

# STANDARDS OF PRACTICE

Adopted by the  
MINNESOTA ASSOCIATION FOR  
GUARDIANSHIP AND CONSERVATORSHIP

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**MINNESOTA ASSOCIATION FOR  
GUARDIANSHIP AND CONSERVATORSHIP  
M A G i C  
An Organization to Explore Substitute Decision-Making**

**STANDARDS OF PRACTICE  
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## **MAGiC MISSION STATEMENT**

The Minnesota Association for Guardianship and Conservatorship, MAGiC, is a non-profit membership organization focused on the practice and issues of substitute decision-making for vulnerable persons. MAGiC promotes best practices and ethical provision of service in the least restrictive manner possible through education and advocacy for its members and the community.

We affirm the following values:

1. We believe services are to be provided in the least restrictive manner possible, respecting the rights and dignity of vulnerable persons.
2. We strive for the highest professional standards and ethics in providing service.
3. We are committed to the education and training of our members.
4. We believe in professional collaboration and legislative advocacy in working toward the well-being of vulnerable persons.

## **BILL OF RIGHTS FOR WARDS AND PROTECTED PERSONS**

The ward/protected person retains all rights not restricted by court order or specifically granted to the guardian/conservator. These include but are not limited to:

1. The right to treatment with dignity and respect.
2. The right to protection from harm.
3. The right to exercise control of aspects of life not delegated specifically by court order to the guardian/conservator. The guardian/conservator shall not exceed the bounds of court-granted authority.
4. The right to guardianship/conservatorship services suited to the ward/protected person's conditions and needs.
5. The right to privacy: bodily privacy, right to unimpeded, private, and uncensored communication, and the right to visit with persons of the ward/protected person's choice.
6. The right to procreate.
7. The right to receive health care and medical treatment.
8. The right to vote.
9. The right to make a will. NOTE: Depending on the level of incapacity, the ward or-protected person may not retain this right.
10. The right to have current and previously stated personal desires, medical treatment statements, religious beliefs, preferences, and opinions given due consideration in decisions made by the guardian or conservator.
11. The right to petition the court for termination or modification of the guardianship/conservatorship.
12. The right to be represented by an attorney at any time. NOTE: The guardian, the conservator or the court may need to authorize the retention of legal counsel by the ward/protected person
13. The right to marry. NOTE: Court approval may be required, depending on the situation.

## P R E A M B L E

All persons have the right to self-determination. Individuals who have an incapacity, however, may not be able to independently exercise this right and may require assistance with decision-making. When such assistance is necessary, it must be respectful of the individual's dignity and legal rights.

The Minnesota Association for Guardianship and Conservatorship (MAGiC) is a membership organization dedicated to ensuring that substitute decision-making provided to individuals with incapacity is of quality and is provided in the least restrictive manner.

The organization is a means of education and communication for those concerned about individuals with incapacity and those interested in issues related to substitute decision-making.

The Standards Committee was established in 1989 at the First Annual MAGiC Conference. The goal of this committee was to establish a uniform set of standards for individuals and institutions appointed by the courts to act as guardians and conservators. In 1996, the Standards of Practice were revised and expanded to include a Code of Ethics and Bill of Rights for wards and protected persons. These are to be the yardstick by which we will measure the quality of our performance.

The Standards of Practice and Code of Ethics were developed to address the behaviors, practices, and philosophies of acting guardians and conservators. It is assumed that the original appointment of the guardian or conservator was appropriate, accurate, and procedurally conducted in accordance with Minnesota Statutes Chapter 524.

Guardians and conservators benefit wards and protected persons so they may experience life to their fullest potential and maintain self-esteem. By the establishment of a guardianship and/or conservatorship, the court appointed decision-maker is empowered to care for and protect the rights of the ward or protected person. The guardian/conservator is diligent in advocating rights for the benefit of the ward or protected person and in preventing abuse, exploitation, or self-neglect. The courts monitor the actions of the guardian and conservator. Guardians are responsible for the personal affairs of the ward as the courts direct. Conservators are responsible for the financial affairs of protected persons as the courts direct.

The ward/protected person is included in the decision-making process. Additionally, the guardian/conservator shall consult the family, medical and social histories, and past lifestyle to attain a sense of the ward/protected person's moral, ethical, and spiritual values, as well as fully considering the risks, benefits and alternatives of decisions. In making any decision, the guardian or conservator shall fully consider the risks, benefits, and available alternatives.

Minnesota law employs a "best interest" standard for decision-making and is silent on the model of "substituted judgment" with the exception of two specific instances relating to court approved estate planning and health care directives where the law does consider substituted judgment. MAGiC takes the position that substituted judgment<sup>1</sup> is the higher standard of decision-making and emphasizes the importance of following the ward/protected person's known wishes as expressed while capacitated, when these wishes do not cause harm to the ward/protected person.

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<sup>1</sup> Substituted judgment means making decisions in accordance with decisions the ward or protected person would have made if/when capacitated. This relies on the guardian or conservator's knowledge of the ward or protected person's previously expressed wishes.

If the ward/protected person's wishes were never known or expressed when capacitated, or if the decision would be likely to cause significant harm to that individual, the guardian/conservator shall then make decisions in the best interest of the individual. Best interest requires that the guardian/conservator consider the least intrusive, most normalizing, and least restrictive course of action to provide for the needs of the ward/protected person and includes consideration of the individual's current and previous wishes.

The guardian/conservator is an officer of the court and is subject to the direction of the court at all times and in all things related to the guardianship/conservatorship.

A guardian or conservator has only those powers necessary to provide for the demonstrated needs of the ward or protected person. The guardian or conservator shall make decisions in a manner that limits civil rights and restricts personal freedoms only to the extent necessary to provide needed care and services.

The court appointed decision-maker is responsible to protect the rights and pursue relief on behalf of the ward or protected person. The court appointed decision-maker is to safeguard and aggressively pursue protection of the ward or protected person's interests. If actions by providers of services do not meet the individual needs of the ward or protected person, the guardian/conservator is to take appropriate legal or administrative action on behalf of the ward or protected person, including, but not limited to, the following:

1. Determine that the individual's legal rights are protected.
2. Take appropriate action when necessary or when the individual's legal rights are abridged.
3. Initiate appropriate avenues for relief including, but not limited to, administrative appeals or civil action. Relief includes, but is not limited to, redress of abuse.

## **I. CODE OF ETHICS**

### **The Guardian/Conservator's Relationship with The Ward/Protected Person**

1. The guardian/conservator's primary responsibility is to the ward/protected person.
2. The guardian/conservator shall exercise extreme care and diligence when making decisions on behalf of the ward/protected person.
3. The guardian/conservator shall recognize and respect a ward/protected person's political, religious, and moral beliefs. A guardian/conservator shall not impose his or her own such beliefs on the ward/protected person in interactions with, or in decision-making for, the individual.
4. The guardian/conservator shall act as an advocate to protect the civil rights and liberties of the ward/protected person. The guardian/conservator shall maximize opportunities for growth, independence, self-determination, and dignity.
5. The guardian/conservator shall strive to develop a trusting, accessible relationship with the highest level of communication possible with the ward/protected person, family, and other significant persons.
6. The guardian/conservator shall perform duties with the highest level of integrity, confidentiality, and respect for the unique qualities of the individual ward/protected person.
7. The guardian/conservator shall not discriminate against a ward/protected person on the basis of age, sex, race, national origin, religion, disability, political affiliation, sexual orientation, economic position, choice of lifestyle, or on any other basis.
8. The guardian/conservator shall not engage in any sexual relationship with a ward/protected person, or a ward/protected person's family members.
9. The guardian/conservator shall scrupulously avoid any actual or appearance of conflict of interest, impropriety, or self-dealing which may further the guardian/conservator's personal, religious, political, or outside business interests in relations with the ward/protected person or the ward/protected person's estate.
10. The guardian/conservator shall accept professional fees as the total compensation for services. The guardian/conservator, or the guardian/conservator's associates and families, shall not profit from providing housing, care, medical or social service to the ward/protected person.
11. The guardian/conservator should seek to provide the same level of professional service to the ward/protected person, regardless of that person's economic status or the level of payment of the guardian/conservator's services.

12. The conservator shall manage the estate of the protected person with prudence, care, judgment, and fiduciary integrity.
13. The guardian/conservator shall perform duties in the least restrictive form of intervention available, recognizing that the ward/protected person retains all rights not granted to the conservator.
14. The guardian/conservator shall, at all times, bear in mind the ward/protected person's right to be restored to capacity. The guardian/conservator shall assist the ward/protected person to achieve the highest level of independence.

#### **Conduct as a Guardian or Conservator**

15. The guardian/conservator shall maintain high standards of personal conduct in the capacity and identity as guardian or conservator.
16. The guardian/conservator shall strive to become and remain proficient in professional practice and the performance of professional practice.
17. The guardian/conservator shall take responsibility for identifying, developing, and utilizing available knowledge necessary for professional practice.
18. The guardian/conservator shall comply with all statutory requirements, and be knowledgeable and informed about local, state, and federal laws and policies in the provision of service and in obtaining resources for the ward or protected person.

#### **The Guardian/Conservator and the Profession**

19. The guardian/conservator shall treat colleagues with respect, courtesy, fairness, and good faith.
20. The guardian/conservator shall uphold and advance the values, ethics, and knowledge of the profession.

