

BILL NO. 35-0174

Thirty-Fifth Legislature of the Virgin Islands

October 18, 2023

An Act repealing and reenacting title 15, Virgin Islands Code, article V parts 1, 2, 3, 4, enacting part 5 and renumbering part 4A as part 6, to repeal the Uniform Guardianship and Protective Proceedings Act and enact the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act with amendments and for other related purposes

PROPOSED BY: Senators Novelle E. Francis, Jr., Angel L. Bolques, Jr.
and Marvin A. Blyden

1 *Be enacted by the Legislature of the Virgin Islands:*

2 **SECTION 1.** Title 15, Virgin Islands Code, article V parts 1, 2, 3, and 4 are repealed
3 and reenacted to read as follows:

4 **“Part 1. General Provisions (§§5-101-5-127)**

5 **§ 5-101. Short title.** Parts 1, 2, 3, 4, and 5 may be cited as the Uniform Guardianship,
6 Conservatorship, and Other Protective Arrangements Act.

7 **§ 5-102. Definitions.** In this article:

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

10 (2) “Adult subject to conservatorship” means an adult for whom a conservator has been
11 appointed under this article.

1 (3) “Adult subject to guardianship” means an adult for whom a guardian has been
2 appointed under this article.

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

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

8 (6) “Conservatorship estate” means the property subject to a conservatorship under this
9 article.

10 (7) “Full conservatorship” means a conservatorship that grants the conservator all
11 powers available under this article.

12 (8) “Full guardianship” means a guardianship that grants the guardian all powers
13 available under this article.

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

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

19 (11) “Incapacitated person” means an individual who, for reasons other than being a
20 minor, is unable to receive and evaluate information or make or communicate decisions to such
21 an extent that the individual lacks the ability to meet essential requirements for physical health,
22 safety, or self-care, even with appropriate technological assistance.

23 (12) “Individual subject to conservatorship” means an adult or minor for whom a
24 conservator has been appointed under this article.

1 (13) “Individual subject to guardianship” means an adult or minor for whom a guardian
2 has been appointed under this article.

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

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

11 (16) “Limited conservatorship” means a conservatorship that grants the conservator less
12 than all powers available under this article, grants powers over only certain property, or
13 otherwise restricts the powers of the conservator.

14 (17) “Limited guardianship” means a guardianship that grants the guardian less than all
15 powers available under this article or otherwise restricts the powers of the guardian.

16 (18) “Minor” means an unemancipated individual under 18 years of age.

17 (19) “Minor subject to conservatorship” means a minor for whom a conservator has been
18 appointed under this article.

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

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

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

1 (23) “Property” includes tangible and intangible property.

2 (24) “Protective arrangement instead of conservatorship” means a court order entered
3 under section 503.

4 (25) “Protective arrangement instead of guardianship” means a court order entered under
5 section 502.

6 (26) “Protective arrangement under part 5” means a court order entered under Section
7 5-502 or 5-503.

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

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

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

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

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

16 (30) “Standby guardian” means a person appointed by the court under section 207.

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

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

24 **§ 5-103. Reserved.**

1 **§ 5-104. Subject-matter jurisdiction.**

2 (a) Except to the extent jurisdiction is precluded by title 15, article V, part 6, the
3 Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the Superior Court
4 has jurisdiction over a guardianship for a minor domiciled or present in the Virgin Islands. The
5 court has jurisdiction over a conservatorship or protective arrangement instead of
6 conservatorship for a minor domiciled or having property in the Virgin Islands.

7 (b) The Superior Court has jurisdiction over a guardianship, conservatorship, or
8 protective arrangement under part 5 or an adult as provided in title 15, article V, part 6, the
9 Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

10 (c) After notice is given in a proceeding for a guardianship, conservatorship, or
11 protective arrangement under part 5 and until termination of the proceeding, the court in which
12 the petition is filed has:

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

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

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

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

23 (d) A court that appoints a guardian or conservator or authorizes a protective
24 arrangement under this article has exclusive and continuing jurisdiction over the proceeding

1 until the court terminates the proceeding or the appointment or protective arrangement expires
2 by its terms.

3 **§ 5-105. Transfer of proceeding.**

4 (a) This section does not apply to a guardianship or conservatorship for an adult which
5 is subject to the transfer provisions of §5-461.

6 (b) After appointment of a guardian or conservator, the court that made the appointment
7 may transfer the proceeding to a court in another judicial division in the Virgin Islands or
8 another state if transfer is in the best interest of the individual subject to the guardianship or
9 conservatorship.

10 (c) If a proceeding for a guardianship or conservatorship is pending in another state or
11 a foreign country, and a petition for guardianship or conservatorship for the same individual is
12 filed in a court in the Virgin Islands, the court shall notify the court in the other state or foreign
13 country and, after consultation with that court, assume or decline jurisdiction, whichever is in
14 the best interest of the respondent.

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

21 (e) Notice of hearing on a petition under subsection (d), together with a copy of the
22 petition, must be given to the respondent, if the respondent is at least 12 years of age at the time
23 of the hearing, and to the persons that would be entitled to notice if the procedures for
24 appointment of a guardian or conservator under this part were applicable. The court shall make

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

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

7 **§ 5-106. Venue.**

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

9 (1) the judicial division in the Virgin Islands in which the minor resides or is
10 present at the time the proceeding commences; or

11 (2) the judicial division in the Virgin Islands in which another proceeding
12 concerning the custody or parental rights of the minor is pending.

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

15 (1) the judicial division in the Virgin Islands in which the respondent resides;

16 (2) if the respondent has been admitted to an institution by court order, the
17 judicial division in the Virgin Islands in which the court is located; or

18 (3) if the proceeding is for appointment of an emergency guardian for an adult,
19 the judicial division in the Virgin Islands in which the respondent is present.

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

22 (1) the judicial division in the Virgin Islands in which the respondent resides,
23 whether or not a guardian has been appointed in another judicial division in the Virgin
24 Islands or other jurisdiction; or

1 (2) if the respondent does not reside in the Virgin Islands, in any division in which
2 property of the respondent is located.

3 (d) If proceedings under this part are brought in more than one judicial division in the
4 Virgin Islands, the court of the judicial division in the Virgin Islands in which the first
5 proceeding is brought has the exclusive right to proceed unless the court determines venue is
6 properly in another court or the interest of justice otherwise requires transfer of the proceeding.

7 **§ 5-107. Practice in court.**

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

10 (b) If proceedings for a guardianship, conservatorship, or protective arrangement under
11 chapter 4 for the same individual are commenced or pending in the same court, the proceedings
12 may be consolidated.

13 (c) A respondent may demand a jury trial in a proceeding under this article on the issue
14 whether a basis exists for appointment of a guardian or

15 **§ 5-108. Letters of office.**

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

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

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

23 (d) The court at any time may limit the powers conferred on a guardian or conservator.
24 The court shall issue new letters of office to reflect the limitation. The court shall give notice

1 of the limitation to the guardian or conservator, individual subject to guardianship or
2 conservatorship, each parent of a minor subject to guardianship or conservatorship, and any
3 other person the court determines.

4 **§ 5-109. Effect of acceptance of appointment.** On acceptance of appointment, a guardian or
5 conservator submits to personal jurisdiction of the court in the Virgin Islands in any proceeding
6 relating to the guardianship or conservatorship.

7 **§ 5-110. Co-guardian; co-conservator.**

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

10 (b) A co-guardian or co-conservator appointed to serve immediately may act when that
11 co-guardian or co-conservator complies with section 5-108.

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

14 (1) the event occurs; and

15 (2) that co-guardian or co-conservator complies with section 5-108.

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

18 **§ 5-111. Judicial appointment of successor guardian or successor conservator.**

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

21 (b) A person entitled under sections 5-202 or 5-302 to petition the court to appoint a
22 guardian may petition the court to appoint a successor guardian. A person entitled under section
23 5-402 to petition the court to appoint a conservator may petition the court to appoint a successor
24 conservator.

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

3 (1) the event occurs; and

4 (2) the successor complies with section 5-108.

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

7 **§ 5-112. Effect of death, removal, or resignation of guardian or conservator.**

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

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

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

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

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

19 **§ 5-113. Notice of hearing generally.**

20 (a) Except as otherwise provided in sections 5-203, 5-207, 5-303, 5-403, and 5-505, if
21 notice of a hearing under this part is required, the movant shall give notice of the date, time, and
22 place of the hearing to the person to be notified unless otherwise ordered by the court for good
23 cause. Except as otherwise provided in this part notice must be given in compliance with V.I.
24 R. CIV. P. Rule 5(b) at least 14 days before the hearing.

1 (b) Proof of notice of a hearing under this article must be made before or at the hearing
2 and filed in the proceeding.

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

6 **§ 5-114. Waiver of notice.**

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

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

12 **§ 5-115. Guardian ad litem.** The court at any time may appoint a guardian ad litem for an
13 individual if the court determines the individual's interest otherwise would not be adequately
14 represented. If no conflict of interest exists, a guardian ad litem may be appointed to represent
15 multiple individuals or interests. The guardian ad litem may not be the same individual as the
16 attorney representing the respondent. The court shall state the duties of the guardian ad litem
17 and the reasons for the appointment.

18 **§ 5-116. Request for notice.**

19 (a) A person may file with the court a request for notice under this part if the person is:

20 (1) not otherwise entitled to notice; and

21 (2) interested in the welfare of a respondent, individual subject to guardianship or
22 conservatorship, or individual subject to a protective arrangement under part 5.

23 (b) A request under subsection (a) must include a statement showing the interest of the
24 person making the request and the address of the person or an attorney for the person to whom

1 notice is to be given.

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

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

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

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

10 (2) been convicted of:

11 (A) a felony;

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

13 or

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

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

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

1 **§ 5-118. Multiple nominations.** If a respondent or other person makes more than one
2 nomination of a guardian or conservator, the latest in time governs.

3 **§ 5-119. Compensation and expenses; in general.**

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

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

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

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

18 **§ 5-120. Compensation of guardian or conservator.**

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

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

4 (c) In determining reasonable compensation for a guardian or conservator, the court, or
5 a conservator in determining reasonable compensation for a guardian as provided in subsection
6 (a), shall consider:

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

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

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

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

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

17 (6) the extent to which the services provided were or were not consistent with the
18 guardian's plan under section 5-316 or conservator's plan under section 5-419; and

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

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

23 (e) If an individual subject to guardianship or conservatorship seeks to modify or
24 terminate the guardianship or conservatorship or remove the guardian or conservator, the court

1 may order compensation to the guardian or conservator for time spent opposing modification,
2 termination, or removal only to the extent the court determines the opposition was reasonably
3 necessary to protect the interest of the individual subject to guardianship or conservatorship.

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

8 **§ 5-122. Petition after appointment for instruction or ratification.**

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

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

14 **§ 5-123. Third-party acceptance of authority of guardian or conservator.**

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

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

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

24 (b) A person may refuse to recognize the authority of a guardian or conservator to act

1 on behalf of an individual subject to guardianship or conservatorship if:

2 (1) the guardian's or conservator's proposed action would be inconsistent with
3 this article or

4 (2) the person makes, or has actual knowledge that another person has made, a
5 report to the Department of Humans Services, Division of Children, Youth and Families,
6 stating a good-faith belief that the individual subject to guardianship or conservatorship is
7 subject to physical or financial abuse, neglect, exploitation, or abandonment by the
8 guardian or conservator or a person acting for or with the guardian or conservator.

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

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

16 **§ 5-124. Use of agent by guardian or conservator.**

17 (a) Except as otherwise provided in subsection (c), a guardian or conservator may
18 delegate a power to an agent which a prudent guardian or conservator of comparable skills could
19 delegate prudently under the circumstances if the delegation is consistent with the guardian's or
20 conservator's fiduciary duties and the guardian's plan under section 5-316 or conservator's plan
21 under section 5-419.

