

GUARDIANS OF MINORS

Section 5-201. [Appointment and Status of Guardian of Minor.]

A person may become a guardian of a minor by parental appointment or upon appointment by the Court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward.

Section 5-202. [Parental Appointment of Guardian for Minor.]

(a) The parent of an unmarried minor may appoint a guardian for the minor by will, or other writing signed by the parent and attested by at least 2 witnesses.

(b) Subject to the right of the minor under Section 5-203, if both parents are dead or incapacitated or the surviving parent has no parental rights or has been adjudged to be incapacitated, a parental appointment becomes effective when the guardian's acceptance is filed in the Court in which a nominating instrument is probated, or, in the case of a non-testamentary nominating instrument, in the Court at the place where the minor resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

(c) A parental appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

(d) Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor and to the person having the minor's care or the minor's nearest adult relative.

Section 5-203. [Objection by Minor of Fourteen or Older to Parental Appointment.]

A minor 14 or more years of age who is the subject of a parental appointment may prevent the appointment or cause it to terminate by filing in the Court in which the nominating instrument is filed a written objection to the appointment before it is accepted or within 30 days after receiving notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the Court in a proper proceeding of the

parental nominee or any other suitable person.

Section 5-204. [Court Appointment of Guardian of Minor;
Conditions for Appointment.]

(a) The Court may appoint a guardian for an unmarried minor if all parental rights have been terminated or suspended by circumstances or prior Court order. A guardian appointed pursuant to Section 5-202 whose appointment has not been prevented or nullified under Section 5-203 has priority over any guardian who may be appointed by the Court, but the Court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

(b) If necessary, and on appropriate petition or application, the Court may appoint a temporary guardian who shall have the full authority of a general guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months. The appointment of a temporary guardian for a minor may occur even though the conditions described in subsection (a) have not been established.

Section 5-205. [Venue.]

The venue for guardianship proceedings for a minor is in the court at the place where the minor resides or is present at the time the proceedings are commenced.

Section 5-206. [Procedure for Court-appointment of Guardian of Minor.]

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

(b) After the filing of a petition, the Court shall set a date for hearing, and the petitioner shall give notice of the time and place of hearing the petition in the manner prescribed by Section 1-101 to:

(1) the minor, if 14 or more years of age and not the petitioner;

(2) any person alleged to have had the principal care and custody of the minor during the 60 days preceding the filing of the petition; and

(3) any living parent of the minor.

(c) Upon hearing, if the Court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of Section 5-204(a) have been met, and the welfare and best interest of the minor will be served by the requested appointment, it shall make the appointment and issue letters. In other cases, the Court may dismiss the proceedings or make any other disposition of the matter that will serve the best interest of the minor.

(d) If the Court determines at any time in the proceeding that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

/* This is an issue which is one that causes some difficulty, in that even minors over the age of 14 may want persons as guardians who are "nicer" to them without regard to who will best objectively assist and protect them. */

Section 5-207. [Court Appointment of Guardian of Minor; Qualifications; Priority of Minor's Nominee.]

The Court may appoint as guardian any person whose appointment would be in the best interest of the minor. The Court shall appoint a person nominated by the minor, if the minor is 14 or more years of age, unless the Court finds the appointment contrary to the best interest of the minor.

Section 5-208. [Consent to Service by Acceptance of Appointment; Notice.]

By accepting a parental or court appointment as guardian, a guardian submits personally to the jurisdiction of the Court in any proceeding relating to the guardianship that may be instituted by any interested person. The petitioner shall cause notice of any proceeding to be delivered or mailed to the guardian at the guardian's address listed in the Court records and to the address then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by court order or parental nomination.

Section 5-209. [Powers and Duties of Guardian of Minor.]

(a) A guardian of a minor ward has the powers and responsibilities of a parent regarding the ward's support, care, and education, but a guardian is not personally liable for the

ward's expenses and is not liable to third persons by reason of the relationship for acts of the ward.

(b) In particular and without qualifying the foregoing, a guardian shall:

(1) become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(2) take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward;

(3) apply any available money of the ward to the ward's current needs for support, care, and education;

(4) conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs; and

(5) report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the Court on petition of any person interested in the ward's welfare or as required by Court rule.

