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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
128TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT “ ” to H.P. 91, L.D. 123, Bill, “An Act To Recodify and Revise the Maine Probate Code”

Amend the bill in Part A in section 2 by striking out all of §1-308 (page 13, lines 27 to 29 in L.D.) and inserting the following:

**§1-308. Appeals**

Appeals from all final judgments, orders and decrees of the court may be taken to the Supreme Judicial Court, sitting as the Law Court, as in other civil actions.'

Amend the bill in Part A in section 2 in §1-602 by inserting at the end the following:

**'12. Registration of guardianship order from another state.** For registering a guardianship order from another state, the fee is \$25.'

Amend the bill in Part A in section 2 in §2-106 in subsection 3 by striking out all of paragraph A (page 29, lines 30 to 32 in L.D.) and inserting the following:

'A. Surviving descendants in the generation nearest to the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and'

Amend the bill in Part A in section 2 in §2-113 by striking out all of subsection 1 (page 31, lines 2 to 10 in L.D.) and inserting the following:

**'1. Parent barred from inheriting through child.** A parent is barred from inheriting through intestate succession from or through a child of the parent if:

A. The parent’s parental rights were terminated and the parent-child relationship was not judicially reestablished; or

B. The child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child’s death the parental rights of the parent could have been terminated under the laws of this State other than Articles 1 to 8 on the basis of nonsupport, abandonment, abuse, neglect or other actions or inactions of the parent toward the child.'

**COMMITTEE AMENDMENT**

1 Amend the bill in Part A in section 2 in Article 2 by striking out all of subpart 2 and  
2 inserting the following:

3 **'SUBPART 2**

4 **PARENT-CHILD RELATIONSHIP**

5 **§2-115. Determination of parentage for purposes of intestate succession**

6 Unless otherwise provided in this subpart, "parent" for purposes of intestate  
7 succession means a person who has established a parent-child relationship with the child  
8 under Article 9 or Title 19-A, chapter 61 and whose parental rights have not been  
9 terminated.

10 **§2-116. Effect of a pending petition**

11 If a petition to establish parentage under Title 19-A, chapter 61 or a petition for  
12 adoption under Article 9 is pending and has not been finally adjudicated at the time of the  
13 petitioner's death, the subject of the petition is considered a child of the petitioner for  
14 intestate succession purposes and may inherit from and through the petitioner. If the  
15 subject of the petition dies before a final adjudication of parentage is issued, the petitioner  
16 may inherit from or through the subject of the petition only if there is a final adjudication  
17 of parentage.

18 **§2-117. Effect of an order granting adoption on adoptee and adoptee's former**  
19 **parents**

20 An order granting an adoption divests the adoptee's former parents of all legal rights,  
21 powers, privileges, immunities, duties and obligations concerning the adoptee, including  
22 the right to inherit from or through the adoptee. An adoptee, however, may inherit from  
23 the adoptee's former parents if so provided in the adoption decree.

24 **§2-118. Child born after death of parent**

25 An individual is a parent of a child who is born after the individual's death, if the  
26 child is:

27 **1. In utero.** In utero not later than 36 months after the individual's death; or

28 **2. Born.** Born not later than 45 months after the individual's death.'

29 Amend the bill in Part A in section 2 in §2-208 by striking out all of subsection 2  
30 (page 43, lines 12 to 20 in L.D.) and inserting the following:

31 **2. Valuation.** The value of property is determined as follows.

32 A. The value of property included in the augmented estate under section 2-205,  
33 2-206 or 2-207 is reduced in each category by enforceable claims against the included  
34 property.

35 B. The value of property includes the commuted value of any present or future  
36 interest and the commuted value of amounts payable under any trust, except as  
37 provided in paragraph C, life insurance settlement option, annuity contract, public or

1 private pension, disability compensation, death benefit or retirement plan or any  
2 similar arrangement, exclusive of the federal Social Security system.

3 C. The value of a surviving spouse's beneficial interest in a trust from which  
4 distributions of both income and principal to the surviving spouse are subject to the  
5 trustee's discretion, regardless of whether that discretion is expressed in the form of a  
6 standard of distribution, is presumed to be 1/2 of the total value of the trust estate  
7 unless a different value is established by proof; except that the value of a surviving  
8 spouse's beneficial interest in a trust from which distributions of both income and  
9 principal to the surviving spouse are subject to the trustee's discretion, without an  
10 ascertainable standard, is presumed to be the full value of the trust estate if the spouse  
11 is the sole trustee of the trust.'

12 Amend the bill in Part A in section 2 by striking out all of §2-403 (page 3, lines 27 to  
13 39 and page 50, lines 1 to 3 in L.D.) and inserting the following:

14 **§2-403. Exempt property**

15 In addition to the homestead allowance, the decedent's surviving spouse is entitled  
16 from the estate to a value, not exceeding \$15,000 in excess of any security interests in the  
17 estate of tangible personal property, including, but not limited to, in household furniture,  
18 automobiles, furnishings, appliances and personal effects. If there is no surviving spouse,  
19 children of the decedent are entitled jointly to the same value; however, the decedent, by  
20 will, may exclude one or more adult children from the receipt of exempt property. If  
21 encumbered chattels are selected and the value in excess of security interests, plus that of  
22 other exempt property, is less than \$15,000, or if there is not \$15,000 worth of exempt  
23 property in the estate, the spouse or children are entitled to other assets of the estate, if  
24 any, to the extent necessary to make up the \$15,000 value. Rights to exempt property and  
25 assets needed to make up a deficiency of exempt property have priority over all claims  
26 against the estate, except that the right to any assets to make up a deficiency of exempt  
27 property abates as necessary to permit earlier payment of homestead allowance and  
28 family allowance. These rights are in addition to any benefit or share passing to the  
29 surviving spouse or children by the decedent's will unless otherwise provided by intestate  
30 succession or by way of elective share.'

31 Amend the bill in Part A in section 2 by striking out all of §2-705 (page 71, lines 1 to  
32 38 and page 72, lines 1 to 18 in L.D.) and inserting the following:

33 **§2-705. Class gifts construed to accord with intestate succession; exceptions**

34 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
35 following terms have the following meanings.

36 A. "Distribution date" means the date when an immediate or postponed class gift  
37 takes effect in possession or enjoyment.

38 B. "Relative" has the meaning set forth in section 2-115.

39 **2. Terms of relationship.** A class gift that uses a term of relationship to identify the  
40 class members includes in the class a child of parents regardless of their martial status,  
41 and their respective descendants if appropriate to the class, in accordance with the rules  
42 for intestate succession regarding parent-child relationships.

1           3. Relatives by marriage. Terms of relationship in a governing instrument that do  
2 not differentiate relationships by parentage, including relatives of parents, from those by  
3 marriage, such as uncles, aunts, nieces or nephews, are construed to exclude relatives by  
4 marriage, unless:

5           A. When the governing instrument was executed, the class was then and foreseeably  
6 would be empty; or

7           B. The language or circumstances otherwise establish that relatives by marriage were  
8 intended to be included.

9           4. Relatives of shared parentage. Terms of relationship in a governing instrument  
10 that do not differentiate relationships by whether all parents are shared, such as brothers,  
11 sisters, nieces or nephews, are construed to include all types of relationships regardless of  
12 whether relatives share all parents.

13           5. Transferor not parent. In construing a dispositive provision of a transferor who  
14 is not the parent, the transferor or a relative of the transferor must have established a  
15 parent-child relationship with the child before the child reached 18 years of age.

16           6. Class-closing rules. The following provisions apply for purposes of the class-  
17 closing rules.

18           A. A child in utero at a particular time is treated as living at that time if the child  
19 lives 120 hours after birth.

20           B. A child of assisted reproduction or a gestational child is conceived posthumously  
21 and the distribution date is the deceased parent's death, the child is treated as living  
22 on the distribution date if the child lives 120 hours after birth and was in utero not  
23 later than 36 months after the deceased parent's death or born not later than 45  
24 months after the deceased parent's death is treated as living at that time if the child  
25 lives 120 hours after birth.

26           C. An individual who is in the process of being adopted when the class closes is  
27 treated as a child of the parent when the class closes if the adoption is subsequently  
28 granted.'

29           Amend the bill in Part A in section 2 by striking out all of §3-607 (page 127, lines 30  
30 to 38 in L.D.) and inserting the following:

31           '§3-607. Order restraining personal representative

32           1. Order. On petition of any person who appears to have an interest in the estate,  
33 the court by temporary order may restrain a personal representative from performing  
34 specified acts of administration, disbursement or distribution, or exercise of any powers  
35 or discharge of any duties of the personal representative's office, or make any other order  
36 to secure proper performance of the personal representative's duty, if it appears to the  
37 court that the personal representative otherwise may take some action that would  
38 jeopardize unreasonably the interest of the applicant or of some other interested person.  
39 Persons with whom the personal representative may transact business may be made  
40 parties.

41           2. Hearing. The matter under subsection 1 must be set for hearing as soon as  
42 practicable unless the parties otherwise agree. Notice as the court directs must be given



1 to the personal representative and the personal representative's attorney of record, if any,  
2 and to any other parties named as defendants in the petition.'

3 Amend the bill in Part A in section 2 by striking out all of §3-711 (page 136, lines 3  
4 to 7 in L.D.) and inserting the following:

5 **'§3-711. Powers of personal representatives; in general**

6 Until termination of the personal representative's appointment, a personal  
7 representative has the same power over the title to property of the estate that an absolute  
8 owner would have, in trust however, for the benefit of the creditors and others interested  
9 in the estate. This power may be exercised without notice, hearing or order of court,  
10 except as limited by this section. The personal representative may not sell or transfer any  
11 interest in real property of the estate without giving notice at least 10 days prior to that  
12 sale or transfer to any person succeeding to an interest in that property, unless the  
13 personal representative is authorized under the will to sell or transfer real estate without  
14 this notice.'

15 Amend the bill in Part A in section 2 in §3-1201 in subsection 1 by striking out all of  
16 paragraph A (page 164, lines 11 and 12 in L.D.) and inserting the following:

17 'A. The value of the entire estate, wherever located, less liens and encumbrances,  
18 does not exceed \$40,000.'

19 Amend the bill in Part A in section 2 by striking out all of Article 5 and inserting the  
20 following:

21 **'ARTICLE 5**

22 **UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**

23 **PART 1**

24 **GENERAL PROVISIONS**

25 **§5-101. Short title**

26 Parts 1, 2, 3, 4 and 5 of this Article may be known and cited as "the Uniform  
27 Guardianship and Protective Proceedings Act."

28 **§5-102. Definitions**

29 As used in this Article, unless the context otherwise indicates, the following terms  
30 have the following meanings.

31 1. Adult. "Adult" means an individual at least 18 years of age or an emancipated  
32 individual under 18 years of age.

33 2. Adult subject to conservatorship. "Adult subject to conservatorship" means an  
34 adult for whom a conservator has been appointed under this Act.

35 3. Adult subject to guardianship. "Adult subject to guardianship" means an adult  
36 for whom a guardian has been appointed under this Act.

- 1        **4. Best interest of the minor.** "Best interest of the minor" means the standard of the  
2        best interest of the child according to the factors set forth in Title 19-A, section 1653,  
3        subsection 3.
- 4        **5. Claim.** "Claim" includes a claim against an individual or conservatorship estate,  
5        whether arising in contract, tort or otherwise.
- 6        **6. Conservator.** "Conservator" means a person appointed by a court to make  
7        decisions with respect to the property or financial affairs of an individual subject to  
8        conservatorship. "Conservator" includes a coconservator.
- 9        **7. Conservatorship estate.** "Conservatorship estate" means the property subject to  
10       conservatorship under this Act.
- 11       **8. Full conservatorship.** "Full conservatorship" means a conservatorship that grants  
12       the conservator all powers available under this Act.
- 13       **9. Full guardianship.** "Full guardianship" means a guardianship that grants the  
14       guardian all powers available under this Act.
- 15       **10. Guardian.** "Guardian" means a person appointed by a court to make decisions  
16       with respect to the personal affairs of an individual. "Guardian" includes a coguardian  
17       but does not include a guardian ad litem.
- 18       **11. Guardian ad litem.** "Guardian ad litem" means a person appointed to inform  
19       the court about, and to represent, the needs and best interest of an individual.
- 20       **12. Individual subject to conservatorship.** "Individual subject to conservatorship"  
21       means an adult or minor for whom a conservator has been appointed.
- 22       **13. Individual subject to guardianship.** "Individual subject to guardianship"  
23       means an adult or minor for whom a guardian has been appointed.
- 24       **14. Less restrictive alternative.** "Less restrictive alternative" means an approach to  
25       meeting an individual's needs that restricts fewer rights than would the appointment of a  
26       guardian or conservator. "Less restrictive alternative" includes supported decision  
27       making, appropriate technological assistance, appointment of an agent by the individual,  
28       including appointment under a power of attorney for health care or power of attorney for  
29       finances, or appointment of a representative payee.
- 30       **15. Letters of office.** "Letters of office" means judicial certification of guardianship  
31       or conservatorship.
- 32       **16. Limited conservatorship.** "Limited conservatorship" means a conservatorship  
33       that grants the conservator less than all powers available under this Act, grants powers  
34       over only certain property or otherwise restricts the powers of the conservator.
- 35       **17. Limited guardianship.** "Limited guardianship" means a guardianship that  
36       grants the guardian less than all powers available under this Act or otherwise restricts the  
37       powers of the guardian.
- 38       **18. Minor.** "Minor" means an unemancipated individual who is under 18 years of  
39       age.

# COMMITTEE AMENDMENT

1 19. Minor subject to conservatorship. "Minor subject to conservatorship" means a  
2 minor for whom a conservator has been appointed under this Act.

3 20. Minor subject to guardianship. "Minor subject to guardianship" means a  
4 minor for whom a guardian has been appointed under this Act.

5 21. Parent. "Parent" means a person who has established a parent-child relationship  
6 with the child under Title 19-A, chapter 61 and whose parental rights have not been  
7 terminated.

8 22. Person. "Person" means an individual, estate, business or nonprofit entity,  
9 public corporation, government or governmental subdivision, agency or instrumentality  
10 or other legal entity.

11 23. Property. "Property" means anything that may be the subject of ownership and  
12 includes both real and personal property, tangible and intangible, or any interest therein.

13 24. Protective arrangement instead of conservatorship. "Protective arrangement  
14 instead of conservatorship" means a court order entered under section 5-503.

15 25. Protective arrangement instead of guardianship. "Protective arrangement  
16 instead of guardianship" means a court order entered under section 5-502.

17 26. Protective arrangement instead of guardianship or conservatorship.  
18 "Protective arrangement instead of guardianship or conservatorship" means a court order  
19 entered under Part 5, including an order authorizing a single transaction or more than one  
20 related transaction.

21 27. Record. "Record," used as a noun, means information that is inscribed on a  
22 tangible medium or that is stored in an electronic or other medium and is retrievable in  
23 perceivable form.

24 28. Respondent. "Respondent" means an individual for whom appointment of a  
25 guardian or conservator or a protective arrangement instead of guardianship or  
26 conservatorship is sought.

27 29. Sign. "Sign" means, with present intent to authenticate or adopt a record:

28 A. To execute or adopt a tangible symbol; or

29 B. To attach to or logically associate with the record an electronic symbol, sound or  
30 process.

31 30. State. "State" means a state of the United States, the District of Columbia, the  
32 Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or  
33 insular possession subject to the jurisdiction of the United States. "State" includes an  
34 Indian tribe or band recognized by federal law or formally acknowledged by a state.

35 31. Suitable. "Suitable," with respect to a guardian for a minor, means that the  
36 guardian can provide a safe and appropriate residence for the minor, understands and is  
37 prepared to follow the terms of the appointment and understands and can address the  
38 minor's needs and protect the minor from harm.

39 32. Supported decision making. "Supported decision making" means assistance  
40 from one or more persons of an individual's choosing:

- 1           A. In understanding the nature and consequences of potential personal and financial  
2           decisions that enables the individual to make the decisions; and
- 3           B. When consistent with the individual's wishes, in communicating a decision once it  
4           is made.

5           **§5-103. Facility of transfer**

6           **1. Transfer of money or personal property to minor.** Unless a person required to  
7           transfer money or personal property to a minor knows that a conservator has been  
8           appointed or that a proceeding for appointment of a conservator of the estate of the minor  
9           is pending, the person may do so, as to an amount or value not exceeding \$10,000 a year,  
10           by transferring it to:

- 11           A. A person who has the care and custody of the minor and with whom the minor  
12           resides;
- 13           B. A guardian of the minor;
- 14           C. A custodian under the Maine Uniform Transfers to Minors Act;
- 15           D. A financial institution as a deposit in an interest-bearing account or certificate in  
16           the sole name of the minor and giving notice of the deposit to the minor; or
- 17           E. The minor, if married.

18           **2. Responsibility for proper application.** A person who transfers money or  
19           property in compliance with this section is not responsible for its proper application.

20           **3. For benefit of minor; no personal financial benefit.** A guardian or other person  
21           who receives money or property for a minor under subsection 1, paragraph A or B may  
22           apply it only to the support, care, education, health and welfare of the minor and may not  
23           derive a personal financial benefit except for reimbursement for necessary expenses. Any  
24           excess must be preserved for the future support, care, education, health and welfare of the  
25           minor, and any balance must be transferred to the minor upon emancipation or attaining  
26           majority.

27           **§5-104. Subject matter jurisdiction**

28           **1. Jurisdiction; minors.** Except to the extent that jurisdiction is precluded by the  
29           Uniform Child Custody Jurisdiction and Enforcement Act and Title 4, section 152,  
30           subsection 5-A, the court has jurisdiction over a guardianship for a minor domiciled or  
31           present in this State. The court has jurisdiction over conservatorship or protective  
32           arrangement instead of conservatorship for a minor domiciled in or having property  
33           located in this State.

34           **2. Jurisdiction; adults.** The court has jurisdiction over a guardianship,  
35           conservatorship and an order for a protective arrangement instead of conservatorship for  
36           an adult as provided in the Uniform Adult Guardianship and Protective Proceedings  
37           Jurisdiction Act, Part 6.

38           **3. Exclusive or concurrent jurisdiction.** After service of notice in a proceeding  
39           seeking a guardianship, conservatorship or protective arrangement instead of

1 guardianship or conservatorship and until termination of the proceeding, the court in  
2 which the petition is filed has:

3 A. Exclusive jurisdiction to determine the need for a guardianship, conservatorship  
4 or protective arrangement;

5 B. Exclusive jurisdiction to determine how property of the respondent that is subject  
6 to the law of this State must be managed, expended or distributed to or for the use of  
7 the respondent, an individual who is dependent in fact on the respondent or other  
8 claimant;

9 C. Concurrent jurisdiction to determine the validity of a claim against the respondent  
10 or property of the respondent or a question of title concerning the property; and

11 D. If a guardian or conservator is appointed, exclusive jurisdiction over issues related  
12 to administration of the guardianship or conservatorship.

13 4. Exclusive and continuing jurisdiction. A court that appoints a guardian or  
14 conservator, or authorizes a protective arrangement instead of guardianship or  
15 conservatorship, has exclusive and continuing jurisdiction over the proceeding until the  
16 court terminates the proceeding or the appointment or protective arrangement expires by  
17 its terms.

18 **§5-105. Transfer of proceeding**

19 **1. Guardianship or conservatorship subject to transfer provisions.** This section  
20 does not apply to a guardianship or conservatorship for an adult that is subject to the  
21 transfer provisions of Part 6, subpart 3.

22 **2. Transfer if serves best interest of individual.** After the appointment of a  
23 guardian or conservator, the court that made the appointment may transfer the proceeding  
24 to a court in another county in this State or to another state if transfer will serve the best  
25 interest of the individual subject to the guardianship or conservatorship.

26 **3. Proceeding pending in another state or foreign country.** If a proceeding for a  
27 guardianship or conservatorship is pending in another state or a foreign country and a  
28 petition for guardianship or conservatorship is filed in a court in this State, the court shall  
29 notify the court in the other state or foreign country and, after consultation with that  
30 court, assume or decline jurisdiction, whichever is in the best interest of the respondent.

31 **4. Petition for appointment in this State.** A guardian or conservator appointed in  
32 another state or country may petition the court for appointment as a guardian or  
33 conservator in this State if jurisdiction in this State is or will be established. The  
34 appointment may be made on proof of appointment in the other state or foreign country  
35 and presentation of a certified copy of the part of the court record in the other state or  
36 country specified by the court in this State.

37 **5. Notice; appointment unless not in best interest of respondent.** Notice of  
38 hearing on a petition under subsection 4, together with a copy of the petition, must be  
39 given to the respondent, if the respondent is 14 years of age or older at the time of the  
40 hearing, and to the persons that would be entitled to notice if the procedures for  
41 appointment of a guardian or conservator under this Act were applicable. The court shall

1 make the appointment in this State unless it determines that the appointment would not be  
2 in the best interest of the respondent.

3 6. Copy of order of appointment. Not later than 14 days after appointment under  
4 subsection 5, the guardian or conservator shall give a copy of the order of appointment to  
5 the individual subject to guardianship or conservatorship, if the individual is 14 years of  
6 age or older, and to all persons given notice of the hearing on the petition.

7 **§5-106. Venue**

8 **1. Guardianship proceeding for minor.** Venue for a guardianship proceeding for a  
9 minor is in:

10 A. The county or division of this State in which the minor, the petitioner or a parent  
11 or guardian of the child resides or is present at the time the proceeding commences;  
12 or

13 B. The county or division of this State where another proceeding concerning the  
14 custody and parental rights of the minor is pending.

15 **2. Guardianship proceeding or protective arrangement for adult.** Venue for a  
16 guardianship proceeding or protective arrangement instead of guardianship for an adult is  
17 in:

18 A. The county of this State in which the respondent resides;

19 B. If the respondent has been admitted to an institution by order of a court of  
20 competent jurisdiction, the county in which the court is located; or

21 C. In a proceeding for appointment of an emergency guardian of an adult, the county  
22 in which the respondent is present.

23 **3. Conservatorship proceeding or protective arrangement.** Venue for a  
24 conservatorship proceeding or protective arrangement instead of conservatorship is in:

25 A. The county of this State in which the respondent resides, whether or not a  
26 guardian has been appointed in another county or another jurisdiction; or

27 B. If the respondent does not reside in this State, in any county of this State in which  
28 property of the respondent is located.

29 **4. Proceedings in more than one county.** If proceedings under this Act are brought  
30 in more than one county in this State, the court of the county in which the first proceeding  
31 is brought has the exclusive right to proceed unless the court determines venue is properly  
32 in another court of the interest of justice otherwise requires transfer of the proceeding.

33 **§5-107. Practice in court**

34 **1. Rules.** Except as otherwise provided in this Act, the Maine Rules of Probate  
35 Procedure, the Maine Rules of Civil Procedure and the Maine Rules of Evidence,  
36 including rules concerning appellate review, govern a proceeding under this Act.

37 **2. Consolidation.** If proceedings under this Act for the same individual are  
38 commenced or pending in the same court, the proceedings may be consolidated.

1 **§5-108. Letters of office**

2 **1. Guardian; letters of office.** On a guardian's filing of an acceptance of  
3 appointment, the court shall issue appropriate letters of office.

4 **2. Conservator; letters of office.** On a conservator's filing of an acceptance of  
5 appointment and filing of any required bond or compliance with any other asset-  
6 protection arrangement required by the court, the court shall issue appropriate letters of  
7 office.

8 **3. Limitations stated.** Limitations on the powers of the guardian or conservator or  
9 on the property subject to conservatorship must be stated in the letters of office.

10 **4. Limitations at any time; new letters of office; notice.** Upon request or sua  
11 sponte, the court at any time may limit the powers conferred on the guardian or  
12 conservator. The court shall issue new letters of office to reflect the limitation. The court  
13 shall give notice of the limitation to the guardian or conservator, the individual subject to  
14 guardianship or conservatorship, each parent of a minor subject to guardianship or  
15 conservatorship and any other person as the court determines.

16 **§5-109. Effect of acceptance of appointment**

17 A guardian or conservator that accepts appointment submits personally to the  
18 jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

19 **§5-110. Coguardian; coconservator**

20 **1. Appointment at any time.** The court at any time may appoint a coguardian or  
21 coconservator to serve immediately or when a designated future event occurs.

22 **2. Acceptance of appointment.** A coguardian or coconservator appointed to serve  
23 immediately may act when the coguardian or coconservator files an acceptance of  
24 appointment.

25 **3. Service upon designated future event.** A coguardian or coconservator appointed  
26 to serve when a designated future event occurs may act when:

27 A. The designated event occurs; and

28 B. The coguardian or coconservator files an acceptance of appointment.

29 **4. Joint decisions.** Unless an order of appointment under subsection 1 or subsequent  
30 order states otherwise, coguardians or coconservators shall make decisions jointly.

31 **§5-111. Judicial appointment of successor guardian or successor conservator**

32 **1. Appointment of successor by court.** The court at any time may appoint a  
33 successor guardian or successor conservator to serve immediately or when a designated  
34 future event occurs.

35 **2. Petition to appoint successor.** A person entitled under section 5-202 or 5-302 to  
36 petition the court to appoint a guardian may petition the court to appoint a successor  
37 guardian. A person entitled under section 5-402 to petition the court to appoint a  
38 conservator may petition the court to appoint a successor conservator.

1           3. Service upon designated future event. A successor guardian or successor  
2 conservator appointed to serve when a designated future event occurs may act as guardian  
3 or conservator if:

4           A. The designated event occurs; and

5           B. The successor guardian or successor conservator files an acceptance of  
6 appointment.

7           4. Succeeds to powers. A successor guardian or successor conservator succeeds to  
8 the predecessor's powers unless otherwise provided by the court.

9           §5-112. Effect of death, removal or resignation of guardian or conservator

10           1. Termination. Appointment of a guardian or conservator terminates on the death  
11 or removal of the guardian or conservator or when the court approves a resignation of the  
12 guardian or conservator under subsection 2.

13           2. Petition to resign; approval. A guardian or conservator must petition the court  
14 to resign. The petition may include a request that the court appoint a successor.  
15 Resignation of a guardian or conservator is effective on the date the resignation is  
16 approved by the court.

17           3. Liability. Death, removal or resignation of a guardian or conservator does not  
18 affect liability for a previous act or the obligation to account for an action taken on behalf  
19 of the individual subject to guardianship or conservatorship or to account for the  
20 individual's money or other property.

21           §5-113. Notice of hearing

22           1. Notice by movant. If notice of a hearing under this Act is required, the movant  
23 shall give notice of the date, time and place of the hearing to the person to be notified  
24 unless otherwise ordered by the court for good cause. Except as otherwise provided in  
25 this Act, notice must be given in compliance with the Maine Rules of Probate Procedure,  
26 Rule 4 or the Maine Rules of Civil Procedure, Rule 4 at least 14 days before the hearing.

27           2. Proof of notice. Proof of notice of a hearing under this Act must be made before  
28 or at the hearing and filed in the proceeding.

29           3. Type size; plain language. Notice of a hearing under this Act must be in at least  
30 16-point type, in plain language and, to the extent feasible, in a language in which the  
31 recipient is proficient.

32           §5-114. Waiver of notice

33           1. Waiver by person. Except as otherwise provided in subsection 2, a person may  
34 waive notice under this Act in a record signed by the person or the person's attorney and  
35 filed in the proceeding.

36           2. Waiver prohibited. A respondent, an individual subject to guardianship, an  
37 individual subject to conservatorship, an individual subject to a protective arrangement  
38 instead of guardianship or conservatorship, an appointed guardian or an appointed  
39 conservator may not waive notice under this Act.



1        **§5-115. Guardian ad litem**

2            At any stage of a proceeding under this Act, the court may appoint a guardian ad  
3 litem for an individual to identify and represent the individual's best interest or perform  
4 other duties if the court determines the individual's interest otherwise would not be  
5 adequately represented. If a conflict of interest or potential conflict of interest does not  
6 exist, a guardian ad litem may be appointed to represent multiple individuals or interests.  
7 The guardian ad litem may not be the same individual as the attorney representing the  
8 respondent. The court shall state on the record the duties of the guardian ad litem and the  
9 reasons for the appointment.

10        **§5-116. Request for notice**

11            A person that is interested in the welfare of a respondent, individual subject to  
12 guardianship or conservatorship or individual subject to a protective arrangement instead  
13 of guardianship or conservatorship and that is not otherwise entitled to notice under this  
14 Act may file a request with the court for notice. The court shall send or deliver a copy of  
15 the request to the guardian, to the custodian if one has been appointed and to the  
16 individual who is subject to the guardianship, conservatorship or protective arrangement.  
17 The recipient of the notice may file an objection within 60 days. If an objection is filed,  
18 the court shall hold a hearing on the request. If the court approves the request, the court  
19 shall give notice of the approval to the guardian or conservator if one has been appointed  
20 or to the respondent if no guardian or conservator has been appointed. The request must  
21 include a statement showing the interest of the person making it and the address of the  
22 person or an attorney for the person to whom notice is to be given.

23        **§5-117. Disclosure of bankruptcy or criminal history**

24            **1. Disclosure; petition.** As part of the petition to be appointed a guardian or  
25 conservator, a person shall disclose to the court whether the person:

- 26            A. Is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or  
27            B. Has been convicted of:  
28                    (1) A felony;  
29                    (2) A crime involving dishonesty, neglect, violence or use of physical force; or  
30                    (3) Another crime relevant to the functions the individual would assume as  
31                    guardian or conservator.

32            **2. Agent; convictions; approval.** A guardian or conservator may not engage an  
33 agent the guardian or conservator knows has been convicted of a felony, a crime  
34 involving dishonesty, neglect, violence or use of physical force or any other crime  
35 relevant to the functions the agent is being engaged to perform promptly without prior  
36 approval of the court.

37            **3. Finances manager agent; debtor; disclosure.** If a conservator engages or  
38 anticipates engaging an agent to manage finances of the individual subject to  
39 conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency  
40 or receivership proceeding, the conservator promptly shall disclose that knowledge to the  
41 court.

1 **§5-118. Multiple appointments or nominations**

2 If a respondent or other person makes more than one appointment or nomination of a  
3 guardian or a conservator, the latest in time governs.

4 **§5-119. Compensation and expenses; in general**

5 1. Attorney for respondent. Unless otherwise compensated for services rendered,  
6 an attorney for a respondent in a proceeding under this Act is entitled to reasonable  
7 compensation and reimbursement of reasonable expenses from the property of the  
8 respondent.

9 2. Attorney or other person. Unless otherwise compensated for services rendered,  
10 an attorney or other person whose services resulted in an order beneficial to an individual  
11 subject to guardianship or conservatorship or beneficial to an individual for whom a  
12 protective arrangement instead of guardianship or conservatorship was ordered is entitled  
13 to reasonable compensation and reimbursement of reasonable expenses from the property  
14 of the individual.

15 3. Court review. After notice to all interested persons, on petition of an interested  
16 person, the propriety of employment of any person by a conservator or guardian,  
17 including any attorney, accountant, investment advisor or other specialized agent or  
18 assistant, and the reasonableness of the compensation of any person so employed may be  
19 reviewed by the court. Any person who has received excessive compensation or  
20 reimbursement of inappropriate expenses for services rendered may be ordered to make  
21 appropriate refunds. The factors set forth in section 3-721, subsection 2 must be  
22 considered as guides in determining the reasonableness of compensation under this  
23 section.

24 4. Costs assessed against petitioner. If the court dismisses a petition under this Act  
25 and determines the petition was filed in bad faith, the court may assess the cost of any  
26 court-ordered professional evaluation or visitor against the petitioner.

27 **§5-120. Liability of guardian or conservator for act of individual subject to**  
28 **guardianship or conservatorship**

29 A guardian or conservator is not personally liable to a 3rd person for the act of an  
30 individual subject to guardianship or conservatorship solely by reason of the guardianship  
31 or conservatorship.

32 **§5-121. Petition after appointment for instructions or ratification**

33 1. Petition. A guardian or conservator may petition the court for instruction  
34 concerning fiduciary responsibility or ratification of a particular act.

35 2. Instruction or order. On notice and hearing on a petition under subsection 1, the  
36 court may give an appropriate instruction and enter any appropriate order.

37 **§5-122. Third-party acceptance of authority of guardian or conservator**

38 1. Refusal to recognize authority required. A person must refuse to recognize the  
39 authority of a guardian or conservator to act on behalf of an individual subject to  
40 guardianship or conservatorship if:

1           A. The person has actual knowledge or a reasonable belief that the guardian's or  
2           conservator's letters of office are invalid or that the guardian or conservator is  
3           exceeding or improperly exercising authority granted by the court; or

4           B. The person has actual knowledge that the individual subject to guardianship or  
5           conservatorship is subject to physical or financial abuse, neglect, exploitation or  
6           abandonment by the guardian or conservator or a person acting for or with the  
7           guardian or conservator.

8           **2. Refusal to recognize authority discretionary.** A person may refuse to recognize  
9           the authority of a guardian or conservator to act on behalf of an individual subject to  
10           guardianship or conservatorship if:

11           A. The guardian's or conservator's proposed action would be inconsistent with this  
12           Act; or

13           B. The person makes, or has actual knowledge that another person has made, a report  
14           to adult protective services or child protective services stating a good faith belief that  
15           the individual subject to guardianship or conservatorship is subject to physical or  
16           financial abuse, neglect, exploitation or abandonment by the guardian or conservator  
17           or a person acting for or with the guardian or conservator.

18           **3. Report refusal to court.** A person that refuses to accept the authority of a  
19           guardian or conservator in accordance with subsection 2 shall report the refusal and the  
20           reason for refusal to the court. The court on receiving a report shall consider whether  
21           removal of the guardian or conservator or other action is appropriate.

22           **4. Petition to require acceptance.** A guardian or conservator may petition the court  
23           to require a 3rd party to accept a decision made by the guardian or conservator on behalf  
24           of the individual subject to guardianship or conservatorship.

25           **§5-123. Use of agent by guardian or conservator**

26           **1. Delegation consistent with plan and fiduciary duty.** Except as otherwise  
27           provided in subsection 3, a guardian or conservator may delegate a power to an agent that  
28           a prudent guardian or conservator of comparable skills could prudently delegate under the  
29           circumstances if the delegation is consistent with the guardian's or conservator's plan and  
30           fiduciary duty.

31           **2. Delegating a power.** In delegating a power under subsection 1, the guardian or  
32           conservator shall exercise reasonable care, skill and caution in:

33           A. Selecting the agent;

34           B. Establishing the scope and terms of the agent's work in accordance with the  
35           guardian's or conservator's plan;

36           C. Monitoring the agent's performance and compliance with the delegation; and

37           D. Redressing action or inaction of the agent that would constitute a breach of the  
38           guardian's or conservator's duties if performed by the guardian or conservator.

39           **3. Delegation limitation.** A guardian or conservator may not delegate all powers to  
40           an agent.

1 4. Agent performing a delegated power. In performing a power delegated under  
2 this section, an agent shall:

3 A. Exercise reasonable care to comply with the terms of the delegation and use  
4 reasonable care in the performance of the delegated power; and

5 B. If the agent has been delegated the power to make a decision on behalf of the  
6 individual subject to guardianship or conservatorship, in making the decision use the  
7 same decision-making standard the guardian or conservator would be required to use  
8 in making the decision.

9 5. Jurisdiction of court. By accepting a delegation of a power from a guardian or  
10 conservator under this section, an agent submits to the jurisdiction of the courts of this  
11 State in an action involving the agent's performance as agent.

12 6. Liability. A guardian or conservator that delegates and monitors a power in  
13 compliance with this section is not liable for the decisions or actions of the agent.

14 **§5-124. Temporary substitute guardian or conservator**

15 1. Temporary substitute guardian. The court may appoint a temporary substitute  
16 guardian for a period not longer than 6 months for an individual subject to guardianship  
17 if:

18 A. A proceeding to remove an existing guardian is pending; or

19 B. The court finds an existing guardian is not effectively performing the guardian's  
20 duties and the welfare of the individual requires immediate action.

21 2. Temporary substitute conservator. The court may appoint a temporary  
22 substitute conservator for a period not longer than 6 months for an individual subject to  
23 conservatorship if:

24 A. A proceeding to remove an existing conservator is pending; or

25 B. The court finds that an existing conservator is not effectively performing the  
26 conservator's duties and the welfare of the individual or the conservatorship estate  
27 requires immediate action.

28 3. Powers. Except as otherwise ordered by the court, a temporary substitute  
29 guardian or temporary substitute conservator appointed under this section has the powers  
30 stated in the order of appointment of the guardian or conservator. The authority of an  
31 existing guardian or conservator is suspended for as long as the temporary substitute  
32 guardian or conservator has authority.

33 4. Notice. The court shall give notice of appointment of a temporary substitute  
34 guardian or temporary substitute conservator under this section not later than 5 days after  
35 the appointment, to:

36 A. The individual subject to guardianship or conservatorship;

37 B. The affected guardian or conservator; and

38 C. In the case of a minor, each parent of the minor and any person currently having  
39 custody or care of the minor.

1 5. Removal. The court may remove a temporary substitute guardian or temporary  
2 substitute conservator appointed under this section at any time. The temporary substitute  
3 guardian or temporary substitute conservator shall make any report the court requires.

4 6. Application. Except as otherwise provided in this section, the provisions of this  
5 Act:

6 A. Concerning a guardian for a minor apply to a temporary substitute guardian for a  
7 minor;

8 B. Concerning a guardian for an adult apply to a temporary substitute guardian for an  
9 adult; and

10 C. Concerning a conservator apply to a temporary substitute conservator.

11 **§5-125. Registration of order; effect**

12 1. Registration of guardianship order. If a guardian has been appointed for an  
13 individual in another state and a petition for guardianship of the individual is not pending  
14 in this State, the guardian appointed in the other state, after giving notice to the  
15 appointing court, may register the guardianship order in this State by filing as a foreign  
16 judgment, in a court of an appropriate county of this State, certified copies of the order  
17 and letters of office.

18 2. Registration of conservatorship order. If a conservator is appointed in another  
19 state and a petition for conservatorship is not pending in this State, the conservator  
20 appointed in the other state, after giving notice to the appointing court, may register the  
21 conservatorship in this State by filing as a foreign judgment, in a court of a county in  
22 which property belonging to the individual subject to conservatorship is located, certified  
23 copies of the order of conservatorship, letters of office and any bond or other asset-  
24 protection arrangement required by the court.

25 3. Exercise of powers. On registration of a guardianship or conservatorship order  
26 from another state, the guardian or conservator may exercise in this State all powers  
27 authorized in the order except as prohibited by the law of this State other than this Act.  
28 If the guardian or conservator is not a resident of this State, the guardian or conservator  
29 may maintain an action or proceeding in this State subject to any condition imposed by  
30 this State on a nonresident party.

31 4. Enforcement of registered order. The court may grant any relief available under  
32 this Act and law of this State other than this Act to enforce a registered order.

33 **§5-126. Grievance against guardian or conservator**

34 1. File a grievance with the court. An individual who is subject to guardianship or  
35 conservatorship, or a person interested in the welfare of an individual subject to  
36 guardianship or conservatorship, who reasonably believes a guardian or conservator is  
37 breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner  
38 inconsistent with this Act may file a grievance with the court. The grievance must be in  
39 writing or another record.

40 2. Procedure upon receiving grievance. Subject to subsection 3, after receiving a  
41 grievance under subsection 1, the court:

1           A. Shall review the grievance and, if necessary to determine the appropriate response  
2           to the grievance, court records related to the guardianship or conservatorship;

3           B. Shall schedule a hearing if the individual subject to guardianship or  
4           conservatorship is an adult and if the grievance supports a reasonable belief that:

5                   (1) Removal of the guardian and appointment of a successor may be appropriate  
6                   in accordance with section 5-318;

7                   (2) Termination or modification of the guardianship may be appropriate under  
8                   section 5-319;

9                   (3) Removal of the conservator and appointment of a successor may be  
10                  appropriate under section 5-430;

11                  (4) Termination or modification of the conservatorship may be appropriate under  
12                  section 5-431; and

13           C. May take any action supported by the grievance and record, including:

14                   (1) Ordering the guardian or conservator to provide to the court a report,  
15                   accounting, inventory, updated plan or other information;

16                   (2) Appointing a guardian ad litem;

17                   (3) Appointing an attorney for the individual subject to guardianship or  
18                   conservatorship; or

19                   (4) Scheduling a hearing.

20           3. Similar grievance filed within 6 months. The court may decline to proceed  
21           under subsection 2 if a similar grievance was made within the preceding 6 months and the  
22           court followed the procedures of subsection 2 in considering the grievance.

23           §5-127. Delegation by parent or guardian

24           1. Delegation; power of attorney. A parent or a guardian of a minor or  
25           incapacitated person, by a power of attorney, may delegate to another person, for a period  
26           not exceeding 12 months, any power regarding care, custody or property of the minor or  
27           ward, except the power to consent to marriage, adoption or termination of parental rights  
28           to the minor. A delegation of powers by a court-appointed guardian becomes effective  
29           only when the power of attorney is filed with the court. A delegation of powers under  
30           this section does not deprive the parent or guardian of any parental or legal authority  
31           regarding the care and custody of the minor or incapacitated person. A delegation of  
32           powers under this section is subject to the same court supervision that applies to  
33           temporary substitute guardians as described in section 5-124, subsection 5. Any  
34           delegation under this section may be revoked or amended by the appointing parent or  
35           guardian in writing and delivered to the person to whom the powers were delegated and  
36           to other interested persons.

37           2. National Guard or Reserves; extension. Notwithstanding subsection 1, unless  
38           otherwise stated in the power of attorney, if the parent or guardian is a member of the  
39           National Guard or Reserves of the United States Armed Forces under an order to active

1 duty for a period of more than 30 days, a power of attorney that would otherwise expire is  
2 automatically extended until 30 days after the parent or guardian is no longer under that  
3 active duty order or until an order of the court so provides.

4 This subsection applies only if the parent's or guardian's service is in support of:

5 A. An operational mission for which members of the reserve components have been  
6 ordered to active duty without their consent; or

7 B. Forces activated during a period of war declared by the United States Congress or  
8 a period of national emergency declared by the President of the United States or the  
9 United States Congress.

10 **3. Temporary care of minor.** This subsection applies when a parent or guardian  
11 executes a power of attorney under subsection 1 for the purpose of providing for the  
12 temporary care of a minor.

13 A. The execution of a power of attorney under subsection 1, without other evidence,  
14 does not constitute abandonment, abuse or neglect. A parent or guardian of a minor  
15 may not execute a power of attorney with the intention of permanently avoiding or  
16 divesting the parent or guardian of parental and legal responsibility for the care of the  
17 minor. Upon the expiration or termination of the power of attorney, the minor must  
18 be returned to the custody of the parent or guardian as soon as reasonably possible  
19 unless otherwise ordered by the court.

20 B. Unless the power of attorney is terminated, the agent named in the power of  
21 attorney shall exercise parental or legal authority on a continuous basis without  
22 compensation from the State for the duration of the power of attorney authorized by  
23 subsection 1. Nothing in this subsection disqualifies the agent from applying for and  
24 receiving benefits from any state or federal program of assistance for the minor or the  
25 agent. Nothing in this subsection prevents individuals or religious, community or  
26 other charitable organizations from voluntarily providing the agent with support  
27 related to the care of the minor while the minor is in the temporary care of the agent.

28 C. A minor may not be considered placed in foster care or in any way a ward of the  
29 State by virtue of the parent's or guardian's execution of a power of attorney  
30 authorized by subsection 1. The agent named in the power of attorney may not be  
31 considered a family foster home by virtue of the parent's or guardian's execution of a  
32 power of attorney authorized by subsection 1 and is not subject to any laws regarding  
33 the licensure or regulation of family foster homes unless licensed as a family foster  
34 home. Nothing in this subsection disqualifies the agent from being or becoming a  
35 family foster home licensed by the State or prevents the placement of the minor in the  
36 agent's care if the minor enters state custody.

37 **4. Background check.** An organization, other than an organization whose primary  
38 purpose is to provide free legal services or to provide hospital services, that is exempt  
39 from federal income taxation under Section 501(a) of the United States Internal Revenue  
40 Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or  
41 guardians with the process of executing a power of attorney for the temporary care of a  
42 minor shall ensure that a background check is conducted for the agent and any adult  
43 members of the agent's household, whether by completing the background check directly  
44 or by verifying that a current background check has already been conducted. The

1 background check must include the following sources, and the results must be shared  
2 with the parent or guardian and the proposed agent:

3 A. A screening for child and adult abuse, neglect or exploitation cases in the records  
4 of the Department of Health and Human Services; and

5 B. A criminal history record check that includes information obtained from the  
6 Federal Bureau of Investigation.

7 The organization shall maintain records on the training and background checks of agents,  
8 including the content and dates of training and full transcripts of background checks, for a  
9 period of not less than 5 years after the minor attains 18 years of age. The organization  
10 shall make the records available to a parent or guardian executing a power of attorney  
11 under this subsection and to the ombudsman under Title 22, section 4087-A and any  
12 local, state or federal authority conducting an investigation involving the agent, the parent  
13 or guardian or the minor.

