

ARTICLE 5

UNIFORM GUARDIANSHIP, CONSERVATORSHIP AND PROTECTIVE PROCEEDINGS

Prefatory Comment:

Maine is the first state to adopt the Uniform Law Commission's (ULC) Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (aka "Uniform Probate Code"), which the ULC approved in July 2017. Specifically, Maine has adopted, with some modifications, Articles 1 and 3 through 5 of the Uniform Probate Code. The Maine Legislature did not adopt Article 2 of the Uniform Probate Code, pertaining to minor guardianship. Several provisions in Article 2 of the Uniform Probate Code depart from Maine law and practice or are not consistent with reforms enacted with Title 18-C. Instead, Article 5, Part 2 of Title 18-C includes the minor guardianship provisions of the 2010 version of the Uniform Probate Code, with several modifications, as noted in the Maine Comments herein.

PART 1

GENERAL PROVISIONS

§ 5-101. Short title

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

Maine Comment: The Maine Uniform Guardianship and Protective Proceedings Act title is different than the Uniform Probate Code's title of the "Uniform Guardianship, Conservatorship and Other Protective Arrangements Act" because Part 2 is unique to Maine and the Maine statute contains significant differences in content and topic from the Uniform Probate Code

§ 5-102. Definitions

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

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

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

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

4. Best interest of the minor. "Best interest of the minor" means the standard of the best interest of the child according to the factors set forth in Title 19-A, section 1653, subsection 3.

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

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

7. Conservatorship estate. "Conservatorship estate" means the property subject to conservatorship under this Act.

8. Full conservatorship. "Full conservatorship" means a conservatorship that grants the conservator all powers available under this Act.

9. Full guardianship. "Full guardianship" means a guardianship that grants the guardian all powers available under this Act.

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

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

12. Individual subject to conservatorship. "Individual subject to conservatorship" means an adult or minor for whom a conservator has been appointed.

13. Individual subject to guardianship. "Individual subject to guardianship" means an adult or minor for whom a guardian has been appointed.

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

15. Letters of office. "Letters of office" means judicial certification of guardianship or conservatorship.

16. Limited conservatorship. "Limited conservatorship" means a conservatorship that grants the conservator less than all powers available under this Act.

grants powers over only certain property or otherwise restricts the powers of the conservator.

17. Limited guardianship. "Limited guardianship" means a guardianship that grants the guardian less than all powers available under this Act or otherwise restricts the powers of the guardian.

18. Minor. "Minor" means an unemancipated individual who is under 18 years of age.

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

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

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

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

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

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

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

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

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

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

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

A. To execute or adopt a tangible symbol; or

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

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

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

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

A. In understanding the nature and consequences of potential personal and financial decisions that enables the individual to make the decisions; and

B. When consistent with the individual's wishes, in communicating a decision once it is made.

Maine Comment: The definitions in this section apply to all of Article 5 and include two definitions, in paragraphs 4 and 31, that are specifically applicable to minor guardianships and are not derived from the Uniform Probate Code or the 2010 version of the Uniform Probate Code.

The definition of "Best interest of the minor" is a change from prior Maine law and cross-references the factors set forth in 19-A M.R.S. § 1653(3) (Rights and Responsibilities – Parental Rights and Responsibilities), which applies in parental rights and responsibilities determinations.

The definition of "Suitable" describes the qualifications for a person to be appointed as a guardian for a minor under Section 5-204(2).

§ 5-103. Facility of transfer

1. Transfer of money or personal property to minor. Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding ~~the annual gift tax exclusion, pursuant to 26 United States Code Section 2503~~~~\$10,000 a year~~, by transferring it to:

A. A person who has the care and custody of the minor and with whom the minor resides;

B. A guardian of the minor;

C. A custodian under the Maine Uniform Transfers to Minors Act;

D. A Qualified State Tuition Program under Section 529 and/or Qualified ABLE Program under Section 529A of the Internal Revenue Code;

ED. A financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor; or

FE. The minor, if married or emancipated.

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

3. For benefit of minor; no personal financial benefit. A guardian or other person who receives money or property for a minor under subsection 1, paragraph A or B may apply it only to the support, care, education, health and welfare of the minor and may not derive a personal financial benefit, but may be reimbursed for necessary expenses for the benefit of the minor. Any excess must be preserved for the future support, care, education, health and welfare of the minor, and any balance must be transferred to the minor when the minor becomes an adult or is otherwise emancipated.

Maine Comment: This section is the same as section 5-103 of the now-repealed Title 18-A, except that the amount is increased from \$5,000 to \$10,000 per year. This section provides options, rather than a court-involved conservatorship or single transaction authority, for personal property not exceeding \$10,000 per year owed to a minor and sets forth obligations for the person receiving the money on behalf of the minor.

§ 5-104. Subject matter jurisdiction

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

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

3. Exclusive or concurrent jurisdiction. After service of notice in a proceeding seeking a guardianship, conservatorship or protective arrangement instead of guardianship or conservatorship and until termination of the proceeding, the court in which the petition is filed has:

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

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

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

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

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

§ 5-105. Transfer of proceeding

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

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

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

4. Petition for appointment in this State. A guardian or conservator appointed in another state or country may petition the court for appointment as a guardian or conservator in this State if jurisdiction in this State is or will be established. The appointment may be made on proof of appointment in the other state or foreign country

and presentation of a certified copy of the part of the court record in the other state or country specified by the court in this State.

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

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

§ 5-106. Venue

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

- A. The county or division of this State in which the minor, the petitioner or a parent or guardian of the child resides or is present at the time the proceeding commences; or
- B. The county or division of this State where another proceeding concerning the custody and parental rights of the minor is pending.

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

- A. The county of this State in which the respondent resides;
- B. If the respondent has been admitted to an institution by order of a court of competent jurisdiction, the county in which the court is located; or
- C. In a proceeding for appointment of an emergency guardian of an adult, the county in which the respondent is present.

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

- A. The county of this State in which the respondent resides, whether or not a guardian has been appointed in another county or another jurisdiction; or
- B. If the respondent does not reside in this State, any county of this State in which property of the respondent is located.

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

Maine Comment: Subsection 2(A) of this section limits non-emergency guardianships to the county in which the respondent resides, which is narrower than section 5-302 of the now-repealed Title 18-A, which also provided venue for non-emergency guardianships in the county in which the respondent was present.

§ 5-107. Practice in court

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

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

§ 5-108. Letters of office

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

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

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

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

§ 5-109. Effect of acceptance of appointment

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

§ 5-110. Co-guardian; co-conservator

1. Appointment at any time. The court at any time may appoint a co-guardian or co-conservator to serve immediately or when a designated future event occurs.

2. Acceptance of appointment. A co-guardian or co-conservator appointed to serve immediately may act when the co-guardian or co-conservator files an acceptance of appointment.

3. Service upon designated future event. A co-guardian or co-conservator appointed to serve when a designated future event occurs may act when:

A. The designated event occurs; and

B. The co-guardian or co-conservator files an acceptance of appointment.

4. Joint decisions. Unless an order of appointment under subsection 1 or subsequent order states otherwise, co-guardians or co-conservators shall make decisions jointly.

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

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

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

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

A. The designated event occurs; and

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

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

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

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

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

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

§ 5-113. Notice of hearing

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

2. Proof of notice. Proof of notice of a hearing under this Act must be ~~made filed~~ at least 3 days before ~~or at~~ the hearing ~~and filed in the proceeding~~.

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

§ 5-114. Waiver of notice

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

2. Waiver prohibited. Unless represented by an attorney, a respondent, an individual subject to guardianship, an individual subject to conservatorship, an individual subject to a protective arrangement instead of guardianship or conservatorship, an appointed guardian or an appointed conservator may not waive notice under this Act.

Maine Comment: Subsection 2 of this section adds that an appointed guardian and an appointed conservator cannot waive notice under any circumstances.

§ 5-115. Guardian ad litem

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

Maine Comment: This section is derived from Section 1-112 of the now-repealed Title 18-A and includes a cross-reference to the new provision regarding the appointment of guardians *ad litem* in minor guardianship proceedings in Section 5-212. This section broadens the court's discretion to appoint a guardian ad litem to perform other duties in addition to identifying and representing the individual's best interests if the court determines the individual's interest otherwise would not be adequately represented.

§ 5-116. Request for notice

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

Maine Comment: This section deviates from the Uniform Probate Code in that it adds the requirement that the court send a copy of the request for notice to the guardian and or conservator if one has been appointed and otherwise to the individual subject to the guardianship, conservatorship or protective arrangement. This section also deviates from the Uniform Probate Code in that it adds a sixty-day period for filing an objection and for a hearing if an objection is filed. These added steps give the parties an opportunity to object and have the court determine the appropriateness of the request by a person who is otherwise not entitled to notice.

§ 5-117. Disclosure of bankruptcy or criminal history

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

A. Is or has been a debtor in a bankruptcy, insolvency or receivership proceeding; or

B. Has been convicted of:

(1) A felony;

(2) A crime involving dishonesty, neglect, violence or use of physical force; or

(3) Any other crime relevant to the functions the individual would assume as guardian or conservator.

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

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

Maine Comment: Subsection 1 of this section adds that the disclosure be part of the petition for the appointment of a guardian or conservator to enable the court to address the issue in the preliminary part of the proceeding.

Subsection 2 of this section prohibits the guardian or conservator from knowingly engaging an agent who has been convicted of a felony, or convicted of a crime involving dishonesty, neglect, violence or the use of physical force or any other relevant crime without prior court approval. Prior court approval affords more protection as compared to the Uniform Probate Code's more limited requirement of promptly informing the court.

§ 5-118. Multiple appointments or nominations

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

§ 5-119. Compensation and expenses; in general

1. Attorney for respondent. ~~Unless otherwise compensated for services rendered.~~ **Unless the court has made a finding that the respondent is indigent and has appointed an attorney for the respondent on that basis,** An attorney for a respondent in a proceeding under this Act is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the respondent.

2. Attorney or other person. ~~Unless otherwise compensated for services rendered.~~ **Unless the court has made a finding that the respondent is indigent** An attorney or other person whose services resulted in an order beneficial to an individual subject to guardianship or conservatorship or beneficial to an individual for whom a protective arrangement instead of guardianship or conservatorship was ordered is entitled to reasonable compensation and reimbursement of reasonable expenses from the property of the individual.

3. Court review. After notice to all interested persons, on petition of an interested person, the propriety of employment of any person by a conservator or guardian, including any attorney, accountant, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of compensation for and the appropriateness of services provided pursuant to subsections (1) and (2) above, may be reviewed by the court. Any person who has received excessive compensation or reimbursement of inappropriate expenses for services rendered may be ordered to make appropriate refunds. The factors set forth in section 3-721, subsection 2 must be considered as guides in determining the reasonableness of compensation under this section.

4. Costs assessed against petitioner. If the court dismisses a petition under this Act and determines the petition was filed in bad faith, the court may assess the cost of any court-ordered professional evaluation or visitor against the petitioner and any attorneys' fees or other costs incurred by the respondent.

5. Guardian. ~~A guardian is entitled to reasonable compensation for services as guardian based on the factors set forth in sections 3-721, subsection 2 and to reimbursement for room and board provided to the ward consistent with the plan or revised plan filed with the Court; provided, however, if no conservator has been appointed, then any payments to the guardian for room and board must be approved by the court either before or after the payments are made.~~

Maine Comment: Contrary to the Uniform Probate Code's requirement that compensation be approved by the court before payment, this section contains sufficient protection with an optional court review by a petition of an interested party, which is in addition to the annual accounting requirement found in section 5-423.

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

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

Maine Comment: This section purposefully is not intended to incorporate the Uniform Probate Code's comment in regard to the personal liability of a guardian or conservator for acts of the individual subject to guardianship or conservatorship based on a negligence or breach of fiduciary duty standard because this provision is not intended to address the standard of care for liability of a guardian or conservator.

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

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

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

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

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

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

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

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

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

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

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

4. Petition to require recognition or acceptance. A guardian or conservator may petition the court to require a 3rd party to recognize the authority of a guardian or conservator or accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship, and if the court finds that the refusal of a 3rd party to recognize the authority of a guardian or conservator or accept the decision made by the guardian or conservator was made in bad faith and without adequate justification, the court may surcharge the person who refuses to recognize the authority of a guardian or conservator or accept the authority of the guardian or conservator for attorneys' fees and costs. Notice of the petition shall given to the adult subject to guardianship or conservatorship and to all persons entitled to notice under section 5-310, subsection 5 or section 5-411, subsection 5, or a subsequent order.

Maine Comment: Subsection 3 of this section modifies the Uniform Probate Code's optional reporting requirement for a person who refuses to accept the authority of a guardian or conservator to a mandatory report for a person who has refused to accept the authority of a guardian and conservator.

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

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

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

A. Selecting the agent;

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

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

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

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

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

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

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

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

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

§ 5-124. Temporary substitute guardian or conservator

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

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

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

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

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

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

3. Powers. Except as otherwise ordered by the court, a temporary substitute guardian or temporary substitute conservator appointed under this section has the powers stated in the order of appointment of the guardian or conservator. The authority of an

existing guardian or conservator is suspended for as long as the temporary substitute guardian or conservator has authority.