## II. STANDARDS APPLICABLE TO ALL GUARDIANS/CONSERVATORS

### A. Qualifications of a Professional Guardian/Conservator

To do the job well, a professional guardian or conservator must be knowledgeable in many areas, including housing, financial management, government benefits, medical issues, as well as the laws governing his or her actions. At the same time, a professional must convey a character of compassion, ethics, integrity, responsibility and respect. A professional shall not have been liable in an action that involved fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft or conversion, nor have been removed by a court for any of these actions. For these reasons, a professional guardian or conservator shall possess the following credentials:

- Have sufficient background or experience to give the professional a working knowledge of services, providers and facilities available for wards/protected persons, as well as skills necessary to effectively relate to vulnerable adults.
- Complete initial training on the role and responsibilities of a guardian and conservator
- Complete a degree in a field related to guardianship/conservatorship or have extensive and significant relevant work experience related to guardianship/conservatorship.
- Be a person of the highest ethical character
- Pass the background check as required by statute
- Qualify for a bond
- Be at least 21 years of age

On an ongoing basis and at least annually, a professional must complete sufficient continuing education courses in order to:

- Keep up-to-date on changes in the law and procedures
- Stay current with changes in community resources available to wards and protected persons
- Maintain an understanding of the professional's role and duties

In addition, a professional should be an active member of a professional organization that relates to guardianship/conservatorship. An active membership will help to maintain professional standards, keep current on changes in the profession, problem-solve with peers and keep from being isolated.

### B. Communication

Communication with a ward/protected person's family members, friends, and other involved persons (hereafter, referred to as informal support network) has the potential to positively or negatively impact the effectiveness of the guardian/conservator's efforts as well as influence the quality of life for the ward/protected person. The value of an informal support network in any person's life cannot be underestimated, even in circumstances that others might consider questionable. Developing practices that enhance positive communication is critical to the effectiveness of the guardian/conservator. The guardian/conservator must also act and make decisions that consider ways to support and enhance the ward/protected person's contact with

the informal support network, when this is in the best interest of the ward/protected person.

1. The Guardian/Conservator should make reasonable efforts to locate the ward/protected person's family and identify the ward/protected person's informal support network. For purposes of serving statutory notices on interested persons, family includes a ward/protected person's spouse, adult children, parents, siblings, or if none, next of kin.
2. Within a reasonable time after appointment, the guardian/conservator should communicate with the ward/protected person's informal support network. This may take place in person, in teleconference, or in electronic or written communication as appropriate to the situation. Areas of discussion may include:
  - a. Pertinent information that the guardian/conservator needs to gather from the informal support network to better serve the ward/protected person
  - b. Role identification: guardian/conservator's court and statutory obligations, areas of responsibility, and limits of responsibility
  - c. Identification and clarification of the informal support network's expectations of the guardian/conservator
  - d. Identification and clarification of the guardian/conservator's expectations of the support network
  - e. Billing practices. This may include:
    - i. types of contacts/activities billed (phone calls to and from families, visits, etc.)
    - ii. clarification that court will review guardian/conservator fees
  - f. Ongoing communication expectations. This may include:
    - i. explanation of guardian/conservator's normal business hours in which phone calls will be accepted
    - ii. how guardian/conservator will handle after-hour contacts and emergencies
    - iii. clarifying whether family wants to be contacted for occurrences such as hospitalizations, falls, room-changes, etc.
    - iv. identification of main contact person within the informal support network, as appropriate to the situation, who will then share information with the rest of the informal support network

### C. Conflicts of Interest

The best interest of the ward/protected person is the primary responsibility of the guardian/conservator. Conflicts of interest must be avoided because they can impact the

objectivity of the guardian/conservator's decision-making on behalf of the incapacitated client. Likewise, the appearance of impropriety or the violation of a conflict of interest impacts how the guardian/conservator is viewed by the court, the ward/protected person, and those dealing with the ward/protected person. As a result, the guardian/conservator should avoid the following:

1. Outside or personal relationships with the ward/protected person's family.
2. Accept gifts from the ward/protected person or family members unless the gifts are nominal, unsolicited, and to not accept them would not be in the best interest of the ward/protected person.
3. Petition to have self appointed as guardian or conservator, unless there is no other acceptable alternative and if another entity has completed an independent, objective assessment of the need for the guardianship/conservatorship.
4. Increase the cost of the conservatorship/guardianship by billing for activities that can be done by others at a lower cost.
5. Using the guardian/conservator's family to provide services to the ward/conservatee.

#### D. Boundaries

Boundaries are necessary as a way to keep a relationship professional and, therefore, effective. Guardians/Conservators who are engaged in a personal relationship with a ward/protected person or their informal support network run the risk of losing perspective on the role dictated by the statute and granted by the Court. Guardians/conservators can be personable without being personal and thus are better able to perform their duties in a caring, compassionate, yet objective manner. Establishing professional boundaries will also prevent guardians/conservators from entering into situations which pose an appearance of impropriety or present a conflict of interest.

##### *Personal Relationships*

Personal relationships (e.g., friendships, romantic or sexual interaction) with a ward/protected person's family, friends, or care providers can be problematic, in appearance and in actual practice. Such relationships have great potential to negatively impact the ability of the guardian/conservator to carry out the responsibilities of meeting the needs and best interests of the ward/protected person. The interests of a family member or potential heir could conflict with the ward/protected person's best interests, a delineation that could be difficult to recognize by a guardian/conservator who is engaging in a personal relationship with a member of the client's informal support network.

1. Guardians/conservators shall avoid personal relationships with wards, protected persons, their families, friends, and care providers, with the following exceptions:
  - Relationships with the ward/protected person's family members or friends who are related to the guardian/conservator by blood, marriage/domestic partnership, or

adoption, and that were in existence prior to the establishment of the fiduciary/client relationship.

2. Guardians/conservators shall not engage in sexual relations with a ward/protected person, except if the guardian/conservator is the spouse or the relationship existed prior to the appointment of the guardian/conservator and the ward/protected person is capable of consenting to these relations.
3. Family conflicts in the lives of wards/protected persons occur frequently. Guardians/conservators must remain at all times objective decision-makers and refrain from taking sides in family disputes. This will be best accomplished by remaining independent and not engaging in personal relationships with members of the informal support network.

### *Gifts*

In order to establish and maintain an effective professional relationship with the ward/protected person, acceptance of gifts should be avoided. However, it may be appropriate to accept gifts from the ward/protected person or family members if the gifts are nominal, unsolicited, and to not accept them would not be in the best interest of the ward/protected person. If a gift of the ward/protected person's personal property is offered, it should be graciously declined because of the appearance of impropriety and other risks.

### *Role of Guardian/Conservator vs. Role of Family*

A guardian/conservator is appointed by the court to serve as a substitute decision-maker, not a surrogate family member. Family or friends frequently provide many social activities with the ward/protected person such as attendance at cultural events, attending sporting events, taking vacations, bringing the ward/protected person home for a meal or visit, shopping for a holiday or birthday gift for a ward/protected person. When there is no family, guardians/conservators may be tempted to provide such activities to enhance the self-esteem and quality of life for the ward/protected person. However, these activities, when performed and billed by the guardian/conservator, present a serious appearance of impropriety and should be avoided unless they serve a purpose that cannot be accomplished in another manner. For example, going out for a meal away from the person's residence in order to observe and converse with the person about the care being received at the facility might be appropriate, if only that portion of the time spent on well-being monitoring is billed.

1. Services provided and billed should reflect only those activities related to guardianship/conservatorship duties granted by the court.
2. The guardian/conservator should strive to locate other providers, paid or volunteer, to provide social activities when there is no one in the informal support network available.

#### E. Interactions with Service Providers and Other Professionals

1. The guardian/conservator shall maintain a working knowledge of the services, providers, facilities, and funding sources available in the community.
2. The guardian/conservator shall not provide direct service to the ward/protected person and instead shall engage the services of professionals and other service providers as appropriate to meet the needs of the ward/protected person. These providers may include attorneys, accountants/tax preparers, stockbrokers, real estate agents, doctors, nurses, companions, and home care providers. The guardian/conservator shall not personally perform activities that typically fall under the realm of these and other service providers.

When hiring service providers, the guardian/conservator shall:

- make every effort to ensure that quality services are provided to the ward/protected person while also considering the cost-effectiveness of such services;
  - avoid using professionals and other service providers personally associated with the guardian/conservator as this constitutes a conflict of interest.
  - attempt at all times to use professionals and other service providers that are bonded, licensed, and insured, to reduce liability risk.
3. The guardian/conservator shall coordinate and monitor services needed by the ward/protected person to ensure receipt of appropriate care and treatment.
  4. The guardian/conservator shall treat all professionals and service providers with respect and courtesy to enhance the working relationship between the provider, ward/protected person, and the guardian/conservator for the optimal benefit of the ward/protected person.

#### F. General Standards for Consent Determination

When decisions are made pursuant to guardianship or conservatorship, the guardian/conservator shall consider the following:

1. That no less restrictive alternatives exist, and;
2. That the benefit and potential harm to the ward/protected person has been weighed, and;
3. That the desires of the ward/protected person have been considered, and;
4. That community integration is considered whenever reasonably possible, and;
5. That reasonable efforts have been made to obtain the opinions of the relatives and other involved individuals.