14 5. Disqualification of agent. An employee or volunteer for an organization  
15 described in subsection 4 may not further assist with a process that results in the  
16 completion of a power of attorney for the temporary care of a minor if the background  
17 checks conducted pursuant to subsection 4, paragraphs A and B disclose any  
18 substantiated allegations of child abuse, neglect or exploitation or any crimes that would  
19 disqualify the agent from becoming a licensed family foster home in the State.

20 Without regard to whether an organization is included or excluded by the terms of this  
21 subsection, nothing in this section changes the restrictions on the unauthorized practice of  
22 law as provided in Title 4, section 807 with regard to the preparation of powers of  
23 attorney.

24 6. Penalties. The following penalties apply to violations of this section.

25 A. An organization that knowingly fails to perform or verify the background checks  
26 or fails to share the background check information as required by subsection 4 is  
27 subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in  
28 a civil action.

29 B. An organization or an employee or volunteer of an organization that continues to  
30 assist a parent, guardian or agent in completing a power of attorney under subsection  
31 4 if the background checks conducted pursuant to subsection 4 disclose any  
32 substantiated allegations of child abuse, neglect or exploitation or any crimes that  
33 would disqualify the agent from becoming a licensed family foster home is subject to  
34 a civil penalty not to exceed \$5,000, payable to the State and recoverable in a civil  
35 action.

36 C. An organization or an employee or volunteer of an organization that knowingly  
37 fails to maintain records or to disclose information as required by subsection 4 is  
38 subject to a civil penalty not to exceed \$5,000, payable to the State and recoverable in  
39 a civil action.

40 **PART 2**

41 **GUARDIANSHIP OF MINOR**



1 **§5-201. Appointment and status of guardian**

2 A person becomes a guardian of a minor by parental appointment or upon  
3 appointment by the court. The guardianship status continues until terminated, without  
4 regard to the location of the guardian or minor ward. This section does not apply to  
5 permanency guardians appointed in District Court child protective proceedings under  
6 Title 22, section 4038-C. If a minor has a permanency guardian, the court may not  
7 appoint another guardian without leave of the District Court in which the child protective  
8 proceeding is pending.

9 **§5-202. Parental appointment of guardian**

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

15 **2. Petition to confirm selection, terminate right to object.** Upon petition of an  
16 appointing parent and a finding that the appointing parent will likely become unable to  
17 care for the child within 2 years, and after notice as provided in section 5-205, subsection  
18 1, the court, before the appointment becomes effective, may confirm the parent's selection  
19 of a guardian and terminate the rights of others to object.

20 **3. Appointment effective.** Subject to section 5-203, the appointment of a guardian  
21 becomes effective upon the appointing parent's death, an adjudication that the parent is an  
22 incapacitated person or a written determination by a physician who has examined the  
23 parent that the parent is no longer able to care for the child, whichever first occurs.

24 **4. Acceptance of appointment.** The guardian becomes eligible to act upon the  
25 filing of an acceptance of appointment, which must be filed within 30 days after the  
26 guardian's appointment becomes effective. The guardian shall:

27 A. File the acceptance of appointment and a copy of the will with the court of the  
28 county in which the will was or could be probated or, in the case of another  
29 appointing instrument, file the acceptance of appointment and the appointing  
30 instrument with the court of the county in which the minor resides or is present; and

31 B. Give written notice of the acceptance of appointment to the appointing parent, if  
32 living, the minor, if the minor has attained 14 years of age, and a person other than  
33 the parent having care and custody of the minor.

34 **5. Notice of right to object.** Unless the appointment was previously confirmed by  
35 the court, the notice given under subsection 4, paragraph B must include a statement of  
36 the right of those notified to terminate the appointment by filing a written objection in the  
37 court as provided in section 5-203.

38 **6. Petition to confirm appointment.** Unless the appointment was previously  
39 confirmed by the court, within 30 days after filing the notice and the appointing  
40 instrument, a guardian shall petition the court for confirmation of the appointment, giving  
41 notice in the manner provided in section 5-205, subsection 1.

1           7. Parental rights not superseded; priority. The appointment of a guardian by a  
2 parent does not supersede the parental rights of either parent. If both parents are dead or  
3 have been adjudged incapacitated persons, an appointment by the last parent who died or  
4 was adjudged incapacitated has priority. An appointment by a parent that is effected by  
5 filing the guardian's acceptance under a will probated in the state of the testator's domicile  
6 is effective in this State.

7           8. Relation back of powers. The powers of a guardian who timely complies with  
8 the requirements of subsections 4 and 6 relate back to give acts by the guardian that are of  
9 benefit to the minor and occurred on or after the date the appointment became effective  
10 the same effect as those that occurred after the filing of the acceptance of the  
11 appointment.

12           9. Termination of authority. The authority of a guardian appointed under this  
13 section terminates upon the first to occur of the appointment of a guardian by the court or  
14 the giving of written notice to the guardian of the filing of an objection pursuant to  
15 section 5-203.

16           **§5-203. Objection by minor or others to parental appointment**

17           Until the court has confirmed an appointee under section 5-202, a minor who is the  
18 subject of an appointment by a parent and who has attained 14 years of age, the other  
19 parent or a person other than a parent or guardian having care or custody of the minor  
20 may prevent or terminate the appointment at any time by filing a written objection in the  
21 court in which the appointing instrument is filed and giving notice of the objection to the  
22 guardian and any other persons entitled to notice of the acceptance of the appointment.  
23 An objection may be withdrawn and if withdrawn is of no effect. The objection does not  
24 preclude judicial appointment of the person selected by the parent if all other  
25 requirements for appointment, including appointment over the objection of a parent, are  
26 met. The court may treat the filing of an objection as a petition for the appointment of an  
27 emergency or interim guardian under section 5-204 and proceed accordingly.

28           **§5-204. Judicial appointment of guardian; conditions for appointment**

29           1. Petition. A minor or a person interested in the welfare of a minor may petition for  
30 appointment of a guardian.

31           2. Appointment. The court may appoint a guardian for a minor if the court finds the  
32 appointment is in the best interest of the minor, the proposed guardian is suitable and  
33 finds:

- 34           A. That the parents consent;
- 35           B. That all parental rights have been terminated; or
- 36           C. By clear and convincing evidence that the parents are unwilling or unable to  
37 exercise their parental rights, including but not limited to:
- 38                 (1) The parent is currently unwilling or unable to meet the minor's needs and that  
39                 will have a substantial adverse effect on the minor's well-being if the minor lives  
40                 with the parent; or

1           (2) The parent has failed, without good cause, to maintain a parental relationship  
2           with the minor including but not limited to failing to maintain regular contact  
3           with the minor for a length of time that evidences an intent to abandon the minor.

4           **3. Priority for appointment.** If a guardian is appointed by a parent pursuant to  
5           section 5-202 and the appointment has not been prevented or terminated under section  
6           5-203, that appointee has priority for appointment. However, the court may proceed with  
7           another appointment upon a finding that the appointee under section 5-202 has failed to  
8           accept the appointment within 30 days after notice of the guardianship proceeding.

9           **4. Appointment of a guardian on an emergency basis.** If the court finds that  
10           following the procedures of this Part will likely result in substantial harm to a minor's  
11           health or safety and that no other person appears to have authority to act in the  
12           circumstances, the court, on appropriate petition, may appoint an emergency guardian for  
13           the minor. The duration of the guardian's authority may not exceed 90 days, and the  
14           guardian may exercise only the powers specified in the order. Reasonable notice of the  
15           time and place of the hearing on the petition for appointment of an emergency guardian  
16           must be given to the minor, if the minor has attained 14 years of age, to each living parent  
17           of the minor and a person having care or custody of the minor, if other than a parent. The  
18           court may dispense with the notice if it finds from affidavit or testimony that the minor  
19           will be substantially harmed before a hearing can be held on the petition. If the guardian  
20           is appointed without notice, notice of the appointment must be given within 48 hours  
21           after the appointment. The court shall schedule a hearing on the appointment of the  
22           guardian within 14 days but not less than 7 days after issuance of the order appointing the  
23           guardian, except that counsel for a parent may request that the hearing take place sooner.  
24           The petitioner bears the burden of proof on the appropriateness of the appointment  
25           pursuant to this section.

26           **5. Child support.** When appointing a guardian, including on an emergency or  
27           interim basis, the court's order must indicate whether there are any support orders  
28           involving the child presently in effect through judicial or administrative proceedings and  
29           the effect of the guardianship appointment on the orders. The court shall consider  
30           whether to order a parent to pay child support to the guardian in accordance with Title  
31           19-A, Part 3. A guardian must be treated as a caretaker relative for computation of a  
32           parental support obligation pursuant to Title 19-A, section 2006, subsection 4. The court  
33           may reserve the question of support or decline to issue an order if it determines that an  
34           order for support is not warranted at the time of the appointment. When the Department  
35           of Health and Human Services provides child support enforcement services, the  
36           Commissioner of Health and Human Services may designate employees of the  
37           department who are not attorneys to represent the department in court if a hearing is held.  
38           The commissioner shall ensure that appropriate training is provided to all employees who  
39           are designated to represent the department under this subsection.

40           **§5-205. Judicial appointment of guardian; procedure**

41           **1. Petition; notice of hearing.** After a petition for appointment of a guardian is  
42           filed, the court shall schedule a hearing, and the petitioner shall give notice of the time  
43           and place of the hearing, together with a copy of the petition, to:

44           A. The minor, if the minor has attained 14 years of age and is not the petitioner;

- 1           B. Any person alleged to have had the primary care and custody of the minor during  
2           the 60 days before the filing of the petition;
- 3           C. Each living parent of the minor or, if there is none, the adult nearest in kinship  
4           who can be found;
- 5           D. Any person nominated as guardian by the minor if the minor has attained 14 years  
6           of age;
- 7           E. Any appointee of a parent whose appointment has not been prevented or  
8           terminated under section 5-203; and
- 9           F. Any guardian or conservator currently acting for the minor in this State or  
10          elsewhere.

11          If the court finds that receiving information from the Department of Health and Human  
12          Services may be necessary for the determination of any issue before the court, it may  
13          order a Department of Health and Human Services employee to attend the hearing and to  
14          provide information relevant to the proceeding. When receiving information by oral  
15          testimony that is confidential pursuant to Title 22, section 4008, the court shall close the  
16          proceeding and ensure that it is recorded. When receiving information contained in  
17          written or media records that is confidential pursuant to Title 22, section 4008, the court  
18          shall review those records in camera, weighing the confidentiality of such records against  
19          the necessity for counsel and the parties to have access to them, and enter an appropriate  
20          order regarding the scope and manner of access. The court, in its discretion, may take  
21          other measures necessary to preserve the confidentiality of the information received.

22          **2. Appointment; other disposition.** The court, after the hearing scheduled pursuant  
23          to subsection 1, shall make the appointment of a guardian if the court finds that venue is  
24          proper, the required notices have been given, the conditions of section 5-204, subsection  
25          2 have been met and the best interest of the minor will be served by the appointment. In  
26          other cases, the court may dismiss the proceeding or make any other disposition of the  
27          matter that will serve the best interest of the minor.

28          **3. Priority of minor's nominee.** The court shall appoint a person or persons  
29          nominated by the minor, if the minor has attained 14 years of age, in accordance with the  
30          requirements of section 5-204.

31          **4. Appointment of counsel.** A nonconsenting parent whose parental rights have not  
32          been terminated is entitled to court-appointed legal counsel if indigent. In a contested  
33          action, the court may also appoint counsel for any indigent guardian or petitioner when a  
34          parent or legal custodian has counsel.

35          **5. Attorney for a minor; notice to minor.** If the court determines at any stage of  
36          the proceeding, before or after appointment, that the interests of the minor are or may be  
37          inadequately represented, the court may appoint an attorney to represent the minor, giving  
38          consideration to the choice of the minor if the minor has attained 14 years of age. A  
39          minor may appear with or through counsel, but the court is not restricted from requiring  
40          the minor to be present for some or all of a hearing or other proceeding. A minor 14  
41          years of age or older must receive notice of any proceeding subsequent to the  
42          appointment of a guardian through the same means as required for any other party, and  
43          the minor may consent, object or otherwise participate in the proceeding.

# COMMITTEE AMENDMENT

1 6. Term or duration of order. The court may specify the term of the appointment  
2 based on the parties' agreement or the court's findings. The term may be extended or  
3 otherwise modified by agreement of the parties or after a hearing. If no term is specified,  
4 the appointment remains in place until modified or the occurrence of an event resulting in  
5 termination set forth in section 5-210.

6 If one of the parents of a minor is a member of the National Guard or the Reserves of the  
7 United States Armed Forces under an order to active duty for a period of more than 30  
8 days, a guardianship that would otherwise expire is automatically extended until 30 days  
9 after the parent is no longer under those active duty orders or until an order of the court so  
10 provides as long as the parent's service is in support of:

11 A. An operational mission for which members of the reserve components have been  
12 ordered to active duty without their consent; or

13 B. Forces activated during a period of war declared by Congress or a period of  
14 national emergency declared by the President of the United States or Congress of the  
15 United States.

16 7. Interim order. Upon motion by a party or the court's initiative, and pursuant to  
17 an agreement of the parties or findings made after a hearing, the court may enter an  
18 interim order appointing a guardian for a period of time up to 6 months or pending the  
19 court's order after the scheduled final hearing on a petition for appointment, if such an  
20 order is necessary to provide for the minor's housing, health, education, medical or other  
21 essential needs prior to the hearing. Any interim order must meet the requirements of  
22 section 5-204 and this section, including notice, and may be extended or modified  
23 pursuant to an agreement of the parties or findings made after a hearing.

24 8. Mediation. The court may refer the parties to mediation at any time after a  
25 petition or motion is filed, if mediation services are available at a reasonable fee or no  
26 cost, and may require that the parties have made a good faith effort to mediate the issue  
27 before holding a hearing. If the court finds that any party failed to make a good faith  
28 effort to mediate, the court may order the parties to submit to mediation, dismiss the  
29 action or any part of the action, render a decision or judgment by default, assess attorney's  
30 fees and costs or impose any other sanction that is appropriate in the circumstances. The  
31 court may also impose an appropriate sanction upon a party's failure without good cause  
32 to appear for mediation after receiving notice of the scheduled time for mediation. An  
33 agreement reached by the parties through mediation on an issue must be reduced to  
34 writing, signed by the parties and presented to the court for approval as a court order.

35 9. Identifying information sealed. If a party alleges in an affidavit or a pleading  
36 under oath that the health, safety or liberty of a party or the minor would be jeopardized  
37 by disclosure of identifying information, including but not limited to the address of a  
38 party or the minor, the information must be sealed by the clerk and not disclosed to any  
39 other party or to the public unless the court orders the disclosure to be made after a  
40 hearing in which the court takes into consideration the health, safety or liberty of the  
41 party or minor and determines that the disclosure is in the interest of justice.

1 **§5-206. Terms of order appointing guardian**

2 **1. Terms of order.** An order appointing a guardian of a minor must include the  
3 following:

4 A. The reasons for the appointment of the guardian, including whether there was any  
5 agreement by the parties or findings after a hearing;

6 B. The powers and duties granted to the guardian, including those set forth in section  
7 5-207;

8 C. The rights and responsibilities retained by the parent, as described in subsection 3;

9 D. The anticipated duration of the appointment, including whether it remains in place  
10 until a petition to modify or terminate and whether the parties agree to termination  
11 after a particular event, such as return from deployment;

12 E. A description of the process and standards for modification and termination; and

13 F. Notice of the court's authority to hold a hearing and find that a party has violated a  
14 part of the order and is in contempt and to order relief to the other party for the  
15 violations or contempt.

16 **2. Other orders concerning minor.** If any orders regarding custody or other  
17 parental rights with respect to a minor are in effect at the time of the appointment of a  
18 guardian of the minor, the order must refer to the orders and indicate the effect of the  
19 appointment on the rights and responsibilities set forth in the orders.

20 **3. Rights and responsibilities retained by parent.** An order appointing a guardian  
21 must specify whether the minor's parent retains any of the following rights and  
22 responsibilities after the appointment and, if any rights or responsibilities are not retained,  
23 the reasons they are not retained:

24 A. A schedule of parent-child contact or a determination by the court that denial of  
25 parent-child contact is necessary to protect the physical safety or emotional well-  
26 being of the minor. The court may determine the reasonable frequency and duration  
27 of parent-child contact and may set conditions for parent-child contact that are in the  
28 best interests of the minor. Any schedule of contact must reflect any existing parent-  
29 child contact order in effect to the extent reasonably practicable and consistent with  
30 the court's findings or the agreement of the parties. The court may set forth specific  
31 conditions that must be satisfied by the parent prior to the start of some or all aspects  
32 of the contact schedule;

33 B. Access to records and information regarding the minor as provided under Title  
34 19-A, section 1653, subsection 2, paragraph D, subparagraph (4);

35 C. Parental rights and responsibilities as described under Title 19-A, section 1501,  
36 subsection 5; and

37 D. Child support as defined in Title 19-A, section 1501, subsection 2.

38 **4. Parent as coguardian.** A parent may copetition and be appointed as a coguardian  
39 of the parent's minor child if the court determines a joint appointment with a nonparent is  
40 in best interest of the minor and is made with the parent's consent.

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**§5-207. Duties of guardian**

**1. Guardian has duties and responsibilities of a parent.** Except as otherwise limited by the court, a guardian of a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health and welfare. A guardian shall act at all times in the best interest of the minor and exercise reasonable care, diligence and prudence.

**2. Specific duties and responsibilities.** A guardian shall:

A. Become or remain personally acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capacities, limitations, needs, opportunities and physical and mental health;

B. Take reasonable care of the minor's personal effects and bring a protective proceeding if necessary to protect other property of the minor;

C. Expend money of the minor that has been received by the guardian for the minor's current needs for support, care, education, health and welfare;

D. Conserve any excess money of the minor for the minor's future needs, but if a conservator has been appointed for the estate of the minor, the guardian shall pay the money at least quarterly to the conservator to be conserved for the minor's future needs;

E. Report the condition of the minor and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the minor's welfare or as required by court rule; and

F. Inform the court of any change in the minor's custodial dwelling or address.

**3. Reporting on the status of the minor.** The court may require the guardian of a minor to submit regular status reports about the minor, to be submitted under oath or affirmation to the court and served on the parent and guardian ad litem, if still active, on an annual basis or under other conditions set by the court.

A. The court may require the status report to include specific information, including but not limited to the following to the extent applicable to the guardianship:

- (1) The current address of the minor and each parent;
- (2) The minor's health care and health needs, including any medical and mental health services the child received;
- (3) The minor's educational needs and progress, including the name of the minor's school, day care or other early education program, the minor's grade level and the minor's educational achievements;
- (4) Contact between the minor and the minor's parents, including the frequency and duration of the contact and whether it was supervised;
- (5) How the parents have been involved in decision making for the minor;
- (6) Whether the parents have provided any financial support for the minor;

- 1           (7) How the guardian has carried out the guardian's responsibilities and duties  
2           under the order of appointment;
- 3           (8) An accounting of any funds received on the minor's behalf;
- 4           (9) The minor's strengths, challenges and any other areas of concern; and
- 5           (10) Recommendations with supporting reasons as to whether the guardianship  
6           order should be continued, modified or terminated.

7           B. Before deciding whether to require status reports, the court shall consider whether  
8           reporting would create a substantial likelihood of harm to the health, safety or liberty  
9           of the minor.

10          C. The contents of status reports are confidential and may not be released to any  
11          nonparty except by court order.

12          D. A parent or other person interested in the minor's welfare may petition the court to  
13          seek a status report from the guardian if one is not otherwise required or based upon  
14          specific concerns about the minor's care.

15          E. Nothing in this subsection limits a court's authority to otherwise supervise the  
16          guardianship, including scheduling a status conference to address matters raised in a  
17          status report or to be held at a specified time after the entry of the order or appointing  
18          a guardian ad litem or visitor to conduct an investigation. The court shall accept any  
19          information submitted by a minor 14 years of age or older regarding the  
20          guardianship.

21          **§5-208. Powers of guardian**

22                **1. Guardian has powers of a parent.** Except as otherwise limited by the court, a  
23                guardian of a minor has the powers of a parent regarding the minor's support, care,  
24                education, health and welfare.

25                **2. Specific powers.** A guardian may:

26                    A. Apply for and receive money for the support of the minor otherwise payable to  
27                    the minor's parent, guardian or custodian under the terms of any statutory system of  
28                    benefits or insurance or any private contract, devise, trust, conservatorship or  
29                    custodianship;

30                    B. If otherwise consistent with the terms of any order by a court of competent  
31                    jurisdiction relating to custody of the minor, take custody of the minor and establish  
32                    the minor's place of custodial dwelling, but may establish or move the minor's  
33                    custodial dwelling outside the State only upon express authorization of the court;

34                    C. If a conservator for the estate of a minor has not been appointed with existing  
35                    authority, commence a proceeding, including an administrative proceeding, or take  
36                    other appropriate action to compel a person to support the minor or to pay money for  
37                    the benefit of the minor;

38                    D. Except as limited by section 5-807, consent to medical or other care, treatment or  
39                    service for the minor;



1 E. Consent to the marriage of the minor; and  
2 F. If reasonable under all of the circumstances, delegate to the minor certain  
3 responsibilities for decisions affecting the minor's well-being.

4 3. Consent to adoption. The court may specifically authorize the guardian to  
5 consent to the adoption of the minor.

6 4. Powers of coguardians. If coguardians are appointed, the powers of the  
7 guardians are joint and several, unless limited by the appointing document.

8 **§5-209. Rights and immunities of guardian**

9 1. Reasonable compensation and reimbursement. A guardian is entitled to  
10 reasonable compensation for services as guardian and to reimbursement for room, board  
11 and clothing provided by the guardian to the minor, but only as approved by the court. If  
12 a conservator, other than the guardian or a person who is affiliated with the guardian, has  
13 been appointed for the estate of the minor, reasonable compensation and reimbursement  
14 to the guardian may be approved and paid by the conservator without order of the court.

15 2. Personal liability. A guardian need not use the guardian's personal funds for the  
16 minor's expenses. A guardian is not liable to a 3rd person for acts of the minor solely by  
17 reason of the guardianship. A guardian is not liable for injury to the minor resulting from  
18 the negligence or act of a 3rd person providing medical or other care, treatment or service  
19 for the minor except to the extent that a parent would be liable under the circumstances.

20 **§5-210. Modification or termination of guardianship; other proceedings after**  
21 **appointment**

22 1. Modification of guardianship order. A guardian of a minor, a parent of a minor,  
23 a person interested in the welfare of a minor or the minor, if 14 years of age or older, may  
24 file a motion asking the court to modify the terms of an order appointing a guardian or to  
25 take other action in the best interest of the minor as circumstances require. The motion  
26 must be filed with the court and served on all parties entitled to notice. Unless the motion  
27 specifies that it is filed with the consent of all parties entitled to notice, the matter must be  
28 set for hearing to determine whether there has been a substantial change in circumstances  
29 necessitating modification of the order and how the court should modify the order in  
30 furtherance of the best interest of the minor and the parent's rights. The court may  
31 identify certain requirements that must be met before specific provisions of the order are  
32 modified. A court may modify a term of a guardianship order as needed to grant relief to  
33 a party to address contempt or other failure to follow the order.

34 2. Termination of guardianship. A guardianship of a minor terminates upon the  
35 minor's death, adoption, emancipation, marriage or attainment of majority or as ordered  
36 by the court pursuant to this section.

37 3. Termination of appointment. The appointment of a guardian or conservator  
38 terminates upon the death, resignation or removal of the guardian or conservator or upon  
39 termination of the guardianship or conservatorship. A resignation of a guardian or  
40 conservator is effective when approved by the court. A parental or spousal appointment  
41 as guardian under an informally probated will terminates if the will is later denied probate  
42 in a formal proceeding. Termination of the appointment of a guardian or conservator

1 does not affect the liability of either for previous acts or the obligation to account for  
2 money and other assets of the minor or protected person.

3 **4. Petition for removal or permission to resign.** A minor, if 14 years of age or  
4 older, a parent of the minor or a person interested in the welfare of the minor may petition  
5 for removal of a guardian on the ground that removal would be in the best interest of the  
6 minor or for other good cause. A guardian may petition for permission to resign. A  
7 petition for removal or permission to resign may include a request for appointment of a  
8 successor guardian.

9 **5. Appointment of additional or successor guardian.** The court may appoint an  
10 additional guardian at any time, to serve immediately or upon some other designated  
11 event, and may appoint a successor guardian in the event of a vacancy or make the  
12 appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional  
13 or successor guardian may file an acceptance of appointment at any time after the  
14 appointment, but not later than 30 days after the occurrence of the vacancy or other  
15 designated event. The additional or successor guardian becomes eligible to act on the  
16 occurrence of the vacancy or designated event or the filing of the acceptance of  
17 appointment, whichever last occurs. A successor guardian succeeds to the predecessor's  
18 powers.

19 **6. Termination without consent; best interest; subsequent petitions.** Except  
20 upon a petition to terminate guardianship brought by a parent pursuant to subsection 7,  
21 the court may not terminate the guardianship of a minor in the absence of the guardian's  
22 consent unless the court finds by a preponderance of the evidence that the termination is  
23 in the best interest of the minor. The petitioner has the burden of showing by a  
24 preponderance of the evidence that termination of the guardianship is in the best interest  
25 of the minor. If the court does not terminate the guardianship, the court may dismiss  
26 subsequent petitions for termination of the guardianship unless there has been a  
27 substantial change of circumstances.

28 **7. Parent's petition to terminate guardianship; burden of proof.** A parent may  
29 bring a petition to terminate the guardianship of a minor. A parent's notification to the  
30 court of the revocation of prior consent for a guardianship must be considered a petition  
31 to terminate the guardianship. A party opposing a parent's petition to terminate a  
32 guardianship bears the burden of proving by a preponderance of the evidence that the  
33 parent seeking to terminate the guardianship is currently unfit to regain custody of the  
34 minor. If the party opposing termination of the guardianship fails to meet its burden of  
35 proof on the question of the parent's fitness to regain custody, the court shall terminate the  
36 guardianship and make any further order that may be appropriate. In a contested action,  
37 the court may appoint counsel for the minor or for any indigent guardian or parent. In  
38 ruling on a petition to terminate a guardianship, the court may modify the terms of the  
39 guardianship or order transitional arrangements pursuant to section 5-211.

40 **§5-211. Transitional arrangement for minors**

41 In issuing, modifying or terminating an order of guardianship for a minor, the court  
42 may enter an order providing for transitional arrangements for the minor if the court  
43 determines that such arrangements will assist the minor with a transition of custody and  
44 are in the best interest of the minor. Orders providing for transitional arrangements may

1 include, but are not limited to, rights of contact, housing, counseling or rehabilitation. In  
2 determining the best interest of the minor, a court may consider the minor's relationship  
3 with the guardian and need for stability.

4 **§5-212. Appointment of guardian ad litem for minor**

5 In any proceeding under this Part, including for issuing, modifying or terminating an  
6 order of guardianship for a minor, the court may appoint a guardian ad litem for the  
7 minor. The appointment may be made at any time, but the court shall make every effort  
8 to make the appointment as soon as possible after the commencement of the proceeding.  
9 The court shall follow the requirements of section 1-111 and other applicable law or court  
10 rules in making the appointment.

11 **PART 3**

12 **GUARDIANSHIP OF ADULT**

13 **§5-301. Basis for appointment of guardian for adult**

14 **1. Appointment.** On petition and after notice and hearing, the court may:

15 A. Appoint a guardian for a respondent who is an adult if it finds by clear and  
16 convincing evidence that the respondent lacks the ability to meet essential  
17 requirements for physical health, safety or self-care because:

18 (1) The respondent is unable to receive and evaluate information or make or  
19 communicate decisions, even with appropriate supportive services, technological  
20 assistance, or supported decision making; and

21 (2) The respondent's identified needs cannot be met by a protective arrangement  
22 instead of guardianship or other less restrictive alternatives; or

23 B. With appropriate findings, treat the petition as one for a conservatorship under  
24 Part 4 or a protective arrangement instead of guardianship or conservatorship under  
25 Part 5, enter any other appropriate order or dismiss the proceeding.

26 **2. Powers.** The court shall grant to a guardian appointed under subsection 1 only  
27 those powers necessitated by the limitations and demonstrated needs of the respondent  
28 and enter orders that will encourage the development of the respondent's maximum self-  
29 determination and independence. The court may not establish a full guardianship if a  
30 limited guardianship, protective arrangement instead of guardianship or other less  
31 restrictive alternatives would meet the needs of the respondent.

32 **§5-302. Petition for appointment of guardian for adult**

33 **1. Petition for appointment.** A person interested in an adult's welfare, including the  
34 adult for whom the order is sought, may petition for the appointment of a guardian for the  
35 adult.

36 **2. Contents of petition.** A petition under subsection 1 must set forth the petitioner's  
37 name, principal residence, current street address, if different, relationship to the  
38 respondent and interest in the appointment and state or contain the following to the extent  
39 known:

- 1           A. The respondent's name, age, principal residence, current street address, if  
2           different, and, if different, address of the dwelling in which it is proposed that the  
3           respondent will reside if the petition is granted;
- 4           B. The name and address of the respondent's:
- 5                   (1) Spouse or domestic partner or, if the respondent has none, any adult with  
6                   whom the respondent has shared household responsibilities for more than 6  
7                   months in the 12-month period before the filing of the petition;
- 8                   (2) Adult children or, if the respondent has none, each parent and adult sibling of  
9                   the respondent or, if the respondent has none, at least one adult nearest in kinship  
10                  to the respondent who can be found with reasonable diligence; and
- 11                  (3) Adult stepchildren whom the respondent actively parented during the  
12                  stepchildren's minor years and with whom the respondent had an ongoing  
13                  relationship within 2 years before the filing of the petition;
- 14           C. The name and current address of each of the following, if applicable:
- 15                   (1) A person responsible for care of the respondent;
- 16                   (2) Any attorney currently representing the respondent;
- 17                   (3) The representative payee appointed by the United States Social Security  
18                   Administration for the respondent;
- 19                   (4) A guardian or conservator acting for the respondent in this State or in another  
20                   jurisdiction;
- 21                   (5) A trustee or custodian of a trust or custodianship of which the respondent is a  
22                   beneficiary;
- 23                   (6) The United States Department of Veterans Affairs fiduciary for the  
24                   respondent;
- 25                   (7) An agent designated under a power of attorney for health care in which the  
26                   respondent is identified as the principal;
- 27                   (8) An agent designated under a power of attorney for finances in which the  
28                   respondent is identified as the principal;
- 29                   (9) A person nominated as guardian by the respondent;
- 30                   (10) A person nominated as guardian by the respondent's parent, spouse or  
31                   domestic partner in a will or other signed record;
- 32                   (11) A proposed guardian and the reason the proposed guardian should be  
33                   selected; and
- 34                   (12) A person known to have routinely assisted the respondent with decision  
35                   making within the 6 months before the filing of the petition;
- 36           D. The reason a guardianship is necessary, including a brief description of:

- 1           (1) The nature and extent of the respondent's alleged need;
- 2           (2) Any protective arrangement instead of guardianship or other less restrictive  
3           alternatives for meeting the respondent's alleged need that have been considered  
4           or implemented;
- 5           (3) If no protective arrangement or other less restrictive alternatives have been  
6           considered or implemented, the reason they have not been considered or  
7           implemented; and
- 8           (4) The reason a protective arrangement or other less restrictive alternatives are  
9           insufficient to meet the respondent's alleged need;

- 10          E. Whether the petitioner seeks a limited guardianship or full guardianship;
- 11          F. If the petitioner seeks a full guardianship, the reason limited guardianship or a  
12          protective arrangement instead of guardianship is inappropriate;
- 13          G. If a limited guardianship is requested, the powers to be granted to the guardian;
- 14          H. The name and current address, if known, of any person with whom the petitioner  
15          seeks to limit the respondent's contact;
- 16          I. If the respondent has property other than personal effects, a general statement of  
17          the respondent's property with an estimate of its value, including any insurance or  
18          pension, and the source and amount of any other anticipated income or receipts; and
- 19          J. Whether the respondent needs an interpreter, translator or other form of support to  
20          communicate effectively with the court or understand court proceedings.

21          **3. Attorney for petitioner.** A petition under subsection 1 must state the name and  
22          address of an attorney representing the petitioner, if any.

23          **§5-303. Notice and hearing**

24                 **1. Date, time and place for hearing.** On receipt of a petition under section 5-302  
25                 for appointment of a guardian for a respondent who is an adult, the court shall set a date,  
26                 time and place for hearing the petition.

27                 **2. Notice to respondent.** A copy of a petition under section 5-302 and notice of a  
28                 hearing on the petition must be served personally on the respondent. The notice must  
29                 inform the respondent of the respondent's rights at the hearing, including the right to an  
30                 attorney and to attend at the hearing. The notice must also include a description of the  
31                 nature, purpose and consequences of granting the petition. Failure to serve the  
32                 respondent with notice substantially complying with this subsection precludes the court  
33                 from granting the petition.

34                 **3. Notice to other persons.** In a proceeding on a petition under section 5-302,  
35                 notice of the hearing also must be given to any person required to be listed in the petition  
36                 under section 5-302, subsection 2, paragraphs A to C and any other person the court  
37                 determines is entitled to notice. Failure to give notice under this subsection does not  
38                 preclude the court from appointing a guardian.

1 4. Notice of petition after appointment. Notice of a hearing on a petition that is  
2 filed after the appointment of a guardian and that seeks an order under this Part, together  
3 with a copy of the petition, must be given to the adult subject to guardianship, the  
4 guardian and any other person as the court determines.

5 **§5-304. Appointment of visitor**

6 1. Appointment of visitor. On receipt of a petition for appointment of a guardian  
7 for a respondent who is an adult under section 5-302, the court shall appoint a visitor.  
8 The visitor must be an individual having training or experience in the type of abilities,  
9 limitations and needs alleged in the petition.

10 2. Interview with respondent. A visitor appointed under subsection 1 shall  
11 interview the respondent in person and, in a manner the respondent is best able to  
12 understand:

13 A. Explain to the respondent the substance of the petition, the nature, purpose and  
14 effect of the proceeding, the respondent's rights at the hearing and the general powers  
15 and duties of a guardian;

16 B. Determine the respondent's views about the appointment, including views about a  
17 proposed guardian, the guardian's proposed powers and duties and the scope and  
18 duration of the proposed guardianship;

19 C. Inform the respondent of the respondent's right to employ and consult with an  
20 attorney at the respondent's expense and the right to request a court-appointed  
21 attorney; and

22 D. Inform the respondent that all costs and expenses of the proceeding, including the  
23 respondent's attorney's fees, may be paid from the respondent's assets.

24 3. Additional duties. In addition to the duties imposed by subsection 2, the visitor  
25 shall:

26 A. Interview the petitioner and proposed guardian, if any;

27 B. Visit the respondent's present dwelling and any dwelling in which it is reasonably  
28 believed the respondent will live if the appointment is made;

29 C. Obtain information from any physician or other person known to have treated,  
30 advised or assessed the respondent's relevant physical or mental condition; and

31 D. Investigate the allegations in the petition and any other matter relating to the  
32 petition as the court directs.

33 4. Report of visitor. A visitor under this section shall file a report in a record with  
34 the court at least 10 days before any hearing on the petition. The report must include:

35 A. Whether or not the respondent wishes to contest any aspect of the proceedings or  
36 to seek any limitation on the proposed guardian's powers;

37 B. A recommendation whether an attorney should be appointed to represent the  
38 respondent;

39 C. A summary of self-care and independent living tasks the respondent can manage  
40 without assistance or with existing supports, could manage with the assistance of

- 1 appropriate supportive services, technological assistance or supported decision
- 2 making and cannot manage;
- 3 D. Recommendations regarding the appropriateness of guardianship, including
- 4 whether a protective arrangement instead of guardianship or other less restrictive
- 5 alternatives for meeting the respondent's needs are available and, if a guardianship is
- 6 recommended, whether it should be full or limited and, if a limited guardianship, the
- 7 powers to be granted to the guardian;
- 8 E. A statement of the qualifications of the proposed guardian and whether the
- 9 respondent approves or disapproves of the proposed guardian;
- 10 F. A statement whether the proposed dwelling meets the respondent's needs and
- 11 whether the respondent has expressed a preference as to residence;
- 12 G. A recommendation whether a further professional evaluation under section 5-306
- 13 is necessary;
- 14 H. A statement whether the respondent is able to attend a hearing at the location
- 15 court proceedings typically are conducted;
- 16 I. A statement whether the respondent is able to participate in a hearing and that
- 17 identifies any technology or other form of support that would enhance the
- 18 respondent's ability to participate; and
- 19 J. Any other matter as the court directs.

20 **§5-305. Appointment and role of attorney for adult**

21 **1. Appointment of attorney required.** The court shall appoint an attorney to

22 represent the respondent in a proceeding on a petition under section 5-302 if:

- 23 A. Requested by the respondent;
- 24 B. Recommended by the visitor;
- 25 C. The court determines that the respondent needs representation; or
- 26 D. It comes to the court's attention that the respondent wishes to contest any aspect
- 27 of the proceeding or to seek any limitation on the proposed guardian's powers.

28 **2. Duties of attorney.** An attorney representing the respondent in a proceeding on a

29 petition under section 5-302 shall:

- 30 A. Make reasonable efforts to ascertain the respondent's wishes;
- 31 B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and
- 32 C. If the respondent's wishes are not reasonably ascertainable, advocate for the result
- 33 that is the least restrictive option in type, duration and scope, consistent with the
- 34 respondent's interests.

35 **§5-306. Professional evaluation**

36 **1. Evaluation; report.** In every adult guardianship matter, the respondent must be

37 examined by a licensed physician, psychologist or other individual, any of whom must be

38 acceptable to the court, who is qualified to evaluate the respondent's alleged cognitive and

1 functional abilities. The individual conducting the evaluation shall file a report in a  
2 record with the court at least 10 days before any hearing on the petition. Unless  
3 otherwise directed by the court, the report must contain:

4 A. A description of the nature, type and extent of the respondent's cognitive and  
5 functional abilities and limitations;

6 B. An evaluation of the respondent's mental and physical condition and, if  
7 appropriate, educational potential, adaptive behavior and social skills;

8 C. A prognosis for improvement and recommendation for the appropriate treatment,  
9 support or habilitation plan; and

10 D. The date of the examination on which the report is based.

11 2. Right to decline. The respondent has the right to decline to participate in an  
12 evaluation ordered under subsection 1.

13 **§5-307. Attendance and rights at hearing**

14 1. Attendance by respondent. Except as otherwise provided in subsection 2, a  
15 hearing under section 5-303 may proceed only if the respondent attends the hearing. If it  
16 is not reasonably feasible for the respondent to attend a hearing at the location court  
17 proceedings typically are conducted, the court shall make reasonable efforts to hold the  
18 hearing at an alternative location convenient to the respondent or allow the respondent to  
19 attend the hearing using real-time audiovisual technology.

20 2. Hearing without respondent in attendance. A hearing under section 5-303 may  
21 proceed without the respondent in attendance if the court finds by clear and convincing  
22 evidence that:

23 A. The respondent consistently and repeatedly has refused to attend the hearing after  
24 having been fully informed of the right to attend the hearing and the potential  
25 consequences of failing to do so; or

26 B. There is no practicable way for the respondent to attend and participate in the  
27 hearing even with appropriate supportive services and technological assistance.

28 3. Assistance to respondent. The respondent may be assisted in a hearing under  
29 section 5-303 by a person or persons of the respondent's choosing, assistive technology or  
30 an interpreter or translator, or a combination of these supports. If assistance would  
31 facilitate the respondent's participation in the hearing but is not otherwise available to the  
32 respondent, the court shall make reasonable efforts to provide it.

33 4. Attorney for respondent. The respondent has a right to choose an attorney to  
34 represent the respondent at a hearing under section 5-303.

35 5. Rights of respondent at hearing. For or at a hearing under section 5-303, the  
36 respondent may:

37 A. Present evidence and subpoena witnesses and documents;

38 B. Examine witnesses, including any court-appointed evaluator and the visitor; and

39 C. Otherwise participate in the hearing.



1 6. Attendance by proposed guardian required. Unless excused by the court for  
2 good cause, the proposed guardian shall attend a hearing under section 5-303.

3 7. Closed upon request; good cause. A hearing under section 5-303 must be closed  
4 on request of the respondent and a showing of good cause.

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

9 **§5-308. Confidentiality of records**

10 1. Matter of public record; exception. The existence of a proceeding for or the  
11 existence of a guardianship for an adult is a matter of public record unless the court seals  
12 the records after:

13 A. The respondent or individual subject to guardianship requests the records be  
14 sealed; and

15 B. Either:

16 (1) The petition for guardianship is dismissed; or

17 (2) The guardianship is terminated.

18 2. Access to court records. An adult subject of a proceeding for a guardianship,  
19 whether or not a guardian is appointed, any attorney designated by the adult and a person  
20 entitled to notice under section 5-310, subsection 5 are entitled to access court records of  
21 the proceeding and resulting guardianship, including a guardian's report or plan. In  
22 addition, a person for good cause may petition the court for access to court records of the  
23 guardianship, including an annual report or guardian's plan. The court shall grant access  
24 if access is in the best interest of the respondent or adult subject to guardianship or  
25 furthers the public interest and does not endanger the welfare or financial interest of the  
26 adult.

27 3. Reports confidential; availability. A report under section 5-304 of a visitor or a  
28 professional evaluation under section 5-306 is confidential and must be sealed on filing  
29 but is available to:

30 A. The court;

31 B. The individual who is the subject of the report or evaluation, without limitation as  
32 to use;

33 C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of  
34 the proceeding;

35 D. An agent appointed under a power of attorney for health care or advance health  
36 care directive, or power of attorney for finances in which the respondent is identified  
37 as the principal, unless the court orders otherwise; and

38 E. Other persons when it is in the public interest or for a purpose the court orders for  
39 good cause.

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**§5-309. Who may be guardian of adult; priorities**

**1. Priority for appointment.** Except as otherwise provided in subsection 3, the court in appointing a guardian for an adult shall consider persons otherwise qualified in the following order of priority:

- A. A guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction;
- B. A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;
- C. An agent appointed by the respondent under a power of attorney for health care or an advance health care directive;
- D. A spouse or domestic partner of the respondent; and
- E. A family member or other individual who has exhibited special care and concern for the respondent.

**2. Equal priority.** With respect to persons having equal priority under subsection 1, the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential guardian's relationship with the respondent, the potential guardian's skills, the expressed wishes of the respondent, the extent to which the potential guardian and the respondent have similar values and preferences and the likelihood the potential guardian will be able to satisfy the duties of a guardian successfully.

**3. Appointment based on best interest of respondent.** The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection 1 and appoint a person having a lower priority or no priority.

**4. Appointment prohibited; exceptions.** A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

- A. The individual is related to the respondent by blood, marriage or adoption; or
- B. The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

**5. Long-term care institution; exceptions.** An owner, operator or employee of a long-term care institution at which the respondent is receiving care may not be appointed as guardian unless the owner, operator or employee is related to the respondent by blood, marriage or adoption.

**§5-310. Order of appointment**

- 1. Order contents.** A court order appointing a guardian for an adult must clearly:
- A. Include a finding that clear and convincing evidence has established that the identified needs of the respondent cannot be met by a protective arrangement instead

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

3 B. Include a finding that clear and convincing evidence established that the  
4 respondent was given proper notice of the hearing on the petition;

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

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

12 **2. Rights retained.** An adult subject to guardianship retains the right to vote unless  
13 the order under subsection 1 includes the findings required by subsection 1, paragraph C.  
14 An adult subject to guardianship retains the right to marry unless the order under  
15 subsection 1 includes the findings required by subsection 1, paragraph D.

16 **3. Basis for full guardianship.** A court order establishing a full guardianship for an  
17 adult clearly must state the basis for granting a full guardianship and include specific  
18 findings that support the conclusion that a limited guardianship would not meet the  
19 functional needs of the adult subject to guardianship.

