          (i) An individual subject to conservatorship who seeks to  
21 terminate or modify the terms of the conservatorship has the



1 right to choose an attorney to represent the individual in this  
2 matter. If the individual is not represented by an attorney,  
3 the court shall appoint an attorney under the same conditions as  
4 in section -406. The court shall award reasonable attorney's  
5 fees to the attorney as provided in section -119.

6 (j) On termination of a conservatorship other than by  
7 reason of the death of the individual subject to  
8 conservatorship, property of the conservatorship estate passes  
9 to the individual. The order of termination must direct the  
10 conservator to file a final report and petition for discharge on  
11 approval by the court of the final report.

12 (k) On termination of a conservatorship by reason of the  
13 death of the individual subject to conservatorship, the  
14 conservator promptly shall file a final report and petition for  
15 discharge on approval by the court of the final report. On  
16 approval of the final report, the conservator shall proceed  
17 expeditiously to distribute the conservatorship estate to the  
18 individual's estate or as otherwise ordered by the court. The  
19 conservator may take reasonable measures necessary to preserve  
20 the conservatorship estate until distribution can be made.



1           (1) The court shall issue a final order of discharge on  
2 the approval by the court of the final report and satisfaction  
3 by the conservator of any other condition the court imposed on  
4 the conservator's discharge.

5           §    -432   **Transfer for benefit of minor without appointment**  
6 **of conservator.** (a) Unless a person required to transfer funds  
7 or other property to a minor knows that a conservator for the  
8 minor has been appointed or a proceeding is pending for  
9 conservatorship, the person may transfer an amount or value not  
10 exceeding \$15,000 in a twelve month period to:

11           (1) A person that has care or custody of the minor and  
12                 with whom the minor resides;  
13           (2) A guardian for the minor;  
14           (3) A custodian under chapter 553A; or  
15           (4) A financial institution as a deposit in an interest-  
16                 bearing account or certificate solely in the name of  
17                 the minor and shall give notice to the minor of the  
18                 deposit.

19           (b) A person that transfers funds or other property under  
20 this section is not responsible for its proper application.



1 (c) A person that receives funds or other property for a  
 2 minor under subsection (a)(1) or (2) may apply it only to the  
 3 support, care, education, health, or welfare of the minor, and  
 4 may not derive a personal financial benefit from it, except for  
 5 reimbursement for necessary expenses. Funds not applied for  
 6 these purposes must be preserved for the future support, care,  
 7 education, health, or welfare of the minor, and the balance, if  
 8 any, transferred to the minor when the minor becomes an adult or  
 9 otherwise is emancipated.

10 **ARTICLE 5**

11 **OTHER PROTECTIVE ARRANGEMENTS**

12 **§ -501 Authority for protective arrangement.** (a) Under  
 13 this article, a court:

14 (1) On receiving a petition for a guardianship for an  
 15 adult may order a protective arrangement instead of  
 16 guardianship as a less restrictive alternative to  
 17 guardianship; and

18 (2) On receiving a petition for a conservatorship for an  
 19 individual may order a protective arrangement instead  
 20 of conservatorship as a less restrictive alternative  
 21 to conservatorship.



1 (b) A person interested in an adult's welfare, including  
2 the adult or a conservator for the adult, may petition under  
3 this article for a protective arrangement instead of  
4 guardianship.

5 (c) The following persons may petition under this article  
6 for a protective arrangement instead of conservatorship:

7 (1) The individual for whom the protective arrangement is  
8 sought;

9 (2) A person interested in the property, financial  
10 affairs, or welfare of the individual, including a  
11 person that would be affected adversely by lack of  
12 effective management of property or financial affairs  
13 of the individual; and

14 (3) The guardian for the individual.

15 **§ -502 Basis for protective arrangement instead of**

16 **guardianship for adult.** (a) After the hearing on a petition  
17 under section -302 for a guardianship or under  
18 section -501(b) for a protective arrangement instead of  
19 guardianship, the court may issue an order under subsection (b)  
20 for a protective arrangement instead of guardianship if the  
21 court finds by clear and convincing evidence that:



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

8           (2) The respondent's identified needs cannot be met by a  
9           less restrictive alternative.