## G. Vulnerable Adults Act

Pursuant to Minn. Stat. Section 626.5572, Subd.16, a guardian/conservator is a person engaged in the care of a vulnerable adult and is subject to the reporting requirements of the Vulnerable Adults Act (Minn. Stat. Section 626.557) in the event of concerns of maltreatment. Further, the guardian/conservator shall consider him or herself a mandated reporter.

## H. Ward /Protected Person's Rights after Guardianship / Conservatorship Appointment

### 1. Right to Appeal

***STATUTE: Minn. Stat. Section 524.5-310(d) Within 14 days after an appointment, a guardian shall send or deliver to the ward, and counsel if represented at the hearing, a copy of the order of appointment accompanied by a notice which advises the ward of the right to appeal the guardianship appointment in the time and manner provided by the Rules of Appellate Procedure.***

***STATUTE: Minn. Stat. Section 524.5-409(d) Within 14 days after an appointment, the conservator shall send or deliver to the protected person, if the protected person has attained 14 years of age and is not missing, detained, or unable to return to the United States, and counsel if represented at the hearing, a copy of the order of appointment accompanied by a notice which advises the protected person of the right to appeal the conservatorship appointment in the time and manner provided by the Rules of Appellate Procedure.***

The guardian/conservator will ensure the copy of the order of appointment and notice of right to appeal is delivered to the ward/protected person.

### 2. Right to Petition for Restoration

***STATUTE: Minn. Stat. Section 524.5-310(e) Each year, within 30 days after an appointment, a guardian shall send or deliver to the ward a notice of the right to request termination or modification of the guardianship.***

***STATUTE: Minn. Stat. Section 524.5-409(e) Each year, within 30 days after the anniversary date of an appointment, a conservator shall send or deliver to the protected person a notice of the right to request termination or modification of the conservatorship.***

- a. Annually the guardian/conservator must give notice to the ward/protected person of the right to petition for restoration to capacity, discharge of the guardian or conservator, or modification of the guardianship or conservatorship order.
- b. Annually the guardian/conservator must file with the court an affidavit of mailing the Annual Notice of Rights to the ward/protected person.

I. Modification of Guardianship / Conservatorship

1. A guardian/conservator shall petition for modification of the guardianship/conservatorship when the condition of the ward/protected person changes such that fewer or additional powers are required.
2. The guardian/conservator shall support that ward/protected person at the highest level of functioning in any action to modify or terminate the guardianship/conservatorship.

J. Billing Practices and Fees

**STATUTE: 524.5-502 COMPENSATION AND EXPENSES.**

***(c) When the court determines that a guardian or conservator has rendered necessary services or has incurred necessary expenses for the benefit of the ward or protected person, the court may order reimbursement or compensation to be paid from the estate of the protected person or from the county having jurisdiction over the guardianship or protective proceeding if the ward or protected person is indigent... (d) The court shall order reimbursement or compensation if the guardian or conservator requests payment and the guardian or conservator was nominated by the court or by the county adult protection unit because no suitable relative or other person was available to provide guardianship or protective proceeding services necessary to prevent maltreatment of a vulnerable adult...***

1. A guardian/conservator shall bear in mind at all times the responsibility to conserve the estate when making decisions regarding the provision of guardianship/ conservatorship services, including when determining their fees.
2. Services provided and billed should reflect only those activities related to guardianship/conservatorship duties granted by the court.
3. Factors to be considered in determining reasonableness of the guardian/conservator's billable time include the following:
  - a. Powers and responsibilities of the guardian/conservator.
  - b. Necessity of the services.
  - c. Time and labor required.
  - d. Difficulty of the situation involved.
  - e. Skill and experience required to properly carry out the duty.
  - f. Needs of the ward/protected person.
  - g. Costs of alternatives.
4. Fees or expenses charged by a guardian/conservator shall be documented through billings maintained by the guardian/conservator in the form of time records. Time records shall clearly and accurately state:
  - a. Time spent on a task.
  - b. Duty performed.
  - c. Expenses incurred.
  - d. Collateral contacts involved.

- e. Identification of individual who performed the duty (e.g., guardian/conservator, staff, volunteer).
5. The guardian/conservator shall generate bills regularly, usually monthly and not less than quarterly.
6. The guardian/conservator shall not bill the ward/protected person, or his/her personal needs account, when fees can be paid by another source. Alternative sources of payment may include MA personal needs deduction, court or county payments, Veterans Administration allowances, or contract payments.
7. The guardian/conservator shall not bill for costs incurred by the guardian/conservator in the sale or purchase of that guardian/conservator's business.
8. The guardian/conservator shall not bill the ward/protected person for the cost or for the purchasing process of necessary office equipment or for tasks that are associated with administration of the guardian/conservator's business. This includes billing for:
  - a. attending guardianship trainings and conferences
  - b. time spent preparing the guardian/conservator's monthly billing
  - c. picking up mail from post office box
  - d. fees incurred or staff time required in transmitting data or responsibilities between a guardian/conservator's staff or within a corporation.
9. The guardian/conservator shall not bill for activities that can be provided by others at a lower cost. Examples include: cleaning out a house, moving items or property of a client to a new residence, and transportation of the ward/protected person. The guardian/conservator should not provide direct service to the ward/protected person and therefore, should not bill for such activity.
10. The guardian/conservator shall strive to locate other providers, paid or volunteer, to provide social activities when there is no one in the ward/protected person's informal support network available. The guardian/conservator should avoid billing for providing social activity services even when alternatives cannot be found.
11. Activities which enhance the quality of life of the ward/protected person can be offered, but should not be billed, by the guardian/conservator. Examples include: attending funerals, purchasing birthday or holiday gifts, attending social activities or parties at the ward/protected person's residence, and accompanying the ward/protected person to theatre, concert, or other community outings.
12. The guardian/conservator is responsible for ensuring that billable time is spent appropriately. It is the guardian/conservator's role to prevent wards/protected persons and their family members or interested persons from causing excessive bills by frequent and unnecessary contacts with the guardian/conservator. This may require that limits be placed on the number of communications accepted or directly responded to by the guardian/conservator. Taking care to ensure that urgent or important information is received, the guardian/conservator should inform the parties that he/she will receive all communications but that there may be a direct response from the guardian/conservator only at a predetermined interval.

#### K. Sale of Business

A professional guardian/conservator may sell all or part of his or her business, subject to the professional meeting the following guidelines:

1. Determine that purchaser is qualified to provide quality service to the wards/protected persons.
2. Ensure the purchaser is not serving or representing any interest adverse to the interest of the wards/protected persons.
3. Ensure continuity of care and protection for the wards/protected persons during the period of sale and transition period.
4. Provide at least thirty (30) days advanced written notice of sale to the courts, the wards/protected persons, families and other interested persons.
5. Petition the court for permission to resign and request appointment of the successor guardian/conservator.
6. Ensure that the wards/protected persons will not be held liable for any fees incurred in the sale of the business.

#### L. Client File

The purpose of this Standard is to ensure immediate access of important information of each ward or protected person and to facilitate continuity of care by any successor fiduciary. The guardian/conservator shall maintain a separate file for each ward/protected person.

1. The file should contain, the following information and documents available for immediate retrieval:
  - a. A face sheet indicating the ward/protected person's name, date of birth, address, telephone number and social security number.
  - b. Pertinent legal documents involving the ward/protected person, including court orders, Letters of Guardianship/Conservatorship, estate planning documents, Powers of Attorney, funeral arrangements, and other pertinent documents.
  - c. Available vital records including birth, death, and marriage certificates, Veteran discharge papers, etc.
  - d. Any existing advance directives indicating code status and health care directives and documentation of the ward/protected person's known values, lifestyle preferences and wishes regarding medical and other care.

- e. List of key contacts and contact information, including family members, interested others and attorney of record.
  - f. List of service providers, contact information, a description of services provided to the ward/protected person and progress/status reports.
  - g. Pertinent medical information which may include a list of diagnoses and allergies; name and phone number of physicians; hospital preference; over the counter and prescribed medications, dosages, purpose; list of known previously prescribed medications and any complications experienced; and medical insurance coverage information.
  - h. Documentation of all client and collateral contacts, including date, time and activity. Include progress notes reflecting the work done and being done for the ward/protected person.
  - i. In the case of guardianship, the guardianship plan, which should be updated once a year and as needed.
  - j. In the case of guardianship, assessments regarding the client's past and present medical, psychological and social functioning when available.
  - k. A photograph of the ward/protected person.
2. In the case of conservatorship, the following, kept either with the above information or in a separate format/file, should include pertinent financial information including:
- a. The inventory and subsequent accountings, including all backup information such as bills, investment statements, record of personal property and intent to dispose documents.
  - b. Insurance documents, including the bond coverage and home or personal property coverage.
  - c. All tax returns that have been filed during the conservatorship and, if possible, three years prior to the set up of the conservatorship.

Note: Once the file is closed and the guardian/conservator has been discharged, the entire file should be stored for at least seven years. The guardian/conservator may decide to keep records longer as appropriate to the situation.