20 **4. Limited guardianship; powers granted to guardian.** A court order establishing  
21 a limited guardianship for an adult must state clearly the powers granted to the guardian.

22 **5. Notice; access to reports and plans.** The court shall, as part of any order  
23 establishing a guardianship for an adult, identify any person that subsequently is entitled  
24 to:

25 A. Notice of the rights of the adult subject to guardianship;

26 B. Notice of a change in the primary dwelling of the adult subject to guardianship;

27 C. Notice that the guardian has delegated:

28 (1) The power to manage the care of the adult subject to guardianship;

29 (2) The power to make decisions about where the adult subject to guardianship  
30 lives;

31 (3) The power to make major medical decisions on behalf of the adult subject to  
32 guardianship;

33 (4) Any power that requires court approval under section 5-315; or

34 (5) Substantially all powers of the guardian.

35 D. Notice that the guardian will be unavailable to visit the adult subject to  
36 guardianship for more than 2 months or unable to perform the guardian's duties for  
37 more than one month;

38 E. A copy of the guardian's report and plan;

- 1           F. Access to court records pertaining to the guardianship;
- 2           G. Notice of the death or significant change in the condition of the adult subject to
- 3           guardianship;
- 4           H. Notice that the court has limited or modified the powers of the guardian; and
- 5           I. Notice of the guardian's removal.

6           **6. Entitled to notice; exceptions.** A spouse, a domestic partner and the adult

7           children of the adult subject to guardianship are entitled to notice under subsection 5

8           unless the court determines notice would be contrary to the preferences or prior directions

9           of the adult subject to guardianship or not in the best interest of the adult.

10           **§5-311. Notice of order of appointment; rights**

11           A guardian appointed under section 5-309 shall give to the adult subject to

12           guardianship and to all other persons given notice under section 5-303 a copy of the order

13           of appointment, together with a notice of the right to request termination or modification.

14           The order and notice must be given not later than 14 days after the appointment.

15           **§5-312. Emergency guardian**

16           **1. Basis for emergency guardianship.** On petition by a person interested in an

17           adult's welfare or on its own after a petition has been filed under section 5-302, the court

18           may appoint an emergency guardian for the adult if the court finds:

- 19           A. Appointment of an emergency guardian is likely to prevent substantial harm to
- 20           the adult's physical health, safety or welfare;
- 21           B. No other person appears to have authority and willingness to act in the
- 22           circumstances; and
- 23           C. There is reason to believe that a basis for appointment of a guardian under section
- 24           5-301 may exist.

25           **2. Limited time and powers.** The duration of authority of an emergency guardian

26           for an adult may not exceed 60 days and the emergency guardian may exercise only the

27           powers specified in the order. The emergency guardian's authority may be extended once

28           for not more than 120 days if the court finds that the conditions for appointment of an

29           emergency guardian in subsection 1 continue.

30           **3. Notice before petition.** Prior to filing a petition under this section, notice must be

31           provided as follows.

- 32           A. The petitioner shall provide notice orally or in writing to the following:
  - 33           (1) The respondent and the respondent's spouse, parents, adult children and any
  - 34           domestic partner known to the court;
  - 35           (2) Any person who is serving as guardian or conservator or who has care and
  - 36           custody of the respondent; and
  - 37           (3) In case no other person is notified under subparagraph (1), at least one of the
  - 38           closest adult relatives of the respondent or, if there are none, an adult friend, if
  - 39           any can be found.

1 B. Notice under paragraph A must include the following information:

2 (1) The temporary authority that the petitioner is requesting;

3 (2) The location and telephone number of the court in which the petition is being  
4 filed; and

5 (3) The name of the petitioner and the intended date of filing.

6 C. The petitioner shall state in an affidavit the date, time, location and method of  
7 providing the required notice under paragraph A and to whom the notice was  
8 provided. The court shall make a determination as to the adequacy of the method of  
9 providing notice and whether the petitioner complied with the notice requirements of  
10 this subsection. The requirements of section 5-309 do not apply to this section.

11 D. Notice is not required under this subsection in the following circumstances:

12 (1) Giving notice would place the respondent at substantial risk of abuse, neglect  
13 or exploitation;

14 (2) Notice, if provided, would not be effective; or

15 (3) The court determines that there is good cause not to provide notice.

16 E. If, prior to filing the petition, the petitioner does not provide notice as required  
17 under this subsection, the petitioner must state in the affidavit the reasons for not  
18 providing notice. If notice has not been provided, the court shall make a  
19 determination as to the sufficiency of the reason for not providing notice before  
20 issuing a temporary order.

21 **4. Appointment without notice and hearing.** The court may appoint an emergency  
22 guardian for an adult without notice and a hearing only if the court finds from an affidavit  
23 or testimony that the respondent will be substantially harmed before a hearing on the  
24 appointment can be held. If the court appoints an emergency guardian without notice and  
25 a hearing, the court shall, not later than 48 hours after the appointment, notify the  
26 respondent, the respondent's attorney and any other person as the court determines of the  
27 appointment. If the respondent objects to the appointment, the court shall hold a hearing  
28 within 14 days of the appointment.

29 **5. Not a determination.** Appointment of an emergency guardian under this section  
30 is not a determination that the conditions required for appointment of a guardian under  
31 section 5-301 have been satisfied.

32 **6. Removal; report; application.** The court may remove an emergency guardian  
33 appointed under this section at any time. The emergency guardian shall make any report  
34 the court requires. In other respects, the provisions of this Act concerning guardians  
35 apply to an emergency guardian appointed under this section.

36 **§5-313. Duties of guardian for adult**

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

1           **2. Promote self-determination.** A guardian for an adult shall promote the self-  
2 determination of the adult subject to guardianship and, to the extent reasonably feasible,  
3 encourage the adult to participate in decisions, act on the adult's own behalf and develop  
4 or regain the capacity to manage the adult's personal affairs. In furtherance of this duty,  
5 the guardian shall:

6           A. Become or remain personally acquainted with the adult subject to guardianship  
7 and maintain sufficient contact with the adult, including through regular visitation, to  
8 know of the adult's abilities, limitations, needs, opportunities and physical and mental  
9 health;

10           B. To the extent reasonably feasible, identify the values and preferences of the adult  
11 subject to guardianship and involve the adult in decisions affecting the adult,  
12 including decisions about the adult's care, dwelling, activities and social interactions;  
13 and

14           C. Make reasonable efforts to identify and facilitate supportive relationships and  
15 services for the adult subject to guardianship.

16           **3. Reasonable care, diligence and prudence.** A guardian for an adult at all times  
17 shall exercise reasonable care, diligence and prudence when acting on behalf of or  
18 making decisions for the adult subject to guardianship. In furtherance of this duty, the  
19 guardian shall:

20           A. Take reasonable care of the personal effects, pets and service or support animals  
21 of the adult subject to guardianship and bring a proceeding for a conservatorship or  
22 protective arrangement instead of conservatorship if necessary to protect the adult's  
23 property;

24           B. Spend money of the adult subject to guardianship that has been received by the  
25 guardian for the adult's current needs for support, care, education, health and welfare;

26           C. Administer assets of the adult subject to guardianship having a value of \$5,000 or  
27 less;

28           D. Conserve any excess money of the adult subject to guardianship for the adult's  
29 future needs, but if a conservator has been appointed for the adult, the guardian shall  
30 pay the money to the conservator, at least quarterly, to be conserved for the adult's  
31 future needs; and

32           E. Monitor the quality of services, including long-term care services, provided to the  
33 adult subject to guardianship.

34           **4. Decision of the adult.** In making a decision for an adult subject to guardianship,  
35 the guardian shall make the decision the guardian reasonably believes the adult would  
36 make if the adult were able unless doing so would unreasonably harm or endanger the  
37 welfare or personal or financial interests of the adult. To determine the decision the adult  
38 subject to guardianship would make if able, the guardian shall consider the adult's prior or  
39 current directions, preferences, opinions, values and actions, to the extent actually known  
40 or reasonably ascertainable by the guardian.

41           **5. Decision in best interest of the adult.** If a guardian for an adult cannot make a  
42 decision under subsection 4 because the guardian does not know and cannot reasonably

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

6 A. Information received from professionals and persons that demonstrate sufficient  
7 interest in the welfare of the adult;

8 B. Other information the guardian believes the adult would have considered if the  
9 adult were able to act; and

10 C. Other factors that a reasonable person in the circumstances of the adult would  
11 consider, including consequences for others.

12 6. Notice to court. A guardian for an adult immediately shall notify the court if the  
13 condition of the adult subject to guardianship has changed so that the adult is capable of  
14 exercising rights previously removed.

15 **§5-314. Powers of guardian for adult**

16 1. Powers. Except as otherwise limited by the court, a guardian for an adult may:

17 A. Apply for or receive money or benefits for the support of the adult, unless a  
18 conservator has been appointed for the adult and the application or receipt is within  
19 the powers of the conservator;

20 B. If otherwise consistent with an order by a court with jurisdiction relating to the  
21 dwelling of the adult, establish the adult's place of dwelling;

22 C. Consent to medical or other care, treatment or service for the adult;

23 D. If a conservator for the adult has not been appointed, commence a proceeding,  
24 including an administrative proceeding, or take other appropriate action to compel  
25 another person to support the adult or pay funds for the adult's benefit;

26 E. To the extent reasonable, delegate to the adult certain responsibility for decisions  
27 affecting the adult's well-being; and

28 F. Receive personally identifiable health care information concerning the adult.

29 2. Adoption. The court may by specific order authorize a guardian for an adult to  
30 consent to the adoption of the adult.

31 3. Specific order of court required. The court may by specific order authorize a  
32 guardian for an adult to:

33 A. Consent or withhold consent to the marriage of the adult if the adult's right to  
34 marry has been removed under section 5-310;

35 B. Petition for divorce, dissolution or annulment of marriage of the adult or for a  
36 declaration of invalidity of the adult's marriage; or

37 C. Support or oppose a petition for divorce, dissolution or annulment of marriage of  
38 the adult or for a declaration of invalidity of the adult's marriage.

1 4. Court's consideration. In determining whether to authorize a power under  
2 subsection 2 or 3, the court shall consider whether the underlying act would be in  
3 accordance with the adult's preferences, values and prior directions and whether the  
4 underlying act would be in the best interest of the adult.

5 5. Duties with respect to dwelling. In exercising the guardian's power under  
6 subsection 1, paragraph B to establish the dwelling of the adult subject to guardianship,  
7 the guardian shall:

8 A. Select a residential setting the guardian believes the adult would select if the adult  
9 were able, in accordance with the decision-making standard in section 5-313,  
10 subsections 4 and 5. If the guardian does not know and cannot reasonably determine  
11 what setting the adult subject to guardianship probably would choose if able, or the  
12 guardian reasonably believes the decision the adult would make would unreasonably  
13 harm or endanger the welfare or personal or financial interests of the adult, the  
14 guardian shall choose in accordance with section 5-313, subsection 5 a residential  
15 setting that is consistent with the best interest of the adult;

16 B. In selecting among residential settings, give priority to a residential setting that is  
17 in a location that will allow the adult subject to guardianship to interact with persons  
18 important to the adult and meet the adult's needs in the least restrictive manner  
19 reasonably feasible unless doing so would be inconsistent with the decision-making  
20 standard in section 5-313, subsections 4 and 5;

21 C. Not later than 30 days after a change in the dwelling of the adult subject to  
22 guardianship, give notice of the change to the court, the adult subject to guardianship  
23 and any person identified as entitled to the notice in the court order appointing the  
24 guardian or a subsequent order. The notice must include the address and nature of  
25 the new dwelling and state whether the adult subject to guardianship received  
26 advance notice of the change and whether the adult objected to the change;

27 D. Establish or move the permanent place of dwelling of an adult subject to  
28 guardianship to a nursing home, mental health facility or other facility that places  
29 restrictions on the individual's ability to leave or have visitors only if:

30 (1) The establishment or move is set forth in the guardian's plan;

31 (2) The court authorizes the establishment or move; or

32 (3) Notice of the establishment or move is given at least 14 days before the  
33 establishment or move to the adult subject to guardianship and all persons  
34 entitled to the notice under section 5-310, subsection 5 or a subsequent order and  
35 no objection has been filed;

36 E. Establish or move the place of dwelling of an adult subject to guardianship  
37 outside this State only if consistent with the guardian's plan and authorized by the  
38 court by specific order; and

39 F. Take action that would result in the sale of or surrender the lease to the primary  
40 dwelling of the adult subject to guardianship only if:

41 (1) The action is specifically set forth in the guardian's plan;



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(2) The court authorizes the action by specific order; or

(3) Notice of the action is given at least 14 days before the action to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent order and no objection has been filed.

**6. Duties with respect to health care.** In exercising the guardian's power under subsection 1, paragraph C to make health care decisions, a guardian shall:

A. Involve the adult in decision making to the extent reasonably feasible, including, when practicable, by encouraging and supporting the adult in understanding the risks and benefits of health care options;

B. Defer to a decision by an agent under a power of attorney for health care or an advance health care directive executed by the adult and cooperate to the extent feasible with the agent making the decision; and

C. Take into account:

(1) The risks and benefits of treatment options; and

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

**§5-315. Special limitations on guardian's power**

**1. Limitations; health care; finances.** Unless authorized by the court by specific order, a guardian for an adult does not have the power to revoke or amend a power of attorney for health care or an advance health care directive or power of attorney for finances executed by the adult. If a power of attorney for health care or an advance health care directive is in effect, unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

**2. Commitment to mental health facility.** A guardian for an adult may not initiate the commitment of the adult to a mental health facility except in accordance with the state's procedure for involuntary civil commitment under Title 34-B, chapter 3, subchapter 4, article 3.

**3. Restrictions on contact.** A guardian for an adult may not restrict the ability of the adult to communicate, visit or interact with others, including receiving visitors or making or receiving telephone calls, personal mail or electronic communications, including through social media, or participating in social activities, unless:

A. Authorized by the court by specific order;

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

1 C. The guardian has good cause to believe restriction is necessary because  
2 interaction with the person poses a risk of significant physical, psychological or  
3 financial harm to the adult and the restriction is:

4 (1) For a period of not more than 7 business days if the person has a family or  
5 preexisting social relationship with the adult; or

6 (2) For a period of not more than 60 days if the person does not have a family or  
7 preexisting social relationship with the adult.

8 **§5-316. Guardian's plan**

9 **1. Plan; revision.** The petitioner for appointment of a guardian for an adult shall file  
10 with the petition a plan for the care of the adult. When there is a subsequent change in  
11 circumstances, or the guardian seeks to deviate significantly from the plan previously  
12 filed, the guardian shall file with the court a revised plan for the care of the adult. The  
13 plan must be based on the needs of the adult and take into account the best interest of the  
14 adult as well as the adult's preferences, values and prior directions, to the extent known to  
15 or reasonably ascertainable by the guardian. The plan must identify:

16 A. The living arrangement, services and supports the guardian expects to arrange,  
17 facilitate or continue for the adult;

18 B. Social and educational activities the guardian expects to facilitate on behalf of the  
19 adult;

20 C. Any person with whom the adult has a relationship and any plan the guardian has  
21 for facilitating visits with the person;

22 D. The anticipated nature and frequency of the guardian's visits and communication  
23 with the adult;

24 E. Goals for the adult including any goal related to the restoration of the adult's rights  
25 and how the guardian anticipates achieving the goals;

26 F. Whether the adult already has a plan in place and, if so, whether the guardian's  
27 plan is consistent with the adult's plan; and

28 G. A statement or list of the amount the guardian proposes to charge for each service  
29 the guardian anticipates providing to the adult.

30 **2. Notice of revised plan.** A guardian shall give notice of the filing of a revised plan  
31 under subsection 1, along with a copy of the plan, to the adult subject to guardianship, all  
32 persons entitled to notice under section 5-310, subsection 5 or a subsequent order and  
33 other persons as the court determines. The notice must include a statement of the right to  
34 object to the revised plan and be given not later than 14 days after the filing.

35 **3. Objection to revised plan.** An adult subject to guardianship and any person  
36 entitled under subsection 2 to receive notice and a copy of the guardian's plan may object  
37 to the revised plan.

38 **4. Court review of plan or revised plan; approval.** The court shall review a  
39 guardian's plan or revised plan filed under subsection 1. In deciding whether to approve  
40 the plan or the revised plan the court shall consider an objection under subsection 3 and

1 whether the plan or revised plan is consistent with the guardian's duties and powers under  
2 sections 5-313 and 5-314. The court may schedule a hearing on any revised plan  
3 submitted and may not approve any revised plan until 30 days after its filing.

4 **5. Copy of approved plan.** After a guardian's plan under this section is approved by  
5 the court, the guardian shall provide a copy of the plan to the adult subject to  
6 guardianship, all persons entitled to notice under section 5-310, subsection 5 or a  
7 subsequent order and other persons as the court determines.

8 **§5-317. Guardian's report; monitoring of guardianship**

9 **1. Report; contents.** A guardian for an adult at least annually shall submit to the  
10 court a report in a record regarding the condition of the adult and accounting for money  
11 and other property in the guardian's possession or subject to the guardian's control. Each  
12 report must state or contain:

13 A. The mental, physical and social condition of the adult;

14 B. The living arrangements of the adult during the reporting period;

15 C. A summary of the supported decision making, technological assistance, medical  
16 services, educational and vocational services and other supports and services  
17 provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

18 D. A summary of the guardian's visits with the adult, including the dates of the visits;

19 E. Action taken on behalf of the adult;

20 F. The extent to which the adult has participated in decision making;

21 G. If the adult is living in a mental health facility or living in a facility that provides  
22 the adult with health care or other personal services, whether the guardian considers  
23 the facility's current plan for support, care, treatment or habilitation consistent with  
24 the adult's preferences, values, prior directions and best interest;

25 H. Anything of more than de minimis value that the guardian, any individual who  
26 resides with the guardian or the spouse, domestic partner, parent, child or sibling of  
27 the guardian has received from an individual providing goods or services to the adult;

28 I. If the guardian has delegated powers to an agent, the powers delegated and the  
29 reason for the delegation;

30 J. Any business relation the guardian has with a person the guardian has paid or a  
31 person that has benefited from the property of the adult;

32 K. A copy of the guardian's most recent plan and a statement whether the guardian  
33 has deviated from the plan and, if so, how the guardian has deviated and why;

34 L. Plans for future care and support;

35 M. A recommendation as to the need for continued guardianship and any  
36 recommended change in the scope of the guardianship; and

37 N. Whether any coguardian or successor guardian appointed to serve when a  
38 designated future event occurs is alive and able to serve.

1           **2. Appointment of visitor.** The court may appoint a visitor to review a report  
2 submitted under this section, interview the guardian or adult subject to guardianship or  
3 investigate any other matter involving the guardianship.

4           **3. Notice of filing of report; copy.** Notice of the filing of a guardian's report under  
5 this section, together with a copy of the report, must be given to the adult subject to  
6 guardianship, all persons entitled to notice under section 5-310, subsection 5 or a  
7 subsequent order and any other person as the court determines. The notice and report  
8 must be given not later than 14 days after the filing of the report.

9           **4. System to monitor reports.** The court shall establish a system for monitoring  
10 reports submitted under this section and review each report at least annually to determine  
11 whether:

12           A. The report provides sufficient information to establish the guardian has complied  
13 with the guardian's duties;

14           B. The guardianship should continue; and

15           C. The guardian's requested fees, if any, should be approved.

16           **5. Noncompliance; modification or termination.** If the court determines there is  
17 reason to believe a guardian for an adult has not complied with the guardian's duties or  
18 the guardianship should be modified or terminated, the court:

19           A. Shall notify the adult, the guardian and all persons entitled to notice under section  
20 5-310, subsection 5 or a subsequent order;

21           B. May require additional information from the guardian;

22           C. May appoint a visitor to interview the adult or guardian or investigate any matter  
23 involving the guardianship; and

24           D. May consider removing the guardian under section 5-318 or terminating the  
25 guardianship or changing the powers of the guardian or other terms of the  
26 guardianship under section 5-319.

27           **6. Fees not reasonable.** If the court has reason to believe that fees requested by a  
28 guardian for an adult are not reasonable, the court shall hold a hearing to determine  
29 whether to adjust the requested fees.

30           **7. Approval of report.** A guardian for an adult may petition the court for approval  
31 of a report filed under this section. The court after review may approve the report. If the  
32 court approves the report, there is a rebuttable presumption the report is accurate as to a  
33 matter adequately disclosed in the report.

34           **§5-318. Removal of guardian for adult; appointment of successor**

35           **1. Removal; successor.** The court may remove a guardian for an adult for failure to  
36 perform the guardian's duties or for other good cause and appoint a successor guardian to  
37 assume the duties of guardian.

38           **2. Hearing.** The court shall conduct a hearing to determine whether to remove a  
39 guardian for an adult and appoint a successor on:

1 A. Petition of the adult, the guardian or a person interested in the welfare of the adult  
2 that contains allegations that, if true, would support a reasonable belief that removal  
3 of the guardian and appointment of a successor may be appropriate, but the court may  
4 decline to hold a hearing if a petition based on the same or substantially similar facts  
5 was filed within the preceding 6 months;

6 B. Communication from the adult, the guardian or a person interested in the welfare  
7 of the adult that supports a reasonable belief that removal of the guardian and  
8 appointment of a successor may be appropriate; or

9 C. Determination by the court that a hearing would be in the best interest of the  
10 adult.

11 **3. Notice.** Notice of a petition under subsection 2, paragraph A shall be given to the  
12 adult subject to guardianship, the guardian and such other persons as the court  
13 determines.

14 **4. Attorney for the adult.** An adult subject to guardianship who seeks to remove  
15 the guardian and have a successor appointed has a right to choose an attorney to represent  
16 the adult. If the adult subject to guardianship is not represented by an attorney, the court  
17 shall appoint an attorney under the same conditions as in section 5-305. The court shall  
18 award reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

19 **5. Procedure to select successor.** In selecting a successor guardian of an adult, the  
20 court shall follow the procedures under section 5-309.

21 **6. Notice of appointment of successor.** Not later than 30 days after appointing a  
22 successor guardian, the court shall give notice of the appointment to the adult subject to  
23 guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a  
24 subsequent order.

25 **§5-319. Termination or modification of guardianship for adult**

26 **1. Petition for termination or modification.** An adult subject to guardianship, the  
27 guardian for the adult or a person interested in the welfare of the adult may petition for:

28 A. Termination of the guardianship on the ground that a basis for appointment under  
29 section 5-301 does not exist or termination would be in the best interest of the adult,  
30 or for other good cause; or

31 B. Modification of the guardianship on the ground that the extent of protection or  
32 assistance granted is not appropriate, or for other good cause.

33 **2. Hearing.** The court shall conduct a hearing to determine whether termination or  
34 modification of a guardianship of an adult is appropriate on:

35 A. Petition under subsection 1 that contains allegations that, if true, would support a  
36 reasonable belief that termination or modification of the guardianship may be  
37 appropriate, but the court may decline to hold a hearing if a petition based on the  
38 same or substantially similar facts was filed within the preceding 6 months;

39 B. Communication from the adult, the guardian or a person interested in the welfare  
40 of the adult that supports a reasonable belief that termination or modification of the

1 guardianship may be appropriate, including because of a change in the functional  
2 needs of the adult or supports or services available to the adult;

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

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

10 **3. Notice.** Notice of a petition under subsection 2, paragraph A must be given to the  
11 adult subject to guardianship, the guardian and such other persons as the court  
12 determines.

13 **4. Termination.** On presentation of prima-facie evidence for termination of a  
14 guardianship for an adult, the court shall order termination unless it is proven that the  
15 basis for appointment of a guardian under section 5-301 is satisfied.

16 **5. Modification.** The court shall modify the powers granted to a guardian for an  
17 adult if the powers are excessive or inadequate due to a change in the abilities or  
18 limitations of the adult, the adult's supports or services or other circumstances.

19 **6. Procedure.** Unless the court otherwise orders for good cause, before terminating  
20 or modifying a guardianship for an adult, the court shall follow the same procedures to  
21 safeguard the rights of the adult that apply to a petition for guardianship.

22 **7. Attorney for the adult.** An adult subject to guardianship who seeks to terminate  
23 or modify the terms of the guardianship has a right to choose an attorney to represent the  
24 adult in this matter. If the adult is not represented by an attorney, the court shall appoint  
25 an attorney under the same conditions as in section 5-305. The court shall award  
26 reasonable attorney's fees to the attorney for the adult as provided in section 5-119.

27 **PART 4**

28 **CONSERVATORSHIP**

29 **§5-401. Basis for appointment of conservator**

30 **1. Conservator for minor; findings.** On petition and after notice and hearing, the  
31 court may appoint a conservator for the property or financial affairs of a minor, if the  
32 court finds by a preponderance of evidence that:

33 A. The minor owns money or property requiring management or protection that  
34 otherwise cannot be provided; or

35 B. Appointment of a conservator is in the best interest of the minor and:

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

38 (2) Either:

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

3                    (b) Appointment is necessary or desirable to obtain or provide money  
4                    needed for the support, care, education, health or welfare of the minor.

5                    **2. Conservator for adult; findings.** On petition and after notice and hearing, the  
6                    court may appoint a conservator for the property or financial affairs of an adult if the  
7                    court determines by clear and convincing evidence that:

8                    A. The adult is unable to manage property or financial affairs because:

9                    (1) Of a limitation in the ability to receive and evaluate information or make or  
10                    communicate decisions even with the use of appropriate supportive services,  
11                    technological assistance and supported decision making; or

12                    (2) The adult is missing, detained or unable to return to the United States;

13                    B. Appointment is necessary to:

14                    (1) Avoid harm to the adult or significant dissipation of the property of the adult;  
15                    or

16                    (2) Obtain or provide money needed for the support, care, education, health or  
17                    welfare of the adult, or of an individual entitled to the adult's support, and  
18                    protection is necessary or desirable to obtain or provide money for the purpose;  
19                    and

20                    C. The respondent's identified needs cannot be met by less restrictive alternatives.

21                    **3. Powers.** The court shall grant a conservator only those powers necessitated by  
22                    demonstrated limitations and needs of the respondent and enter orders that encourage the  
23                    development of the respondent's maximum self-determination and independence. The  
24                    court may not establish a full conservatorship if a limited conservatorship, protective  
25                    arrangement instead of conservatorship or other less restrictive alternatives would meet  
26                    the needs of the respondent.

27                    **§5-402. Petition for appointment of conservator**

28                    **1. Petitioner.** The following may petition for the appointment of a conservator:

29                    A. The individual for whom the order is sought;

30                    B. A person interested in the estate, financial affairs or welfare of the individual,  
31                    including a person that would be adversely affected by lack of effective management  
32                    of property and financial affairs of the individual; or

33                    C. The guardian of the individual.

34                    **2. Contents.** A petition under subsection 1 must set forth the petitioner's name,  
35                    principal residence, current street address, if different, relationship to the respondent and  
36                    interest in the appointment and state or contain the following to the extent known:

- 1        A. The respondent's name, age, principal residence, current street address, if  
2        different, and, if different, address of the dwelling in which it is proposed the  
3        respondent will reside if the petition is granted;
- 4        B. The name and address of the respondent's:
- 5            (1) Spouse or domestic partner, or if the respondent has none, any adult with  
6            whom the respondent has shared household responsibilities for more than 6  
7            months in the 12-month period before the filing of the petition;
- 8            (2) Adult children or, if the respondent has none, each parent and adult sibling of  
9            the respondent, or, if none, at least one adult nearest in kinship to the respondent  
10           who can be found with reasonable diligence; and
- 11           (3) Adult stepchildren whom the respondent actively parented during the  
12           stepchildren's minor years and with whom the respondent had an ongoing  
13           relationship within 2 years before filing of the petition;
- 14        C. The name and current address of each of the following, if applicable:
- 15           (1) A person responsible for the care or custody of the respondent;
- 16           (2) Any attorney currently representing the respondent;
- 17           (3) The representative payee appointed by the United States Social Security  
18           Administration for the respondent;
- 19           (4) A guardian or conservator acting for a respondent in this State or another  
20           jurisdiction;
- 21           (5) A trustee or custodian of a trust or custodianship of which the respondent is a  
22           beneficiary;
- 23           (6) The United States Department of Veterans Affairs fiduciary for the  
24           respondent;
- 25           (7) An agent designated under a power of attorney for health care or an advance  
26           health directive in which the respondent is identified as the principal;
- 27           (8) An agent designated under a power of attorney for finances in which the  
28           respondent is identified as the principal;
- 29           (9) A person known to have routinely assisted the respondent with decision  
30           making within the 6 months before the filing of the petition;
- 31           (10) Any proposed conservator, including a person nominated by the respondent  
32           if the respondent is 14 years of age or older; and
- 33           (11) If the individual for whom a conservator is sought is a minor:
- 34                (a) An adult with whom the minor resides if not otherwise listed; and
- 35                (b) Any person not otherwise listed that had the care or custody of the minor  
36                for 60 or more days during the 2 years preceding the filing of the petition or



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any person that had the primary care or custody of the minor for at least 730 days during the 5 years preceding the filing of the petition;

D. A general statement of the respondent's property with an estimate of its value, and the source and amount of other anticipated income or receipts;

E. The reason conservatorship is necessary, including a brief description of:

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

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

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

(4) If no protective arrangement or other less restrictive alternatives have been considered or implemented, the reason they have not been considered or implemented; and

(5) The reason a protective arrangement or other less restrictive alternatives are insufficient to meet the respondent's need;

F. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

G. Whether the petitioner seeks a limited conservatorship or a full conservatorship;

H. If the petitioner seeks a full conservatorship, the reason a limited conservatorship or protective arrangement instead of conservatorship is not appropriate;

I. If the petition includes the name of a proposed conservator, the reason the proposed conservator should be appointed; and

J. If the petition is for a limited conservatorship, a description of the property to be placed under the conservator's control and any other requested limitation on the authority of the conservator.

3. Attorney for petitioner. A petition under subsection 1 must state the name and address of an attorney representing the petitioner, if any.

**§5-403. Notice and hearing**

1. Date, time and place for hearing. On receipt of a petition for appointment of a conservator under section 5-402, the court shall set a date, time and place for hearing the petition.

2. Notice to respondent. A copy of a petition under section 5-402 and notice of a hearing on the petition must be served personally on the respondent at least 14 days before the hearing. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must inform the respondent of the respondent's rights at the

1 hearing, including the right to an attorney and to attend the hearing. The notice must also  
2 include a description of the nature, purpose and consequences of granting the petition.  
3 Failure to serve the respondent with notice substantially complying with this subsection  
4 precludes the court from granting the petition.

5 **3. Notice to others.** In a proceeding on a petition under section 5-402, notice of the  
6 hearing also must be given to the persons required to be listed in the petition under  
7 section 5-402, subsection 3, paragraphs A to C and any other person interested in the  
8 respondent's welfare as the court determines at least 14 days prior to the hearing. Failure  
9 to give notice under this subsection does not preclude the court from appointing a  
10 conservator.

11 **4. Notice of petition after order.** Notice of a hearing on a petition that is filed after  
12 the appointment of a conservator that seeks an order under this Part, together with a copy  
13 of the petition, must be given to the individual subject to conservatorship if the individual  
14 is 14 years of age or older and is not missing, detained or unable to return to the United  
15 States, the conservator and any other person as the court determines.

16 **§5-404. Original petition for appointment or protective order**

17 **1. Petition.** The person to be protected, any person who is interested in the estate,  
18 affairs or welfare of the person to be protected, including the parent, guardian, custodian  
19 or domestic partner of the person to be protected, or any person who would be adversely  
20 affected by lack of effective management of the property and affairs of the person to be  
21 protected may petition for the appointment of a conservator or for other appropriate  
22 protective order.

23 **2. Contents of petition.** A petition under subsection 1 must contain such  
24 information and be in such form as the Supreme Judicial Court by rule provides.

25 **3. Purpose; priority scheduling.** A petition for a protective order made under oath  
26 may be used to initiate court consideration, accounting and remediation of the actions of  
27 any individual responsible for the management of the property or affairs of another. In  
28 the case of an emergency, the petition must be given priority scheduling by the court.

29 A. The petition must include the following information and may include other  
30 information required by rule:

31 (1) Name, address and telephone number of the petitioner;

32 (2) Name, address and telephone number of the principal;

33 (3) Name, address and telephone number of the person with actual or apparent  
34 authority to manage the property or affairs of the principal;

35 (4) Facts concerning the extent and nature of the principal's inability to manage  
36 the principal's property or affairs effectively and any facts supporting an  
37 allegation that an emergency exists;

38 (5) Facts concerning the extent and nature of the actual or apparent agent's lack  
39 of management of the principal's property or affairs. If applicable, facts  
40 describing how the petitioner has already been adversely affected by the lack of  
41 management of the principal's property or affairs; and

1                   (6) Names, addresses and relationships of all persons who are required to receive  
2                   notice of the petition.

3                   B. This subsection does not limit any other purpose for the use of a petition for a  
4                   protective order or any other remedy available to the court.

5                   **§5-405. Appointment and role of visitor**

6                   1. Visitor for minor respondent. If the respondent in a proceeding to appoint a  
7                   conservator is a minor, the court may appoint a visitor to investigate a matter related to  
8                   the petition or to inform the minor or a parent of the minor about the petition or a related  
9                   matter.

10                  2. Visitor for adult respondent. If the respondent in a proceeding to appoint a  
11                  conservator is an adult, the court shall appoint a visitor unless the adult is represented by  
12                  an attorney. The duties and reporting requirements of the visitor are limited to the relief  
13                  requested in the petition. The visitor must be an individual having training or experience  
14                  in the type of abilities, limitations and needs alleged in the petition.

15                  3. Duties of visitor for adult respondent. A visitor appointed for an adult under  
16                  subsection 2 shall interview the respondent in person, and in a manner the respondent is  
17                  best able to understand:

18                  A. Explain to the respondent the substance of the petition, the nature, purpose and  
19                  effect of the proceeding, the respondent's rights at the hearing and the general powers  
20                  and duties of a conservator;

21                  B. Determine the respondent's views about the appointment sought by the petitioner,  
22                  including views about a proposed conservator, the conservator's proposed powers and  
23                  duties and the scope and duration of the proposed conservatorship;

24                  C. Inform the respondent of the respondent's right to employ and consult with an  
25                  attorney at the respondent's expense and the right to request a court-appointed  
26                  attorney; and

27                  D. Inform the respondent that all costs and expenses of the proceeding, including the  
28                  respondent's attorney's fees, may be paid from the respondent's assets.

29                  4. Additional duties. In addition to the duties imposed by subsection 3, the visitor  
30                  appointed for an adult under subsection 2 shall:

31                  A. Interview the petitioner and proposed conservator, if any;

32                  B. Review financial records of the respondent, if relevant to the visitor's  
33                  recommendation under subsection 5, paragraph B;

34                  C. State whether the respondent's needs could be met by a less restrictive alternative,  
35                  including a protective arrangement instead of conservatorship and, if so, identify the  
36                  less restrictive alternative; and

37                  D. Investigate the allegations in the petition and any other matter relating to the  
38                  petition as the court directs.

1 5. Report. A visitor appointed for an adult under subsection 2 shall file a report in a  
2 record with the court at least 10 days before any hearing on the petition. The report must  
3 include:

4 A. Whether or not the respondent wants to challenge any aspect of the proceeding or  
5 to seek any limitation on the conservator's powers;

6 B. A recommendation whether an attorney should be appointed to represent the  
7 respondent;

8 C. A recommendation:

9 (1) Regarding the appropriateness of conservatorship, or whether a protective  
10 arrangement instead of conservatorship or other less restrictive alternatives for  
11 meeting the respondent's needs are available;

12 (2) If a conservatorship is recommended, whether it should be full or limited;  
13 and

14 (3) If a limited conservatorship is recommended, the powers to be granted to the  
15 conservator and the property that should be placed under the conservator's  
16 control;

17 D. A statement of the qualifications of the proposed conservator and whether the  
18 respondent approves or disapproves of the proposed conservator;

19 E. A recommendation whether a further professional evaluation under section 5-407  
20 is necessary;

21 F. A statement whether the respondent is able to attend a hearing at the location court  
22 proceedings are typically conducted;

23 G. A statement whether the respondent is able to participate in a hearing and that  
24 identifies any technology or other form of support that would enhance the  
25 respondent's ability to participate; and

26 H. Any other matter as the court directs.

27 **§5-406. Appointment and role of attorney**

28 1. Attorney for respondent. The court shall appoint an attorney to represent a  
29 respondent in a proceeding on a petition under section 5-402 if:

30 A. Requested by the respondent;

31 B. Recommended by the visitor;

32 C. The court determines that the respondent needs representation; or

33 D. It comes to the court's attention that the respondent wishes to contest any aspect  
34 of the proceeding or to seek any limitation on the proposed conservator's powers.

35 2. Duties of attorney. The attorney representing the respondent in a proceeding on a  
36 petition under section 5-402 shall:

37 A. Make reasonable efforts to ascertain the respondent's wishes;

- 1 B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and
- 2 C. If the respondent's wishes are not reasonably ascertainable, advocate for the result
- 3 that is the least-restrictive option in type, duration and scope, consistent with the
- 4 respondent's interests.

5 **3. Attorney for parent of minor.** The court may appoint an attorney to represent a

6 parent of a minor who is the subject of a proceeding on a petition under section 5-402 if:

- 7 A. The parent objects to appointment of a conservator;
- 8 B. The court determines that counsel is needed to ensure that consent to appointment
- 9 of a conservator is informed; or
- 10 C. The court otherwise determines the parent needs representation.

11 **§5-407. Professional evaluation**

12 **1. Evaluation; report.** The respondent must be examined by a licensed physician,

13 psychologist or other individual, any of whom must be acceptable to the court, who is

14 qualified to evaluate the respondent's alleged cognitive and functional abilities and

15 limitations and will not be advantaged or disadvantaged by a decision to grant the petition

16 or otherwise has a conflict of interest. The individual conducting the evaluation shall file

17 a report in a record with the court at least 10 days before any hearing on the petition.

18 Unless otherwise directed by the court, the report must contain:

- 19 A. A description of the nature, type and extent of the respondent's cognitive and
- 20 functional abilities and limitations with regard to the management of the respondent's
- 21 property and financial affairs;
- 22 B. An evaluation of the respondent's mental and physical condition and, if
- 23 appropriate, educational potential, adaptive behavior and social skills;
- 24 C. A prognosis for improvement with regard to the ability to manage the
- 25 respondent's property and financial affairs; and
- 26 D. The date of the examination on which the report is based.

27 **2. Right to decline.** The respondent has the right to decline to participate in an

28 evaluation ordered under subsection 1.

29 **§5-408. Attendance and rights at hearing**

30 **1. Attendance by respondent required.** Except as otherwise provided in

31 subsection 2, a hearing under section 5-403 any proceed only if the respondent attends the

32 hearing. If it is not reasonably feasible for the respondent to attend a hearing at the

33 location court proceedings typically are conducted, the court shall make reasonable

34 efforts to hold the hearing at an alternative location convenient to the respondent or allow

35 the respondent to attend the hearing using real-time audiovisual technology.

36 **2. Hearing without respondent; findings.** A hearing under section 5-403 may

37 proceed without the respondent in attendance if the court finds by clear and convincing

38 evidence that:

1 A. The respondent consistently and repeatedly has refused to attend the hearing after  
2 having been fully informed of the right to attend the hearing and the potential  
3 consequences of failing to do so;

4 B. There is no practicable way for the respondent to attend and participate in the  
5 hearing even with appropriate supportive services and technological assistance; or

6 C. The respondent is a minor who has received proper notice and attendance would  
7 be harmful to the minor.

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

13 **4. Attorney for respondent.** The respondent has a right to choose an attorney to  
14 represent the respondent at a hearing under section 5-403.

15 **5. Rights of respondent at hearing.** At a hearing under section 5-403, the  
16 respondent may:

17 A. Present evidence and subpoena witnesses and documents;

18 B. Examine witnesses, including any court-appointed evaluator and the visitor; and

19 C. Otherwise participate in the hearing.

20 **6. Attendance by proposed conservator required.** Unless excused by the court for  
21 good cause, the proposed conservator shall attend a hearing under section 5-403.

22 **7. Closed upon request; good cause.** A hearing under section 5-403 must be closed  
23 on request of the respondent and a showing of good cause.

24 **8. Participation; best interest of respondent.** Any person may request to  
25 participate in a hearing under section 5-403. The court may grant the request, with or  
26 without hearing, on determining that the best interest of the respondent will be served.  
27 The court may attach appropriate conditions to the person's participation.

28 **§5-409. Confidentiality of records**

29 **1. Matter of public record; exceptions.** The existence of a proceeding for or the  
30 existence of conservatorship is a matter of public record unless the court seals the record  
31 after:

32 A. The respondent, the individual subject to conservatorship or the parent of a minor  
33 subject to conservatorship requests the record be sealed; and

34 B. Either:

35 (1) The petition for conservatorship is dismissed; or

36 (2) The conservatorship is terminated.

37 **2. Access to records.** An individual subject to a proceeding for a conservatorship,  
38 whether or not a conservator is appointed, an attorney designated by the individual and a

1 person entitled to notice under section 5-411 or a subsequent order are entitled to access  
2 court records of the proceeding and resulting conservatorship, including the conservator's  
3 plan and report. In addition, a person for good cause may petition the court for access to  
4 court records of the conservatorship, including the conservator's plan and report. The  
5 court shall grant access if access is in the best interest of the respondent or individual  
6 subject to conservatorship or furthers the public interest and does not endanger the  
7 welfare or financial interests of the respondent or individual.

8 **3. Reports; availability.** A report under section 5-405 of a visitor or professional  
9 evaluation under section 5-407 is confidential and must be sealed on filing but is  
10 available to:

11 A. The court;

12 B. The individual who is the subject of the report or evaluation, without limitation as  
13 to use;

14 C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of  
15 the proceeding;

16 D. An agent appointed under a power of attorney for finances in which the  
17 respondent is identified as the principal, unless the court orders otherwise; and

18 E. Other persons when it is in the public interest or for a purpose the court orders for  
19 good cause.

20 **§5-410. Who may be conservator; priorities**

21 **1. Priority for appointment.** Except as otherwise provided in subsection 3, the  
22 court in appointing a conservator shall consider persons otherwise qualified in the  
23 following order of priority:

24 A. A conservator, other than a temporary or emergency conservator, currently acting  
25 for the respondent in another jurisdiction;

26 B. A person nominated as conservator by the respondent, including the respondent's  
27 most recent nomination made in a power of attorney for finances;

28 C. An agent appointed by the respondent to manage the respondent's property under  
29 a power of attorney for finances;

30 D. A spouse or domestic partner of the respondent; and

31 E. A family member or other individual who has exhibited special care and concern  
32 for the respondent.

33 **2. Equal priority.** With respect to persons having equal priority under subsection 1,  
34 the court shall select as conservator the person the court considers best qualified. In  
35 determining the best qualified person, the court shall consider the potential conservator's  
36 relationship with the respondent, the potential conservator's skills, the expressed wishes  
37 of the respondent, the extent to which the potential conservator and the respondent have  
38 similar values and preferences and the likelihood that the potential conservator will be  
39 able to satisfy the duties of a conservator successfully.

1 **3. Appointment based on best interest of respondent.** The court, acting in the best  
2 interest of the respondent, may decline to appoint as conservator a person having priority  
3 under subsection 1 and appoint a person having a lower priority or no priority.

4 **4. Appointment prohibited; exceptions.** A person that provides paid services to  
5 the respondent, or an individual who is employed by a person that provides paid services  
6 to the respondent or is the spouse, domestic partner, parent or child of an individual who  
7 provides or is employed to provide paid services to the respondent, may not be appointed  
8 as conservator unless:

9 A. The individual is related to the respondent by blood, marriage or adoption; or

10 B. The court finds by clear and convincing evidence that the person is the best  
11 qualified person available for appointment and the appointment is in the best interest  
12 of the respondent.

13 **5. Long-term health care institution; exceptions.** An owner, operator or employee  
14 of a long-term health care institution at which the respondent is receiving care may not be  
15 appointed as conservator unless the owner, operator or employee is related to the  
16 respondent by blood, marriage or adoption.

17 **§5-411. Order of appointment**

18 **1. Conservator for minor; findings.** A court order appointing a conservator for a  
19 minor must include findings to support appointment of a conservator and, if a full  
20 conservatorship is granted, the reason a limited conservatorship would not meet the  
21 identified needs of the minor.

