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AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; AMENDING ARTICLE 5 OF THE UNIFORM PROBATE CODE ADDRESSING SEPARATE ACCOUNTS AND RECORDS, LIABILITY OF A GUARDIAN OR CONSERVATOR, VOTING RIGHTS OF A PROTECTED PERSON, NOTICE, CONFIDENTIALITY, VISITATION, ALTERNATE PROTECTIVE ARRANGEMENTS, WAIVERS OF LIABILITY AND BONDING; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Part 1 of Article 5 of the Uniform Probate Code, Section 45-5-107 NMSA 1978, is enacted to read:

"45-5-107. SEPARATE ACCOUNTS AND RECORDS.--

A. A guardian or conservator shall not commingle the guardian's or conservator's funds or investments with those held by the guardian or conservator as a fiduciary for a minor or an adult. Funds and any investments held by the guardian or conservator as a fiduciary for the minor or the adult shall be held in accounts that are separate from those of the guardian or conservator. If a guardian or conservator serves as fiduciary for one or more individuals subject to guardianship or conservatorship, the guardian or conservator shall hold the funds and any investments held as a fiduciary in a separate account for each individual subject to

1 guardianship or conservatorship. Except as otherwise  
2 provided in the Uniform Probate Code, and to the extent that  
3 is reasonable and customary, any other property held by the  
4 guardian or conservator as a fiduciary for one or more  
5 individuals subject to guardianship or conservatorship shall  
6 be titled separately:

7 (1) from the guardian's or conservator's  
8 property; and

9 (2) for each individual subject to  
10 guardianship or conservatorship.

11 B. A court at any time may require a guardian to  
12 bring a proceeding for a conservatorship if necessary or  
13 advisable to:

14 (1) protect property of a minor or an adult,  
15 including any property held by the guardian as a fiduciary  
16 for the minor or the adult;

17 (2) conserve for the minor's future needs  
18 all funds of the minor not expended for the minor's current  
19 needs; or

20 (3) conserve for the adult's future needs  
21 all funds of the adult not expended for the adult's current  
22 needs.

23 C. The guardian or conservator shall maintain  
24 those books and records that are in the possession, custody  
25 or control of the guardian or conservator and that concern

1 the funds, investments or other property held by the guardian  
2 or conservator as a fiduciary for an individual for seven  
3 years, or for such other period as may be provided by the  
4 court."

5 SECTION 2. A new section of Part 1 of Article 5 of the  
6 Uniform Probate Code, Section 45-5-108 NMSA 1978, is enacted  
7 to read:

8 "45-5-108. LIABILITY OF GUARDIAN OR CONSERVATOR FOR ACT  
9 OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR CONSERVATORSHIP.--A  
10 guardian or conservator is not personally liable to another  
11 person solely because of the guardianship or conservatorship  
12 for an act or omission of the individual subject to  
13 guardianship or conservatorship."

14 SECTION 3. A new section of Part 1 of Article 5 of the  
15 Uniform Probate Code, Section 45-5-109 NMSA 1978, is enacted  
16 to read:

17 "45-5-109. VOTING RIGHTS.--The voting rights of a  
18 protected person shall not be abridged or restricted except  
19 pursuant to Article 7, Section 1 of the constitution of  
20 New Mexico."

21 SECTION 4. Section 45-5-303 NMSA 1978 (being Laws 1989,  
22 Chapter 252, Section 5, as amended) is amended to read:

23 "45-5-303. PROCEDURE FOR COURT APPOINTMENT OF A  
24 GUARDIAN OF AN INCAPACITATED PERSON.--

25 A. An interested person may petition for

1 appointment of a guardian for an alleged incapacitated  
2 person.

3 B. A petition under Subsection A of this section  
4 shall state the petitioner's name, principal residence,  
5 current street address, if different, relationship to the  
6 alleged incapacitated person, interest in the appointment,  
7 the name and address of any attorney representing the  
8 petitioner and, to the extent known, the following:

9 (1) the alleged incapacitated person's name,  
10 age, principal residence, current street address, if  
11 different, and, if different, address of the dwelling in  
12 which it is proposed that the alleged incapacitated person  
13 will reside if the petition is granted;

14 (2) the name and address of the alleged  
15 incapacitated person's:

16 (a) spouse, or, if the alleged  
17 incapacitated person has none, an adult with whom the alleged  
18 incapacitated person is in a long-term relationship of  
19 indefinite duration in which the individual has demonstrated  
20 an actual commitment to the alleged incapacitated person  
21 similar to the commitment of a spouse and in which the  
22 individual and the alleged incapacitated person consider  
23 themselves to be responsible for each other's well-being;

24 (b) adult children or, if none, each  
25 parent and adult sibling of the alleged incapacitated person

1 or, if none, at least one adult nearest in kinship to the  
2 alleged incapacitated person who can be found with reasonable  
3 diligence; and

4 (c) adult stepchildren whom the alleged  
5 incapacitated person actively parented during the  
6 stepchildren's minor years and with whom the alleged  
7 incapacitated person had an ongoing relationship in the  
8 two-year period immediately preceding the filing of the  
9 petition;

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

12 (a) a person responsible for care of  
13 the alleged incapacitated person;

14 (b) any attorney currently representing  
15 the alleged incapacitated person;

16 (c) any representative payee appointed  
17 by the federal social security administration for the alleged  
18 incapacitated person;

19 (d) a guardian or conservator acting  
20 for the alleged incapacitated person in New Mexico or in  
21 another jurisdiction;

22 (e) a trustee or custodian of a trust  
23 or custodianship of which the alleged incapacitated person is  
24 a beneficiary;

25 (f) any fiduciary for the alleged

1 incapacitated person appointed by the federal department of  
2 veterans affairs;

3 (g) an agent designated under a power  
4 of attorney for health care in which the alleged  
5 incapacitated person is identified as the principal;

6 (h) an agent designated under a power  
7 of attorney for finances in which the alleged incapacitated  
8 person is identified as the principal;

9 (i) a person nominated as guardian by  
10 the alleged incapacitated person;

11 (j) a person nominated as guardian by  
12 the alleged incapacitated person's parent or spouse in a will  
13 or other signed record;

14 (k) a proposed guardian and the reason  
15 the proposed guardian should be selected; and

16 (l) a person known to have routinely  
17 assisted the alleged incapacitated person with decision  
18 making during the six months immediately preceding the filing  
19 of the petition;

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

22 (a) the nature and extent of the  
23 alleged incapacitated person's alleged need;

24 (b) any least restrictive alternative  
25 for meeting the alleged incapacitated person's alleged need

1 that has been considered or implemented;

2 (c) if no least restrictive alternative  
3 has been considered or implemented, the reason it has not  
4 been considered or implemented; and

5 (d) the reason a least restrictive  
6 alternative instead of guardianship is insufficient to meet  
7 the alleged incapacitated person's alleged need;

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

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

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

15 (8) the name and current address, if known,  
16 of any person with whom the petitioner seeks to limit the  
17 alleged incapacitated person's contact;

18 (9) if the alleged incapacitated person has  
19 property other than personal effects, a general statement of  
20 the alleged incapacitated person's property, with an estimate  
21 of its value, including any insurance or pension, and the  
22 source and amount of other anticipated income or receipts;  
23 and

24 (10) whether the alleged incapacitated  
25 person needs an interpreter, translator or other form of

1 support to communicate effectively with the court or  
2 understand court proceedings.