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

- A. The individual subject to guardianship or conservatorship;
- B. The affected guardian or conservator; and
- C. In the case of a minor, each parent of the minor and any person currently having custody or care of the minor.

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

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

- A. Concerning a guardian for a minor apply to a temporary substitute guardian for a minor;
- B. Concerning a guardian for an adult apply to a temporary substitute guardian for an adult; and
- C. Concerning a conservator apply to a temporary substitute conservator.

Maïne Comment: Subsection 6 of this section clarifies that except as otherwise provided within this section, all provisions for guardians and conservators under this Title apply to temporary substitute guardians and temporary substitute conservators as well.

§ 5-125. Registration of order; effect

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

2. Registration of conservatorship order. If a conservator is appointed in another state and a petition for conservatorship is not pending in this State, the

conservator appointed in the other state, after giving notice to the appointing court, may register the conservatorship in this State by filing as a foreign judgment, in a court of a county in which property belonging to the individual subject to conservatorship is located, certified copies of the order of conservatorship, letters of office and any bond or other asset-protection arrangement required by the court.

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

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

§ 5-126. Grievance against guardian or conservator

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

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

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

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

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

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

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

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

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

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

(2) Appointing a guardian ad litem;

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

(4) Scheduling a hearing.

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

§ 5-127. Delegation by parent or guardian

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

2. National Guard or Reserves; extension. Notwithstanding subsection 1, unless otherwise stated in the power of attorney, if the parent or guardian is a member of the National Guard or Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a power of attorney that would otherwise expire is automatically extended until 30 days after the parent or guardian is no longer under that active duty order or until an order of the court so provides.

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

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

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

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

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

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

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

4. Background check. An organization, other than an organization whose primary purpose is to provide free legal services or to provide hospital services, that is exempt from federal income taxation under Section 501(a) of the United States Internal Revenue Code of 1986 as an organization described by Section 501(c)(3) and that assists parents or guardians with the process of executing a power of attorney for the temporary care of a minor shall ensure that a background check is conducted for the agent and any adult members of the agent's household, whether by completing the background check directly or by verifying that a current background check has already been conducted. The background check must include the following sources, and the results must be shared with the parent or guardian and the proposed agent:

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

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

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

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

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

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

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

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

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

Maine Comment: This section is the same as section 5-104 of the now-repealed Title 18-A, which was initially passed in 1979 and amended several times, and includes new language in subsection 1 expressly recognizing a parent's or guardian's right to revoke or amend the delegation of rights before the expiration of such delegation. Contrary to the Uniform Probate Code's proposed comparable section which limits delegation only to parents of minor children, Maine has chosen to continue to permit guardians to delegate powers by a power of attorney to be effective only when the power of attorney is filed with the court. The delegation of powers is subject to the same court supervision that applies to temporary substitute guardians described in section 5-124. Delegation by a parent and guardian is permitted for a period not exceeding twelve months, three months longer than the Uniform Probate Code's comparable provision limited to parental delegation.

PART 3

GUARDIANSHIP OF ADULT

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

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

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

(1) The respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provide adequate protection for the respondent;

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

(3) The appointment is necessary or desirable as a means of enabling the respondent to meet essential requirements for physical health, safety or self-care; or

B. With appropriate findings, and additional notices to persons the court determines are entitled to notice, treat the petition as one for a conservatorship under Part 4 or a protective arrangement instead of guardianship or conservatorship under Part 5, enter any other appropriate order or dismiss the proceeding.

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

Maine Comment

The Uniform Act was revised in Section 5-301 (1)(A)(1) to require the court to find that any appropriate supportive services, technological assistance or supported decision making provide adequate protection for the particular respondent. Section 5-302(2) of the Uniform Act is also revised by adding that a less restrictive alternative to guardianship provide adequate protection for the respondent.

Consistent with the Uniform Act, Section 5-301 sets forth the only grounds for appointment of a guardian for an adult. Prior Maine law allowed for testamentary appointment by a parent or spouse.

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

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

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

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

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

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;

C. The name and current address of each of the following, if applicable:

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

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian by the respondent;

(10) A person nominated as guardian by the respondent's parent, spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected; and

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

D. The reason a guardianship is necessary, including a brief description of:

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

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

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

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

E. Whether the petitioner seeks a limited guardianship or full guardianship;

F. If the petitioner seeks a full guardianship, the reason limited guardianship or a protective arrangement instead of guardianship is inappropriate;

G. If a limited guardianship is requested, the powers to be granted to the guardian;

H. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

I. If the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts; and

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

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

§ 5-303. Notice and hearing

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

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

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

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

Maine Comment

The notice and hearing provision of the Uniform Law was adopted in § 5-303. Notice must include a description of the nature, purpose and consequences of granting the petition. Said required description did not exist under prior Maine law. The Court must review the notice to

confirm that the respondent was served with a notice substantially complying with the requirements of §5-303(2).

§ 5-304. Appointment of visitor

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

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

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

B. Determine the respondent's views about the appointment, including views about a proposed guardian, the guardian's proposed powers and duties and the scope and duration of the proposed guardianship, and general preferences and values;

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

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

~~E. Determine the respondent's medical conditions, cognitive functioning, every day functioning, preferences, values, and levels of supervision needed.~~

3. Additional duties. In addition to the duties imposed by subsection 2, the visitor shall perform any duties that the court directs, which may include:

A. Interviewing the petitioner and proposed guardian, if any;

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

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

D. Investigating the allegations in the petition and any other matter relating to the petition as the court directs.

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

- A. Whether or not the respondent wishes to contest any aspect of the proceedings or to seek any limitation on the proposed guardian's powers;
- B. A recommendation whether an attorney should be appointed to represent the respondent;
- C. ~~A summary of the respondent's medical conditions, cognitive functioning, every day functioning, preferences, values, and levels of supervision needed,~~ and a summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, or could manage with the assistance of appropriate supportive services, technological assistance or supported decision making ~~and cannot manage;~~
- D. Recommendations regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternatives for meeting the respondent's needs are available and, if a guardianship is recommended, whether it should be full or limited and, if a limited guardianship, the powers to be granted to the guardian;
- E. A statement of the qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;
- F. A statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;
- G. A recommendation whether a further professional evaluation under section 5-306 is necessary;
- H. A statement whether the respondent is able to attend a hearing at the location court proceedings typically are conducted;
- I. A statement whether the respondent wishes to attend the hearing after being informed of the right to attend the hearing, the purposes of the hearing and the potential consequences of failing to attend;
- J. A statement whether the respondent is able to participate in a hearing and that identifies any technology or other form of support that would enhance the respondent's ability to participate; and
- K. Any other matter as the court directs.

Maine Comment

In contrast to the Uniform Act, Section 5-304 sets out required visitor's duties in § 5-304(2) and additional duties in subsection (3) which may often be required, but which the Court has the discretion to tailor. Additional duties under subsection (3), such as visiting a potential future dwelling, or obtaining additional medical or mental health information could be problematic or impossible in some cases and are left to the discretion of the Court.

Because subsequent section 5-305 continues current Maine practice of determining whether

an attorney will be appointed for a respondent on a case by case basis, the visitor under §5-304 must address the issue under subsections (4)(A) and (B). Also in contrast to the Uniform Act, §5-304(I) provides for the visitor to report on whether or not the respondent wishes to attend the hearing, after being fully informed by the visitor.

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

1. Appointment of attorney required. The court shall appoint an attorney to represent the respondent in a proceeding on a petition under section 5-302 if:

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

2. Duties of attorney. An attorney representing the respondent in a proceeding on a petition under section 5-302 shall:

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

Maine Comment

Maine rejected the Uniform Act's preferred alternative of appointing an attorney in all situations and, instead, preserved current practice of appointing an attorney if requested by the respondent, recommended by the visitor, deemed necessary by the Court, or when the respondent is reported to contest any aspect of the proposed guardianship.

§ 5-306. Professional evaluation

1. Evaluation; report. In every adult guardianship matter, the respondent must be examined by a licensed physician or psychologist who is acceptable to the court and who is qualified to evaluate the respondent's alleged cognitive and functional abilities. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

- A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;
- B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;
- C. A prognosis for improvement and recommendation for the appropriate treatment, support or habilitation plan; and
- D. The date of the examination on which the report is based.

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation pursuant to subsection 1 or the respondent refuses to provide medical reports, the court may enter an order of guardianship or other protective arrangement without the report of a licensed physician or psychologist or supporting medical reports, if the court otherwise finds that there is a basis for such an order in accordance with section 5-301.

Maine Comment

The Uniform Act provided for an evaluation by a broad list of professionals upon order of the court after the the petition is filed. Maine drafters elected to retain the current practice of requiring a professional evaluation in every case with the report to be filed at least 10 days before hearing. Also in contrast to the Uniform Act, Section 5-306 continues the current requirement that the professional be either a licensed physician or psychologist.

Section 5-306(2) confirms that if the respondent declines to participate in an evaluation, the court may still enter an order for a protective arrangement if the court otherwise finds that there is a basis for such an order in accordance with section 5-301.

§ 5-307. Attendance and rights at hearing

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

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

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

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

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

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

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

- A. Present evidence and subpoena witnesses and documents;
- B. Examine witnesses, including any court-appointed evaluator and the visitor; and
- C. Otherwise participate in the hearing.

6. Attendance by proposed guardian required. Unless excused by the court for good cause, the proposed guardian, ~~or counsel on behalf of the proposed guardian,~~ shall attend a hearing under section 5-303 either in person, using real-time audiovisual technology, or by telephone if real-time audiovisual technology is unavailable.

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

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

Maine Comment

Consistent with the Uniform Act, section 5-307 expresses a strong preference for the respondent's presence in Court and sets forth the process and standards for proceeding to hearing in the absence of the respondent. The new Maine law adds attendance of the respondent by real-time audiovisual technology and if unavailable by telephone, with court approval.

Also consistent with the Uniform Act, Section 5-307(6) requires the proposed guardian to be present at hearing, unless excused for good cause, but adds authority for the guardian to be present with the use of real-time audiovisual technology and if unavailable by telephone.

§ 5-308. Confidentiality of records

1. Matter of public record; exception. ~~Only t~~The existence of a proceeding for guardianship for an adult and ~~or~~ the existence or termination of a guardianship for an adult, and the name and contact information of the proposed guardian or guardian and their counsel, is a matter of public record. ~~unless the court seals the records after:~~

~~A. tThe respondent or individual subject to guardianship requests the records be sealed; and or~~

~~B. Either:~~

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

~~(2) B. The guardianship is terminated.~~

2. Access to court records. An adult subject of a proceeding for a guardianship, whether or not a guardian is appointed; any attorney designated by the adult and a person entitled to notice under section 5-310, subsection 5; ~~the petitioner on a petition for guardianship, for conservatorship or for a protective arrangement; the proposed guardian or conservator; the court appointed visitor; all parties listed in the petition under section 5-302, subsection 2, and the personal representative of a deceased adult's estate; and counsel for any of the foregoing,~~ -are entitled to access ~~to all of the~~ court records of the proceeding and resulting guardianship, including a guardian's report or plan. In addition, a person for good cause may petition the court for access to court records of the guardianship, including an annual report or guardian's plan. The court ~~may~~shall grant access if access is in the best interest of the respondent or adult subject to guardianship or furthers the public interest and does not endanger the welfare or financial interest of the adult.

3. Reports confidential; availability. ~~The information provided in the petition under section 5-302, subsection 2, paragraph I, a~~A report under section 5-304 of a visitor and/or a professional evaluation under section 5-306 is confidential and must be sealed on filing but is available to:

~~A. The court;~~

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

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

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

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

Maine Comment

The Uniform Act's comments recognize that States are struggling with how to protect privacy of respondents and adults under guardianship, conservatorship and protective arrangements. Section 5-308 errs on the side of privacy.

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

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

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

B. A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;

C. An agent appointed by the respondent under a power of attorney for health care or an advance health care directive;

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

E. An adult child of the respondent;

F. A parent of the respondent, including a person nominated by will or other writing signed by a deceased parent;

G. Any relative of the respondent with whom the respondent resided for more than 6 months within 12 months prior to the filing of the petition; and

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

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

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection 1 and appoint a person having a lower priority or no priority. In its determination, the court may evaluate whatever factors the court determines appropriate, including comparing the following factors for the person having priority and the potential guardian who has a lower or no priority: relationships with the respondent, the higher priority persons and the potential guardian's skills, the expressed wishes of the respondent, and the extent to which the person with higher priority and the person with lower or no priority have similar values and preferences with

the respondent and the likelihood that the potential guardian will be able to satisfy the duties of a guardian successfully.

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

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

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

Maine Comment

In contrast to the Uniform Act, and consistent with prior Maine law, section 5-309 adds to the order of priority for appointment (E) an adult child, (F) a parent of the respondent or written nominee of a deceased parent, and (G) any relative with whom the respondent resided for more than 6 months within 12 months of the filing of the petition.

In an expansion of the Uniform Act, section 5-309(2) sets forth factors for the court to consider when appointing a person with a lower priority or no priority.