22 **2. Conservator for adult; findings.** A court order appointing a conservator for an  
23 adult must include a clear finding that:

24 A. The identified needs of the respondent cannot be met by a protective arrangement  
25 instead of conservatorship or other less restrictive alternatives, including use of  
26 appropriate supportive services, technological assistance or supported decision  
27 making; and

28 B. Clear and convincing evidence established the respondent was given proper notice  
29 of the hearing on the petition.

30 **3. Basis for full conservatorship.** A court order establishing a full conservatorship  
31 for an adult clearly must state the basis for granting a full conservatorship and include  
32 specific findings to support the conclusion that a limited conservatorship would not meet  
33 the functional needs of the adult.

34 **4. Limited conservatorship; powers granted to conservator.** A court order  
35 establishing a limited conservatorship must state clearly the property placed under the  
36 control of the conservator and the powers granted to the conservator.

37 **5. Notice; access to reports and plans.** The court shall, as part of an order  
38 establishing a conservatorship, identify any person that subsequently is entitled to:

39 A. Notice of the rights of the individual subject to conservatorship;

40 B. Notice of a sale of or surrender of a lease to the primary dwelling of the individual  
41 subject to conservatorship;



- 1 C. Notice that the conservator has delegated any power that requires court approval
- 2 under section 5-414 or substantially all powers of the conservator;
- 3 D. Notice that the conservator will be unavailable to perform the conservator's duties
- 4 for more than one month;
- 5 E. Copies of the conservator's plan and report;
- 6 F. Access to court records pertaining to the conservatorship;
- 7 G. A transaction involving a substantial conflict between the conservator's fiduciary
- 8 duties and personal interests;
- 9 H. Notice of the death or significant change in the condition of the individual subject
- 10 to conservatorship;
- 11 I. Notice that the court has limited or modified the powers of the conservator; and
- 12 J. Notice of the conservator's removal.

13 **6. Entitled to notice; exceptions.** If an individual subject to conservatorship is an

14 adult, the spouse, domestic partner and adult children of the adult subject to

15 conservatorship are entitled under subsection 5 to notice unless the court determines

16 notice would be contrary to the preferences or prior directions of the adult subject to

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

18 **7. Notice when minor is subject to conservatorship.** If an individual subject to

19 conservatorship is a minor, each parent and adult sibling of the minor is entitled under

20 subsection 5 to notice unless the court determines notice would not be in the best interest

21 of the minor.

22 **§5-412. Notice of order of appointment; rights**

23 **1. Notice of appointment, order; rights.** A conservator appointed under section

24 5-410 shall give to the individual subject to conservatorship and to all other persons given

25 notice under section 5-403 a copy of the order of appointment, together with a notice of

26 the right to request termination or modification. The order and notice must be given not

27 later than 14 days after the appointment.

28 **2. Notice if person missing.** If a conservator is appointed under section 5-401,

29 subsection 2, paragraph A, subparagraph (2) and the individual subject to conservatorship

30 is missing, notice under subsection 1 to the individual is not required.

31 **§5-413. Emergency conservator**

32 **1. Appointment; findings.** On petition by a person interested in an individual's

33 welfare or on its own after a petition has been filed under section 5-402, the court may

34 appoint an emergency conservator for the individual if the court finds:

- 35 A. Appointment of an emergency conservator is likely to prevent substantial and
- 36 irreparable harm to the respondent's property or financial interests;
- 37 B. No other person appears to have authority and willingness to act in the
- 38 circumstances; and

1 C. There is reason to believe that a basis for appointment of a conservator under  
2 section 5-401 may exist.

3 **2. Duration of emergency conservatorship.** The duration of authority of an  
4 emergency conservator may not exceed 60 days and the emergency conservator may  
5 exercise only the powers specified in the order. The emergency conservator's authority  
6 may be extended once for not more than 120 days if the court finds that the conditions for  
7 appointment of an emergency conservator in subsection 1 continue.

8 **3. Notice before petition.** Prior to filing a petition under this section, notice must be  
9 provided as follows.

10 **A. The petitioner shall provide notice orally or in writing to the following:**

11 (1) The respondent and the respondent's spouse, parents, adult children and any  
12 domestic partner known to the court;

13 (2) Any person who is serving as guardian or conservator or who has care and  
14 custody of the respondent; and

15 (3) In case no other person is notified under subparagraph (1), at least one of the  
16 closest adult relatives of the respondent or, if there are none, an adult friend, if  
17 any can be found.

18 **B. Notice under paragraph A must include the following information:**

19 (1) The temporary authority that the petitioner is requesting;

20 (2) The location and telephone number of the court in which the petition is being  
21 filed; and

22 (3) The name of the petitioner and the intended date of filing.

23 **C. The petitioner shall state in an affidavit the date, time, location and method of**  
24 **providing the required notice under paragraph A and to whom the notice was**  
25 **provided. The court shall make a determination as to the adequacy of the method of**  
26 **providing notice and whether the petitioner complied with the notice requirements of**  
27 **this subsection. The requirements of section 5-410 do not apply to this section.**

28 **D. Notice is not required under this subsection in the following circumstances:**

29 (1) Giving notice would place the respondent at substantial risk of abuse, neglect  
30 or exploitation;

31 (2) Notice, if provided, would not be effective; or

32 (3) The court determines that there is good cause not to provide notice.

33 **E. If, prior to filing the petition, the petitioner does not provide notice as required**  
34 **under this subsection, the petitioner must state in the affidavit the reasons for not**  
35 **providing notice. If notice has not been provided, the court shall make a**  
36 **determination as to the sufficiency of the reason for not providing notice before**  
37 **issuing a temporary order.**

1           **4. Appointment without notice and hearing.** The court may appoint an emergency  
2 conservator without notice and a hearing only if the court finds from an affidavit or  
3 testimony that the respondent's property or financial interests will be substantially and  
4 irreparably harmed before a hearing on the appointment can be held. If the court appoints  
5 an emergency conservator without notice and a hearing, the court shall not later than 48  
6 hours after the appointment, notify the respondent, the respondent's attorney and other  
7 persons as the court determines of the appointment. If a person objects to the  
8 appointment, the court shall hold a hearing within 14 days.

9           **5. Not a determination.** Appointment of an emergency conservator under this  
10 section is not a determination that the conditions required for appointment of a  
11 conservator under section 5-401 have been satisfied.

12           **6. Removal; report; application.** The court may remove an emergency conservator  
13 appointed under this section at any time. The emergency conservator shall make any  
14 report the court requires. In other respects, the provisions of this Part concerning  
15 conservators apply to an emergency conservator appointed under this section.

16           **§5-414. Powers of conservator requiring court approval**

17           **1. Powers requiring specific authorization; notice.** Except as otherwise ordered  
18 by the court, a conservator must give notice to persons entitled to notice under section  
19 5-403, subsection 4 and receive specific authorization by the court before the conservator  
20 may exercise with respect to the conservatorship the power to:

21           A. Make gifts, except those of de minimis value;

22           B. Sell, encumber an interest in or surrender a lease to the primary dwelling of the  
23 individual subject to conservatorship;

24           C. Convey, release or disclaim contingent or expectant interests in property,  
25 including marital property and any right of survivorship incident to joint tenancy;

26           D. Exercise or release a power of appointment;

27           E. Create a revocable or irrevocable trust of property of the conservatorship estate,  
28 whether or not the trust extends beyond the duration of the conservatorship, or revoke  
29 or amend a trust revocable by the individual subject to conservatorship;

30           F. Exercise a right to elect an option or change a beneficiary under an insurance  
31 policy or annuity or surrender the policy or annuity for its cash value;

32           G. Exercise a right to an elective share in the estate of a deceased spouse or domestic  
33 partner of the individual subject to conservatorship or to renounce or disclaim a  
34 property interest;

35           H. Grant a creditor a priority for payment over creditors of the same or higher class  
36 if the creditor is providing property or services used to meet the basic living and care  
37 needs of the individual subject to conservatorship and preferential treatment  
38 otherwise would be impermissible under section 5-428, subsection 5; and

39           I. Make, modify, amend or revoke the will of the individual subject to  
40 conservatorship in compliance with the laws of the state governing for executing  
41 wills.

1           **2. Approval based on decision of individual.** In approving a conservator's exercise  
2 of the powers listed in subsection 1, the court shall consider primarily the decision the  
3 individual subject to conservatorship would make if able, to the extent the decision can be  
4 ascertained.

5           **3. To determine decision of individual.** To determine under subsection 2 the  
6 decision the individual subject to conservatorship would make if able, the court shall  
7 consider the individual's prior or current directions, preferences, opinions, values and  
8 actions, to the extent actually known or reasonably ascertainable. The court also shall  
9 consider:

10           A. The financial needs of the individual subject to conservatorship and individuals  
11 who are in fact dependent on the individual subject to conservatorship for support,  
12 and the interest of creditors;

13           B. Possible reduction of income, estate, inheritance or other tax liabilities;

14           C. Eligibility for governmental assistance;

15           D. The previous pattern of giving or level of support provided by the individual  
16 subject to conservatorship;

17           E. Any existing estate plan or lack of estate plan of the individual subject to  
18 conservatorship;

19           F. The life expectancy of the individual subject to conservatorship and the  
20 probability that the conservatorship will terminate before the individual's death; and

21           G. Any other relevant factors.

22           **4. Power of attorney for finances.** A conservator may not revoke or amend a  
23 power of attorney for finances executed by the individual subject to conservatorship. If a  
24 power of attorney for finances is in effect, a decision of the agent takes precedence over  
25 that of the conservator, unless there is a court order to the contrary.

26           **§5-415. Petition for order subsequent to appointment**

27           An individual subject to conservatorship or a person interested in the welfare of the  
28 individual may file a petition in the court for an order;

29           **1. Bond or collateral.** Requiring the conservator to furnish bond or collateral or  
30 additional bond or collateral or allowing a reduction in a bond or collateral previously  
31 furnished;

32           **2. Accounting.** Requiring an accounting for the administration of the  
33 conservatorship estate;

34           **3. Distribution.** Directing distribution;

35           **4. Removal; temporary or successor.** Removing the conservator and appointing a  
36 temporary or successor conservator;

37           **5. Modification.** Modifying the type of appointment or powers granted to the  
38 conservator, if the extent of protection or management previously granted is currently  
39 excessive or insufficient to meet the individual's needs, including because the individual's  
40 abilities or supports have changed;

1 6. Inventory, plan or report. Rejecting or modifying the conservator's inventory,  
2 plan or report; or

3 7. Other relief. Granting other appropriate relief.

4 **§5-416. Bond; alternative asset-protection arrangement**

5 1. Bond, alternative asset-protection arrangement required. The court shall  
6 require a conservator to furnish a bond with a surety the court specifies, or require an  
7 alternative asset-protection arrangement, conditioned on faithful discharge of all duties of  
8 the conservator. The court may waive the requirement only if the court finds that a bond  
9 or other asset-protection arrangement is not necessary to protect the interests of the  
10 individual subject to conservatorship. The court may not waive the requirement if the  
11 conservator is in the business of serving as a conservator and is being paid for the  
12 conservator's service except as provided by subsection 3.

13 2. Amount of bond; collateral. Unless the court directs otherwise, the bond  
14 required under this section must be in the amount of the aggregate capital value of the  
15 conservatorship estate, plus one year's estimated income, less the value of property  
16 deposited under arrangement requiring a court order for its removal and real property the  
17 conservator lacks power to sell or convey without specific court authorization. The court,  
18 in place of surety on a bond, may accept collateral for the performance of the bond,  
19 including a pledge of securities or a mortgage of real property.

20 3. Bond not required. A regulated financial service institution qualified to do trust  
21 business in this State need not give a bond.

22 **§5-417. Terms and requirements of bond**

23 1. Bond requirements. The following rules apply to the bond required under  
24 section 5-416.

25 A. Except as otherwise provided by the bond, the surety and the conservator are  
26 jointly and severally liable.

27 B. By executing a bond provided by a conservator, a surety submits to the  
28 jurisdiction of the court that issued letters of office to the conservator in a proceeding  
29 pertaining to the duties of the conservator in which the surety is named as a party.  
30 Notice of the proceeding must be given to the surety at the address shown in the court  
31 records at the place where the bond is filed and any other address of the surety then  
32 known to the person required to provide the notice.

33 C. On petition of a successor conservator or any person affected by a breach of the  
34 obligation of the bond, a proceeding may be brought against a surety for breach of the  
35 obligation of the bond.

36 D. A proceeding against the bond may be brought until liability under the bond is  
37 exhausted.

38 2. Proceeding against surety. A proceeding may not be brought against a surety of  
39 a bond under this section on a matter as to which a proceeding against the conservator is  
40 barred.

1 3. Notice of nonrenewal. The surety or sureties of the bond must immediately serve  
2 notice to the court and to the individual under conservatorship if the bond is not renewed  
3 by the conservator.

4 **§5-418. Duties of conservator**

5 1. Duties as fiduciary. A conservator is a fiduciary and has a duty of prudence and  
6 duty of loyalty to the individual subject to conservatorship.

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

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

19 4. Best interest of individual. If a conservator cannot make a decision under  
20 subsection 3 because the conservator does not know and cannot reasonably determine the  
21 decision that the individual subject to conservatorship probably would make if able, or  
22 the conservator reasonably believes the decision the conservator believes the individual  
23 would make would fail to preserve resources needed to maintain the individual's well-  
24 being and lifestyle or otherwise would unreasonably harm or endanger the welfare of the  
25 individual, the conservator shall act in accordance with the best interest of the individual.  
26 In determining the best interest of the individual, the conservator shall consider:

27 A. Information received from professionals and persons that demonstrate sufficient  
28 interest in the welfare of the individual;

29 B. Other information the conservator believes the individual would have considered  
30 if the individual were able to act; and

31 C. Other factors a reasonable person in the circumstances of the individual would  
32 consider, including consequences for others.

33 5. Prudent investor standard. Except when inconsistent with the conservator's  
34 duties under subsections 1 to 4, a conservator shall invest and manage the conservatorship  
35 estate as a prudent investor would, by considering:

36 A. The circumstances of the individual subject to conservatorship and the  
37 conservatorship estate;

38 B. General economic conditions;

39 C. The possible effect of inflation or deflation;

40 D. The expected tax consequences of an investment decision or strategy;

1 E. The role of each investment or course of action in relation to the conservatorship  
2 estate as a whole;

3 F. The expected total return from income and appreciation of capital;

4 G. The need for liquidity, regularity of income and preservation or appreciation of  
5 capital; and

6 H. The special relationship or value, if any, of specific property to the individual  
7 subject to conservatorship.

8 **6. Propriety of investment and management.** The propriety of a conservator's  
9 investment and management of the conservatorship estate is determined in light of the  
10 facts and circumstances existing when the conservator decides or acts and not by  
11 hindsight.

12 **7. Reasonable effort to verify facts.** A conservator shall make a reasonable effort  
13 to verify facts relevant to the investment and management of the conservatorship estate.

14 **8. Special skills or expertise.** A conservator that has special skills or expertise, or is  
15 named conservator in reliance on the conservator's representation of special skills or  
16 expertise, has a duty to use the special skills or expertise in carrying out the conservator's  
17 duties.

18 **9. Consistent with estate plan and other instrument.** In investing, selecting  
19 specific property for distribution and invoking a power of revocation or withdrawal for  
20 the use or benefit of the individual subject to conservatorship, a conservator shall  
21 consider any estate plan of the individual known or reasonably ascertainable to the  
22 conservator and may examine the will or other donative, nominative or other appointive  
23 instrument of the individual.

24 **10. Insurance.** A conservator shall maintain insurance on the insurable real and  
25 personal property of the individual subject to conservatorship, unless the conservatorship  
26 estate lacks sufficient funds to pay for insurance or a court issues an order finding:

27 A. The property lacks sufficient equity; or

28 B. Insuring the property would unreasonably dissipate the conservatorship estate or  
29 otherwise not be in the best interest of the individual subject to conservatorship.

30 **11. Cooperation, power of attorney for finances.** If a power of attorney for  
31 finances is in effect, a conservator shall cooperate with the agent to the extent feasible.

32 **12. Digital assets.** A conservator has access to and authority over a digital asset of  
33 the individual subject to conservatorship to the extent provided by the Revised Uniform  
34 Fiduciary Access to Digital Assets Act or by court order.

35 **13. Adult becomes capable.** A conservator of an adult shall notify the court if the  
36 condition of the adult subject to conservatorship has changed so that the adult is capable  
37 of exercising rights previously removed immediately upon learning of the change.

38 **§5-419. Conservator's plan**

39 **1. Plan; revision.** The petitioner for appointment as conservator for an adult shall  
40 file with the petition a plan for protecting, managing, expending and distributing the

1 assets of the conservatorship estate. When there is a change in circumstances or when the  
2 conservator seeks to deviate significantly from the conservator's plan previously filed, the  
3 conservator shall file with the court a revised plan for protecting, managing, expending  
4 and distributing the assets of the conservatorship estate. The plan must be based on the  
5 needs of the individual subject to conservatorship and take into account the best interest  
6 of the individual as well as the individual's preferences, values and prior directions, to the  
7 extent known to or reasonably ascertainable by the conservator. The conservator shall  
8 include in the plan:

9 A. A budget setting forth projected expenses and resources, including an estimate of  
10 the total amount of fees the conservator anticipates charging per year and a statement  
11 or list of the amount the conservator proposes to charge for each service the  
12 conservator anticipates providing to the individual subject to conservatorship;

13 B. How the conservator will involve the individual subject to conservatorship in  
14 decisions about management of the conservatorship estate;

15 C. Any step the conservator plans to take to develop or restore the ability of the  
16 individual subject to conservatorship to manage the conservatorship estate, and

17 D. An estimate of the duration of the conservatorship.

18 2. Notice of revised plan. A conservator shall give notice of the filing of a revised  
19 plan under subsection 1, along with a copy of the revised plan, to the individual subject to  
20 conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a  
21 subsequent order and other persons as the court determines. The notice must be given not  
22 later than 14 days after the filing.

23 3. Objection to revised plan. An individual subject to conservatorship and any  
24 person entitled under subsection 2 to receive notice and a copy of the conservator's  
25 revised plan may object to the revised plan.

26 4. Court review of plan; revised plan; approval. The court shall review a  
27 conservator's plan or revised plan filed under subsection 1. In deciding whether to  
28 approve the plan or revised plan, the court shall consider any objection under subsection  
29 3 and whether the plan or revised plan is consistent with the conservator's duties and  
30 powers. The court may not approve the plan or revised plan until 30 days after its filing.

31 5. Copy of approved plan. After a conservator's plan or revised plan under this  
32 section is approved by the court, the conservator shall provide a copy of the plan or  
33 revised plan to the individual subject to conservatorship, all persons entitled to notice  
34 under section 5-411, subsection 5 or a subsequent order and other persons as the court  
35 determines.

36 **§5-420. Inventory; records**

37 1. Inventory. Not later than 60 days after appointment, a conservator shall prepare  
38 and file with the appointing court a detailed inventory of the conservatorship estate,  
39 together with an oath or affirmation that the inventory is believed to be complete and  
40 accurate as far as information permits.

41 2. Notice of filing of inventory. A conservator shall give notice of the filing of an  
42 inventory to the individual subject to conservatorship, all persons entitled to notice under



1 section 5-411, subsection 5 or a subsequent order and other persons as the court  
2 determines. The notice must be given not later than 14 days after the filing.

3 **3. Records.** A conservator shall keep records of the administration of the  
4 conservatorship estate and make them available for examination on reasonable request of  
5 the individual subject to conservatorship, a guardian of the individual or any person the  
6 conservator or as the court determines.

7 **§5-421. Administrative powers of conservator not requiring court approval**

8 **1. Powers unless limited; powers of trustee.** Except as otherwise provided in  
9 section 5-414 or qualified or limited in the court's order of appointment and stated in the  
10 letters of office, a conservator has all powers granted in this section and any additional  
11 powers granted to a trustee by law of this State other than this Part.

12 **2. Powers of conservator.** A conservator, acting reasonably and consistent with the  
13 fiduciary duties of the conservator to accomplish the purpose of the appointment, without  
14 specific court authorization or confirmation, may:

15 A. Collect, hold and retain property included in the conservatorship estate, including  
16 property in which the conservator has a personal interest and real property in another  
17 state, until the conservator determines disposition of the property should be made;

18 B. Receive additions to the conservatorship estate;

19 C. Continue or participate in the operation of a business or other enterprise;

20 D. Acquire an undivided interest in property included in the conservatorship estate in  
21 which the conservator, in a fiduciary capacity, holds an undivided interest;

22 E. Invest assets of the conservatorship estate;

23 F. Deposit money of the conservatorship estate in a financial institution, including  
24 one operated by the conservator;

25 G. Acquire or dispose of property of the conservatorship estate, including real  
26 property in another state, for cash or on credit, at public or private sale, and manage,  
27 develop, improve, exchange, partition, change the character of or abandon property  
28 included in the conservatorship estate;

29 H. Make ordinary or extraordinary repairs or alterations in a building or other  
30 structure, demolish any improvement, or raze existing or erect a new party wall or  
31 building;

32 I. Subdivide, develop or dedicate land to public use, make or obtain the vacation of a  
33 plat and adjust a boundary, adjust a difference in valuation, exchange or partition land  
34 by giving or receiving consideration and dedicate an easement to public use without  
35 consideration;

36 J. Enter for any purpose into a lease of property as lessor or lessee, with or without  
37 an option to purchase or renew, for a term within or extending beyond the term of the  
38 conservatorship;

39 K. Enter into a lease or arrangement for exploration and removal of minerals or other  
40 natural resources or a pooling or unitization agreement;

- 1 L. Grant an option involving disposition of property included in the conservatorship  
2 estate or accept or exercise an option for the acquisition of property;
- 3 M. Vote a security, in person or by general or limited proxy;
- 4 N. Pay a call, assessment or other sum chargeable or accruing against or on account  
5 of a security;
- 6 O. Sell or exercise a stock subscription or conversion right;
- 7 P. Consent, directly or through a committee or agent, to the reorganization,  
8 consolidation, merger, dissolution or liquidation of a corporation or other business  
9 enterprise;
- 10 Q. Hold a security in the name of a nominee or in other form without disclosure of  
11 the conservatorship so that title to the security may pass by delivery;
- 12 R. Insure the conservatorship estate against damage or loss in accordance with  
13 section 5-418, subsection 10 and the conservator against liability with respect to a 3rd  
14 party;
- 15 S. Borrow money, with or without security, to be repaid from the conservatorship  
16 estate or otherwise;
- 17 T. Advance money for the protection of the conservatorship estate or the individual  
18 subject to conservatorship and all expenses, losses and liability sustained in the  
19 administration of the conservatorship estate or because of holding any property for  
20 which the conservator has a lien on the conservatorship estate as against the  
21 individual subject to conservatorship for the advances;
- 22 U. Pay or contest a claim, settle a claim by or against the conservatorship estate or  
23 the individual subject to conservatorship by compromise, arbitration or otherwise, or  
24 release, in whole or in part, a claim belonging to the conservatorship estate to the  
25 extent the claim is uncollectible;
- 26 V. Pay a tax, assessment, compensation of the conservator or any guardian, and other  
27 expense incurred in the collection, care, administration and protection of the  
28 conservatorship estate;
- 29 W. Pay a sum distributable to an individual subject to conservatorship or individual  
30 who is in fact dependent on the individual subject to conservatorship by paying the  
31 sum to the distributee or for the use of the distributee:
- 32 (1) To the guardian of the distributee;
- 33 (2) To a distributee's custodian under the Maine Uniform Transfers to Minors  
34 Act or custodial trustee under the Uniform Custodial Trust Act of any state; or
- 35 (3) If there is no guardian, custodian or custodial trustee, to a relative or other  
36 person having physical custody of the distributee;
- 37 X. Prosecute or defend an action, claim or proceeding in any jurisdiction for the  
38 protection of the conservatorship estate or of the conservator in the performance of  
39 the conservator's duties;

1 Y. Structure the finances of the individual subject to conservatorship to establish  
2 eligibility for a public benefit, including by making gifts consistent with the  
3 individual's preferences, values and prior directions, if the conservator's action does  
4 not jeopardize the individual's welfare and otherwise is consistent with the  
5 conservator's duties; and

6 Z. Execute and deliver any instrument that will accomplish or facilitate the exercise  
7 of a power vested in the conservator.

8 **§5-422. Distribution from conservatorship estate**

9 Except as otherwise provided in section 5-414 or qualified or limited in the court's  
10 order of appointment and stated in the letters of office, and unless contrary to a  
11 conservator's plan filed under section 5-419, a conservator may expend or distribute  
12 income or principal of the conservatorship estate without specific court authorization or  
13 confirmation for the support, care, education, health or welfare of the individual subject  
14 to conservatorship or an individual who is in fact dependent on the individual subject to  
15 conservatorship, including the payment of child or spousal support, in accordance with  
16 the following rules.

17 **1. Appropriate standard.** A conservator shall consider a recommendation relating  
18 to the appropriate standard of support, care, education, health or welfare for the individual  
19 subject to conservatorship, or an individual who is in fact dependent on the individual  
20 subject to conservatorship, made by a guardian of the individual subject to  
21 conservatorship, if any, and, if the individual subject to conservatorship is a minor, a  
22 recommendation made by a guardian or parent of the minor.

23 **2. Liability for distribution.** A conservator acting in compliance with the  
24 conservator's duties under section 5-418 is not liable for a distribution made based on a  
25 recommendation under subsection 1 unless the conservator knows the distribution is not  
26 in the best interest of the individual subject to conservatorship.

27 **3. Considerations for expenditure, distribution.** In making an expenditure or  
28 distribution under this subsection, the conservator shall consider:

29 A. The size of the conservatorship estate, the estimated duration of the  
30 conservatorship and the likelihood the individual subject to conservatorship, at some  
31 future time, may be fully self-sufficient and able to manage the individual's financial  
32 affairs and the conservatorship estate;

33 B. The accustomed standard of living of the individual subject to conservatorship  
34 and an individual who is in fact dependent on the individual subject to  
35 conservatorship;

36 C. Other money or source used for the support of the individual subject to  
37 conservatorship; and

38 D. The preferences, values and prior directions of the individual subject to  
39 conservatorship.

40 **4. Compensation or reimbursement.** Money expended or distributed under this  
41 subsection may be paid by the conservator to any person, including the individual subject  
42 to conservatorship, as reimbursement for expenditures the conservator might have made,

1 or in advance for services to be rendered to the individual subject to conservatorship if it  
2 is reasonable to expect the services will be performed and advance payment is customary  
3 or reasonably necessary under the circumstances.

4 **§5-423. Conservator's report and accounting; monitoring**

5 **1. Report.** A conservator shall file a report in a record with the court regarding the  
6 administration of the conservatorship estate annually unless the court otherwise directs,  
7 on resignation or removal, on termination of the conservatorship and at any other time as  
8 the court directs.

9 **2. Contents.** A report under subsection 1 must state or contain:

10 A. An accounting that contains a list of property included in the conservatorship  
11 estate and of the receipts, disbursements, liabilities and distributions during the period  
12 for which the report is made;

13 B. A list of the services provided to the individual subject to conservatorship;

14 C. A copy of the conservator's most recently approved plan and a statement whether  
15 the conservator has deviated from the plan and, if so, how and why the conservator  
16 has deviated;

17 D. Any recommended change in the conservatorship, including its scope and  
18 whether the conservatorship needs to continue;

19 E. Annual credit report of the individual subject to conservatorship and to the extent  
20 feasible, a copy of the most recent reasonably available financial statements  
21 evidencing the status of bank accounts, investment accounts and mortgages or other  
22 debts of the individual subject to conservatorship, along with, with all but the last 4  
23 digits of the account numbers and the individual's social security number redacted;

24 F. Anything of more than de minimis value that the conservator, any individual who  
25 resides with the conservator or the spouse, domestic partner, parent, child or sibling  
26 of the conservator has received from a person providing goods or services to the  
27 individual subject to conservatorship;

28 G. Any business relation the conservator has with a person providing goods or  
29 services to the individual subject to conservatorship;

30 H. Any business relation the conservator has with a person the conservator has paid  
31 or a person that has benefited from the property of the individual subject to  
32 conservatorship; and

33 I. Whether any coconservator or successor conservator appointed to serve when a  
34 designated future event occurs is alive and able to serve.

35 **3. Visitor.** The court may appoint a visitor to review a report under this section or  
36 conservator's plan under section 5-419, interview the individual subject to  
37 conservatorship or conservator and investigate any matter involving the conservatorship  
38 as the court directs. In connection with the report, the court may order the conservator to  
39 submit the conservatorship estate to appropriate examination in a manner the court  
40 directs.

1 4. Notice of report; copy. Notice of the filing under this section of a conservator's  
2 report, together with a copy of the report, must be provided to the individual subject to  
3 conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a  
4 subsequent order, and a person the court determines is entitled to the report.  
5 Notwithstanding section 5-409, the credit report provided pursuant to subsection 2,  
6 paragraph E is confidential and may not be provided with the rest of the conservator's  
7 report except to the individual subject to conservatorship. The notice and report must be  
8 given not later than 14 days after filing.

9 5. Monitoring; frequency of report. The court shall establish procedures for  
10 monitoring a conservator's plan and report and review the plan and report not less than  
11 annually to determine whether:

12 A. The plan and report provide sufficient information to establish the conservator has  
13 complied with the conservator's duties;

14 B. The conservatorship should continue; and

15 C. The conservator's requested fees, if any, should be approved.

16 6. Noncompliance. If the court determines there is reason to believe the conservator  
17 has not complied with the conservator's duties or the conservatorship should not continue,  
18 the court:

19 A. Shall notify the conservator, the individual subject to conservatorship and all  
20 persons entitled to notice under section 5-411, subsection 5 or a subsequent order;

21 B. May require additional information from the conservator;

22 C. May appoint a visitor to interview the individual subject to conservatorship or  
23 conservator and investigate any matter involving the conservatorship as the court  
24 directs; and

25 D. May, consistent with sections 5-430 and 5-431, hold a hearing to consider  
26 removal of the conservator, termination of the conservatorship or a change in the  
27 powers granted to the conservator or terms of the conservatorship.

28 7. Unreasonable fees. If the court determines there is reason to believe a  
29 conservator's requested fees are not reasonable, the court shall hold a hearing to adjust the  
30 fees.

31 8. Approval of report or accounting. A conservator may petition the court for  
32 approval of a report or accounting filed under this section. The court after review may  
33 approve the report or accounting. An order, after notice and hearing, approving a final  
34 report discharges the conservator from all liabilities, claims and causes of action by a  
35 person given notice of the report and the hearing as to a matter adequately disclosed in  
36 the report.

37 §5-424. Attempted transfer of property by individual subject to conservatorship

38 1. Interest not transferable or assignable; not subject to claims. The interest of  
39 an individual subject to conservatorship in property included in the conservatorship estate  
40 is not transferable or assignable by the individual and is not subject to levy, garnishment  
41 or similar process for claims against the individual unless allowed under section 5-428.

1           **2. Contract void against individual and property.** If an individual subject to  
2 conservatorship enters into a contract after having the right to enter the contract removed  
3 by the court, the contract is void against the individual and the individual's property but is  
4 enforceable against the person that contracted with the individual.

5           **3. Protection of 3rd parties.** A 3rd party that deals with an individual subject to  
6 conservatorship with respect to property included in the conservatorship estate is entitled  
7 to protection provided by law of this State other than this Act.

8           **§5-425. Transaction involving conflict of interest**

9           A transaction involving a conservatorship estate that is affected by a substantial  
10 conflict between the conservator's fiduciary duties and personal interests is voidable  
11 unless the transaction is authorized by the court by specific order after notice to all  
12 persons entitled to notice under section 5-411, subsection 5 or a subsequent order. A  
13 transaction affected by a substantial conflict between fiduciary duties and personal  
14 interests includes a sale, encumbrance or other transaction involving the conservatorship  
15 estate entered into by the conservator, an individual with whom the conservator resides,  
16 the spouse, domestic partner, descendant, sibling, agent or attorney of the conservator, or  
17 a corporation or other enterprise in which the conservator has a substantial beneficial  
18 interest.

19           **§5-426. Protection of person dealing with conservator**

20           **1. Protection of 3rd party.** A person that assists or deals with a conservator in good  
21 faith and for value in any transaction, other than one requiring a court order under section  
22 5-414, is protected as though the conservator properly exercised the power in question.  
23 Knowledge by a person that the person is dealing with a conservator does not alone  
24 require the person to inquire into the existence of the authority of the conservator or the  
25 propriety of the conservator's exercise of authority, but restrictions on authority that are  
26 stated in letters of office, or as otherwise provided by law, are effective as to the person.  
27 A person that pays or delivers property to a conservator is not responsible for proper  
28 application of the property.

29           **2. Application of protection.** Protection under subsection 1 extends to a procedural  
30 irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of  
31 office and is not a substitute for protection provided to a person that assists or deals with  
32 a conservator by comparable provisions in law of this State other than this Act relating to  
33 commercial transactions or simplifying transfers of securities by fiduciaries.

34           **§5-427. Death of individual subject to conservatorship**

35           **1. Delivery of will.** If an individual subject to conservatorship dies, the conservator  
36 shall deliver to the court for safekeeping any will of the individual in the conservator's  
37 possession and inform the personal representative named in the will if feasible or if not  
38 feasible, a beneficiary named in the will, of the delivery.

39           **2. Powers and duties of personal representative; notice.** If 40 days after the death  
40 of an individual subject to conservatorship no personal representative has been appointed  
41 and an application or petition for appointment is not before the court, the conservator may  
42 apply to exercise the powers and duties of a personal representative to administer and

1 distribute the decedent's estate. The conservator shall give notice to a person nominated  
2 as personal representative by a will of the decedent of which the conservator is aware and  
3 to all of the decedent's heirs and all devisees of the will, if any. The court may grant the  
4 application if there is no objection and endorse the letters of office to note that the  
5 individual formerly subject to conservatorship is deceased and the conservator has  
6 acquired the powers and duties of a personal representative.

7 **3. Effect of appointment as personal representative.** Issuance of an order under  
8 this section has the effect of an order of appointment of a personal representative under  
9 section 3-308 and Article 3, Parts 6 to 10.

10 **4. Distribution; discharge.** On the death of an individual subject to  
11 conservatorship, the conservator shall conclude the administration of the conservatorship  
12 estate by distributing property subject to conservatorship to the individual's successors.  
13 Not later than 30 days after distribution, the conservator shall file a final report and  
14 petition for discharge.

15 **§5-428. Presentation and allowance of claim**

16 **1. Claims against estate or protected person.** A conservator may pay, or secure by  
17 encumbering property included in the conservatorship estate, a claim against the  
18 conservatorship estate or the individual subject to conservatorship arising before or  
19 during the conservatorship on presentation and allowance in accordance with the  
20 priorities under subsection 4. A claimant may present a claim by:

21 A. Sending or delivering to the conservator a statement in a record of the claim,  
22 indicating its basis, the name and address of the claimant and the amount claimed; or

23 B. Filing with the court a record of the claim, in a form acceptable to the court, and  
24 sending or delivering a copy of the statement to the conservator.

25 **2. Presented claim; allowance; disallowance.** A claim under subsection 1 is  
26 presented on receipt by the conservator of the statement of claim by the conservator or  
27 the filing with the court of the claim, whichever first occurs. A presented claim is  
28 allowed if it is not disallowed by the conservator in a record sent or delivered to the  
29 claimant not later than 60 days after its presentation. Before payment the conservator  
30 may change an allowance of the claim to a disallowance in whole or in part, but not after  
31 allowance under a court order or order directing payment of the claim. Presentation of a  
32 claim tolls the running of a statute of limitations that has not expired relating to the claim  
33 until 30 days after its disallowance.

34 **3. Unpaid claim.** A claimant whose claim under subsection 1 has not been paid may  
35 petition the court to determine the claim at any time before it is barred by a statute of  
36 limitations, and the court may order its allowance, payment or security by encumbering  
37 property included in the conservatorship estate. If a proceeding is pending against the  
38 individual subject to conservatorship at the time of appointment of the conservator or is  
39 initiated thereafter, the moving party shall give the conservator notice of the proceeding if  
40 it could result in creating a claim against the conservatorship estate.

41 **4. Distribution; order.** If a conservatorship estate is likely to be exhausted before  
42 all existing claims are paid, the conservator shall distribute the estate in money or in kind  
43 in payment of claims in the following order:

- 1           A. Costs and expenses of administration;  
2           B. A claim of the Federal Government or State Government having priority under  
3           law other than this act;  
4           C. A claim incurred by the conservator for support, care, education, health or welfare  
5           previously provided to the individual subject to conservatorship or an individual who  
6           is in fact dependent on the individual subject to conservatorship;  
7           D. A claim arising before the conservatorship; and  
8           E. All other claims.

9           **5. Preference of claims.** Preference may not be given in the payment of a claim  
10          under subsection 4 over another claim of the same class. A claim due and payable may  
11          not be preferred over a claim not due unless:

12          A. Doing so would leave the conservatorship estate without sufficient funds to pay  
13          the basic living and health care expenses of the individual subject to conservatorship;  
14          and

15          B. The court authorizes the preference under section 5-414, subsection 1, paragraph  
16          H.

17          **6. Security interest in conservatorship estate.** If assets of a conservatorship estate  
18          are adequate to meet all existing claims, the court, acting in the best interest of the  
19          individual subject to conservatorship, may order the conservator to grant a security  
20          interest in the conservatorship estate for payment of a claim at a future date.

21          **§5-429. Personal liability of conservator**

22          **1. Not personally liable.** Except as otherwise agreed by a conservator, the  
23          conservator is not personally liable on a contract properly entered into in a fiduciary  
24          capacity in the course of administration of the conservatorship estate unless the  
25          conservator fails to reveal in the contract or before entering into the contract the  
26          conservator's representative capacity.

27          **2. Personally liable.** A conservator is personally liable for an obligation arising  
28          from control of property of the conservatorship estate or an act or omission occurring in  
29          the course of administration of the conservatorship estate only if the conservator is  
30          personally at fault.

31          **3. Claims asserted against conservator.** A claim based on a contract entered into  
32          by a conservator in a fiduciary capacity, an obligation arising from control of property  
33          included in the conservatorship estate or a claim based on a tort committed in the course  
34          of administration of the conservatorship estate may be asserted against the  
35          conservatorship estate in a proceeding against the conservator in a fiduciary capacity,  
36          whether or not the conservator is personally liable for the claim.

37          **4. Determination of liability.** A question of liability between a conservatorship  
38          estate and the conservator personally may be determined in a proceeding for accounting,  
39          surcharge or indemnification or another appropriate proceeding or action.



1 **§5-430. Removal of conservator; appointment of successor**

2 **1. Removal by court.** The court may remove a conservator for failure to perform  
3 the conservator's duties or other good cause and appoint a successor conservator to  
4 assume the duties of the conservator.

5 **2. Hearing upon petition, communication or determination.** The court shall  
6 conduct a hearing to determine whether to remove a conservator and appoint a successor  
7 on:

8 **A. Petition of the individual subject to conservatorship, conservator or person**  
9 **interested in the welfare of the individual that contains allegations that, if true, would**  
10 **support a reasonable belief that removal of the conservator and appointment of a**  
11 **successor may be appropriate, but the court may decline to hold a hearing if a petition**  
12 **based on the same or substantially similar facts was filed within the preceding 6**  
13 **months;**

14 **B. Communication from the individual subject to conservatorship, conservator or**  
15 **person interested in the welfare of the individual that supports a reasonable belief that**  
16 **removal of the conservator and appointment of a successor may be appropriate; or**

17 **C. Determination by the court that a hearing would be in the best interest of the**  
18 **individual subject to conservatorship.**

19 **3. Notice of petition.** Notice of a petition under subsection 2, paragraph A must be  
20 given to the individual subject to conservatorship, the conservator and such other persons  
21 as the court determines.

22 **4. Attorney for individual subject to conservatorship.** If an individual subject to  
23 conservatorship who seeks to remove the conservator and have a successor appointed is  
24 not represented by an attorney, the court shall appoint an attorney under the same  
25 conditions as in section 5-406. The court shall award reasonable attorney's fees to the  
26 attorney for the individual as provided in section 5-119.

27 **5. Selection of successor conservator.** In selecting a successor conservator, the  
28 court shall follow the procedures under section 5-410.

29 **6. Notice of appointment of successor conservator.** Not later than 30 days after  
30 appointing a successor conservator, the court shall give notice of the appointment to the  
31 individual subject to conservatorship and all persons entitled to the notice under section  
32 5-411, subsection 5 or a subsequent order.

33 **§5-431. Termination or modification of conservatorship**

34 **1. Conservatorship for a minor.** A conservatorship for a minor terminates on the  
35 earlier of:

36 **A. An order of the court;**

37 **B. The minor becoming an adult or, if the minor consents or the court finds by clear**  
38 **and convincing evidence that substantial harm to the minor's interests is otherwise**  
39 **likely, attaining 21 years of age;**

40 **C. Emancipation of the minor; and**

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D. Death of the minor.

2. Conservatorship for an adult. A conservatorship for an adult terminates on order of the court or when the adult dies.

3. Petition for termination or modification. An individual subject to conservatorship, the conservator or a person interested in the welfare of the individual may petition for:

A. Termination of the conservatorship on the ground that a basis for appointment under section 5-401 does not exist or termination would be in the best interest of the individual, or for other good cause; or

B. Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

4. Hearing. The court shall conduct a hearing to determine whether termination or modification of a conservatorship is appropriate on:

A. Petition under subsection 3 that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;

B. A communication from the individual subject to conservatorship, the conservator or a person interested in the welfare of the individual that supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because of a change in the functional needs of the individual or in the supports or services available to the individual;

C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the individual subject to conservatorship have changed or a protective arrangement of conservatorship or other less restrictive alternatives are available; or

D. A determination by the court that a hearing would be in the best interest of the individual.

5. Notice of petition. Notice of a petition under subsection 3 must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

6. Termination. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless a basis for appointment of a conservator under section 5-401 is satisfied.

7. Modification. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.

8. Safeguard rights of individual. Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.

1           **9. Attorney for individual subject to conservatorship.** If an individual subject to  
2 conservatorship who seeks to terminate or modify the terms of the conservatorship is not  
3 represented by an attorney, the court shall appoint an attorney under the same conditions  
4 in section 5-406. The court shall award reasonable attorney's fees to the individual's  
5 attorney as provided in section 5-119.

6           **10. Property; report; petition for discharge.** On termination of a conservatorship  
7 and whether or not formally distributed by the conservator, property of the  
8 conservatorship estate passes to the individual formerly subject to conservatorship or the  
9 individual's heirs, successors or assigns. The order of termination must provide for  
10 expenses of administration and direct the conservator to file a final report and petition for  
11 discharge on approval of the final report.

12           **11. Discharge.** The court shall enter a final order of discharge on the approval of the  
13 final report and satisfaction by the conservator of any other condition placed by the court  
14 on the conservator's discharge.

15           **12. Distribution.** On the death of an individual subject to conservatorship or other  
16 event terminating or partially terminating the conservatorship, the conservator shall  
17 proceed expeditiously to distribute the conservatorship estate to the individual or other  
18 persons entitled to it. The conservator may take reasonable measures necessary to  
19 preserve the conservatorship estate until distribution can be effected.

20           **§5-432. Transfer for benefit of minor without appointment of conservator**

21           **1. Transfer of money or property to minor.** Unless a person required to transfer  
22 money or personal property to a minor knows that a conservator has been appointed or a  
23 proceeding is pending for conservatorship for the minor, the person may transfer an  
24 amount or value not exceeding \$14,000 in a 12-month period to:

25           A. A person that has the care or custody of the minor and with whom the minor  
26 resides;

27           B. A guardian of the minor;

28           C. A custodian under the Maine Uniform Transfers to Minors Act or Uniform Gifts  
29 to Minors Act; or

30           D. A financial institution as a deposit in an interest-bearing account or certificate in  
31 the sole name of the minor and the person shall give notice to the minor of the  
32 deposit.

33           **2. Proper application of transferred money or property.** A person that transfers  
34 money or property under this section is not responsible for its proper application.

35           **3. Application of money or property.** A person that receives money or property for  
36 a minor under subsection 1, paragraph A or B may apply it only to the support, care,  
37 education, health and welfare of the minor, and may not derive a personal financial  
38 benefit from it, except for reimbursement for necessary expenses. Funds in excess of  
39 those required to be so applied must be preserved for the future support, care, education,  
40 health or welfare of the minor, and the balance, if any, transferred to the minor when the  
41 minor becomes an adult or is otherwise emancipated.