(c) A guardian may:

(1) receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship, and money or property of the ward paid or delivered pursuant to Section 5-101;

(2) if consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, take custody of the person of the ward and establish the ward's place of abode within or without this State;

(3) if no conservator for the estate of the ward has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward;

(4) consent to medical or other professional care, treatment, or advice for the ward without liability by reason of the consent for injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

(5) consent to the marriage or adoption of the ward; and

/* The marriage of the ward in some states also results in their becoming a legal adult. */

(6) if reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(d) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing personally provided to the ward, but only as approved by order of the Court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the Court controlling the guardian.

(e) In the interest of developing self-reliance on the part of a ward or for other good cause, the Court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the minor or other interested person, may limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of a minor must be endorsed on the guardian's letters or, in the case of a guardian by parental appointment, must be reflected in letters that are issued at the time any limitation is imposed. Following the same procedure, a limitation may be removed and appropriate letters issued.

Section 5-210. [Termination of Appointment of Guardian; General.]

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect the guardian's liability for prior acts or the obligation to account for funds and assets of the ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the Court. A parental appointment under an informally probated will terminates if the

will is later denied probate in a formal proceeding.

Section 5-211. [Proceedings Subsequent to Appointment;
Venue.]

(a) The Court at the place where the ward resides has concurrent jurisdiction with the Court that appointed the guardian or in which acceptance of a parental appointment was filed over resignation, removal, accounting, and other proceedings relating to the guardianship.

(b) If the Court at the place where the ward resides is neither the appointing court nor the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced in all appropriate cases shall notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian must be sent to the appointing court or the court in which acceptance of appointment is filed.

Section 5-212. [Resignation, Removal, and Other Post-
appointment Proceedings.]

(a) Any person interested in the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward or for any other order that is in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(b) Notice of hearing on a petition for an order subsequent to appointment of a guardian must be given to the ward, the guardian, and any other person as ordered by the court.

(c) After notice and hearing on a petition for removal or for permission to resign, the Court may terminate the guardianship and make any further order that may be appropriate.

(d) If the Court determines at any time in the proceeding that the interest of the ward is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

PART 3

GUARDIANS OF INCAPACITATED PERSONS

Section 5-301. [Appointment of Guardian for Incapacitated Person by Will or Other Writing.]

(a) The parent of an unmarried incapacitated person may appoint by will, or other writing signed by the parent and attested by at least 2 witnesses, a guardian of the incapacitated person. If both parents are dead or the surviving parent is adjudged incapacitated, a parental appointment becomes effective when, after having given 7 days prior written notice of intention to do so to the incapacitated person and to the person having the care of the person or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is [informally or formally] probated, or in the case of a non-testamentary nominating instrument, in the Court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be terminated by filing a written objection in the Court, as provided by subsection (d). If both parents are dead, an effective appointment by the parent who died later has priority.

(b) The spouse of a married incapacitated person may appoint by will, or other writing signed by the spouse and attested by at least 2 witnesses, a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days prior written notice of intention to do so to the incapacitated person and to the person having care of the incapacitated person or to the nearest adult relative, the guardian files acceptance of appointment in the Court in which the will is informally or formally probated or, in the case of non-testamentary nominating instrument, in the Court at the place where the incapacitated person resides or is present. The notice shall state that the appointment may be terminated by filing a written objection in the Court, as provided by subsection (d). An effective appointment by a spouse has priority over an appointment by a parent.

(c) An appointment effected by filing the guardian's acceptance under a will probated in the state of the decedent's domicile is effective in this State.

(d) Upon the filing in the Court in which the will was probated or, in the case of a non-testamentary nominating instrument, in the Court at the place where the incapacitated

person resides or is present, of written objection to the appointment by the incapacitated person for whom a parental or spousal appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the Court in a proper proceeding of the parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this Part. As amended in 1987.

Section 5-302. [Venue.]

The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present at the time the proceedings are commenced. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the [county] in which that court is located.

Section 5-303. [Procedure for Court-appointment of a Guardian of an Incapacitated Person.]