§ 5-310. Order of appointment

1. Order contents. A court order appointing a guardian for an adult must ~~clearly:~~

A. Include a finding that clear and convincing evidence ~~has established that the basis for an appointment of guardianship, as required under section 5-301, has been met; and~~

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

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

~~D. State whether the adult subject to guardianship retains the right to marry and, if the adult's right to marry is subject to conditions or if the adult does not retain the right to marry, include findings that support the conditions on that right or the removal of that right.~~

2. Rights retained. An adult subject to guardianship retains the right to vote **and the right to marry** unless the court orders otherwise. **A court order removing the right to vote shall include a finding that the adult cannot communicate, with or without support, a specific desire to participate in the voting process. A court order removing the right to marry or placing conditions on the right to marry shall include findings that support the removal of the right to marry or support conditions on the right to marry.** ~~under subsection 1 includes the findings required by subsection 1, paragraph C. An adult subject to guardianship retains the right to marry unless the order under subsection 1 includes the findings required by subsection 1, paragraph D.~~

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

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

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

- A. Notice of the rights of the adult subject to guardianship;
- B. Notice of a change in the primary dwelling of the adult subject to guardianship;
- C. Notice that the guardian has delegated:
 - (1) The power to manage the care of the adult subject to guardianship;
 - (2) The power to make decisions about where the adult subject to guardianship lives;
 - (3) The power to make major medical decisions on behalf of the adult subject to guardianship;
 - (4) Any power that requires court approval under section 5-315; or
 - (5) Substantially all powers of the guardian.
- D. Notice that the guardian will be ~~unavailable to visit the adult subject to guardianship for more than 2 months or~~ unable to perform the guardian's duties for more than one month;
- E. A copy of the guardian's report and plan;
- F. Access to court records pertaining to the guardianship;

G. Notice of the death or significant change in the condition of the adult subject to guardianship;

H. Notice that the court has limited or modified the powers of the guardian; and

I. Notice of the guardian's removal.

6. Entitled to notice; exceptions. A spouse, a domestic partner and the adult children of the adult subject to guardianship are entitled to notice under subsection 5 unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to guardianship or not in the best interest of the adult.

Maine Comment

In contrast to the Uniform Act, section 5-310 refers back to the required findings in section 5-301, rather than repeating them. The actual court order shall state verbatim the required findings of section 5-301 to articulate the findings.

Also, subsection (2) confirms that the right to vote and the right to marry are automatically preserved unless the Court orders otherwise.

Section 5-310 (5)(D) retained the Uniform Act provision for notice when a guardian will be unable to perform the guardian's duties for more than one month, but rejected requiring notice of unavailability to visit for more than two months. There are numerous out of state guardians who provide appropriate supervision and oversight, but who may be unable to visit every two months.

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

A guardian appointed under section 5-309 shall give to the adult subject to guardianship and to all other persons given notice under section 5-303 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

Maine Comment

The extensive post-hearing notice of rights process set forth in the Uniform Act was rejected as likely ineffective and otherwise satisfied by the hearing process and final court order. Section 5-311 does require the guardian to provide the respondent and other appropriate persons with the order of appointment and a notice of the right to terminate or modify the guardianship within 14 days of the appointment. Since actual delivery to the respondent is required, a process for confirming delivery may have to be established by the court.

§ 5-312. Emergency guardian

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

A. Appointment of an emergency guardian is likely to prevent substantial harm to the adult's physical health, safety or welfare;

B. No other person appears to have authority and willingness to act in the circumstances; and

C. There is reason to believe that a basis for appointment of a guardian under section 5-301 may exist.

2. Limited time and powers. The duration of authority of an emergency guardian for an adult may not exceed 60 days and the emergency guardian may exercise only the powers specified in the order. The emergency guardian's authority may be extended once for not more than 120 days if the court finds that the conditions for appointment of an emergency guardian in subsection 1 continue.

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

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

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

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

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

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

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

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

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

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the

petitioner complied with the notice requirements of this subsection. The requirements of section 5-303⁹ do not apply to this section.

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

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

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

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

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

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

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

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

Maine Comment

Although section 5-312 adopts the Uniform Act's term of 'emergency guardian', Maine's former temporary guardianship process is essentially incorporated into the new statute. The initial appointment may be for 60 days and may be extended for up to 120 additional days. Upon appropriate findings, contrary to the Uniform Act, section 5-312 does not provide for the automatic appointment of an attorney for the respondent. The basis for an emergency appointment, the notice requirements prior to the petition, and the required affidavit regarding notice to the respondent and other interested persons are consistent with prior Maine law. The prior exception to the requirement of notice is preserved in section 5-312(D).

§ 5-313. Duties of guardian for adult

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

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

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

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

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

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

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

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

C. Administer assets of the adult subject to guardianship having a value of \$510,000 or less;

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

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

4. Decision of the adult. In making a decision for an adult subject to guardianship, the guardian shall make the decision the guardian reasonably believes the adult would make if the adult were able unless doing so would unreasonably harm or endanger the welfare or personal or financial interests of the adult. To determine the decision the adult subject to

guardianship would make if able, the guardian shall consider the adult's prior or current directions, preferences, opinions, values and actions, to the extent actually known or reasonably ascertainable by the guardian.

5. Decision in best interest of the adult. If a guardian for an adult cannot make a decision under subsection 4 because the guardian does not know and cannot reasonably determine the decision that the adult probably would make if able, or the guardian reasonably believes the decision the adult would make would unreasonably harm or endanger the welfare or personal or financial interests of the adult, the guardian shall act in accordance with the best interest of the adult. In determining the best interest of the adult, the guardian shall consider:

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

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

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

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

Maine Comment

The new section 5-313 adopts the Uniform law regarding the duties of a guardian for an adult. However, it should be noted that section 5-313 (3)(1)(C) was added to give a guardian specific statutory authority to administer assets having a value of \$10,000 or less. The \$10,000 amount is consistent with the MaineCare limit for countable assets.

§ 5-314. Powers of guardian for adult

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

A. Apply for or receive money, personal effects or benefits for the support of the adult, and apply the money for support, care and education of the adult, unless a conservator has been appointed for the adult and the application or receipt is within the powers of the conservator, but the guardian may not use funds from the adult's estate for room and board which the guardian, the guardians's spouse, parent or child have furnished the adult unless a charge for the services is approved by order of the court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Not later than 30 days after a change in the dwelling of the adult subject to guardianship, give notice of the change to the court, the adult subject to guardianship and any person

identified as entitled to the notice in the court order appointing the guardian or a subsequent order. The notice must include the address and nature of the new dwelling and state whether the adult subject to guardianship received advance notice of the change and whether the adult objected to the change;

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

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

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

(3) ~~Unless time sensitive~~ ~~Absent a compelling reason,~~ nNotice of the establishment or move is given at least 14 days before the establishment or move to the adult subject to guardianship and all persons entitled to the notice under section 5-310, subsection 5 or a subsequent ~~order.~~ ~~and no objection has been filed;~~ ~~The notice shall be given either orally and~~ ~~or in writing~~ to the adult subject to guardianship, and in writing to all persons entitled to notice under section 5-310 and shall include the address of the current dwelling, the address and type of new permanent place of dwelling, the reason for the move to the new permanent place of dwelling, and the right to object to the new dwelling.

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

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

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

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

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

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

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

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

C. Take into account:

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

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

7. Application to existing guardianships. For guardianships established prior to July 1, 2019, the guardian shall not be subject to the duties of notice and restrictions of power set forth in subsection 5, paragraphs C, D and F, until so ordered by the court.

Maine Comment

The new section 5-314 is generally consistent with the Uniform Act's powers of guardian of adult. The authority of a guardian to receive personal effects was added in section 5-314(1)(A). The authority of a guardian to establish or move the permanent dwelling of the respondent under section 5-314(5)(D) was expanded to permit such a move if it is 'generally' set forth in the guardian's plan [section 5-314 (5)(D)(1)], in recognition that specific details of a planned move may not be known until immediately before a move. Section 5-314(5)(D)(3) also gives a guardian the authority to establish or move the permanent place of dwelling without the otherwise required advance notice if the guardian has a compelling reason and subsequent prompt notice is provided to the adult and persons entitled to notice.

The authority of a guardian to sell or surrender the lease to the primary dwelling is expanded in section 5-314 (5)(F) to permit such action if it is 'generally' set forth in the guardian's plan or if notice of the proposed action is given as specified in section 5-314(5)(F)(3) and no objection is filed within 14 days of such notice.

Subsection 7 creates an exception, for guardianships established prior to the July 1, 2019 effective date of Title 18-C, to the imposition of certain duties and restrictions of powers until an express order of the court directed to the guardian.

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

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

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

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

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

A. Authorized by the court by specific order;

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

C. The guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological or financial harm to the adult. The guardian shall provide a notice, orally and ~~or~~ in writing, of the restriction to the adult subject to guardianship immediately upon imposition of the restriction and shall provide written notice of the restriction to all other persons entitled to notice under section 5-310, subsection 5 within 7 days of imposition of the restriction. Notice shall include a description of the restriction, the rationale supporting the restriction, contact information of the court, and the right to object to the restriction. ~~and the restriction is:~~

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

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

4. Application to existing guardianships. For guardianships established prior

to July 1, 2019, the guardian shall not be subject to the duties of notice and restrictions of power set forth in subsection 3 until so ordered by the court.

Maine Comment

The Uniform Act's provision on special limitations on a guardian's power was adopted in section 5-315, except for some aspects of restrictions on contact. In contrast to specification of separate time frames for different categories of people, section 5-315 authorizes a guardian to restrict the access of any person upon good cause, with immediate

oral and written notice to the respondent and notice to all others entitled to notice within 7 days of the imposition of the restriction. The contents of the notice is described.

Subsection 4 creates an exception, for guardianships established prior to the July 1, 2019 effective date of Title 18-C, to the imposition of certain duties and restrictions of powers until an express order of the court directed to the guardian.

§ 5-316. Guardian's plan

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

A. The adult's medical conditions, cognitive functioning, every day functioning, and levels of supervision needed;

A-1 The living arrangement, services and supports the guardian expects to arrange, facilitate or continue for the adult;

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

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

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

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

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

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

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

3. Objection to revised plan. An adult subject to guardianship and any person entitled under subsection 2 to receive notice and a copy of the guardian's plan may object to the revised plan within 14 days of receipt of notice of the revised plan.

4. Court review of plan or revised plan; approval. The court shall review a guardian's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or the revised plan the court shall consider an objection under subsection 3 and whether the plan or revised plan is consistent with the guardian's duties and powers under sections 5-313 and 5-314. The court may schedule a hearing on any revised plan submitted and may not approve any revised plan until 30 days after its filing. The guardian may implement the revised plan 30 days after filing unless the court orders otherwise.

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

6. Application to existing guardianships. For guardianships established prior to July 1, 2019, the guardian shall not be subject to the requirement for filing a revised plan until so ordered by the court.

Maine Comment

Section 5-316 (1)(A) adds a requirement that the plan identify the adult's medical conditions, cognitive functioning, everyday functioning and levels of supervision needed. With regard to revised plans, section 5-316(3) creates a right to object for all appropriate parties within 14 days of receipt of notice of the revised plan. Although the court may elect to schedule a hearing on a revised plan under section 5-316(4), a revised plan may be implemented without hearing 30 days after filing unless the court orders otherwise.

Subsection 6 creates an exception, for guardianships established to the July 1, 2019 effective date of Title 18-C, to the requirement to file a revised plan until an express order of the court directed to the guardian.

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

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

- A. The mental, physical and social condition of the adult;
- B. The living arrangements of the adult during the reporting period;

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

D. A summary of the guardian's visits with the adult, including the dates of the visits; and/or the visits of ~~professionals~~ agents hired by the guardian to visit on behalf of the guardian;

E. Action taken on behalf of the adult;

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

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

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

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

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

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

L. Plans for future care and support;

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

N. The fees paid to the guardian for the year, and/or still outstanding; and

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

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

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

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

- A. The report provides sufficient information to establish the guardian has complied with the guardian's duties;
- B. The guardianship should continue; and
- C. The guardian's requested fees, if any, should be approved.

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

- A. Shall notify the adult, the guardian and all persons entitled to notice under section 5-310, subsection 5 or a subsequent order;
- B. May require additional information from the guardian;
- C. May appoint a visitor to interview the adult or guardian or investigate any matter involving the guardianship; and
- D. May consider removing the guardian under section 5-318 or terminating the guardianship or changing the powers of the guardian or other terms of the guardianship under section 5-319.

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

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

8. Application to existing guardianships. For guardianships established prior to July 1, 2019 in which there is no existing order to file annual reports, the guardian shall not be subject to the requirement for filing an annual report until so ordered by the court.

Maine Comment

Section 5-317(1)(D) gives statutory recognition of the guardian's authority to hire an agent to visit on behalf of the guardian. Section 5-317 (1)(N) adds a requirement that the guardian's report include a statement of fees paid to the guardian during the report year and/or fees still outstanding for the report year.

Unless there is an existing order to file annual reports, Subsection 8 creates an exception, for guardianships established prior to the July 1, 2019 effective date of Title 18-C, to the requirement to file an annual report, until an express order of the court directed to the guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Communication from the adult, the guardian or a person interested in the welfare of the adult that supports a reasonable belief that termination or modification of the guardianship may be appropriate, including because of a change in the functional needs of the adult or supports or services available to the adult;

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

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

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

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

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

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

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

PART 4

CONSERVATORSHIP

§ 5-401. Basis for appointment of conservator

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

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

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

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

(2) Either:

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

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

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

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

(1) Of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appropriate supportive services, technological assistance and supported decision making **that provide adequate protection for the respondent**; or

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

B. Appointment is necessary to:

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

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

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

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

Maine Comment

Consistent with the new Maine guardianship statute, in § 5-401(2)(A)(1) and § 5-401(3) the Uniform Act was revised to require the Court to find that any appropriate supportive services, technological assistance or supported decision making provide adequate protection for the particular respondent and a less restrictive alternative to conservatorship provide adequate protection for the respondent.