**PART 5**

**OTHER PROTECTIVE ARRANGEMENTS**

**§5-501. Authority for protective arrangements**

**1. Order protective arrangement.** Under this Part, a court:

**A. Upon receiving a petition for a guardianship for an adult may order one or more protective arrangements instead of guardianship as a less restrictive alternative to guardianship; and**

**B. Upon receiving a petition for a conservatorship for an individual may order one or more protective arrangements instead of conservatorship as a less restrictive alternative to conservatorship.**

**2. Protective arrangement instead of guardianship.** A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this Part for one or more protective arrangements instead of guardianship.

**3. Protective arrangement instead of conservatorship.** The following persons may petition under this Part for one or more protective arrangements instead of conservatorship:

**A. The individual for whom the protective arrangements are sought;**

**B. A person interested in the property, financial affairs or welfare of the individual, including a person that would be adversely affected by lack of effective management of property or financial affairs of the individual; and**

**C. The guardian of the individual.**

**§5-502. Basis for protective arrangements instead of guardianship for adult**

**1. Findings.** After the hearing conducted on a petition for guardianship under section 5-302 or one or more protective arrangements instead of guardianship under section 5-501, subsection 1, the court may enter an order for one or more protective arrangements instead of guardianship under subsection 2 if the court finds by clear and convincing evidence that:

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

**B. The respondent's identified needs cannot be met by less restrictive alternatives.**

**2. Orders other than guardianship.** If the court makes the findings under subsection 1, the court, instead of appointing a guardian, may:

**A. Authorize or direct one or more transactions necessary to meet the respondent's need for health, safety or care, including but not limited to:**

**(1) One or more particular medical treatments or refusals of particular medical treatments;**

- 1           (2) A move to a specified place of dwelling; or  
2           (3) Visitation or supervised visitation between the respondent and another  
3           person;
- 4           B. Restrict access to the respondent by a person whose access places the respondent  
5           at serious risk of physical or psychological harm; and
- 6           C. Order other arrangements on a limited basis that are appropriate.

7           **3. Factors.** In deciding whether to enter an order under this section, the court shall  
8           consider the factors under sections 5-313 and 5-314 that a guardian must consider when  
9           making a decision on behalf of an adult subject to guardianship.

10           **§5-503. Basis for protective arrangements instead of conservatorship for adult or**  
11           **minor**

12           **1. Findings.** After the hearing conducted on a petition for conservatorship for an  
13           adult under section 5-402 or one or more protective arrangements instead of  
14           conservatorship for an adult under section 5-501, subsection 3, the court may enter an  
15           order for one or more protective arrangements instead of conservatorship under  
16           subsection 3 for the respondent if the court finds:

17           A. By clear and convincing evidence that the respondent is unable to manage  
18           property or financial affairs because of a limitation in the ability to receive and  
19           evaluate information or make or communicate decisions, even with appropriate  
20           supportive services, technological assistance or supported decision making, or the  
21           adult is missing, detained or unable to return to the United States;

22           B. By a preponderance of the evidence that:

23           (1) The respondent has property likely to be wasted or dissipated unless  
24           management is provided; or

25           (2) The order under subsection 3 is necessary or desirable to obtain or provide  
26           money needed for the support, care, education, health or welfare of the adult or  
27           an individual who is entitled to the respondent's support and protection; and

28           C. The respondent's identified needs cannot be met by less restrictive alternatives.

29           **2. Protective arrangements for minors.** After the hearing conducted on a petition  
30           for conservatorship for a minor under section 5-402 or a protective arrangement instead  
31           of conservatorship for a minor under section 5-501, subsection 3, the court may enter an  
32           order for a protective arrangement or protective arrangements instead of conservatorship  
33           under subsection 3 for the respondent if the court finds by a preponderance of the  
34           evidence that the minor owns money or property requiring management or protection that  
35           cannot be provided otherwise and:

36           A. The minor has or may have financial affairs that may be put at unreasonable risk  
37           or hindered because of the minor's age; or

38           B. The order under subsection 3 is necessary or desirable to obtain or provide money  
39           needed for the support, care, education, health or welfare of the minor.

1 **3. Orders other than conservatorship.** If the court makes the findings under  
2 subsection 1 or 2, the court, instead of appointing a conservator, may:

3 A. Authorize or direct a transaction necessary to protect the financial interest or  
4 property of the respondent, including but not limited to:

5 (1) An action to establish eligibility for benefits;

6 (2) Payment, delivery, deposit or retention of funds or property;

7 (3) Sale, mortgage, lease or other transfer of property;

8 (4) Purchase of an annuity;

9 (5) Entry into a contractual relationship, including a contract to provide for  
10 personal care, supportive services, education, training or employment;

11 (6) Addition to or establishment of a trust;

12 (7) Ratification or invalidation of a contract, trust, will or other transaction,  
13 including a transaction related to the property or business affairs of the  
14 respondent; or

15 (8) Settlement of a claim; or

16 B. Restrict access to the respondent's property by a person whose access to the  
17 property places the respondent at serious risk of financial harm.

18 **4. Order to restrict access.** If, after the hearing conducted under section 5-505 on a  
19 petition under section 5-501, subsection 1, paragraph B or subsection 3, a court may enter  
20 an order to restrict access to the respondent or the respondent's property by a person that  
21 the court finds by clear and convincing evidence:

22 A. Through fraud, coercion, duress or the use of deception and control, caused or  
23 attempted to cause an action that would have resulted in financial harm to the  
24 respondent or the respondent's property; and

25 B. Poses a serious risk of substantial financial harm to the respondent or the  
26 respondent's property.

27 **5. Factors.** In deciding whether to enter an order under subsection 3 or 4, the court  
28 shall consider the factors under section 5-418 a conservator must consider when making a  
29 decision on behalf of an individual subject to conservatorship.

30 **6. Minors; factors.** In deciding whether to enter an order under subsection 3 or 4  
31 for a respondent who is a minor, the court also shall consider the best interest of the  
32 respondent, the preference of the parents of the respondent and the preference of the  
33 respondent if the minor is 14 years of age or older.

34 **§5-504. Petition**

35 **1. Petition contents.** A petition for one or more protective arrangements instead of  
36 guardianship or conservatorship must set forth the petitioner's name, principal residence,  
37 current street address, if different, relationship to the respondent, interest in the protective  
38 arrangements and state or contain the following to the extent known:

- 1       A. The respondent's name, age, principal residence, current street address, if  
2       different, and, if different, address of the dwelling in which it is proposed that the  
3       respondent will reside if the petition is granted;
- 4       B. The name and address of the respondent's:
- 5               (1) Spouse or domestic partner or, if the respondent has none, any adult with  
6               whom the respondent has shared household responsibilities for more than 6  
7               months in the 12-month period before the filing of the petition;
- 8               (2) Adult children or, if the respondent has none, each parent and adult sibling of  
9               the respondent, or, if none, at least one adult nearest in kinship to the respondent  
10              who can be found with reasonable diligence; and
- 11              (3) Adult stepchildren whom the respondent actively parented during the  
12              stepchildren's minor years and with whom the respondent had an ongoing  
13              relationship within 2 years before the filing of the petition;
- 14       C. The name and current address of each of the following, if applicable:
- 15              (1) A person responsible for care or custody of the respondent;
- 16              (2) Any attorney currently representing the respondent;
- 17              (3) The representative payee appointed by the United States Social Security  
18              Administration for the respondent;
- 19              (4) A guardian or conservator acting for the respondent in this State or in another  
20              jurisdiction;
- 21              (5) A trustee or custodian of a trust or custodianship of which the respondent is a  
22              beneficiary;
- 23              (6) The United States Department of Veterans Affairs fiduciary for the  
24              respondent;
- 25              (7) An agent designated under a power of attorney for health care in which the  
26              respondent is identified as the principal;
- 27              (8) An agent designated under a power of attorney for finances in which the  
28              respondent is identified as the principal;
- 29              (9) A person nominated as guardian or conservator by the respondent;
- 30              (10) A person nominated as guardian by the respondent's parent or spouse or  
31              domestic partner in a will or other signed record;
- 32              (11) A proposed guardian and the reason the proposed guardian should be  
33              selected;
- 34              (12) A person known to have routinely assisted the respondent with decision  
35              making within the 6 months before the filing of the petition; and
- 36              (13) If the respondent is a minor;

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(a) An adult with whom the respondent resides if not otherwise listed; and

(b) Any person not otherwise listed that had primary care or custody of the respondent for 60 or more days during the 2 years immediately preceding the filing of the petition or any person that had primary care or custody of the respondent for at least 730 days during the 5 years immediately preceding the filing of the petition;

D. The nature of the protective arrangement or protective arrangements sought;

E. The reason a protective arrangement sought is necessary, including a brief description of:

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

(2) Any less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented and, if there are none, the reason they have not been considered or implemented; and

(3) The reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;

F. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

G. Whether the respondent needs an interpreter, translator or other form of support to communicate effectively with the court or understand court proceedings;

H. If one or more protective arrangements instead of conservatorship are sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

I. If one or more protective arrangements instead of guardianship are sought and the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

2. Attorney for petitioner. A petition under subsection 1 must state the name and address of an attorney representing the petitioner, if any.

**§5-505. Notice and hearing**

1. Date, time and place for hearing. On receipt of a petition under section 5-501, the court shall set a date, time and place for hearing on the petition.

2. Notice to respondent. A copy of a petition under section 5-501 and notice of the hearing under subsection 1 must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.



1 3. Notice to others. In a hearing under subsection 1, notice of the hearing also must  
2 be given to the persons listed in the petition and any other person interested in the  
3 respondent's welfare as the court determines. Failure to give notice under this subsection  
4 does not preclude the court from granting the petition.

5 4. Notice of petition after order. Notice of a hearing on a petition filed under this  
6 Act after the court has ordered a protective arrangement or protective arrangements under  
7 this Part, together with a copy of the petition, must be given to the respondent and any  
8 other person as the court determines.

9 **§5-506. Appointment of visitor**

10 1. Petition for protective arrangement. On receipt of a petition for one or more  
11 protective arrangements instead of guardianship under section 5-501, the court shall  
12 appoint a visitor. A visitor appointed under this subsection must be an individual having  
13 training or experience in the type of abilities, limitations and needs alleged in the petition.

14 2. Protective order for minor. On receipt of a petition for a protective order  
15 instead of conservatorship for a minor under section 5-501, the court may appoint a  
16 visitor to investigate a matter related to the petition or to inform the respondent or a  
17 parent of the respondent about the petition or a related matter.

18 3. Protective order for adult. On receipt of a petition for a protective order instead  
19 of conservatorship for an adult under section 5-501, the court shall appoint a visitor  
20 unless the respondent is represented by an attorney.

21 4. Visitor's duties. A visitor appointed under subsection 1 or 3 shall interview the  
22 respondent in person and, in a manner the respondent is best able to understand:

23 A. Explain to the respondent the substance of the petition, the nature, purpose and  
24 effect of the proceeding, and the respondent's rights at the hearing;

25 B. Determine the respondent's views with respect to the order sought;

26 C. Inform the respondent of the respondent's right to employ and consult with an  
27 attorney at the respondent's expense and the right to request a court-appointed  
28 attorney;

29 D. Inform the respondent that all costs and expenses of the proceeding, including the  
30 respondent's attorney's fees, may be paid from the respondent's assets;

31 E. If the petitioner seeks an order related to the dwelling of the respondent, visit the  
32 respondent's present dwelling and any dwelling in which it is reasonably believed the  
33 respondent will live if the order is granted;

34 F. If one or more protective arrangements instead of guardianship are sought, obtain  
35 information from any physician or other person known to have treated, advised or  
36 assessed the respondent's relevant physical or mental condition;

37 G. If one or more protective arrangements instead of conservatorship are sought,  
38 review financial records of the respondent if relevant to the visitor's recommendation  
39 under subsection 5, paragraph C; and

40 H. Investigate the allegations in the petition and any other matter relating to the  
41 petition as the court directs.

1 **5. Report.** A visitor under this section promptly shall file a report in a record with  
2 the court, which must include:

3 A. A recommendation whether an attorney should be appointed to represent the  
4 respondent;

5 B. To the extent relevant to the order sought, a summary of self-care, independent-  
6 living tasks and financial management tasks the respondent can manage without  
7 assistance or with existing supports, could manage with the assistance of appropriate  
8 supportive services, technological assistance or supported decision making and  
9 cannot manage;

10 C. Recommendations regarding the appropriateness of the protective arrangement  
11 sought and whether less restrictive alternatives for meeting the respondent's needs are  
12 available;

13 D. If the petition seeks to change the physical location of the dwelling of the  
14 respondent, a statement whether the proposed dwelling meets the respondent's needs  
15 and whether the respondent has expressed a preference as to the respondent's  
16 dwelling;

17 E. A recommendation whether a professional evaluation under section 5-508 is  
18 necessary;

19 F. A statement whether the respondent is able to attend a hearing at the location court  
20 proceedings typically are conducted;

21 G. A statement whether the respondent is able to participate in a hearing and that  
22 identifies any technology or other form of support that would enhance the  
23 respondent's ability to participate; and

24 H. Any other matter as the court directs.

25 **§5-507. Appointment and role of attorney**

26 **1. Appointment of attorney.** The court shall appoint an attorney to represent the  
27 respondent in a proceeding under this Part if:

28 A. Requested by the respondent;

29 B. Recommended by the visitor; or

30 C. The court determines that the respondent needs representation.

31 **2. Attorney's duties.** An attorney representing the respondent in a proceeding under  
32 this Part shall:

33 A. Make reasonable efforts to ascertain the respondent's wishes;

34 B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

35 C. If the respondent's wishes are not reasonably ascertainable, advocate for the result  
36 that is the least restrictive option in type, duration and scope, consistent with the  
37 respondent's interests.

38 **3. Attorney for parent of minor.** The court shall appoint an attorney to represent a  
39 parent of a minor who is the subject of a proceeding under this Part if:

- 1        A. The parent objects to the entry of an order for a protective arrangement or  
2        protective arrangements instead of guardianship or conservatorship;
- 3        B. The court determines that counsel is needed to ensure that consent to the entry of  
4        an order for one or more protective arrangements is informed; or
- 5        C. The court otherwise determines the parent needs representation.

6        **§5-508. Professional evaluation**

7        **1. Order professional evaluation.** At or before a hearing on a petition under this  
8        Part for a protective arrangement, the court shall order a professional evaluation of the  
9        respondent:

- 10       A. If the respondent requests the evaluation; or
- 11       B. Unless the court finds that it has sufficient information to determine the  
12       respondent's needs and abilities without the evaluation.

13       **2. Examination; report.** If the court orders an evaluation under subsection 1, the  
14       respondent must be examined by a licensed physician, psychologist, social worker or  
15       other individual approved by the court who is qualified to evaluate the respondent's  
16       alleged cognitive and functional abilities and limitations and will not be advantaged or  
17       disadvantaged by a decision to grant the petition or otherwise have a conflict of interest.  
18       The individual conducting the evaluation promptly shall file a report in a record with the  
19       court. Unless otherwise directed by the court, the report must contain:

- 20       A. A description of the nature, type and extent of the respondent's cognitive and  
21       functional abilities and limitations;
- 22       B. An evaluation of the respondent's mental and physical condition and, if  
23       appropriate, educational potential, adaptive behavior and social skills;
- 24       C. A prognosis for improvement, including with regard to the ability to manage the  
25       respondent's property and financial affairs if a limitation in that ability is alleged, and  
26       recommendation for the appropriate treatment, support or habilitation plan; and
- 27       D. The date of the examination on which the report is based.

28       **3. Right to decline evaluation.** The respondent may decline to participate in an  
29       evaluation ordered under subsection 1.

30       **§5-509. Attendance and rights at hearing**

31       **1. Attendance by respondent required.** Except as otherwise provided in  
32       subsection 2, a hearing under this Part shall proceed only if the respondent attends the  
33       hearing. If it is not reasonably feasible for the respondent to attend a hearing at the  
34       location court proceedings typically are conducted, the court shall make reasonable  
35       efforts to hold the hearing at an alternative location convenient to the respondent or allow  
36       the respondent to attend the hearing using real-time audiovisual technology.

37       **2. Hearing without respondent; findings.** A hearing under this Part may proceed  
38       without the respondent in attendance if the court finds by clear and convincing evidence  
39       that:

1 A. The respondent consistently and repeatedly has refused to attend the hearing after  
2 having been fully informed of the right to attend the hearing and the potential  
3 consequences of failing to do so;

4 B. There is no practicable way for the respondent to attend and participate in the  
5 hearing even with appropriate supportive services and technological assistance;

6 C. The respondent is represented by an attorney and the attorney represents that the  
7 respondent does not want to attend the hearing;

8 D. The visitor has confirmed with the respondent that the respondent has no  
9 objection to the protective arrangements and that the respondent does not wish to  
10 attend the hearing; or

11 E. The respondent is a minor who has received proper notice and attendance would  
12 be harmful to the minor.

13 **3. Assistance to respondent.** The respondent may be assisted in a hearing under  
14 this Part by a person or persons of the respondent's choosing, assistive technology or an  
15 interpreter or translator, or a combination of these supports. If assistance would facilitate  
16 the respondent's participation in the hearing but is not otherwise available to the  
17 respondent, the court shall make reasonable efforts to provide it.

18 **4. Attorney for respondent.** The respondent has a right to choose an attorney to  
19 represent the respondent at a hearing under this Part.

20 **5. Rights of respondent at hearing.** At a hearing under this Part, the respondent  
21 may:

22 A. Present evidence and subpoena witnesses and documents;

23 B. Examine witnesses, including any court-appointed evaluator and the visitor; and

24 C. Otherwise participate in the hearing.

25 **6. Closed upon request; good cause.** A hearing under this Part must be closed on  
26 request of the respondent and a showing of good cause.

27 **7. Participation; best interest of respondent.** Any person may request to  
28 participate in a hearing conducted under this Part. The court may grant the request, with  
29 or without hearing, on determining that the best interest of the respondent will be served.  
30 The court may attach appropriate conditions to the person's participation.

31 **§5-510. Notice of order**

32 The court shall give notice of an order under this Part to the individual who is the  
33 subject of the protective arrangements instead of guardianship or conservatorship, a  
34 person whose access to the respondent is restricted by the order and any other person as  
35 the court determines.

36 **§5-511. Confidentiality of records**

37 **1. Matter of public record; exceptions.** The existence of a proceeding for or the  
38 existence of one or more protective arrangements instead of a guardianship or  
39 conservatorship is a matter of public record unless the court seals the record after:

1 A. The respondent, the individual subject to the protective arrangements or the  
2 parent of a minor subject to the protective arrangements requests the record be sealed;  
3 and

4 B. Either:

5 (1) The proceeding is dismissed;

6 (2) The protective arrangement is no longer in effect; or

7 (3) Any act authorized by the order granting the protective arrangement has been  
8 completed.

9 **2. Access to records.** A respondent, an individual subject to a proceeding for one or  
10 more protective arrangements instead of guardianship or conservatorship, an attorney  
11 designated by the respondent or individual, a parent of a minor subject to one or more  
12 protective arrangements and any other person the court determines are entitled to access  
13 court records of the proceeding and resulting protective arrangement. A person not  
14 otherwise entitled to access to court records under this subsection may petition the court  
15 for access. The court shall grant access if access is in the best interest of the respondent  
16 or individual subject to the protective arrangements or furthers the public interest and  
17 does not endanger the welfare or financial interests of the respondent or individual.

18 **3. Reports sealed; availability.** A report of a visitor or professional evaluation  
19 generated in the course of a proceeding under this Part must be sealed on filing but is  
20 available to:

21 A. The court;

22 B. The individual who is the subject of the report or evaluation, without limitation as  
23 to use;

24 C. The petitioner, visitor and petitioner's and respondent's attorneys, for purposes of  
25 the proceeding;

26 D. Unless the court directs otherwise, an agent appointed under a power of attorney  
27 for finances in which the respondent is identified as the principal;

28 E. If the order is for one or more protective arrangements instead of guardianship  
29 and unless the court directs otherwise, an agent appointed under a power of attorney  
30 for health care in which the respondent is identified as the principal; and

31 F. Other persons when it is in the public interest or for a purpose the court orders for  
32 good cause.

33 **PART 6**

34 **UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS**  
35 **JURISDICTION ACT**

36 **SUBPART 1**

37 **GENERAL PROVISIONS**

1 **§5-601. Short title**

2 This Part may be known and cited as "the Uniform Adult Guardianship and  
3 Protective Proceedings Jurisdiction Act."

4 **§5-602. Definitions**

5 As used in this Part, unless the context otherwise indicates, the following terms have  
6 the following meanings.

7 **1. Adult.** "Adult" means an individual who has attained 18 years of age.

8 **2. Conservator.** "Conservator" means a person appointed by the court to administer  
9 the property of an adult, including a person appointed under Part 4.

10 **3. Guardian.** "Guardian" means a person appointed by the court to make decisions  
11 regarding the person of an adult, including a person appointed under Part 3.

12 **4. Guardianship proceeding.** "Guardianship proceeding" means a judicial  
13 proceeding in which an order for the appointment of a guardian is sought or has been  
14 issued.

15 **5. Individual subject to guardianship.** "Individual subject to guardianship" means  
16 an adult for whom a guardian has been appointed.

17 **6. Party.** "Party" means an interested person within the meaning of section 1-201,  
18 subsection 26, including the respondent, petitioner, guardian, conservator or any other  
19 person allowed by the court to participate in a guardianship or protective proceeding.

20 **7. Person.** "Person," except in the term "protected person," means an individual;  
21 corporation; business trust; estate; trust; partnership; limited liability company;  
22 association; joint venture; public corporation; government or governmental subdivision,  
23 agency or instrumentality; or any other legal or commercial entity.

24 **8. Protected person.** "Protected person" means an adult for whom a protective  
25 order has been issued.

26 **9. Protective order.** "Protective order" means an order appointing a conservator or  
27 other order related to management or disposition of an adult's property.

28 **10. Protective proceeding.** "Protective proceeding" means a judicial proceeding in  
29 which a protective order is sought or has been issued.

30 **11. Respondent.** "Respondent" means an adult for whom a protective order or the  
31 appointment of a guardian is sought.

32 **§5-603. International application of Part**

33 A court of this State may treat a foreign country as if it were a state for the purpose of  
34 applying this Part.

35 **§5-604. Communication between courts**

36 **1. Communication between courts; participation; record.** A court of this State  
37 may communicate with a court in another state concerning a proceeding arising under this  
38 Part. The court may allow the parties to participate in the communication. Except as

1 otherwise provided in subsection 2, the court shall make a record of the communication.  
2 The record may be limited to the fact that the communication occurred.

3 **2. No record required.** Courts may communicate concerning schedules, calendars,  
4 court records and other administrative matters without making a record.

5 **§5-605. Cooperation between courts**

6 **1. Request of court of another state.** In a guardianship proceeding or protective  
7 proceeding in this State, a court of this State may request the appropriate court of another  
8 state to do any of the following:

9 A. Hold an evidentiary hearing;

10 B. Order a person in that state to produce evidence or give testimony pursuant to  
11 procedures of that state;

12 C. Order that an evaluation or assessment be made of the respondent;

13 D. Order any appropriate investigation of a person involved in a proceeding;

14 E. Forward to the court a certified copy of the transcript or other record of a hearing  
15 under paragraph A or any other proceeding, any evidence otherwise produced under  
16 paragraph B and any evaluation or assessment prepared in compliance with an order  
17 under paragraph C or D;

18 F. Issue any order necessary to ensure the appearance in the proceeding of a person  
19 whose presence is necessary for the court to make a determination, including the  
20 respondent or the individual subject to guardianship or protected person; and

21 G. Issue an order authorizing the release of medical, financial, criminal or other  
22 relevant information in that state, including protected health information as defined in  
23 45 Code of Federal Regulations, Section 160.103, as amended.

24 **2. Jurisdiction to comply with request.** If a court of another state in which a  
25 guardianship proceeding or protective proceeding is pending requests assistance of the  
26 kind provided in subsection 1, a court of this State has jurisdiction for the limited purpose  
27 of granting the request or making reasonable efforts to comply with the request.

28 **§5-606. Taking testimony in another state**

29 **1. Testimony of witness in another state.** In a guardianship proceeding or  
30 protective proceeding, in addition to other procedures that may be available, testimony of  
31 a witness who is located in another state may be offered by deposition or other means  
32 allowable in this State for testimony taken in another state. The court on its own motion  
33 may order that the testimony of a witness be taken in another state and may prescribe the  
34 manner in which and the terms upon which the testimony is to be taken.

35 **2. Deposition or testimony by electronic means.** In a guardianship proceeding or  
36 protective proceeding, a court in this State may permit a witness located in another state  
37 to be deposed or to testify by telephone or audiovisual or other electronic means. A court  
38 of this State shall cooperate with the court of the other state in designating an appropriate  
39 location for the deposition or testimony.

1 3. Documentary evidence transmitted, no original writing. Documentary  
2 evidence transmitted from another state to a court of this State by technological means  
3 that do not produce an original writing may not be excluded from evidence on an  
4 objection based on the best evidence rule.

5 SUBPART 2

6 JURISDICTION

7 §5-621. Definitions; significant-connection factors

8 1. Definitions. As used in this subpart, unless the context otherwise indicates, the  
9 following terms have the following meanings.

10 A. "Emergency" means a circumstance that likely will result in substantial harm to a  
11 respondent's health, safety or welfare and for which the appointment of a guardian is  
12 necessary.

13 B. "Home state" means the state in which the respondent was physically present,  
14 including any period of temporary absence, for at least 6 consecutive months  
15 immediately before the filing of a petition for a protective order or the appointment of  
16 a guardian or, if the respondent was not physically present in a single state for the 6  
17 months immediately preceding the filing of the petition, the state in which the  
18 respondent was physically present, including any period of temporary absence, for at  
19 least 6 consecutive months ending within the 6 months prior to the filing of the  
20 petition.

21 C. "Significant-connection state" means a state, other than the home state, with  
22 which a respondent has a significant connection other than mere physical presence  
23 and in which substantial evidence concerning the respondent is available.

24 2. Significant-connection factors. In determining under section 5-623 and section  
25 5-631, subsection 5 whether a respondent has a significant connection with a particular  
26 state, the court shall consider:

27 A. The location of the respondent's family and other persons required to be notified  
28 of the guardianship proceeding or protective proceeding;

29 B. The length of time the respondent at any time was physically present in the state  
30 and the duration of any absence;

31 C. The location of the respondent's property; and

32 D. The extent to which the respondent has ties to the state such as voting registration,  
33 state or local tax return filing, vehicle registration, driver's license, social relationship  
34 and receipt of services.

35 §5-622. Exclusive basis

36 This subpart provides the exclusive jurisdictional basis for a court of this State to  
37 appoint a guardian or issue a protective order for an adult.



1 **§5-623. Jurisdiction**

2 A court of this State has jurisdiction to appoint a guardian or issue a protective order  
3 for a respondent if:

4 **1. Respondent's home state.** This State is the respondent's home state; or

5 **2. Significant-connection state and other factors.** On the date the petition is filed,  
6 this State is a significant-connection state and:

7 A. The respondent does not have a home state or a court of the respondent's home  
8 state has declined to exercise jurisdiction because this State is a more appropriate  
9 forum;

10 B. The respondent has a home state, a petition for an appointment or order is not  
11 pending in a court of that state or another significant-connection state and, before the  
12 court makes the appointment or issues the order:

13 (1) A petition for an appointment or order is not filed in the respondent's home  
14 state;

15 (2) An objection to the court's jurisdiction is not filed by a person required to be  
16 notified of the proceeding; and

17 (3) The court in this State concludes that it is an appropriate forum under the  
18 factors set forth in section 5-626;

19 C. This State does not have jurisdiction under either paragraph A or B, the  
20 respondent's home state and all significant-connection states have declined to  
21 exercise jurisdiction because this State is the more appropriate forum and jurisdiction  
22 in this State is consistent with the Constitution of Maine and the United States  
23 Constitution; or

24 D. The requirements for special jurisdiction under section 5-624 are met.

25 **§5-624. Special jurisdiction**

26 **1. Special jurisdiction.** If this State is not the respondent's home state and not a  
27 significant-connection state, a court of this State has special jurisdiction to do any of the  
28 following:

29 A. Appoint a guardian in an emergency for a term not exceeding 6 months for a  
30 respondent who is physically present in this State;

31 B. Issue a protective order with respect to real or tangible personal property located  
32 in this State; or

33 C. Appoint a guardian or conservator for an individual subject to guardianship or  
34 protected person for whom a provisional order to transfer the proceeding from  
35 another state has been issued under procedures similar to those in section 5-631.

36 **2. Emergency appointment.** If a petition for the appointment of a guardian in an  
37 emergency is brought in this State and this State was not the respondent's home state on  
38 the date the petition was filed, the court shall dismiss the proceeding at the request of the

1 court of the home state, if any, whether dismissal is requested before or after the  
2 emergency appointment.

3 **§5-625. Exclusive and continuing jurisdiction**

4 Except as otherwise provided in section 5-624, a court that has appointed a guardian  
5 or issued a protective order consistent with this Part has exclusive and continuing  
6 jurisdiction over the proceeding until it is terminated by the court or the appointment or  
7 order expires by its own terms.

8 **§5-626. Appropriate forum**

9 **1. Decline jurisdiction.** A court of this State having jurisdiction under section 5-623  
10 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if  
11 it determines at any time that a court of another state is a more appropriate forum.

12 **2. Actions by court that declines jurisdiction.** If a court of this State declines to  
13 exercise its jurisdiction under subsection 1, it shall either:

14 A. Dismiss or stay the proceeding; or

15 B. Impose any condition the court considers just and proper, including the condition  
16 that a petition for the appointment of a guardian or issuance of a protective order be  
17 filed promptly in another state.

18 **3. Appropriate forum factors.** In determining whether it is an appropriate forum,  
19 the court shall consider all relevant factors, which may include:

20 A. Any expressed preference of the respondent;

21 B. Whether abuse, neglect or exploitation of the respondent has occurred or is likely  
22 to occur and which state could best protect the respondent from the abuse, neglect or  
23 exploitation;

24 C. The length of time the respondent was physically present in or was a legal  
25 resident of this State or another state;

26 D. The distance of the respondent from the court in each state;

27 E. The financial circumstances of the respondent's estate;

28 F. The nature and location of the evidence;

29 G. The ability of the court in each state to decide the issue expeditiously and the  
30 procedures necessary to present evidence;

31 H. The familiarity of the court of each state with the facts and issues in the  
32 proceeding; and

33 I. If an appointment were made, the court's ability to monitor the conduct of the  
34 guardian or conservator.

35 **§5-627. Jurisdiction declined by reason of conduct**

36 **1. Jurisdiction because of unjustifiable conduct.** If at any time a court of this  
37 State determines that it acquired jurisdiction to appoint a guardian or issue a protective  
38 order because of unjustifiable conduct, the court may:

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A. Decline to exercise jurisdiction;

B. Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

C. Continue to exercise jurisdiction after considering:

(1) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(2) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 5-626, subsection 3; and

(3) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 5-623.

2. Assessment of expenses. If a court of this State determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this State or a governmental subdivision, agency or instrumentality of this State unless authorized by law other than this Part.

**§5-628. Notice of proceeding**

If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this State.

**§5-629. Proceedings in more than one state**

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this State under section 5-624, subsection 1, paragraph A or B, if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following apply.

1. Jurisdiction proper; proceed with case. If the court in this State has jurisdiction under section 5-623, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 5-623 before the appointment or issuance of the order.

2. Lack of jurisdiction; communication with court. If the court in this State does not have jurisdiction under section 5-623, whether at the time the petition is filed or at

1 any time before the appointment or issuance of the order, the court shall stay the  
2 proceeding and communicate with the court in the other state. If the court in the other  
3 state has jurisdiction, the court in this State shall dismiss the petition unless the court in  
4 the other state determines that the court in this State is a more appropriate forum.

5 **SUBPART 3**

6 **TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP**

7 **§5-631. Transfer of guardianship or conservatorship to another state**

8 1. **Petition.** A guardian or conservator appointed in this State may petition the court  
9 to transfer the guardianship or conservatorship to another state.

10 2. **Notice.** Notice of a petition under subsection 1 must be given to the persons that  
11 would be entitled to notice of a petition in this State for the appointment of a guardian or  
12 conservator.

13 3. **Hearing or opportunity for hearing.** On the court's own motion or on request of  
14 the guardian or conservator, the individual subject to guardianship or protected person or  
15 other person required to be notified of the petition, the court shall hold a hearing or  
16 provide an opportunity for a hearing to be held on a petition filed pursuant to subsection  
17 1.

18 4. **Provisional order; guardianship.** The court shall issue an order provisionally  
19 granting a petition to transfer a guardianship and shall direct the guardian to petition for  
20 guardianship in the other state if the court is satisfied that the guardianship will be  
21 accepted by the court in the other state and the court finds that:

22 A. The individual subject to guardianship is physically present in or is reasonably  
23 expected to move permanently to the other state;

24 B. An objection to the transfer has not been made or, if an objection has been made,  
25 the objector has not established by a preponderance of the evidence that the transfer  
26 would be contrary to the best interests of the individual subject to guardianship; and

27 C. Plans for care and services for the individual subject to guardianship in the other  
28 state are reasonable and sufficient.

29 5. **Provisional order; conservatorship.** The court shall issue a provisional order  
30 granting a petition to transfer a conservatorship and shall direct the conservator to petition  
31 for conservatorship in the other state if the court is satisfied that the conservatorship will  
32 be accepted by the court of the other state and the court finds that:

33 A. The protected person is physically present in or is reasonably expected to move  
34 permanently to the other state or the protected person has a significant connection to  
35 the other state considering the factors in section 5-621, subsection 2;

36 B. An objection to the transfer has not been made or, if an objection has been made,  
37 the objector has not established by a preponderance of the evidence that the transfer  
38 would be contrary to the best interests of the protected person; and

39 C. Adequate arrangements will be made for management or disposition of the  
40 protected person's property.

1 6. Final order. The court shall issue a final order confirming the transfer and  
2 terminating the guardianship or conservatorship upon its receipt of:

3 A. A provisional order accepting the proceeding from the court to which the  
4 proceeding is to be transferred that is issued under provisions similar to section  
5 5-632; and

6 B. The documents required to terminate a guardianship or conservatorship in this  
7 State.

8 **§5-632. Accepting guardianship or conservatorship transferred from another state**

9 1. Petition. To confirm transfer of a guardianship or conservatorship transferred to  
10 this State under provisions similar to section 5-631, the guardian or conservator must  
11 petition the court in this State to accept the guardianship or conservatorship. The petition  
12 must include a certified copy of the other state's provisional order of transfer.

13 2. Notice. Notice of a petition under subsection 1 must be given to those persons  
14 who would be entitled to notice if the petition were a petition for the appointment of a  
15 guardian or issuance of a protective order in both the transferring state and this State.  
16 The notice must be given in the same manner as notice is required to be given in this  
17 State.

18 3. Hearing. On the court's own motion or on request of the guardian or conservator,  
19 the individual subject to guardianship or protected person or other person required to be  
20 notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to  
21 subsection 1.

22 4. Provisional order. The court shall issue an order provisionally granting a petition  
23 filed under subsection 1 unless:

24 A. An objection is made and the objector establishes by a preponderance of the  
25 evidence that transfer of the proceeding would be contrary to the best interests of the  
26 individual subject to guardianship or protected person; or

27 B. The guardian or conservator is ineligible for appointment in this State.

28 5. Final order. The court shall issue a final order accepting the proceeding and  
29 appointing the guardian or conservator as guardian or conservator in this State upon its  
30 receipt from the court from which the proceeding is being transferred of a final order  
31 issued under provisions similar to section 5-631 transferring the proceeding to this State.

32 6. Recognition of order from other state. In granting a petition under this section,  
33 the court shall recognize a guardianship or conservatorship order from the other state,  
34 including the determination of the individual subject to guardianship's or protected  
35 person's need for guardianship or protective order and the appointment of the guardian or  
36 conservator.

37 7. Denial; other proceedings unaffected. The denial by a court of this State of a  
38 petition to accept a guardianship or conservatorship transferred from another state does  
39 not affect the ability of the guardian or conservator to seek appointment as guardian or  
40 conservator in this State under Part 3 or 4 if the court has jurisdiction to make an  
41 appointment other than by reason of the provisional order of transfer.

**SUBPART 4**

**MISCELLANEOUS PROVISIONS**

**§5-641. Uniformity of application and construction**

In applying and construing this Part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**§5-642. Relation to Electronic Signatures in Global and National Commerce Act**

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b).

**§5-643. Transitional provisions**

**1. Proceedings on or after July 1, 2013.** This Part applies to guardianship and protective proceedings begun on or after July 1, 2013.

**2. Proceedings before July 1, 2013.** Subparts 1 and 3 and sections 5-641 and 5-642 apply to proceedings begun before July 1, 2013, regardless of whether a guardianship or protective order has been issued.

**PART 7**

**PUBLIC GUARDIAN AND CONSERVATOR**

**§5-701. Public guardians and conservators; general**

**1. Appointment of public guardian or conservator.** In any case in which a guardian or conservator may be appointed by the court under this Article, the court may appoint a public guardian or conservator as provided in this Part for persons who are in need of protective services.

**2. Department of Health and Human Services.** The Department of Health and Human Services shall act as the public guardian or conservator for persons in need of protective services.

**3. Article applies to public guardians and conservators.** Except as otherwise provided in this Part, the appointment, termination, rights and duties and other provisions for guardians and conservators in this Article apply to public guardians and conservators.

**§5-702. Priority of private guardian or conservator**

A public guardian or conservator may not be appointed if the court determines that a suitable private guardian or conservator is available and willing to assume the responsibilities of a guardian or conservator.

**§5-703. Exclusiveness of public guardian or conservator**

When the court has appointed a public guardian or conservator under this Part, no other guardian or conservator may be appointed for the same individual subject to

1 guardianship or protected person during the continuation of the public guardianship or  
2 public conservatorship.

3 **§5-704. Nomination of public guardian or conservator**

4 **1. Nomination of public guardian.** Any person who is eligible to petition for  
5 appointment of a guardian under section 5-302, subsection 1, including the commissioner  
6 of any state department, the head of any state institution, the overseers of the poor and the  
7 welfare director or health officer of any municipality, may nominate the public guardian.

8 **2. Nomination of public conservator.** Any person who is eligible to petition for  
9 appointment of a conservator under section 5-402, subsection 1, including the  
10 commissioner of any state department, the head of any state institution, the overseer of  
11 the poor and the welfare director or health officer of any municipality, may nominate the  
12 public conservator.

13 **3. Article applies to proceedings for determining appointment.** Except as  
14 supplemented by section 5-705, the proceedings for determining the appointment of a  
15 public guardian or conservator are governed by the provisions of this Article for the  
16 appointment of guardians and conservators generally.

17 **§5-705. Acceptance by public guardian or conservator; plan**

18 Prior to the appointment of a public guardian or conservator, the appropriate agency  
19 nominated shall accept or reject the nomination in writing within 30 days of its receipt of  
20 notification that it has been nominated and if the nomination is accepted shall file a  
21 detailed plan that, as relevant, must include but is not limited to the type of proposed  
22 living arrangement for the individual subject to guardianship, how the individual's  
23 financial needs will be met, how the individual's medical and other remedial needs will be  
24 met, how the individual's social needs will be met and a plan for the individual's  
25 continuing contact with relatives and friends, as well as a plan for the management of the  
26 individual's or protected person's estate in the case of a public conservatorship.

27 **§5-706. Officials authorized to act as public guardian or conservator**

28 **1. Commissioner of Health and Human Services.** When the Department of Health  
29 and Human Services is appointed public guardian or conservator of a person, the  
30 authority of the public guardian or conservator must be exercised by the Commissioner of  
31 Health and Human Services and by any persons duly delegated by the commissioner to  
32 exercise such authority.

33 **2. Delegation of authority.** Persons duly delegated by the officials authorized to act  
34 under subsection 1 may include a staff of competent social workers or competent social  
35 workers assigned to the public guardian or conservator by the Department of Health and  
36 Human Services. In the event that the delegation is to an individual, such individual must  
37 be qualified by reason of education or experience, or both, in administering to the needs  
38 of the individual or individuals over whom the individual is to exercise administrative or  
39 supervisory authority under the public guardian.

1 **§5-707. Duties and powers of a public guardian or conservator**

2 A public guardian or conservator has the same powers, rights and duties respecting  
3 the individual subject to guardianship or the protected person as provided for guardians  
4 and conservators by the other Parts of this Article except as otherwise specifically  
5 provided in this Part, including the following particular provisions.

6 1. Placement in licensed facility; removal. A public guardian may place an  
7 individual subject to guardianship in a facility described in Title 22, section 1811 only if  
8 the facility is duly licensed. In the event that the license of any such facility is suspended  
9 or revoked, the public guardian having any individual subject to guardianship placed in  
10 that facility shall remove the individual and effect an appropriate placement of the  
11 individual as soon as practicable after knowledge of the suspension or revocation of the  
12 license.

13 2. Examination and evaluation; report to court. A public guardian or conservator  
14 at least annually, and at any time when ordered by the court, shall review the case of  
15 every person for whom the public guardian or conservator is acting under this Part. A  
16 report of each review must be filed with the court. Each review must contain an  
17 examination and evaluation of the plan created under section 5-705 for the individual  
18 subject to guardianship or protected person and recommendations for a modification of  
19 the plan, as appropriate or necessary.

20 3. Records. A public guardian or conservator shall keep books of account or other  
21 records showing separately the principal amount received, increments thereto and  
22 disbursements therefrom for the benefit of the individual subject to guardianship or  
23 protected person, and such other records as are appropriate for the particular situation,  
24 together with the name of the individual subject to guardianship or protected person, the  
25 source from which the money was received and the purpose for which the money was  
26 expended.

27 4. In absence of kin, autopsy and burial. A public guardian, in the absence of  
28 available next of kin, may authorize the performance of an autopsy upon the body of a  
29 deceased individual subject to guardianship. The public guardian, in the absence of  
30 available next of kin, or in the event that next of kin refuses to assume responsibility for  
31 the deceased individual subject to guardianship, shall cause any deceased individual  
32 subject to guardianship to be suitably buried and has authority to expend funds of the  
33 individual for that purpose, and in the event the individual is without funds at the time of  
34 death, the public guardian shall cause the individual to be suitably buried at public  
35 expense, as in the case of the burial of any other deceased indigent person.

36 **§5-708. No change in rights to services**

37 The appointment of a public guardian or conservator in no way enlarges or  
38 diminishes the individual subject to guardianship's or protected person's right to services  
39 made available to all persons in need of service or protection in the State except for the  
40 provision of guardianship or conservatorship services as provided under this Article.



1 **§5-709. No change in powers and duties of agency heads and trustees**

2 Nothing in this Article abrogates any other powers or duties vested by law in the head  
3 of any public institution, or vested by the settlor of a trust in the trustee thereof, for the  
4 benefit of any individual subject to guardianship or protected person for whom the public  
5 guardian or conservator is appointed.

6 **§5-710. Bond**

7 The public guardian or conservator is not required to file bonds in individual  
8 guardianships or conservatorships, but shall give a surety bond for the joint benefit of the  
9 individuals subject to guardianship or protected persons placed under the responsibility of  
10 the public guardian or conservator and the State, with a surety company or companies  
11 authorized to do business within the State, in an amount not less than the total value of all  
12 assets held by the public guardian or conservator, which amount must be computed at the  
13 end of each state fiscal year and approved by the Probate Court for Kennebec County. At  
14 no time may the bond of each of the public guardians or conservators be less than \$500  
15 respectively.

16 **§5-711. Compensation**

17 **1. Reasonable expenses; account for costs.** The public guardian or conservator  
18 may receive such reasonable amounts for its expenses as guardian or conservator as the  
19 Probate Court may allow. The amounts so allowed must be allocated to an account from  
20 which may be drawn expenses for filing fees, bond premiums, court costs and other  
21 expenses required in the administration of the functions of the public guardian or  
22 conservator. No amounts thus received may inure to the benefit of any employee of the  
23 public guardian or conservator. Any balance in the account at the end of a fiscal year  
24 does not lapse but is carried forward from year to year and used for the purposes provided  
25 for in this subsection.

26 **2. Reimbursement of personal expenditures.** Any personal expenditures made on  
27 the individual subject to guardianship's or protected person's behalf by the public  
28 guardian or conservator must, when properly evidenced, be reimbursed out of the  
29 individual subject to guardianship's or protected person's estate. Claims for services  
30 rendered by state agencies must be submitted to the Probate Court for approval before  
31 payment.