10          (b) If the court makes the findings under subsection (a),  
11 the court, instead of appointing a guardian, may:

12          (1) Authorize or direct a transaction necessary to meet  
13          the respondent's need for health, safety, or care,  
14          including:

15               (A) A particular medical treatment or refusal of a  
16               particular medical treatment;

17               (B) A move to a specified place of dwelling; or

18               (C) Visitation or supervised visitation between the  
19               respondent and another person;

20          (2) Restrict access to the respondent by a specified  
21          person whose access places the respondent at serious



1 risk of physical, psychological, or financial harm;  
2 and

3 (3) Order other arrangements on a limited basis that are  
4 appropriate.

5 (c) In deciding whether to issue an order under this  
6 section, the court shall consider the factors under  
7 sections -313 and -314 which a guardian must consider when  
8 making a decision on behalf of an adult subject to guardianship.

9 § -503 Basis for protective arrangement instead of  
10 conservatorship for adult or minor. (a) After the hearing on a  
11 petition under section -402 for conservatorship for an adult  
12 or under section -501(c) for a protective arrangement instead  
13 of conservatorship for an adult, the court may issue an order  
14 under subsection (c) for a protective arrangement instead of  
15 conservatorship for the adult if the court finds by clear and  
16 convincing evidence that:

17 (1) The adult is unable to manage property or financial  
18 affairs because:

19 (A) Of a limitation in the ability to receive and  
20 evaluate information or make or communicate  
21 decisions, even with appropriate supportive



1 services, technological assistance, or supported  
2 decision making; or

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

5 (2) An order under subsection (c) is necessary to:

6 (A) Avoid harm to the adult or significant  
7 dissipation of the property of the adult; or

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

12 (3) The respondent's identified needs cannot be met by a  
13 less restrictive alternative.

14 (b) After the hearing on a petition under section -402  
15 for conservatorship for a minor or under section -501(c) for  
16 a protective arrangement instead of conservatorship for a minor,  
17 the court may issue an order under subsection (c) for a  
18 protective arrangement instead of conservatorship for the  
19 respondent if the court finds by a preponderance of the evidence  
20 that the arrangement is in the minor's best interest, and:



- 1           (1) If the minor has a parent, the court gives weight to  
2           any recommendation of the parent whether an  
3           arrangement is in the minor's best interest;
- 4           (2) Either:
- 5               (A) The minor owns money or property requiring  
6               management or protection that otherwise cannot be  
7               provided;
- 8               (B) The minor has or may have financial affairs that  
9               may be put at unreasonable risk or hindered  
10              because of the minor's age; or
- 11              (C) The arrangement is necessary or desirable to  
12              obtain or provide funds or other property needed  
13              for the support, care, education, health, or  
14              welfare of the minor; and
- 15           (3) The order under subsection (c) is necessary or  
16           desirable to obtain or provide money needed for the  
17           support, care, education, health, or welfare of the  
18           minor.
- 19           (c) If the court makes the findings under subsection (a)  
20 or (b), the court, instead of appointing a conservator, may:



- 1           (1) Authorize or direct a transaction necessary to protect  
2           the financial interest or property of the respondent,  
3           including:
- 4           (A) An action to establish eligibility for benefits;
  - 5           (B) Payment, delivery, deposit, or retention of funds  
6           or property;
  - 7           (C) Sale, mortgage, lease, or other transfer of  
8           property;
  - 9           (D) Purchase of an annuity;
  - 10          (E) Entry into a contractual relationship, including  
11          a contract to provide for personal care,  
12          supportive services, education, training, or  
13          employment;
  - 14          (F) Addition to or establishment of a trust;
  - 15          (G) Ratification or invalidation of a contract,  
16          trust, will, or other transaction, including a  
17          transaction related to the property or business  
18          affairs of the respondent; or
  - 19          (H) Settlement of a claim; or



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

4           (d) After the hearing on a petition under  
5 section     -501(a)(2) or (c), whether or not the court makes the  
6 findings under subsection (a) or (b), the court may issue an  
7 order to restrict access to the respondent or the respondent's  
8 property by a specified person that the court finds by clear and  
9 convincing evidence:

10          (1) Through fraud, coercion, duress, or the use of  
11          deception and control caused or attempted to cause an  
12          action that would have resulted in financial harm to  
13          the respondent or the respondent's property; and

14          (2) Poses a serious risk of substantial financial harm to  
15          the respondent or the respondent's property.

16          (e) Before issuing an order under subsection (c) or (d),  
17 the court shall consider the factors under section     -418 a  
18 conservator must consider when making a decision on behalf of an  
19 individual subject to conservatorship.