3 C. Notice of a petition under this section for the  
4 appointment of a guardian and the hearing on the petition  
5 shall be given as provided in Section 45-5-309 NMSA 1978.

6 D. After the filing of a petition, the court shall  
7 set a date for hearing on the issues raised by the petition.  
8 Unless an alleged incapacitated person already has an  
9 attorney of the alleged incapacitated person's own choice,  
10 the court shall appoint an attorney to represent the alleged  
11 incapacitated person. The court-appointed attorney in the  
12 proceeding shall have the duties of a guardian ad litem, as  
13 set forth in Section 45-5-303.1 NMSA 1978.

14 E. The person alleged to be incapacitated shall be  
15 examined by a qualified health care professional appointed by  
16 the court who shall submit a report in writing to the court.  
17 The report shall:

18 (1) describe the nature and degree of the  
19 alleged incapacitated person's incapacity, if any, and the  
20 level of the alleged incapacitated person's intellectual,  
21 developmental and social functioning; and

22 (2) contain observations, with supporting  
23 data, regarding the alleged incapacitated person's ability to  
24 make health care decisions and manage the activities of daily  
25 living.



1 F. The court shall appoint a visitor who shall  
2 interview the person seeking appointment as guardian and the  
3 person alleged to be incapacitated. The visitor shall also  
4 visit the present place of abode of the person alleged to be  
5 incapacitated and the place where it is proposed the alleged  
6 incapacitated person will be detained or reside if the  
7 requested appointment is made. The visitor shall evaluate  
8 the needs of the person alleged to be incapacitated and shall  
9 submit a written report to the court. The report shall  
10 include a recommendation regarding the appropriateness of the  
11 appointment of the proposed guardian. The report to the  
12 court shall also include recommendations regarding:

13 (1) those aspects of personal care that the  
14 alleged incapacitated person can manage without supervision  
15 or assistance;

16 (2) those aspects of personal care that the  
17 alleged incapacitated person could manage with the  
18 supervision or assistance of support services and benefits;  
19 and

20 (3) those aspects of personal care that the  
21 alleged incapacitated person is unable to manage without the  
22 supervision of a guardian.

23 Unless otherwise ordered by the court, the appointment  
24 of the visitor terminates and the visitor is discharged from  
25 the visitor's duties upon entry of an order appointing a

1 guardian and acceptance of the appointment by the guardian.

2 G. A person alleged to be incapacitated shall be  
3 present at the hearing on the issues raised by the petition  
4 and any response to the petition unless the court determines  
5 by evidence that it is not in the alleged incapacitated  
6 person's best interest to be present because of a threat to  
7 the health or safety of the alleged incapacitated person or  
8 others as determined by the court.

9 H. The court upon request or its own motion may  
10 conduct hearings at the location of the alleged incapacitated  
11 person who is unable to be present in court.

12 I. The rules of evidence shall apply and no  
13 hearsay evidence that is not otherwise admissible in a court  
14 shall be admitted into evidence except as otherwise provided  
15 in this article. There is a legal presumption of capacity,  
16 and the burden of proof shall be on the petitioner to prove  
17 the allegations set forth in the petition. Such proof shall  
18 be established by clear and convincing evidence.

19 J. The existence of a proceeding for or the  
20 existence of a guardianship for an adult is a matter of  
21 public record unless the court seals the record after:

22 (1) the alleged incapacitated person or  
23 individual subject to guardianship requests that the record  
24 be sealed; and

25 (2) either:

1 (a) the petition for guardianship is  
2 dismissed; or

3 (b) the guardianship is terminated.

4 K. An alleged incapacitated person or the  
5 protected person subject to a proceeding for a guardianship,  
6 whether or not a guardian is appointed, an attorney  
7 designated by the alleged incapacitated person or the  
8 protected person and a person entitled to notice are entitled  
9 to access court records of the proceeding and resulting  
10 guardianship. A person not otherwise entitled to access  
11 court records under this subsection for good cause may  
12 petition the court for access to court records of the  
13 guardianship. The court shall grant access if access is in  
14 the best interest of the alleged incapacitated person or the  
15 protected person or furthers the public interest and does not  
16 endanger the welfare or financial interests of the alleged  
17 incapacitated person or the protected person.

18 L. A report pursuant to Subsections E and F of  
19 this section or a written report filed pursuant to  
20 Section 45-5-303.1 NMSA 1978 is confidential and shall be  
21 sealed on filing, but is available to:

22 (1) the court;

23 (2) the alleged incapacitated person who is  
24 the subject of the report or evaluation, without limitation  
25 as to use;

1 (3) the petitioner, visitor, guardian ad  
2 litem and an attorney of record for purposes of the  
3 proceeding;

4 (4) unless the court orders otherwise, an  
5 agent appointed under a power of attorney for health care or  
6 power of attorney for finances in which the alleged  
7 incapacitated person is the principal; and

8 (5) any other person if it is in the public  
9 interest, as determined by the court, or for a purpose the  
10 court orders for good cause.

11 M. Notwithstanding the provisions of Subsection J  
12 of this section, a disclosure of information shall not  
13 include diagnostic information, treatment information or  
14 other medical or psychological information.

15 N. The issue of whether a guardian shall be  
16 appointed for the alleged incapacitated person shall be  
17 determined by the court at an open hearing unless, for good  
18 cause, the court determines otherwise.

19 O. Upon request of the petitioner or alleged  
20 incapacitated person, the court shall schedule a jury trial."

21 SECTION 5. Section 45-5-309 NMSA 1978 (being Laws 1975,  
22 Chapter 257, Section 5-309, as amended) is amended to read:

23 "45-5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS.--

24 A. On filing of a petition under Section 45-5-303  
25 NMSA 1978 for appointment of a guardian for an alleged

1 incapacitated person, the court shall set a date, time and  
2 place for hearing the petition.

3 B. A copy of a petition under Section 45-5-303  
4 NMSA 1978 and notice of a hearing on the petition shall be  
5 served personally on the alleged incapacitated person. The  
6 notice shall inform the alleged incapacitated person of the  
7 alleged incapacitated person's rights at the hearing and the  
8 right to attend the hearing. The notice shall include a  
9 description of the nature, purpose and consequences of  
10 granting the petition. The court shall not grant the  
11 petition if notice substantially complying with this  
12 subsection is not served on the alleged incapacitated person.

13 C. In a proceeding on a petition under  
14 Section 45-5-303 NMSA 1978, the notice required under  
15 Subsection B of this section shall be given to the persons  
16 required to be listed in the petition under Section 45-5-303  
17 NMSA 1978 and any other person interested in the alleged  
18 incapacitated person's welfare that the court determines.  
19 Failure to give notice under this subsection does not  
20 preclude the court from appointing a guardian.