32 **§5-712. Individuals subject to guardianship; guardian ad litem costs**

33 **1. Guardian ad litem, other special costs.** The costs of the guardian ad litem or  
34 any other special costs may be paid by the Department of Health and Human Services,  
35 within the limits of the department's budget, when:

36 A. A person is in need of protective services and:

37 (1) A guardian ad litem is appointed under the provisions of this Code; or

38 (2) A court incurs special costs in a proceeding concerning the person; and

39 B. Appointment of a public guardian or conservator is sought or the person, within 3  
40 months prior to the filing of the petition:



1 B. Approval or disapproval of diagnostic tests, surgical procedures, programs of  
2 medication and orders not to resuscitate; and

3 C. Directions to provide, withhold or withdraw artificial nutrition and hydration and  
4 all other forms of health care, including life-sustaining treatment.

5 **7. Health care institution.** "Health care institution" means an institution, facility or  
6 agency licensed, certified or otherwise authorized or permitted by law to provide health  
7 care in the ordinary course of business.

8 **8. Health care provider.** "Health care provider" means an individual licensed,  
9 certified or otherwise authorized or permitted by law to provide health care in the  
10 ordinary course of business or practice of a profession.

11 **9. Individual instruction.** "Individual instruction" means a direction from an  
12 individual with capacity concerning a health care decision for the individual.

13 **10. Life-sustaining treatment.** "Life-sustaining treatment" means any medical  
14 procedure or intervention that, when administered to a person without capacity and in  
15 either a terminal condition or a persistent vegetative state, will serve only to prolong the  
16 process of dying. "Life-sustaining treatment" may include artificially administered  
17 nutrition and hydration, which is the provision of nutrients and liquids through the use of  
18 tubes, intravenous procedures or similar medical interventions.

19 **11. Persistent vegetative state.** "Persistent vegetative state" means a state that  
20 occurs after coma in which the patient totally lacks higher cortical and cognitive function,  
21 but maintains vegetative brain stem processes, with no realistic possibility of recovery, as  
22 diagnosed in accordance with acceptable medical standards.

23 **12. Person.** "Person" means an individual, corporation, business trust, estate, trust,  
24 partnership, association, joint venture, government, governmental subdivision, agency or  
25 instrumentality or any other legal or commercial entity.

26 **13. Physician.** "Physician" means an individual authorized to practice medicine  
27 under Title 32.

28 **14. Power of attorney for health care.** "Power of attorney for health care" means  
29 the designation of an agent with capacity to make health care decisions for the individual  
30 granting the power.

31 **15. Primary physician.** "Primary physician" means a physician designated by an  
32 individual with capacity or by the individual's agent, guardian or surrogate to have  
33 primary responsibility for the individual's health care or, in the absence of a designation  
34 or if the designated physician is not reasonably available, a physician who undertakes the  
35 responsibility.

36 **16. Reasonably available.** "Reasonably available" means readily able to be  
37 contacted without undue effort and willing and able to act in a timely manner considering  
38 the urgency of the patient's health care needs.

39 **17. Supervising health care provider.** "Supervising health care provider" means  
40 the primary physician or, if there is no primary physician or the primary physician is not  
41 reasonably available, the health care provider who has undertaken primary responsibility  
42 for a patient's health care.

1 18. Surrogate. "Surrogate" means an individual with capacity, other than a patient's  
2 agent or guardian, authorized under this Part to make health care decisions as provided in  
3 section 5-806.

4 19. Terminal condition. "Terminal condition" means an incurable and irreversible  
5 condition that, without the administration of life-sustaining treatment, in the opinion of  
6 the primary physician, will result in death within a relatively short time.

7 **§5-803. Advance health care directives**

8 1. Individual instruction. An adult or emancipated minor with capacity may give  
9 an individual instruction. The instruction may be oral or written. The instruction may be  
10 limited to take effect only if a specified condition arises. An oral instruction is valid only  
11 if made to a health care provider or to an individual who may serve as a surrogate under  
12 section 5-806, subsection 2.

13 2. Power of attorney for health care. An adult or emancipated minor with capacity  
14 may execute a power of attorney for health care, which may authorize the agent to make  
15 any health care decision the principal could have made while having capacity. The power  
16 must be in writing and signed by the principal and 2 witnesses. Notwithstanding any law  
17 validating electronic or digital signatures, signatures of the principal and witnesses must  
18 be made in person and not by electronic means. The power remains in effect  
19 notwithstanding the principal's later incapacity and may include individual instructions.  
20 Unless related to the principal by blood, marriage or adoption, an agent may not be an  
21 owner, operator or employee of a residential long-term health care institution at which the  
22 principal is receiving care.

23 3. Effective upon determination that principal lacks capacity. Unless otherwise  
24 specified in a power of attorney for health care, the authority of an agent becomes  
25 effective only upon a determination that the principal lacks capacity and ceases to be  
26 effective upon a determination that the principal has recovered capacity.

27 4. Determination. Unless otherwise specified in a written advance health care  
28 directive, a determination that an individual lacks or has recovered capacity or that  
29 another condition exists that affects an individual instruction, the authority of an agent or  
30 the validity of an advance health care directive must be made by the primary physician,  
31 by a court of competent jurisdiction or, for an individual who has included a directive  
32 authorizing mental health treatment in an advance health care directive, by a person  
33 qualified to conduct an examination pursuant to Title 34-B, section 3863.

34 5. Decision in accordance with instructions, wishes, best interest. An agent shall  
35 make a health care decision in accordance with the principal's individual instructions, if  
36 any, and other wishes to the extent known to the agent. Otherwise, the agent shall make  
37 the decision in accordance with the agent's determination of the principal's best interest.  
38 In determining the principal's best interest, the agent shall consider the principal's  
39 personal values to the extent known to the agent.

40 6. Effective without judicial approval. A health care decision made by an agent  
41 for a principal is effective without judicial approval.

42 7. Nomination of guardian. A written advance health care directive may include  
43 the individual's nomination of a guardian of the person.

1 8. Validity of advance health care directive. An advance health care directive is  
2 valid for purposes of this Part if it complies with this Part, regardless of when or where  
3 executed or communicated, or if it is valid under the laws of the state in which it was  
4 executed. An advance health care directive that is valid where executed or communicated  
5 is valid for the purposes of this Part.

6 9. Directing mental health treatment. An advance health care directive is valid for  
7 purposes of directing mental health treatment. The terms of the directive must be  
8 construed in accordance with this Part and Title 34-B, sections 3831 and 3862.

9 10. Personal representative for purposes of federal law. A surrogate or an agent  
10 named in an advance health care directive has the power and authority to serve as the  
11 personal representative of the patient who executed the health care directive for all  
12 purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42  
13 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal  
14 Regulations, Parts 160-164. The surrogate or agent has all the rights of the patient with  
15 respect to the use and disclosure of the individually identifiable health information and  
16 other medical records of the patient.

17 §5-804. Revocation of advance health care directive

18 1. Revocation of designation of agent. An individual with capacity may revoke the  
19 designation of an agent only by a signed writing or by personally informing the  
20 supervising health care provider.

21 2. Revocation of advance health care directive. An individual with capacity may  
22 revoke all or part of an advance health care directive, other than the designation of an  
23 agent, at any time and in any manner that communicates an intent to revoke.

24 3. Communication of revocation. A health care provider, agent, guardian or  
25 surrogate who is informed of a revocation by an individual with capacity shall promptly  
26 communicate the fact of the revocation to the supervising health care provider and to any  
27 health care institution at which the patient is receiving care.

28 4. Revocation of spouse as agent. A decree of annulment, divorce, dissolution of  
29 marriage or legal separation revokes a previous designation of a spouse as agent unless  
30 otherwise specified in the decree or in a power of attorney for health care.

31 5. Revocation of earlier advance health care directive in conflict. An advance  
32 health care directive that conflicts with an earlier advance health care directive revokes  
33 the earlier directive to the extent of the conflict.

34 §5-805. Optional form

35 The following form may, but need not, be used to create an advance health care  
36 directive. The other sections of this Part govern the effect of this or any other writing  
37 used to create an advance health care directive. An individual with capacity may  
38 complete or modify all or any part of the following form.

39 ADVANCE HEALTH CARE DIRECTIVE

40 Explanation

1 You have the right to give instructions about your own health care. You also have  
2 the right to name someone else to make health care decisions for you. This form lets you  
3 do either or both of these things. It also lets you express your wishes regarding donation  
4 of organs and the designation of your primary physician. If you use this form, you may  
5 complete or modify all or any part of it. You are free to use a different form.

6 Part 1 of this form is a power of attorney for health care. Part 1 lets you name  
7 another individual as agent to make health care decisions for you if you become incapable  
8 of making your own decisions or if you want someone else to make those decisions for  
9 you now even though you are still capable. You may also name an alternate agent to act  
10 for you if your first choice is not willing, able or reasonably available to make decisions  
11 for you. Unless related to you, your agent may not be an owner, operator or employee of  
12 a residential long-term health care institution at which you are receiving care.

13 Unless the form you sign limits the authority of your agent, your agent may make all  
14 health care decisions for you. This form has a place for you to limit the authority of your  
15 agent. You need not limit the authority of your agent if you wish to rely on your agent  
16 for all health care decisions that may have to be made. If you choose not to limit the  
17 authority of your agent, your agent will have the right to:

18 (1) Consent or refuse consent to any care, treatment, service or procedure to  
19 maintain, diagnose or otherwise affect a physical or mental condition;

20 (2) Select or discharge health care providers and institutions;

21 (3) Approve or disapprove diagnostic tests, surgical procedures, programs of  
22 medication and orders not to resuscitate; and

23 (4) Direct the provision, withholding or withdrawal of artificial nutrition and  
24 hydration and all other forms of health care, including life-sustaining treatment.

25 Part 2 of this form lets you give specific instructions about any aspect of your health  
26 care. Choices are provided for you to express your wishes regarding the provision,  
27 withholding or withdrawal of treatment to keep you alive, including the provision of  
28 artificial nutrition and hydration, as well as the provision of pain relief. Space is also  
29 provided for you to add to the choices you have made or for you to write out any  
30 additional wishes.

31 Part 3 of this form lets you express an intention to donate your bodily organs and  
32 tissues following your death.

33 Part 4 of this form lets you designate a physician to have primary responsibility for  
34 your health care.

35 After completing this form, sign and date the form at the end. You must have 2 other  
36 individuals sign as witnesses. Give a copy of the signed and completed form to your  
37 physician, to any other health care providers you may have, to any health care institution  
38 at which you are receiving care and to any health care agents you have named. You  
39 should talk to the person you have named as agent to make sure that he or she  
40 understands your wishes and is willing to take the responsibility.

41 You have the right to revoke this advance health care directive or replace this form at  
42 any time.

\*\*\*\*\*

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

.....

(name of individual you choose as agent)

.....

(address) (city) (state) (zip code)

.....

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health care decision for me, I designate as my first alternate agent:

.....

(name of individual you choose as first alternate agent)

.....

(address) (city) (state) (zip code)

.....

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health care decision for me, I designate as my second alternate agent:

.....

(name of individual you choose as second alternate agent)

.....

(address) (city) (state) (zip code)

.....

(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

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(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box , my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

(a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

(b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have



1 made in paragraph (6) unless I mark the following box. If I mark this box [ ], artificial  
2 nutrition and hydration must be provided regardless of my condition and regardless of the  
3 choice I have made in paragraph (6).

4 (8) RELIEF FROM PAIN: Except as I state in the following space, I direct that  
5 treatment for alleviation of pain or discomfort be provided at all times, even if it hastens  
6 my death:

7 .....  
8 .....

9 (9) OTHER WISHES: (If you do not agree with any of the optional choices above  
10 and wish to write your own, or if you wish to add to the instructions you have given  
11 above, you may do so here.) I direct that:

12 .....  
13 .....

14 (Add additional sheets if needed)

15 PART 3

16 DONATION OF ORGANS AT DEATH

17 (OPTIONAL)

18 (10) UPON MY DEATH: (mark applicable box)

19 [ ] (a) I give any needed organs, tissues or parts, OR

20 [ ] (b) I give the following organs, tissues or parts only:

21 .....

22 (c) My gift is for the following purposes: (strike any of the following you do not  
23 want)

24 (i) Transplant

25 (ii) Therapy

26 (iii) Research

27 (iv) Education

28 PART 4

29 PRIMARY PHYSICIAN

30 (OPTIONAL)

31 DESIGNATION OF PRIMARY PHYSICIAN

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(11) I designate the following physician as my primary physician:

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(name of physician)

.....

(address) (city) (state) (zip code)

.....

(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

.....

(name of physician)

.....

(address) (city) (state) (zip code)

.....

(phone)

\*\*\*\*\*

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

.....

(date) (sign your name)

.....

(address) (print your name)

.....

(city) (state)

SIGNATURES OF WITNESSES:

First witness 2nd witness

.....

(print name) (print name)

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1            (address) \_\_\_\_\_ (address)  
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 5            (signature of witness) \_\_\_\_\_ (signature of witness)  
 6            .....  
 7            (date) \_\_\_\_\_ (date)

8            **§5-806. Decisions by surrogate**

9            **1. Decisions by surrogate.** A surrogate may make a decision to withhold or  
 10            withdraw life-sustaining treatment for a patient who is an adult or emancipated minor if  
 11            the patient has been determined by the primary physician to lack capacity, no agent or  
 12            guardian has been appointed or the agent or guardian is not reasonably available and the  
 13            patient is in a terminal condition or a persistent vegetative state as determined by the  
 14            primary physician.

15            A surrogate also is authorized to make any other health-care decision for a patient who is  
 16            an adult or emancipated minor if the patient has been determined by the primary  
 17            physician to lack capacity and no agent or guardian exists, except that a surrogate may  
 18            not deny surgery, procedures or other interventions that are lifesaving and medically  
 19            necessary.

20            A medically necessary procedure is one providing the most patient-appropriate  
 21            intervention or procedure that can be safely and effectively given.

22            **2. Priority of who may act as surrogate.** Any member of the following classes of  
 23            the patient's family who is reasonably available, in descending order of priority, may act  
 24            as surrogate:

- 25            A. The spouse, unless legally separated;
- 26            B. An adult who shares an emotional, physical and financial relationship with the  
 27            patient similar to that of a spouse;
- 28            C. An adult child;
- 29            D. A parent;
- 30            E. An adult brother or sister;
- 31            F. An adult grandchild;
- 32            G. An adult niece or nephew, related by blood or adoption;
- 33            H. An adult aunt or uncle, related by blood or adoption; or
- 34            I. Any adult relative of the patient, related by blood or adoption, who is familiar with  
 35            the patient's personal values and is reasonably available for consultation.

36            **3. Adult who has exhibited special concern.** If none of the individuals eligible to  
 37            act as surrogate under subsection 2 is reasonably available, an adult who has exhibited

1 special concern for the patient, who is familiar with the patient's personal values and who  
2 is reasonably available may act as surrogate.

3 **4. Communication of assumption of authority.** A surrogate shall communicate the  
4 surrogate's assumption of authority as promptly as practicable to the members of the  
5 patient's family specified in subsection 2 who can be readily contacted.

6 **5. Conflict among potential surrogates; neutral 3rd party or court.** If more than  
7 one member of a class assumes authority to act as surrogate and they, or members of  
8 different classes who are reasonably available, do not agree on a health care decision and  
9 the supervising health care provider is so informed, the supervising health care provider  
10 may comply with the decision of the class having priority or a majority of the members of  
11 that class who have communicated their views to the provider. The health care provider  
12 may refer the members of the class or classes to a neutral 3rd party for assistance in  
13 resolving the dispute or to a court of competent jurisdiction. If the class is evenly divided  
14 concerning the health care decision and the supervising health care provider is so  
15 informed, that class and all individuals having lower priority are disqualified from  
16 making the decision.

17 **6. Decision in accordance with instructions, wishes, best interest.** A surrogate  
18 shall make a health care decision in accordance with the patient's individual instructions,  
19 if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate  
20 shall make the decision in accordance with the surrogate's determination of the patient's  
21 best interest and in good faith. In determining the patient's best interest, the surrogate  
22 shall consider the patient's personal values to the extent known to the surrogate. A  
23 consent is not valid if it conflicts with the intention of the patient previously expressed to  
24 the surrogate.

25 **7. Effective without judicial approval.** A health care decision made by a surrogate  
26 for a patient lacking capacity is effective without judicial approval.

27 **8. Disqualification.** An individual with capacity at any time may disqualify another,  
28 including a member of the individual's family, from acting as the individual's surrogate  
29 by a signed writing or by personally informing the supervising health care provider of the  
30 disqualification.

31 **9. Conflict of interest.** A surrogate may not be an owner, operator or employee of a  
32 residential long-term health care institution at which the patient is receiving care unless  
33 the surrogate is one of the following:

34 A. The spouse of the patient;

35 B. An adult child of the patient;

36 C. A parent of the patient; or

37 D. A relative of the patient with whom the patient has resided for more than 6  
38 months prior to the decision.

39 **10. Written declaration supporting authority.** A supervising health care provider  
40 may require an individual claiming the right to act as surrogate for a patient to provide a  
41 written declaration under penalty of perjury stating facts and circumstances reasonably  
42 sufficient to establish the claimed authority.

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**§5-807. Decisions by guardian**

**1. Compliance with expressed wishes; cannot revoke advance health care directive.** Except as authorized by a court of competent jurisdiction, a guardian shall comply with the individual subject to guardianship's individual instructions and other wishes, if any, expressed while the individual subject to guardianship had capacity and to the extent known to the guardian and may not revoke the individual subject to guardianship's advance health care directive unless the appointing court expressly so authorizes.

**2. Agent's decision takes precedence.** Absent a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

**3. Effective without judicial approval; exceptions.** A health care decision made by a guardian for the individual subject to guardianship is effective without judicial approval, except under the following circumstances:

- A. The guardian's decision is contrary to the individual subject to guardianship's individual instructions and other wishes, expressed while the individual subject to guardianship had capacity; or**
- B. The guardian seeks to withhold or withdraw life-sustaining treatment from the individual subject to guardianship, against the advice of the individual subject to guardianship's primary physician and in the absence of instructions from the individual subject to guardianship, made while the individual subject to guardianship had capacity.**

**§5-808. Obligations of health care provider**

**1. Communicate to patient.** Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

**2. Include in record advance health care directive, surrogate, revocation, disqualification.** A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health care record.

**3. Include in record determinations on capacity; communicate.** A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists that affects an individual instruction or the authority of an agent, guardian or surrogate or the validity of an advance health care directive shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

**4. Compliance.** Except as provided in subsections 5 and 6, a health care provider or health care institution providing care to a patient shall:

1 A. Comply with an individual instruction of the patient and with a reasonable  
2 interpretation of that instruction made by a person then authorized to make health  
3 care decisions for the patient; and

4 B. Comply with a health care decision for the patient made by a person then  
5 authorized to make health care decisions for the patient to the same extent as if the  
6 decision had been made by the patient while having capacity.

7 **5. Decline to comply; not in compliance; reasons of conscience; contrary to**  
8 **policy.** A health care provider may decline to comply with an individual instruction or  
9 health care decision if the instruction or decision appears not to be in compliance with  
10 this Part or for reasons of conscience. A health care institution may decline to comply  
11 with an individual instruction or health care decision if the instruction or decision appears  
12 not to be in compliance with this Part or if the instruction or decision is contrary to a  
13 policy of the institution that is expressly based on reasons of conscience and if the policy  
14 was timely communicated to the patient or to a person then authorized to make health  
15 care decisions for the patient.

16 **6. Decline to comply; ineffective health care; contrary to generally accepted**  
17 **standards.** A health care provider or health care institution may decline to comply with  
18 an individual instruction or health care decision that requires medically ineffective health  
19 care or health care contrary to generally accepted health care standards applicable to the  
20 health care provider or institution.

21 **7. Duties if decline to comply.** A health care provider or health care institution that  
22 declines to comply with an individual instruction or health care decision shall:

23 A. Promptly so inform the patient, if possible, and any person then authorized to  
24 make health care decisions for the patient;

25 B. Provide continuing care to the patient until a transfer can be effected or a court of  
26 competent jurisdiction issues a final order regarding the decision; and

27 C. Unless the patient or person then authorized to make health care decisions for the  
28 patient refuses assistance, immediately make all reasonable efforts to assist in the  
29 transfer of the patient to another health care provider or institution that is willing to  
30 comply with the instruction or decision.

31 **8. Not as a condition for providing health care.** A health care provider or health  
32 care institution may not require or prohibit the execution or revocation of an advance  
33 health care directive as a condition for providing health care.

34 **§5-809. Health care information**

35 Unless otherwise specified in an advance health care directive, a person then  
36 authorized to make health care decisions for a patient has the same rights as the patient to  
37 request, receive, examine, copy and consent to the disclosure of medical or any other  
38 health care information.

39 **§5-810. Immunities**

40 **1. Health care provider or institution.** A health care provider or health care  
41 institution acting in good faith and in accordance with generally accepted health care

1 standards applicable to the health care provider or health care institution is not subject to  
2 civil or criminal liability or to discipline for unprofessional conduct for:

3 A. Complying with a health care decision of a person apparently having authority  
4 and capacity to make a health care decision for a patient, including a decision to  
5 withhold or withdraw health care;

6 B. Declining to comply with a health care decision of a person based on a belief that  
7 the person then lacked authority or capacity or that the decision otherwise does not  
8 comply with this Part;

9 C. Complying with an advance health care directive and assuming that the directive  
10 was valid when made and has not been revoked or terminated; or

11 D. Seeking judicial relief from a court of competent jurisdiction.

12 2. Agent, guardian or surrogate. An individual acting as agent, guardian or  
13 surrogate under this Part is not subject to civil or criminal liability or to discipline for  
14 unprofessional conduct for health care decisions made in good faith.

15 **§5-811. Statutory damages**

16 1. Health care provider or institution; intentional violation. A health care  
17 provider or health care institution that intentionally violates this Part is subject to liability  
18 to the aggrieved individual for damages of \$500 or actual damages resulting from the  
19 violation, whichever is greater, plus reasonable attorney's fees.

20 2. Interference with autonomy to make health care decisions. A person who  
21 intentionally falsifies, forges, conceals, defaces or obliterates an individual's advance  
22 health care directive or a revocation of an advance health care directive without the  
23 individual's consent, or who coerces or fraudulently induces an individual to give, revoke  
24 or not to give an advance health care directive, is subject to liability to that individual for  
25 damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus  
26 reasonable attorney's fees.

27 **§5-812. Capacity**

28 1. Right to make health care decisions while having capacity. This Part does not  
29 affect the right of an individual to make health care decisions while having capacity to do  
30 so.

31 2. Presumed to have capacity; rebuttal. An individual is presumed to have  
32 capacity to make a health care decision, to give or revoke an advance health care directive  
33 and to designate or disqualify a surrogate. This presumption may be rebutted by a  
34 determination by the individual's primary physician or by a court of competent  
35 jurisdiction.

36 **§5-813. Effect of copy**

37 A copy of a written advance health care directive, revocation of an advance health  
38 care directive or designation or disqualification of a surrogate has the same effect as the  
39 original.

1 **§5-814. Effect of Part**

2 **1. No presumption concerning intention if no advance health care directive or if**  
3 **revoked.** This Part does not create a presumption concerning the intention of an  
4 individual who has not made or who has revoked an advance health care directive.

5 **2. Death resulting from withholding or withdrawing health care.** Death resulting  
6 from the withholding or withdrawal of health care in accordance with this Part does not  
7 for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of  
8 insurance or an annuity providing a death benefit, notwithstanding any term of the policy  
9 or annuity to the contrary.

10 **3. Prohibited by other statutes.** This Part does not authorize mercy killing, assisted  
11 suicide, euthanasia or the provision, withholding or withdrawal of health care to the  
12 extent prohibited by other statutes of this State.

13 **4. Health care contrary to generally accepted health care standards.** This Part  
14 does not authorize or require a health care provider or health care institution to provide  
15 health care contrary to generally accepted health care standards applicable to the health  
16 care provider or health care institution.

17 **5. Admission to a mental health institution.** This Part does not authorize an agent  
18 or surrogate to consent to the admission of an individual to a mental health institution  
19 unless the individual's written advance health care directive expressly so provides.

20 **6. Other statutes governing treatment for mental illness.** This Part does not  
21 affect other statutes of this State governing treatment for mental illness of an individual  
22 involuntarily committed to a mental health institution.

23 **§5-815. Judicial relief**

24 On petition of a patient, the patient's agent, guardian or surrogate, a health care or  
25 social services provider or health care institution involved with the patient's care, a state  
26 agency mandated to provide adult protective services pursuant to Title 22, chapter 958-A,  
27 or an adult relative or adult friend of the patient, the court may enjoin or direct a health  
28 care decision or other equitable relief.

29 **§5-816. Uniformity of application and construction**

30 This Part must be applied and construed to effectuate its general purpose to make  
31 uniform the law with respect to the subject matter of this Part among states enacting it.

32 **§5-817. Military advanced medical directives**

33 A military advanced medical directive executed in accordance with 10 United States  
34 Code, Section 1044c is valid in this State.

35 **PART 9**

36 **MAINE UNIFORM POWER OF ATTORNEY ACT**

37 **SUBPART 1**

38 **GENERAL PROVISIONS AND DEFINITIONS**



1 **§5-901. Short title**

2 This Part may be known and cited as "the Maine Uniform Power of Attorney Act."

3 **§5-902. Definitions**

4 As used in this Part, unless the context otherwise indicates, the following terms have  
5 the following meanings.

6 **1. Agent.** "Agent" means a person granted authority to act for a principal under a  
7 power of attorney, whether denominated an agent, attorney-in-fact or otherwise. "Agent"  
8 includes an original agent, coagent, successor agent and a person to whom an agent's  
9 authority is delegated.

10 **2. Durable.** "Durable," with respect to a power of attorney, means not terminated by  
11 the principal's incapacity.

12 **3. Electronic.** "Electronic" means relating to technology having electrical, digital,  
13 magnetic, wireless, optical, electromagnetic or similar capabilities.

14 **4. Good faith.** "Good faith" means honesty in fact.

15 **5. Incapacity.** "Incapacity" means inability of an individual to effectively manage  
16 property or business affairs because the individual:

17 A. Is impaired by reason of mental illness, mental deficiency, physical illness or  
18 disability, chronic use of drugs, chronic intoxication or other cause to the extent that  
19 the individual lacks sufficient understanding, capacity or ability to receive and  
20 evaluate information or make or communicate decisions regarding the individual's  
21 property or business affairs; or

22 B. Is:

23 (1) Missing;

24 (2) Detained, including incarcerated in a penal system; or

25 (3) Outside the United States and unable to return.

26 **6. Person.** "Person" means an individual, corporation, business trust, estate, trust,  
27 partnership, limited liability company, association, joint venture, public corporation,  
28 government or governmental subdivision, agency or instrumentality or any other legal or  
29 commercial entity.

30 **7. Power of attorney.** "Power of attorney" means a writing or other record that  
31 grants authority to an agent to act in the place of the principal, whether or not the term  
32 "power of attorney" is used.

33 **8. Presently exercisable general power of appointment.** "Presently exercisable  
34 general power of appointment," with respect to property or a property interest subject to a  
35 power of appointment, means power exercisable at the time in question to vest absolute  
36 ownership in the principal individually, the principal's estate, the principal's creditors or  
37 the creditors of the principal's estate. "Presently exercisable general power of  
38 appointment" includes a power of appointment not exercisable until the occurrence of a  
39 specified event, the satisfaction of an ascertainable standard or the passage of a specified

1 period only after the occurrence of the specified event, the satisfaction of the  
2 ascertainable standard or the passage of the specified period. "Presently exercisable  
3 general power of appointment" does not include a power exercisable in a fiduciary  
4 capacity or only by will.

5 **9. Principal.** "Principal" means an individual who grants authority to an agent in a  
6 power of attorney.

7 **10. Property.** "Property" means anything that may be the subject of ownership,  
8 whether real or personal or legal or equitable, or any interest or right therein.

9 **11. Sign.** "Sign" means, with present intent to authenticate or adopt a record:

10 A. To execute or adopt a tangible symbol; or

11 B. To attach to or logically associate with the record an electronic sound, symbol or  
12 process.

13 **12. Stocks and bonds.** "Stocks and bonds" means stocks, bonds, mutual funds and  
14 all other types of securities and financial instruments, whether held directly, indirectly or  
15 in any other manner. "Stocks and bonds" does not include commodity futures contracts  
16 and call or put options on stocks or stock indexes.

17 **§5-903. Applicability**

18 This Part applies to all powers of attorney except:

19 **1. Coupled with an interest in the subject of the power.** A power to the extent it  
20 is coupled with an interest in the subject of the power, including a power given to or for  
21 the benefit of a creditor in connection with a credit transaction;

22 **2. Health care decisions.** A power to make health care decisions;

23 **3. Proxy or other delegation to exercise rights.** A proxy or other delegation to  
24 exercise voting rights or management rights with respect to an entity; and

25 **4. Governmental purpose.** A power created on a form prescribed by a government  
26 or governmental subdivision, agency or instrumentality for a governmental purpose.

27 **§5-904. Power of attorney is durable**

28 A power of attorney created under this Part is durable unless it expressly provides  
29 that it is terminated by the incapacity of the principal.

30 **§5-905. Execution of power of attorney; notices**

31 **1. Signed by principal; acknowledged.** A power of attorney must be signed by the  
32 principal or in the principal's conscious presence by another individual directed by the  
33 principal to sign the principal's name on the power of attorney. A signature on a power of  
34 attorney is presumed to be genuine if the principal acknowledges the signature before a  
35 notary public or other individual authorized by law to take acknowledgments. A power  
36 of attorney under this Part is not valid unless it is acknowledged before a notary public or  
37 other individual authorized by law to take acknowledgments.

1        **2. Notices for durable power of attorney.** A durable power of attorney under this  
2 Part is not valid unless it contains the following notices substantially in the following  
3 form:

4        "Notice to the Principal: As the "Principal" you are using this power of attorney to grant  
5 power to another person (called the Agent) to make decisions about your property and to  
6 use your property on your behalf. Under this power of attorney you give your Agent  
7 broad and sweeping powers to sell or otherwise dispose of your property without notice  
8 to you. Under this document your Agent will continue to have these powers after you  
9 become incapacitated. The powers that you give your Agent are explained more fully in  
10 the Maine Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5,  
11 Part 9. You have the right to revoke this power of attorney at any time as long as you are  
12 not incapacitated. If there is anything about this power of attorney that you do not  
13 understand, you should ask an attorney to explain it to you.

14        Notice to the Agent: As the "Agent" you are given power under this power of attorney to  
15 make decisions about the property belonging to the Principal and to dispose of the  
16 Principal's property on the Principal's behalf in accordance with the terms of this power  
17 of attorney. This power of attorney is valid only if the Principal is of sound mind when  
18 the Principal signs it. When you accept the authority granted under this power of  
19 attorney, a special legal relationship is created between you and the Principal. This  
20 relationship imposes upon you legal duties that continue until you resign or the power of  
21 attorney is terminated or revoked. The duties are more fully explained in the Maine  
22 Uniform Power of Attorney Act, Maine Revised Statutes, Title 18-C, Article 5, Part 9 and  
23 Title 18-B, sections 802 to 807 and Title 18-B, chapter 9. As the Agent, you are  
24 generally not entitled to use the Principal's property for your own benefit or to make gifts  
25 to yourself or others unless the power of attorney gives you such authority. If you violate  
26 your duty under this power of attorney, you may be liable for damages and may be  
27 subject to criminal prosecution. You must stop acting on behalf of the Principal if you  
28 learn of any event that terminates this power of attorney or your authority under this  
29 power of attorney. Events of termination are more fully explained in the Maine Uniform  
30 Power of Attorney Act and include, but are not limited to, revocation of your authority or  
31 of the power of attorney by the Principal, the death of the Principal or the commencement  
32 of divorce proceedings between you and the Principal. If there is anything about this  
33 power of attorney or your duties under it that you do not understand, you should ask an  
34 attorney to explain it to you."

35        **§5-906. Validity of power of attorney**

36        **1. Executed on or after January 1, 2019.** A power of attorney executed in this  
37 State on or after January 1, 2019 is valid if its execution complies with section 5-905.

38        **2. Executed on or after July 1, 2010 but before January 1, 2019.** A power of  
39 attorney executed on or after July 1, 2010 but before January 1, 2019 is valid if its  
40 execution complied with former Title 18-A, section 5-906.

41        **3. Executed before July 1, 2010.** A power of attorney executed in this State before  
42 July 1, 2010 is valid if its execution complied with the law of this State as it existed at the  
43 time of execution.

1        **4. Executed other than in this State.** A power of attorney executed other than in  
2 this State is valid in this State if, when the power of attorney was executed, the execution  
3 complied with:

4        **A.** The law of the jurisdiction that determines the meaning and effect of the power of  
5 attorney pursuant to section 5-907; or

6        **B.** The requirements for a military power of attorney pursuant to 10 United States  
7 Code, Section 1044b, as amended.

8        **5. Defective notice.** A power of attorney executed in this State is valid and  
9 enforceable 2 years after execution if the notice required by section 5-905, subsection 2 is  
10 included but is incomplete or defective in any respect.

11        **6. Copy.** Except as otherwise provided by statute other than this Part, a photocopy  
12 or electronically transmitted copy of an original power of attorney has the same effect as  
13 the original.

14        **§5-907. Meaning and effect of power of attorney**

15        The meaning and effect of a power of attorney are determined by the law of the  
16 jurisdiction indicated in the power of attorney and, in the absence of an indication of  
17 jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

18        **§5-908. Nomination of conservator or guardian; relation of agent to court-**  
19 **appointed fiduciary**

20        **1. Nomination of conservator or guardian.** In a power of attorney, a principal may  
21 nominate a conservator of the principal's estate or guardian of the principal's person for  
22 consideration by the court if protective proceedings for the principal's estate or person are  
23 begun after the principal executes the power of attorney. Except for good cause shown or  
24 disqualification, the court shall make its appointment in accordance with the principal's  
25 most recent nomination.

26        **2. Relation of agent to court-appointed fiduciary.** If, after a principal executes a  
27 power of attorney, a court appoints a conservator of the principal's estate or other  
28 fiduciary charged with the management of some or all of the principal's property, the  
29 agent is accountable to the fiduciary as well as to the principal. The power of attorney is  
30 not terminated and the agent's authority continues unless limited, suspended or terminated  
31 by the court.

32        **§5-909. When power of attorney effective**

33        **1. Effective when executed unless otherwise provided.** A power of attorney is  
34 effective when executed unless the principal provides in the power of attorney that it  
35 becomes effective at a future date or upon the occurrence of a future event or  
36 contingency.

37        **2. Future event or contingency; determination.** If a power of attorney becomes  
38 effective upon the occurrence of a future event or contingency, the principal, in the power  
39 of attorney, may authorize one or more persons to determine in a writing or other record  
40 that the event or contingency has occurred.

1           **3. Incapacity; determination.** If a power of attorney becomes effective upon the  
2 principal's incapacity and the principal has not authorized a person to determine whether  
3 the principal is incapacitated, or the person authorized is unable or unwilling to make the  
4 determination, the power of attorney becomes effective upon a determination in a writing  
5 or other record by:

6           A. A physician that the principal is incapacitated within the meaning of section  
7 5-902, subsection 5, paragraph A; or

8           B. An attorney, a judge or an appropriate governmental official that the principal is  
9 incapacitated within the meaning of section 5-902, subsection 5, paragraph B.

10           **4. Personal representative pursuant to federal law.** A person authorized by the  
11 principal in the power of attorney to determine that the principal is incapacitated may act  
12 as the principal's personal representative pursuant to the federal Health Insurance  
13 Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq.,  
14 as amended, and applicable regulations, to obtain access to the principal's health care  
15 information and communicate with the principal's health care provider.

16           **§5-910. Termination of power of attorney or agent's authority**

17           **1. Termination of power of attorney.** A power of attorney terminates when:

18           A. The principal dies;

19           B. The principal becomes incapacitated, if the power of attorney is not durable;

20           C. The principal revokes the power of attorney;

21           D. The power of attorney provides that it terminates;

22           E. The purpose of the power of attorney is accomplished; or

23           F. The principal revokes the agent's authority or the agent dies, becomes  
24 incapacitated or resigns and the power of attorney does not provide for another agent  
25 to act under the power of attorney.

26           **2. Termination of agent's authority.** An agent's authority terminates:

27           A. When the principal revokes the authority;

28           B. When the agent dies, becomes incapacitated or resigns;

29           C. When an action is filed for the termination or annulment of the agent's marriage to  
30 the principal or their legal separation, unless the power of attorney otherwise  
31 provides;

32           D. Upon the sooner to occur of either:

33           (1) The marriage of the principal to a person other than the agent if upon or after  
34 execution of the power of attorney the principal and the agent are or became  
35 registered domestic partners, the filing with the domestic partner registry, in  
36 accordance with Title 22, section 2710, subsection 4, of a notice consenting to the  
37 termination of a registered domestic partnership of the principal and the agent; or

1           (2) Upon service, in accordance with Title 22, section 2710, subsection 4, of a  
2           notice of intent to terminate the registered domestic partnership of the principal  
3           and the agent; or

4           E. When the power of attorney terminates.

5           **3. Agent's authority until termination.** Unless the power of attorney otherwise  
6           provides, an agent's authority is exercisable until the authority terminates under  
7           subsection 2, notwithstanding a lapse of time since the execution of the power of  
8           attorney.

9           **4. Termination of authority not effective without actual knowledge.** Termination  
10          of an agent's authority or of a power of attorney is not effective as to the agent or another  
11          person that, without actual knowledge of the termination, acts in good faith under the  
12          power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds  
13          the principal and the principal's successors in interest.

14          **5. Incapacity does not revoke or terminate nondurable power of attorney**  
15          **without actual knowledge.** Incapacity of the principal of a power of attorney that is not  
16          durable does not revoke or terminate the power of attorney as to an agent or other person  
17          that, without actual knowledge of the incapacity, acts in good faith under the power of  
18          attorney. An act so performed, unless otherwise invalid or unenforceable, binds the  
19          principal and the principal's successors in interest.

20          **6. Previously executed power of attorney not revoked unless provided.** The  
21          execution of a power of attorney does not revoke a power of attorney previously executed  
22          by the principal unless the subsequent power of attorney provides that the previous power  
23          of attorney is revoked or that all other powers of attorney are revoked.

24          **§5-911. Coagents and successor agents**

25          **1. Coagents.** A principal may designate 2 or more persons to act as coagents.  
26          Unless the power of attorney otherwise provides, each coagent may exercise its authority  
27          independently.

28          **2. Successor agents.** A principal may designate one or more successor agents to act  
29          if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to  
30          serve. A principal may grant authority to designate one or more successor agents to an  
31          agent or other person designated by name, office or function. Unless the power of  
32          attorney otherwise provides, a successor agent:

33                  A. Has the same authority as that granted to the original agent; and

34                  B. May not act until all predecessor agents have resigned, died, become  
35                  incapacitated, are no longer qualified to serve or have declined to serve.

36          **3. Not liable for actions of other agent.** Except as otherwise provided in the power  
37          of attorney and subsection 4, an agent that does not participate in or conceal a breach of  
38          fiduciary duty committed by another agent, including a predecessor agent, is not liable for  
39          the actions of the other agent.

40          **4. Actual knowledge of breach or imminent breach; damages.** An agent that has  
41          actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall

1 notify the principal and, if the principal is incapacitated, take any action reasonably  
2 appropriate in the circumstances to safeguard the principal's interests. An agent that fails  
3 to notify the principal or take action as required by this subsection is liable for the  
4 reasonably foreseeable damages that could have been avoided if the agent had notified  
5 the principal or taken such action.

6 **§5-912. Reimbursement and compensation of agent**

7 Unless the power of attorney otherwise provides, an agent is entitled to  
8 reimbursement of expenses reasonably incurred on behalf of the principal and to  
9 compensation that is reasonable under the circumstances. The factors set forth in section  
10 3-721, subsection 2 should be considered as guides in determining the reasonableness of  
11 compensation under this section.

12 **§5-913. Agent's acceptance**

13 Except as otherwise provided in the power of attorney, a person accepts appointment  
14 as an agent under a power of attorney by exercising authority or performing duties as an  
15 agent or by any other assertion or conduct indicating acceptance.

16 **§5-914. Agent's duties**

17 **1. Minimum mandatory duties.** Notwithstanding provisions in the power of  
18 attorney, an agent that has accepted appointment shall:

19 A. Act in accordance with the principal's reasonable expectations to the extent  
20 actually known by the agent and otherwise act as a fiduciary under the standards of  
21 care applicable to trustees as described under Title 18-B, sections 802 to 807 and  
22 Title 18-B, chapter 9;

23 B. Act in good faith; and

24 C. Act only within the scope of authority granted in the power of attorney.

25 **2. Default duties.** Except as otherwise provided in the power of attorney, an agent  
26 that has accepted appointment shall:

27 A. Act loyally for the principal's benefit;

28 B. Act so as not to create a conflict of interest that impairs the agent's ability to act  
29 impartially;

30 C. Act with the care, competence and diligence ordinarily exercised by agents in  
31 similar circumstances;

32 D. Keep a record of all receipts, disbursements and transactions made on behalf of  
33 the principal;

34 E. Cooperate with a person that has authority to make health care decisions for the  
35 principal to carry out such decisions; and

36 F. Attempt to preserve the principal's estate plan, to the extent actually known by the  
37 agent, based on all relevant factors, including:

38 (1) The value and nature of the principal's property;

- 1                   (2) The principal's foreseeable obligations and need for maintenance;  
2                   (3) Minimization of taxes, including income, estate, inheritance, generation-  
3                   skipping transfer and gift taxes; and  
4                   (4) Eligibility for a benefit, a program or assistance under a statute, rule or  
5                   regulation.

6                   **3. Failure to preserve estate plan; good faith.** An agent that acts in good faith is  
7                   not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

8                   **4. Agent also benefits.** An agent that acts with care, competence and diligence for  
9                   the sole interest of the principal is not liable solely because the agent also benefits from  
10                   the act or has an individual or conflicting interest in relation to the property or affairs of  
11                   the principal.

12                   **5. Special skills or expertise.** If an agent is selected by the principal because of  
13                   special skills or expertise possessed by the agent or in reliance on the agent's  
14                   representation that the agent has special skills or expertise, the special skills or expertise  
15                   must be considered in determining whether the agent has acted with care, competence and  
16                   diligence under the circumstances.

17                   **6. Value of property declines.** Absent a breach of duty to the principal, an agent is  
18                   not liable if the value of the principal's property declines.

19                   **7. Delegation of authority.** An agent that exercises authority to delegate to another  
20                   person the authority granted by the principal or that engages another person on behalf of  
21                   the principal is not liable for an act, error of judgment or default of that person if the  
22                   agent exercises care, competence and diligence in selecting and monitoring the person.

23                   **8. Disclosure upon request.** Except as otherwise provided in the power of attorney,  
24                   an agent is not required to disclose receipts, disbursements or transactions conducted on  
25                   behalf of the principal unless ordered by a court or requested by the principal, a guardian,  
26                   a conservator, another fiduciary acting for the principal, a governmental agency having  
27                   authority to protect the welfare of the principal or, upon the death of the principal, by the  
28                   personal representative or successor in interest of the principal's estate. If so requested,  
29                   within 30 days the agent shall comply with the request or provide a writing or other  
30                   record substantiating why additional time is needed and shall comply with the request  
31                   within an additional 30 days.

32                   **§5-915. Exoneration of agent**

33                   A provision in a power of attorney relieving an agent of liability for breach of duty is  
34                   binding on the principal and the principal's successors in interest except to the extent the  
35                   provision:

36                   **1. Dishonesty, improper motive, reckless indifference.** Relieves the agent of  
37                   liability for breach of duty committed dishonestly, with an improper motive or with  
38                   reckless indifference to the purposes of the power of attorney; or

39                   **2. Abuse of relationship.** Was inserted as a result of an abuse of a confidential or  
40                   fiduciary relationship with the principal.



1 **§5-916. Judicial relief**

2 **1. Petition.** The following persons may petition the Probate Court or the Superior  
3 Court for the county in which either the principal or the agent resides to construe a power  
4 of attorney or review the agent's conduct and grant appropriate relief:

5 A. The principal or the agent;

6 B. A guardian, conservator or other fiduciary acting for the principal;

7 C. A person authorized to make health care decisions for the principal;

8 D. The principal's spouse, registered domestic partner, parent or descendant;

9 E. An individual who would qualify as a presumptive heir of the principal;

10 F. A person named as a beneficiary to receive any property, benefit or contractual  
11 right on the principal's death or as a beneficiary of a trust created by or for the  
12 principal that has a financial interest in the principal's estate;

13 G. A governmental agency having regulatory authority to protect the welfare of the  
14 principal;

15 H. The principal's caregiver or another person that demonstrates sufficient interest in  
16 the principal's welfare; and

17 I. A person asked to accept the power of attorney.

18 **2. Motion by principal to dismiss; lack of capacity.** Upon motion by the principal,  
19 the court shall dismiss a petition filed under this section, unless the court finds that the  
20 principal lacks capacity to revoke the agent's authority or the power of attorney.