(a) An incapacitated person or any person interested in the welfare of the incapacitated person may petition for appointment of a guardian, limited or general.

(b) After the filing of a petition, the Court shall set a date for hearing on the issue of incapacity so that notices may be given as required by Section 5-304, and, unless the allegedly incapacitated person is represented by counsel, appoint an attorney to represent the person in the proceeding. The person so appointed may be granted the powers and duties of a guardian ad litem. The person alleged to be incapacitated must be examined by a physician or other qualified person appointed by the Court who shall submit a report in writing to the Court. The person alleged to be incapacitated also must be interviewed by a visitor sent by the Court. The visitor also shall interview the person who appears to have caused the petition to be filed and any person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the appointment is made and submit a report in writing to the Court. The Court may utilize the service of any public or charitable agency as an additional visitor to evaluate the condition of the allegedly incapacitated person and to make appropriate recommendations to the Court.

(c) A person alleged to be incapacitated is entitled to be present at the hearing in person. The person is entitled to be

represented by counsel, to present evidence, to cross-examine witnesses, including the Court-appointed physician or other qualified person and any visitor [, and to trial by jury]. The issue may be determined at a closed hearing [or without a jury] if the person alleged to be incapacitated or counsel for the person so requests.

(d) Any person may apply for permission to participate in the proceeding, and the Court may grant the request, with or without hearing, upon determining that the best interest of the alleged incapacitated person will be served thereby. The Court may attach appropriate conditions to the permission.

Section 5-304. [Notice in Guardianship Proceeding.]

(a) In a proceeding for the appointment of a guardian of an incapacitated person, and, if notice is required in a proceeding for appointment of a temporary guardian, notice of hearing must be given to each of the following:

(1) the person alleged to be incapacitated and spouse, or, if none, adult children, or if none, parents;

(2) any person who is serving as guardian, conservator, or who has the care and custody of the person alleged to be incapacitated;

(3) in case no other person is notified under paragraph (1), at least one of the nearest adult relatives, if any can be found; and

(4) any other person as directed by the Court.

(b) Notice of hearing on a petition for an order subsequent to appointment of a guardian must be given to the ward, the guardian and any other person as ordered by the Court.

(c) Notice must be served personally on the alleged incapacitated person. Notices to other persons as required by subsection (a)(1) must be served personally if the person to be notified can be found within the state. In all other cases, required notices must be given as provided in Section 1-401.

(d) The person alleged to be incapacitated may not waive notice.

Section 5-305. [Who May Be Guardian; Priorities.]

(a) Any qualified person may be appointed guardian of an incapacitated person.

(b) Unless lack of qualification or other good cause dictates the contrary, the Court shall appoint a guardian in accordance with the incapacitated person's most recent nomination in a durable power of attorney.

(c) Except as provided in subsection (b), the following are entitled to consideration for appointment in the order listed:

(1) the spouse of the incapacitated person or a person nominated by will of a deceased spouse or by other writing signed by the spouse and attested by at least 2 witnesses;

(2) an adult child of the incapacitated person;

(3) a parent of the incapacitated person, or a person nominated by will of a deceased parent or by other writing signed by a parent and attested by at least two witnesses;

(4) any relative of the incapacitated person with whom the person has resided for more than 6 months prior to the filing of the petition; and

(5) a person nominated by the person who is caring for or paying for the care of the incapacitated person.

(d) With respect to persons having equal priority, the Court shall select the one it deems best qualified to serve. The Court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower priority or no priority.

Section 5-306. [Findings; Order of Appointment.]

(a) The Court shall exercise the authority conferred in this Part so as to encourage the development of maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's mental and adaptive limitations or other conditions warranting the procedure.

(b) The Court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person. The Court, on appropriate findings, may (i) treat the petition as one for a protective

order under Section 5-401 and proceed accordingly, (ii) enter any other appropriate order, or (iii) dismiss the proceedings.

(c) The Court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, may limit the powers of a guardian otherwise conferred by Parts 1, 2, 3 and 4 of this Article and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated person must be endorsed on the guardian's letters or, in the case of a guardian by parental or spousal appointment, must be reflected in letters issued at the time any limitation is imposed. Following the same procedure, a limitation may be removed or modified and appropriate letters issued.