21 D. After the appointment of a guardian, notice of  
22 a hearing on a petition for any order under Part 3 of  
23 Chapter 45, Article 5 NMSA 1978, together with a copy of the  
24 petition, shall be given to:

25 (1) the protected person subject to

1 guardianship;

2 (2) the guardian; and

3 (3) any other person the court determines."

4 SECTION 6. Section 45-5-312 NMSA 1978 (being Laws 1975,  
5 Chapter 257, Section 5-312, as amended) is amended to read:

6 "45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED  
7 GUARDIAN AND GUARDIAN.--

8 A. If the court enters judgment pursuant to  
9 Subsection C of Section 45-5-304 NMSA 1978, it shall appoint  
10 a limited guardian if it determines that the protected person  
11 is able to manage some but not all aspects of personal care.  
12 The court shall specify those powers that the limited  
13 guardian shall have and may further restrict each power so as  
14 to permit the protected person to care for the protected  
15 person's own self commensurate with the protected person's  
16 ability to do so. A person for whom a limited guardian has  
17 been appointed retains all legal and civil rights except  
18 those that have been specifically granted to the limited  
19 guardian by the court. The limited guardian shall exercise  
20 supervisory powers over the protected person in a manner that  
21 is the least restrictive form of intervention consistent with  
22 the order of the court.

23 B. A guardian of a protected person has the same  
24 powers, rights and duties respecting the protected person  
25 that a parent has respecting an unemancipated minor child,

1 except that a guardian is not legally obligated to provide  
2 from the guardian's own funds for the protected person and is  
3 not liable to third persons for acts of the protected person  
4 solely by reason of the guardianship. In particular and  
5 without qualifying the foregoing, a guardian or the  
6 guardian's replacement has the following powers and duties,  
7 except as modified by order of the court:

8 (1) to the extent that it is consistent with  
9 the terms of any order by a court of competent jurisdiction  
10 relating to detention or commitment of the protected person,  
11 a guardian is entitled to custody of the protected person and  
12 may establish the protected person's place of abode within or  
13 without New Mexico;

14 (2) if entitled to custody of the protected  
15 person, a guardian shall make provision for the care, comfort  
16 and maintenance of the protected person and, whenever  
17 appropriate, arrange for training and education. The  
18 guardian shall take reasonable care of the protected person's  
19 clothing, furniture, vehicles and other personal effects and  
20 commence conservatorship proceedings if other property of the  
21 protected person is in need of protection;

22 (3) if no agent is entitled to make health  
23 care decisions for the protected person under the provisions  
24 of the Uniform Health-Care Decisions Act, then the guardian  
25 shall make health care decisions for the protected person in

1 accordance with the provisions of that act. In exercising  
2 health care powers, a guardian may consent or withhold  
3 consent that may be necessary to enable the protected person  
4 to receive or refuse medical or other professional care,  
5 counsel, treatment or service. That decision shall be made  
6 in accordance with the values of the protected person, if  
7 known, or the best interests of the protected person if the  
8 values are not known;

9 (4) if no conservator for the estate of the  
10 protected person has been appointed, if the court has  
11 determined that a conservatorship is not appropriate and if a  
12 guardian appointed by the court has been granted authority to  
13 make financial decisions on behalf of the protected person in  
14 the order of appointment and in the letters of guardianship  
15 pursuant to Subsection C of Section 45-5-308 NMSA 1978, the  
16 guardian has the following powers and duties, including the  
17 power:

18 (a) to institute proceedings to compel  
19 any person under a duty to support the protected person or to  
20 pay sums for the welfare of the protected person to perform  
21 that duty;

22 (b) to receive money and tangible  
23 property deliverable to the protected person and apply the  
24 money and property for support, care and education of the  
25 protected person, but the guardian shall not use funds from



1 the protected person's estate for room and board that the  
2 guardian or the guardian's spouse, parent or child has  
3 furnished the protected person, unless a charge for the  
4 service is approved by order of the court made upon notice to  
5 at least one of the next of kin of the protected person, if  
6 notice is possible;

7 (c) to serve as advocate and  
8 decision-maker for the protected person in any disputes with  
9 persons or organizations, including financial institutions,  
10 regarding the protected person's finances;

11 (d) to obtain information regarding the  
12 protected person's assets and income from persons or  
13 organizations handling the protected person's finances;

14 (e) to file an initial inventory of all  
15 property belonging to the protected person within ninety days  
16 after appointment; and

17 (f) to exercise care to conserve any  
18 excess for the protected person's needs and include in the  
19 guardian's ninety-day and annual reports a description of  
20 decisions made regarding the protected person's finances and  
21 property; and

22 (5) the guardian shall exercise the  
23 guardian's supervisory powers over the protected person in a  
24 manner that is least restrictive of the protected person's  
25 personal freedom and consistent with the need for

1 supervision.

2 C. A guardian of a protected person for whom a  
3 conservator also has been appointed shall control the care  
4 and custody of the protected person and is entitled to  
5 receive reasonable sums for services and for room and board  
6 furnished to the protected person. The guardian may request  
7 the conservator to expend the protected person's estate by  
8 payment to third persons or institutions for the protected  
9 person's care and maintenance.

10 D. Unless authorized by the court by specific  
11 order, a guardian for an adult shall not revoke or amend a  
12 power of attorney for health care or power of attorney for  
13 finances signed by the adult. If a power of attorney for  
14 health care is in effect, unless there is a court order to  
15 the contrary, a health care decision of an agent takes  
16 precedence over that of the guardian, and the guardian shall  
17 cooperate with the agent to the extent feasible. If a power  
18 of attorney for finances is in effect, unless there is a  
19 court order to the contrary, a decision by the agent that the  
20 agent is authorized to make under the power of attorney for  
21 finances takes precedence over that of the guardian, and the  
22 guardian shall cooperate with the agent to the extent  
23 feasible.

24 E. A guardian for an adult shall not initiate the  
25 commitment of the adult to a mental health treatment facility

1 except in accordance with the state's procedure for  
2 involuntary civil commitment.

3 F. A guardian for a protected person shall not  
4 restrict the ability of the protected person to communicate,  
5 visit or interact with others, including receiving visitors  
6 and making or receiving telephone calls, personal mail or  
7 electronic communications, including through social media or  
8 participating in social activities, unless:

9 (1) authorized by the court by specific  
10 order;

11 (2) a less restrictive alternative is in  
12 effect that limits contact between the protected person and a  
13 person; or

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

19 (a) for a period of not more than seven  
20 business days if the person has a family or preexisting  
21 social relationship with the protected person; or

22 (b) for a period of not more than sixty  
23 days if the person does not have a family or preexisting  
24 social relationship with the protected person."