§ 5-402. Petition for appointment of conservator

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

A. The individual for whom the order is sought;

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

C. The guardian of the individual.

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

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner; or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

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

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before filing of the petition;

C. The name and current address of each of the following, if applicable:

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

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for a respondent in this State or another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care or an advance health directive in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition;

(10) Any proposed conservator, including a person nominated by the respondent if the respondent is 14 years of age or older; and

(11) If the individual for whom a conservator is sought is a minor:

(a) An adult with whom the minor resides if not otherwise listed; and

(b) Any person not otherwise listed that had the care or custody of the minor for 60 or more days during the 2 years preceding the filing of the petition or any person that had the primary care or custody of the minor for at least 730 days during the 5 years preceding the filing of the petition;

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

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

(1) The nature and extent of the respondent's alleged need based on the respondent's medical conditions, cognitive functioning, every day financial functioning, and levels of supervision needed;

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

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

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

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

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

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

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

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

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

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

Maine Comment

The structure of the Petition for Appointment proposed in the Uniform Act was adopted in full in section 5-402. The information required is far more comprehensive than previously required

under Maine law; and section 5-402(2)(E) was revised to require a brief description of the respondent's needs based on medical condition, cognitive functioning, every day financial functioning and needed levels of supervision.

§ 5-403. Notice and hearing

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

2. Notice to respondent. A copy of a petition under section 5-402 and notice of a hearing on the petition must be served personally on the respondent at least 14 days before the hearing. If the respondent's whereabouts are unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must inform the respondent of the respondent's rights at the hearing, including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

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

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

§ 5-404. ~~Petition for protective order~~ Order to Preserve or Apply Property While Proceeding Pending.

While a petition under Section 402 is pending, after preliminary hearing and without notice to others, the court may issue an order to preserve and apply property of the respondent as required for the support of the respondent or an individual who is in fact dependent on the respondent.

Maine Comment

The Uniform Act version was adopted, except for the provision authorizing the appointment of a master. The position of master is not otherwise utilized in the Probate Code.

~~**1. Petition.** The person to be protected, any person who is interested in the estate, affairs or welfare of the person to be protected, including the parent, guardian,~~

~~conservatoreustodian or domestic partner of the person to be protected, or any person who would be adversely affected by lack of effective management of the property and affairs of the person to be protected may petition for a protective order.~~

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

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

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

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

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

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

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

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

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

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

§ 5-405. Appointment and role of visitor

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

2. Visitor for adult respondent. If the respondent in a proceeding to appoint a conservator is an adult, the court shall appoint a visitor unless the adult is represented by an attorney. The duties and reporting requirements of the visitor are limited to the relief requested in

the petition. The visitor must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

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

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

B. Determine the respondent's views about the appointment sought by the petitioner, including views about a proposed conservator, the conservator's proposed powers and duties and the scope and duration of the proposed conservatorship, and general financial preferences and values;

C. Determine the respondent's financial functioning, financial preferences, levels of supervision needed, and independent financial tasks the respondent can manage without assistance or with existing supports, or could manage with the assistance of appropriate supportive services, technological assistance or supported decision making;

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

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

4. Additional duties. In addition to the duties imposed by subsection 3, the visitor appointed for an adult under subsection 2 shall perform any duties that the court directs, which may include:

A. Interviewing the petitioner and proposed conservator, if any;

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

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

D. Investigating the allegations in the petition and any other matter relating to the petition as the court directs.

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

A. A summary of the respondent's financial functioning, financial preferences, levels of supervision needed, and independent financial tasks the respondent can manage without assistance or with existing supports, or could manage with the assistance of appropriate supportive services, technological assistance or supported decision making;

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

CB. A recommendation whether an attorney should be appointed to represent the respondent;

DC. A recommendation:

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

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

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

ED. A statement of the qualifications of the proposed conservator and whether the respondent approves or disapproves of the proposed conservator;

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

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

HG. A statement whether the respondent wishes to attend the hearing after being informed of the right to attend the hearing, the purposes of the hearing, and the potential consequences of failing to attend;

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

KH. Any other matter as the court directs.

Maine Comment

In contrast to the Uniform Act, section 5-405 sets out required visitor's duties in section 5-405(3) and additional duties in subsection (4) which may often be required, but which the court has the discretion to tailor. Because section 5-406 continues current Maine practice of determining whether or not an attorney will be appointed for a respondent on a case by case basis, the visitor under section 5-405 must address the issue under subsections (5)(B) and (C). Also in contrast to the Uniform Act, section 5-405 (H) provides for the visitor to report on whether or not the respondent wishes to attend the hearing, after being fully informed by the visitor.

§ 5-406. Appointment and role of attorney

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

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

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

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

3. Attorney for parent of minor. The court may appoint an attorney to represent a parent of a minor who is the subject of a proceeding on a petition under section 5-402 if:

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

Maine Comment

Maine rejected the Uniform Act's preferred alternative of appointing an attorney in all situations and, instead, preserved current practice of appointing an attorney if requested by the respondent, recommended by the visitor, deemed necessary by the Court, or when the respondent is reported to contest any aspect of the proposed guardianship.

§ 5-407. Professional evaluation

1. Evaluation; report. The respondent must be examined by a licensed physician or psychologist who is acceptable to the court, who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and who will not be advantaged or

disadvantaged by a decision to grant the petition and does not otherwise have a conflict of interest. The individual conducting the evaluation shall file a report in a record with the court at least 10 days before any hearing on the petition. Unless otherwise directed by the court, the report must contain:

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

2. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation pursuant to subsection 1 or the respondent refuses to provide medical reports, the court may enter an order of conservatorship or other protective arrangement without the report of a licensed physician or psychologist or supporting medical reports, if the court otherwise finds that there is a basis for such an order in accordance with section 5-401.

Maine Comment

The Uniform Act provided for an evaluation by a broad list of professionals upon order of the court after the the petition is filed. Maine drafters elected to retain the current practice of requiring a professional evaluation in every case with the report to be filed at least 10 days before hearing. Also in contrast to the Uniform Act, Section 5-407 continues the current requirement that the professional be either a licensed physician or psychologist.

Section 5-407(2) confirms that if the respondent declines to participate in an evaluation, the court may still enter an order for a protective arrangement if the court otherwise finds that there is a basis for such an order in accordance with section 5-301.

§ 5-408. Attendance and rights at hearing

1. Attendance by respondent required. Except as otherwise provided in subsection 2, a hearing under section 5-403 may proceed only if the respondent attends the hearing. If it is not reasonably feasible for the respondent to attend a hearing at the location court proceedings typically are conducted, the court shall make reasonable efforts to hold the hearing at an alternative location convenient to the respondent or allow the respondent to attend the hearing using real-time audiovisual technology or telephone if real-time audiovisual is not available.

2. Hearing without respondent; findings. A hearing under section 5-403 may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

- A. The respondent consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend the hearing and the potential consequences of failing to do so;
- B. There is no practicable way for the respondent to attend and participate in the hearing even with appropriate supportive services and technological assistance; or
- C. The respondent is a minor who has received proper notice and attendance would be harmful to the minor.

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

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

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

- A. Present evidence and subpoena witnesses and documents;
- B. Examine witnesses, including any court-appointed evaluator and the visitor; and
- C. Otherwise participate in the hearing.

6. Attendance by proposed conservator required. Unless excused by the court for good cause, the proposed conservator, ~~or counsel on behalf of the proposed conservator,~~ shall attend a hearing under section 5-403 either in person, using real-time audiovisual technology, or by telephone if real-time audiovisual technology is unavailable.

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

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

Maine Comment

Consistent with the Uniform Act, § 5-408 expresses a strong preference for the respondent's presence in court and sets forth the process and standards for proceeding to hearing in the

absence of the respondent. The new Maine law adds attendance of the respondent by real-time audiovisual technology and if unavailable by telephone, with court approval.

Also consistent with the Uniform Act, section 5-408(6) requires the proposed conservator to be present at hearing, unless excused for good cause, but adds authority for the conservator to be present with the use of real-time audiovisual technology and if unavailable by telephone.

§ 5-409. Confidentiality of records

1. Matter of public record; exceptions. ~~Only the existence of a proceeding for conservatorship and the existence or termination of conservatorship, and the name and contact information of the proposed conservator or conservator and their counsel, is a matter of public record, unless the court seals the record after:~~

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

~~B. Either:~~

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

~~(2) The conservatorship is terminated.~~

2. Access to records. ~~An individual subject to a proceeding for a conservatorship, whether or not a conservator is appointed; an attorney designated by the individual and a person entitled to notice under section 5-411 or a subsequent order; the petitioner on a petition for guardianship, for conservatorship or for a protective arrangement; the proposed guardian or conservator; the court appointed visitor; all persons required to be listed in the petition under section 5-402, subsection 2, paragraphs A to C, the personal representative of a deceased adult's estate and any other person interested in the respondent's welfare as the court determines; and counsel for any of the foregoing, are entitled to access ~~confidential or sealed~~ all court records of the proceeding and resulting conservatorship, including the conservator's plan and report. In addition, a person for good cause may petition the court for access to court records of the conservatorship, including the conservator's plan and report. The court ~~may~~ ~~shall~~ grant access if access is in the best interest of the respondent or individual subject to conservatorship or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.~~

3. Reports; availability. ~~The information provided in the petition under section 5-402, subsection 2, paragraph D, Aa report under section 5-405 of a visitor or professional evaluation under section 5-407, plans and revised plans under section 5-419, an inventory under section 5-420, and reports and accountings under section 5-423 areis confidential and must be sealed on filing but is available to:~~

~~A. The court;~~

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

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

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

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

Maine Comment

The Uniform Act's comments recognize that States are struggling with how to protect privacy of respondents and adults under guardianship, conservatorship and protective arrangements. Section 5-409 errs on the side of privacy.

§ 5-410. Who may be conservator; priorities

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

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

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

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

D. A spouse or domestic partner of the respondent;

E. An adult child of the respondent;

F. A parent of the respondent, or a person nominated in the will of a deceased parent; and

G. ~~and~~

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

2. Equal priority. With respect to persons having equal priority under subsection 1, the court shall select as conservator the person the court considers best qualified. In determining the best qualified person, the court shall consider the potential conservator's relationship with the respondent, the potential conservator's skills, the expressed wishes of the respondent, the extent

to which the potential conservator and the respondent have similar values and preferences and the likelihood that the potential conservator will be able to satisfy the duties of a conservator successfully.

3. Appointment based on best interest of respondent. The court, acting in the best interest of the respondent, may decline to appoint as conservator a person having priority under subsection 1 and appoint a person having a lower priority or no priority. In its determination, the court may evaluate whatever factors the court determines appropriate, including comparing the following factors for the person having priority and the potential conservator who has a lower or no priority: relationships with the respondent, the higher priority person's and the potential conservator's skills, the expressed wishes of the respondent, and the extent to which the person with higher priority and the person with lower or no priority have similar values and preferences with the respondent and the likelihood that the potential guardianconservator will be able to satisfy the duties of a guardianconservator successfully.

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

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

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

Maine Comment

In contrast to the Uniform Act, and consistent with prior Maine law, section 5-410 added to the order of priority for appointment an adult child, and a parent of the respondent or written nominee of a deceased parent.

In an expansion of the Uniform Act, section 5-410(3) sets forth factors for the court to consider when appointing a person with a lower priority or no priority.

§ 5-411. Order of appointment

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

2. Conservator for adult; findings. A court order appointing a conservator for an adult must include a ~~clear~~ finding ~~by clear and convincing evidence~~ that:

A. ~~The basis for appointment of a conservatorship as required under Section 5-401 has been met; The identified needs of the respondent cannot be met by a protective arrangement instead of conservatorship or other less restrictive alternatives, including use of appropriate supportive services, technological assistance or supported decision making; and~~

B. ~~Clear and convincing evidence established~~ ~~T~~he respondent was given proper notice of the hearing on the petition.

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

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

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

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

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

C. Notice that the conservator has delegated any power that requires court approval under section 5-414 or substantially all powers of the conservator;

D. Notice that the conservator will be unavailable to perform the conservator's duties for more than one month;

E. Copies of the conservator's plan and report;

F. Access to court records pertaining to the conservatorship;

G. A transaction involving a substantial conflict between the conservator's fiduciary duties and personal interests;

H. Notice of the death or significant change in the condition of the individual subject to conservatorship;

I. Notice that the court has limited or modified the powers of the conservator; and

J. Notice of the conservator's removal.

6. Entitled to notice; exceptions. If an individual subject to conservatorship is an adult, the spouse, domestic partner and adult children of the adult subject to conservatorship are entitled under subsection 5 to notice unless the court determines notice would be contrary to the preferences or prior directions of the adult subject to conservatorship or not in the best interest of the adult subject to conservatorship.