20          (f) Before issuing an order under subsection (c) or (d)  
21 for a respondent who is a minor, the court also shall consider



1 the best interest of the minor, the preference of the parents of  
2 the minor, and the preference of the minor, if the minor is  
3 twelve years of age or older.

4 § -504 **Petition for protective arrangement.** A petition  
5 for a protective arrangement instead of guardianship or  
6 conservatorship must state the petitioner's name, principal  
7 residence, current street address, if different, relationship to  
8 the respondent, interest in the protective arrangement, the name  
9 and address of any attorney representing the petitioner, and, to  
10 the extent known, the following:

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

16 (2) The name and address of the respondent's:  
17 (A) Spouse or domestic partner or, if the respondent  
18 has none, an adult with whom the respondent has  
19 shared household responsibilities for more than  
20 six months in the twelve month period before the  
21 filing of the petition;



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

5 (C) Adult stepchildren whom the respondent actively  
6 parented during the stepchildren's minor years  
7 and with whom the respondent had an ongoing  
8 relationship in the two year period immediately  
9 before the filing of the petition;

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

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

14 (B) Any attorney currently representing the  
15 respondent;

16 (C) The representative payee appointed by the Social  
17 Security Administration for the respondent;

18 (D) A guardian or conservator acting for the  
19 respondent in this State or another jurisdiction;



- 1 (E) A trustee or custodian of a trust or  
2 custodianship of which the respondent is a  
3 beneficiary;
- 4 (F) The fiduciary appointed for the respondent by the  
5 Department of Veterans Affairs;
- 6 (G) An agent designated under a power of attorney for  
7 health care in which the respondent is identified  
8 as the principal;
- 9 (H) An agent designated under a power of attorney for  
10 finances in which the respondent is identified as  
11 the principal;
- 12 (I) A person nominated as guardian or conservator by  
13 the respondent if the respondent is twelve years  
14 of age or older;
- 15 (J) A person nominated as guardian by the  
16 respondent's parent, spouse, or domestic partner  
17 in a will or other signed record;
- 18 (K) A person known to have routinely assisted the  
19 respondent with decision making in the six-month  
20 period immediately before the filing of the  
21 petition; and



- 1 (L) If the respondent is a minor:
  - 2 (i) An adult not otherwise listed with whom the
  - 3 respondent resides; and
  - 4 (ii) Each person not otherwise listed that had
  - 5 primary care or custody of the respondent
  - 6 for at least sixty days during the two years
  - 7 immediately before the filing of the
  - 8 petition or for at least seven hundred
  - 9 thirty days during the five years
  - 10 immediately before the filing of the
  - 11 petition;
- 12 (4) The nature of the protective arrangement sought;
- 13 (5) The reason the protective arrangement sought is
- 14 necessary, including a brief description of:
  - 15 (A) The nature and extent of the respondent's alleged
  - 16 need;
  - 17 (B) Any less restrictive alternative for meeting the
  - 18 respondent's alleged need which has been
  - 19 considered or implemented;
  - 20 (C) If no less restrictive alternative has been
  - 21 considered or implemented, the reason less



1 restrictive alternatives have not been considered  
2 or implemented; and

3 (D) The reason other less restrictive alternatives  
4 are insufficient to meet the respondent's alleged  
5 need;

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

9 (7) Whether the respondent needs an interpreter,  
10 translator, or other form of support to communicate  
11 effectively with the court or understand court  
12 proceedings;

13 (8) If a protective arrangement instead of guardianship is  
14 sought and the respondent has property other than  
15 personal effects, a general statement of the  
16 respondent's property with an estimate of its value,  
17 including any insurance or pension, and the source and  
18 amount of any other anticipated income or receipts;  
19 and

20 (9) If a protective arrangement instead of conservatorship  
21 is sought, a general statement of the respondent's



1 property with an estimate of its value, including any  
2 insurance or pension, and the source and amount of  
3 other anticipated income or receipts.

4 § -505 **Notice and hearing.** (a) On filing of a petition  
5 under section -501, the court shall set a date, time, and  
6 place for a hearing on the petition.

7 (b) A copy of a petition under section -501 and notice  
8 of a hearing on the petition must be served personally on the  
9 respondent. The notice must inform the respondent of the  
10 respondent's rights at the hearing, including the right to an  
11 attorney and to attend the hearing. The notice must include a  
12 description of the nature, purpose, and consequences of granting  
13 the petition. The court may not grant the petition if notice  
14 substantially complying with this subsection is not served on  
15 the respondent.