1 Chapter 252, Section 14, as amended) is amended to read:

2 "45-5-314. ANNUAL REPORT--AUDITS.--

3 A. The guardian of an incapacitated person shall  
4 file an initial report with the appointing court within  
5 ninety days of the guardian's appointment. Thereafter, the  
6 guardian shall file an annual report within thirty days of  
7 the anniversary date of the guardian's appointment. A copy  
8 of the report shall also be submitted to the district judge  
9 who appointed the guardian or the judge's successor, to the  
10 incapacitated person and to the incapacitated person's  
11 conservator, if any. The court shall review this report.  
12 The report shall include information concerning the progress  
13 and condition of the incapacitated person, including the  
14 incapacitated person's health, medical and dental care,  
15 residence, education, employment and habitation; a report on  
16 the manner in which the guardian carried out the guardian's  
17 powers and fulfilled the guardian's duties; and the  
18 guardian's opinion regarding the continued need for  
19 guardianship. If the guardian has been provided power  
20 pursuant to Paragraph (4) of Subsection B of Section 45-5-312  
21 NMSA 1978, the report shall contain information on financial  
22 decisions made by the guardian. The report may be  
23 substantially in the following form:

24 "STATE OF NEW MEXICO

25 COUNTY OF \_\_\_\_\_

1 \_\_\_\_\_ JUDICIAL DISTRICT COURT  
2 IN THE MATTER OF THE GUARDIANSHIP OF

3 \_\_\_\_\_  
4 CAUSE NO. \_\_\_\_\_

5 an incapacitated adult

6 GUARDIAN'S 90-DAY \_\_\_\_\_ ANNUAL \_\_\_\_\_ FINAL \_\_\_\_\_ (check  
7 one)

8 REPORT ON THE CONDITION AND WELL-BEING OF AN ADULT PROTECTED  
9 PERSON

10 Date of Appointment: \_\_\_\_\_

11 *Pursuant to Section 45-5-314 NMSA 1978, the undersigned duly*  
12 *appointed, qualified and acting guardian of the*  
13 *above-mentioned protected person reports to the court as*  
14 *follows (attach additional sheets, if necessary):*

15 1. PROTECTED Name \_\_\_\_\_

16 PERSON: Residential Address \_\_\_\_\_

17 Facility Name \_\_\_\_\_

18 City, State, Zip Code \_\_\_\_\_

19 Telephone \_\_\_\_\_ Date of Birth \_\_\_\_\_

20 Name of person primarily responsible at protected person's  
21 place of residence: \_\_\_\_\_.

22 2. GUARDIAN: Name \_\_\_\_\_

23 Business Name (if any) \_\_\_\_\_

24 Address \_\_\_\_\_

25 City, State, Zip Code \_\_\_\_\_

1 Telephone \_\_\_\_\_ Alternate Telephone # \_\_\_\_

2 Relation to Protected Person \_\_\_\_\_

3 3. FINAL REPORTS ONLY (otherwise, go to #4)

4 I am filing a Final Report because of: \_\_\_\_ My resignation

5 \_\_\_\_ Death of the Protected Person \_\_\_\_ Court Order

6 \_\_\_\_ Other (please explain): \_\_\_\_\_

7 A. If because of resignation, Name of successor, if  
8 appointed: \_\_\_\_\_

9 Address \_\_\_\_\_

10 City, State, Zip Code \_\_\_\_\_

11 B. If because of Protected Person's death: (attach  
12 copy of death certificate, if available)

13 Date and place of death: \_\_\_\_\_

14 Name of personal representative if appointed: \_\_\_\_\_

15 Address \_\_\_\_\_

16 City, State, Zip Code \_\_\_\_\_

17 4. During the past year or 90 days (if initial report), I  
18 have visited the Protected Person \_\_\_\_\_ times. The date of  
19 my last personal visit was \_\_\_\_\_.

20 5. (A) Describe the residence of the Protected Person:

21 \_\_\_\_ Hospital/medical facility \_\_\_\_ Protected Person's  
22 home

23 \_\_\_\_ Guardian's home \_\_\_\_ Relative's home (explain  
24 below)

25 \_\_\_\_ Nursing home \_\_\_\_ Boarding/Foster/Group Home

1           \_\_\_\_\_ Other:

2           \_\_\_\_\_

3           (B) During the past year or 90 days (if first report),  
4 has the Protected Person changed his/her residence? \_\_\_\_\_

5 Do you anticipate a change of residence for the protected  
6 person in the next year? \_\_\_\_\_

7 6. The name and address of any hospital or other institution  
8 (if any) where the Protected Person is now admitted:

9 \_\_\_\_\_  
10 \_\_\_\_\_.

11 7. The Protected Person is under a physician's regular care.

12                               \_\_\_\_\_ Yes           \_\_\_\_\_ No

13 Identify the health care providers.

14 Physician: \_\_\_\_\_

15 Dentist (if any): \_\_\_\_\_

16 Mental Health Professional (i.e., psychiatrist, counselor):  
17 \_\_\_\_\_

18 Other: \_\_\_\_\_

19 8. (A) During the past year or 90 days (if initial report),  
20 the Protected Person's physical health:

21 Remained the same \_\_\_\_\_

22 Primary diagnosis: \_\_\_\_\_

23           \_\_\_\_\_ improved           \_\_\_\_\_ deteriorated

24 (explain) \_\_\_\_\_

25           (B) During the past year or 90 days (if initial report), SJC/SB 19

1 the Protected Person's mental health: Remained the same \_\_\_\_\_

2 Major diagnosis, if any: \_\_\_\_\_

3 Improved \_\_\_\_\_ deteriorated (explain) \_\_\_\_\_

4 If physical or mental health has deteriorated, please explain:

5 \_\_\_\_\_

6 9. Describe any significant hospitalizations or mental or  
7 medical events during the past year or 90 days (if initial  
8 report):

9 \_\_\_\_\_

10 10. List the Protected Person's activities and changes, if  
11 any, over the past year or 90 days (if initial report):

12 Recreational Activities: \_\_\_\_\_

13 Educational Activities: \_\_\_\_\_

14 Social Activities: \_\_\_\_\_

15 List Active Friends and/or Relatives: \_\_\_\_\_

16 Occupational activities: \_\_\_\_\_

17 Other: \_\_\_\_\_

18 11. Describe briefly any contracts entered into and major  
19 decisions made on behalf of the Protected Person during the  
20 past year or 90 days (if initial report): \_\_\_\_\_

21 \_\_\_\_\_

22 12. The Protected Person has made the following statements  
23 regarding his/her living arrangements and the guardianship  
24 over him/her: \_\_\_\_\_

25 \_\_\_\_\_



1 13. I believe the Protected Person has unmet needs.

2 \_\_\_\_\_ Yes (explain) \_\_\_\_\_ No

3 \_\_\_\_\_

4 If yes, indicate efforts made to meet these needs: \_\_\_\_\_

5 \_\_\_\_\_

6 14. The Protected Person continues to require the assistance  
7 of a guardian: \_\_\_\_\_ Yes \_\_\_\_\_ No

8 Explain why or why not: \_\_\_\_\_

9 \_\_\_\_\_.