7. Notice when minor is subject to conservatorship. If an individual subject to conservatorship is a minor, each parent and adult sibling of the minor is entitled under subsection 5 to notice unless the court determines notice would not be in the best interest of the minor.

Maine Comment

In contrast to the Uniform Act, section 5-411 refers back to the required findings in section 5-401, rather than repeating them. The actual court order shall state verbatim the required findings of section 5-301 to articulate the findings.

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

1. Notice of appointment, order; rights. A conservator appointed under section 5-401 shall give to the individual subject to conservatorship and to all other persons given notice under section 5-403 a copy of the order of appointment, together with a notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

2. Notice if person missing. If a conservator is appointed under section 5-401, subsection 2, paragraph A, subparagraph (2) and the individual subject to conservatorship is missing, notice under subsection 1 to the individual is not required.

Maine Comment

The extensive post-hearing notice of rights process set forth in the Uniform Act was rejected as likely ineffective and otherwise satisfied by the hearing process and final order. Section 5-412 does require the conservator to provide the respondent and other appropriate persons with the order of appointment and a notice of the right to terminate or modify the conservatorship within 14 days of the appointment. Since actual delivery to the respondent is required, a process for confirming delivery may have to be established by the court.

§ 5-413. Emergency conservator

1. Appointment; findings. On petition by a person interested in an individual's welfare or on its own after a petition has been filed under section 5-402, the court may appoint an emergency conservator for the individual if the court finds:

A. Appointment of an emergency conservator is likely to prevent substantial and irreparable harm to the respondent's property or financial interests;

B. No other person appears to have authority and willingness to act in the circumstances; and

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

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

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

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

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

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

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

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

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

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

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

C. The petitioner shall state in an affidavit the date, time, location and method of providing the required notice under paragraph A and to whom the notice was provided. The court shall make a determination as to the adequacy of the method of providing notice and whether the

petitioner complied with the notice requirements of this subsection. The requirements of section 5-412~~0~~ do not apply to this section.

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

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

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

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

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

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

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

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

Maine Comment

Although section 5-413 adopts the Uniform Act's term of "emergency conservator", Maine's former temporary conservatorship process is essentially incorporated into the new statute. The initial appointment may be for 60 days and may be extended for up to 120 additional days upon appropriate findings. Contrary to the Uniform Act, section 5-413 does not provide for the automatic appointment of an attorney for the respondent. The basis for an emergency appointment, the notice requirements prior to the petition, and the required affidavit regarding notice to the respondent and other interested persons are consistent with prior Maine law. The prior exception to the requirement of notice is preserved in section 5-413(D).

§ 5-414. Powers of conservator requiring court approval

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

- A. Except as provided in Section 5-421(2)(Y), mMake gifts, except those of de minimis value;
- B. Sell, encumber an interest in or surrender a lease to the primary dwelling of the individual subject to conservatorship;
- C. Convey, release or disclaim contingent or expectant interests in property, including marital property and any right of survivorship incident to joint tenancy;
- D. Exercise or release a power of appointment;
- E. Create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the individual subject to conservatorship;
- F. Exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value;
- G. Exercise a right to an elective share in the estate of a deceased spouse or domestic partner of the individual subject to conservatorship or to renounce or disclaim a property interest;
- H. Grant a creditor a priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the individual subject to conservatorship and preferential treatment otherwise would be impermissible under section 5-428, subsection 5; and
- I. Make, modify, amend or revoke the will of the individual subject to conservatorship, with the conservator treated as the individual making, modifying, amending or revoking the will in compliance with the laws of the State governing executing wills.

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

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

- A. The financial needs of the individual subject to conservatorship and individuals who are in fact dependent on the individual subject to conservatorship for support, and the interest of creditors;
- B. Possible reduction of income, estate, inheritance or other tax liabilities;
- C. Eligibility for governmental assistance;
- D. The previous pattern of giving or level of support provided by the individual subject to conservatorship;
- E. Any existing estate plan or lack of estate plan of the individual subject to conservatorship;
- F. The life expectancy of the individual subject to conservatorship and the probability that the conservatorship will terminate before the individual's death; and
- G. Any other relevant factors.

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

5. Application to existing conservatorships. For conservatorships established prior to July 1, 2019, the conservator shall not be subject to the notice and court authorization requirements under subsection 1, paragraph b, until so ordered by the court.

Maine Comment

Section 5-414, consistent with the provisions of the Uniform Act, includes the new authority of a conservator to make or modify a will of the individual subject to conservatorship.

Subsection 5 creates an exception, for conservatorships established prior to the July 1, 2019 effective date of Title 18-C, to the imposition of certain notice and court authorization requirements until an express order of the court directed to the conservator.

§ 5-415. Petition for order subsequent to appointment

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

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

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

3. Distribution. Directing distribution;

4. Removal; temporary or successor. Removing the conservator and appointing a temporary or successor conservator;

5. Modification. Modifying the type of appointment or powers granted to the conservator, if the extent of protection or management previously granted is currently excessive or insufficient to meet the individual's needs, including because the individual's abilities or supports have changed;

6. Inventory, plan or report. Rejecting or modifying the conservator's inventory, plan or report; or

7. Other relief. Granting other appropriate relief.

§ 5-416. Bond or alternative asset-protection arrangement

1. Bond or alternative asset-protection arrangement required. The court shall require a conservator of an estate of \$50,000 or more to furnish a bond with a surety the court specifies, or require an alternative asset-protection arrangement, conditioned on faithful discharge of all duties of the conservator. The court may waive the requirement only if the court finds that a bond or other asset-protection arrangement is not necessary to protect the interests of the individual subject to conservatorship. The court may not waive the requirement if the conservator is in the business of serving as a conservator and is being paid for the conservator's service except as provided by subsection 3. With respect to an estate of less than \$50,000, the court in its discretion may require a bond or other surety.

2. Amount of bond; collateral. Unless the court directs otherwise, the bond required under this section must be in the amount of the aggregate capital value of the conservatorship estate, plus one year's estimated income, less the value of property deposited under arrangement requiring a court order for its removal and real property the conservator lacks power to sell or convey without specific court authorization. The court, in place of surety on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

3. Bond not required. A regulated financial service institution qualified to do trust business in this State need not give a bond.

4. Spouse as Conservator. The court, in its discretion, may waive the requirement of a bond or other surety for a spouse wishing to serve as conservator.

Maine Comment

Contrary to the Uniform Act, section 5-416 preserves Maine's prior preference for requiring a bond only for estates over a certain value and sets that value at \$50,000 or more. Section 5-416(4) also preserves Maine's prior discretionary waiver of the bond requirement for a spouse.

§ 5-417. Terms and requirements of bond

1. Bond requirements. The following rules apply to the bond required under section 5-416.

A. Except as otherwise provided by the bond, the surety and the conservator are jointly and severally liable.

B. By executing a bond provided by a conservator, a surety submits to the jurisdiction of the court that issued letters of office to the conservator in a proceeding pertaining to the duties of the conservator in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the court records at the place where the bond is filed and any other address of the surety then known to the person required to provide the notice.

C. On petition of a successor conservator or any person affected by a breach of the obligation of the bond, a proceeding may be brought against a surety for breach of the obligation of the bond.

D. A proceeding against the bond may be brought until liability under the bond is exhausted.

2. Proceeding against surety. A proceeding may not be brought against a surety of a bond under this section on a matter as to which a proceeding against the conservator is barred.

3. Notice of nonrenewal. The surety or sureties of the bond must immediately serve notice to the court and to the individual under conservatorship if the bond is not renewed by the conservator.

§ 5-418. Duties of conservator

1. Duties as fiduciary. A conservator is a fiduciary and has a duty of prudence and duty of loyalty to the individual subject to conservatorship.

2. Promote self-determination. A conservator shall promote the self-determination of the individual subject to conservatorship and, to the extent feasible, encourage the individual to participate in decisions, act on the individual's own behalf and develop or regain the capacity to manage the individual's personal affairs.

3. Decision of individual. In making a decision on behalf of the individual subject to conservatorship, the conservator shall make the decision the conservator reasonably believes the individual would make if able, unless doing so would fail to preserve the resources needed to maintain the individual's well-being and lifestyle or otherwise unreasonably harm or endanger the welfare or personal or financial interests of the individual. To determine the decision the individual would make if able, the conservator shall consider the individual's prior or current

directions, preferences, opinions, values and actions to the extent actually known or reasonably ascertainable by the conservator.

4. Best interest of individual. If a conservator cannot make a decision under subsection 3 because the conservator does not know and cannot reasonably determine the decision that the individual subject to conservatorship probably would make if able, or the conservator reasonably believes the decision the conservator believes the individual would make would fail to preserve resources needed to maintain the individual's well-being and lifestyle or otherwise would unreasonably harm or endanger the welfare of the individual, the conservator shall act in accordance with the best interest of the individual. In determining the best interest of the individual, the conservator shall consider:

- A. Information received from professionals and persons that demonstrate sufficient interest in the welfare of the individual;
- B. Other information the conservator believes the individual would have considered if the individual were able to act; and
- C. Other factors a reasonable person in the circumstances of the individual would consider, including consequences for others.

5. Prudent investor standard. Except when inconsistent with the conservator's duties under subsections 1 to 4, a conservator shall invest and manage the conservatorship estate as a prudent investor would, by considering:

- A. The circumstances of the individual subject to conservatorship and the conservatorship estate;
- B. General economic conditions;
- C. The possible effect of inflation or deflation;
- D. The expected tax consequences of an investment decision or strategy;
- E. The role of each investment or course of action in relation to the conservatorship estate as a whole;
- F. The expected total return from income and appreciation of capital;
- G. The need for liquidity, regularity of income and preservation or appreciation of capital; and
- H. The special relationship or value, if any, of specific property to the individual subject to conservatorship.

6. Propriety of investment and management. The propriety of a conservator's investment and management of the conservatorship estate is determined in light of the facts and circumstances existing when the conservator decides or acts and not by hindsight.

7. Reasonable effort to verify facts. A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

8. Special skills or expertise. A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the conservator's duties.

9. Consistent with estate plan and other instrument. In investing, selecting specific property for distribution and invoking a power of revocation or withdrawal for the use or benefit of the individual subject to conservatorship, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator and may examine the will or other donative, nominative or other appointive instrument of the individual.

10. Insurance. A conservator shall maintain insurance on the insurable real and personal property of the individual subject to conservatorship, unless the conservatorship estate lacks sufficient funds to pay for insurance or a court issues an order finding:

A. The property lacks sufficient equity; or

B. Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual subject to conservatorship.

11. Cooperation, power of attorney for finances. If a power of attorney for finances is in effect, a conservator shall cooperate with the agent to the extent feasible.

12. Digital assets. A conservator has access to and authority over a digital asset of the individual subject to conservatorship to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by court order.

13. Adult becomes capable. A conservator of an adult shall notify the court if the condition of the adult subject to conservatorship has changed so that the adult is capable of exercising rights previously removed immediately upon learning of the change.

§ 5-419. Conservator's plan

1. Plan; revision. The petitioner for appointment as conservator for an adult shall file with the petition a plan for protecting, managing, expending and distributing the assets of the conservatorship estate. When there is a change in circumstances or when the conservator seeks to deviate significantly from the conservator's plan previously filed, the conservator shall file with the court a revised plan for protecting, managing, expending and distributing the assets of the conservatorship estate. The plan must be based on the needs of the individual subject to conservatorship and take into account the best interest of the individual as well as the individual's preferences, values and prior directions, to the extent known to or reasonably ascertainable by the conservator. The conservator shall include in the plan:

A. A budget setting forth projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the individual subject to conservatorship;

B. How the conservator will involve the individual subject to conservatorship in decisions about management of the conservatorship estate;

C. Any step the conservator plans to take to develop or restore the ability of the individual subject to conservatorship to manage the conservatorship estate; and

D. An estimate of the duration of the conservatorship.

2. Notice of revised plan. A conservator shall give notice of the filing of a revised plan under subsection 1, along with a copy of the revised plan, to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must **include a statement of the right to object to the revised plan and** be given not later than 14 days after the filing.

3. Objection to revised plan. An individual subject to conservatorship and any person entitled under subsection 2 to receive notice and a copy of the conservator's revised plan may object to the revised plan **within 14 days of receipt of notice of the revised plan.**

4. Court review of plan or revised plan; approval. The court shall review a conservator's plan or revised plan filed under subsection 1. In deciding whether to approve the plan or revised plan, the court shall consider any objection under subsection 3 and whether the plan or revised plan is consistent with the conservator's duties and powers. The court **may schedule a hearing on any revised plan submitted and may not approve any ~~the plan or~~ revised plan until 30 days after its filing. The conservator may implement the revised plan 30 days after filing unless the court orders otherwise.**

5. Copy of approved plan. After a conservator's plan or revised plan under this section is approved by the court, the conservator shall provide a copy of the plan or revised plan to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines.

6. Application to existing conservatorships. For conservatorships established prior to July 1, 2019, the conservator shall not be subject to the requirement for the filing of a revised plan until so ordered by the court.

Maine Comment

Contrary to the Uniform Act, section 5-419 requires that the conservator's plan be filed with the petition. Notice of any subsequently filed revised plan must be served on the person subject to conservatorship and other appropriate parties within 14 days of filing and said notice must include a statement of the right of any party to object within 14 days of the receipt of notice. Section 5-419(4) gives the court discretion to approve a revised plan with or without a hearing 30 days after filing and authorizes a conservator to implement the revised plan 30 days after filing unless the court orders otherwise.

