
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 In addition to rejecting outdated and offensive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 (1) 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 (1) 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.



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:



- 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:



- 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;



- 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 entireties;
- 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 (1) 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

Signature of Petitioner

Date

Signature of Petitioner's Attorney if
Petitioner is Represented by Counsel

Date

APPENDIX A:

**People whose name and address must be listed in Section 4 of this petition
if they are not the Petitioner.**

- 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 *The court may appoint a guardian or order a protective arrangement instead of guardianship for an adult*
 26 *if the adult lacks the ability to meet essential requirements for physical health, safety, or self-care because*
 27 *(1) the adult is unable to receive and evaluate information or make or communicate decisions even with*
 28 *the use of supportive services, technological assistance, and supported decision-making, and (2) the adult's*
 29 *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):



- 1
2 3. **People who are required to be notified of this petition.** State the name and address of
3 the people listed in Appendix A.
4
- 5 4. **Existing agents.** State the name and address of any person appointed as an agent under a
6 power of attorney for finances or power of attorney for health care, or who has been
7 appointed as the individual's representative for payment of benefits.
8
- 9 5. **Action requested.** State whether Petitioner is seeking appointment of a guardian, a
10 conservator, or a protective arrangement instead of an appointment.
11
- 12 6. **Order requested or appointment requested.** If seeking a protective arrangement
13 instead of a guardianship or conservatorship, state the transaction or other action you
14 want the court to order. If seeking appointment of a guardian or conservator, state the
15 powers Petitioner requests the court grant to a guardian or conservator.
16
- 17 7. **State why the appointment or protective arrangement sought is necessary.** Include a
18 description of the nature and extent of Respondent's alleged need.
19
- 20 8. **State all less restrictive alternatives to meeting Respondent's alleged need that have**
21 **been considered or implemented.** Less restrictive alternatives could include supported
22 decision making, technological assistance, or the appointment of an agent by Respondent
23 including appointment under a power of attorney for health care or power of attorney for
24 finances. If no alternative has been considered or implemented, state the reason why not.
25
- 26 9. **Explain why less restrictive alternatives will not meet Respondent's alleged need.**
27
- 28 10. **Provide a general statement of Respondent's property and an estimate of its value.**
29 Include any real property such as a house or land, insurance or pension, and the source
30 and amount of any other anticipated income or receipts. As part of this Statement,
31 indicate, if known, how the property is titled (for example, is it jointly owned?).
32
- 33 11. **For a petition seeking appointment of a conservator.** (skip this section if not asking
34 for appointment of a conservator)
 - 35 a. If seeking appointment of a conservator with all powers permissible under this
36 State's law, explain why appointment of a conservator with fewer powers (i.e., a
37 "limited conservatorship") or other protective arrangement instead of
38 conservatorship will not meet the individual's alleged needs.
 - 39 b. If seeking a limited conservatorship, state the property Petitioner requests be
40 placed under the conservator's control and any proposed limitation on the
41 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

SIGNATURE

Signature of Petitioner

Date

Signature of Petitioner's Attorney if
Petitioner is Represented by Counsel

Date

**APPENDIX A:
People whose name and address must be listed in Section 3 of this petition, if they are not
the Petitioner.**



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



1 the person has a family or pre-existing social relationship with you
 2 or not more than sixty days if the person does not have that kind of
 3 relationship with you.
 4

5 **Additional rights for persons for whom a conservator has been appointed:**

6 As an adult subject to conservatorship, you have a right to:

- 7 (1) Participate in decisions about how your property is managed to the extent
- 8 feasible; and
- 9 (2) Receive a copy of your conservator's inventory, report, and plan."

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ARTICLE 7

12

MISCELLANEOUS PROVISIONS

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§ -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.

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§ -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."

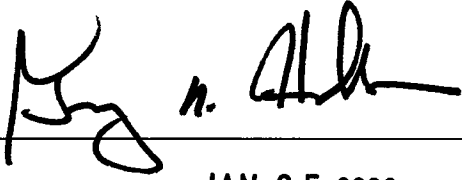
19 SECTION 3. Article V of chapter 560, Hawaii Revised
20 Statutes, is repealed.

21 SECTION 4. This Act shall take effect on July 1, 2023.



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INTRODUCED BY:



JAN 25 2023



H.B. NO. 1440

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.