10 15. The authority given to me by the Court should:

11 \_\_\_\_\_ remain the same \_\_\_\_\_ be decreased \_\_\_\_\_ be increased

12 Why: \_\_\_\_\_

13 \_\_\_\_\_

14 16. Additional information concerning the Protected Person or  
15 myself (the guardian) that I wish to share with the Court:

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 17. If the court has granted you the authority to make  
20 financial decisions on behalf of the Protected Person, then  
21 please describe the decisions you have made for the protected  
22 person: \_\_\_\_\_.

23 Signature of Guardian: \_\_\_\_\_ Date: \_\_\_\_\_

24 Printed Name: \_\_\_\_\_."

25 B. Any guardian may rely on a qualified health

1 care professional's current written report to provide  
2 descriptions of the physical and mental conditions required  
3 in items 7, 8, 9, 14 and 15 of the annual report as specified  
4 in Subsection A of this section.

5 C. The guardian may be fined five dollars (\$5.00)  
6 per day for an overdue annual report. The fine shall be used  
7 to fund the costs of visitors, counsel and functional  
8 assessments utilized in conservatorship and guardianship  
9 proceedings pursuant to the Uniform Probate Code.

10 D. The court shall not waive the requirement of an  
11 annual report under any circumstance but may grant an  
12 extension of time not to exceed sixty days. The court may  
13 require the filing of more than one report annually.

14 E. A guardian of a protected person shall fully  
15 comply with the requirements of any audit of an account,  
16 inventory, report or property of a protected person."

17 SECTION 8. Section 45-5-404 NMSA 1978 (being Laws 1975,  
18 Chapter 257, Section 5-404, as amended) is amended to read:

19 "45-5-404. ORIGINAL PETITION FOR APPOINTMENT OF  
20 CONSERVATOR.--

21 A. The following may petition for the appointment  
22 of a conservator:

23 (1) a person interested in the estate,  
24 financial affairs or welfare of an individual, including a  
25 person that would be adversely affected by lack of effective

1 management of property or financial affairs of an individual;  
2 or

3 (2) the guardian for an individual.

4 B. A petition under Subsection A of this section  
5 shall state the petitioner's name, principal residence,  
6 current street address, if different, relationship to the  
7 alleged incapacitated person, interest in the appointment,  
8 the name and address of any attorney representing the  
9 petitioner and, to the extent known, the following:

10 (1) the alleged incapacitated person's name,  
11 age, principal residence, current street address, if  
12 different, and, if different, address of the dwelling in  
13 which it is proposed that the alleged incapacitated person  
14 will reside if the petition is granted;

15 (2) the name and address of the alleged  
16 incapacitated person's:

17 (a) spouse, or, if the alleged  
18 incapacitated person has none, an adult with whom the alleged  
19 incapacitated person is in a long-term relationship of  
20 indefinite duration in which the individual has demonstrated  
21 an actual commitment to the alleged incapacitated person  
22 similar to the commitment of a spouse and in which the  
23 individual and the alleged incapacitated person consider  
24 themselves to be responsible for each other's well-being;

25 (b) adult children or, if none, each

1 parent and adult sibling of the alleged incapacitated person  
2 or, if none, at least one adult nearest in kinship to the  
3 alleged incapacitated person who can be found with reasonable  
4 diligence; and

5 (c) adult stepchildren whom the alleged  
6 incapacitated person actively parented during the  
7 stepchildren's minor years and with whom the alleged  
8 incapacitated person had an ongoing relationship during the  
9 two years immediately preceding the filing of the petition;

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

12 (a) a person responsible for the care  
13 or custody of the alleged incapacitated person;

14 (b) any attorney currently representing  
15 the alleged incapacitated person;

16 (c) the representative payee appointed  
17 by the federal social security administration for the alleged  
18 incapacitated person;

19 (d) a guardian or conservator acting  
20 for the alleged incapacitated person in New Mexico or another  
21 jurisdiction;

22 (e) a trustee or custodian of a trust  
23 or custodianship of which the alleged incapacitated person is  
24 a beneficiary;

25 (f) the fiduciary appointed for the

1 alleged incapacitated person by the federal department of  
2 veterans affairs;

3 (g) an agent designated under a power  
4 of attorney for health care in which the alleged  
5 incapacitated person is identified as the principal;

6 (h) an agent designated under a power  
7 of attorney for finances in which the alleged incapacitated  
8 person is identified as the principal;

9 (i) a person known to have routinely  
10 assisted the alleged incapacitated person with decision  
11 making in the six-month period immediately before the filing  
12 of the petition; and

13 (j) any proposed conservator, including  
14 a person nominated by the alleged incapacitated person;

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

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

21 (a) the nature and extent of the  
22 alleged incapacitated person's alleged need;

23 (b) if the petition alleges the alleged  
24 incapacitated person is missing, detained or unable to return  
25 to the United States, the relevant circumstances, including

1 the time and nature of the disappearance or detention and any  
2 search or inquiry concerning the alleged incapacitated  
3 person's whereabouts;

4 (c) any less restrictive alternative  
5 for meeting the alleged incapacitated person's alleged need  
6 that has been considered or implemented;

7 (d) if no less restrictive alternatives  
8 have been considered or implemented, the reason it has not  
9 been considered or implemented; and

10 (e) the reason a less restrictive  
11 alternative is insufficient to meet the alleged incapacitated  
12 person's need;

13 (6) whether the petitioner seeks a limited  
14 conservatorship or a full conservatorship;

15 (7) if the petitioner seeks a full  
16 conservatorship, the reason a limited conservatorship instead  
17 of conservatorship is not appropriate;

18 (8) if the petition includes the name of a  
19 proposed conservator, the reason the proposed conservator  
20 should be appointed;

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

25 (10) whether the alleged incapacitated

1 person needs an interpreter, translator or other form of  
2 support to communicate effectively with the court or  
3 understand court proceedings; and

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

6 SECTION 9. Section 45-5-405 NMSA 1978 (being Laws 1975,  
7 Chapter 257, Section 5-405, as amended) is amended to read:

8 "45-5-405. NOTICE IN CONSERVATORSHIP PROCEEDINGS.--

9 A. On filing of a petition under Section 45-5-404  
10 NMSA 1978 for appointment of a conservator, the court shall  
11 set a date, time and place for a hearing on the petition.

12 B. A copy of a petition under Section 45-5-404  
13 NMSA 1978 and notice of a hearing on the petition shall be  
14 served personally on the alleged incapacitated person. If  
15 the alleged incapacitated person's whereabouts are unknown or  
16 personal service cannot be made, service on the alleged  
17 incapacitated person shall be made as provided in  
18 Section 45-1-401 NMSA 1978. The notice shall inform the  
19 alleged incapacitated person of the alleged incapacitated  
20 person's rights at the hearing and the right to attend the  
21 hearing. The notice also shall include a description of the  
22 nature, purpose and consequences of granting the petition.  
23 The court shall not grant a petition for appointment of a  
24 conservator if notice substantially complying with this  
25 subsection is not served on the alleged incapacitated person.

1 C. In a proceeding on a petition under  
2 Subsection B of this section, the notice required shall be  
3 given to the persons required to be listed in the petition  
4 under Section 45-5-404 NMSA 1978 and any other person  
5 interested in the alleged incapacitated person's welfare the  
6 court determines. Failure to give notice under this  
7 subsection does not preclude the court from appointing a  
8 conservator.