Section 5-307. [Acceptance of Appointment; consent to jurisdiction.]

By accepting appointment, a guardian submits personally to the jurisdiction of the Court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding must be delivered or mailed to the guardian at the address listed in the Court records and at the address as then known to the petitioner.

Section 5-308. [Emergency Orders; Temporary Guardians.]

(a) If an incapacitated person has no guardian, an emergency exists, and no other person appears to have authority to act in the circumstances, on appropriate petition the Court may appoint a temporary guardian whose authority may not extend beyond [15 days] [the period of effectiveness of ex parte restraining orders], and who may exercise those powers granted in the order.

(b) If an appointed guardian is not effectively performing duties and the Court further finds that the welfare of the incapacitated person requires immediate action, it may appoint, with or without notice, a temporary guardian for the incapacitated person having the powers of a general guardian for a specified period not to exceed 6 months. The authority of any permanent guardian previously appointed by the Court is suspended as long as a temporary guardian has authority.

(c) The Court may remove a temporary guardian at any time. A temporary guardian shall make any report the Court requires. In other respects the provisions of Parts 1, 2, 3 and 4 of this

Article concerning guardians apply to temporary guardians.

Section 5-309. (General Powers and Duties of Guardian.)

Except as limited pursuant to Section 5-306(c), a guardian of an incapacitated person is responsible for care, custody, and control of the ward, but is not liable to third persons by reason of that responsibility for acts of the ward. In particular and without qualifying the foregoing, a guardian has the same duties, powers and responsibilities as a guardian for a minor as described in Section 5209(b), (c) and (d).

Section 5-310. [Termination of Guardianship for Incapacitated Person.]

The authority and responsibility of a guardian of an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in Section 5-311. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect a guardian's liability for prior acts or the obligation to account for funds and assets of the ward.

Section 5-311. [Removal or Resignation of Guardian; Termination of Incapacity.]

(a) On petition of the ward or any person interested in the ward's welfare, the Court, after hearing, may remove a guardian if in the best interest of the ward. On petition of the guardian, the Court, after hearing, may accept a resignation.

(b) An order adjudicating incapacity may specify a minimum period, not exceeding six months, during which a petition for an adjudication that the ward is no longer incapacitated may not be filed without special leave. Subject to that restriction, the ward or any person interested in the welfare of the ward may petition for an order that the ward is no longer incapacitated and for termination of the guardianship. A request for an order may also be made informally to the Court and any person who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court.

/* It would seem that a parallel criminal law would be appropriate as well. /*

(c) Upon removal, resignation, or death of the guardian, or if the guardian is determined to be incapacitated, the Court may

appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian, or ordering that a ward's incapacity has terminated, the Court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian.

Section 5-312. [Proceedings Subsequent to Appointment;
Venue.]

(a) The Court at the place where the ward resides has concurrent jurisdiction with the Court that appointed the guardian or in which acceptance of a parental or spousal appointment was filed over resignation, removal, accounting, and other proceedings relating to the guardianship, including proceedings to limit the authority previously conferred on a guardian or to remove limitations previously imposed.

(b) If the Court at the place where the ward resides is not the Court in which acceptance of appointment is filed, the Court in which proceedings subsequent to appointment are commenced, in all appropriate cases, shall notify the other Court, in this or another state, and after consultation with that Court determine whether to retain jurisdiction or transfer the proceedings to the other Court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation, removing a guardian, or altering authority must be sent to the Court in which acceptance of appointment is filed.

PART 4

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

Section 5-401. [Protective Proceedings.]

(a) Upon petition and after notice and hearing in accordance with the provisions of this Part, the Court may appoint a conservator or make any other protective order for cause as provided in this section.

(b) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the Court determines that a minor owns money or property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be jeopardized or prevented by minority, or that funds are needed for support and education and that protection is necessary or desirable to obtain or provide funds.

(c) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the Court determines that (i) the person is unable to manage property and business affairs effectively for such reasons as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (ii) the person has property that will be wasted or dissipated unless property management is provided or money is needed for the support, care, and welfare of the person or those entitled to the person's support and that protection is necessary or desirable to obtain or provide money.