### III. GUARDIAN

***STATUTE: Minn. Stat. Section 524.5-313(c) The court may appoint a guardian if it determines that all the powers and duties listed in this section are needed to provide for the needs of the incapacitated person. The court may also appoint a guardian if it determines that a guardian is needed to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a guardian or those which the court may grant to a guardian include, but are not limited to:***

#### A. Custody and Abode

***STATUTE: Minn. Stat. Section 524.5-313(c)(1) the power to have custody of the ward and the power to establish a place of abode within or outside the state, except as otherwise provided in this clause. The ward or any interested person may petition the court to prevent or to initiate a change in abode. A ward may not be admitted to a regional treatment center by the guardian except:***

***(i) after a hearing under chapter 253B;***

***(ii) for outpatient services; or***

***(iii) for the purpose of receiving temporary care for a specific period of time not to exceed 90 days in any calendar year;***

1. The guardian has custody of the ward and may determine place of abode.
2. Exception: The ward may not be admitted to any regional treatment center except pursuant to the provisions of Minn. Stat. Section 253B, the Minnesota Commitment Act of 1982.
3. The guardian shall carefully monitor the living situation of the ward. The following factors should be examined and evaluated:
  - a. Whether the living arrangements provide the most appropriate and least restrictive living arrangements available.
  - b. The ward's prior lifestyle and present satisfaction with the living arrangements.
  - c. Whether the living arrangements meet the needs of the ward with minimal intrusion on the privacy and autonomy of the ward. In making this determination, the following criteria shall be considered:
    - (1) The state of repair, cleanliness, and safety of the abode.
    - (2) The availability of needed support systems. Support systems include, but are not limited to, the help and care given by family, friends, and church and community organizations. Professional services such as in-home services, medical and psychological services, and transportation needs should be considered.
    - (3) The planning process. The guardian shall participate with appropriate community health care resources in establishing and effecting an appropriate plan. The plan

shall consider the availability of support services, physical therapy, occupational therapy and counseling, and educational and recreational opportunities. The financial aspects of all moves must be carefully weighed.

- (4) The quality of life offered by the living environment. In making this determination, consideration should include, but is not limited to:
  - (a) The availability of recreational, educational, and productive activities, especially individually designed activities.
  - (b) The atmosphere and physical condition of the living situation, such as cleanliness, safety, availability of windows and light, accessibility to the outdoors, setting and surroundings in which the residence is located, upkeep of the buildings, furnishings, etc.
  - (c) The quality of personal and medical care provided.
  - (d) The presence of personal items of comfort, sentiment, and familiarity.
4. CAUTION: *Muscala v. Wirties*, 310 N.W.2d 696 (Minn. 1981). A guardian moving a ward from the homestead for more than six months must file a Notice of Intent to Return with the County Assessor's Office if the homestead exemption is to be preserved. Minn. Stat. Section 510.07
5. CAUTION: Any person may petition the court to initiate a residence change. This option is available to offset abuses by the guardian. A corollary is that absent an objection to the court, the guardian can control the residence, even against the wishes of the ward.

#### B. Care, Comfort, and Maintenance

***STATUTE: Minn. Stat. Section 524.5-313(c)(2) the duty to provide for the ward's care, comfort, and maintenance needs, including food, clothing, shelter, health care, social and recreational requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation. The guardian has no duty to pay for these requirements out of personal funds. Whenever possible and appropriate, the guardian should meet these requirements through governmental benefits or services to which the ward is entitled, rather than from the ward's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian, but the guardian shall have no personal or monetary liability;***

1. The guardian shall have meaningful visits with the ward no less than once a month; but as often as necessary to ensure the ward's well-being. In addition, the guardian shall have at least one other communication with; the ward's significant others, care professionals, or interested parties to remain current on the ward's status. In some cases it may be necessary to meet with the ward and care providers separately to properly assess situations.
  - a. A meaningful visit shall consist of, but is not limited to, the following activities:

- (1) Communication with the ward. In this communication, the guardian shall make every effort to ascertain the ward's attitude toward the living situation, the current status, needs, and desires of the ward.
  - (2) Assessment of the ward's physical appearance and psychological and emotional state, change in weight, injury, grooming, and assessment of personal items such as clothing and personal care items.
- b. Other communication as required by circumstances may include, but is not limited to:
  - (1) Regular communication with care providers. Where applicable, this may include conversations with physicians, psychologists, nurses, social workers, chaplain/clergy, physical or occupational therapists, teachers, and residential staff. The guardian should make a reasonable effort to attend and participate in care conferences concerning the ward.
  - (2) Examination of records kept regarding the ward.
  - (3) Assessment of the appropriateness of maintaining the ward in the current living situation including that the ward is receiving appropriate programming and treatment.
  - (4) Regular, proactive communication with family and other significant persons regarding changes in emotional status, care, abode, medical condition, and any other condition, whenever the health and safety of the ward would not be jeopardized by such communication.
2. The guardian shall be available to the ward and/or interested parties for routine and emergency communications. For routine matters, response will be in a reasonable time frame to address the issue.
3. The guardian shall actively promote the care, comfort, and maintenance of the ward by:
  - a. Promoting individualized care planning reflecting previous lifestyle, including but not limited to hobbies, social activities, employment and volunteer interests, family, and community involvements;
  - b. Gaining thorough knowledge of the ward's current diagnosis and care; and
  - c. Reporting changes in condition to care providers, family, and other significant persons.
4. The guardian shall keep a written summary of visits and other communication related to the guardianship.
5. The guardian shall know the religious faith and church affiliation of the ward and assist the ward in maintaining participation, as desired.
6. The guardian shall arrange for the ward to receive personal services.
7. If the ward moves, the guardian shall facilitate the move so that the ward's personality and life style will be reflected in the new environment.

8. The guardian shall monitor and evaluate services by reviewing information from providers and others.
9. The guardian shall obtain sufficient knowledge of the ward as is reasonably possible to make appropriate decisions on the ward's behalf.
10. The guardian shall utilize knowledge of the service entitlements and service availability in order to plan for individual needs of the ward and to assist in representing the ward.
11. The guardian shall take appropriate action to safeguard that county agencies and providers exercise and implement responsibilities in a manner consistent with the least restrictive alternative.
12. The guardian shall pursue services for the ward that will enable the ward to grow and to develop personally and intellectually.
13. The guardian shall pursue steps toward utilization of community-based services on behalf of the ward.
14. The guardian shall obtain knowledge of entitlement programs on behalf of the ward and aggressively pursue the benefits of those programs.

C. Care of Personal Effects

***STATUTE: Minn. Stat. Section 524.5-313(c) (3) the duty to take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects, and, if other property requires protection, the power to seek appointment of a conservator of the estate. The guardian must give notice by mail to interested persons prior to the disposition of the ward's clothing, furniture, vehicles, or other personal effects. The notice must inform the person of the right to object to the disposition of the property within ten days of the date of mailing and to petition the court for a review of the guardian's proposed actions. Notice of the objection must be served by mail or personal service on the guardian and the ward unless the ward is the objector. The guardian served with notice of an objection to the disposition of the property may not dispose of the property unless the court approves the disposition after a hearing;***

1. Personal property should be appraised and secured. The statute states "reasonable care" must be taken. The risk of a ward's loss of personal belongings by gift, theft, or otherwise, must be balanced with depriving the ward of wanted personal items.
2. A ward's stored personal items shall be carefully inventoried and labeled and be identifiable as separate from the belongings of any other individual.
3. Personal property no longer needed by the ward may be disposed of in numerous ways--including sale, donation, and refuse. The ward and other interested persons are informed of the intended disposition by written notice. If objections are received, there must be a hearing prior to the disposition of the property.

CAUTION: Property referred to in the ward's will requires special consideration. An attorney should be consulted before disposal of such property.

4. Family pictures, items of sentimental or religious value, and items of personal property may be stored when it is not appropriate for the ward to retain such items in the living environment.

#### D. Consent to Medical Treatment

*STATUTE: Minn. Stat. Section 524.5-313(c)(4)(i) The power to give any necessary consent to enable the ward to receive necessary medical or other professional care, counsel, treatment, or service, except that no guardian may give consent for psychosurgery, electroshock, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court as provided in this clause. The guardian shall not consent to any medical care for the ward which violates the known conscientious, religious, or moral belief of the ward.*

*(ii) a guardian who believes a procedure described in item (i) requiring prior court approval to be necessary for the proper care of the ward, shall petition the court for an order and, in the case of a public guardianship under chapter 252A, obtain the written recommendation of the commissioner of human services. The court shall fix the time and place for the hearing and shall give notice to the ward in such manner as specified in section 524.5-308 and to interested persons. The court shall appoint an attorney to represent the ward who is not represented by counsel, provided that such appointment shall expire upon the expiration of the appeal time for the order issued by the court under this section or the order dismissing a petition, or upon such other time or event as the court may direct. In every case the court shall determine if the procedure is in the best interest of the ward. In making its determination, the court shall consider a written medical report which specifically considers the medical risks of the procedure, whether alternative, less restrictive methods of treatment could be used to protect the best interest of the ward, and any recommendation of the commissioner of human services for a public ward. The standard of proof is that of clear and convincing evidence.*

*(iii) In the case of a petition for sterilization of a mentally retarded ward, the court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a social worker who is familiar with the ward's social history and adjustment or the case manager for the ward to examine or evaluate the ward and to provide written reports to the court. The reports shall indicate why sterilization is being proposed, whether sterilization is necessary and is the least intrusive method for alleviating the problem presented, and whether it is in the best interest of the ward. The medical report shall specifically consider the medical risks of sterilization, the consequences of not performing the sterilization, and whether alternative methods of contraception could be used to protect the best interest of the ward.*