16 (c) In a proceeding on a petition under section -501,  
17 the notice required under subsection (b) must be given to the  
18 persons required to be listed in the petition under  
19 section -504(1) through (3) and any other person interested  
20 in the respondent's welfare the court determines. Failure to



1 give notice under this subsection does not preclude the court  
2 from granting the petition.

3 (d) After the court has ordered a protective arrangement  
4 under this article, notice of a hearing on a petition filed  
5 under this chapter, together with a copy of the petition, must  
6 be given to the respondent and any other person the court  
7 determines.

8 § -506 **Appointment and role of examiner.** (a) On filing  
9 of a petition under section -501 for a protective arrangement  
10 instead of guardianship, the court shall appoint an examiner.  
11 The examiner must be an individual with training or experience  
12 in the type of abilities, limitations, and needs alleged in the  
13 petition.

14 (b) On filing of a petition under section -501 for a  
15 protective arrangement instead of conservatorship for a minor,  
16 the court may appoint an examiner to investigate a matter  
17 related to the petition or inform the minor or a parent of the  
18 minor about the petition or a related matter.

19 (c) On filing of a petition under section -501 for a  
20 protective arrangement instead of conservatorship for an adult,  
21 the court shall appoint an examiner unless the respondent is



1 represented by an attorney appointed by the court. The examiner  
2 must be an individual with training or experience in the types  
3 of abilities, limitations, and needs alleged in the petition.

4 (d) An examiner appointed under subsection (a) or (c)  
5 shall interview the respondent in person and in a manner the  
6 respondent is best able to understand:

7 (1) Explain to the respondent the substance of the  
8 petition, the nature, purpose, and effect of the  
9 proceeding, and the respondent's rights at the hearing  
10 on the petition;

11 (2) Determine the respondent's views with respect to the  
12 order sought;

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

17 (4) Inform the respondent that all costs and expenses of  
18 the proceeding, including respondent's attorney's  
19 fees, may be paid from the respondent's assets;

20 (5) If the petitioner seeks an order related to the  
21 dwelling of the respondent, visit the respondent's



1 present dwelling and any dwelling in which it is  
2 reasonably believed the respondent will live if the  
3 order is granted;

4 (6) If a protective arrangement instead of guardianship is  
5 sought, obtain information from any physician or other  
6 person known to have treated, advised, or assessed the  
7 respondent's relevant physical or mental condition;

8 (7) If a protective arrangement instead of conservatorship  
9 is sought, review financial records of the respondent,  
10 if relevant to the examiner's recommendation under  
11 subsection (e)(3); and

12 (8) Investigate the allegations in the petition and any  
13 other matter relating to the petition the court  
14 directs.

15 (e) An examiner under this section promptly shall file a  
16 report in a record with the court, which must include:

17 (1) A recommendation whether an attorney should be  
18 appointed to represent the respondent;

19 (2) To the extent relevant to the order sought, a summary  
20 of self-care, independent-living tasks, and financial-  
21 management tasks the respondent:



- 1           (A) Can manage without assistance or with existing
- 2            supports;
- 3           (B) Could manage with the assistance of appropriate
- 4            supportive services, technological assistance, or
- 5            supported decision making; and
- 6           (C) Cannot manage;
- 7       (3) A recommendation regarding the appropriateness of the
- 8           protective arrangement sought and whether a less
- 9           restrictive alternative for meeting the respondent's
- 10          needs is available;
- 11       (4) If the petition seeks to change the physical location
- 12          of the dwelling of the respondent, a statement whether
- 13          the proposed dwelling meets the respondent's needs and
- 14          whether the respondent has expressed a preference as
- 15          to the respondent's dwelling;
- 16       (5) A recommendation whether a professional evaluation
- 17          under section 508 is necessary;
- 18       (6) A statement whether the respondent is able to attend a
- 19          hearing at the location court proceedings typically
- 20          are held;



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

5 (8) Any other matter the court directs.

6 § -507 **Appointment and role of attorney.** (a) The court  
7 shall appoint an attorney to represent the respondent in a  
8 proceeding under this article if:

9 (1) The respondent requests the appointment;

10 (2) The examiner recommends the appointment; or

11 (3) The court determines the respondent needs  
12 representation.