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

24 (1) selecting the agent;

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

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

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

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

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

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

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

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

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

18 **§ 5-125. Registration of order; effect**

19 (a) If a guardian has been appointed in another state for an individual, and a petition for
20 guardianship for the individual is not pending in the Virgin Islands, the guardian appointed in
21 the other state, after giving notice to the appointing court, may register the guardianship order
22 in the Virgin Islands by filing as a foreign judgment, in a court of an appropriate judicial division
23 in the Virgin Islands, certified copies of the order and letters of office.

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

1 for conservatorship for the individual is not pending in the Virgin Islands, the conservator
2 appointed for the individual in the other state, after giving notice to the appointing court, may
3 register the conservatorship in the Virgin Islands by filing as a foreign judgment, in a court of a
4 judicial division in the Virgin Islands in which property belonging to the individual subject to
5 conservatorship is located, certified copies of the order of conservatorship, letters of office, and
6 any bond or other asset-protection arrangement required by the court.

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

13 (d) The court may grant any relief available under this part and laws of the Virgin
14 Islands other than this part to enforce an order registered under this section.

15 **§ 5-126. Temporary substitute guardian or conservator.**

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

- 18 (1) a proceeding to remove a guardian for the individual is pending; or
19 (2) the court finds a guardian is not effectively performing the guardian's duties
20 and the welfare of the individual requires immediate action.

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

- 23 (1) a proceeding to remove a conservator for the individual is pending; or
24 (2) the court finds that a conservator for the individual is not effectively

1 performing the conservator's duties and the welfare of the individual or the
2 conservatorship estate requires immediate action.

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

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

10 (1) the individual subject to guardianship or conservatorship;

11 (2) the affected guardian or conservator; and

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

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

17 **§ 5-127. Grievance against guardian or conservator.**

18 (a) An individual who is subject to guardianship or conservatorship, or person
19 interested in the welfare of an individual subject to guardianship or conservatorship, that
20 reasonably believes the guardian or conservator is breaching the guardian's or conservator's
21 fiduciary duty or otherwise acting in a manner inconsistent with this article may file a grievance
22 in a record with the court.

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

24 (1) shall review the grievance and, if necessary to determine the appropriate

1 response, court records related to the guardianship or conservatorship;

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

4 (A) removal of the guardian and appointment of a successor may be
5 appropriate under section 5-318;

6 (B) termination or modification of the guardianship may be appropriate
7 under section 5-319;

8 (C) removal of the conservator and appointment of a successor may be
9 appropriate under section 5-430; or

10 (D) termination or modification of the conservatorship may be appropriate
11 under section 5-431; and

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

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

15 (B) appointing a guardian ad litem;

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

18 (D) holding a hearing.

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

22 **§ 5-128. Delegation by parent or guardian.** A parent or guardian of a minor, or incapacitated
23 person, by a power of attorney, may delegate to another person, for a period not exceeding six
24 months, any powers regarding care, custody, or property of the minor or ward, other than power

1 to consent to marriage or adoption.

2 **Part 2. Guardianship of a Minor (§§5-201-5-211)**

3 **§ 5-201. Basis for appointment of guardian for minor.**

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

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

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

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

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

12 **§ 5-202. Petition for appointment of guardian for minor.**

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

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

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

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

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

1 filing of the petition or for at least 730 days during the five years immediately before the
2 filing of the petition;

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

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

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

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

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

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

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

17 **§5-203. Notice of hearing for appointment of guardian for minor.**

18 (a) If a petition is filed under section 5-202, the court shall schedule a hearing and the
19 petitioner shall:

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

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

24 (B) each parent of the minor or, if there is none, the adult nearest in kinship

1 who can be found with reasonable diligence;

2 (C) any adult with whom the minor resides;

3 (D) each person that had primary care or custody of the minor for at least 60
4 days during the two years immediately before the filing of the petition or for at least
5 730 days during the five years immediately before the filing of the petition; and

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

8 (2) give notice under Section 5-113 of the date, time, and place of the hearing,
9 together with a copy of the petition, to:

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

12 (B) any nominee of a parent;

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

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

15 (E) any other person the court determines.

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

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

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

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

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

4 (1) interview the petitioner and the minor;

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

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

8 **§ 5-204. Attorney for minor or parent.**

9 (a) The court shall appoint an attorney to represent a minor who is the subject of a
10 proceeding under section 5-202 if:

11 (1) requested by the minor and the minor is 12 years of age or older;

12 (2) recommended by a guardian ad litem; or

13 (3) the court determines the minor needs representation.

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

15 (1) make a reasonable effort to ascertain the minor's wishes;

16 (2) advocate for the minor's wishes to the extent reasonably ascertainable; and

17 (3) if the minor's wishes are not reasonably ascertainable, advocate for the
18 minor's best interest.

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

21 (d) A parent of a minor who is the subject of a proceeding under section 5-202 may
22 retain an attorney to represent the parent in the proceeding.

23 (e) The court shall appoint an attorney to represent a parent of a minor who is the subject
24 of a proceeding under section 5-202 if:

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

5 **§ 5-205. Attendance and participation at hearing for appointment of guardian for minor.**

6 (a) The court shall require a minor who is the subject of a hearing under section 5-203
7 to attend the hearing and allow the minor to participate in the hearing unless the court
8 determines, by clear-and-convincing evidence presented at the hearing or a separate hearing,
9 that:

- 10 (1) the minor consistently and repeatedly refused to attend the hearing after being
- 11 fully informed of the right to attend and, if the minor is 12 years of age or older, the
- 12 potential consequences of failing to do so;
- 13 (2) there is no practicable way for the minor to attend the hearing;
- 14 (3) the minor lacks the ability or maturity to participate meaningfully in the
- 15 hearing; or
- 16 (4) attendance would be harmful to the minor.

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

19 (c) Each parent of a minor who is the subject of a hearing under section 5-203 has the
20 right to attend the hearing.

21 (d) A person may request permission to participate in a hearing under section 5-203.
22 The court may grant the request, with or without hearing, on determining that it is in the best
23 interest of the minor who is the subject of the hearing. The court may impose appropriate
24 conditions on the person's participation.

1 **§ 5-206. Order of appointment; priority of nominee; limited guardianship for minor.**

2 (a) After a hearing under section 5-203, the court may appoint a guardian for a minor,
3 if appointment is proper under section 5-201, dismiss the proceeding, or take other appropriate
4 action consistent with this part or law of the Virgin Islands other than this part

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

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

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

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

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

24 (d) The court, as part of an order appointing a guardian for a minor, shall state rights

1 retained by any parent of the minor, which may include contact or visitation with the minor,
2 decision making regarding the minor's health care, education, or other matter, or access to a
3 record regarding the minor.

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

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

7 (2) the court has modified or limited the powers of the guardian; or

8 (3) the court has removed the guardian.

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

11 **§ 5-207. Standby guardian for minor.**

12 (a) A standby guardian appointed under this section may act as guardian, with all duties
13 and powers of a guardian under sections 5-209 and 5-210, when no parent of the minor is willing
14 or able to exercise the duties and powers granted to the guardian.

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

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

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

21 and

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

24 (d) A petition under subsection (c)(1) must include the same information required under

1 section 5-202 for the appointment of a guardian for a minor.

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

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

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

6 (B) each parent of the minor;

7 (C) the person nominated as standby guardian; and

8 (D) any other person the court determines; and

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

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

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

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

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

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

1 served with due diligence.

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

5 (1) interview the petitioner and the minor;

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

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

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

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

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

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

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

20 (2) the guardian delegates custody of the minor;

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

22 (4) the court removes the guardian.

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

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

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

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

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

10 **§5-208. Emergency guardian for minor.**

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

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

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

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

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

- 1 (1) the minor, if the minor is 12 years of age or older;
- 2 (2) any attorney appointed under Section 5-204;
- 3 (3) each parent of the minor;
- 4 (4) any person, other than a parent, having care or custody of the minor; and
- 5 (5) any other person the court determines.

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

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

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

18 **§ 5-209. Duties of guardian for minor.**

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

23 (b) A guardian for a minor shall:

- 24 (1) be personally acquainted with the minor and maintain sufficient contact with

1 the minor to know the minor's abilities, limitations, needs, opportunities, and physical and
2 mental health;

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

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

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

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

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

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

19 **§ 5-210. Powers of guardian for minor.**

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

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

24 (1) apply for and receive funds and benefits otherwise payable for the support of

1 the minor to the minor's parent, guardian, or custodian under a statutory system of benefits
2 or insurance or any private contract, devise, trust, conservatorship, or custodianship;

3 (2) unless inconsistent with a court order entitled to recognition in this state, take
4 custody of the minor and establish the minor's place of dwelling and, on authorization of
5 the court, establish or move the minor's dwelling outside this state;

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

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

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

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

14 (d) A guardian for a minor may consent to the marriage of the minor, if authorized by
15 the court.

16 **§ 5-211. Removal of guardian for minor; termination of guardianship; appointment of**
17 **successor.**

18 (a) Guardianship under this article for a minor terminates:

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

20 (2) when the court finds that the standard in section 5-201 for appointment of a
21 guardian is not satisfied, unless the court finds that:

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

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

1 decisions for the minor.

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

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

9 (d) The court shall follow the priorities in section 5-206(b) when selecting a successor
10 guardian for a minor.

11 (e) Not later than 30 days after appointment of a successor guardian for a minor, the
12 court shall give notice of the appointment to the minor subject to guardianship, if the minor is
13 12 years of age or older, each parent of the minor, and any other person the court determines.

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

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

19 **Part 3. Guardianship of an Adult (§§5-301-5-319)**

20 **§ 5-301. Basis for appointment of guardian for adult.**

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

22 (1) appoint a guardian for an adult if the court finds by clear-and-convincing
23 evidence that:

24 (A) the respondent lacks the ability to meet essential requirements for

1 physical health, safety, or self-care because the respondent is unable to receive and
2 evaluate information or make or communicate decisions, even with appropriate
3 supportive services, technological assistance, or supported decision making; and

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

6 (2) with appropriate findings, treat the petition as one for a conservatorship under
7 part 4 or protective arrangement under part 5, issue any appropriate order, or dismiss the
8 proceeding.

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

15 **§ 5-302. Petition for appointment of guardian for adult.**

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

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

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

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

2 (A) spouse, or if respondent the respondent has none, an adult with whom
3 the respondent has shared household responsibilities for more than six months in the
4 12-month period immediately before the filing of the petition;

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

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

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

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

13 (B) any attorney currently representing the respondent;

14 (C) any representative payee appointed by the Social Security
15 Administration for the respondent;

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

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

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

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

24 (H) an agent designated under a power of attorney for finances in which the

1 respondent is identified as the principal;

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

3 (J) a person nominated as guardian by the respondent's parent or spouse in
4 a will or other signed record;

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **§ 5-303. Notice of hearing for appointment of guardian for adult.**

7 (a) On filing of a petition under section 5-302 for appointment of a guardian for an
8 adult, the court shall set a date, time, and place for hearing the petition.

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

15 (c) In a proceeding on a petition under section 5-302, the notice required under
16 subsection (b) must be given to the persons required to be listed in the petition under section 5-
17 302(b)(1) through (3) and any other person interested in the respondent's welfare the court
18 determines. Failure to give notice under this subsection does not preclude the court from
19 appointing a guardian.

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

22 (1) the adult subject to guardianship;

23 (2) the guardian; and

24 (3) any other person the court determines.

1 **§ 5-304. Appointment and role of visitor.**

2 (a) On receipt of a petition under section 5-302 for appointment of a guardian for an
3 adult, the court shall appoint a visitor. The visitor must be an individual with training or
4 experience in the type of abilities, limitations, and needs alleged in the petition.