Subsection 6 creates an exception, for conservatorships established prior to the July 1, 2019 effective date of Title 18-C, to the requirement to file a revised plan until an express order of the court directed to the conservator.

§ 5-420. Inventory; records

1. Inventory. Not later than 960 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the conservatorship estate, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

2. Notice of filing of inventory. A conservator shall give notice of the filing of an inventory to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order and other persons as the court determines. The notice must be given not later than 14 days after the filing.

3. Records. A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian of the individual or any person as the conservator or the court determines.

Maine Comment

Section 5-420 adopts the Uniform Act's Inventory provisions, except for establishing a 90 day filing requirement in place of the shorter deadline in the Uniform Act.

§ 5-421. Administrative powers of conservator not requiring court approval

1. Powers unless limited; powers of trustee. Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, a conservator has all powers granted in this section and any additional powers granted to a trustee by law of this State other than this Part.

2. Powers of conservator. A conservator, acting reasonably and consistent with the fiduciary duties of the conservator to accomplish the purpose of the appointment, without specific court authorization or confirmation, may:

- A.** Collect, hold and retain property included in the conservatorship estate, including property in which the conservator has a personal interest and real property in another state, until the conservator determines disposition of the property should be made;
- B.** Receive additions to the conservatorship estate;
- C.** Continue or participate in the operation of a business or other enterprise;

- D. Acquire an undivided interest in property included in the conservatorship estate in which the conservator, in a fiduciary capacity, holds an undivided interest;
- E. Invest assets of the conservatorship estate;
- F. Deposit money of the conservatorship estate in a financial institution, including one operated by the conservator;
- G. Acquire or dispose of property of the conservatorship estate, including real property in **this state or** another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of or abandon property included in the conservatorship estate;
- H. Make ordinary or extraordinary repairs or alterations in a building or other structure, demolish any improvement, or raze existing or erect a new party wall or building;
- I. Subdivide, develop or dedicate land to public use, make or obtain the vacation of a plat and adjust a boundary, adjust a difference in valuation, exchange or partition land by giving or receiving consideration and dedicate an easement to public use without consideration;
- J. Enter for any purpose into a lease of property as lessor or lessee, with or without an option to purchase or renew, for a term within or extending beyond the term of the conservatorship;
- K. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or a pooling or unitization agreement;
- L. Grant an option involving disposition of property included in the conservatorship estate or accept or exercise an option for the acquisition of property;
- M. Vote a security, in person or by general or limited proxy;
- N. Pay a call, assessment or other sum chargeable or accruing against or on account of a security;
- O. Sell or exercise a stock subscription or conversion right;
- P. Consent, directly or through a committee or agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;
- Q. 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;
- R. Insure the conservatorship estate against damage or loss in accordance with section 5-418, subsection 10 and the conservator against liability with respect to a 3rd party;
- S. Borrow money, with or without security, to be repaid from the conservatorship estate or otherwise;
- T. Advance money for the protection of the conservatorship estate or the individual subject to conservatorship and all expenses, losses and liability sustained in the administration of

the conservatorship estate or because of holding any property for which the conservator has a lien on the conservatorship estate as against the individual subject to conservatorship for the advances;

U. Pay or contest a claim, settle a claim by or against the conservatorship estate or the individual subject to conservatorship by compromise, arbitration or otherwise, or release, in whole or in part, a claim belonging to the conservatorship estate to the extent the claim is uncollectible;

V. Pay a tax, assessment, compensation of the conservator or any guardian, and other expense incurred in the collection, care, administration and protection of the conservatorship estate;

W. Pay a sum distributable to an individual subject to conservatorship or individual who is in fact dependent on the individual subject to conservatorship by paying the sum to the distributee or for the use of the distributee:

(1) To the guardian of the distributee;

(2) To a distributee's custodian under the Maine Uniform Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act of any state; or

(3) If there is no guardian, custodian or custodial trustee, to a relative or other person having physical custody of the distributee;

X. Prosecute or defend an action, claim or proceeding in any jurisdiction for the protection of the conservatorship estate or of the conservator in the performance of the conservator's duties;

Y. Structure the finances of the individual subject to conservatorship to establish eligibility for a public benefit, including by making gifts consistent with the individual's preferences, values and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties; and

Z. Execute and deliver any instrument that will accomplish or facilitate the exercise of a power vested in the conservator.

§ 5-422. Distribution from conservatorship estate

Except as otherwise provided in section 5-414 or qualified or limited in the court's order of appointment and stated in the letters of office, and unless contrary to a conservator's plan filed under section 5-419, a conservator may expend or distribute income or principal of the conservatorship estate without specific court authorization or confirmation for the support, care, education, health or welfare of the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship, including the payment of child or spousal support, in accordance with the following rules.

1. Appropriate standard. A conservator shall consider a recommendation relating to the appropriate standard of support, care, education, health or welfare for the individual subject to conservatorship, or an individual who is in fact dependent on the individual subject to conservatorship, made by a guardian of the individual subject to conservatorship, if any, and, if the individual subject to conservatorship is a minor, a recommendation made by a guardian or parent of the minor.

2. Liability for distribution. A conservator acting in compliance with the conservator's duties under section 5-418 is not liable for a distribution made based on a recommendation under subsection 1 unless the conservator knows the distribution is not in the best interest of the individual subject to conservatorship.

3. Considerations for expenditure, distribution. In making an expenditure or distribution under this subsection, the conservator shall consider:

A. The size of the conservatorship estate, the estimated duration of the conservatorship and the likelihood the individual subject to conservatorship, at some future time, may be fully self-sufficient and able to manage the individual's financial affairs and the conservatorship estate;

B. The accustomed standard of living of the individual subject to conservatorship and an individual who is in fact dependent on the individual subject to conservatorship;

C. Other money or source used for the support of the individual subject to conservatorship; and

D. The preferences, values and prior directions of the individual subject to conservatorship.

4. Compensation or reimbursement. Money expended or distributed under this subsection may be paid by the conservator to any person, including the individual subject to conservatorship, as reimbursement for expenditures the conservator might have made, or in advance for services to be rendered to the individual subject to conservatorship if it is reasonable to expect the services will be performed and advance payment is customary or reasonably necessary under the circumstances.

§ 5-423. Conservator's report and accounting; monitoring

1. Report. A conservator shall file a report in a record with the court regarding the administration of the conservatorship estate annually unless the court otherwise directs, on resignation or removal, on termination of the conservatorship and at any other time as the court directs.

2. Contents. A report under subsection 1 must state or contain:

A. An accounting that contains a list of property included in the conservatorship estate and of the receipts, disbursements, liabilities and distributions during the period for which the report is made;

B. A list of the services provided to the individual subject to conservatorship;

C. A copy of the conservator's most recently approved plan and a statement whether the conservator has deviated from the plan and, if so, how and why the conservator has deviated;

D. Any recommended change in the conservatorship, including its scope and whether the conservatorship needs to continue;

E. Annual credit report of the individual subject to conservatorship and to the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts and mortgages or other debts of the individual subject to conservatorship, along with, with all but the last 4 digits of the account numbers and the individual's social security number redacted;

F. Anything of more than de minimis value that the conservator, any individual who resides with the conservator or the spouse, domestic partner, parent, child or sibling of the conservator has received from a person providing goods or services to the individual subject to conservatorship;

G. Any business relation the conservator has with a person providing goods or services to the individual subject to conservatorship;

H. Any business relation the conservator has with a person the conservator has paid or a person that has benefited from the property of the individual subject to conservatorship; and

I. Whether any coconservator or successor conservator appointed to serve when a designated future event occurs is alive and able to serve.

3. Visitor. The court may appoint a visitor to review a report under this section or conservator's plan under section 5-419, interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs. In connection with the report, the court may order the conservator to submit the conservatorship estate to appropriate examination in a manner the court directs.

4. Notice of report; copy. Notice of the filing under this section of a conservator's report, together with a copy of the report, must be provided to the individual subject to conservatorship, all persons entitled to notice under section 5-411, subsection 5 or a subsequent order, and a person the court determines is entitled to the report. Notwithstanding section 5-409, the credit report provided pursuant to subsection 2, paragraph E is confidential and may not be provided with the rest of the conservator's report except to the individual subject to conservatorship. The notice and report must be given not later than 14 days after filing.

5. Monitoring; frequency of report. The court shall establish procedures for monitoring a conservator's plan and report and review the plan and report not less than annually to determine whether:

A. The plan and report provide sufficient information to establish the conservator has complied with the conservator's duties;

B. The conservatorship should continue; and

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

6. Noncompliance. If the court determines there is reason to believe the conservator has not complied with the conservator's duties or the conservatorship should not continue, the court:

A. Shall notify the conservator, the individual subject to conservatorship and all persons entitled to notice under section 5-411, subsection 5 or a subsequent order;

B. May require additional information from the conservator;

C. May appoint a visitor to interview the individual subject to conservatorship or conservator and investigate any matter involving the conservatorship as the court directs; and

D. May, consistent with sections 5-430 and 5-431, hold a hearing to consider removal of the conservator, termination of the conservatorship or a change in the powers granted to the conservator or terms of the conservatorship.

7. Unreasonable fees. If the court determines there is reason to believe a conservator's requested fees are not reasonable, the court shall hold a hearing to adjust the fees.

8. Approval of report or accounting. A conservator may petition the court for approval of a report or accounting filed under this section. The court after review may approve the report or accounting. An order, after notice and hearing, approving a final report or accounting discharges the conservator from all liabilities, claims and causes of action by a person given notice of the report or accounting and the hearing as to a matter adequately disclosed in the report or accounting.

9. Application to existing conservatorships. For conservatorships established prior to January 1, 2008, the conservator shall not be subject to the requirement for an annual report and account until so ordered by the court.

Maine Comment

Subsection 9 creates an exception, for conservatorships established prior to January 1, 2008, to the requirement to file an annual report until an express order of the court directed to the conservator. The January 1, 2008 date is consistent with the provisions of Title 18-A, Section 419, which required a private conservator appointed after January 1, 2008 to file an annual account with the court.

§ 5-424. Attempted transfer of property by individual subject to conservatorship

1. Interest not transferable or assignable; not subject to claims. The interest of an individual subject to conservatorship in property included in the conservatorship estate is not transferable or assignable by the individual and is not subject to levy, garnishment or similar process for claims against the individual unless allowed under section 5-428.

2. Contract void against individual and property. If an individual subject to conservatorship enters into a contract after having the right to enter the contract removed by the court, the contract is void against the individual and the individual's property but is enforceable against the person that contracted with the individual.

3. Protection of 3rd parties. A 3rd party that deals with an individual subject to conservatorship with respect to property included in the conservatorship estate is entitled to protection provided by law of this State other than this Act.

§ 5-425. Transaction involving conflict of interest

A transaction involving a conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary duties and personal interests is voidable unless the transaction is authorized by the court by specific order after notice to all persons entitled to notice under section 5-411, subsection 5 or a subsequent order. A transaction affected by a substantial conflict between fiduciary duties and personal interests includes a sale, encumbrance or other transaction involving the conservatorship estate entered into by the conservator, an individual with whom the conservator resides, the spouse, domestic partner, descendant, sibling, agent or attorney of the conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

§ 5-426. Protection of person dealing with conservator

1. Protection of 3rd party. A person that assists or deals with a conservator in good faith and for value in any transaction, other than one requiring a court order under section 5-414, is protected as though the conservator properly exercised the power in question. Knowledge by a person that the person is dealing with a conservator does not alone require the person to inquire into the existence of the authority of the conservator or the propriety of the conservator's exercise of authority, but restrictions on authority that are stated in letters of office, or as otherwise provided by law, are effective as to the person. A person that pays or delivers property to a conservator is not responsible for proper application of the property.

2. Application of protection. Protection under subsection 1 extends to a procedural irregularity or jurisdictional defect in the proceeding leading to the issuance of letters of office and is not a substitute for protection provided to a person that assists or deals with a conservator by comparable provisions in law of this State other than this Act relating to commercial transactions or simplifying transfers of securities by fiduciaries.

§ 5-427. Death of individual subject to conservatorship

1. Delivery of will. If an individual subject to conservatorship dies, the conservator shall deliver to the court for safekeeping any will of the individual in the conservator's possession and inform the personal representative named in the will if feasible, or if not feasible a beneficiary named in the will, of the delivery.

2. Powers and duties of personal representative; notice. If 40 days after the death of an individual subject to conservatorship no personal representative has been appointed and an application or petition for appointment is not before the court, the conservator may apply to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The conservator shall give notice to a person nominated as personal representative by a will of the decedent of which the conservator is aware and to all of the decedent's heirs and all devisees of the will, if any. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the conservator has acquired the powers and duties of a personal representative.

3. Effect of appointment as personal representative. Issuance of an order under this section has the effect of an order of appointment of a personal representative under section 3-308 and Article 3, Parts 6 to 10.

4. Distribution; discharge. On the death of an individual subject to conservatorship, the conservator shall conclude the administration of the conservatorship estate by distributing property subject to conservatorship to the individual's successors. Not later than 30 days after distribution, the conservator shall file a final report and petition for discharge.