13 (b) An attorney representing the respondent in a  
14 proceeding under this article shall:

15 (1) Make reasonable efforts to ascertain the respondent's  
16 wishes;

17 (2) Advocate for the respondent's wishes to the extent  
18 reasonably ascertainable; and

19 (3) If the respondent's wishes are not reasonably  
20 ascertainable, advocate for the result that is the



1           least restrictive alternative in type, duration, and  
2           scope, consistent with the respondent's interests.

3           §   -508   **Professional evaluation.**   (a)   At or before a  
4   hearing on a petition under this article for a protective  
5   arrangement, the court shall order a professional evaluation of  
6   the respondent:

- 7           (1)   If the respondent requests the evaluation; or  
8           (2)   Or in other cases, unless the court finds that it has  
9           sufficient information to determine the respondent's  
10          needs and abilities without the evaluation.

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



- 1           (1) A description of the nature, type, and extent of the  
2                    respondent's cognitive and functional abilities and  
3                    limitations;
- 4           (2) An evaluation of the respondent's mental and physical  
5                    condition and, if appropriate, educational potential,  
6                    adaptive behavior, and social skills;
- 7           (3) A prognosis for improvement, including with regard to  
8                    the ability to manage the respondent's property and  
9                    financial affairs if a limitation in that ability is  
10                  alleged, and recommendation for the appropriate  
11                  treatment, support, or habilitation plan; and
- 12          (4) The date of the examination on which the report is  
13                  based.
- 14          (c) The respondent may decline to participate in an  
15          evaluation ordered under subsection (a).

16           §   -509   **Attendance and rights at hearing.**   (a) Except as  
17          otherwise provided in subsection (b), a hearing under this  
18          article may not proceed unless the respondent attends the  
19          hearing. If it is not reasonably feasible for the respondent to  
20          attend a hearing at the location court proceedings typically are  
21          held, the court shall make reasonable efforts to hold the



1 hearing at an alternative location convenient to the respondent  
2 or allow the respondent to attend the hearing using real-time  
3 audio-visual technology.

4 (b) A hearing under this article may proceed without the  
5 respondent in attendance if the court finds by clear and  
6 convincing evidence that:

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

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

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

17 (c) The respondent may be assisted in a hearing under this  
18 article by a person or persons of the respondent's choosing,  
19 assistive technology, or an interpreter or translator, or a  
20 combination of these supports. If assistance would facilitate  
21 the respondent's participation in the hearing, but is not



1 otherwise available to the respondent, the court shall make  
2 reasonable efforts to provide it.

3 (d) The respondent has a right to choose an attorney to  
4 represent the respondent at a hearing under this article.

5 (e) At a hearing under this article, the respondent may:

6 (1) Present evidence and subpoena witnesses and documents;

7 (2) Examine witnesses, including any court-appointed  
8 evaluator and the examiner; and

9 (3) Otherwise participate in the hearing.

10 (f) A hearing under this article must be closed on request  
11 of the respondent and a showing of good cause.

12 (g) Any person may request to participate in a hearing  
13 under this article. The court may grant the request, with or  
14 without a hearing, on determining that the best interest of the  
15 respondent will be served. The court may impose appropriate  
16 conditions on the person's participation.

17 § -510 **Notice of order.** The court shall give notice of  
18 an order under this article to the individual who is subject to  
19 the protective arrangement instead of guardianship or  
20 conservatorship, a person whose access to the individual is



1 restricted by the order, and any other person the court  
2 determines.

3 § -511. CONFIDENTIALITY OF RECORDS. (a) The existence  
4 of a proceeding for or the existence of a protective arrangement  
5 instead of guardianship or conservatorship is a matter of public  
6 record unless the court seals the record after:

7 (1) The respondent, the individual subject to the  
8 protective arrangement, or the parent of a minor  
9 subject to the protective arrangement requests the  
10 record be sealed; and

11 (2) Either:

12 (A) The proceeding is dismissed;

13 (B) The protective arrangement is no longer in  
14 effect; or

15 (C) An act authorized by the order granting the  
16 protective arrangement has been completed.