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

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

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

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

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

18 (c) The visitor appointed under subsection (a) shall:

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

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

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

24 (4) investigate the allegations in the petition and any other matter relating to the

1 petition the court directs.

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

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

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

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

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

15 (B) if a limited guardianship is recommended, the powers to be granted to
16 the guardian;

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

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

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

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

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

4 (9) any other matter the court directs.

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

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

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

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

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

13 and

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

17 **§ 5-306. Professional evaluation.**

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

20 (1) if the respondent requests the evaluation; or

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

23 (b) If the court orders an evaluation under subsection (a), the respondent must be
24 examined by a licensed physician, psychologist, social worker, or other individual appointed by

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

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

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

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

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

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

14 **§ 5-307. Attendance and rights at hearing.**

15 (a) Except as otherwise provided in subsection (b), a hearing under section 5-303 may
16 not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the
17 respondent to attend a hearing at the location court proceedings typically are held, the court shall
18 make reasonable efforts to hold the hearing at an alternative location convenient to the
19 respondent or allow the respondent to attend the hearing using real-time audio-visual
20 technology.

21 (b) A hearing under section 5-303 may proceed without the respondent in attendance if
22 the court finds by clear-and-convincing evidence that:

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

1 failing to do so; or

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

4 (c) The respondent may be assisted in a hearing under section 5-303 by a person or
5 persons of the respondent's choosing, assistive technology, or an interpreter or translator, or a
6 combination of these supports. If assistance would facilitate the respondent's participation in
7 the hearing but is not otherwise available to the respondent, the court shall make reasonable
8 efforts to provide it.

9 (d) The respondent has a right to choose an attorney to represent the respondent at a
10 hearing under section 5-303.

11 (e) At a hearing held under section 5-303, the respondent may:

12 (1) present evidence and subpoena witnesses and documents;

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

14 and

15 (3) otherwise participate in the hearing.

16 (f) Unless excused by the court for good cause, a proposed guardian shall attend a
17 hearing under section 5-303.

18 (g) A hearing under section 5-303 must be closed on request of the respondent and a
19 showing of good cause.

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

24 **§5-308. Confidentiality of records.**

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

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

5 (2) either:

6 (A) the petition for guardianship is dismissed; or

7 (B) the guardianship is terminated.

8 (b) An adult subject to a proceeding for a guardianship, whether or not a guardian is
9 appointed, an attorney designated by the adult, and a person entitled to notice under section 5-
10 310(e) or a subsequent order are entitled to access court records of the proceeding and resulting
11 guardianship, including the guardian's plan under section 5-316 and report under section 5-317.
12 A person not otherwise entitled to access court records under this subsection for good cause
13 may petition the court for access to court records of the guardianship, including the guardian's
14 report and plan. The court shall grant access if access is in the best interest of the respondent or
15 adult subject to guardianship or furthers the public interest and does not endanger the welfare
16 or financial interests of the adult.

17 (c) A report under section 5-304 of a visitor or a professional evaluation under Section
18 5-306 is confidential and must be sealed on filing, but is available to:

19 (1) the court;

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

22 (3) the petitioner, visitor, and petitioner's and respondent's attorneys, for
23 purposes of the proceeding;

24 (4) unless the court orders otherwise, an agent appointed under a power of

1 attorney for health care or power of attorney for finances in which the respondent is the
2 principal; and

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

5 **§5-309. Who may be guardian for adult; order of priority.**

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

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

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

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

14 (4) a spouse of the respondent; and

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

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

23 (c) The court, acting in the best interest of the respondent, may decline to appoint as
24 guardian a person having priority under subsection (a) and appoint a person having a lower

1 priority or no priority.

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

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

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

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

13 **§5-310. Order of appointment for guardian.**

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

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

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

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

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

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

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

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

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

15 (1) notice of the rights of the adult under section 5-311(b);

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

17 (3) notice that the guardian has delegated:

18 (A) the power to manage the care of the adult;

19 (B) the power to make decisions about where the adult lives;

20 (C) the power to make major medical decisions on behalf of the adult;

21 (D) a power that requires court approval under section 315; or

22 (E) substantially all powers of the guardian;

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

1 (5) a copy of the guardian's plan under section 5-316 and the guardian's report
2 under section 5-317;

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

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

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

6 (9) notice of the removal of the guardian.

7 (f) A spouse and adult children of an adult subject to guardianship are entitled to notice
8 under subsection (e) unless the court determines notice would be contrary to the preferences or
9 prior directions 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) A guardian appointed under section 5-309 shall give the adult subject to
12 guardianship and all other persons given notice under section 5-303 a copy of the order of
13 appointment, together with notice of the right to request termination or modification. The order
14 and notice must be given not later than 14 days after the appointment.

15 (b) Not later than 30 days after appointment of a guardian under section 5-309, the court
16 shall give to the adult subject to guardianship, the guardian, and any other person entitled to
17 notice under section 5-310(e) or a subsequent order a statement of the rights of the adult subject
18 to guardianship and procedures to seek relief if the adult is denied those rights. The statement
19 must be in at least 16-point font, in plain language, and, to the extent feasible, in a language in
20 which the adult subject to guardianship is proficient. The statement must notify the adult subject
21 to guardianship of the right to:

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

24 (2) be involved in decisions affecting the adult, including decisions about the

1 adult's care, dwelling, activities, or social interactions, to the extent reasonably feasible;

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

5 (4) be notified at least 14 days before a change in the adult's primary dwelling or
6 permanent move to a nursing home, mental health facility, or other facility that places
7 restrictions on the individual's ability to leave or have visitors unless the change or move
8 is proposed in the guardian's plan under section 5-316 or authorized by the court by
9 specific order;

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

12 (6) communicate, visit, or interact with others, including receiving visitors, and
13 making or receiving telephone calls, personal mail, or electronic communications,
14 including through social media, unless:

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

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

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

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

24 (ii) for a period of not more than 60 days if the person does not have

1 a family or pre-existing social relationship with the adult;

2 (7) receive a copy of the guardian's plan under Section 5-316 and the guardian's
3 report under Section 5-317; and

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

5 **§ 5-312. Emergency guardian for adult.**

6 (a) On its own after a petition has been filed under section 5-302, or on petition by a
7 person interested in an adult's welfare, the court may appoint an emergency guardian for the
8 adult if the court finds:

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

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

13 (3) there is reason to believe that a basis for appointment of a guardian under
14 section 5-301 exists.

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

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

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

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

8 (A) the respondent;

9 (B) the respondent's attorney; and

10 (C) any other person the court determines; and

11 (2) hold a hearing on the appropriateness of the appointment not later than five
12 days after the appointment.

13 (e) Appointment of an emergency guardian under this section is not a determination
14 that a basis exists for appointment of a guardian under section 5-301.

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

17 **§ 5-313. Duties of guardian for adult.**

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

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

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

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

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

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

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

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

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

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

23 (d) In making a decision for an adult subject to guardianship, the guardian shall make
24 the decision the guardian reasonably believes the adult would make if the adult were able unless

1 doing so would unreasonably harm or endanger the welfare or personal or financial interests of
2 the adult. To determine the decision the adult subject to guardianship would make if able, the
3 guardian shall consider the adult's previous or current directions, preferences, opinions, values,
4 and actions, to the extent actually known or reasonably ascertainable by the guardian.

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

11 (1) information received from professionals and persons that demonstrate
12 sufficient interest in the welfare of the adult;

13 (2) other information the guardian believes the adult would have considered if the
14 adult were able to act; and

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

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

19 **§ 5-314. Powers of guardian for adult.**

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

21 (1) apply for and receive funds and benefits for the support of the adult, unless a
22 conservator is appointed for the adult and the application or receipt is within the powers
23 of the conservator;

24 (2) unless inconsistent with a court order, establish the adult's place of dwelling;

1 (3) consent to health or other care, treatment, or service for the adult;

2 (4) if a conservator for the adult has not been appointed, commence a proceeding,
3 including an administrative proceeding, or take other appropriate action to compel another
4 person to support the adult or pay funds for the adult's benefit;

5 (5) to the extent reasonable, delegate to the adult responsibility for a decision
6 affecting the adult's well-being; and

7 (6) receive personally identifiable health-care information regarding the adult.

8 (b) The court by specific order may authorize a guardian for an adult to consent to the
9 adoption of the adult.

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

11 (1) consent or withhold consent to the marriage of the adult if the adult's right to
12 marry has been removed under Section 5-310;

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

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

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

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

22 (1) select a residential setting the guardian believes the adult would select if the
23 adult were able, in accordance with the decision-making standard in section 313(d) and

24 (e). If the guardian does not know and cannot reasonably determine what setting the adult

1 subject to guardianship probably would choose if able, or the guardian reasonably believes
2 the decision the adult would make would unreasonably harm or endanger the welfare or
3 personal or financial interests of the adult, the guardian shall choose in accordance with
4 section 313(e) a residential setting that is consistent with the adult's best interest;

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

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

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

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

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

19 (A) the establishment or move is in the guardian's plan under section 5-316;

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

21 (C) the guardian gives notice of the establishment or move at least 14 days
22 before the establishment or move to the adult and all persons entitled to notice under
23 section 5-310(e)(2) or a subsequent order, and no objection is filed;

24 (5) establish or move the place of dwelling of the adult outside this state only if

1 consistent with the guardian's plan and authorized by the court by specific order; and

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

4 (A) the action is specifically included in the guardian's plan under section
5 5-316;

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

7 (C) notice of the action was given at least 14 days before the action to the
8 adult and all persons entitled to the notice under section 5-310(e)(2) or a subsequent
9 order and no objection has been filed.

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

12 (1) involve the adult in decision making to the extent reasonably feasible,
13 including, when practicable, by encouraging and supporting the adult in understanding the
14 risks and benefits of healthcare options;

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

18 (3) take into account:

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

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

22 **§ 5-315. Special limitations on guardian's power.**

23 (a) Unless authorized by the court by specific order, a guardian for an adult does not
24 have the power to revoke or amend a power of attorney for health care or power of attorney for

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

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

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

15 (1) authorized by the court by specific order;

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

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

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

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

1 **§ 5-316. Guardian's plan.**

2 (a) A guardian for an adult, not later than 60 days after appointment and when there is
3 a significant change in circumstances, or the guardian seeks to deviate significantly from the
4 guardian's plan, shall file with the court a plan for the care of the adult. The plan must be based
5 on the needs of the adult and consider the best interest of the adult as well as the adult's
6 preferences, values, and prior directions, to the extent known to or reasonably ascertainable by
7 the guardian. The guardian shall include in the plan:

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

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

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

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

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

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

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

23 (b) A guardian shall give notice of the filing of the guardian's plan under subsection
24 (a), together with a copy of the plan, to the adult subject to guardianship, a person entitled to

1 notice under section 5-310(e) or a subsequent order, and any other person the court determines.
2 The notice must include a statement of the right to object to the plan and be given not later than
3 14 days after the filing.

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

6 (d) The court shall review the guardian's plan filed under subsection (a) and determine
7 whether to approve the plan or require a new plan. In deciding whether to approve the plan, the
8 court shall consider an objection under subsection (c) and whether the plan is consistent with
9 the guardian's duties and powers under sections 5-313 and 5-314. The court may not approve
10 the plan until thirty days after its filing.

11 (e) After the guardian's plan filed under this section is approved by the court, the
12 guardian shall provide a copy of the plan to the adult subject to guardianship, a person entitled
13 to notice under section 5-310(e) or a subsequent order, and any other person the court
14 determines.