*(iv) Any ward whose right to consent to a sterilization has not been restricted under this section or section 252A.101 may be sterilized only if the ward consents in writing or there is a sworn acknowledgment by an interested person of a nonwritten consent by the ward. The consent must certify that the ward has received a full explanation from a physician or registered nurse of the nature and irreversible consequences of the sterilization.*

*(v) A guardian or the public guardian's designee who acts within the scope of authority conferred by letters of guardianship under section 252A.101, subdivision 7, and according to the standards established in this chapter or in chapter 252A shall not be civilly or criminally liable for the provision of any necessary medical care, including, but not limited to, the administration of psychotropic medication or the implementation of*

*aversive and deprivation procedures to which the guardian or the public guardian's designee has consented.*

***STATUTE: Minn. Stat. Section 524.5 315 (c) A guardian, without authorization of the court, may revoke the appointment of an agent of a health care directive of which the ward is the principal, but the guardian may not, absent a court order, revoke the health care directive itself. If a health care directive is in effect, absent an order of the court to the contrary, a health care decision of the guardian takes precedence over that of an agent.***

1. Health care definitions and principles
  - a. "Consent" is the principle that every competent person has the right to decide what can or cannot be done to their own body.
  - b. "Informed consent" is the principle that a consent is valid only if the person understands the nature of the treatment, including risks, benefits, and alternatives and is capable of deciding which alternative is in that person's best interest. Informed consent includes the following:
    - (1) The person is able to receive and assimilate relevant information.
    - (2) The person has the capacity to reason and to understand relevant information and to make decisions based upon the relevant information.
    - (3) The consent is given voluntarily and without coercion
    - (4) The person understands the nature of the diagnosis, the prognosis, and the current clinical condition.
    - (5) The person understands risks and benefits of all treatment alternatives including risks and benefits of no treatment.
  - c. "Health care" encompasses physical and mental health.
  - d. "Treatment" includes medical or other professional care, counsel, service, or intervention.
2. The standard for health care and treatment consents under guardianship is informed consent.
3. Criteria and procedures for making an informed health care decision: (Note: The following process may be abbreviated during medical emergencies or routine/preventative care.)
  - a. Only a guardian with court-appointed authority may consent to or refuse health care and treatment for the ward.
  - b. The guardian's decisions will comply with applicable state and federal laws and rules. The guardian should be aware of any pertinent institutional policies and procedures related to health care decision-making.

- c. The guardian shall review and evaluate the information necessary to exercise informed consent, including:
  - (1) Ward's health care records;
  - (2) The professional opinion of the treating physician(s) and involved health-care professionals;
  - (3) The ward's diagnosis, prognosis, and current clinical condition;
  - (4) Reasons for the treatment;
  - (5) Benefits of the treatment;
  - (6) Possible risks and side effects of the treatment;
  - (7) Possible alternative procedures, as well as risks and benefits; and
  - (8) The consequences if consent for the treatment is not given.
- d. Obtain a second medical opinion for any treatment, as indicated.
- e. Solicit opinions of other professionals as indicated (e.g., nurse, psychiatrist, psychologist, social worker, advocate, clergy, occupational therapist, physical therapist, biomedical ethics committee, other medical professionals, etc.) A broad range of perspectives may reduce the possibility of personal biases entering the decision-making process.
- f. Inform the ward of the diagnosis, prognosis, proposed treatment, and the risks, benefits, and alternatives of the proposed treatment, including no treatment, as well as common medical and psychological results of any treatment or alternative.
  - (1) This information must be given in the form in which the ward communicates and understands (e.g., native language, written communication, sign language, hearing aid devices, etc.)
  - (2) If documented by the attending physician to be medically inadvisable, specific medical information need not be given.
  - (3) The ward has the right to refuse to receive medical information.
- g. Solicit the opinion of the ward regarding the treatment and consider:
  - (1) The current statements of the ward;
  - (2) Prior statements of the ward including, but not limited to, health care directive, living will, durable power of attorney for health care, or any other oral or written declarations of intent. *NOTE: The guardian may revoke the appointment of a health care agent, but absent a court order, the guardian may not violate the health care directive itself.*
  - (3) Known conscientious, religious, or moral beliefs of the ward.

- h. As appropriate, make reasonable efforts to inform and solicit information from the family and/or significant others.  
  
CAUTION: Be sensitive to confidentiality issues.
  - i. Consult with the guardian's attorney, as appropriate, especially when there are objections, questions, controversy, family disagreement, significant issues, or remaining doubts.
  - j. Document the decision-making process in the guardian's record. Obtain copies of appropriate documents, including all consent. Request that the medical record contain adequate documentation of the decision-making process.
  - k. Review the ward's health insurance coverage, including benefits, authorized services, authorized providers, and appeal procedures. Check for coverage of needed services.
  - l. Seek court intervention when necessary or required.
  - m. Health care treatment decisions shall not be based on discrimination due to the ward's status, condition, or disability
4. Neuroleptic Medications: The guardian must determine what medication(s) the ward is receiving. If any neuroleptic medication is being received, or is proposed, the guardian must do the following:
- a. Follow informed health care decision criteria and procedures as described above.
  - b. Evaluate whether there exists a psychiatric diagnosis that is drug-responsive.
  - c. Determine exactly what the proposed medication is, including dosage and normal range of dosage for the ward's age and diagnosis.
  - d. Evaluate whether there are identifiable and measurable behaviors, supported by the observation of baseline data, that are targeted to be affected by the medication.
  - e. Determine that other (non-psychiatric) causes for the behavior have been ruled out and that other interventions have been tried or ruled out prior to the suggestion of neuroleptic medication.
  - f. Determine that the potential benefits of the medication are worth the potential risks and side effects.
  - g. Evaluate that there is a specific, adequate plan for monitoring and review of the medications and targeted behavior.
  - h. Determine that the medication is being used for appropriate reasons, not as a substitute for staff coverage or as punishment.
  - i. If the ward refuses to take the medications, seek legal counsel.

5. Exceptions:

- a. The guardian shall not consent to psychosurgery, electro-shock, sterilization, or experimental treatment of any kind without court approval.
- b. The guardian shall not consent to any health care that violates the known conscientious, religious, or moral beliefs of the ward without court approval.
- c. When clear and reliable evidence of the ward's wishes regarding health care, counsel, treatment, or service are known to have been expressed prior to incapacity, the guardian's decisions shall not violate these known wishes without court approval.

E. Financial - When There Is No Conservator

***STATUTE: Minn. Stat. Section 524.5-313(c)(5) In the event there is no duly appointed conservator of the ward's estate, the guardian shall have the power to approve or withhold approval of any contract, except for necessities, which the ward may make or wish to make***

***STATUTE: Minn. Stat. Section 524.5-313(c)(7) If there is no acting conservator of the estate for the ward, the guardian has the power to apply on behalf of the ward for any assistance, services, or benefits available to the ward through any unit of government.***

F. Supervisory Authority

***STATUTE: Minn. Stat. Section 524.5-313(c)(6) The duty and power to exercise supervisory authority over the ward in a manner which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services***

1. The power to exercise supervisory authority over the ward can include the power to consent or withdraw consent to marriage if the court finds the ward "incapacitated with respect to choosing a spouse." See In Re Guardianship of Mikulanec, 356 N.W. 2d 683 (Minn. 1984)

G. Annual Report of Personal Well-Being

***STATUTE: Minn. Stat. Section 524.5-316 (a) A guardian shall report to the court in writing on the condition of the ward at least annually and whenever ordered by the court. A report must state or contain:***

- (1) the current mental, physical, and social condition of the ward;***
- (2) the living arrangements for all addresses of the ward during the reporting period;***
- (3) the medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care; and***
- (4) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.***

***STATUTE: Minn. Stat. Section 534.5-308 (d) The guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the court directs. The notice must be sent or delivered within 14 days after the filing of the report.***

The guardian will ensure the annual report is given to the ward as well as to the court.

#### H. Guardianship Plan

A guardianship plan assists the guardian in assessing the ward's needs and formulates a direction for the guardianship. A guardianship plan encourages the guardian to consider the unique needs of the individual ward, and offers a platform for the guardian to advocate to other professionals to ensure that goals are pursued on behalf of the ward. Additionally, a guardianship plan provides for continuity of care between guardianship staff and in the event of a successor guardian appointment. Utilizing information generated in a facility care plan, Individual Service Plan, or other document when such exist may be helpful.

1. Within 60 days of being appointed, the guardian shall develop a written guardianship plan for the ward. This shall be filed in the ward's case file.
  - a. The plan will address short and long-term goals for the ward.
    - i. Examples of short-term goals may include: a move into or out of a long-term care facility; location of an appropriate assisted living facility; maintain current residence through hiring home care providers; work with police and adult protection to address maltreatment issues, etc.
    - ii. Examples of long-term goals may include: working towards modification or termination of the guardianship; maintaining a safe plan that meets the ward's needs, etc.
  - b. Depending on the areas of authority granted by the court, the Guardianship Plan will include planning for medical, psychiatric, social, vocational, educational, training, residential, and recreational needs of the ward as appropriate to the individual ward.
2. As applicable, the conservator or other fiduciary, family, social service providers and others may need to be involved in the process of developing a plan.
3. The plan should be evaluated and updated annually, or more often as the situation of the ward changes.