9 D. After the appointment of a conservator, notice  
10 of a hearing on a petition for an order under Part 4 of  
11 Chapter 45, Article 5 NMSA 1978, together with a copy of the  
12 petition, shall be given to:

13 (1) the protected person subject to  
14 conservatorship if the protected person is not missing,  
15 detained or unable to return to the United States;

16 (2) the conservator; and

17 (3) any other person the court determines."

18 SECTION 10. Section 45-5-405.1 NMSA 1978 (being Laws  
19 1993, Chapter 301, Section 26) is amended to read:

20 "45-5-405.1. PROTECTIVE ARRANGEMENTS AND SINGLE  
21 TRANSACTIONS AUTHORIZED.--

22 A. If after notice in accordance with Section  
23 45-5-405 NMSA 1978 to all interested persons, as defined in  
24 Section 45-1-201 NMSA 1978, and after hearing, it is  
25 established that a basis exists as described in



1 Section 45-5-401 NMSA 1978 for affecting the estate and  
2 financial affairs of a person, the court, without appointing  
3 a conservator, may issue an order pursuant to Subsection B of  
4 this section for a protective arrangement instead of  
5 conservatorship for the person. Unless the person already  
6 has an attorney of the person's own choice, the court shall  
7 appoint an attorney to represent the person at the hearing.  
8 The court-appointed attorney shall have the duties of a  
9 guardian ad litem, as set forth in Section 45-5-404.1  
10 NMSA 1978.

11 B. The court, instead of appointing a conservator,  
12 may:

13 (1) authorize a person or direct a person to  
14 execute a transaction necessary to protect the financial  
15 interest or property of the protected person, including:

16 (a) an action to establish eligibility  
17 for benefits;

18 (b) payment, delivery, deposit or  
19 retention of funds or property;

20 (c) sale, mortgage, lease or other  
21 transfer of property, including water rights and oil, gas and  
22 other mineral interests;

23 (d) purchase of an annuity;

24 (e) entry into a contractual  
25 relationship, including a contract to provide for personal

1 care, supportive services, education, training or employment;

2 (f) addition to or establishment of a  
3 trust;

4 (g) ratification or invalidation of a  
5 contract, trust or other transaction, including a transaction  
6 related to the property or business affairs of the protected  
7 person; or

8 (h) settlement of a claim; or

9 (2) restrict access to the protected  
10 person's property by a specified person whose access to the  
11 property places the protected person at serious risk of  
12 financial harm.

13 C. After the notice and hearing pursuant to  
14 Subsection A of this section, the court may issue an order to  
15 restrict access to the protected person or the protected  
16 person's property by a specified person that the court finds  
17 by clear and convincing evidence:

18 (1) through fraud, coercion, duress or the  
19 use of deception and control caused or attempted to cause an  
20 action that would have resulted in financial harm to the  
21 protected person or the protected person's property; and

22 (2) poses a serious risk of substantial  
23 financial harm to the protected person or the protected  
24 person's property.

25 D. Before issuing an order pursuant to

1 Subsection B or C of this section, the court shall consider  
2 the factors described in Section 45-5-417 NMSA 1978 that a  
3 conservator shall consider when making a decision on behalf  
4 of an individual subject to conservatorship.

5 E. Before issuing an order pursuant to  
6 Subsection B or C of this section for a protected person who  
7 is a minor, the court also shall consider the best interest  
8 of the minor, the preference of the parents of the minor and  
9 the preference of the minor, if the minor is twelve years of  
10 age or older.

11 F. Before issuing an order pursuant to  
12 Subsection B or C of this section for a protected person who  
13 is an adult, the court shall also consider the adult's prior  
14 or current directions, preferences, opinions, values and  
15 actions, to the extent actually known or reasonably  
16 ascertainable."

17 SECTION 11. Section 45-5-407 NMSA 1978 (being  
18 Laws 1975, Chapter 257, Section 5-407, as amended) is amended  
19 to read:

20 "45-5-407. PROCEDURE FOR COURT APPOINTMENT OF A  
21 CONSERVATOR.--

22 A. Upon receipt of a petition for appointment of a  
23 conservator or other protective order because of minority,  
24 the court shall set a date for hearing on the matters alleged  
25 in the petition. If at any time in the proceeding the court

1 finds the minor is or may be inadequately represented, it may  
2 appoint an attorney to represent the minor, giving  
3 consideration to the choice of the minor if the minor is  
4 fourteen years of age or older. An attorney appointed by the  
5 court to represent a minor shall represent and protect the  
6 interests of the minor.

7 B. Upon receipt of a petition for appointment of a  
8 conservator for reasons other than minority, the court shall  
9 set a date for hearing. Unless the person to be protected is  
10 already represented by an attorney of the person's own  
11 choice, the court shall appoint an attorney to represent the  
12 person to be protected in the proceeding. The  
13 court-appointed attorney shall have the duties of a guardian  
14 ad litem as set forth in Section 45-5-404.1 NMSA 1978.

15 C. If the petition is for the appointment of a  
16 conservator for an incapacitated person, the person to be  
17 protected shall be examined by a qualified health care  
18 professional appointed by the court who shall submit a report  
19 in writing to the court. The report shall:

20 (1) describe the nature and degree of the  
21 person's incapacity, if any, and the level of the  
22 intellectual, developmental and social functioning of the  
23 person to be protected; and

24 (2) contain observations, with supporting  
25 data, regarding the ability of the person to be protected to

1 manage the person's estate or financial affairs.

2 D. The court shall also appoint a visitor who  
3 shall interview the person seeking appointment as conservator  
4 and the person to be protected. The visitor shall also visit  
5 the present place of residence of the person to be protected.  
6 The visitor shall evaluate the needs of the person to be  
7 protected and shall submit a written report to the court.  
8 The report shall include a recommendation regarding the  
9 appropriateness of the appointment of the proposed  
10 conservator. The report shall also include recommendations  
11 regarding:

12 (1) those aspects of the person's financial  
13 affairs that the person to be protected can manage without  
14 supervision or assistance;

15 (2) those aspects of the person's financial  
16 affairs that the person to be protected could manage with the  
17 supervision or assistance of support services and benefits;  
18 and

19 (3) those aspects of the person's financial  
20 affairs that the person to be protected is unable to manage  
21 even with the supervision or assistance of support services  
22 and benefits.

23 Unless otherwise ordered by the court, the appointment  
24 of the visitor terminates and the visitor is discharged from  
25 duties upon entry of an order appointing a conservator and

1 acceptance of the appointment by the conservator.

2 E. The person to be protected shall be present at  
3 the hearing on the issues raised by the petition and any  
4 response to the petition, unless the court determines it is  
5 not in the best interest of the person for whom a conservator  
6 is sought to be present because of a threat to the health or  
7 safety of the person for whom a conservator is sought or  
8 others as determined by the court. The court upon request or  
9 its own motion may conduct hearings at the location of the  
10 person to be protected if the person is unable to be present  
11 in court.