15 **§ 5-317. Guardian's report; monitoring of guardianship.**

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

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

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

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

23 (3) a summary of the supported decision making, technological assistance,
24 medical services, educational and vocational services, and other supports and services

1 provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

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

4 (5) action taken on behalf of the adult;

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

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

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

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

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

17 (11) a copy of the guardian's most recently approved plan under section 5-316 and
18 a statement whether the guardian has deviated from the plan and, if so, how the guardian
19 has deviated and why;

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

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

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

1 (c) The court may appoint a visitor to review a report submitted under this section or a
2 guardian's plan submitted under section 5-316, interview the guardian or adult subject to
3 guardianship, or investigate any other matter involving the guardianship.

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

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

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

12 (2) the guardianship should continue; and

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

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

17 (1) shall notify the adult, the guardian, and any other person entitled to notice
18 under section 5-310(e) or a subsequent order;

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

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

22 (4) consistent with sections 5-318 and 5-319, may hold a hearing to consider
23 removal of the guardian, termination of the guardianship, or a change in the powers
24 granted to the guardian or terms of the guardianship.

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

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

7 **§ 5-318. Removal of guardian for adult; appointment of successor.**

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

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

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

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

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

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

24 (d) An adult subject to guardianship who seeks to remove the guardian and have a

1 successor guardian appointed has the right to choose an attorney to represent the adult in this
2 matter. If the adult is not represented by an attorney, the court shall appoint an attorney under
3 the same conditions as in section 5-305. The court shall award reasonable attorney's fees to the
4 attorney for the adult as provided in section 5-119.

5 (e) In selecting a successor guardian for an adult, the court shall follow the priorities
6 under section 5-309.

7 (f) Not later than 30 days after appointing a successor guardian, the court shall give
8 notice of the appointment to the adult subject to guardianship and any person entitled to notice
9 under section 5-310(e) or a subsequent order.

10 **§ 5-319. Termination or modification of guardianship for adult.**

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

13 (1) termination of the guardianship on the ground that a basis for appointment
14 under section 5-301 does not exist or termination would be in the best interest of the adult
15 or for other good cause; or

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

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

20 (1) petition under subsection (a) which contains allegations that, if true, would
21 support a reasonable belief that termination or modification of the guardianship may be
22 appropriate, but the court may decline to hold a hearing if a petition based on the same or
23 substantially similar facts was filed during the preceding six months;

24 (2) communication from the adult, guardian, or person interested in the welfare

1 of the adult which supports a reasonable belief that termination or modification of the
2 guardianship may be appropriate, including because the functional needs of the adult or
3 supports or services available to the adult have changed;

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

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

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

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

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

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

22 (g) An adult subject to guardianship who seeks to terminate or modify the terms of the
23 guardianship has the right to choose an attorney to represent the adult in the matter. If the adult
24 is not represented by an attorney, the court shall appoint an attorney under the same conditions

1 as in section 5-305. The court shall award reasonable attorney's fees to the attorney for the adult
2 as provided in section 5-119.

3 **Part 4. Conservatorship (§§5-401-5-432)**

4 **§ 5-401. BASIS FOR APPOINTMENT OF CONSERVATOR.**

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

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

10 (2) either:

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

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

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

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

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

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

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

24 (2) appointment is necessary to:

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

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

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

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

13 **§ 5-402. PETITION FOR APPOINTMENT OF CONSERVATOR.**

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

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

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

19 (3) the guardian for the individual.

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

24 (1) the respondent's name, age, principal residence, current street address, if

1 different, and, if different, address of the dwelling in which it is proposed the respondent
2 will reside if the petition is granted;

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

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

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

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

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

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

15 (B) any attorney currently representing the respondent;

16 (C) the representative payee appointed by the Social Security
17 Administration for the respondent;

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

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

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

24 (G) an agent designated under a power of attorney for health care in which

1 the respondent is identified as the principal;

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

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

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

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

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

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

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

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

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

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

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

1 considered or implemented;

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

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

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

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

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

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

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

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

19 **§ 5-403. Notice and hearing for appointment of conservator.**

20 (a) On filing of a petition under section 5-402 for appointment of a conservator, the
21 court shall set a date, time, and place for a hearing on the petition.

22 (b) A copy of a petition under section 5-402 and notice of a hearing on the petition must
23 be served personally on the respondent. If the respondent's whereabouts are unknown or
24 personal service cannot be made, service on the respondent must be made by substituted service

1 by publication, pursuant to 5 V.I.C. §112. The notice must inform the respondent of the
2 respondent's rights at the hearing, including the right to an attorney and to attend the hearing.
3 The notice must include a description of the nature, purpose, and consequences of granting the
4 petition. The court may not grant a petition for appointment of a conservator if notice
5 substantially complying with this subsection is not served on the respondent.

6 (c) In a proceeding on a petition under section 5-402, the notice required under
7 subsection (b) must be given to the persons required to be listed in the petition under section 5-
8 402(b)(1) through (3) and any other person interested in the respondent's welfare the court
9 determines. Failure to give notice under this subsection does not preclude the court from
10 appointing a conservator.

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

- 13 (1) the individual subject to conservatorship, if the individual is 12 years of age
14 or older and not missing, detained, or unable to return to the United States;
15 (2) the conservator; and
16 (3) any other person the court determines.

17 **§ 5-404. Order to preserve or apply property while proceeding pending.** While a petition
18 under section 5-402 is pending, after preliminary hearing and without notice to others, the court
19 may issue an order to preserve and apply property of the respondent as required for the support
20 of the respondent or an individual who is in fact dependent on the respondent. The court may
21 appoint a master to assist in implementing the order.

22 **§ 5-405. Appointment and role of visitor.**

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

1 the minor about the petition or a related matter.

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

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

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

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

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

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

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

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

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

24 (3) investigate whether the respondent's needs could be met by a protective

1 arrangement instead of conservatorship or other less restrictive alternative and, if so,
2 identify the arrangement or other less restrictive alternative; and

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

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

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

9 (2) a recommendation:

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

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

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

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

20 (4) a recommendation whether a professional evaluation under section 5-407 is
21 necessary;

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

24 (6) a statement whether the respondent is able to participate in a hearing and

1 which identifies any technology or other form of support that would enhance the
2 respondent's ability to participate; and

3 (7) any other matter the court directs.

4 **§ 5-406. Appointment and role of attorney.**

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

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

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

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

12 and

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

16 (c) The court shall appoint an attorney to represent a parent of a minor who is the subject
17 of a proceeding under section 5-402 if:

18 (1) the parent objects to appointment of a conservator;

19 (2) the court determines that counsel is needed to ensure that consent to
20 appointment of a conservator is informed; or

21 (3) the court otherwise determines the parent needs representation.

22 **§ 5-407. Professional evaluation.**

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

1 (1) if the respondent requests the evaluation; or

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

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

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

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

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

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

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

21 **§ 5-408. Attendance and rights at hearing.**

22 (a) Except as otherwise provided in subsection (b), a hearing under Section 5-403 may
23 not proceed unless the respondent attends the hearing. If it is not reasonably feasible for the
24 respondent to attend a hearing at the location court proceedings typically are held, the court

1 shall make reasonable efforts to hold the hearing at an alternative location convenient to the
2 respondent or allow the respondent to attend the hearing using real-time audio-visual
3 technology.

4 (b) A hearing under section 5-403 may proceed without the respondent in attendance if
5 the court finds by clear-and-convincing evidence that:

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

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

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

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

18 (d) The respondent has a right to choose an attorney to represent the respondent at a
19 hearing under section 5-403.

20 (e) At a hearing under section 5-403, the respondent may:

21 (1) present evidence and subpoena witnesses and documents;

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

23 and

24 (3) otherwise participate in the hearing.

1 (f) Unless excused by the court for good cause, a proposed conservator shall attend a
2 hearing under section 5-403.

3 (g) A hearing under section 5-403 must be closed on request of the respondent and a
4 showing of good cause.

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

9 **§ 5-409. Confidentiality of records.**

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

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

14 (2) either:

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

16 (B) the conservatorship is terminated.

17 (b) An individual subject to a proceeding for a conservatorship, whether or not a
18 conservator is appointed, an attorney designated by the individual, and a person entitled to notice
19 under section 5-411(e) or a subsequent order may access court records of the proceeding and
20 resulting conservatorship, including the conservator's plan under section 5-419 and the
21 conservator's report under section 5-423. A person not otherwise entitled to access to court
22 records under this section for good cause may petition the court for access to court records of
23 the conservatorship, including the conservator's plan and report. The court shall grant access if
24 access is in the best interest of the respondent or individual subject to conservatorship or furthers

1 the public interest and does not endanger the welfare or financial interests of the respondent or
2 individual.

3 (c) A report under section 5-405 of a visitor or professional evaluation under section 5-
4 407 is confidential and must be sealed on filing, but is available to:

5 (1) the court;

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

8 (3) the petitioner, visitor, and petitioner's and respondent's attorneys, for
9 purposes of the proceeding;

10 (4) unless the court directs otherwise, an agent appointed under a power of
11 attorney for finances in which the respondent is identified as the principal; and

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

14 **§ 5-410. Who may be conservator; order of priority.**

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

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

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

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

23 (4) a spouse of the respondent; and

24 (5) a family member or other individual who has shown special care and concern

1 for the respondent.

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

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

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

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

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

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

22 **§ 5-411. Order of appointment of conservator.**

23 (a) A court order appointing a conservator for a minor must include findings to support
24 appointment of a conservator and, if a full conservatorship is granted, the reason a limited

1 conservatorship would not meet the identified needs of the minor.

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

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

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

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

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

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

16 (1) notice of the rights of the individual subject to conservatorship under section
17 5-412(b);

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

20 (3) notice that the conservator has delegated a power that requires court approval
21 under section 5-414 or substantially all powers of the conservator;

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

24 (5) a copy of the conservator's plan under section 5-419 and the conservator's

1 report under section 5-423;

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

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

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

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

7 and

8 (10) notice of the removal of the conservator.

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

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

16 **§ 5-412. Notice of order of appointment; rights.**

17 (a) A conservator appointed under section 5-411 shall give to the individual subject to
18 conservatorship and to all other persons given notice under section 5-403 a copy of the order of
19 appointment, together with notice of the right to request termination or modification. The order
20 and notice must be given not later than 14 days after the appointment.

21 (b) Not later than 30 days after appointment of a conservator under section 5-411, the
22 court shall give to the individual subject to conservatorship, the conservator, and any other
23 person entitled to notice under section 5-411(e) a statement of the rights of the individual subject
24 to conservatorship and procedures to seek relief if the individual is denied those rights. The

1 statement must be in plain language, in at least 16-point font, and to the extent feasible, in a
2 language in which the individual subject to conservatorship is proficient. The statement must
3 notify the individual subject to conservatorship of the right to:

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

6 (2) participate in decision making to the extent reasonably feasible;

7 (3) receive a copy of the conservator's plan under section 5-419, the conservator's
8 inventory under section 5-420, and the conservator's report under section 5-423; and

9 (4) object to the conservator's inventory, plan, or report.

10 (c) If a conservator is appointed for the reasons stated in section 5-401(b)(1)(B) and the
11 individual subject to conservatorship is missing, notice under this section to the individual is
12 not required.

13 **§ 5-413. Emergency conservator.**

14 (a) On its own or on petition by a person interested in an individual's welfare after a
15 petition has been filed under section 5-402, the court may appoint an emergency conservator for
16 the individual if the court finds:

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

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

21 (3) there is reason to believe that a basis for appointment of a conservator under
22 section 5-401 exists.

23 (b) The duration of authority of an emergency conservator may not exceed 60 days and
24 the emergency conservator may exercise only the powers specified in the order of appointment.

1 The emergency conservator's authority may be extended once for not more than 60 days if the
2 court finds that the conditions for appointment of an emergency conservator under subsection
3 (a) continue.