Section 5-402. [Protective Proceedings; Jurisdiction of Business Affairs of Protected Persons.]

After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the Court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person, the protected person's dependents, or other claimants; and

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and questions of title concerning any estate asset.

Section 5-403. [Venue.]

Venue for proceedings under this Part is:

(1) in the Court at the place in this State where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this State, in the Court at any place where property of the person is located.

Section 5-404. [Original Petition for Appointment or Protective

Order.]

(a) The person to be protected or any person who is interested in the estate, affairs, or welfare of the person, including a parent, guardian, custodian, or any person who would be adversely affected by lack of effective management of the person's property and business affairs may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition must set forth to the extent known the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of the guardian, if any; the name and address of the nearest relative known to the petitioner; a general statement of the person's property with an estimate of the value thereof, including any compensation, insurance, pension, or allowance to which the person is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition must also set forth the name and address of the person whose appointment is sought and the basis of the claim to priority for appointment.

Section 5-405. [Notice.]

(a) On a petition for appointment of a conservator or other protective order, the requirements for notice described in Section 5-304 apply, but (i) if the person to be protected has disappeared or is otherwise situated so as to make personal service of notice impracticable, notice to the person must be given by publication as provided in Section 1-401, and (ii) if the person to be protected is a minor, the provisions of Section 5-206 also apply.

(b) Notice of hearing on a petition for an order subsequent to appointment of a conservator or other protective order must be given to the protected person, any conservator of the protected person's estate, and any other person as ordered by the Court.

Section 5-406. [Procedure Concerning Hearing and Order on Original Petition.]

(a) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the Court shall set a date for hearing. If the Court determines at any time in the proceeding that the interests of the minor are

or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 or more years of age. An attorney appointed by the Court to represent a minor may be granted the powers and duties of a guardian ad litem.

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the Court shall set a date for hearing. Unless the person to be protected has chosen counsel, the Court shall appoint an attorney to represent the person who may be granted the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the Court may direct that the person to be protected be examined by a physician designated by the Court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The Court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the Court.

(c) The Court may utilize, as an additional visitor, the service of any public or charitable agency to evaluate the condition of the person to be protected and make appropriate recommendations to the Court.

(d) The person to be protected is entitled to be present at the hearing in person. The person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including any Court-appointed physician or other qualified person and any visitor [, and to trial by jury]. The issue may be determined at a closed hearing [or without a jury] if the person to be protected or counsel for the person so requests.

(e) Any person may apply for permission to participate in the proceeding and the Court may grant the request, with or without hearing, upon determining that the best interest of the person to be protected will be served thereby. The Court may attach appropriate conditions to the permission.

(f) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the Court shall make an appointment or other appropriate protective order.

Section 5-407. [Permissible Court Orders.]

(a) The Court shall exercise the authority conferred in this Part to encourage the development of maximum self-reliance and independence of a protected person and make protective orders only to the extent necessitated by the protected person's mental and adaptive limitations and other conditions warranting the procedure.

(b) The Court has the following powers that may be exercised directly or through a conservator in respect to the estate and business affairs of a protected person:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the Court may preserve and apply the property of the person to be protected as may be required for the support of the person or dependents of the person.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the Court has all those powers over the estate and business affairs of the minor which are or may be necessary for the best interest of the minor and members of the minor's immediate family.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the Court, for the benefit of the person and members of the person's immediate family, has all the powers over the estate and business affairs which the person could exercise if present and not under disability, except the power to make a will. Those powers include, but are not limited to, power to make gifts; to convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety; to exercise or release powers held by the protected person as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment; to enter into contracts; to create revocable or irrevocable trusts of property of the estate which may extend beyond the disability or life of the protected person; to exercise options of the protected person to purchase securities or other property; to exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value; to exercise any right to an elective share in the estate of the person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

(c) The Court may exercise or direct the exercise of the following powers only if satisfied, after notice and hearing, that it is in the best interest of the protected person, and that the person either is incapable of consenting or has consented to the proposed exercise of power:

(1) to exercise or release powers of appointment of which the protected person is donee;

(2) to renounce or disclaim interests;

(3) to make gifts in trust or otherwise exceeding 20 percent of any year's income of the estate; and

(4) to change beneficiaries under insurance and annuity policies.