21 **§5-917. Agent's liability**

22 An agent that violates this Part is liable to the principal or the principal's successors in  
23 interest for the amount required to:

24 **1. Restore property.** Restore the value of the principal's property to what it would  
25 have been had the violation not occurred; and

26 **2. Reimburse fees and costs.** Reimburse the principal or the principal's successors  
27 in interest for the attorney's fees and costs paid on the agent's behalf.

28 **§5-918. Agent's resignation; notice**

29 Unless the power of attorney provides a different method for an agent's resignation,  
30 an agent may resign by giving notice to the principal and, if the principal is incapacitated:

31 **1. Conservator, guardian, coagent, successor agent.** To the conservator or  
32 guardian, if one has been appointed for the principal, and a coagent or successor agent; or

33 **2. Caregiver, interested person, governmental agency.** If there is no person  
34 described in subsection 1, to:

35 A. The principal's caregiver;

36 B. Another person reasonably believed by the agent to have sufficient interest in the  
37 principal's welfare; or

1 C. A governmental agency having authority to protect the welfare of the principal.

2 **§5-919. Acceptance of and reliance upon acknowledged power of attorney**

3 **1. Acknowledged.** For purposes of this section and section 5-920, "acknowledged"  
4 means purportedly verified before a notary public or other individual authorized to take  
5 acknowledgments.

6 **2. Signature not genuine.** A person that in good faith accepts an acknowledged  
7 power of attorney without actual knowledge that the signature is not genuine may rely  
8 upon the presumption under section 5-905 that the signature is genuine.

9 **3. Void, invalid or terminated; exceeding or improper authority.** A person that  
10 in good faith accepts an acknowledged power of attorney without actual knowledge that  
11 the power of attorney is void, invalid or terminated, that the purported agent's authority is  
12 void, invalid or terminated or that the agent is exceeding or improperly exercising the  
13 agent's authority may rely upon the power of attorney as if the power of attorney were  
14 genuine, valid and still in effect, the agent's authority were genuine, valid and still in  
15 effect and the agent had not exceeded and had properly exercised the authority.

16 **4. Request and rely upon.** A person that is asked to accept an acknowledged power  
17 of attorney may request, and rely upon, without further investigation:

18 **A.** An agent's certification under penalty of perjury of any factual matter concerning  
19 the principal, agent or power of attorney.

20 **B.** An English translation of the power of attorney if the power of attorney contains,  
21 in whole or in part, language other than English; and

22 **C.** An opinion of counsel as to any matter of law concerning the power of attorney if  
23 the person making the request provides in a writing or other record the reason for the  
24 request.

25 **5. Expense of translation or opinion of counsel.** An English translation or an  
26 opinion of counsel requested under this section must be provided at the principal's  
27 expense unless the request is made more than 7 business days after the power of attorney  
28 is presented for acceptance.

29 **6. Employee without actual knowledge.** For purposes of this section and section  
30 5-920, a person that conducts activities through employees is without actual knowledge  
31 of a fact relating to a power of attorney, a principal or an agent if the employee  
32 conducting the transaction involving the power of attorney is without actual knowledge of  
33 the fact.

34 **§5-920. Liability for refusal to accept acknowledged power of attorney**

35 **1. Request within 7 days; accept within 5 days of receipt.** Except as otherwise  
36 provided in subsection 2:

37 **A.** A person shall either accept an acknowledged power of attorney or request a  
38 certification, a translation or an opinion of counsel under section 5-919, subsection 4  
39 no later than 7 business days after presentation of the power of attorney for  
40 acceptance;

1 B. If a person requests a certification, a translation or an opinion of counsel under  
2 section 5-919, subsection 4, the person shall accept the power of attorney no later  
3 than 5 business days after receipt of the certification, translation or opinion of  
4 counsel; and

5 C. A person may not require an additional or different form of power of attorney for  
6 authority granted in the power of attorney presented.

7 **2. Acceptance not required.** A person is not required to accept an acknowledged  
8 power of attorney if:

9 A. The person is not otherwise required to engage in a transaction with the principal  
10 in the same circumstances;

11 B. Engaging in a transaction with the agent or the principal in the same  
12 circumstances would be inconsistent with federal law;

13 C. The person has actual knowledge of the termination of the agent's authority or of  
14 the power of attorney before exercise of the power;

15 D. A request for a certification, a translation or an opinion of counsel under section  
16 5-919, subsection 4 is refused;

17 E. The person in good faith believes that the power is not valid or that the agent does  
18 not have the authority to perform the act requested, whether or not a certification, a  
19 translation or an opinion of counsel under section 5-919, subsection 4 has been  
20 requested or provided; or

21 F. The person has a good faith belief that the principal may be subject to physical or  
22 financial abuse, neglect, exploitation or abandonment by the agent or a person acting  
23 for or with the agent and the person makes, or has actual knowledge that another  
24 person has made, a report to the Department of Health and Human Services regarding  
25 such beliefs.

26 **3. Consequences of refusal.** A person that refuses in violation of this section to  
27 accept an acknowledged power of attorney is subject to:

28 A. A court order mandating acceptance of the power of attorney; and

29 B. Liability for reasonable attorney's fees and costs incurred in any action or  
30 proceeding that confirms the validity of the power of attorney or mandates  
31 acceptance of the power of attorney.

32 **§5-921. Principles of law and equity**

33 Unless displaced by a provision of this Part, the principles of law and equity  
34 supplement this Part.

35 **§5-922. Laws applicable to financial institutions and entities**

36 This Part does not supersede any other law applicable to financial institutions or other  
37 entities, and the other law controls if inconsistent with this Part.

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**§5-923. Remedies under other law**

The remedies under this Part are not exclusive and do not abrogate any right or remedy under the law of this State other than this Part.

**SUBPART 2**

**AUTHORITY**

**§5-931. Authority that requires specific grant; grant of general authority**

**1. Specific grant of authority required.** An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- A. Create, amend, revoke or terminate an inter vivos trust;
- B. Make a gift;
- C. Create or change rights of survivorship;
- D. Create or change a beneficiary designation;
- E. Delegate authority granted under the power of attorney;
- F. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- G. Exercise fiduciary powers that the principal has authority to delegate; and
- H. Disclaim property, including a power of appointment.

**2. Limitation on creating interest in principal's property.** Notwithstanding a grant of authority to do an act described in subsection 1, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, registered domestic partner or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

**3. General authority.** Subject to subsections 1, 2, 4 and 5, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 5-934 to 5-946.

**4. Authority to make a gift.** Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 5-947.

**5. Overlapping subjects.** Subject to subsections 1, 2 and 4, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

**6. Authority with respect to principal's property.** Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this State

1 and whether or not the authority is exercised or the power of attorney is executed in this  
2 State.

3 **7. Act pursuant to power of attorney.** An act performed by an agent pursuant to a  
4 power of attorney has the same effect and inures to the benefit of and binds the principal  
5 and the principal's successors in interest as if the principal had performed the act.

6 **§5-932. Incorporation of authority**

7 **1. Reference to subject.** An agent has authority described in this subpart if the  
8 power of attorney refers to general authority with respect to the descriptive term for the  
9 subjects stated in sections 5-934 to 5-947 or cites the section in which the authority is  
10 described.

11 **2. Reference to section number.** A reference in a power of attorney to general  
12 authority with respect to the descriptive term for a subject in sections 5-934 to 5-947 or a  
13 citation to a section of sections 5-934 to 5-947 incorporates the entire section as if it were  
14 set out in full in the power of attorney.

15 **3. Modify incorporated authority.** A principal may modify authority incorporated  
16 by reference.

17 **§5-933. Construction of authority generally**

18 Except as otherwise provided in the power of attorney, by executing a power of  
19 attorney that incorporates by reference a subject described in sections 5-934 to 5-947 or  
20 that grants to an agent authority to do all acts that a principal could do pursuant to section  
21 5-931, subsection 3, a principal authorizes the agent, with respect to that subject, to:

22 **1. Money or another thing of value.** Demand, receive and obtain, by litigation or  
23 otherwise, money or another thing of value to which the principal is, may become or  
24 claims to be entitled and conserve, invest, disburse or use anything so received or  
25 obtained for the purposes intended;

26 **2. Contracts.** Contract in any manner with any person, on terms agreeable to the  
27 agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate,  
28 reform, restate, release or modify the contract or another contract made by or on behalf of  
29 the principal;

30 **3. Instrument or communication.** Execute, acknowledge, seal, deliver, file or  
31 record any instrument or communication the agent considers desirable to accomplish a  
32 purpose of a transaction, including creating at any time a schedule listing some or all of  
33 the principal's property and attaching it to the power of attorney;

34 **4. Claim in favor of or against principal; intervene.** Initiate, participate in, submit  
35 to alternative dispute resolution, settle, oppose or propose or accept a compromise with  
36 respect to a claim existing in favor of or against the principal or intervene in litigation  
37 relating to the claim;

38 **5. Assistance of court or governmental agency.** Seek on the principal's behalf the  
39 assistance of a court or other governmental agency to carry out an act authorized in the  
40 power of attorney;

1 6. Advisors. Engage, compensate and discharge an attorney, accountant,  
2 discretionary investment manager, expert witness or other advisor;

3 7. Record, report or other document. Prepare, execute and file a record, report or  
4 other document to safeguard or promote the principal's interest under a statute, rule or  
5 regulation;

6 8. Communication with government or instrumentality. Communicate with any  
7 representative or employee of a government or governmental subdivision, agency or  
8 instrumentality on behalf of the principal;

9 9. Access communications. Access communications intended for and communicate  
10 on behalf of the principal, whether by mail, electronic transmission, telephone or other  
11 means; and

12 10. Any lawful act. Do any lawful act with respect to the subject and all property  
13 related to the subject.

14 **§5-934. Real property**

15 Unless the power of attorney otherwise provides, language in a power of attorney  
16 granting general authority with respect to real property authorizes the agent to:

17 1. Acquire or reject an interest in real property. Demand, buy, lease, receive,  
18 accept as a gift or as security for an extension of credit or otherwise acquire or reject an  
19 interest in real property or a right incident to real property;

20 2. Grant or dispose of an interest in real property. Sell; exchange; convey with  
21 or without covenants, representations or warranties; quitclaim; release; surrender; retain  
22 title for security; encumber; partition; consent to partitioning; subject to an easement or  
23 covenant; subdivide; apply for zoning or other governmental permits; plat or consent to  
24 platting; develop; grant an option concerning; lease; sublease; contribute to an entity in  
25 exchange for an interest in that entity; or otherwise grant or dispose of an interest in real  
26 property or a right incident to real property;

27 3. Interest in real property as security. Pledge or mortgage an interest in real  
28 property or right incident to real property as security to borrow money or pay, renew or  
29 extend the time of payment of a debt of the principal or a debt guaranteed by the  
30 principal;

31 4. Claim to real property. Release, assign, satisfy or enforce by litigation or  
32 otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other  
33 claim to real property that exists or is asserted;

34 5. Manage or conserve interest in real property. Manage or conserve an interest  
35 in real property or a right incident to real property owned or claimed to be owned by the  
36 principal, including:

37 A. Insuring against liability or casualty or other loss;

38 B. Obtaining or regaining possession of or protecting the interest or right by  
39 litigation or otherwise;

40 C. Paying, assessing, compromising or contesting taxes or assessments or applying  
41 for and receiving refunds in connection with them; and

1 D. Purchasing supplies, hiring assistance or labor and making repairs or alterations to  
2 the real property;

3 6. Structures or other improvements. Use, develop, alter, replace, remove, erect  
4 or install structures or other improvements upon real property in or incident to which the  
5 principal has, or claims to have, an interest or right;

6 7. Reorganization with respect to real property. Participate in a reorganization  
7 with respect to real property or an entity that owns an interest in or right incident to real  
8 property and receive, hold and act with respect to stocks and bonds or other property  
9 received in a plan of reorganization, including:

10 A. Selling or otherwise disposing of them;

11 B. Exercising or selling an option, right of conversion or similar right with respect to  
12 them; and

13 C. Exercising any voting rights in person or by proxy;

14 8. Form of title. Change the form of title of an interest in or right incident to real  
15 property; and

16 9. Public use. Dedicate to public use, with or without consideration, easements or  
17 other real property in which the principal has, or claims to have, an interest.

18 **§5-935. Tangible personal property**

19 Unless the power of attorney otherwise provides, language in a power of attorney  
20 granting general authority with respect to tangible personal property authorizes the agent  
21 to:

22 1. Acquire or reject interest in tangible personal property. Demand, buy,  
23 receive, accept as a gift or as security for an extension of credit or otherwise acquire or  
24 reject ownership or possession of tangible personal property or an interest in tangible  
25 personal property;

26 2. Grant or otherwise dispose of interest in tangible personal property. Sell;  
27 exchange; convey with or without covenants, representations or warranties; quitclaim;  
28 release; surrender; create a security interest in; grant options concerning; lease; sublease;  
29 or otherwise dispose of tangible personal property or an interest in tangible personal  
30 property;

31 3. Security interest in tangible personal property. Grant a security interest in  
32 tangible personal property or an interest in tangible personal property as security to  
33 borrow money or pay, renew or extend the time of payment of a debt of the principal or a  
34 debt guaranteed by the principal;

35 4. Claim to tangible personal property. Release, assign, satisfy or enforce by  
36 litigation or otherwise a security interest, lien or other claim on behalf of the principal  
37 with respect to tangible personal property or an interest in tangible personal property; and

38 5. Manage or conserve tangible personal property. Manage or conserve tangible  
39 personal property or an interest in tangible personal property on behalf of the principal,  
40 including:

- 1 A. Insuring against liability or casualty or other loss;
- 2 B. Obtaining or regaining possession of or protecting the property or interest by
- 3 litigation or otherwise;
- 4 C. Paying, assessing, compromising or contesting taxes or assessments or applying
- 5 for and receiving refunds in connection with them;
- 6 D. Moving the property from place to place;
- 7 E. Storing the property for hire or on a gratuitous bailment;
- 8 F. Using and making repairs, alterations or improvements to the property; and
- 9 G. Changing the form of title of an interest in tangible personal property.

10 **§5-936. Stocks and bonds**

11 Unless the power of attorney otherwise provides, language in a power of attorney

12 granting general authority with respect to stocks and bonds authorizes the agent to:

- 13 1. Buy, sell and exchange. Buy, sell and exchange stocks and bonds;
- 14 2. Stocks and bonds account. Establish, continue, modify or terminate an account
- 15 with respect to stocks and bonds;
- 16 3. Security. Pledge stocks and bonds as security to borrow, pay, renew or extend the
- 17 time of payment of a debt of the principal;
- 18 4. Evidences of ownership. Receive certificates and other evidences of ownership
- 19 with respect to stocks and bonds; and
- 20 5. Voting rights. Exercise voting rights with respect to stocks and bonds in person
- 21 or by proxy, enter into voting trusts and consent to limitations on the right to vote.

22 **§5-937. Commodities and options**

23 Unless the power of attorney otherwise provides, language in a power of attorney

24 granting general authority with respect to commodities and options authorizes the agent

25 to:

- 26 1. Commodity futures, stock options. Buy, sell, exchange, assign, settle and
- 27 exercise commodity futures contracts and call or put options on stocks or stock indexes
- 28 traded on a regulated option exchange; and
- 29 2. Option accounts. Establish, continue, modify and terminate option accounts.

30 **§5-938. Banks and other financial institutions**

31 Unless the power of attorney otherwise provides, language in a power of attorney

32 granting general authority with respect to banks and other financial institutions authorizes

33 the agent to:

- 34 1. Banking arrangement by principal. Continue, modify and terminate an account
- 35 or other banking arrangement made by or on behalf of the principal;
- 36 2. Banking arrangement selected by agent. Establish, modify and terminate an
- 37 account or other banking arrangement with a bank, trust company, savings and loan



1 association, credit union, thrift company, brokerage firm or other financial institution  
2 selected by the agent;

3 **3. Contract for services.** Contract for services available from a financial institution,  
4 including renting a safe deposit box or space in a vault;

5 **4. Withdraw property of principal.** Withdraw, by check, order, electronic funds  
6 transfer or otherwise, money or property of the principal deposited with or left in the  
7 custody of a financial institution;

8 **5. Receive and act on documents.** Receive statements of account, vouchers, notices  
9 and similar documents from a financial institution and act with respect to them;

10 **6. Safe deposit box or vault.** Enter a safe deposit box or vault and withdraw or add  
11 to the contents;

12 **7. Borrow and pledge as security.** Borrow money and pledge as security personal  
13 property of the principal necessary to borrow money or pay, renew or extend the time of  
14 payment of a debt of the principal or a debt guaranteed by the principal;

15 **8. Negotiable and nonnegotiable paper of the principal.** Make, assign, draw,  
16 endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other  
17 negotiable or nonnegotiable paper of the principal or payable to the principal or the  
18 principal's order; transfer money; receive the cash or other proceeds of those transactions;  
19 and accept a draft drawn by a person upon the principal and pay it when due;

20 **9. Receive and act on negotiable and nonnegotiable instruments.** Receive for the  
21 principal and act upon a sight draft, warehouse receipt or other document of title, whether  
22 tangible or electronic, or other negotiable or nonnegotiable instrument;

23 **10. Letters of credit.** Apply for, receive and use letters of credit, credit and debit  
24 cards, electronic transaction authorizations and traveler's checks from a financial  
25 institution and give an indemnity or other agreement in connection with letters of credit;  
26 and

27 **11. Extension of time of payment.** Consent to an extension of the time of payment  
28 with respect to commercial paper or a financial transaction with a financial institution.

29 **§5-939. Operation of entity or business**

30 Subject to the terms of a document or an agreement governing an entity or an entity  
31 ownership interest, and unless the power of attorney otherwise provides, language in a  
32 power of attorney granting general authority with respect to operation of an entity or  
33 business authorizes the agent to:

34 **1. Ownership interest.** Operate, buy, sell, enlarge, reduce or terminate an  
35 ownership interest;

36 **2. Duty, liability, right, power, privilege or option.** Perform a duty or discharge a  
37 liability and exercise in person or by proxy a right, power, privilege or option that the  
38 principal has, may have or claims to have;

39 **3. Ownership agreement.** Enforce the terms of an ownership agreement;

1 4. Ownership interest litigation. Initiate, participate in, submit to alternative  
2 dispute resolution, settle, oppose or propose or accept a compromise with respect to  
3 litigation to which the principal is a party because of an ownership interest;

4 5. Stocks and bonds. Exercise in person or by proxy, or enforce by litigation or  
5 otherwise, a right, power, privilege or option the principal has or claims to have as the  
6 holder of stocks and bonds;

7 6. Stocks and bonds litigation. Initiate, participate in, submit to alternative dispute  
8 resolution, settle, oppose or propose or accept a compromise with respect to litigation to  
9 which the principal is a party concerning stocks and bonds;

10 7. Sole ownership. With respect to an entity or business owned solely by the  
11 principal:

12 A. Continue, modify, renegotiate, extend and terminate a contract made by or on  
13 behalf of the principal with respect to the entity or business before execution of the  
14 power of attorney;

15 B. Determine:

16 (1) The location of its operation;

17 (2) The nature and extent of its business;

18 (3) The methods of manufacturing, selling, merchandising, financing, accounting  
19 and advertising employed in its operation;

20 (4) The amount and types of insurance carried; and

21 (5) The mode of engaging, compensating and dealing with its employees and  
22 accountants, attorneys or other advisors;

23 C. Change the name or form of organization under which the entity or business is  
24 operated and enter into an ownership agreement with other persons to take over all or  
25 part of the operation of the entity or business; and

26 D. Demand and receive money due or claimed by the principal or on the principal's  
27 behalf in the operation of the entity or business and control and disburse the money in  
28 the operation of the entity or business;

29 8. Additional capital. Put additional capital into an entity or business in which the  
30 principal has an interest;

31 9. Reorganization, consolidation, conversion, domestication or merger. Join in a  
32 plan of reorganization, consolidation, conversion, domestication or merger of the entity or  
33 business in which the principal has an interest;

34 10. Sell or liquidate. Sell or liquidate all or part of an entity or business in which  
35 the principal has an interest;

36 11. Buy-out agreement value. Establish the value of an entity or business under a  
37 buy-out agreement to which the principal is a party;

1 12. Reports and other papers; payments. Prepare, sign, file and deliver reports,  
2 compilations of information, returns or other papers with respect to an entity or business  
3 and make related payments; and

4 13. Taxes, assessments, fines and penalties. Pay, compromise or contest taxes,  
5 assessments, fines or penalties and perform any other act to protect the principal from  
6 illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or  
7 business, including attempts to recover, in any manner permitted by law, money paid  
8 before or after the execution of the power of attorney.

9 **§5-940. Insurance and annuities**

10 Unless the power of attorney otherwise provides, language in a power of attorney  
11 granting general authority with respect to insurance and annuities authorizes the agent to:

12 1. Insurance or annuity contract procured by principal. Continue, pay the  
13 premium or make a contribution on, modify, exchange, rescind, release or terminate a  
14 contract procured by or on behalf of the principal that insures or provides an annuity to  
15 either the principal or another person, whether or not the principal is a beneficiary under  
16 the contract;

17 2. New insurance or annuity contract for principal and family. Procure new,  
18 different and additional contracts of insurance and annuities for the principal and the  
19 principal's spouse, registered domestic partner, children and other dependents and select  
20 the amount, type of insurance or annuity and mode of payment;

21 3. Insurance or annuity contract procured by agent. Pay the premium or make a  
22 contribution on, modify, exchange, rescind, release or terminate a contract of insurance or  
23 annuity procured by the agent;

24 4. Loan secured by insurance or annuity contract. Apply for and receive a loan  
25 secured by a contract of insurance or annuity;

26 5. Surrender, cash on insurance or annuity contract. Surrender and receive the  
27 cash surrender value on a contract of insurance or annuity;

28 6. Election. Exercise an election;

29 7. Investment powers. Exercise investment powers available under a contract of  
30 insurance or annuity;

31 8. Manner of paying premiums. Change the manner of paying premiums on a  
32 contract of insurance or annuity;

33 9. Change or convert type. Change or convert the type of insurance or annuity with  
34 respect to which the principal has or claims to have authority described in this section;

35 10. Benefit or assistance to guarantee or pay premiums. Apply for and procure a  
36 benefit or assistance under a statute or regulation to guarantee or pay premiums of a  
37 contract of insurance on the life of the principal;

38 11. Interest of principal in contract. Collect, sell, assign, hypothecate, borrow  
39 against or pledge the interest of the principal in a contract of insurance or annuity;

1 12. Form and timing of payment of proceeds. Select the form and timing of the  
2 payment of proceeds from a contract of insurance or annuity; and

3 13. Tax or assessment. Pay, from proceeds or otherwise, compromise or contest,  
4 and apply for refunds in connection with, a tax or assessment levied by a taxing authority  
5 with respect to a contract of insurance or annuity or its proceeds or liability accruing by  
6 reason of the tax or assessment.

7 **§5-941. Estate, trust and other beneficial interest**

8 1. Definition. As used in this section, "estate, trust and other beneficial interest"  
9 means a trust, probate estate, guardianship, conservatorship, escrow or custodianship or a  
10 fund from which the principal is, may become or claims to be entitled to a share or  
11 payment.

12 2. General authority. Unless the power of attorney otherwise provides, language in  
13 a power of attorney granting general authority with respect to an estate, trust and other  
14 beneficial interest authorizes the agent to:

15 A. Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment  
16 from the fund;

17 B. Demand or obtain money or another thing of value to which the principal is, may  
18 become or claims to be entitled by reason of the fund, by litigation or otherwise;

19 C. Exercise for the benefit of the principal a presently exercisable general power of  
20 appointment held by the principal;

21 D. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or  
22 propose or accept a compromise with respect to litigation to ascertain the meaning,  
23 validity or effect of a deed, will, declaration of trust or other instrument or transaction  
24 affecting the interest of the principal;

25 E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or  
26 propose or accept a compromise with respect to litigation to remove, substitute or  
27 surcharge a fiduciary;

28 F. Conserve, invest, disburse or use anything received for an authorized purpose; and

29 G. Transfer an interest of the principal in real property, stocks and bonds, accounts  
30 with financial institutions or securities intermediaries, insurance, annuities and other  
31 property to the trustee of a revocable trust created by the principal as settlor.

32 **§5-942. Claims and litigation**

33 Unless the power of attorney otherwise provides, language in a power of attorney  
34 granting general authority with respect to claims and litigation authorizes the agent to:

35 1. Assert and maintain claim. Assert and maintain before a court or administrative  
36 agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or  
37 defense, including an action to recover property or other thing of value, or recover  
38 damages sustained by the principal; eliminate or modify tax liability; or seek an  
39 injunction, specific performance or other relief;

1 2. Participate in litigation. Bring an action to determine adverse claims or  
2 intervene or otherwise participate in litigation;

3 3. Effect or satisfy judgment, order or decree. Seek an attachment, garnishment,  
4 order of arrest or other preliminary, provisional or intermediate relief and use an available  
5 procedure to effect or satisfy a judgment, order or decree;

6 4. Offer of judgment or admission of facts; bind principal. Make or accept a  
7 tender, offer of judgment or admission of facts, submit a controversy on an agreed  
8 statement of facts, consent to examination and bind the principal in litigation;

9 5. Alternative dispute resolution, settle and compromise. Submit to alternative  
10 dispute resolution, settle and propose or accept a compromise;

11 6. Service of process; procedure. Waive the issuance and service of process upon  
12 the principal; accept service of process; appear for the principal; designate persons upon  
13 which process directed to the principal may be served; execute and file or deliver  
14 stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and  
15 give surety and indemnity bonds; contract and pay for the preparation and printing of  
16 records and briefs; and receive, execute and file or deliver a consent, waiver, release,  
17 confession of judgment, satisfaction of judgment, notice, agreement or other instrument  
18 in connection with the prosecution, settlement or defense of a claim or litigation;

19 7. Bankruptcy or insolvency; reorganization, receivership or appointment of  
20 receiver or trustee. Act for the principal with respect to bankruptcy or insolvency,  
21 whether voluntary or involuntary, concerning the principal or some other person, or with  
22 respect to a reorganization, receivership or application for the appointment of a receiver  
23 or trustee that affects an interest of the principal in property or other thing of value;

24 8. Pay claim or litigation. Pay a judgment, award or order against the principal or a  
25 settlement made in connection with a claim or litigation; and

26 9. Receive settlement of or proceeds of claim or litigation. Receive money or  
27 other thing of value paid in settlement of or as proceeds of a claim or litigation.

28 **§5-943. Personal and family maintenance**

29 1. General authority. Unless the power of attorney otherwise provides, language in  
30 a power of attorney granting general authority with respect to personal and family  
31 maintenance authorizes the agent to:

32 A. Perform the acts necessary to maintain the customary standard of living of the  
33 principal, the principal's spouse or the principal's registered domestic partner and the  
34 following individuals, whether living when the power of attorney is executed or later  
35 born:

36 (1) Individuals legally entitled to be supported by the principal; and

37 (2) Individuals whom the principal has customarily supported or indicated the  
38 intent to support;

39 B. Make periodic payments of child support and other family maintenance required  
40 by a court or governmental agency or an agreement to which the principal is a party;

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C. Provide living quarters for the individuals described in paragraph A by:

- (1) Purchase, lease or other contract; or
- (2) Paying the operating costs, including interest, amortization payments, repairs, improvements and taxes, for premises owned by the principal or occupied by those individuals;

D. Provide normal domestic help, usual vacations and travel expenses and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph A;

E. Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph A;

F. Act as the principal's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq., as amended, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal;

G. Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing them, for the individuals described in paragraph A;

H. Maintain credit and debit accounts for the convenience of the individuals described in paragraph A and open new accounts; and

I. Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or to continue contributions to those organizations.

2. Authority with respect to gifts. Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this Part.

**§5-944. Benefits from governmental programs or civil or military service**

1. Definition. As used in this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute, rule or regulation including Social Security, Medicare and Medicaid.

2. General authority. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

- A. Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 5-943, subsection 1, paragraph A and for shipment of their household effects;

- 1           B. Take possession and order the removal and shipment of property of the principal  
2           from a post, warehouse, depot, dock or other place of storage or safekeeping, either  
3           governmental or private, and execute and deliver a release, voucher, receipt, bill of  
4           lading, shipping ticket, certificate or other instrument for that purpose;
- 5           C. Enroll in, apply for, select, reject, change, amend or discontinue, on the  
6           principal's behalf, a benefit or program;
- 7           D. Prepare, file and maintain a claim of the principal for a benefit or assistance,  
8           financial or otherwise, to which the principal may be entitled under a statute, rule or  
9           regulation;
- 10           E. Initiate, participate in, submit to alternative dispute resolution, settle, oppose or  
11           propose or accept a compromise with respect to litigation concerning any benefit or  
12           assistance the principal may be entitled to receive under a statute, rule or regulation;  
13           and
- 14           F. Receive the financial proceeds of a claim described in paragraph D and conserve,  
15           invest, disburse or use for a lawful purpose anything so received.

16           **§5-945. Retirement plans**

17           **1. Definition.** As used in this section, "retirement plan" means a plan or account  
18           created by an employer, the principal or another individual to provide retirement benefits  
19           or deferred compensation of which the principal is a participant, beneficiary or owner,  
20           including a plan or account under the following sections of the federal Internal Revenue  
21           Code:

- 22           A. An individual retirement account under 26 United States Code, Section 408, as  
23           amended;
- 24           B. A Roth individual retirement account under 26 United States Code, Section 408A,  
25           as amended;
- 26           C. A deemed individual retirement account under 26 United States Code, Section  
27           408(q), as amended;
- 28           D. An annuity or mutual fund custodial account under 26 United States Code,  
29           Section 403(b), as amended;
- 30           E. A pension, profit-sharing, stock bonus or other retirement plan qualified under 26  
31           United States Code, Section 401(a), as amended;
- 32           F. A plan under 26 United States Code, Section 457(b), as amended; and
- 33           G. A nonqualified deferred compensation plan under 26 United States Code, Section  
34           409A, as amended.

35           **2. General authority.** Unless the power of attorney otherwise provides, language in  
36           a power of attorney granting general authority with respect to retirement plans authorizes  
37           the agent to:

- 38           A. Select the form and timing of payments under a retirement plan and withdraw  
39           benefits from a plan;

- 1 B. Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one  
2 retirement plan to another;
- 3 C. Establish a retirement plan in the principal's name;
- 4 D. Make contributions to a retirement plan;
- 5 E. Exercise investment powers available under a retirement plan; and
- 6 F. Borrow from, sell assets to or purchase assets from a retirement plan.

7 **§5-946. Taxes**

8 Unless the power of attorney otherwise provides, language in a power of attorney  
9 granting general authority with respect to taxes authorizes the agent to:

10 1. **Prepare, sign and file returns and other documents.** Prepare, sign and file  
11 federal, state, local and foreign income, gift, payroll, property, Federal Insurance  
12 Contributions Act and other tax returns, claims for refunds, requests for extension of  
13 time, petitions regarding tax matters and any other tax-related documents, including  
14 receipts, offers, waivers, consents, including consents and agreements under 26 United  
15 States Code, Section 2032A, as amended, closing agreements and any power of attorney  
16 required by the federal Internal Revenue Service or other taxing authority with respect to  
17 a tax year upon which the statute of limitations has not run and the following 25 tax  
18 years;

19 2. **Taxes due, refunds, bonds, confidential information and deficiencies.** Pay  
20 taxes due, collect refunds, post bonds, receive confidential information and contest  
21 deficiencies determined by the federal Internal Revenue Service or other taxing authority;

22 3. **Election under tax law.** Exercise any election available to the principal under  
23 federal, state, local or foreign tax law; and

24 4. **Act for principal in all tax matters.** Act for the principal in all tax matters for all  
25 periods before the federal Internal Revenue Service or other taxing authority.

26 **§5-947. Gifts**

27 1. **Gift.** For the purposes of this section, a gift for the benefit of a person includes a  
28 gift to a trust, an account under the Maine Uniform Transfers to Minors Act and a tuition  
29 savings account or prepaid tuition plan as defined under 26 United States Code, Section  
30 529, as amended.

31 2. **Consistent with principal's objectives.** An agent may make a gift of the  
32 principal's property only as the agent determines is consistent with the principal's  
33 objectives if known by the agent and, if unknown, as the agent determines is consistent  
34 with the principal's objectives based on all relevant factors, including:

35 A. The value and nature of the principal's property;

36 B. The principal's foreseeable obligations and need for maintenance;

37 C. Minimization of taxes, including income, estate, inheritance, generation-skipping  
38 transfer and gift taxes;





1        Agent's Name Printed  
 2        .....

3        Agent's Address  
 4        .....

5        Agent's Telephone Number  
 6        This document was acknowledged before me on ..... (Date)  
 7        by .....

8        (Name of Agent)  
 9        ..... (Seal, if any)

10       Signature of Notary/Attorney  
 11       My commission expires: .....

12       This document prepared by:  
 13       .....

**SUBPART 4**

**MISCELLANEOUS PROVISIONS**

**§5-961. Uniformity of application and construction**

In applying and construing this Part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

**§5-962. Relation to Electronic Signatures in Global and National Commerce Act**

This Part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b).

**§5-963. Effect on existing powers of attorney**

Except as otherwise provided in this Part:

**1. Application to powers of attorney.** This Part applies to a power of attorney created before, on or after January 1, 2019;

**2. Application to judicial proceedings commenced on or after January 1, 2019.** This Part applies to a judicial proceeding concerning a power of attorney commenced on or after January 1, 2019; and

**3. Application to judicial proceedings commenced before January 1, 2019.** This Part applies to a judicial proceeding concerning a power of attorney commenced before January 1, 2019, unless the court finds that application of a provision of this Part would substantially interfere with the effective conduct of the judicial proceeding or prejudice

1 the rights of a party, in which case that provision does not apply and the superseded law  
2 applies.

3 An act done before January 1, 2019 is not affected by this Part.'

4 Amend the bill in Part A in section 2 in §8-301 in subsection 2 by striking out all of  
5 paragraph F (page 348, lines 28 to 31 in L.D.) and inserting the following:

6 'F. For an adoption decree entered before the effective date and not amended after  
7 the effective date, the child is the child of both the former and adopting parents for  
8 purposes of intestate succession, notwithstanding section 2-117, unless the decree  
9 provides otherwise.'

10 Amend the bill in Part A in section 2 by striking out all of Article 9 and inserting the  
11 following:

12 'ARTICLE 9

13 ADOPTION

14 PART 1

15 GENERAL PROVISIONS

16 §9-101. Short title

17 This Article may be known and cited as "the Adoption Act."

18 §9-102. Definitions

19 As used in this Article, unless the context otherwise indicates, the following terms  
20 have the following meanings.

21 1. Adoptee. "Adoptee" means a person who will be or who has been adopted,  
22 regardless of whether the person is a child or an adult.

23 2. Adult. "Adult" means a person who is 18 years of age or older.

24 3. Child. "Child" means a person who is under 18 years of age.

25 4. Consent. "Consent," used as a noun, means a voluntary agreement to an adoption  
26 by a specific petitioner that is executed by a parent or custodian of the adoptee.

27 5. Department. "Department" means the Department of Health and Human  
28 Services.

29 6. Licensed child-placing agency. "Licensed child-placing agency" means an  
30 agency, person, group of persons, organization, association or society licensed to operate  
31 in this State pursuant to Title 22, chapter 1671.

32 7. Parent. "Parent" means a person who, with respect to a child:

33 A. Has established parentage pursuant to Title 19-A, chapter 61; or

34 B. When no person described in paragraph A exists, is the legal guardian of the  
35 child.

1        **8. Petitioner.** "Petitioner" means a person filing a petition to adopt an adult or a  
2 child, and includes both petitioners under a joint petition, except as otherwise provided in  
3 this Article.

4        **9. Putative parent.** "Putative parent" means a person who is the alleged parent of a  
5 child but whose parentage has not been but may be legally determined in accordance with  
6 Title 19-A, chapter 61.

7        **10. Surrender and release.** "Surrender and release," used as a noun, means a  
8 voluntary relinquishment of all parental rights to a child to the department or a licensed  
9 child-placing agency for the purpose of placement for adoption.

10        **§9-103. Jurisdiction**

11        **1. Probate Court jurisdiction.** Subject to Title 4, section 152, subsection 5-A, the  
12 Probate Court has exclusive jurisdiction over the following:

13        A. Petitions for adoption;

14        B. Consents and reviews of withholdings of consent by persons other than a parent;

15        C. Surrenders and releases;

16        D. Termination of parental rights proceedings brought pursuant to section 9-204;

17        E. Proceedings to determine the rights of putative parents of children whose  
18 adoptions or surrenders and releases are pending before the Probate Court; and

19        F. Reviews conducted pursuant to section 9-205.

20        **2. District Court jurisdiction.** The District Court has jurisdiction to conduct  
21 hearings pursuant to section 9-205. The District Court has jurisdiction over any matter  
22 described in subsection 1 if the proceeding concerns a child over whom the District Court  
23 has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

24        **§9-104. Venue; transfer**

25        **1. Venue if adoptee placed by agency or department.** If an adoptee is placed by a  
26 licensed child-placing agency or the department, the petition for adoption must be filed in  
27 the court in the county or division where:

28        A. The petitioner resides;

29        B. The adoptee resides or was born;

30        C. An office of the agency that placed the adoptee for adoption is located; or

31        D. Parental rights of the minor adoptee's parents have been terminated.

32        **2. Venue if agency or department not involved in placement.** If an adoptee is not  
33 placed by a licensed child-placing agency or the department, the petition for adoption  
34 must be filed in the county or division where the adoptee resides or where the petitioners  
35 reside.

36        **3. Transfer.** If, in the interests of justice or for the convenience of the parties, the  
37 court finds that the matter should be heard in another court, the court may transfer, stay or  
38 dismiss the proceeding, subject to any further conditions imposed by the court.

1 **§9-105. Rights of adopted persons**

2 Except as otherwise provided by law, an adopted person has all the same rights,  
3 including inheritance rights, that a child born to the adoptive parents would have. An  
4 adoptee also retains the right to inherit from the adoptee's former parents if the adoption  
5 decree so provides, as specified in section 2-119, subsection 6.

6 **§9-106. Legal representation**

7 **1. Attorney for parents.** The parents are entitled to an attorney for any hearing held  
8 pursuant to this Article. If a parent or putative parent wants an attorney but is unable to  
9 afford one, the parent or the putative parent may request the court to appoint an attorney.  
10 If the court finds either or both of them indigent, the court shall appoint and pay the  
11 reasonable costs and expenses of the attorney of the indigent party. The attorney may not  
12 be the attorney for the adoptive parents.

13 **2. Attorney for minor indigent parent.** When the adoptee is unrelated to the  
14 petitioner, the court shall appoint an attorney who is not the attorney for the adoptive  
15 parents to represent a minor indigent parent at every stage of the proceedings unless the  
16 minor indigent parent refuses representation or the court determines that representation is  
17 unnecessary.

18 **§9-107. Indian Child Welfare Act of 1978**

19 The federal Indian Child Welfare Act of 1978, United States Code, Title 25, Section  
20 1901 et seq. governs all proceedings under this Article that pertain to an Indian child as  
21 defined in that Act.

22 **§9-108. Application of prior laws**

23 The laws in effect on December 31, 2018 apply to proceedings for which any of the  
24 following occurred before January 1, 2019:

25 **1. Consent.** The filing of a consent;

26 **2. Surrender and release.** The filing of a surrender and release;

27 **3. Waiver of notice.** The filing of a waiver of notice by a parent or putative parent  
28 under former Title 19, section 532-C;

29 **4. Order terminating parental rights.** The issuance of an order terminating  
30 parental rights; or

31 **5. Adoption petition.** The filing of a petition for adoption.

32 **§9-109. Mediation**

33 The court may refer the parties to mediation at any time after a petition is filed if  
34 mediation services are available at a reasonable fee or no cost, and may require that the  
35 parties have made a good faith effort to mediate the issue before holding a hearing. An  
36 agreement reached by the parties through mediation on an issue must be reduced to  
37 writing, signed by the parties and presented to the court for approval as a court order.

38

**PART 2**

1                    **DETERMINATION OF PARENTAGE AND TERMINATION OF PARENTAL**  
2                    **RIGHTS**

3                    **§9-201. Determination of parentage**

4                    **1. Affidavit of parentage.** When a parent of a child wishes to consent to the  
5                    adoption of the child or to execute a surrender and release for the purpose of adoption of  
6                    the child and a putative parent has not consented to the adoption of the child or joined in a  
7                    surrender and release for the purpose of adoption of the child or waived the right to  
8                    notice, the parent must file an affidavit of parentage with the court so that the court may  
9                    determine how to give notice of the proceedings to the putative parent.

10                   **2. Notice of intent to consent or execute surrender and release.** If a court finds  
11                   from the affidavit of the parent submitted pursuant to subsection 1 that the putative  
12                   parent's whereabouts are known, the court shall order that notice of the parent's intent to  
13                   consent to adoption or to execute a surrender and release, or the parent's actual consent or  
14                   surrender and release, for the purpose of adoption of the child, be served upon the  
15                   putative parent. If the court finds that the putative parent's whereabouts are unknown, the  
16                   court shall order notice by publication in accordance with the applicable rules of  
17                   procedure. If the parent does not know or refuses to tell the court who a putative parent  
18                   is, the court may order publication in accordance with the applicable rules of procedure in  
19                   a newspaper of general circulation in the area where the petition is filed, where the parent  
20                   became pregnant or where the putative parent is most likely to be located. The notice  
21                   must specify the names of the parent and the child.

22                   **3. Waiver of notice.** A putative parent may waive the right to notice under this  
23                   section in a document acknowledged before a notary public or a judge. The notary public  
24                   may not be an attorney who represents either the parent or any person who is likely to  
25                   become the legal guardian, custodian or parent of the child.

26                   A. The waiver of notice must indicate that the putative parent understands that the  
27                   waiver of notice operates as a consent to adoption or a surrender and release for the  
28                   purposes of adoption for any adoption of the child and that by signing the waiver of  
29                   notice the putative parent voluntarily gives up any rights to the child.

30                   B. The waiver of notice may state that the putative parent neither admits nor denies  
31                   parentage.

32                   **4. Determination of parentage of putative parent.** If, after notice, the putative  
33                   parent of the child wishes to establish parentage of the child, the putative parent must,  
34                   within 20 days after notice has been given or within a longer period of time as ordered by  
35                   the court, petition the court to initiate proceedings to establish parentage under Title  
36                   19-A, chapter 61.

37                   **5. Hearing date.** Upon receipt of a petition under subsection 4, the court shall fix a  
38                   date for a hearing to determine the putative parent's parentage of the child.

39                   **6. Appointment of attorneys.** The court shall appoint an attorney who is not the  
40                   attorney for the putative parent, the parent or the potential transferee agency or a potential  
41                   adoptive parent to represent the child and to protect the child's interests in the proceedings  
42                   under this section.

1 7. Notice of hearing. Notice of a hearing under this section must be given to a  
2 parent, a putative parent, the attorney for the child and any other parties the court  
3 determines appropriate. Notice need not be given to a putative parent who has waived the  
4 right to notice as provided in subsection 3.

5 8. Studies and reports. Upon order of the court, the department or licensed child-  
6 placing agency shall furnish studies and reports relevant to the proceedings under this  
7 section.

8 9. Findings; effect of parent not waiving notice. If the putative parent is  
9 determined to be the child’s parent pursuant to one or more of the means of establishing  
10 parentage under Title 19-A, chapter 61, and does not execute a waiver of notice pursuant  
11 to subsection 3, then a petitioner must bring a petition to terminate the parent’s parental  
12 rights pursuant to section 9-204 if the petitioner proceeds with the adoption.

13 10. Findings; putative parent does not seek to establish or establish parentage of  
14 the child. If the putative parent does not bring a petition to establish parentage under  
15 subsection 4 or does not establish parentage of the child under Title 19-A, chapter 61, the  
16 court shall rule that the putative parent’s consent or surrender and release is not needed  
17 for the adoption.