17 (b) A respondent, an individual subject to a protective  
18 arrangement instead of guardianship or conservatorship, an  
19 attorney designated by the respondent or individual, a parent of  
20 a minor subject to a protective arrangement, and any other  
21 person the court determines are entitled to access court records



1 of the proceeding and resulting protective arrangement. A  
2 person not otherwise entitled to access to court records under  
3 this subsection for good cause may petition the court for  
4 access. The court shall grant access if access is in the best  
5 interest of the respondent or individual subject to the  
6 protective arrangement or furthers the public interest and does  
7 not endanger the welfare or financial interests of the  
8 respondent or individual.

9 (c) A report of an examiner or professional evaluation  
10 generated in the course of a proceeding under this article must  
11 be sealed on filing but is available to:

12 (1) The court;

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

15 (3) The petitioner, examiner, and petitioner's and  
16 respondent's attorneys, for purposes of the  
17 proceeding;

18 (4) Unless the court orders otherwise, an agent appointed  
19 under a power of attorney for finances in which the  
20 respondent is the principal;



1 (5) If the order is for a protective arrangement instead  
2 of guardianship and unless the court orders otherwise,  
3 an agent appointed under a power of attorney for  
4 health care in which the respondent is identified as  
5 the principal; and

6 (6) Any other person if it is in the public interest or  
7 for a purpose the court orders for good cause.

8 § -512. **Appointment of master.** The court may appoint a  
9 master to assist in implementing a protective arrangement under  
10 this article. The master has the authority conferred by the  
11 order of appointment and serves until discharged by court order.

12 **ARTICLE 6**

13 **FORMS**

14 § -601 **Use of forms.** Use of the forms contained in this  
15 article is optional. Failure to use these forms does not  
16 prejudice any party.

17 § -602 **Petition for guardianship for a minor.** The  
18 petition for guardianship for a minor may be submitted in  
19 substantially the following form:

20 **"Petition for Guardianship for Minor**

21 State of Hawaii



1 County of:  
2 Name and address of attorney representing Petitioner, if applicable:  
3

4 **Note to Petitioner:** This form can be used to petition for a guardian for a minor. A court may  
5 appoint a guardian for a minor who does not have a guardian if the court finds the appointment is  
6 in the minor's best interest, and: (1) the parents, after being fully informed of the nature and  
7 consequences of guardianship, consent; (2) all parental rights have been terminated; or (3) the  
8 court finds by clear and convincing evidence that the parents are unwilling or unable to exercise  
9 their parental rights.

10

11 **1. Information about the person filing this petition (the "Petitioner")**

- 12 a. Name:
- 13 b. Principal residence:
- 14 c. Current street address (if different):
- 15 d. Relationship to minor:
- 16 e. Interest in this petition:
- 17 f. Telephone number (optional):
- 18 g. Email address (optional):

19

20 **2. Information about the minor alleged to need a guardian.**

21 Provide the following information to the extent known.

- 22 a. Name:
- 23 b. Age:
- 24 c. Principal residence:
- 25 d. Current street address (if different):
- 26 e. If Petitioner anticipates the minor moving, or seeks to move the minor,  
27 proposed new address:
- 28 f. Does the minor need an interpreter, translator, or other form of support to  
29 communicate with the court or understand court proceedings? If so, please  
30 explain.
- 31 g. Telephone number (optional):
- 32 h. Email address (optional):

33

34 **3. Information about the minor's parent(s).**

- 35 a. Name(s) of living parent(s):
- 36 b. Current street address(es) of living parent(s):
- 37 c. Does any parent need an interpreter, translator, or other form of support to  
38 communicate with the court or understand court proceedings? If so, please  
39 explain.

40



- 1 4. **People who are required to be notified of this petition.** State the name and current  
2 address of the people listed in Appendix A.  
3
- 4 5. **Appointment requested.** State the name and address of any proposed guardian and the  
5 reason the proposed guardian should be selected.  
6
- 7 6. **State why Petitioner seeks the appointment.** Include a description of the nature and  
8 extent of the minor's alleged need.  
9
- 10 7. **Property.** If the minor has property other than personal effects, state the minor's  
11 property with an estimate of its value.  
12
- 13 8. **Other proceedings.** If there are any other proceedings concerning the care or custody of  
14 the minor currently pending in any court in this State or another jurisdiction, please  
15 describe them.  
16
- 17 9. **Attorney(s).** If the minor or the minor's parent is represented by an attorney in this  
18 matter, state the name, telephone number, email address, and address of the attorney(s).  
19

**SIGNATURE**

20	_____	_____
21	Signature of Petitioner	Date
22		
23	_____	_____
24	Signature of Petitioner's Attorney if	Date
25	Petitioner is Represented by Counsel	