(d) A determination that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person.

Section 5-408. [Protective Arrangements and Single Transactions Authorized.]

(a) If it is established in a proper proceeding that a basis exists as described in Section 5-401 for affecting the property and business affairs of a person, the Court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include payment, delivery, deposit, or retention of funds or property; sale, mortgage, lease, or other transfer of property; entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or addition to or establishment of a suitable trust.

(b) If it is established in a proper proceeding that a basis exists as described in Section 5-401 for affecting the property and business affairs of a person, the Court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's property and business affairs if the Court determines that the transaction is in the best interest of the protected person.

(c) Before approving a protective arrangement or other

transaction under this section, the Court shall consider the interests of creditors and dependents of the protected person and, in view of the disability, whether the protected person needs the continuing protection of a conservator. The Court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the Court of all matters done pursuant to the order of appointment.

Section 5-409. [Who May Be Appointed Conservator; Priorities.]

(a) The Court may appoint an individual or a corporation with general power to serve as trustee or conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(1) a conservator, guardian of property, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides;

(2) an individual or corporation nominated by the protected person 14 or more years of age and of sufficient mental capacity to make an intelligent choice;

(3) the spouse of the protected person;

(4) an adult child of the protected person;

(5) a parent of the protected person, or a person nominated by the will of a deceased parent;

(6) any relative of the protected person who has resided with the protected person for more than 6 months before the filing of the petition; and

(7) a person nominated by one who is caring for or paying benefits to the protected person.

(b) A person in priorities (1), (3), (4), (5), or (6) may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute. With respect to persons having equal priority, the Court shall select the one it deems best qualified to serve. The Court, acting in the best interest of the protected person, may pass over a person having priority and appoint a person having a lower priority or no priority.

Section 5-410. (Bond.)

The Court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of securities deposited under arrangements requiring an order of the Court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without Court authorization. The Court, in lieu of sureties on a bond, may accept other collateral for the performance of the bond, including a pledge of securities or a mortgage of land.

Section 5-411. [Terms and Requirements of Bonds.]

(a) The following requirements and provisions apply to any bond required under Section 5410.

(1) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the Court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party respondent. Notice of any proceeding must be delivered to the surety or mailed by registered or certified mail to the address listed with the Court at the place where the bond is filed and to the address as then known to the petitioner.

(3) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator.

(4) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

Section 5-412. [Effect of Acceptance of Appointment.]

By accepting appointment, a conservator submits personally to the jurisdiction of the Court in any proceeding relating to the

estate which may be instituted by any interested person. Notice of any proceeding must be delivered to the conservator or mailed by registered or certified mail to the address as listed in the petition for appointment or as thereafter reported to the Court and to the address as then known to the petitioner.

Section 5-413. [Compensation and Expenses.]

If not otherwise compensated for services rendered, any visitor, attorney, physician, conservator, or special conservator appointed in a protective proceeding and any attorney whose services resulted in a protective order or in an order that was beneficial to a protected person's estate is entitled to reasonable compensation from the estate.

Section 5-414. [Death, Resignation, or Removal of Conservator.]

The Court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. Upon the conservator's death, resignation, or removal, the Court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

Section 5-415. [Petitions for orders Subsequent to Appointment.]

(a) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

(1) requiring bond or collateral or additional bond or collateral, or reducing bond;

(2) requiring an accounting for the administration of the trust;

(3) directing distribution;

(4) removing the conservator and appointing a temporary or successor conservator; or

(5) granting other appropriate relief.

(b) A conservator may petition the appointing court for instructions concerning fiduciary responsibility.

(c) Upon notice and hearing, the Court may give appropriate instructions or make any appropriate order.

Section 5-416. [General Duty of Conservator.]

A conservator, in relation to powers conferred by this Part, or implicit in the title acquired by virtue of the proceeding, shall act as a fiduciary and observe the standards of care applicable to trustees.

Section 5-417. [Inventory and Records.]