#### I. Interpersonal Relationships and Sexual Expression of the Ward

While the topic of sexuality is a sensitive subject and discussion may cause embarrassment, expression of sexuality is an essential facet of human nature. Even a person with limited capacity is entitled to sexual expression in a way that is uniquely specific to that individual. For some wards, merely being allowed to hold hands will encompass their need for intimacy

and sexual expression, while for others there may be a necessity for non-judgmental care providers to offer more privacy. The guardian shall not allow his or her own biases and discomfort to interfere with effective decision-making. The guardian shall recognize that sexual expression occurs on a continuum, and that every client situation is unique and will require an individualized approach to ensure the ward's specific needs are met, while ensuring that the ward's well-being is not jeopardized.

1. The guardian shall acknowledge the ward's right to interpersonal relationships and sexual expression. The guardian must take steps to ensure that a ward's sexual expression is consensual, that the ward is neither victimized nor victimizing others, and that an environment conducive to this expression in privacy is provided.
2. The guardian shall protect the rights of the ward with regard to sexual expression and preferences except where the ward is victimizing others or the desired sexual expression is illegal. A review of ethnic, religious, and cultural values may be necessary to uphold the ward's values and customs.
3. The guardian shall take reasonable measure to protect the health and well-being of the ward.
4. Where applicable, in an effort to prevent sexually-transmitted diseases, the guardian shall ensure that a health care professional has informed the ward about such diseases and the related health consequences.
5. Where applicable, in an effort to prevent unplanned pregnancies, the guardian shall consider birth control options and choose the option that provides the ward the level of protection appropriate to the ward's lifestyle and ability, while considering preferences of the ward. The guardian shall encourage the ward, where possible and appropriate, to be informed and to participate in the choice of a birth control method through education by a health care professional.

#### J. Immunities of Guardian; Limitations

***STATUTE: Minn. Stat. Section 524.5-315 (b) A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the wrongful conduct of the third person***

## IV. CONSERVATOR

**STATUTE: Minn. Stat. Section 524.5-417(c)** *The court may appoint a conservator of the estate if it determines that all the powers and duties listed in this section are needed to provide for the needs of the protected person. The court may also appoint a conservator if it determines that a conservator is necessary to provide for the needs of the protected person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a conservator include, but are not limited to:*

### A. Pay Reasonable Charges

**STATUTE: Minn. Stat. Section 524.5-417(c)(1):** *The duty to pay the reasonable charges for the support, maintenance, and education of the protected person in a manner suitable to the protected person's station in life and the value of the estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the conservator should meet these requirements through governmental benefits or services to which the protected person is entitled, rather than from the protected person's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the conservator shall have no personal or monetary liability*

1. Billings should issue in the name of the protected person and all documents signed by the conservator on behalf of the protected person should indicate that relationship, to prevent incurring personal liability.
2. The conservator has the duty to pay reasonable charges on behalf of the protected person. This obligates the conservator to determine reasonable charges.
3. Charges for support and maintenance include, but are not limited to:
  - a. Housing and related expenses, personal living expenses.
  - b. Necessary withholding, unemployment taxes, and workers' compensation premiums for employees of the protected person.
  - c. Medical services rendered. File all related insurance documents.

**CAUTION:** If there is no guardian, the responsibility for obtaining these services may fall to the conservator by default.

**CAUTION:** Before assets are expended to pay charges of the protected person, care should be taken so that solely-owned assets are expended prior to joint or beneficiary-designated assets. The conservator should consult with his/her attorney for advice.

**Note:** If there are not enough assets to pay the charges of the protected person, the conservator should seek legal advice regarding the priority of payment of charges. See Section L. Claims Against the Protected Person.

B. Pay All Just and Lawful Debts

**STATUTE: Minn. Stat. Section 524.5-417(c)(2):** *The duty to pay out of the protected person's estate all just and lawful debts of the protected person and the reasonable charges incurred for the support, maintenance, and education of the protected person's spouse or dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the protected person;*

**STATUTE: Minn. Stat. Section 524.5-427**

*(a) ... a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child or spousal support, in accordance with paragraphs (b) to (e).*

*(b) The conservator shall consider recommendations relating to the appropriate standard of support, care, education, health, and welfare for the protected person or an individual who is in fact dependent on the protected person made by a guardian, if any, and, if the protected person is a minor, the conservator shall consider recommendations made by a parent.*

*(c) The conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefit to the protected person or an individual who is in fact dependent on the protected person pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.*

*(d) In making distributions under this section, the conservator shall consider:*

*(1) the size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage business affairs and the estate;*

*(2) the accustomed standard of living of the protected person and individuals who are in fact dependent on the protected person; and*

*(3) other money or sources used for the support of the protected person.*

*(e) Money expended under this section may be paid by the conservator to any person, including the protected person, to reimburse for expenditures that the conservator might have made or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.*

1. Determine tax status and file returns.
2. The conservator shall make a reasonable effort to pay debts in a timely manner.
3. Guidelines for paying debts and charges of the protected person.
  - a. The conservator shall make a reasonable effort to pay debts in a timely manner.

- b. The conservator shall consider recommendations relating to the appropriate standards of care.
  - c. The conservator may not be surcharged for the monies paid to those furnishing services to the protected person pursuant to a recommendation of a guardian unless the conservator knows that the guardian received a personal financial benefit from the services or the recommendation was not in the best interest of the protected person.
  - d. In making distributions, the conservator shall consider, among other things, the following:
    - i. the size of the estate,
    - ii. the expected duration of the conservatorship,
    - iii. the accustomed standard of living of the protected person
    - iv. other monies available for the protected person's support
4. Guidelines for paying charges for the protected person's spouse, child, or other dependent:
- a. The conservator shall consider the recommendations relating to the appropriate standard of care for the dependent person
  - b. The conservator may not be surcharged for the monies paid to those furnishing services to the protected person's spouse, child, or other dependent pursuant to a recommendation of a guardian unless the conservator knows that the guardian received a personal financial benefit from the services or the recommendation was not in the best interest of the protected person's spouse, child, or other dependent.
  - c. In making distributions for an individual who is a dependent of the protected person, the conservator shall consider the factors noted in the above statute and in paragraph 3 d. above.

CAUTION: Obtain court approval before spending the protected person's assets for the benefit of someone other than the protected person, despite the apparent authority given under Minn. Stat. Sec. 524.5-427.

CAUTION: Before assets are expended to pay debts of the protected person, care should be taken so that solely-owned assets are expended prior to joint or beneficiary-designated assets. The conservator should consult with his/her attorney for advice.

Note: If there are not enough assets to pay the debts of the protected person, the conservator should seek legal advice regarding the priority of payment of debts. See Section L. Claims Against the Protected Person.

### C. Financial Management

***STATUTE: Minn. Stat. Section 524.5-418(c)(3) The duty to possess and manage the estate, collect all debts and claims in favor of the protected person, or with the approval of the court, compromise them, institute suit on behalf of protected person and represent the protected person in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of Sections 48A.07, subdivision 6, and 501B.151, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a conservator. A conservator shall also have the power to purchase certain contracts of insurance as provided in Section 50.14, subdivision 14, clause (b);***

1. The conservator shall take possession of and secure assets, including real estate. These actions may include:
  - maintaining and securing occupied and unoccupied real estate.
  - maintaining insurance on all property. If there is no guardian, the responsibility for securing and insuring personal property may fall to the conservator by default.
  - filing Lis Pendens for the real estate and personal property
  - monitoring the protected person's credit history and notifying the credit reporting agencies to prevent the extension of credit without the conservator's consent.
2. The conservator shall investigate and determine all debts and claims in order to pursue collection.
3. After consulting with the guardian, the conservator should develop a financial plan, identifying the need to increase assets, maintain existing assets, or expend the estate to meet the current and anticipated care needs of the protected person.
4. The conservator may, with consent of the court, institute lawsuits and act on behalf of the protected person.
5. The conservator shall invest funds, preserving, protecting, and conserving assets and producing as much income as possible with minimal risk to principal. The conservator is subject to fiduciary standards. Depending on the size and/or complexity of the estate, the conservator should engage the services of investment or legal professionals.
6. The conservator has a duty to search out and apply for all governmental benefits for which the protected person may be eligible.
7. The conservator is obligated to notify the court when the bond does not adequately cover the protected person's assets.