§ 5-428. Presentation and allowance of claim

1. Claims against estate or protected person. A conservator may pay, or secure by encumbering property included in the conservatorship estate, a claim against the conservatorship estate or the individual subject to conservatorship arising before or during the conservatorship on presentation and allowance in accordance with the priorities under subsection 4. A claimant may present a claim by:

- A. Sending or delivering to the conservator a statement in a record of the claim, indicating its basis, the name and address of the claimant and the amount claimed; or
- B. Filing with the court a record of the claim, in a form acceptable to the court, and sending or delivering a copy of the statement to the conservator.

2. Presented claim; allowance; disallowance. A claim under subsection 1 is presented on receipt by the conservator of the statement of claim ~~by the conservator~~ or the filing with the court of the claim, whichever first occurs. A presented claim is allowed if it is not disallowed by the conservator in a record sent or delivered to the claimant not later than 60 days after its presentation. Before payment the conservator may change an allowance of the claim to a disallowance in whole or in part, but not after allowance under a court order or order directing payment of the claim. Presentation of a claim tolls the running of a statute of limitations that has not expired relating to the claim until 30 days after its disallowance.

3. Unpaid claim. A claimant whose claim under subsection 1 has not been paid may petition the court to determine the claim at any time before it is barred by a statute of limitations, and the court may order its allowance, payment or security by encumbering property included in the conservatorship estate. If a proceeding is pending against the individual subject to conservatorship at the time of appointment of the conservator or is initiated thereafter, the moving party shall give the conservator notice of the proceeding if it could result in creating a claim against the conservatorship estate.

4. Distribution; order. If a conservatorship estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

A. Costs and expenses of administration;

B. A claim of the Federal Government or State Government having priority under law other than this Act;

C. A claim incurred by the conservator for support, care, education, health or welfare previously provided to the individual subject to conservatorship or an individual who is in fact dependent on the individual subject to conservatorship;

D. A claim arising before the conservatorship; and

E. All other claims.

5. Preference of claims. Preference may not be given in the payment of a claim under subsection 4 over another claim of the same class. A claim due and payable may not be preferred over a claim not due unless:

A. Doing so would leave the conservatorship estate without sufficient funds to pay the basic living and health care expenses of the individual subject to conservatorship; and

B. The court authorizes the preference under section 5-414, subsection 1, paragraph H.

6. Security interest in conservatorship estate. If assets of a conservatorship estate are adequate to meet all existing claims, the court, acting in the best interest of the individual subject to conservatorship, may order the conservator to grant a security interest in the conservatorship estate for payment of a claim at a future date.

§ 5-429. Personal liability of conservator

1. Not personally liable. Except as otherwise agreed by a conservator, the conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the conservatorship estate unless the conservator fails to reveal in the contract or before entering into the contract the conservator's representative capacity.

2. Personally liable. A conservator is personally liable for an obligation arising from control of property of the conservatorship estate or an act or omission occurring in the course of administration of the conservatorship estate only if the conservator is personally at fault.

3. Claims asserted against conservator. A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from control of property included in the conservatorship estate or a claim based on a tort committed in the course of administration of the conservatorship estate may be asserted against the conservatorship estate in a proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

4. Determination of liability. A question of liability between a conservatorship estate and the conservator personally may be determined in a proceeding for accounting, surcharge or indemnification or another appropriate proceeding or action.

§ 5-430. Removal of conservator; appointment of successor

1. Removal by court. The court may remove a conservator for failure to perform the conservator's duties or other good cause and appoint a successor conservator to assume the duties of the conservator.

2. Hearing upon petition, communication or determination. The court shall conduct a hearing to determine whether to remove a conservator and appoint a successor on:

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

B. Communication from the individual subject to conservatorship, conservator or person interested in the welfare of the individual that supports a reasonable belief that removal of the conservator and appointment of a successor may be appropriate; or

C. Determination by the court that a hearing would be in the best interest of the individual subject to conservatorship.

3. Notice of petition. Notice of a petition under subsection 2, paragraph A must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

4. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to remove the conservator and have a successor appointed is not represented by an attorney, the court shall appoint an attorney under the same conditions as in section 5-406. The court shall award reasonable attorney's fees to the attorney for the individual as provided in section 5-119.

5. Selection of successor conservator. In selecting a successor conservator, the court shall follow the procedures under section 5-410.

6. Notice of appointment of successor conservator. Not later than 30 days after appointing a successor conservator, the court shall give notice of the appointment to the individual subject to conservatorship and all persons entitled to the notice under section 5-411, subsection 5 or a subsequent order.

§ 5-431. Termination or modification of conservatorship

1. Conservatorship for a minor. A conservatorship for a minor terminates on the earlier of:

- A. An order of the court;
- B. The minor becoming an adult or, if the minor consents or the court finds by clear and convincing evidence that substantial harm to the minor's interests is otherwise likely, attaining 21 years of age;
- C. Emancipation of the minor; and
- D. Death of the minor.

2. Conservatorship for an adult. A conservatorship for an adult terminates on order of the court or when the adult dies.

3. Petition for termination or modification. An individual subject to conservatorship, the conservator or a person interested in the welfare of the individual may petition for:

- A. Termination of the conservatorship on the ground that a basis for appointment under section 5-401 does not exist or termination would be in the best interest of the individual, or for other good cause; or
- B. Modification of the conservatorship on the ground that the extent of protection or assistance granted is not appropriate, or for other good cause.

4. Hearing. The court shall conduct a hearing to determine whether termination or modification of a conservatorship is appropriate on:

- A. Petition under subsection 3 that contains allegations that, if true, would support a reasonable belief that termination or modification of the conservatorship may be appropriate, but the court may decline to hold a hearing if a petition based on the same or substantially similar facts was filed within the preceding 6 months;
- B. A communication from the individual subject to conservatorship, the conservator or a person interested in the welfare of the individual that supports a reasonable belief that termination or modification of the conservatorship may be appropriate, including because of a change in the functional needs of the individual or in the supports or services available to the individual;
- C. A report from a guardian or conservator that indicates that termination or modification may be appropriate because the functional needs or supports or services available to the

individual subject to conservatorship have changed or a protective arrangement of conservatorship or other less restrictive alternatives are available; or

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

5. Notice of petition. Notice of a petition under subsection 3 must be given to the individual subject to conservatorship, the conservator and such other persons as the court determines.

6. Termination. On presentation of prima facie evidence for termination of a conservatorship, the court shall order termination unless a basis for appointment of a conservator under section 5-401 is satisfied.

7. Modification. The court shall modify the powers granted to a conservator if the powers are excessive or inadequate due to a change in the abilities or limitations of the individual subject to conservatorship, the individual's supports or other circumstances.

8. Safeguard rights of individual. Unless the court otherwise orders for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the individual subject to conservatorship that apply to a petition for conservatorship.

9. Attorney for individual subject to conservatorship. If an individual subject to conservatorship who seeks to terminate or modify the terms of the conservatorship is not represented by an attorney, the court shall appoint an attorney under the same conditions in section 5-406. The court shall award reasonable attorney's fees to the individual's attorney as provided in section 5-119.

10. Property; report; petition for discharge. On termination of a conservatorship and whether or not formally distributed by the conservator, property of the conservatorship estate passes to the individual formerly subject to conservatorship or ~~other persons entitled to the property~~the individual's heirs, successors or assigns. The order of termination must provide for expenses of administration and direct the conservator to file a final report and petition for discharge on approval of the final report.

11. Discharge. The court shall enter a final order of discharge on the approval of the final report and satisfaction by the conservator of any other condition placed by the court on the conservator's discharge.

12. Distribution. On the death of an individual subject to conservatorship or other event terminating or partially terminating the conservatorship, the conservator shall proceed expeditiously to distribute the conservatorship estate to the individual or other persons entitled to it. The conservator may take reasonable measures necessary to preserve the conservatorship estate until distribution can be effected.

Maine Comment

Section 5-431(10) provides for distribution to ‘other persons entitled to the property’, which entitlement will be determined by the applicable decedent’s estate provisions of Title 18-C, rather than the Uniform Act’s ambiguous reference to ‘heirs, successor or assigns’.

PART 5

OTHER PROTECTIVE ARRANGEMENTS

§ 5-501. Authority for protective arrangements

1. Order protective arrangement. Under this Part, a court:

A. Upon receiving a petition for a guardianship for an adult may order one or more protective arrangements instead of guardianship as a less restrictive alternative to guardianship; and

B. Upon receiving a petition for a conservatorship for an individual may order one or more protective arrangements instead of conservatorship as a less restrictive alternative to conservatorship.

2. Protective arrangement instead of guardianship. A person interested in an adult's welfare, including the adult or a conservator for the adult, may petition under this Part for one or more protective arrangements instead of guardianship.

3. Protective arrangement instead of conservatorship. The following persons may petition under this Part for one or more protective arrangements instead of conservatorship:

A. The individual for whom the protective arrangements are sought;

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

C. The guardian of the individual.

Maine Comment: In contrast to the Uniform Probate Code, this section expressly refers to one or more protective arrangements instead of a guardianship or conservatorship in recognition that a petition may include more than one protective arrangement.

§ 5-502. Basis for protective arrangements instead of guardianship for adult

1. Findings. After the hearing conducted on a petition for guardianship under section 5-302 or one or more protective arrangements instead of guardianship under

section 5-501, subsection 21, the court may enter an order for one or more protective arrangements instead of guardianship under subsection 2 if the court finds by clear and convincing evidence that:

A. The respondent lacks the ability to meet essential requirements for physical health, safety or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, ~~after the court's consideration of the respondent's ability to use even with~~ appropriate supportive services, technological assistance or supported decision making ~~that provides adequate protection for the respondent~~; and

B. The respondent's identified needs cannot be met by ~~appropriate~~ less restrictive alternatives ~~that provide adequate protection for the respondent~~.

2. Orders other than guardianship. If the court makes the findings under subsection 1, the court, instead of appointing a guardian, may:

A. Authorize or direct one or more transactions necessary to meet the respondent's need for health, safety or care, including but not limited to:

(1) One or more particular medical treatments or refusals of particular medical treatments;

(2) A move to a specified place of dwelling; or

(3) Visitation or supervised visitation between the respondent and another person;

B. Restrict access to the respondent by a person whose access places the respondent at serious risk of physical or psychological harm; and

C. Order other arrangements on a limited basis that are appropriate.

3. Factors. In deciding whether to enter an order under this section, the court shall consider the factors under sections 5-313 and 5-314 that a guardian must consider when making a decision on behalf of an adult subject to guardianship.

Maine Comment: In contrast to the Uniform Probate Code, this section expressly permits the court to authorize one or more transactions in recognition that a petition may include more than one protective arrangement.

§ 5-503. Basis for protective arrangements instead of conservatorship for adult or minor

1. Findings. After the hearing conducted on a petition for conservatorship for an adult under section 5-402 or one or more protective arrangements instead of conservatorship for an adult under section 5-501, subsection 3, the court may enter an order for one or more protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds:

A. By clear and convincing evidence that the respondent is unable to manage property or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provide adequate protection for the respondent, or the adult is missing, detained or unable to return to the United States;

B. By a preponderance of the evidence that:

(1) The respondent has property likely to be wasted or dissipated unless management is provided; or

(2) The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the adult or an individual who is entitled to the respondent's support and protection; and

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

2. Protective arrangements for minors. After the hearing conducted on a petition for conservatorship for a minor under section 5-402 or a protective arrangement instead of conservatorship for a minor under section 5-501, subsection 3, the court may enter an order for a protective arrangement or protective arrangements instead of conservatorship under subsection 3 for the respondent if the court finds by a preponderance of the evidence that the minor owns money or property requiring management or protection that cannot be provided otherwise and:

A. The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor's age; or

B. The order under subsection 3 is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the minor.

3. Orders other than conservatorship. If the court makes the findings under subsection 1 or 2, the court, instead of appointing a conservator, may:

A. Authorize or direct a transaction necessary to protect the financial interest or property of the respondent, including but not limited to:

(1) An action to establish eligibility for benefits;

(2) Payment, delivery, deposit or retention of funds or property;

(3) Sale, mortgage, lease or other transfer of property;

(4) Purchase of an annuity;

(5) Entry into a contractual relationship, including a contract to provide for personal care, supportive services, education, training or employment;

(6) Addition to or establishment of a trust;

(7) Creation, modification, amendment, or revocation of a will or a codicil;

(87) Ratification or invalidation of a contract, trust, will or other transaction, including a transaction related to the property or business affairs of the respondent; or

(98) Settlement of a claim; or

B. Restrict access to the respondent's property by a person whose access to the property places the respondent at serious risk of financial harm.

4. Order to restrict access. If, A after the hearing conducted under section 5-505 on a petition under section 5-501, subsection 1, paragraph B or section 5-501, subsection 3, a court may enter an order to restrict access to the respondent or the respondent's property by a person if that the court finds by clear and convincing evidence that the person:

A. Through fraud, coercion, duress or the use of deception and control, caused ~~or~~ ~~or~~ attempted to cause ~~, or may likely cause an action that would have resulted in~~ financial harm to the respondent or the respondent's property; ~~or~~ and

B. Poses a **significant serious**-risk of ~~substantial financial~~ harm to the respondent or the respondent's property.