12 F. The person to be protected shall not be  
13 permitted by the court to consent to the appointment of a  
14 conservator.

15 G. The court, at the hearing on the petition for  
16 appointment of conservator, shall:

17 (1) inquire into the nature and extent of  
18 the functional limitations of the person to be protected; and

19 (2) ascertain the person's capacity to  
20 manage the person's financial affairs.

21 H. If it is determined that the person to be  
22 protected possesses the capacity to manage the person's  
23 estate or financial affairs, or both, the court shall dismiss  
24 the petition.

25 I. Alternatively, the court may appoint a full

1 conservator, as requested in the petition, or a limited  
2 conservator and confer specific powers of conservatorship  
3 after finding in the record based on clear and convincing  
4 evidence that:

5 (1) the person to be protected is totally  
6 incapacitated or is incapacitated only in specific areas as  
7 alleged in the petition;

8 (2) the conservatorship is necessary as a  
9 means of effectively managing the estate or financial  
10 affairs, or both, of the person to be protected;

11 (3) there are not available alternative  
12 resources that enable the effective management of the estate  
13 and financial affairs of the person to be protected;

14 (4) the conservatorship is appropriate as  
15 the least restrictive form of intervention consistent with  
16 the preservation of the property of the person to be  
17 protected; and

18 (5) the proposed conservator is both  
19 qualified and suitable and is willing to serve.

20 J. After hearing, upon finding that a basis for  
21 the appointment of a conservator has been established, the  
22 court shall make an appointment of a conservator. The court  
23 shall appoint a limited conservator if it determines that the  
24 incapacitated person is able to manage some but not all  
25 aspects of the incapacitated person's estate and financial

1 affairs. The court shall specify those powers that the  
2 limited conservator shall have and may further restrict each  
3 power so as to permit the incapacitated person to care for  
4 the incapacitated person's estate and financial affairs  
5 commensurate with the incapacitated person's ability to do  
6 so.

7 K. A person for whom a conservator has been  
8 appointed retains all legal and civil rights except those  
9 that have been specifically granted to the conservator by the  
10 court. The conservator shall exercise supervisory powers  
11 over the estate and financial affairs of the incapacitated  
12 person in a manner that is the least restrictive form of  
13 intervention consistent with the order of the court.

14 L. The rules of evidence shall apply and no  
15 hearsay evidence that is not otherwise admissible in a court  
16 shall be admitted into evidence except as otherwise provided  
17 in the Uniform Probate Code.

18 M. The existence of a proceeding for or the  
19 existence of conservatorship is a matter of public record  
20 unless the court seals the record after:

21 (1) the alleged incapacitated person, the  
22 protected person subject to conservatorship or the parent or  
23 a guardian of a minor subject to conservatorship requests  
24 that the record be sealed; and

25 (2) either:



1 (a) the petition for conservatorship is  
2 dismissed; or

3 (b) the conservatorship is terminated.

4 N. An alleged incapacitated person or protected  
5 person subject to a proceeding for a conservatorship, whether  
6 or not a conservator is appointed, an attorney designated by  
7 the alleged incapacitated person or protected person and a  
8 person entitled to notice may access court records of the  
9 proceeding and resulting conservatorship. A person not  
10 otherwise entitled to access to court records under this  
11 section for good cause may petition the court for access to  
12 court records of the conservatorship. The court shall grant  
13 access if access is in the best interest of the alleged  
14 incapacitated person or protected person subject to  
15 conservatorship or furthers the public interest and does not  
16 endanger the welfare or financial interests of the alleged  
17 incapacitated person or individual.

18 O. A report under Section 45-5-409 NMSA 1978 is  
19 confidential and shall be sealed on filing, but is available  
20 to:

21 (1) the court;

22 (2) the alleged incapacitated person or  
23 protected person who is the subject of the report, without  
24 limitation as to use;

25 (3) the petitioner, guardian ad litem,

1 visitor and an attorney of record, for purposes of the  
2 proceeding;

3 (4) unless the court directs otherwise, an  
4 agent appointed under a power of attorney for finances in  
5 which the alleged incapacitated person is identified as the  
6 principal; and

7 (5) any other person if it is in the public  
8 interest, as determined by the court, or for a purpose the  
9 court orders for good cause.

10 P. Notwithstanding the provisions of Subsection M  
11 of this section, any disclosure of information shall not  
12 include any diagnostic information, treatment information or  
13 other medical or psychological information.

14 Q. The issue of whether a conservator shall be  
15 appointed for the alleged incapacitated person shall be  
16 determined by the court at an open hearing unless, for good  
17 cause, the court determines otherwise.

18 R. Upon request of the petitioner or person to be  
19 protected, the court shall schedule a jury trial.

20 S. Upon entry of an order appointing a  
21 conservator, a copy of the order shall be furnished to the  
22 person for whom the conservator was appointed and that  
23 person's counsel. The order shall contain the name and  
24 address of the conservator as well as notice to the person  
25 for whom the conservator was appointed of that person's right

1 to appeal the appointment and of that person's right to seek  
2 alteration or termination of the conservatorship at any  
3 time."

4 SECTION 12. Section 45-5-409 NMSA 1978 (being  
5 Laws 1989, Chapter 252, Section 22, as amended) is amended to  
6 read:

7 "45-5-409. ANNUAL REPORT AND ACCOUNT--AUDITS.--

8 A. Every conservator shall file an annual report  
9 and account with the appointing court within thirty days of  
10 the anniversary date of the conservator's appointment, upon  
11 the conservator's resignation or removal or upon termination  
12 of the conservatorship. A copy of the annual report and  
13 account shall also be mailed to the district judge who  
14 appointed the conservator or the conservator's successor, to  
15 the incapacitated person and to the incapacitated person's  
16 guardian, if any. The report shall include information  
17 concerning the progress and condition of the person under  
18 conservatorship, a report on the manner in which the  
19 conservator carried out the conservator's powers and  
20 fulfilled the conservator's duties and the conservator's  
21 opinion regarding the continued need for conservatorship.  
22 The report may be substantially in the following form:

23 "IN THE DISTRICT COURT  
24 \_\_\_\_\_ COUNTY, STATE OF NEW MEXICO  
25 In the matter of the ) No. \_\_\_\_\_

1 Conservatorship of \_\_\_\_\_ )

2 \_\_\_\_\_ )

3 (Enter Name of Person Under Conservatorship)

4 CONSERVATOR'S REPORT AND ACCOUNT

5 Pursuant to Section 45-5-409 NMSA 1978, the undersigned  
6 duly appointed, qualified and acting conservator of the  
7 above-mentioned protected person reports to the court as  
8 follows:

9 1. My name is: \_\_\_\_\_

10 2. My address and telephone number are: \_\_\_\_\_

11 3. The name, if applicable, and address of the place  
12 where the person under conservatorship now resides are:

13 \_\_\_\_\_

14 4. The name of the person primarily responsible for the  
15 care of the person under conservatorship at such person's  
16 place of residence is: \_\_\_\_\_