### D. Approval of Contracts

***Statute: Minn. Stat. Section 524.5-417(c)(5) The power to approve or withhold approval of any contract, except for necessities, which the protected person may make or wish to make;***

E. Application for Governmental Benefits

*Statute: Minn. Stat. Section 524.5-417(c)(6) The power to apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.*

F. Termination of Power of Attorney

*Statute: Minn. Stat. Section 524.5-417(d) The conservator shall have the power to revoke, suspend, or terminate all or any part of a durable power of attorney of which the protected person is the principal... If a durable power of attorney is in effect, the conservator takes precedence over that of an attorney-in-fact.*

G. Sale of Real Estate, Leases, Mortgages

*STATUTE: Minn. Stat. Section 524.5-417(c)(4) Where a protected person has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the protected person, may authorize an exchange or sale of the protected person's interest or a purchase by the protected person of any interest other heirs may have in the real estate, subject to the procedures and notice requirements of section 524.5-418*

*STATUTE: Minn. Stat. Section 524.5-418(a) The court may direct a sale, mortgage, or lease of any real estate of a protected person when the personal property is insufficient to pay debts and other charges against the estate, or to provide for the support, maintenance, and education of the protected person, a spouse, and dependent children, or when it shall determine the sale, mortgage, or lease to be for the best interest of the protected person. The homestead of a protected person shall not be sold, mortgaged, or leased unless the written consent of the spouse has been filed.*

*STATUTE: Minn. Stat. Section 524.5-418(b) A conservator may file a petition to sell, mortgage, or lease alleging briefly the facts constituting the reasons for the application and describing the real estate involved therein. The petition may include all the real estate of the protected person or any part or parts thereof. It may apply for different authority as to separate parcels. It may apply in the alternative for authority to sell, mortgage, or lease. (1) Upon the filing of such petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing shall be given to interested persons and shall state briefly the nature of the application made by the petition...(2) Upon the hearing, the court shall have full power to direct the sale, mortgage, or lease of all the real estate described in the petition, or to direct the sale, mortgage, or lease of any one or more parcels thereof, provided that any such direction shall be within the terms of the application made by the petition...*

*STATUTE: Minn. Stat. Section 524.5-418 (b)(5) If a private sale be ordered, the real estate shall be reappraised by two or more disinterested persons under order of the court unless a prior appraisal of the real estate has been made by two or more disinterested persons not more than six months before the sale, which reappraisal shall be filed before the*

***confirmation of the sale. No real estate shall be sold at private sale for less than its value as fixed by such appraisal.***

1. In considering whether it is in the best interests of the protected person to dispose of real or personal property, the conservator shall consider, but is not limited to a consideration of, the following factors:
  - a. Impact on the life of the protected person
  - b. Future need of or benefit to the protected person
  - c. The current desire of the protected person.
  - d. The provisions of the protected person's estate plan.
  - e. Financial benefit/burden of maintaining the property.
2. Secure, maintain, and insure occupied and unoccupied property.
3. Consult an attorney before selling or encumbering any property, real, or personal, or any interest therein to ensure compliance with statutory requirements.
4. Comply with medical assistance rules when applicable.
5. For any mortgage or for a lease of real estate for one year or more, the conservator must obtain court approval.

#### H. Transaction Set-Aside

***STATUTE: Minn. Stat. Section 524.5-417(e) Transaction set aside. If a protected person has made a financial transaction or gift or entered into a contract during the two-year period before establishment of the conservatorship, the conservator may petition for court review of the transaction, gift, or contract. If the court finds that the protected person was incompetent or subject to duress, coercion, or undue influence when the transaction, gift, or contract was made, the court may declare the transaction, gift, or contract void except as against a bona fide transferee for value and order reimbursement or other appropriate relief. This subdivision does not affect any other right or remedy that may be available to the protected person with respect to the transaction, gift, or contract.***

***STATUTE: Minn. Stat. Section 524.5-417 (f) After the filing of the petition, a certificate of the district court certified to that fact may be filed for record with the Minnesota secretary of state... If a conservator is appointed on the petition, and if the conservatorship order removes or restricts the right of the protected person to transfer property or to contract, then all contracts except for necessities, and all transfers of personal property, tangible or intangible, including, but not limited to, cash or securities transfers at banks, brokerage houses, or other financial institutions, or transfers of cash or securities, made by the protected person after the filing and before the termination of the conservatorship shall be voidable.***

## I. Inventory

***STATUTE: Minn. Stat. Section 524.5-419(a): Within 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.***

The following property shall be included in the inventory:

- (1) real estate, with plat or survey description, and if a homestead, designated as such,
- (2) furniture and household goods
- (3) wearing apparel
- (4) corporation stocks described by certificate numbers
- (5) mortgages, bonds, notes, and other written evidence of debt, described by name of debtor, recording data, or other identification,
- (6) all other personal property accurately identified

All encumbrances, liens, and other charges on any item shall be stated. The conservator shall set forth in the inventory the fair market value of all assets listed therein, however, appraisals are not usually required until assets are sold.

1. Conduct a comprehensive search for all assets.
2. Determine whether any assets have beneficiary designations or whether co-owners are listed on the title. This information should be noted on the Inventory.
3. When a separate guardian and conservator are appointed, the guardian shall cooperate with the conservator in completing the inventory and sale of personal property
4. If there is a need to use legal means to protect assets, notify an attorney.

## J. Financial Record Keeping

***STATUTE: Minn. Stat. Section 524.5-419(b) A conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of the court, ward, protected person, or any attorney representing such persons.***

1. Establish a separate conservatorship account to receive all deposits and make all payments.
2. Maintain a complete and accurate ledger that shows all funds going through the conservatorship account.
3. Keep receipts for all purchases made.
4. Retain bank account statements, cancelled checks, investment account statements, asset information, and tax returns for at least seven (7) years.

5. Avoid advancing expenses on behalf of the protected person. Instead, pay the protected person's vendors directly from the protected person's funds.
6. Refrain from using credit cards to pay the protected person's expenses when possible.
7. Seek approval from the court before making large purchases. An Order to Expend Funds may be obtained *ex parte*.

CAUTION: Each probate court may have varying definitions of what constitutes a large purchase.

8. The conservator may be required to file appropriate accountings with agencies paying benefits to the protected person.

#### K. Conflicts of Interest

***STATUTE: Minn. Stat. Section 524.5-423 Any transaction involving the conservatorship estate which is affected by a conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, the spouse, descendant, agent, or lawyer of a conservator, or corporation or other enterprise in which the conservator has a beneficial interest.***

1. A conservator shall keep conservatorship accounts separate from the conservator's funds at all times.
2. A conservator shall not borrow funds from, nor lend funds to, the protected person and shall not encumber the protected person's property.
3. The conservator shall not purchase from the protected person any personal or real property without approval of the court.
4. The conservator shall not make any gifts out of the protected person's funds without court approval. This includes donations to churches and other charitable organizations.
5. A protected person's funds shall not be used to pay the debts of any party other than the protected person without court approval.

#### L. Claims Against the Protected Person

***STATUTE: Minn. Stat. Section 524.5-429 Claims Against Protected Person.***

***(a) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in paragraph (d)....***

***(b) ...A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within 60 days after its presentation. The conservator before payment may change an allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim....***

***(d) If it appears that the 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:***

- (1) Costs and expenses of administration;***
- (2) Claims of the federal or state government having priority under other law;***
- (3) Reasonable and necessary medical, hospital, or nursing home expenses of the protected person, including compensation of persons attending the ward, protected person, or respondent;***
- (4) Claims incurred by the conservator for support, care, education, health, and welfare previously provided to the protected person or individuals who are in fact dependent on the protected person;***
- (5) Claims arising before the conservatorship; and***
- (6) All other claims.***

***(e) Preference may not be given in the payment of a claim over any other claim of the same class, and a claim due and payable may not be preferred over a claim not due....***

1. Upon receiving a claim, the conservator shall act promptly to determine the legitimacy of the presented claim. The conservator may allow or disallow the claim. To disallow a claim, the conservator should provide written notice within 60 days of its presentment.
2. If the estate does not have enough assets to pay existing claims, claims should be paid in the following order. All claims within a higher priority must be paid before a claim in a lower priority is paid.
  - a. Costs and expenses of administration.
  - b. Federal or state government claims having priority.
  - c. Medical and nursing home expenses and attendant compensation, if reasonable and necessary.
  - d. Claims incurred during the conservatorship related to the protected person or dependents.
  - e. Claims arising before the conservatorship.
  - f. All other claims.

M. Annual Accounting

**STATUTE: Minn. Stat. Section 524.5-420(a)** *A conservator shall report to the court for administration of the estate annually unless the court otherwise directs, upon resignation or removal, upon termination of the conservatorship, and at any other times as the court directs...*

**524.5-420(b)** *A report must state or contain a listing of the assets of the estate under the conservator's control and a listing of the receipts, disbursements and distributions during the reporting period.*

**524.5-420(c)...** *In conjunction with the report, the court may order a conservator to submit the assets of the estate to an appropriate examination to be made in the manner the court directs.*

1. An annual accounting should be filed with the court within 30 days of the anniversary date of the appointment, unless otherwise directed by the court.
2. The annual accounting must show all expenditures on behalf of the protected person during that year. The conservator should keep receipts for all purchases so that cancelled checks can be compared to receipts to verify expenditures.
3. The annual accounting should show all receipts into the conservatorship during the year. The conservator should keep copies of checks or check stubs so that they can be compared to receipts to verify receipts into the conservatorship.
4. The conservator must make certain that all financial transactions have a documented trail so that if the court requires additional information regarding any of the assets, the information is available.
5. Unrealized gains or losses of existing stocks and bonds should not be shown on the annual accounting. Instead, stocks and bonds should be listed on the accounting at their inventory value. Current values of stocks and bonds should be listed on an exhibit attached to the accounting.
6. The conservator will need to comply with Rule 11, MN Rules of General Practice which provides that financial account information must be reported to the Court on a separate confidential form.