5. Factors. In deciding whether to enter an order under subsection 3 or 4, the court shall consider the factors under section 5-418 a conservator must consider when making a decision on behalf of an individual subject to conservatorship.

6. Minors; factors. In deciding whether to enter an order under subsection 3 or 4 for a respondent who is a minor, the court also shall consider the best interest of the respondent, the preference of the parents of the respondent and the preference of the respondent if the minor is 14 years of age or older.

Maine Comment: Consistent with the Uniform Probate Code, subsection 1(A) of this section requires proof by clear and convincing evidence that the respondent is unable to manage property

or financial affairs because of a limitation in the ability to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making, or the adult is missing, detained or unable to return to the United States. However subsection 1(B) of this section reduces the burden of proof to a preponderance of evidence for the required findings that the respondent has property likely to be wasted or dissipated unless management is provided or the order is necessary or desirable to obtain or provide money needed for the support, care, education, health or welfare of the adult or an individual who is entitled to the respondent's support and protection; and the respondent's identified needs cannot be met by less restrictive alternatives.

§ 5-504. Petition

1. Petition contents. A petition for one or more protective arrangements instead of guardianship or conservatorship must set forth the petitioner's name, principal residence, current street address, if different, relationship to the respondent and interest in the protective arrangements and state or contain the following to the extent known:

A. The respondent's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the respondent will reside if the petition is granted;

B. The name and address of the respondent's:

(1) Spouse or domestic partner or, if the respondent has none, any adult with whom the respondent has shared household responsibilities for more than 6 months in the 12-month period before the filing of the petition;

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

(3) Adult stepchildren whom the respondent actively parented during the stepchildren's minor years and with whom the respondent had an ongoing relationship within 2 years before the filing of the petition;

C. The name and current address of each of the following, if applicable:

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

(2) Any attorney currently representing the respondent;

(3) The representative payee appointed by the United States Social Security Administration for the respondent;

(4) A guardian or conservator acting for the respondent in this State or in another jurisdiction;

(5) A trustee or custodian of a trust or custodianship of which the respondent is a beneficiary;

(6) The United States Department of Veterans Affairs fiduciary for the respondent;

(7) An agent designated under a power of attorney for health care in which the respondent is identified as the principal;

(8) An agent designated under a power of attorney for finances in which the respondent is identified as the principal;

(9) A person nominated as guardian or conservator by the respondent;

(10) A person nominated as guardian by the respondent's parent or spouse or domestic partner in a will or other signed record;

(11) A proposed guardian and the reason the proposed guardian should be selected;

(12) A person known to have routinely assisted the respondent with decision making within the 6 months before the filing of the petition; and

(13) If the respondent is a minor:

(a) An adult with whom the respondent resides if not otherwise listed; and

(b) Any person not otherwise listed that had primary care or custody of the respondent for 60 or more days during the 2 years immediately preceding the filing of the petition or any person that had primary care or custody of the respondent for at least 730 days during the 5 years immediately preceding the filing of the petition;

D. The nature of the protective arrangement or protective arrangements sought;

E. The reason a protective arrangement sought is necessary, including a brief description of:

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

(2) Any less restrictive alternatives for meeting the respondent's alleged need that have been considered or implemented and, if there are none, the reason they have not been considered or implemented; and

(3) The reason other less restrictive alternatives are insufficient to meet the respondent's alleged need;

F. The name and current address, if known, of any person with whom the petitioner seeks to limit the respondent's contact;

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

H. If one or more protective arrangements instead of conservatorship are sought, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

I. If one or more protective arrangements instead of guardianship are sought and the respondent has property other than personal effects, a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

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

§ 5-505. Notice and hearing

1. Date, time and place for hearing. On receipt of a petition under section 5-501, the court shall set a date, time and place for hearing on the petition.

2. Notice to respondent. A copy of a petition under section 5-501 and notice of the hearing under subsection 1 must be served personally on the respondent. The notice must inform the respondent of the respondent's rights at the hearing including the right to an attorney and to attend the hearing. The notice must also include a description of the nature, purpose and consequences of granting the petition. Failure to serve the respondent with notice substantially complying with this subsection precludes the court from granting the petition.

3. Notice to others. In a hearing under subsection 1, notice of the hearing also must be given to the persons listed in the petition and any other person interested in the respondent's welfare as the court determines. Failure to give notice under this subsection does not preclude the court from granting the petition.

4. Notice of petition after order. Notice of a hearing on a petition filed under this Act after the court has ordered a protective arrangement or protective arrangements

under this Part, together with a copy of the petition, must be given to the respondent and any other person as the court determines.

§ 5-506. Appointment of visitor

1. Petition for protective arrangement. On receipt of a petition for one or more protective arrangements instead of guardianship for an adult under section 5-501, the court shall appoint a visitor. A visitor appointed under this subsection must be an individual having training or experience in the type of abilities, limitations and needs alleged in the petition.

2. Protective order for minor. On receipt of a petition for a protective order instead of conservatorship for a minor under section 5-501, the court may appoint a visitor to investigate a matter related to the petition or to inform the respondent or a parent of the respondent about the petition or a related matter.

3. Protective order for adult. On receipt of a petition for a protective order instead of conservatorship for an adult under section 5-501, the court shall appoint a visitor unless the respondent is represented by an attorney.

4. Visitor's duties. A visitor appointed under subsection 1 or 3 shall interview the respondent in person and, in a manner the respondent is best able to understand:

A. Explain to the respondent the substance of the petition, the nature, purpose and effect of the proceeding, and the respondent's rights at the hearing;

B. Determine the respondent's views, preferences and values with respect to the order sought;

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

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

53. Additional Visitor duties. In addition to the duties imposed by subsection 4, the visitor shall perform any duties that the court may direct, which may include:

~~A.E. If the petitioner seeks an order related to the dwelling of the respondent, V~~visiting the respondent's present dwelling and any dwelling in which it is reasonably believed the respondent will live if the order is granted;

~~B.F. Obtaining If one or more protective arrangements instead of guardianship are sought, obtain~~ information from any physician or other person known to have treated, advised or assessed the respondent's relevant physical or mental condition;

~~CG. If one or more protective arrangements instead of conservatorship are sought, reviewing financial records of the respondent if relevant to the visitor's recommendation under subsection 5, paragraph C; and, and~~

~~DH. Investigating the allegations in the petition and any other matter relating to the petition as the court directs, and.~~

~~E. Determining the respondent's medical conditions, cognitive functioning, every day functioning, preferences, values, and levels of supervision needed.~~

65. Report. A visitor under this section promptly shall file a report in a record with the court, which, in addition to reporting on the additional visitor duties directed by the court under subsection 5 above, must include:

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

B. To the extent relevant to the order sought, a summary of self-care, independent living tasks and financial management tasks the respondent can manage without assistance or with existing supports, or could manage with the assistance of appropriate supportive services, technological assistance or supported decision that provide making adequate protections for the respondent and cannot manage;

C. To the extent relevant to the order sought, a summary of the respondent's medical conditions, cognitive functioning, everyday functioning, values and preferences, risks and levels of supervision needed, and any means to enhance the respondent's capacity;

~~D~~C. Recommendations regarding the appropriateness of the protective arrangement sought and whether less restrictive alternatives for meeting the respondent's needs are available;

~~E~~D. If the petition seeks to change the physical location of the dwelling of the respondent, a statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to the respondent's dwelling;

~~E~~F. A recommendation whether a professional evaluation under section 5-508 is necessary;

~~G~~F. A statement whether the respondent wishes to attend a hearing, after being informed of the right to attend the hearing, the purposes of the hearing and the potential consequences of failing to do so;

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

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

I.H. Any other matter as the court directs.

§ 5-507. Appointment and role of attorney

1. Appointment of attorney. The court shall appoint an attorney to represent the respondent in a proceeding under this Part if:

A. Requested by the respondent;

B. Recommended by the visitor;

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

D. It comes to the court's attention that the respondent wishes to contest any aspect of the proceeding or to seek any limitations on the protective arrangement.

2. Attorney's duties. An attorney representing the respondent in a proceeding under this Part shall:

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

B. Advocate for the respondent's wishes to the extent reasonably ascertainable; and

C. If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive option in type, duration and scope, consistent with the respondent's interests.

3. Attorney for parent of minor. The court shall appoint an attorney to represent a parent of a minor who is the subject of a proceeding under this Part if:

A. The parent objects to the entry of an order for a protective arrangement or protective arrangements instead of guardianship or conservatorship;

B. The court determines that counsel is needed to ensure that consent to the entry of an order for one or more protective arrangements is informed; or

C. The court otherwise determines the parent needs representation.

Maine Comment: This section deviates from the Uniform Probate Code in that, instead of appointing an attorney in all situations, the court is merely required to appoint an attorney for the respondent if requested by the respondent, recommended by the visitor, or if the court determines that the respondent needs representation. Subsection 1(D) of this section gives even more flexibility for the court to appoint an attorney if it comes to the court's attention that the respondent wishes to contest or seek a limitation to the proceeding or protective arrangement.

§ 5-508. Professional evaluation

1. Order professional evaluation. At or before a hearing on a petition under this Part for a protective arrangement, the court shall order a professional evaluation of the respondent:

- A. If the respondent requests the evaluation; or
- B. Unless the court finds that it has sufficient information to determine the respondent's needs and abilities without the evaluation.

2. Examination; report. If the court orders an evaluation under subsection 1, the respondent must be examined by a licensed physician or psychologist approved by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest. The individual conducting the evaluation promptly shall file a report in a record with the court. Unless otherwise directed by the court, the report must contain:

- A. A description of the nature, type and extent of the respondent's cognitive and functional abilities and limitations;
- B. An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior and social skills;
- C. A prognosis for improvement, including with regard to the ability to manage the respondent's property and financial affairs if a limitation in that ability is alleged, and recommendation for the appropriate treatment, support or habilitation plan; and
- D. The date of the examination on which the report is based.

3. Right to decline. The respondent has the right to decline to participate in an evaluation ordered under subsection 1. If the respondent declines to participate in an evaluation pursuant to Section 1, above, or the respondent refuses to provide medical reports, the court may enter an order for a protective arrangement without such report or supporting medical reports, if the court otherwise finds that there is a basis for such an order in accordance with section 5-401.

Maine Comment: Subsection 2 of this section limits the professionals who may examine a respondent to a licensed physician or psychologist approved by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities limitations, in comparison to the Uniform Probate Code's broader list of professionals which adds a social worker or other individual appointed by the court who is qualified to evaluate the respondent's alleged cognitive and functional abilities limitations.

§ 5-509. Attendance and rights at hearing

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

2. Hearing without respondent; findings. A hearing under this Part may proceed without the respondent in attendance if the court finds by clear and convincing evidence that:

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

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

C. The respondent is represented by an attorney and the attorney represents that the respondent does not want to attend the hearing;

D. The visitor has confirmed with the respondent that the respondent has no objection to the protective arrangements and that the respondent does not wish to attend the hearing; or

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

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

4. Attorney for respondent. The respondent has a right to choose an attorney to represent the respondent at a hearing under this Part.

5. Rights of respondent at hearing. At a hearing under this Part, the respondent may:

A. Present evidence and subpoena witnesses and documents;

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

C. Otherwise participate in the hearing.

6. Closed upon request; good cause. A hearing under this Part must be closed on request of the respondent and a showing of good cause.

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

Maine Comment: Subsection 2(C) of this section permits a hearing to proceed without the presence of the respondent if the respondent is represented by an attorney and the attorney attends the hearing and represents that the respondent does not wish to attend the hearing, in recognition of the authority of the respondent's attorney to represent the respondent alone if the respondent so wishes.

§ 5-510. Notice of order

The court shall give notice of an order under this Part to the individual who is the subject of the protective arrangements instead of guardianship or conservatorship, a person whose access to the respondent is restricted by the order and any other person as the court determines.

§ 5-511. Confidentiality of records

1. Matter of public record; exceptions. Only t~~The existence of a proceeding for or the existence of one or more protective arrangements instead of a guardianship or conservatorship is a matter of public record.~~unless the court seals the record after:

~~A. The respondent, the individual subject to the protective arrangements or the parent of a minor subject to the protective arrangements requests the record be sealed; and~~

~~B. Either:~~

~~(1) The proceeding is dismissed;~~

~~(2) The protective arrangement is no longer in effect; or~~

~~(3) Any act authorized by the order granting the protective arrangement has been completed.~~

2. Access to records. A respondent, an individual subject to a proceeding for one or more protective arrangements instead of guardianship or conservatorship, an attorney designated by the respondent or individual, a parent of a minor subject to one or more protective arrangements, petitioner on a petition for protective arrangement, the court appointed visitor, all parties listed in the petition under section 5-504, subsection 1(B) and (C), counsel for any of the foregoing, and any other person the court determines, are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this

subsection may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangements or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

3. Reports sealed; availability. A report of a visitor or professional evaluation generated in the course of a proceeding under this Part must be sealed on filing but is available to:

A. The court;

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

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

D. Unless the court directs otherwise, an agent appointed under a power of attorney for finances in which the respondent is identified as the principal;

E. If the order is for one or more protective arrangements instead of guardianship and unless the court directs otherwise, an agent appointed under a power of attorney for health care in which the respondent is identified as the principal; and

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