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

8 (d) The court may appoint an emergency conservator without notice to the respondent
9 and any attorney for the respondent only if the court finds from an affidavit or testimony that
10 the respondent's property or financial interests will be substantially and irreparably harmed
11 before a hearing with notice on the appointment can be held. If the court appoints an emergency
12 conservator without giving notice under subsection (c), the court must give notice of the
13 appointment not later than 48 hours after the appointment to:

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

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

19 (f) Appointment of an emergency conservator under this section is not a determination
20 that a basis exists for appointment of a conservator under section 5-401.

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

23 **§ 5-414. Powers of conservator requiring court approval.**

24 (a) Except as otherwise ordered by the court, a conservator must give notice to persons

1 entitled to notice under section 5-403(d) and receive specific authorization by the court before
2 the conservator may exercise with respect to the conservatorship the power to:

3 (1) make a gift, except a gift of de minimis value;

4 (2) sell, encumber an interest in, or surrender a lease to the primary dwelling of
5 the individual subject to conservatorship;

6 (3) convey, release, or disclaim a contingent or expectant interest in property,
7 including marital property and any right of survivorship incident to joint tenancy or
8 tenancy by the entireties;

9 (4) exercise or release a power of appointment;

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

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

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

17 (8) grant a creditor priority for payment over creditors of the same or higher class
18 if the creditor is providing property or services used to meet the basic living and care needs
19 of the individual subject to conservatorship and preferential treatment otherwise would be
20 impermissible under section 5-428(e); and

21 (9) make, modify, amend, or revoke the will of the individual subject to
22 conservatorship in compliance with 15 V.I.C. §13.

23 (b) In approving a conservator's exercise of a power listed in subsection (a), the court
24 shall consider primarily the decision the individual subject to conservatorship would make if

1 able, to the extent the decision can be ascertained.

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

6 (1) the financial needs of the individual subject to conservatorship and individuals
7 who are in fact dependent on the individual subject to conservatorship for support, and the
8 interests of creditors of the individual;

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

10 (3) eligibility for governmental assistance;

11 (4) the previous pattern of giving or level of support provided by the individual;

12 (5) any existing estate plan or lack of estate plan of the individual;

13 (6) the life expectancy of the individual and the probability the conservatorship
14 will terminate before the individual's death; and

15 (7) any other relevant factor.

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

20 **§ 5-415. Petition for order after appointment.**

21 (a) An individual subject to conservatorship or a person interested in the welfare of the
22 individual may petition for an order:

23 (1) requiring the conservator to furnish a bond or collateral or additional bond or
24 collateral or allowing a reduction in a bond or collateral previously furnished;

- 1 (2) requiring an accounting for the administration of the conservatorship estate;
- 2 (3) directing distribution;
- 3 (4) removing the conservator and appointing a temporary or successor
4 conservator;
- 5 (5) modifying the type of appointment or powers granted to the conservator, if the
6 extent of protection or management previously granted is excessive or insufficient to meet
7 the individual's needs, including because the individual's abilities or supports have
8 changed;
- 9 (6) rejecting or modifying the conservator's plan under section 5-419, the
10 conservator's inventory under section 5-420, or the conservator's report under section 5-
11 423; or
- 12 (7) granting other appropriate relief.

13 **§ 5-416. Bond; alternative asset-protection arrangement.**

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

21 (b) Unless the court directs otherwise, the bond required under this section must be in
22 the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated
23 income, less the value of property deposited under an arrangement requiring a court order for
24 its removal and real property the conservator lacks power to sell or convey without specific

1 court authorization. The court, in place of surety on a bond, may accept collateral for the
2 performance of the bond, including a pledge of securities or a mortgage of real property.

3 (c) A regulated financial-service institution qualified to do trust business in the Virgin
4 Islands is not required to give a bond under this section.

5 **§ 5-417. Terms and requirements of bond.**

6 (a) The following rules apply to the bond required under section 5-416:

7 (1) Except as otherwise provided by the bond, the surety and the conservator are
8 jointly and severally liable.

9 (2) By executing a bond provided by a conservator, the surety submits to the
10 personal jurisdiction of the court that issued letters of office to the conservator in a
11 proceeding relating to the duties of the conservator in which the surety is named as a party.
12 Notice of the proceeding must be given to the surety at the address shown in the records
13 of the court in which the bond is filed and any other address of the surety then known to
14 the person required to provide the notice.

15 (3) On petition of a successor conservator or person affected by a breach of the
16 obligation of the bond, a proceeding may be brought against the surety for breach of the
17 obligation of the bond.

18 (4) A proceeding against the bond may be brought until liability under the bond
19 is exhausted.

20 (b) A proceeding may not be brought under this section against a surety of a bond on a
21 matter as to which a proceeding against the conservator is barred.

22 (c) If a bond under section 5-416 is not renewed by the conservator, the surety or sureties
23 immediately shall give notice to the court and the individual subject to conservatorship.

24 **§ 5-418. Duties of conservator.**

1 (a) A conservator is a fiduciary and has duties of prudence and loyalty to the individual
2 subject to conservatorship.

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

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

15 (d) If a conservator cannot make a decision under subsection (c) because the
16 conservator does not know and cannot reasonably determine the decision the individual subject
17 to conservatorship probably would make if able, or the conservator reasonably believes the
18 decision the individual would make would fail to preserve resources needed to maintain the
19 individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare
20 or personal or financial interests of the individual, the conservator shall act in accordance with
21 the best interest of the individual. In determining the best interest of the individual, the
22 conservator shall consider:

23 (1) information received from professionals and persons that demonstrate
24 sufficient interest in the welfare of the individual;

1 (2) other information the conservator believes the individual would have
2 considered if the individual were able to act; and

3 (3) other factors a reasonable person in the circumstances of the individual would
4 consider, including consequences for others.

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

8 (1) the circumstances of the individual subject to conservatorship and the
9 conservatorship estate;

10 (2) general economic conditions;

11 (3) the possible effect of inflation or deflation;

12 (4) the expected tax consequences of an investment decision or strategy;

13 (5) the role of each investment or course of action in relation to the
14 conservatorship estate as a whole;

15 (6) the expected total return from income and appreciation of capital;

16 (7) the need for liquidity, regularity of income, and preservation or appreciation
17 of capital; and

18 (8) the special relationship or value, if any, of specific property to the individual
19 subject to conservatorship.

20 (f) The propriety of a conservator's investment and management of the conservatorship
21 estate is determined in light of the facts and circumstances existing when the conservator decides
22 or acts and not by hindsight.

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

1 (h) A conservator that has special skills or expertise or is named conservator in reliance
2 on the conservator's representation of special skills or expertise, has a duty to use the special
3 skills or expertise in carrying out the conservator's duties.

4 (i) In investing, selecting specific property for distribution, and invoking a power of
5 revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a
6 conservator shall consider any estate plan of the individual known or reasonably ascertainable
7 to the conservator and may examine the will or other donative, nominative, or appointive
8 instrument of the individual.

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

12 (1) the property lacks sufficient equity; or

13 (2) insuring the property would unreasonably dissipate the conservatorship estate
14 or otherwise not be in the best interest of the individual.

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

17 (l) A conservator has access to and authority over a digital asset of the individual
18 subject to conservatorship to the extent provided by 15 V.I.C. § 1301, the Uniform Fiduciary
19 Access to Digital Assets Act, or court order.

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

23 **§ 5-419. Conservator's plan.**

24 (a) A conservator, not later than 60 days after appointment and when there is a

1 significant change in circumstances or the conservator seeks to deviate significantly from the
2 conservator's plan, shall file with the court a plan for protecting, managing, expending, and
3 distributing the assets of the conservatorship estate. The plan must be based on the needs of the
4 individual subject to conservatorship and take into account the best interest of the individual as
5 well as the individual's preferences, values, and prior directions, to the extent known to or
6 reasonably ascertainable by the conservator. The conservator shall include in the plan:

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

11 (2) how the conservator will involve the individual in decisions about
12 management of the conservatorship estate;

13 (3) any step the conservator plans to take to develop or restore the ability of the
14 individual to manage the conservatorship estate; and

15 (4) an estimate of the duration of the conservatorship.

16 (b) A conservator shall give notice of the filing of the conservator's plan under
17 subsection (a), together with a copy of the plan, to the individual subject to conservatorship, a
18 person entitled to notice under section 5-411(e) or a subsequent order, and any other person the
19 court determines. The notice must include a statement of the right to object to the plan and be
20 given not later than 14 days after the filing.

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

23 (d) The court shall review the conservator's plan filed under subsection (a) and
24 determine whether to approve the plan or require a new plan. In deciding whether to approve

1 the plan, the court shall consider an objection under subsection (c) and whether the plan is
2 consistent with the conservator's duties and powers. The court may not approve the plan until
3 30 days after its filing.

4 (e) After a conservator's plan under this section is approved by the court, the
5 conservator shall provide a copy of the plan to the individual subject to conservatorship, a person
6 entitled to notice under section 5-411(e) or a subsequent order, and any other person the court
7 determines.

8 **§ 5-420. Inventory; records.**

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

13 (b) A conservator shall give notice of the filing of an inventory to the individual subject
14 to conservatorship, a person entitled to notice under section 5-411(e) or a subsequent order, and
15 any other person the court determines. The notice must be given not later than 14 days after the
16 filing.

17 (c) A conservator shall keep records of the administration of the conservatorship estate
18 and make them available for examination on reasonable request of the individual subject to
19 conservatorship, a guardian for the individual, or any other person the conservator or the court
20 determines.

21 **§ 5-421. Administrative powers of conservator not requiring court approval.**

22 (a) Except as otherwise provided in section 5-414 or qualified or limited in the court's
23 order of appointment and stated in the letters of office, a conservator has all powers granted in
24 this section and any additional power granted to a trustee by law of the Virgin Islands other than

1 this article.

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

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

8 (2) receive additions to the conservatorship estate;

9 (3) continue or participate in the operation of a business or other enterprise;

10 (4) acquire an undivided interest in property in which the conservator, in a
11 fiduciary capacity, holds an undivided interest;

12 (5) invest assets;

13 (6) deposit funds or other property in a financial institution, including one
14 operated by the conservator;

15 (7) acquire or dispose of property, including real property in another state, for
16 cash or on credit, at public or private sale, and manage, develop, improve, exchange,
17 partition, change the character of, or abandon property;

18 (8) make ordinary or extraordinary repairs or alterations in a building or other
19 structure, demolish any improvement, or raze an existing or erect a new party wall or
20 building;

21 (9) subdivide or develop land, dedicate land to public use, make or obtain the
22 vacation of a plat and adjust a boundary, adjust a difference in valuation of land, exchange
23 or partition land by giving or receiving consideration, and dedicate an easement to public
24 use without consideration;

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

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

6 (12) grant an option involving disposition of property or accept or exercise an
7 option for the acquisition of property;

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

9 (14) pay a call, assessment, or other sum chargeable or accruing against or on
10 account of a security;

11 (15) sell or exercise a stock subscription or conversion right;

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

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

17 (18) insure:

18 (A) the conservatorship estate, in whole or in part, against damage or loss in
19 accordance with section 5-418(j); and

20 (B) the conservator against liability with respect to a third person;

21 (19) borrow funds, with or without security, to be repaid from the conservatorship
22 estate or otherwise;

23 (20) advance funds for the protection of the conservatorship estate or the individual
24 subject to conservatorship and all expenses, losses, and liability sustained in the

1 administration of the conservatorship estate or because of holding any property for which
2 the conservator has a lien on the conservatorship estate;

3 (21) pay or contest a claim, settle a claim by or against the conservatorship estate
4 or the individual subject to conservatorship by compromise, arbitration, or otherwise, or
5 release, in whole or in part, a claim belonging to the conservatorship estate to the extent
6 the claim is uncollectible;

7 (22) pay a tax, assessment, compensation of the conservator or any guardian, and
8 other expense incurred in the collection, care, administration, and protection of the
9 conservatorship estate;

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

13 (A) to the guardian for the distributee;

14 (B) to the custodian of the distributee under and title 15, part III, chapter 62,
15 the Virgin Islands Uniform Transfers to Minors Act, or custodial trustee under title
16 15, part III, chapter 60, the Virgin Islands Uniform Custodial Trust Act; or

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

19 (24) bring or defend an action, claim, or proceeding in any jurisdiction for the
20 protection of the conservatorship estate or the conservator in the performance of the
21 conservator's duties;

22 (25) structure the finances of the individual subject to conservatorship to establish
23 eligibility for a public benefit, including by making gifts consistent with the individual's
24 preferences, values, and prior directions, if the conservator's action does not jeopardize

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

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

4 **§ 5-422. Distribution from conservatorship estate.**

5 (a) Except as otherwise provided in section 5-414 or qualified or limited in the court's
6 order of appointment and stated in the letters of office, and unless contrary to a conservator's
7 plan under section 5-419, the conservator may expend or distribute income or principal of the
8 conservatorship estate without specific court authorization or confirmation for the support, care,
9 education, health, or welfare of the individual subject to conservatorship or an individual who
10 is in fact dependent on the individual subject to conservatorship, including the payment of child
11 or spousal support, in accordance with the following rules:

12 (1) The conservator shall consider a recommendation relating to the appropriate
13 standard of support, care, education, health, or welfare for the individual subject to
14 conservatorship or individual who is dependent on the individual subject to
15 conservatorship, made by a guardian for the individual subject to conservatorship, if any,
16 and, if the individual subject to conservatorship is a minor, a recommendation made by a
17 parent of the minor.