N. Estate Planning By the Conservator

**Statute: Minn. Stat. Section 524.5-411(a)** *After notice to affected persons as provided in this section, and after hearing, and upon express authorization of the court, a conservator may:*

- (1) *make gifts;*
- (2) *convey, release, or disclaim contingent and expectant interests in property...;*
- (3) *exercise or release a power of appointment;*
- (4) *create a revocable or irrevocable trust of property of the estate, ..., or to revoke or amend a trust revocable by the protected person;*

- (5) .... exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities ...;
- (6) exercise any right to exempt property and an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos;
- (7) .... exercise rights to elect options and change beneficiaries under any .... retirement plan.....;
- (8) exercise the power to create, terminate, or alter the beneficial interests and beneficiaries of, a payable on death (POD) account, a transfer on death (TOD) security registration or account, or joint tenancy interests with rights of survivorship; and
- (9) make, amend, or revoke the protected person's will.

.....

*(e) The court, in exercising or in approving a conservator's exercise of the powers listed in paragraph (a), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The court shall also consider:*

- (1) *the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support and the interests of creditors;*
- (2) *possible effect on income, estate, gift, inheritance, or other tax liabilities;*
- (3) *eligibility for governmental assistance with the goal of avoiding reliance on such programs;*
- (4) *the protected person's previous pattern of giving or level of support;*
- (5) *the existing estate plan ;*
- (6) *the protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death;*
- (7) *whether the protected person's needs can be met from the person's remaining assets after any transfer is made, taking into account the effect of any transfer on eligibility for medical assistance long term care services; and*
- (8) *any other factors the court considers relevant.*

.....

*(g) Notwithstanding the power granted to the conservator by the court under this section, the conservator owes no duty to any person other than the protected person. The conservator shall not be held liable for the exercise or the failure to exercise, or the decision to exercise or the decision to decline to exercise, the powers granted by this section. The conservator, however, may be held liable to the protected person's estate for gross negligence related to the implementation of any action approved by the court under this section.*

In considering whether to conduct "estate planning" for the protected person, the conservator first needs to ascertain whether the protected person would have intended to make the estate planning decision. If the protected person's intent cannot be ascertained, the conservator must consider the "best interest" of the protected person in determining whether to proceed with a petition. It will be a rare case in which it is in the "best interest" of the protected person to conduct estate planning that results in reducing the protected person's available assets.

Estate planning decision-making should be made only after consideration is given to the following factors which the court will evaluate in giving its consent:

1. The financial needs of the protected person and the needs of those who are dependent on the protected person for support and the interest of creditors;
2. The effect on income, estate, gifts, inheritance or other tax liabilities;
3. Eligibility for governmental assistance with the goal of avoiding reliance on such programs;
4. Previous pattern of giving or level of support.
5. The existing estate plan;
6. Life expectancy and the probability that the conservatorship will terminate before the protected person's death;
7. Whether needs can be met from the protected person's remaining assets after any transfer is made, taking into account the effect of any transfer on eligibility for medical assistance long term care services; and
8. Any other relevant factors.

Despite the fact that the statute gives the conservator the ability to request an order from the court to conduct estate planning for the protected person, the conservator owes no duty to any person other than the protected person. Likewise, the conservator will not be held liable for the exercise or the failure to exercise, or the decision to exercise or the decision to decline to exercise, the powers granted under this statute.

#### O. Delegation of Conservator Functions

***Statute: Minn. Stat. Section 524.5-426 (a) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the performance of functions that a prudent person of comparable skills may delegate under similar circumstances.***

***(b) The conservator shall exercise reasonable care, skill, and caution in:***

- (1) selecting an agent;***
- (2) establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;***
- (3) periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and***
- (4) redressing an action or decision of an agent which would constitute a breach of fiduciary duty if performed by the conservator.***

***(c) A conservator who complies with paragraphs (a) and (b) is not liable to the protected person or to the estate for the decisions or actions of the agent to whom a function was delegated.***

***(d) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.***

***(e) By accepting a delegation from a conservator subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.***

## V. ACTIONS REQUIRING COURT APPROVAL

The following is a summary of actions by a guardian/conservator which require court approval:

### **Guardianship**

Admitting a ward to a regional treatment center for treatment that exceeds 90 days, except for outpatient services. *Minn. Stat. §524.5-313(c)(1)*

Disposing of a ward's personal property after receipt of an objection from a Notice of Intent to Dispose. *Minn. Stat. §524.5-313(c)(3)*

Consenting to psychosurgery, electroshock, sterilization or experimental treatment of any kind. *Minn. Stat. §524.5-313(c)(4)*

Revoking a ward's health care directive (a health care agent can be revoked without court approval). *Minn. Stat. §524.5-315(c)*

Commitment of a ward to an institution. *Minn. Stat. §524.5-315(d)*

### **Conservatorship**

Altering the protected person's preexisting estate plan, including make gifts; convey, release or disclaim contingent or expectant interests in property; exercise or release a power of appointment; create, revoke or amend a trust; exercise rights to elect options or surrender insurance policies and annuities; alter beneficiary designations; exercise any right to exempt property and an elective share of a deceased spouse's estate; renounce or disclaim any succession interest or by transfer inter vivos; exercise options or alter beneficiaries of a retirement plan; create, terminate or alter beneficial interests and beneficiaries of a POD account or TOD registration or account or joint tenancy interests; make, amend or revoke a will. *Minn. Stat. §524.5-411*

Pay support to someone who is unable to earn a livelihood and who is legally entitled to support from the protected person. *Minn. Stat. §524.5-418(c)(2)*

Compromise claims and debts; institute lawsuits on behalf of the protected person or represent the protected person in any court proceeding. *Minn. Stat. §524.5-418(c)(3)*

Sell or exchange the protected person's real estate. *Minn. Stat. §524.5-418(c)(4); Minn. Stat. §524.5-418A(a)*

Mortgage (or extend an existing mortgage for five or more years) or lease (for one or more years) the protected person's real estate. *Minn. Stat. §524.5-418A(a)*

Approve the compensation received for the protected person's real estate in an eminent domain matter. *Minn. Stat. §524.5-418A(e)*

Plat the protected person's real estate. *Minn. Stat. §524.5-418A(f)*

Convey or lease (for one or more years) real estate to which the protected person is legally bound to make. *Minn. Stat. §524.5-418A(g)*

Enter into transactions affected by a conflict between the conservator's fiduciary interests and the conservator's personal interests. (A transaction affected by a conflict includes any sale, encumbrance or other transaction involving the conservatorship estate entered into by the conservator, or the conservator's spouse, descendant, agent, lawyer or a corporation or enterprise in which the conservator has a beneficial interest.) *Minn. Stat. §524.5-423*

Caution: The probate court may require court approval for additional actions, such as making expensive purchases.

## VI. MODIFICATION AND TERMINATION OF GUARDIANSHIP/CONSERVATORSHIP

### **STATUTE: 524.5-317 TERMINATION OR MODIFICATION OF GUARDIANSHIP.**

- (a) A guardianship terminates upon the death of the ward or upon order of the court.*
- (b) On petition of any person interested in the ward's welfare the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.*
- (c) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination and discharge the guardian unless it is proven that continuation of the guardianship is in the best interest of the ward.*

### **STATUTE: 524.5-431 TERMINATION OF PROCEEDINGS [of Conservatorship]**

- (a) A conservatorship terminates upon the death of the protected person or upon order of the court. Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains majority or is emancipated.*
- (b) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution of probate property to the personal representative of the protected person's estate. The conservator shall distribute nonprobate property to the successor in interest. The conservator shall file a final report and petition for discharge no later than 30 days after distribution, and notice of hearing for allowance of said report shall be given to interested persons and to the personal representative of the protected person's estate.*
- (c) On petition of any person interested in the protected person's welfare, the court may terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator. Termination of the conservatorship does not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.*
- (d) Except as otherwise ordered by the court for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for conservatorship. Upon the establishment of a prima facie case for termination, the court shall order termination unless it is proved that continuation of the conservatorship is in the best interest of the protected person.*
- (e) Upon termination of a conservatorship, whether or not formally distributed by the conservator, title to assets of the estate remains vested in the formerly protected person or passes to the person's successors subject to administration, including claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption. The order of termination must provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer of title or confirm a distribution previously made and to file a final report and a petition for discharge upon approval of the final report.*

***(f) The court shall enter a final order of discharge upon the approval of the final report and satisfaction by the conservator of any other conditions placed by the court on the conservator's discharge.***

**STATUTE: 524.5-428 DEATH OF A PROTECTED PERSON.**

***(a) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the personal representative named in the will of the delivery, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto.***

1. A guardian/conservator or ward/protected person may petition at any time for modification of the guardianship/conservatorship.
2. A guardian/conservator shall petition for modification of the guardianship/conservatorship when the condition of the ward/protected person changes such that fewer or additional powers are required.
3. A guardian/conservator shall support the ward/protected person at the highest level of functioning in any action to modify or terminate the guardianship/conservatorship.
4. A guardian/conservator's powers shall end upon death of the ward/protected person, termination of the guardianship/conservatorship, or the appointment of a successor guardian/conservator.
5. A conservator shall be relieved of conservatorship responsibilities when a final account is allowed by the court and a discharge petition granted.
6. Upon the death of the ward/protected person, the guardian/conservator should do the following:
  - a. Deliver to the court any will of the deceased ward/protected person and inform the named personal representative of the delivery.
  - b. Retain the ward/protected person's estate for delivery to the duly appointed personal representative or others entitled to it.
  - c. Notify any agency providing benefits to the ward/protected person of the death.

**CAUTION:** In many cases there is no one able to assume responsibility for overseeing funeral arrangements, and this may fall to the guardian/conservator by default.

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