17 5. The name and address of any hospital or other  
18 institution where the person under conservatorship is now  
19 admitted on a temporary basis are: \_\_\_\_\_

20 6. A brief description of the physical condition of the  
21 person under conservatorship is: \_\_\_\_\_

22 7. A brief description of the mental condition of the  
23 person under conservatorship is: \_\_\_\_\_

24 8. A description of contracts entered into on behalf of  
25 the person under conservatorship during the past year: \_\_\_\_\_

1           9. Describe all financial decisions made during the  
2 past year, including all receipts and disbursements, any  
3 sale, lease or mortgage of estate assets and any investment  
4 made on behalf of the person under conservatorship (NOTE: If  
5 the person under conservatorship is sharing expenses with  
6 others in a household and paying into joint household  
7 expenses, please identify the percentage of the expenses paid  
8 for by the person under conservatorship and how you  
9 determined that this percentage is appropriate.):

10 \_\_\_\_\_

11           10. The reasons, if any, why the conservatorship should  
12 continue are: \_\_\_\_\_

13 Signature of Conservator: \_\_\_\_\_

14                           Date: \_\_\_\_\_".

15           B. Any conservator may rely on a qualified health  
16 care professional's current written report to provide  
17 descriptions of the physical and mental conditions required  
18 in items 6, 7 and 10 of the annual report and account as  
19 specified in Subsection A of this section.

20           C. The court shall not waive the requirement of an  
21 annual report and account under any circumstance, but may  
22 grant an extension of time. The court may require the filing  
23 of more than one report and account annually.

24           D. The conservator may be fined five dollars  
25 (\$5.00) per day for an overdue annual report and account.

1 The fine shall be used to fund the costs of visitors, counsel  
2 and functional assessments utilized in conservatorship and  
3 guardianship proceedings pursuant to the Uniform Probate  
4 Code.

5 E. In connection with an account, the court may  
6 require a conservator to submit to a physical check of the  
7 property in the conservator's control, to be made in any  
8 manner the court may order.

9 F. In any case in which property consists in whole  
10 or in part of benefits paid by the United States department  
11 of veterans affairs to the conservator or the conservator's  
12 predecessor for the benefit of the protected person, the  
13 department office that has jurisdiction over the area is  
14 entitled to a copy of any report and account filed under  
15 Chapter 45, Article 5 NMSA 1978.

16 G. A conservator shall fully comply with the  
17 requirements of any audit of an account, inventory, report or  
18 property of a protected person."

19 SECTION 13. A new section of Part 4 of Article 5 of the  
20 Uniform Probate Code, Section 45-5-409.1 NMSA 1978, is  
21 enacted to read:

22 "45-5-409.1. WAIVER OF LIABILITY.--

23 A. No person shall request, procure or receive a  
24 release or waiver of liability, however denominated, of a  
25 conservator, an agent, an affiliate or a designee of a

1 conservator or any other third party acting on behalf of a  
2 conservator.

3 B. A release or waiver of liability that is  
4 requested, procured or received contrary to the provisions of  
5 Subsection A of this section is void."

6 SECTION 14. Section 45-5-411 NMSA 1978 (being  
7 Laws 1975, Chapter 257, Section 5-411) is amended to read:

8 "45-5-411. BOND AND TERMS--REQUIREMENTS OF BONDS.--

9 A. Except as otherwise provided in Subsection C of  
10 this section, the court shall require a conservator to  
11 furnish a bond with a surety the court specifies, or require  
12 an alternative asset-protection arrangement, conditioned on  
13 faithful discharge of all duties of the conservator. The  
14 court may waive the requirement only if the court finds that  
15 a bond or other asset-protection arrangement is not necessary  
16 to protect the interests of the individual subject to  
17 conservatorship. Except as otherwise provided in  
18 Subsection C of this section, the court shall not waive the  
19 requirement if the conservator is in the business of serving  
20 as a conservator and is being paid for the conservator's  
21 service.

22 B. Unless the court directs otherwise, the bond  
23 required under this section shall be in the amount of the  
24 aggregate capital value of the conservatorship estate, plus  
25 one year's estimated income, less the value of property

1 deposited under an arrangement requiring a court order for  
2 its removal and real property the conservator lacks power to  
3 sell or convey without specific court authorization. The  
4 court, in place of surety on a bond, may accept collateral  
5 for the performance of the bond, including a pledge of  
6 securities or a mortgage of real property.

7 C. A financial institution that possesses and is  
8 exercising general trust powers in New Mexico is not required  
9 to give a bond under this section. As used in this  
10 subsection, "financial institution" means a state- or  
11 federally chartered, federally insured depository bank or  
12 trust company.

13 D. The following rules apply to the bond required  
14 under this section:

15 (1) except as otherwise provided by the  
16 bond, the surety and the conservator are jointly and  
17 severally liable;

18 (2) by executing a bond provided by a  
19 conservator, the surety submits to the personal jurisdiction  
20 of the court that issued letters of conservatorship in a  
21 proceeding relating to the duties of the conservator in which  
22 the surety is named as a party. Notice of the proceeding  
23 shall be given to the surety;

24 (3) on petition of a successor conservator  
25 or person affected by a breach of the obligation of the bond,



1 a proceeding may be brought against the surety for breach of  
2 the obligation of the bond; and

3 (4) a proceeding against the bond may be  
4 brought until liability under the bond is exhausted.

5 E. If a bond under this section is not renewed by  
6 the conservator, the surety or sureties immediately shall  
7 give notice to the court and the protected person subject to  
8 conservatorship."

9 SECTION 15. TEMPORARY PROVISION--REPORTING  
10 REQUIREMENTS.--On or before November 1, 2018, and again on or  
11 before November 1, 2019, the administrative office of the  
12 courts shall report to the legislative finance committee on  
13 the following topics:

14 A. the status of the Uniform Guardianship,  
15 Conservatorship and Other Protective Arrangements Act as  
16 approved by the national conference of commissioners on  
17 uniform state laws, including publication of official  
18 commentary and introduction and enactment by state  
19 legislatures;

20 B. the feasibility of the implementation in  
21 New Mexico of the Uniform Guardianship, Conservatorship and  
22 Other Protective Arrangements Act; and

23 C. an estimate of the financial cost to the  
24 judiciary to implement the Uniform Guardianship,  
25 Conservatorship and Other Protective Arrangements Act.

1 SECTION 16. APPLICABILITY.--The provisions of this act  
2 apply to:

3 A. a proceeding for appointment of a guardian or  
4 conservator or for a protective arrangement instead of  
5 guardianship or conservatorship commenced on or after  
6 July 1, 2018; and

7 B. a guardianship, conservatorship or protective  
8 arrangement instead of guardianship or conservatorship in  
9 existence on June 30, 2018 unless the court finds application  
10 of a particular provision of this act would substantially  
11 interfere with the effective conduct of the proceeding or  
12 prejudice the rights of a party, in which case the particular  
13 provision of this act does not apply and the superseded law  
14 applies.

15 SECTION 17. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2018. \_\_\_\_\_

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