18 (2) The conservator acting in compliance with the conservator's duties under
19 section 5-418 is not liable for an expenditure or distribution made based on a
20 recommendation under paragraph (1) unless the conservator knows the expenditure or
21 distribution is not in the best interest of the individual subject to conservatorship.

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

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

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

4 (B) the accustomed standard of living of the individual subject to
5 conservatorship and individual who is dependent on the individual subject to
6 conservatorship;

7 (C) other funds or source used for the support of the individual subject to
8 conservatorship; and

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

11 (4) Funds expended or distributed under this section may be paid by the
12 conservator to any person, including the individual subject to conservatorship, as
13 reimbursement for expenditures the conservator might have made, or in advance for
14 services to be provided to the individual subject to conservatorship or individual who is
15 dependent on the individual subject to conservatorship if it is reasonable to expect the
16 services will be performed and advance payment is customary or reasonably necessary
17 under the circumstances.

18 **§ 5-423. Conservator's report and accounting; monitoring.**

19 (a) A conservator shall file with the court a report in a record regarding the
20 administration of the conservatorship estate annually unless the court otherwise directs, on
21 resignation or removal, on termination of the conservatorship, and at any other time the court
22 directs.

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

24 (1) an accounting that lists property included in the conservatorship estate and the

1 receipts, disbursements, liabilities, and distributions during the period for which the report
2 is made;

3 (2) a list of the services provided to the individual subject to conservatorship;

4 (3) a copy of the conservator's most recently approved plan and a statement
5 whether the conservator has deviated from the plan and, if so, how the conservator has
6 deviated and why;

7 (4) a recommendation as to the need for continued conservatorship and any
8 recommended change in the scope of the conservatorship;

9 (5) to the extent feasible, a copy of the most recent reasonably available financial
10 statements evidencing the status of bank accounts, investment accounts, and mortgages or
11 other debts of the individual subject to conservatorship with all but the last four digits of
12 the account numbers and Social Security number redacted;

13 (6) anything of more than de minimis value which the conservator, any individual
14 who resides with the conservator, or the spouse, parent, child, or sibling of the conservator
15 has received from a person providing goods or services to the individual subject to
16 conservatorship;

17 (7) any business relation the conservator has with a person the conservator has
18 paid or that has benefited from the property of the individual subject to conservatorship;
19 and

20 (8) whether any co-conservator or successor conservator appointed to serve when
21 a designated event occurs is alive and able to serve.

22 (c) The court may appoint a visitor to review a report under this section or conservator's
23 plan under section 5-419, interview the individual subject to conservatorship or conservator, or
24 investigate any other matter involving the conservatorship. In connection with the report, the

1 court may order the conservator to submit the conservatorship estate to appropriate examination
2 in a manner the court directs.

3 (d) Notice of the filing under this section of a conservator's report, together with a copy
4 of the report, must be provided to the individual subject to conservatorship, a person entitled to
5 notice under section 5-411(e) or a subsequent order, and other persons the court determines.
6 The notice and report must be given not later than 14 days after filing.

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

9 (1) the reports provide sufficient information to establish the conservator has
10 complied with the conservator's duties;

11 (2) the conservatorship should continue; and

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

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

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

17 (2) may require additional information from the conservator;

18 (3) may appoint a visitor to interview the individual subject to conservatorship or
19 conservator or investigate any matter involving the conservatorship; and

20 (4) consistent with sections 5-430 and 5-431, may hold a hearing to consider
21 removal of the conservator, termination of the conservatorship, or a change in the powers
22 granted to the conservator or terms of the conservatorship.

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

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

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

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

10 **§ 5-424. Attempted transfer of property by individual subject to conservatorship.**

11 (a) The interest of an individual subject to conservatorship in property included in the
12 conservatorship estate is not transferrable or assignable by the individual and is not subject to
13 levy, garnishment, or similar process for claims against the individual unless allowed under
14 section 428.

15 (b) If an individual subject to conservatorship enters into a contract after having the
16 right to enter the contract removed by the court, the contract is void against the individual and
17 the individual's property but is enforceable against the person that contracted with the
18 individual.

19 (c) A person other than the conservator that deals with an individual subject to
20 conservatorship with respect to property included in the conservatorship estate is entitled to
21 protection provided by law of the Virgin Islands other than this article.

22 **§ 5-425. Transaction involving conflict of interest.** A transaction involving a conservatorship
23 estate which is affected by a substantial conflict between the conservator's fiduciary duties and
24 personal interests is voidable unless the transaction is authorized by court order after notice to

1 persons entitled to notice under section 5-411(e) or a subsequent order. A transaction affected
2 by a substantial conflict includes a sale, encumbrance, or other transaction involving the
3 conservatorship estate entered into by the conservator, an individual with whom the conservator
4 resides, the spouse, descendant, sibling, agent, or attorney of the conservator, or a corporation
5 or other enterprise in which the conservator has a substantial beneficial interest.

6 **§ 5-426. Protection of person dealing with conservator.**

7 (a) A person that assists or deals with a conservator in good faith and for value in any
8 transaction, other than a transaction requiring a court order under section 5-414, is protected as
9 though the conservator properly exercised any power in question. Knowledge by a person that
10 the person is dealing with a conservator alone does not require the person to inquire into the
11 existence of authority of the conservator or the propriety of the conservator's exercise of
12 authority, but restrictions on authority stated in letters of office, or otherwise provided by law,
13 are effective as to the person. A person that pays or delivers property to a conservator is not
14 responsible for proper application of the property.

15 (b) Protection under subsection (a) extends to a procedural irregularity or jurisdictional
16 defect in the proceeding leading to the issuance of letters of office and does not substitute for
17 protection for a person that assists or deals with a conservator provided by comparable
18 provisions in law of the Virgin Islands other than this article relating to a commercial transaction
19 or simplifying a transfer of securities by a fiduciary.

20 **§ 5-427. Death of individual subject to conservatorship.**

21 (a) If an individual subject to conservatorship dies, the conservator shall deliver to the
22 court for safekeeping any will of the individual in the conservator's possession and inform the
23 personal representative named in the will if feasible, or if not feasible, a beneficiary named in
24 the will, of the delivery.

1 (b) If 40 days after the death of an individual subject to conservatorship no personal
2 representative has been appointed and no application or petition for appointment is before the
3 court, the conservator may apply to exercise the powers and duties of a personal representative
4 to administer and distribute the decedent's estate. The conservator shall give notice to a person
5 nominated as personal representative by a will of the decedent of which the conservator is aware.
6 The court may grant the application if there is no objection and endorse the letters of office to
7 note that the individual formerly subject to conservatorship is deceased and the conservator has
8 acquired the powers and duties of a personal representative.

9 (c) On the death of an individual subject to conservatorship, the conservator shall
10 conclude the administration of the conservatorship estate as provided in section 5-431.

11 **§ 5-428. PRESENTATION AND ALLOWANCE OF CLAIM.**

12 (a) A conservator may pay, or secure by encumbering property included in the
13 conservatorship estate, a claim against the conservatorship estate or the individual subject to
14 conservatorship arising before or during the conservatorship, on presentation and allowance in
15 accordance with the priorities under subsection (d). A claimant may present a claim by:

16 (1) sending or delivering to the conservator a statement in a record of the claim,
17 indicating its basis, the name and address of the claimant, and the amount claimed; or

18 (2) filing the claim with the court, in a form acceptable to the court, and sending
19 or delivering a copy of the claim to the conservator.

20 (b) A claim under subsection (a) is presented on receipt by the conservator of the
21 statement of the claim or the filing with the court of the claim, whichever first occurs. A
22 presented claim is allowed if it is not disallowed in whole or in part by the conservator in a
23 record sent or delivered to the claimant not later than 60 days after its presentation. Before
24 payment, the conservator may change an allowance of the claim to a disallowance in whole or

1 in part, but not after allowance under a court order or order directing payment of the claim.
2 Presentation of a claim tolls until 30 days after disallowance of the claim the running of a statute
3 of limitations that has not expired relating to the claim.

4 (c) A claimant whose claim under subsection (a) has not been paid may petition the
5 court to determine the claim at any time before it is barred by a statute of limitations, and the
6 court may order its allowance, payment, or security by encumbering property included in the
7 conservatorship estate. If a proceeding is pending against the individual subject to
8 conservatorship at the time of appointment of the conservator or is initiated thereafter, the
9 moving party shall give the conservator notice of the proceeding if it could result in creating a
10 claim against the conservatorship estate.

11 (d) If a conservatorship estate is likely to be exhausted before all existing claims are
12 paid, the conservator shall distribute the estate in money or in kind in payment of claims in the
13 following order:

14 (1) costs and expenses of administration;

15 (2) a claim of the federal or state government having priority under law other than
16 this article;

17 (3) a claim incurred by the conservator for support, care, education, health, or
18 welfare previously provided to the individual subject to conservatorship or an individual
19 who is in fact dependent on the individual subject to conservatorship;

20 (4) a claim arising before the conservatorship; and

21 (5) all other claims.

22 (e) Preference may not be given in the payment of a claim under subsection (d) over
23 another claim of the same class. A claim due and payable may not be preferred over a claim
24 not due unless:

1 (1) doing so would leave the conservatorship estate without sufficient funds to
2 pay the basic living and health-care expenses of the individual subject to conservatorship;
3 and

4 (2) the court authorizes the preference under Section 5-414(a)(8).

5 (f) If assets of a conservatorship estate are adequate to meet all existing claims, the
6 court, acting in the best interest of the individual subject to conservatorship, may order the
7 conservator to grant a security interest in the conservatorship estate for payment of a claim at a
8 future date.

9 **§ 5-429. Personal liability of conservator.**

10 (a) Except as otherwise agreed by a conservator, the conservator is not personally liable
11 on a contract properly entered into in a fiduciary capacity in the course of administration of the
12 conservatorship estate unless the conservator fails to reveal the conservator's representative
13 capacity in the contract or before entering into the contract.

14 (b) A conservator is personally liable for an obligation arising from control of property
15 of the conservatorship estate or an act or omission occurring in the course of administration of
16 the conservatorship estate only if the conservator is personally at fault.