18 **§9-202. Surrender and release; consent**

19 1. Surrender and release or consent; presence of judge. With the approval of the  
20 court of any county within the State and after a determination by the court that a  
21 surrender and release or a consent is in the best interest of the child, the parents or  
22 surviving parent of a child may at any time at least 72 hours after the child's birth:

23 A. Surrender and release all parental rights to the child and the custody and control  
24 of the child to a licensed child-placing agency or the department to enable the  
25 licensed child-placing agency or the department to have the child adopted by a  
26 suitable person; or

27 B. Consent to have the child adopted by a specified petitioner.

28 The parents or the surviving parent must execute the surrender and release or the consent  
29 in the presence of the judge. The adoptee, if 14 years of age or older, must execute the  
30 consent in the presence of the judge. The waiver of notice by the putative parent is  
31 governed by section 9-201, subsection 3.

32 2. Approval of surrender and release or consent. The court may approve a  
33 surrender and release or a consent only if:

34 A. A licensed child-placing agency or the department certifies to the court that  
35 counseling was provided or was offered and refused. This requirement does not  
36 apply if:

37 (1) One of the petitioners is a blood relative; or

38 (2) The adoptee is an adult;

39 B. The court has explained the individual's parental rights and responsibilities, the  
40 effects of the surrender and release or the consent, that in all but specific situations  
41 the individual has the right to revoke the surrender and release or consent within 3

1 days and the existence of the adoption registry and the services available under Title  
2 22, section 2706-A. The individual does not have the right to revoke the consent  
3 when the individual is a consenting party and also a petitioner;

4 C. The court determines that the surrender and release or the consent has been duly  
5 executed and was given freely after the parent was informed of the parent's rights;  
6 and

7 D. Except when a consenting party is also a petitioner, at least 5 working days have  
8 elapsed since the parents or parent executed the surrender and release or the consent  
9 and the parents or parent did not withdraw or revoke the surrender and release or  
10 consent before the judge or, if the judge was not available, before the register.

11 **3. Original; copies.** The original surrender and release or consent must be filed in  
12 the court where the surrender and release or the consent is executed. An attested copy of  
13 the surrender and release or consent must be filed in the court in which the petition is  
14 filed. The court in which the surrender and release or the consent is executed shall  
15 provide an attested copy to each surrendering or consenting party and an attested copy to  
16 the transferring agency. The copy given to the surrendering or consenting party must  
17 contain a statement explaining the importance of keeping the court informed of a current  
18 name and address.

19 **4. Valid after 5 days; exception.** A surrender and release or a consent is not valid  
20 until 5 working days after it has been executed, except that consent by a parent  
21 petitioning to adopt that parent's own child with that parent's spouse is valid upon  
22 signature.

23 **5. Consent acknowledged.** Consent may be acknowledged before a notary public  
24 who is not an attorney for the adopting parents or a partner, associate or employee of an  
25 attorney for the adopting parents when consent is given by:

26 A. The department or a licensed child-placing agency; or

27 B. A public agency or a duly licensed private agency to which parental rights have  
28 been transferred under the law of another state or country.

29 **6. Final and irrevocable; exceptions.** Except as provided in subsection 7 and  
30 section 9-205, subsection 2, a surrender and release or a consent is final and irrevocable  
31 when duly executed.

32 **7. Consent; limitations.** A consent is final only for the adoption consented to, and if  
33 that petition for adoption is withdrawn or dismissed or if the adoption is not finalized  
34 within 18 months of the execution of the consent, a review must be held pursuant to  
35 section 9-205.

36 **8. Surrender and release or consent from another state.** The court shall accept a  
37 surrender and release or a consent by a court of comparable jurisdiction in another state if  
38 the court receives an affidavit from a member of that state's bar or a certificate from that  
39 court of comparable jurisdiction stating that:

40 A. The party executing the surrender and release or the consent followed the  
41 procedure required to make a surrender and release or a consent valid in the state in  
42 which it was executed; and



1           B. The court of comparable jurisdiction advised the person executing the surrender  
2           and release or the consent of the consequences of the surrender and release or the  
3           consent under the laws of the state in which the surrender and release or the consent  
4           was executed.

5           The court shall accept a waiver of notice by a putative parent that meets the requirements  
6           of section 9-201, subsection 3.

7           **§9-203. Duties and responsibilities subsequent to surrender and release**

8           Without notice to the parent or parents, the surrender and release authorized pursuant  
9           to section 9-202 may be transferred together with all rights under section 9-202 from the  
10           transferee agency to the department or from the department as original transferee to any  
11           licensed child-placing agency. If the licensed child-placing agency or the department is  
12           unable to find a suitable adoptive home for a child surrendered and released by a parent  
13           or parents, the licensed child-placing agency or the department to whom custody and  
14           control of that child have been surrendered and released or transferred shall request a  
15           review pursuant to section 9-205.

16           **§9-204. Termination of parental rights**

17           **1. Petition for termination; adoption petition brought solely by parent.** A  
18           petition for termination of parental rights may be brought in the court in which a petition  
19           for adoption is properly filed as part of that petition for adoption. A petition for  
20           termination of parental rights may not be included as part of a petition for adoption  
21           brought solely by another parent of the child unless the adoption is sought to confirm the  
22           parentage status of the petitioning parent.

23           **2. Title 22, chapter 1071, subchapter 6 applies.** Except as otherwise provided by  
24           this section, a termination of parental rights petition is subject to the provisions of Title  
25           22, chapter 1071, subchapter 6.

26           **3. Grounds for Termination.** The court may order termination of parental rights if:

27           A. The parent consents to the termination. Consent must be written and voluntarily  
28           and knowingly executed in court before a judge. The judge shall explain the effects  
29           of a termination order; or

30           B. The court finds, based on clear and convincing evidence, that:

31                   (1) Termination is in the best interest of the child; and

32                   (2) Either:

33                           (a) The parent is unwilling or unable to protect the child from jeopardy, as  
34                           defined by Title 22, section 4002, subsection 6, and these circumstances are  
35                           unlikely to change within a time that is reasonably calculated to meet the  
36                           child's needs;

37                           (b) The parent has been unwilling or unable to take responsibility for the  
38                           child within a time that is reasonably calculated to meet the child's needs; or

39                           (c) The parent has abandoned the child, as described in Title 22, section  
40                           4002, subsection 1-A;

1 In making findings pursuant to this paragraph, the court may consider the extent to  
2 which the parent had opportunities to rehabilitate and to reunify with the child,  
3 including actions by the child’s other parent to foster or to interfere with a  
4 relationship between the parent and child or services provided by public or nonprofit  
5 agencies.

6 **4. Guardian ad litem for child.** The court may appoint a guardian ad litem for a  
7 child who is the subject of a petition for termination of parental rights under subsection 1.  
8 The appointment must be made as soon as possible after the petition for termination of  
9 parental rights is initiated.

10 A. The court shall pay reasonable costs and expenses for the guardian ad litem.

11 B. In general, the guardian ad litem shall act in pursuit of the best interests of the  
12 child. The guardian ad litem must be given access to all reports and records relevant  
13 to the case and investigate to ascertain the facts. The investigation must include,  
14 when possible and appropriate:

15 (1) Reviewing records of psychiatric, psychological or physical examinations of  
16 the child, parents or other persons having or seeking care or custody of the child;

17 (2) Review of relevant school records and other pertinent materials;

18 (3) Interviewing the child with or without other persons present; and

19 (4) Interviews with parents, guardians, teachers and other persons who have been  
20 involved in caring for or treating the child.

21 The guardian ad litem may subpoena, examine and cross-examine witnesses and shall  
22 make recommendations to the court.

23 **§9-205. Review**

24 **1. Judicial review required; 18 months.** The court shall conduct a judicial review  
25 if:

26 A. A child is not adopted within 18 months of the execution of a surrender and  
27 release;

28 B. The adoption is not finalized within 18 months of the consent to an adoption by a  
29 parent or parents; or

30 C. A petition for adoption is not finalized within 18 months.

31 **2. Determination whether adoption viable plan; review; plan; District Court.** If,  
32 after judicial review under subsection 1, the court determines that adoption is still a viable  
33 plan for the child, the court shall schedule another judicial review within 2 years. If the  
34 court determines that adoption is no longer a viable plan, the court shall attempt to notify  
35 the parents, who must be given an opportunity to present an acceptable plan for the child.  
36 If either or both parents are able and willing to assume physical custody of the child, the  
37 court shall declare the surrender and release or the consent void.

38 If the parents are not notified or are unable or unwilling to assume physical custody of the  
39 child or if the court determines that placement of the child with the parents would

1 constitute jeopardy as defined by Title 22, section 4002, subsection 6, the case must be  
2 transferred to the District Court for a hearing pursuant to Title 22, section 4038-A.

3 **PART 3**

4 **ADOPTION PROCEDURES**

5 **§9-301. Petition for adoption and change of name; filing fee**

6 Spouses or unmarried persons jointly or an unmarried person, whether resident or  
7 nonresident of the State, may petition the court to adopt a person, regardless of age, and  
8 to change that person's name. The fee for filing the petition is \$65 plus:

9 **1. National criminal history record check fee.** The fee for a national criminal  
10 history record check for noncriminal justice purposes set by the Federal Bureau of  
11 Investigation for each prospective adoptive parent who is not a parent of the child; and

12 **2. State criminal history record check fee.** The fee for a state criminal history  
13 record check for noncriminal justice purposes established pursuant to Title 25, section  
14 1541, subsection 6 for each prospective adoptive parent who is not a parent of the child.

15 **§9-302. Consent for adoption**

16 **1. Written consent.** Before an adoption is granted, written consent to the adoption  
17 must be given by:

18 A. The adoptee, if the adoptee is 14 years of age or older;

19 B. Each of the adoptee's living parents, except as provided in subsection 2;

20 C. A person or agency having legal custody or guardianship of the adoptee if the  
21 adoptee is a child or to whom the child has been surrendered and released, except that  
22 the person's or agency's lack of consent, if adjudged unreasonable by a court, may be  
23 overruled by the court. In order for the court to find that the person or agency acted  
24 unreasonably in withholding consent, the petitioner must prove, by a preponderance  
25 of the evidence, that the person or agency acted unreasonably. The court may hold a  
26 pretrial conference to determine who will proceed. The court may determine that  
27 even though the burden of proof is on the petitioner, the person or agency should  
28 proceed if the person or agency has important facts necessary to the petitioner in  
29 presenting the petitioner's case. The court shall consider the following:

30 (1) Whether the person or agency determined the needs and interests of the child;

31 (2) Whether the person or agency determined the ability of the petitioner and  
32 other prospective families to meet the child's needs;

33 (3) Whether the person or agency made the decision consistent with the facts;

34 (4) Whether the harm of removing the child from the child's current placement  
35 outweighs any inadequacies of that placement; and

36 (5) All other factors that have a bearing on a determination of the reasonableness  
37 of the person's or agency's decision in withholding consent; and

1 D. A guardian appointed by the court, if the adoptee is a child, when the child has no  
2 living parent, guardian or legal custodian who may consent.

3 A petition for adoption must be pending before a consent is executed.

4 **2. Consent not required.** Consent to adoption is not required of:

5 A. A putative parent if the putative parent:

6 (1) Received notice and failed to respond to the notice within the prescribed time  
7 period;

8 (2) Waived the right to notice under section 9-201, subsection 3;

9 (3) Does not establish parentage of the child under section 9-201, subsection 9;  
10 or

11 (4) Holds no parental rights regarding the adoptee under the laws of the foreign  
12 country in which the adoptee was born;

13 B. A parent whose parental rights have been terminated under Title 22, chapter 1071,  
14 subchapter 6;

15 C. A parent who has executed a surrender and release pursuant to section 9-202;

16 D. A parent whose parental rights have been voluntarily or judicially terminated and  
17 transferred to a public agency or a duly licensed private agency pursuant to the laws  
18 of another state or country; or

19 E. A parent of an adoptee who is 18 years of age or older.

20 **3. Consent by department; notice.** When the department consents to the adoption  
21 of a child in its custody, the department shall immediately notify:

22 A. The District Court in which the action under Title 22, chapter 1071 is pending;  
23 and

24 B. The guardian ad litem for the child.

25 **§9-303. Petition**

26 **1. Sworn; contents.** A petition for adoption must be sworn to by the petitioner and  
27 must include:

28 A. The full name, age and place of residence of the petitioner and, if married, the  
29 place and date of marriage;

30 B. The date and place of birth of the adoptee, if known;

31 C. The birth name of the adoptee, any other names by which the adoptee has been  
32 known and the adoptee's proposed new name, if any;

33 D. The residence of the adoptee at the time of the filing of the petition;

34 E. A statement of the petitioner's intention to establish a parent-child relationship  
35 between the petitioner and the adoptee and a statement that the petitioner is a fit and  
36 proper person able to care and provide for the adoptee's welfare;

1 F. The names and addresses of all persons or agencies known to the petitioner that  
2 affect the custody of, visitation with or access to the adoptee;

3 G. The relationship, if any, of the petitioner to the adoptee;

4 H. The names and addresses of the department and the licensed child-placing  
5 agency, if any;

6 I. The names and addresses of all persons known to the petitioner at the time of filing  
7 from whom consent to the adoption is required; and

8 J. If the petition is for the adoption of a minor child, a statement that the petitioner  
9 acknowledges that after the adoption is finalized, the transfer of the long-term care  
10 and custody of the adoptee without a court order is prohibited under Title 17-A,  
11 section 553, subsection 1, paragraphs C and D.

12 **2. Information to be shared and updated.** A petitioner shall indicate to the court  
13 what information the petitioner is willing to share with the parents and under what  
14 circumstances and shall provide a mechanism for updating that information.

15 **3. Caption.** The caption of a petition for adoption may be styled "In the Matter of  
16 the Adoption Petition of (name of adoptee)." The petitioner must also be designated in  
17 the caption.

18 **§9-304. Investigation; guardian ad litem; registry**

19 **1. Background check; study and report.** Upon the filing of a petition for adoption  
20 of a minor child, the court shall request a background check and shall direct the  
21 department or a licensed child-placing agency to conduct a study and make a report to the  
22 court.

23 A. The study must include an investigation of the conditions and antecedents of the  
24 child to determine whether the child is a proper subject for adoption and whether the  
25 proposed home is suitable for the child. The department or licensed child-placing  
26 agency shall submit the report to the court within 60 days.

27 (1) If the court has a report that provides sufficient, current information, the  
28 court may waive the requirement of a study and report.

29 (2) If the petitioner is a relative of the child or the spouse or domestic partner of  
30 the child's parent, the court may waive the requirement of a study and report.

31 B. The court shall request a background check for each prospective adoptive parent  
32 who is not a parent of the child. The background check must include a screening for  
33 child abuse cases in the records of the department and criminal history record  
34 information obtained from the Maine Criminal Justice Information System and the  
35 Federal Bureau of Investigation.

36 (1) The criminal history record information obtained from the Maine Criminal  
37 Justice Information System must include a record of public criminal history  
38 record information as defined in Title 16, section 703, subsection 8.

1           (2) The criminal history record information obtained from the Federal Bureau of  
2           Investigation must include other state and national criminal history record  
3           information.

4           (3) Each prospective parent who is not a parent of the child shall submit to  
5           having fingerprints taken. The State Police, upon receipt of the fingerprint card,  
6           may charge the court for the expenses incurred in processing state and national  
7           criminal history record checks. The State Police shall take or cause to be taken  
8           the applicant's fingerprints and shall forward the fingerprints to the State Bureau  
9           of Identification so that the bureau can conduct state and national criminal history  
10           record checks. Except for the portion of the payment, if any, that constitutes the  
11           processing fee charged by the Federal Bureau of Investigation, all money  
12           received by the State Police for purposes of this paragraph must be paid over to  
13           the Treasurer of State. The money must be applied to the expenses of  
14           administration incurred by the Department of Public Safety.

15           (4) The subject of a Federal Bureau of Investigation criminal history record  
16           check may obtain a copy of the criminal history record check by following the  
17           procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.  
18           The subject of a state criminal history record check may inspect and review the  
19           criminal history record information pursuant to Title 16, section 709.

20           (5) State and federal criminal history record information may be used by the  
21           court for the purpose of screening prospective adoptive parents in determining  
22           whether the adoption is in the best interests of the child.

23           (6) Information obtained pursuant to this paragraph is confidential. The results  
24           of background checks received by the court are for official use only and may not  
25           be disseminated outside the court except as required under Title 22, section  
26           4011-A.

27           (7) The expense of obtaining the information required by this paragraph is  
28           incorporated in the adoption filing fee established in section 9-301. The court  
29           shall collect the total fee and transfer the appropriate funds to the Department of  
30           Public Safety and the department.

31           The court may waive the background check of a prospective adoptive parent if a previous  
32           background check was completed by a court or by the department under this subsection  
33           within a reasonable period of time and the court is satisfied that nothing new that would  
34           be included in the background check has transpired since the last background check.

35           This subsection does not authorize the court to request a background check for a  
36           petitioner who is also the current legal parent of the child.

37           **2. Background checks by department.** The department may, pursuant to rules  
38           adopted by the department, at any time before the filing of the petition for adoption,  
39           conduct background checks for each prospective adoptive parent of a minor child in its  
40           custody.

41           A. The department may request a background check for each prospective adoptive  
42           parent who is not a parent of the child. The background check must include criminal

1 history record information obtained from the Maine Criminal Justice Information  
2 System and the Federal Bureau of Investigation.

3 (1) The criminal history record information obtained from the Maine Criminal  
4 Justice Information System must include a record of public criminal history  
5 record information as defined in Title 16, section 703, subsection 8.

6 (2) The criminal history record information obtained from the Federal Bureau of  
7 Investigation must include other state and national criminal history record  
8 information.

9 (3) Each prospective parent who is not a parent of the child shall submit to  
10 having fingerprints taken. The State Police, upon receipt of the fingerprint card,  
11 may charge the department for the expenses incurred in processing state and  
12 national criminal history record checks. The State Police shall take or cause to be  
13 taken the applicant's fingerprints and shall forward the fingerprints to the State  
14 Bureau of Identification so that the bureau can conduct state and national  
15 criminal history record checks. Except for the portion of the payment, if any, that  
16 constitutes the processing fee charged by the Federal Bureau of Investigation, all  
17 money received by the State Police for purposes of this paragraph must be paid  
18 over to the Treasurer of State. The money must be applied to the expenses of  
19 administration incurred by the Department of Public Safety.

20 (4) The subject of a Federal Bureau of Investigation criminal history record  
21 check may obtain a copy of the criminal history record check by following the  
22 procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.  
23 The subject of a state criminal history record check may inspect and review the  
24 criminal history record information pursuant to Title 16, section 709.

25 (5) State and federal criminal history record information may be used by the  
26 department for the purpose of screening prospective adoptive parents in  
27 determining whether the adoption is in the best interests of the child.

28 (6) Information obtained pursuant to this paragraph is confidential. The results  
29 of background checks received by the department are for official use only and  
30 may not be disseminated outside the department except to a court considering a  
31 petition for adoption under subsection 1.

32 B. Rules adopted by the department pursuant to this subsection are routine technical  
33 rules as defined in Title 5, chapter 375, subchapter 2-A.

34 **3. Child's background.** This subsection governs the collection and disclosure of  
35 information about the background of a child subject to a petition for adoption under  
36 subsection 1.

37 A. The department, the licensed child-placing agency or any other person who acts  
38 to place or assist in placing a child for adoption shall make reasonable efforts to  
39 obtain medical and genetic information about the child, the parent who gave birth to  
40 the child and a parent who was a source of the gametes used in the child's  
41 conception. Specifically, the department, the licensed child-placing agency or any

1 other person who acts to place or assist in placing the child for adoption shall attempt  
2 to obtain from the child’s parents any information concerning:

3 (1) A current medical, psychological and developmental history of the child,  
4 including an account of the child’s prenatal care and medical condition at birth,  
5 results of newborn screening, any drug or medication taken during pregnancy by  
6 the parent who gave birth to the child, any subsequent medical, psychological or  
7 psychiatric examination and diagnosis, any physical, sexual or emotional abuse  
8 suffered by the child and a record of any immunizations and health care received  
9 since birth; and

10 (2) Relevant information concerning the medical, psychological and social  
11 history of a parent who was the source of the gametes used in the child’s  
12 conception, including any known disease or hereditary disposition to disease, the  
13 history of use of drugs and alcohol, the health during pregnancy of the parent  
14 who gave birth to the child and the health of a parent who was the source of the  
15 gametes used in the child’s conception at the time of the child’s birth.

16 B. The department, the licensed child-placing agency or any other person who acts to  
17 place or assist in placing the child for adoption may request from donors or  
18 gestational carriers, as defined in Title 19-A, section 1832, their medical or genetic  
19 information identical to that described in paragraph A, subparagraphs (1) and (2) and  
20 shall make reasonable efforts to obtain any medical and genetic information  
21 concerning such individuals that is in the possession of the child’s parent or parents.

22 C. Prior to the child being placed for adoption, the department, the licensed child-  
23 placing agency or any other person who acts to place or assist in placing the child for  
24 adoption shall provide the information described in paragraph A to the prospective  
25 adoptive parents.

26 D. If the department, the licensed child-placing agency or any other person who acts  
27 to place or assists in placing the child for adoption has specific, articulable reasons to  
28 question the truth or accuracy of any of the information obtained, those reasons must  
29 be disclosed in writing to the prospective adoptive parents.

30 E. The prospective adoptive parents must be informed in writing if any of the  
31 information described in this subsection cannot be obtained, either because the  
32 records are unavailable or because the parents are unable or unwilling to consent to  
33 its disclosure or to be interviewed.

34 F. If after a child is placed for adoption and either before or after the adoption is final  
35 the child suffers a serious medical or mental illness for which the specific medical,  
36 psychological or social history of the child’s parents, donors or gestational carriers or  
37 the child may be useful in diagnosis or treatment, the prospective adoptive or  
38 adoptive parents may request that the department, the licensed child-placing agency  
39 or any other person who placed or assisted to place the child attempt to obtain  
40 additional information. The department, licensed child-placing agency or other  
41 person shall attempt to obtain the information promptly and shall disclose any  
42 information collected to the prospective adoptive or adoptive parents as soon as  
43 reasonably possible. The department, licensed child-placing agency or other person  
44 may charge a fee to the prospective adoptive or adoptive parents to cover the cost of



1 obtaining and providing the additional information. Fees collected by the department  
2 must be dedicated to defray the costs of obtaining and providing the additional  
3 information. Fees may be reduced or waived for low-income prospective adoptive or  
4 adoptive parents.

5 G. The department, the licensed child-placing agency or any other person who acts  
6 to place or assist in placing the child for adoption shall file the information collected  
7 with the court and, if it appears that the adoption will be granted and this information  
8 has not previously been made available to the adoptive parents pursuant to Title 22,  
9 section 4008, subsection 3, paragraph G or Title 22, section 8205, the court shall  
10 make the information available to the adoptive parents, prior to issuing the decree  
11 pursuant to subsection 8, with protection for the identity of persons other than the  
12 child.

13 H. If the child to be placed for adoption is from a foreign country that has  
14 jurisdiction over the child and the prospective adoptive parents are United States  
15 citizens, compliance with federal and international adoption laws is deemed to be in  
16 compliance with this subsection.

17 **4. Rebuttable presumption; sexual offenses.** There is a rebuttable presumption  
18 that the petitioner would create a situation of jeopardy for the child if the adoption were  
19 granted and that the adoption is not in the best interest of the child if the court finds that  
20 the petitioner for the adoption of a minor child:

21 A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection  
22 6-A, paragraph A in which the victim was a minor at the time of the offense and the  
23 petitioner was at least 5 years older than the minor at the time of the offense, except  
24 that, if the offense was gross sexual assault under Title 17-A, section 253, subsection  
25 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is  
26 substantially similar to that contained in Title 17-A, section 253, subsection 1,  
27 paragraph B or C, and the minor victim submitted as a result of compulsion, the  
28 presumption applies regardless of the ages of the petitioner and the minor victim at  
29 the time of the offense; or

30 B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually  
31 abusing a person who was a minor at the time of the abuse.

32 The petitioner may present evidence to rebut the presumption.

33 **5. Probationary period.** The court may require that a minor child subject to a  
34 petition for adoption under this section live for one year in the home of the petitioner  
35 before the petition is granted and that the child, during all or part of this probationary  
36 period, be under the supervision of the department or a licensed adoption agency.

37 **6. Guardian ad litem.** The court may appoint a guardian ad litem for a minor child  
38 subject to a petition for adoption under this section at any time during the proceedings.

39 **7. Adoption registry and services.** Before the adoption of a minor child is decreed,  
40 the court shall ensure that the petitioners are informed of the existence of the adoption  
41 registry and the services available under Title 22, section 2706-A.

42 **8. Declaration; name change.** If the court is satisfied with the identity and relations  
43 of the parties to a petition for adoption under this section, with the ability of the petitioner

1 to bring up and educate the child properly, considering the condition of the child's  
2 parents, and with the fitness and propriety of the adoption, the court shall make a decree  
3 setting forth the facts and declaring that from that date the child is the child of the  
4 petitioner and that the child's name is changed, without requiring public notice of that  
5 change.

6 **9. Certified copy of birth certificate; certificate of adoption.** A certified copy of  
7 the birth certificate of the child proposed for adoption must be presented with the petition  
8 for adoption if the certified copy can be obtained or made available by filing a delayed  
9 birth registration. After the adoption has been decreed, the register shall file a certificate  
10 of adoption with the State Registrar of Vital Statistics on a form prescribed and furnished  
11 by the state registrar.

12 **10. Transfer of long-term care or custody without court order.** Before the  
13 adoption is decreed under subsection 8, the court shall ensure that the petitioners are  
14 informed that the transfer of the long-term care and custody of the child without a court  
15 order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D.

16 **§9-305. Evidence; procedure**

17 The court may proceed as follows in considering a petition for adoption.

18 **1. Adoptee interview.** The court may interview any adoptee, and shall interview an  
19 adoptee who is 12 years of age or older, outside the presence of the prospective adoptive  
20 parents, to determine the adoptee's attitudes and desires about the adoption and other  
21 relevant issues.

22 **2. Inspection of records; disclosure.** The court may conduct an inspection in  
23 camera of records of relevant child protective proceedings and may disclose only that  
24 information necessary for the determination of any issue before the court. Any disclosure  
25 of information must be done pursuant to Title 22, section 4008, subsection 3.

26 **3. Recording; expenses.** The parties may request a recording of the proceedings.  
27 The requesting party shall pay the expense of the recording.

28 **§9-306. Allowable payments; expenses**

29 **1. Allowable payments by or on behalf of petitioner.** Except when one of the  
30 petitioners is a blood relative of the adoptee or the adoptee is an adult, only the following  
31 expenses may be paid by or on behalf of a petitioner in any proceeding under this Article:

32 A. The actual cost of legal services related to the surrender and release or the consent  
33 and to the adoption process;

34 B. Prenatal and postnatal counseling expenses for the person giving birth to the  
35 child;

36 C. Prenatal, birthing and other related medical expenses for the person giving birth to  
37 the child;

38 D. Necessary transportation expenses to obtain the services listed in paragraphs A, B  
39 and C;

40 E. Foster care expenses for the child;

- 1           F. Necessary living expenses for the person giving birth to the child and the child;
- 2           G. For a putative parent, legal and counseling expenses related to the surrender and
- 3           release, the consent and the adoption process; and
- 4           H. Fees to a licensed child-placing agency providing services in connection with the
- 5           pending adoption.

6           **2. Full accounting of disbursements by petitioner.** Prior to the dispositional  
7           hearing pursuant to section 9-308, the petitioner shall file a full accounting of all  
8           disbursements of anything of value made or agreed to be made by or on behalf of the  
9           petitioner in connection with the adoption. The accounting report must be signed under  
10           penalty of perjury and must be submitted to the court on or before the date the final  
11           decree is granted. The accounting report must be itemized and show the services related  
12           to the adoption or to the placement of the adoptee for adoption that were received by the  
13           adoptee's parents, by the adoptee or on behalf of the petitioner. The accounting must  
14           include the dates of each payment and the names and addresses of each attorney,  
15           physician, hospital, licensed child-placing agency or other person or organization who  
16           received funds or anything of value from the petitioner in connection with the adoption or  
17           the placement of the adoptee with the petitioner or participated in any way in the handling  
18           of the funds, either directly or indirectly. This subsection does not apply when one of the  
19           petitioners is a blood relative or the adoptee is an adult.

20           **3. Payments not contingent; other expenses and payments prohibited.** Payment  
21           for expenses allowable under subsection 1 may not be contingent upon any future  
22           decision a parent might make pertaining to the child. Other expenses or payments to  
23           parents are not authorized.

24           **§9-307. Adoption not granted**

25           If the court determines that it is unable to finalize an adoption to which parents have  
26           consented, the court shall notify the parents that the court has not granted the adoption  
27           and shall conduct a review pursuant to section 9-205.

28           **§9-308. Final decree; dispositional hearing; effect of adoption**

29           **1. Final decree of adoption; requirements.** The court shall grant a final decree of  
30           adoption if the petitioner who filed the petition has been heard or has waived hearing and  
31           the court is satisfied from the hearing or record that:

- 32           A. All necessary consents, relinquishments or terminations of parental rights have
- 33           been duly executed and filed with the court;
- 34           B. An adoption study, when required by section 9-304, has been filed with the court;
- 35           C. A list of all disbursements as required by section 9-306 has been filed with the
- 36           court;
- 37           D. The petitioner is a suitable adopting parent and desires to establish a parent-child
- 38           relationship with the adoptee;
- 39           E. The best interests of the adoptee, described in subsection 2, are served by the
- 40           adoption;

1 F. The petitioner has acknowledged that the petitioner understands that the transfer  
2 of the long-term care and custody of an adoptee who is a minor child without a court  
3 order is prohibited under Title 17-A, section 553, subsection 1, paragraphs C and D;  
4 and

5 G. All requirements of this Article have been met.

6 **2. Best interests of adoptee.** In determining the best interests of an adoptee, the  
7 court shall consider and evaluate the following factors to give the adoptee a permanent  
8 home at the earliest possible date:

9 A. The love, affection and other emotional ties existing between the adoptee and the  
10 adopting person or persons, a parent or a putative parent;

11 B. The capacity and disposition of the adopting person or persons, the parent or  
12 parents or the putative parent to educate and give the adoptee love, affection and  
13 guidance and to meet the needs of the adoptee. An adoption may not be delayed or  
14 denied because the adoptive parent and the adoptee do not share the same race, color  
15 or national origin; and

16 C. The capacity and disposition of the adopting person or persons, the parent or  
17 parents or the putative parent to provide the adoptee with food, clothing and other  
18 material needs, education, permanence and medical care or other remedial care  
19 recognized and permitted in place of medical care under the laws of this State.

20 **3. Findings; decree; confidentiality.** The court shall enter its findings in a written  
21 final decree that includes the new name of the adoptee. The final decree must further  
22 order that from the date of the decree the adoptee is the child of the petitioner and must be  
23 accorded the status set forth in section 9-105. If the court determines that it is in the best  
24 interest of the adoptee, the court may require that the names of the adoptee and of the  
25 petitioner be kept confidential.

26 **4. Notice to parents.** Upon completion of an adoption proceeding, the parents who  
27 consented to an adoption or who executed a surrender and release must be notified by the  
28 court of the completion by regular mail at their last known address. Notice under this  
29 subsection is not required to a parent who is also a petitioner. When the parents' rights  
30 have been terminated pursuant to Title 22, section 4055, the notice must be given to the  
31 department and the department shall notify the parents of the completion by regular mail  
32 at their last known address. Actual receipt of the notice is not a precondition of  
33 completion and does not affect the rights or responsibilities of adoptees or adoptive  
34 parents.

35 **5. Notice to grandparents.** The department shall notify the grandparents of a child  
36 when the child is placed for adoption if the department has received notice that the  
37 grandparents were granted reasonable rights of visitation or access under Title 19-A,  
38 chapter 59 or Title 22, section 4005-E.

39 **6. Effect of adoption.** An order granting the adoption has the following effect:

40 A. An order granting the adoption of the child by the petitioner divests the parent and  
41 child of all legal rights, powers, privileges, immunities, duties and obligations to each  
42 other as parent and child, except an adoptee inherits from the adoptee's former  
43 parents if provided in the adoption decree.

1 B. An adoption order may not disentitle a child to benefits due the child from any  
2 3rd person, agency or state or the United States and may not affect the rights and  
3 benefits that a Native American derives from descent from a member of a federally  
4 recognized Indian tribe.

5 **§9-309. Appeals**

6 **1. Appeal; bond not required of child or next friend.** Any party may appeal from  
7 any order entered under this Article to the Supreme Judicial Court sitting as the Law  
8 Court, as in other civil actions, but a bond to prosecute an appeal is not required of a child  
9 or next friend and costs may not be awarded against either.

10 **2. Appeal expedited.** An appeal from any order under this Article must be  
11 expedited.

12 **3. Attorney, guardian ad litem continues.** An attorney or guardian ad litem  
13 appointed to represent a party in an adoption proceeding continues to represent the  
14 interests of that party in any appeal unless otherwise ordered by the court.

15 **§9-310. Records confidential**

16 Notwithstanding any other provision of law and except as provided in Title 22,  
17 section 2768, all court records relating to an adoption decreed on or after August 8, 1953  
18 are confidential. The court shall keep records of those adoptions segregated from all  
19 other court records. If a court determines that examination of records pertaining to a  
20 particular adoption is proper, the court may authorize that examination by specified  
21 persons, authorize the register to disclose to specified persons any information contained  
22 in the records by letter, certificate or copy of the record or authorize a combination of  
23 both examination and disclosure.

24 Any medical or genetic information in the court records relating to an adoption must  
25 be made available to the adopted child when the adopted child attains 18 years of age and  
26 to the adopted child's descendants, adoptive parents or legal guardian on petition of the  
27 court.

28 **§9-311. Interstate placements**

29 **1. Certificate of compliance; bring child to this State.** A person or agency who  
30 intends to bring a child to this State from another state for the purpose of adoption must  
31 provide to the court the certification of compliance as required by the department  
32 pursuant to Title 22, chapter 1153 or 1154, as applicable.

33 **2. Certificate of compliance; remove child from this State.** A person or agency  
34 who intends to remove a child from this State for the purpose of adoption in another state  
35 must obtain from the department certification of compliance with Title 22, chapter 1153  
36 or 1154, as applicable, prior to the removal of the child from this State.

37 **3. Department certification required.** The court may not grant a petition to adopt a  
38 child who has been brought to or will be removed from this State for the purpose of  
39 adoption without department certification of compliance with Title 22, chapter 1153 or  
40 1154, as applicable.

1 4. Civil violation. An agency or person who fails to comply with this section  
2 commits a civil violation for which a fine of not less than \$100 and not more than \$5,000  
3 may be adjudged.

4 **§9-312. Foreign adoptions**

5 If an adoption in a foreign country has been finalized and the adopting parents are  
6 seeking an adoption under the laws of this State to give recognition to the foreign  
7 adoption, a court may enter a decree of adoption based solely upon a judgment of  
8 adoption in a foreign country and may order a change of name if requested by the  
9 adopting parents. The fee for filing the petition is \$55.

10 **§9-313. Advertisement**

11 1. Definitions. As used in this section, the following terms have the following  
12 meanings.

13 A. "Advertise" means to communicate by any public medium that originates within  
14 this State, including by newspaper, periodical, telephone book listing, outdoor  
15 advertising sign, radio or television, or by any computerized communication system,  
16 including by e-mail, website, Internet account or any similar medium of  
17 communication provided via the Internet.

18 B. "Internet account" means an account created within a bounded system established  
19 by an Internet-based service that requires a user to input or store access information  
20 in an electronic device in order to view, create, use or edit the user's account  
21 information, profile, display, communications or stored data.

22 2. Advertising prohibited. A person may not:

23 A. Advertise for the purpose of finding a child to adopt or to otherwise take into  
24 permanent physical custody;

25 B. Advertise that the person will find an adoptive home or any other permanent  
26 physical placement for a child or arrange for or assist in the adoption, adoptive  
27 placement or any other permanent physical placement of a child;

28 C. Advertise that the person will place a child for adoption or in any other permanent  
29 physical placement; or

30 D. Advertise for the purpose of finding a person to adopt or otherwise take into  
31 permanent custody a particular child.

32 3. Exceptions. This section does not prohibit:

33 A. The department or a child-placing agency from advertising in accordance with  
34 rules adopted by the department; or

35 B. An attorney licensed to practice in this State from advertising the attorney's  
36 availability to practice or provide services relating to the adoption of children.

37 4. Violation. A person who violates subsection 2 commits a civil violation for  
38 which a fine of not more than \$5,000 may be adjudged.

1 **§9-314. Immunity from liability for good faith reporting; proceedings**

2 A person, including an agent of the department, who participates in good faith in  
3 reporting violations of this Article or participates in a related child protection  
4 investigation or proceeding is immune from any criminal or civil liability for reporting or  
5 participating in the investigation or proceeding. For purposes of this section, "good faith"  
6 does not include instances when a false report is made and the person knows the report is  
7 false.

8 **§9-315. Annulment of the adoption decree**

9 **1. Annulment; reasons and limitations.** A court may, on petition filed within one  
10 year of the decree of adoption and after notice and hearing, reverse and annul an adoption  
11 decree based on findings by clear and convincing evidence that the adoption was obtained  
12 as a result of fraud, duress or illegal procedures.

13 A. If the adoptee is a minor, the court shall appoint a guardian ad litem on behalf of  
14 the minor adoptee and shall consider the best interest of the child, taking into account  
15 the factors set forth in Title 19-A, section 1653, subsection 3. The court shall sustain  
16 the decree unless there is clear and convincing evidence of one or more bases for  
17 annulment and that the decree is not in the best interest of the child.

18 The court may allocate the costs of the guardian ad litem to one or more of the parties  
19 and may appoint counsel for a minor adoptee or a party to the annulment  
20 proceedings. A minor adoptee may appear and be represented by counsel.

21 B. Subject to the disposition of an appeal, upon the expiration of one year after an  
22 adoption decree is issued, the decree may not be questioned by any person including  
23 the petitioner, in any manner upon any ground, including fraud, misrepresentation,  
24 failure to give any required notice or lack of jurisdiction of the parties or of the  
25 subject matter.

26 **2. Notice.** Notice of a petition to annul must be given to the parents, except those  
27 whose parental rights were terminated through a proceeding pursuant to Title 22, section  
28 4055, subsection 1, paragraph B, subparagraph (2), and to all parties to the adoption  
29 including the adoptive parents, an adoptee who is 14 years of age or older and the agency  
30 involved in the adoption.

31 **3. Certified copy of annulment.** After the court annuls a decree of adoption, the  
32 register shall transmit immediately a certified copy of the annulment to the State  
33 Registrar of Vital Statistics.

34 **PART 4**

35 **ADOPTION ASSISTANCE PROGRAM**

36 **§9-401. Authorization; special needs children**

37 **1. Program.** There is established in the Department of Health and Human Services  
38 the Adoption Assistance Program, referred to in this Part as "the program."

39 **2. Adoption assistance for special needs children.** Subject to rules and regulations  
40 adopted by the department and the federal Department of Health and Human Services, the

1 department may provide through the program adoption assistance for special needs  
2 children in its care or custody or in the custody of a nonprofit private licensed child-  
3 placing agency in this State if those children are legally eligible for adoption and, when  
4 reasonable but unsuccessful efforts have been made to place them without adoption  
5 assistance, would not otherwise be adopted without the assistance of this program.

6 **3. One-time adoption expenses.** The department shall, subject to rules and  
7 regulations adopted by the department and the federal Department of Health and Human  
8 Services, reimburse adoptive parents of a special needs child for one-time adoption  
9 expenses when reasonable but unsuccessful efforts have been made to place the child  
10 without such assistance.

11 **4. "Special needs child" defined.** As used in this Part, "special needs child" means  
12 a child who:

13 A. Has a physical, mental or emotional handicap that makes placement difficult;

14 B. Has a medical condition that makes placement difficult;

15 C. Is a member of a sibling group that includes at least one member who is difficult  
16 to place;

17 D. Is difficult to place because of age or race;

18 E. Has been a victim of physical, emotional or sexual abuse or neglect that places the  
19 child at risk for future emotional difficulties; or

20 F. Has in that child's family background factors such as severe mental illness,  
21 substance abuse, prostitution, genetic or medical conditions or illnesses that place the  
22 child at risk for future problems.

23 **5. Funds.** For the purposes of this section, the department is authorized to use funds  
24 that are appropriated for child welfare services and funds provided under the United  
25 States Social Security Act, Titles IV-B and IV-E.

26 **6. Amount of adoption assistance.** The amount of adoption assistance under the  
27 program may vary depending upon the resources of the adoptive parents and the special  
28 needs of the child, as well as the availability of other resources, but may not exceed the  
29 total cost of caring for the child if the child were to remain in the care or custody of the  
30 department without regard to the source of the funds.

31 **7. Duration of assistance.** The duration of assistance under the program may  
32 continue until the cessation of legal parental responsibility or until the parents are no  
33 longer supporting the child, at which time the adoption assistance ceases. However, if the  
34 child has need of educational benefits or has a physical, mental or emotional handicap,  
35 adoption assistance may continue until the adoptee has attained 21 years of age if the  
36 adoptee, the parents and the department agree that the need for care and support exists.

37 **8. Children from another state.** Children who are in the custody of a person or  
38 agency in another state who are brought to this State for the purpose of adoption are not  
39 eligible for adoption assistance through the program except for reimbursement of  
40 nonrecurring expenses if the child meets the requirements of the United States Social  
41 Security Act, 42 United States Code, Section 673(c).



1 **§9-402. Adoption assistance**

2 **1. Eligible applicants.** An application for the program may be submitted by the  
3 following persons:

4 **A. A foster parent interested in adopting an eligible child in the foster parent's care;**

5 **B. A person interested in adopting an eligible child; or**

6 **C. An adoptive parent who was not informed of the program or of facts relevant to a**  
7 **child's eligibility when adopting a child who was at the time of adoption eligible for**  
8 **participation in the program.**

9 **2. Standards for adoption apply.** All applicants for the program must meet  
10 department standards for adoption except for financial eligibility.

11 **3. Assistance based on special needs.** Assistance under the program may be  
12 provided for special needs only and may be varied based on the special needs of the child.  
13 Assistance may be provided for a period of time based on the special needs of the child.

14 **§9-403. Administration**

15 **1. Written agreement before final decree; exceptions; reduction in payments.** A  
16 written agreement between an applicant entering into the program and the department  
17 must precede the final decree of adoption, except that an application may be filed  
18 subsequent to the finalization of the adoption if there were facts relevant to the child's  
19 eligibility that were not presented at the time of the request for assistance or if the child  
20 was eligible for participation in the program at the time of placement and the adoptive  
21 parents were not informed of the program.

22 Except as provided by section 9-401, subsection 8, once an adoption assistance payment  
23 is agreed upon and the agreement signed by the prospective adoptive parents, the  
24 department may not reduce the adoption assistance payment amounts.

25 **2. Annual determination.** If assistance under the program continues for more than  
26 one year, the need for assistance must be annually redetermined. Adoption assistance  
27 continues regardless of the state in which the adoptive parents reside, or the state to which  
28 the adoptive parents move, as long as the adoptive parents continue to be eligible based  
29 on the annual redetermination of need.

30 **3. Transfer to legal guardian; new agreement.** Upon the death of all adoptive  
31 parents, adoption assistance under the program may be transferred to the legal guardian as  
32 long as the child continues to be eligible for adoption assistance pursuant to the terms of  
33 the most recent adoption assistance agreement with the adoptive parents. The department  
34 shall enter into a new assistance agreement with the legal guardian.

35 **§9-404. Rules**

36 The department shall adopt rules for the program consistent with this Part.'

37 Amend the bill by adding after Part C the following:

1

**'PART D**

2

**Sec. D-1. 22 MRSA §4038-E, sub-§11, ¶A**, as amended by PL 2011, c. 420, Pt. I, §4 and affected by §5, is further amended to read:

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4

A. An order granting the adoption of the child by the permanency guardian divests the consenting parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, ~~except the inheritance rights between the child and the parent~~ an adoptee inherits from the adoptee's former parents if so provided in the adoption decree.

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**Sec. D-2. 22 MRSA §4056, sub-§1**, as corrected by RR 2009, c. 2, §57, is amended to read:

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11

**1. Parent and child divested of rights.** An order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, ~~except the inheritance rights between the child and parent~~ child inherits from the child's former parents if so provided in the order.'

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