**APPENDIX A:**  
**People whose name and address must be listed in Section 4 of this petition  
if they are not the Petitioner.**

- 32
- 33 (1) The minor, if the minor is twelve years of age or older;
- 34 (2) Each parent of the minor or, if there are none, the adult nearest in kinship that can  
35 be found;
- 36 (3) An adult with whom the minor resides;
- 37 (4) Each person that had primary care or custody of the minor for at least sixty days  
38 during the two years immediately before the filing of the petition or for at least  
39 seven hundred thirty days during the five years immediately before the filing of  
40 the petition;



- 1 (5) If the minor is twelve years of age or older, any person nominated as guardian by
- 2 the minor;
- 3 (6) Any person nominated as guardian by a parent of the minor;
- 4 (7) The grandparents of the minor;
- 5 (8) Adult siblings of the minor; and
- 6 (9) Any current guardian or conservator for the minor appointed in this State or
- 7 another jurisdiction."
- 8

9 § -603 Petition for guardianship, conservatorship, or  
 10 protective arrangement. This form may be used to petition for:

- 11 (1) Guardianship for an adult;
- 12 (2) Conservatorship for an adult or minor;
- 13 (3) A protective arrangement instead of guardianship for
- 14 an adult; or
- 15 (4) A protective arrangement instead of conservatorship
- 16 for an adult or minor:

**"Petition for Guardianship, Conservatorship, or Protective Arrangement**

17 State of Hawaii  
 18 County of:  
 19 Name and address of attorney representing Petitioner, if applicable:  
 20

21 \* \* \*

22 *Note to Petitioner: This form can be used to petition for a guardian, conservator, or both, or for a*  
 23 *protective arrangement instead of either a guardianship or conservatorship. This form should not be used*  
 24 *to petition for guardianship for a minor.*

25  
 26 *The court may appoint a guardian or order a protective arrangement instead of guardianship for an adult*  
 27 *if the adult lacks the ability to meet essential requirements for physical health, safety, or self-care because*  
 28 *(1) the adult is unable to receive and evaluate information or make or communicate decisions even with*  
 29 *the use of supportive services, technological assistance, and supported decision-making, and (2) the adult's*  
 30 *identified needs cannot be met by a less restrictive alternative.*  
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*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):



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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.



- 1 c. State the name and address of any proposed conservator and the reason the
- 2 proposed conservator should be selected.
- 3 d. If Respondent is twelve years of age or older, state the name and address of any
- 4 person Respondent nominates as conservator.
- 5 e. If alleging a limitation in Respondent's ability to receive and evaluate
- 6 information, provide a brief description of the nature and extent of Respondent's
- 7 alleged limitation.
- 8 f. If alleging that Respondent is missing, detained, or unable to return to the United
- 9 States, state the relevant circumstances, including the time and nature of the
- 10 disappearance or detention and a description of any search or inquiry concerning
- 11 Respondent's whereabouts.

12  
13 **12. For a petition seeking appointment of a guardian.** (skip this section if not asking for

- 14 appointment of a guardian)
- 15 a. If seeking appointment of a guardian with all powers permissible under this
  - 16 State's law, explain why appointment of a guardian with fewer powers (i.e., a
  - 17 "limited guardianship") or other protective arrangement instead of guardianship
  - 18 will not meet the individual's alleged needs.
  - 19 b. If seeking a limited guardianship, state the powers Petitioner requests be granted
  - 20 to the guardian.
  - 21 c. State the name and address of any proposed guardian and the reason the proposed
  - 22 guardian should be selected.
  - 23 d. State the name and address of any person nominated as guardian by Respondent,
  - 24 or, in a will or other signed writing or other record, by Respondent's parent or
  - 25 spouse or domestic partner.

26  
27 **13. Attorney.** If Petitioner, Respondent, or, if Respondent is a minor, Respondent's parent is

28 represented by an attorney in this matter, state the name, telephone number, email

29 address, and address of the attorney(s).