17 (c) A claim based on a contract entered into by a conservator in a fiduciary capacity, an
18 obligation arising from control of property included in the conservatorship estate, or a tort
19 committed in the course of administration of the conservatorship estate may be asserted against
20 the conservatorship estate in a proceeding against the conservator in a fiduciary capacity,
21 whether or not the conservator is personally liable for the claim.

22 (d) A question of liability between a conservatorship estate and the conservator
23 personally may be determined in a proceeding for accounting, surcharge, or indemnification or
24 another appropriate proceeding or action.

1 **§ 5-430. REMOVAL OF CONSERVATOR; APPOINTMENT OF SUCCESSOR.**

2 (a) The court may remove a conservator for failure to perform the conservator's duties
3 or other good cause and appoint a successor conservator to assume the duties of the conservator.

4 (b) The court shall hold a hearing to determine whether to remove a conservator and
5 appoint a successor on:

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

11 (2) communication from the individual subject to conservatorship, conservator,
12 or person interested in the welfare of the individual which supports a reasonable belief
13 that removal of the conservator and appointment of a successor may be appropriate; or

14 (3) determination by the court that a hearing would be in the best interest of the
15 individual subject to conservatorship.

16 (c) Notice of a petition under subsection (b)(1) must be given to the individual subject
17 to conservatorship, the conservator, and any other person the court determines.

18 (d) An individual subject to conservatorship who seeks to remove the conservator and
19 have a successor appointed has the right to choose an attorney to represent the individual in this
20 matter. If the individual is not represented by an attorney, the court shall appoint an attorney
21 under the same conditions as in section 5-406. The court shall award reasonable attorney's fees
22 to the attorney as provided in section 5-119.

23 (e) In selecting a successor conservator, the court shall follow the priorities under
24 section 5-410.

1 (f) Not later than 30 days after appointing a successor conservator, the court shall give
2 notice of the appointment to the individual subject to conservatorship and any person entitled to
3 notice under Section 5-411(e) or a subsequent order.

4 **§ 5-431. Termination or modification of conservatorship.**

5 (a) A conservatorship for a minor terminates on the earliest of:

6 (1) a court order terminating the conservatorship;

7 (2) the minor becoming an adult or, if the minor consents or the court finds by
8 clear-and-convincing evidence that substantial harm to the minor's interests is otherwise
9 likely, attaining 21 years of age;

10 (3) emancipation of the minor; or

11 (4) death of the minor.

12 (b) A conservatorship for an adult terminates on order of the court or when the adult
13 dies.

14 (c) An individual subject to conservatorship, the conservator, or a person interested in
15 the welfare of the individual may petition for:

16 (1) termination of the conservatorship on the ground that a basis for appointment
17 under section 5-401 does not exist or termination would be in the best interest of the
18 individual or for other good cause; or

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

21 (d) The court shall hold a hearing to determine whether termination or modification of
22 a conservatorship is appropriate on:

23 (1) petition under subsection (c) which contains allegations that, if true, would
24 support a reasonable belief that termination or modification of the conservatorship may

1 be appropriate, but the court may decline to hold a hearing if a petition based on the same
2 or substantially similar facts was filed within the preceding six months;

3 (2) a communication from the individual subject to conservatorship, conservator,
4 or person interested in the welfare of the individual which supports a reasonable belief
5 that termination or modification of the conservatorship may be appropriate, including
6 because the functional needs of the individual or supports or services available to the
7 individual have changed;

8 (3) a report from a guardian or conservator which indicates that termination or
9 modification may be appropriate because the functional needs or supports or services
10 available to the individual have changed or a protective arrangement instead of
11 conservatorship or other less restrictive alternative is available; or

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

14 (e) Notice of a petition under subsection (c) must be given to the individual subject to
15 conservatorship, the conservator, and any such other person the court determines.

16 (f) On presentation of prima facie evidence for termination of a conservatorship, the
17 court shall order termination unless it is proven that a basis for appointment of a conservator
18 under section 5-401 exists.

19 (g) The court shall modify the powers granted to a conservator if the powers are
20 excessive or inadequate due to a change in the abilities or limitations of the individual subject
21 to conservatorship, the individual's supports, or other circumstances.

22 (h) Unless the court otherwise orders for good cause, before terminating a
23 conservatorship, the court shall follow the same procedures to safeguard the rights of the
24 individual subject to conservatorship which apply to a petition for conservatorship.

1 (i) An individual subject to conservatorship who seeks to terminate or modify the terms
2 of the conservatorship has the right to choose an attorney to represent the individual in this
3 matter. If the individual is not represented by an attorney, the court shall appoint an attorney
4 under the same conditions as in section 5-406. The court shall award reasonable attorney's fees
5 to the attorney as provided in section 5-119.

6 (j) On termination of a conservatorship other than by reason of the death of the
7 individual subject to conservatorship, property of the conservatorship estate passes to the
8 individual. The order of termination must direct the conservator to file a final report and petition
9 for discharge on approval by the court of the final report.

10 (k) On termination of a conservatorship by reason of the death of the individual subject
11 to conservatorship, the conservator promptly shall file a final report and petition for discharge
12 on approval by the court of the final report. On approval of the final report, the conservator
13 shall proceed expeditiously to distribute the conservatorship estate to the individual's estate or
14 as otherwise ordered by the court. The conservator may take reasonable measures necessary to
15 preserve the conservatorship estate until distribution can be made.

16 (l) The court shall issue a final order of discharge on the approval by the court of the
17 final report and satisfaction by the conservator of any other condition the court imposed on the
18 conservator's discharge.

19 **§ 5-432. Transfer for benefit of minor without appointment of conservator.**

20 (a) Unless a person required to transfer funds or other property to a minor knows that a
21 conservator for the minor has been appointed or a proceeding is pending for conservatorship,
22 the person may transfer an amount or value not exceeding \$15,000 in a 12-month period to:

- 23 (1) a person that has care or custody of the minor and with whom the minor
24 resides;

1 (2) a guardian for the minor;

2 (3) a custodian under title 15, part III chapter 61, the Virgin Islands Uniform Gifts
3 to Minors Act, and title 15, part III chapter 62 the Virgin Islands Uniform Transfers to
4 Minors Act; or

5 (4) a financial institution as a deposit in an interest-bearing account or certificate
6 solely in the name of the minor and shall give notice to the minor of the deposit.

7 (b) A person that transfers funds or other property under this section is not responsible
8 for its proper application.

9 (c) A person that receives funds or other property for a minor under subsection (a)(1)
10 or (2) may apply it only to the support, care, education, health, or welfare of the minor, and may
11 not derive a personal financial benefit from it, except for reimbursement for necessary expenses.
12 Funds not applied for these purposes must be preserved for the future support, care, education,
13 health, or welfare of the minor, and the balance, if any, transferred to the minor when the minor
14 becomes an adult or otherwise is emancipated.”

15 **SECTION 2.** Title 15, Virgin Islands Code, article V part 5 is enacted to read as follows:

16 **“Part 5. Other protective arrangements (§§5-501-5-512)**

17 **§ 5-501. Authority for protective arrangement.**

18 (a) Under this part, a court:

19 (1) on receiving a petition for a guardianship for an adult may order a protective
20 arrangement instead of guardianship as a less restrictive alternative to guardianship; and

21 (2) on receiving a petition for a conservatorship for an individual may order a
22 protective arrangement instead of conservatorship as a less restrictive alternative to
23 conservatorship.

24 (b) A person interested in an adult’s welfare, including the adult or a conservator for

1 the adult, may petition under this part for a protective arrangement instead of guardianship.

2 (c) The following persons may petition under this part for a protective arrangement
3 instead of conservatorship:

4 (1) the individual for whom the protective arrangement is sought;

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

8 (3) the guardian for the individual.

9 **§ 5-502. Basis for protective arrangement instead of guardianship for adult.**

10 (a) After the hearing on a petition under section 5-302 for a guardianship or under
11 section 5-501(b) for a protective arrangement instead of guardianship, the court may issue an
12 order under subsection (b) for a protective arrangement instead of guardianship if the court finds
13 by clear-and-convincing evidence that:

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

18 (2) the respondent's identified needs cannot be met by a less restrictive
19 alternative.

20 (b) If the court makes the findings under subsection (a), the court, instead of appointing
21 a guardian, may:

22 (1) authorize or direct a transaction necessary to meet the respondent's need for
23 health, safety, or care, including:

24 (A) a particular medical treatment or refusal of a particular medical

1 treatment;

2 (B) a move to a specified place of dwelling; or

3 (C) visitation or supervised visitation between the respondent and another
4 person;

5 (2) restrict access to the respondent by a specified person whose access places the
6 respondent at serious risk of physical, psychological, or financial harm; and

7 (3) order other arrangements on a limited basis that are appropriate.

8 (c) In deciding whether to issue an order under this section, the court shall consider the
9 factors under sections 5-313 and 5-314 which a guardian must consider when making a decision
10 on behalf of an adult subject to guardianship.

11 **§ 5-503. Basis for protective arrangement instead of conservatorship for adult or minor.**

12 (a) After the hearing on a petition under section 5-402 for conservatorship for an adult
13 or under section 5-501(c) for a protective arrangement instead of conservatorship for an adult,
14 the court may issue an order under subsection (c) for a protective arrangement instead of
15 conservatorship for the adult if the court finds by clear-and-convincing evidence that:

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

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

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

21 (2) an order under subsection (c) is necessary to:

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

24 (B) obtain or provide funds or other property needed for the support, care,

1 education, health, or welfare of the adult or an individual entitled to the adult's
2 support; and

3 (3) the respondent's identified needs cannot be met by a less restrictive
4 alternative.

5 (b) After the hearing on a petition under section 5-402 for conservatorship for a minor
6 or under section 5-501(c) for a protective arrangement instead of conservatorship for a minor,
7 the court may issue an order under subsection (c) for a protective arrangement instead of
8 conservatorship for the respondent if the court finds by a preponderance of the evidence that the
9 arrangement is in the minor's best interest, and:

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

12 (2) either:

13 (A) the minor owns money or property requiring management or protection
14 that otherwise cannot be provided;

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

17 (C) the arrangement is necessary or desirable to obtain or provide funds or
18 other property needed for the support, care, education, health, or welfare of the
19 minor; and

20 (3) the order under subsection (c) is necessary or desirable to obtain or provide
21 money needed for the support, care, education, health, or welfare of the minor.

22 (c) If the court makes the findings under subsection (a) or (b), the court, instead of
23 appointing a conservator, may:

24 (1) authorize or direct a transaction necessary to protect the financial interest or

1 property of the respondent, including:

2 (A) an action to establish eligibility for benefits;

3 (B) payment, delivery, deposit, or retention of funds or property;

4 (C) sale, mortgage, lease, or other transfer of property;

5 (D) purchase of an annuity;

6 (E) entry into a contractual relationship, including a contract to provide for
7 personal care, supportive services, education, training, or employment;

8 (F) addition to or establishment of a trust;

9 (G) ratification or invalidation of a contract, trust, will, or other transaction,
10 including a transaction related to the property or business affairs of the respondent;

11 or

12 (H) settlement of a claim; or

13 (2) restrict access to the respondent's property by a specified person whose access
14 to the property places the respondent at serious risk of financial harm.

15 (d) After the hearing on a petition under section 5-501(a)(2) or (c), whether or not the
16 court makes the findings under subsection (a) or (b), the court may issue an order to restrict
17 access to the respondent or the respondent's property by a specified person that the court finds
18 by clear-and-convincing evidence:

19 (1) through fraud, coercion, duress, or the use of deception and control caused or
20 attempted to cause an action that would have resulted in financial harm to the respondent
21 or the respondent's property; and

22 (2) poses a serious risk of substantial financial harm to the respondent or the
23 respondent's property.

24 (e) Before issuing an order under subsection (c) or (d), the court shall consider the

1 factors under section 5-418 a conservator must consider when making a decision on behalf of
2 an individual subject to conservatorship.