(a) Within 90 days after appointment, each conservator shall prepare and file with the appointing Court a complete inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. The conservator shall provide a copy thereof to the protected person if practicable and the person has attained the age of 14 years and has sufficient mental capacity to understand the arrangement. A copy also shall be provided to any guardian or parent with whom the protected person resides.

(b) The conservator shall keep suitable records of the administration and exhibit the same on request of any interested person.

Section 5-418. [Accounts.]

Each conservator shall account to the Court for administration of the trust not less than annually unless the Court directs otherwise, upon resignation or removal and at other times as the Court may direct. On termination of the protected person's minority or disability, a conservator shall account to the Court or to the formerly protected person or the successors of that person. Subject to appeal or vacation within the time permitted, an order after notice and hearing allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection therewith; and an order, following notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship. In connection with any account, the Court may require a conservator to submit to a physical check of the estate, to be made in any manner the Court specifies.

Section 5-419. [Conservators; Title By Appointment.]

(a) The appointment of a conservator vests in the conservator title as trustee to all property, or to the part thereof specified in the order, of the protected person,

presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys-in-fact. An order specifying that only a part of the property of the protected person vests in the conservator creates a limited conservatorship.

(b) Except as otherwise provided herein, the interest of the protected person in property vested in a conservator by this section is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, though ineffective to affect property rights, may generate a claim for restitution or damages which, subject to presentation and allowance, may be satisfied as provided in Section 5427.

(c) Neither property vested in a conservator by this section nor the interest of the protected person in that property is subject to levy, garnishment, or similar process other than an order issued in the protective proceeding made as provided in Section 5427.

Section 5-420. (Recording of Conservator's Letters.)

(a) Letters of conservatorship are evidence of transfer of all assets, or the part thereof specified in the letters, of a protected person to the conservator. An order terminating a conservatorship is evidence of transfer of all assets subjected to the conservatorship from the conservator to the protected person, or to successors of the person.

(b) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.

Section 5-421. [Sale, Encumbrance, or Transaction Involving Conflict of Interest; Voidable; Exceptions.]

Any sale or encumbrance to a conservator, the spouse, agent, attorney of a conservator, or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator which is affected by a substantial conflict between fiduciary and personal interests is voidable unless the transaction is approved by the Court after notice as directed by the Court.

Section 5-422. [Persons Dealing With Conservators; Protection.]

(a) A person who in good faith either assists or deals with a conservator for value in any transaction other than those requiring a Court order as provided in Section 5407 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters as provided in Section 5425 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(b) The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

Section 5-423. [Powers of Conservator in Administration.]

(a) Subject to limitation provided in Section 5-425, a conservator has all of the powers conferred in this section and any additional powers conferred by law on trustees in this State. In addition, a conservator of the estate of an unmarried minor [under the age of 18 years], as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 5-209 until the minor attains [the age of 18 years] or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided in Part 2.

(b) A conservator without Court authorization or confirmation, may invest and reinvest funds of the estate as would a trustee.

(c) A conservator, acting reasonably in efforts to accomplish the purpose of the appointment, may act without Court authorization or confirmation, to

(1) collect, hold, and retain assets of the estate including land in another state, until judging that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;

(2) receive additions to the estate;

(3) continue or participate in the operation of any business or other enterprise;

(4) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) invest and reinvest estate assets in accordance with subsection (b);

(6) deposit estate funds in a state or federally insured financial institution, including one operated by the conservator;

(7) acquire or dispose of an estate asset, including land in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(8) make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish any improvements; and raze existing or erect new party walls or buildings;

(9) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation or exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;

(10) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(11) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(12) grant an option involving disposition of an estate asset and take an option for the acquisition of any asset;

(13) vote a security, in person or by general or limited proxy;

(14) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) sell or exercise stock-subscription or conversion

rights;

(16) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(17) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(18) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(19) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, for which the conservator has a lien on the estate as against the protected person for advances so made;

(20) pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;

(21) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(22) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(23) pay any sum distributable to a protected person or dependent of the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee to the guardian of the distributee, or, if none, to a relative or other person having custody of the distributee;

(24) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties; act upon their recommendation without

independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(25) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of fiduciary duties; and

(26) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.