30  
31 **SIGNATURE**

32 \_\_\_\_\_

33 Signature of Petitioner

\_\_\_\_\_

Date

34  
35 \_\_\_\_\_

36 Signature of Petitioner's Attorney if

37 Petitioner is Represented by Counsel

\_\_\_\_\_

Date

38  
39 **APPENDIX A:**

40 **People whose name and address must be listed in Section 3 of this petition, if they are not**

41 **the Petitioner.**



- 1 Respondent's spouse or domestic partner, or if Respondent has none, any adult with
- 2 whom Respondent has shared household responsibilities in the past six months;
- 3 Respondent's adult children, or, if Respondent has none, Respondent's parents and adult
- 4 siblings, or if Respondent has none, one or more adults nearest in kinship to Respondent
- 5 who can be found with reasonable diligence;
- 6 Respondent's adult stepchildren whom Respondent actively parented during the
- 7 stepchildren's minor years and with whom Respondent had an ongoing relationship
- 8 within two years of this petition;
- 9 Any person responsible for the care or custody of Respondent;
- 10 Any attorney currently representing Respondent;
- 11 Any representative payee for Respondent appointed by the Social Security
- 12 Administration;
- 13 Any current guardian or conservator for Respondent appointed in this State or another
- 14 jurisdiction;
- 15 Any trustee or custodian of a trust or custodianship of which Respondent is a beneficiary;
- 16 Any Veterans Administration fiduciary for Respondent;
- 17 Any person Respondent has designated as agent under a power of attorney for finances;
- 18 Any person Respondent has designated as agent under a power of attorney for health
- 19 care;
- 20 Any person known to have routinely assisted the individual with decision making in the
- 21 previous six months;
- 22 Any person Respondent nominates as guardian or conservator; and
- 23 Any person nominated as guardian by Respondent's parent or spouse or domestic partner
- 24 in a will or other signed writing or other record."

25

26 § -604 Notification of rights for adult subject to

27 guardianship or conservatorship. This form may be used to

28 notify an adult subject to guardianship or conservatorship of

29 the adult's rights under sections -311 and -412:

30

**"NOTIFICATION OF RIGHTS**

31 You are getting this notice because a guardian, conservator, or both have been appointed for you.

32 It tells you about some important rights you have. It does not tell you about all your rights. If

33 you have questions about your rights, you can ask an attorney or another person, including your

34 guardian or conservator, to help you understand your rights.



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**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 fourteen 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 \_\_\_\_\_ ;
- (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:
  - (A) Your guardian has been authorized by the court by specific order to restrict these communications, visits, or interactions;
  - (B) A protective order is in effect that limits contact between you and other people; or
  - (C) 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 sixty 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**

§ -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.

§ -702 **Relation to electronic signatures in global and national commerce act.** This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, title 15 United States Code section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, title 15 United States Code section 7003(b).

§ -703. **Applicability.** This chapter applies to:



1 (1) A proceeding for appointment of a guardian or  
2 conservator or for a protective arrangement instead of  
3 guardianship or conservatorship commenced  
4 after ; and

5 (2) A guardianship, conservatorship, or protective  
6 arrangement instead of guardianship or conservatorship  
7 in existence on unless the court finds  
8 application of a particular provision of this chapter  
9 would substantially interfere with the effective  
10 conduct of the proceeding or prejudice the rights of a  
11 party, in which case the particular provision of this  
12 chapter does not apply and the superseded law applies.

13 § -704. **Severability.** If any provision of this chapter  
14 or its application to any person or circumstance is held  
15 invalid, the invalidity does not affect other provisions or  
16 applications of this chapter which can be given effect without  
17 the invalid provision or application, and to this end the  
18 provisions of this chapter are severable."

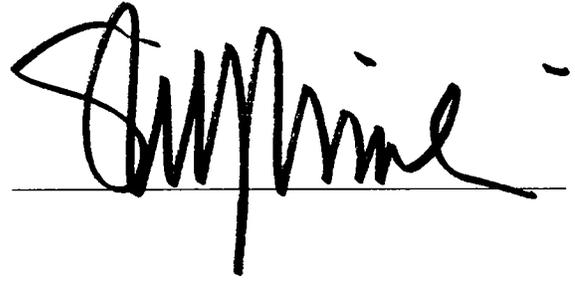
19 SECTION 3. Article V of chapter 560, Hawaii Revised  
20 Statutes, is repealed.

21 SECTION 4. This Act shall take effect on July 1, 2023.



1

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "C. Mine", is written over a horizontal line.



# S.B. NO. 1595

**Report Title:**

Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act; Model Law

**Description:**

Adopts the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. Repeals the superseded Uniform Guardianship and Protective Proceedings Act.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