3 (f) Before issuing an order under subsection (c) or (d) for a respondent who is a minor,
4 the court also shall consider the best interest of the minor, the preference of the parents of the
5 minor, and the preference of the minor, if the minor is 12 years of age or older.

6 **§ 5-504. PETITION FOR PROTECTIVE ARRANGEMENT.**

7 (a) A petition for a protective arrangement instead of guardianship or conservatorship
8 must state the petitioner's name, principal residence, current street address, if different,
9 relationship to the respondent, interest in the protective arrangement, the name and address of
10 any attorney representing the petitioner, and, to the extent known, the following:

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

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

15 (A) spouse or, if the respondent has none, an adult with whom the
16 respondent has shared household responsibilities for more than six months in the
17 12-month period before the filing of the petition;

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

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

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

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

2 (B) any attorney currently representing the respondent;

3 (C) the representative payee appointed by the Social Security
4 Administration for the respondent;

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

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

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

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

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

15 (I) a person nominated as guardian or conservator by the respondent if the
16 respondent is 12 years of age or older;

17 (J) a person nominated as guardian by the respondent's parent, or spouse in
18 a will or other signed record;

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

21 (L) if the respondent is a minor:

22 (i) an adult not otherwise listed with whom the respondent resides;

23 and

24 (ii) each person not otherwise listed that had primary care or custody

1 of the respondent for at least 60 days during the two years immediately before
2 the filing of the petition or for at least 730 days during the five years
3 immediately before the filing of the petition;

4 (4) the nature of the protective arrangement sought;

5 (5) the reason the protective arrangement sought is necessary, including a brief
6 description of:

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

8 (B) any less restrictive alternative for meeting the respondent's alleged need
9 which has been considered or implemented;

10 (C) if no less restrictive alternative has been considered or implemented, the
11 reason less restrictive alternatives have not been considered or implemented; and

12 (D) the reason other less restrictive alternatives are insufficient to meet the
13 respondent's alleged need;

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

16 (7) whether the respondent needs an interpreter, translator, or other form of
17 support to communicate effectively with the court or understand court proceedings;

18 (8) if a protective arrangement instead of guardianship is sought and the
19 respondent has property other than personal effects, a general statement of the
20 respondent's property with an estimate of its value, including any insurance or pension,
21 and the source and amount of any other anticipated income or receipts; and

22 (9) if a protective arrangement instead of conservatorship is sought, a general
23 statement of the respondent's property with an estimate of its value, including any
24 insurance or pension, and the source and amount of other anticipated income or receipts.

1 **§ 5-505. Notice and hearing.**

2 (a) On filing of a petition under section 5-501, the court shall set a date, time, and place
3 for a hearing on the petition.

4 (b) A copy of a petition under section 5-501 and notice of a hearing on the petition must
5 be served personally on the respondent. The notice must inform the respondent of the
6 respondent's rights at the hearing, including the right to an attorney and to attend the hearing.
7 The notice must include a description of the nature, purpose, and consequences of granting the
8 petition. The court may not grant the petition if notice substantially complying with this
9 subsection is not served on the respondent.

10 (c) In a proceeding on a petition under section 5-501, the notice required under
11 subsection (b) must be given to the persons required to be listed in the petition under section 5-
12 504(1) through (3) and any other person interested in the respondent's welfare the court
13 determines. Failure to give notice under this subsection does not preclude the court from
14 granting the petition.

15 (d) After the court has ordered a protective arrangement under this part, notice of a
16 hearing on a petition filed under this part together with a copy of the petition, must be given to
17 the respondent and any other person the court determines.

18 **§ 5-506. Appointment and role of visitor.**

19 (a) On filing of a petition under section 5-501 for a protective arrangement instead of
20 guardianship, the court shall appoint a visitor. The visitor must be an individual with training
21 or experience in the type of abilities, limitations, and needs alleged in the petition.

22 (b) On filing of a petition under section 5-501 for a protective arrangement instead of
23 conservatorship for a minor, the court may appoint a visitor to investigate a matter related to the
24 petition or inform the minor or a parent of the minor about the petition or a related matter.

1 (c) On filing of a petition under section 5-501 for a protective arrangement instead of
2 conservatorship for an adult, the court shall appoint a visitor unless the respondent is represented
3 by an attorney appointed by the court. The visitor must be an individual with training or
4 experience in the types of abilities, limitations, and needs alleged in the petition.

5 (d) A visitor appointed under subsection (a) or (c) shall interview the respondent in
6 person and in a manner the respondent is best able to understand:

7 (1) explain to the respondent the substance of the petition, the nature, purpose,
8 and effect of the proceeding, and the respondent's rights at the hearing on the petition;

9 (2) determine the respondent's views with respect to the order sought;

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

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

14 (5) if the petitioner seeks an order related to the dwelling of the respondent, visit
15 the respondent's present dwelling and any dwelling in which it is reasonably believed the
16 respondent will live if the order is granted;

17 (6) if a protective arrangement instead of guardianship is sought, obtain
18 information from any physician or other person known to have treated, advised, or
19 assessed the respondent's relevant physical or mental condition;

20 (7) if a protective arrangement instead of conservatorship is sought, review
21 financial records of the respondent, if relevant to the visitor's recommendation under
22 subsection (e)(3); and

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

1 (e) A visitor under this section promptly shall file a report in a record with the court,
2 which must include:

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

5 (2) to the extent relevant to the order sought, a summary of self-care, independent-
6 living tasks, and financial-management tasks the respondent:

7 (A) can manage without assistance or with existing supports;

8 (B) could manage with the assistance of appropriate supportive services,
9 technological assistance, or supported decision making; and

10 (C) cannot manage;

11 (3) a recommendation regarding the appropriateness of the protective
12 arrangement sought and whether a less restrictive alternative for meeting the respondent's
13 needs is available;

14 (4) if the petition seeks to change the physical location of the dwelling of the
15 respondent, a statement whether the proposed dwelling meets the respondent's needs and
16 whether the respondent has expressed a preference as to the respondent's dwelling;

17 (5) a recommendation whether a professional evaluation under Section 5-508 is
18 necessary;

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

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

24 (8) any other matter the court directs.

1 **§ 5-507. Appointment and role of attorney.**

2 (a) Unless the respondent in a proceeding under this part is represented by an attorney,
3 the court shall appoint an attorney to represent the respondent, regardless of the respondent's
4 ability to pay.

5 (b) An attorney representing the respondent in a proceeding under this part shall:

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

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

8 and

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

12 (c) The court shall appoint an attorney to represent a parent of a minor who is the subject
13 of a proceeding under this part if:

14 (1) the parent objects to the entry of an order for a protective arrangement instead
15 of guardianship or conservatorship;

16 (2) the court determines that counsel is needed to ensure that consent to the entry
17 of an order for a protective arrangement is informed; or

18 (3) the court otherwise determines the parent needs representation.

19 **§ 5-508. Professional evaluation.**

20 (a) At or before a hearing on a petition under this part for a protective arrangement, the
21 court shall order a professional evaluation of the respondent:

22 (1) if the respondent requests the evaluation; or

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

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

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

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

12 (3) a prognosis for improvement, including with regard to the ability to manage
13 the respondent's property and financial affairs if a limitation in that ability is alleged, and
14 recommendation for the appropriate treatment, support, or habilitation plan; and

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

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

18 **§ 5-509. ATTENDANCE AND RIGHTS AT HEARING.**

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

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

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

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

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

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

15 (d) The respondent has a right to choose an attorney to represent the respondent at a
16 hearing under this part.

17 (e) At a hearing under this part, the respondent may:

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

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

20 and

21 (3) otherwise participate in the hearing.

22 (f) A hearing under this part must be closed on request of the respondent and a showing
23 of good cause.

24 (g) Any person may request to participate in a hearing under this part. The court may

1 grant the request, with or without a hearing, on determining that the best interest of the
2 respondent will be served. The court may impose appropriate conditions on the person's
3 participation.

4 **§ 5-510. Notice of order.** The court shall give notice of an order under this part to the individual
5 who is subject to the protective arrangement instead of guardianship or conservatorship, a
6 person whose access to the individual is restricted by the order, and any other person the court
7 determines.

8 **§ 5-511. Confidentiality of records.**

9 (a) The existence of a proceeding for or the existence of a protective arrangement
10 instead of guardianship or conservatorship is a matter of public record unless the court seals the
11 record after:

12 (1) the respondent, the individual subject to the protective arrangement, or the
13 parent of a minor subject to the protective arrangement requests the record be sealed; and

14 (2) either:

15 (A) the proceeding is dismissed;

16 (B) the protective arrangement is no longer in effect; or

17 (C) an act authorized by the order granting the protective arrangement has
18 been completed.

19 (b) A respondent, an individual subject to a protective arrangement instead of
20 guardianship or conservatorship, an attorney designated by the respondent or individual, a
21 parent of a minor subject to a protective arrangement, and any other person the court determines
22 are entitled to access court records of the proceeding and resulting protective arrangement. A
23 person not otherwise entitled to access to court records under this subsection for good cause
24 may petition the court for access. The court shall grant access if access is in the best interest of

1 the respondent or individual subject to the protective arrangement or furthers the public interest
2 and does not endanger the welfare or financial interests of the respondent or individual.

3 (c) A report of a visitor or professional evaluation generated in the course of a
4 proceeding under this part must be sealed on filing but is available to:

5 (1) the court;

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

8 (3) the petitioner, visitor, and petitioner's and respondent's attorneys, for
9 purposes of the proceeding;

10 (4) unless the court orders otherwise, an agent appointed under a power of
11 attorney for finances in which the respondent is the principal;

12 (5) if the order is for a protective arrangement instead of guardianship and unless
13 the court orders otherwise, an agent appointed under a power of attorney for health care
14 in which the respondent is identified as the principal; and

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

17 **§5-512. Appointment of master.** The court may appoint a master to assist in implementing a
18 protective arrangement under this part. The master has the authority conferred by the order of
19 appointment and serves until discharged by court order.”

20 **SECTION 3.** Title 15, Virgin Islands Code, article V, part 4A is redesignated as part 6
21 and renumbered as follows:

22 **“Part 6. Uniform Adult Guardianship and Protective Proceedings Jurisdiction (Subpts. I**
23 **— V)**

24 Subpart I. General Provisions (§§ 5-641 — 5-646),

1 Subpart II. Jurisdiction (§§ 5-651 — 5-659),
2 Subpart III. Transfer of Guardianship or Conservatorship (§§ 5-661 — 5-662),
3 Subpart IV. Registration and Recognition of Orders From Other States (§§ 5-671 — 5-
4 673), and Subpart V. Applicability; Miscellaneous Provisions (§§ 5-681 — 5-683)”

5 **BILL SUMMARY**

6 This bill replaces the Uniform Guardianship, Conservatorship, and Protective Proceedings
7 Act, which was last revised in 1997, with the Uniform Guardianship, Conservatorship, and Other
8 Protective Arrangements Act, and governs guardianships and conservatorships for both minors
9 and adults and also provides for protective arrangements instead of guardianship for adults and
10 protective arrangements instead of conservatorship for both adults and minors. The bill consists
11 of five parts. Part 1 contains definitions and general provisions applicable to guardianships,
12 conservatorships, and protective arrangements instead of guardianship and conservatorships. Part
13 2 covers guardianships for minors. Part 3 covers guardianships for adults. Part 4 governs
14 conservatorships for both minors and adults. Part 5 provides for protective arrangements instead
15 of guardianship or conservatorship.

16 Section 2 transfers the Uniform Guardianship and Protective Proceedings Jurisdiction Act
17 from 15 V.I.C., article V, part 4A to part 6.

18 **BR23-0312/September 6, 2023/HLF**