

# Agenda

## Ad Hoc Committee on Probate Law and Procedure

September 19, 2008  
12:00 to 2:00 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Executive Dining Room

Approval of minutes	Tab 1	Judge George Harmond
Forms	Tab 2	Tim Shea

**Committee Web Page:** <http://www.utcourts.gov/committees/adhocprobate/>

### Meeting Schedule

Meeting	
October 17, 2008	Forms
November 14, 2008	Report
December 19, 2008	Report

# Tab 1

## MINUTES

### Ad Hoc Committee on Probate Law and Procedure

Administrative Office of the Courts

450 South State Street

Salt Lake City, Utah 84114-0241

August 15, 2008 - 12:00p.m.

#### ATTENDEES

Kent Alderman  
Mary Jane Ciccarello  
Judge George Harmond  
Maureen Henry  
Marianne O'Brien  
Julie Rigby  
Kathy Thyfault

#### EXCUSED

Kerry Chlarson  
Judge Reese Hanson  
Justice Richard Howe  
Steve Mikita  
Judge Gary Stott

#### STAFF

Diana Pollock  
Tim Shea

#### GUESTS

Becky Allred  
Tom Christensen

### I. WELCOME AND APPROVAL OF MINUTES

Judge Harmond welcomed the committee members to the meeting. There were two corrections to the minutes from the previous meeting. With those corrections the minutes were approved unanimously.

Judge Harmond welcomed Becky Allred and Tom Christensen to the meeting. Ms. Allred and Mr. Christensen have experience with conservatorship issues and will be discussing them with the committee.

At the end of the previous meeting, Mr. Shea asked the committee to think about whether there is a reason, or not, to adopt for conservatorships any of the principles that the committee has adopted for guardianships.

### II. CONSERVATORSHIPS

#### Grounds

- A mental incapacity requirement should included, but not be required to establish a conservatorship.
- Very often conservators are appointed because the ward cannot manage his or her financial affairs, the ward requests a conservator, or the ward is confined or missing.

- Some people use a living trust or trust arrangement without court involvement because it is less expensive, less onerous and less oversight while accomplishing the same thing.
- The volunteer program for monitoring should extend to conservators.
- Protective orders include a fairly extensive list of authority that the judge has over the estate. The district court judges will not have sufficient time for this type of direct oversight.
- The guardianship reforms should generally be the same language as for a conservator, however, do not do away with the protective order provisions.
- Inability to manage one's finances should be sufficient for a conservatorship.
- Use the proposed incapacity language for establishing a conservatorship. Add language for "confinement," "detention," "disappearance," or "voluntary request."
- Keep the provision to the effect that a judge can appoint a conservator if there is a person entitled to be supported by the protected person.
- The conservator's authority should be limited, as we have done with guardians.

### **Venue**

- This includes where the respondent might not be a resident of Utah but owns property in Utah.
- If there is an appointment in another state, Utah would honor in under full faith and credit, and there would be no need for a new petition.
- There is a shortcut method under the Probate Code to accept letters issued in another state and bringing them to Utah to be recorded.
- This is primarily a title company issue.

### **Appointment of a Lawyer**

- Unless the person to be protected has counsel of his own choice, the court should appoint counsel to represent him, just like in guardianships.

### **Examination**

- If incapacity is the grounds for the appointment, there is no difference between the guardian and conservator in this process.
- If a person's incapacity is not the grounds for the appointment, there does not need to be a medical determination.

### **Visitor**

- The court can appoint a visitor.

- Helpful to have the court visitor in a conservatorship be a person with financial expertise.

### **Emergency Conservator**

- No current provision in the conservatorship statute.
- The court should be able to appoint in an emergency
- When appointed, the conservator would have the authority to find out what the asset situation is.
- Order from court freezing the assets of the protected person with a deadline.
- The authority is limited to what is expressly authorized in the court order.

### **Evidentiary Standard**

- Clear and convincing evidence is an appropriate standard, even if the grounds are confinement, missing or a voluntary request.

The meeting adjourned at 2:30 p.m.

# Tab 2



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

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Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

**To:** Probate Committee  
**From:** Tim Shea *TS*  
**Date:** September 16, 2008  
**Re:** September 19 meeting

We are scheduled to review forms at the next meeting. Mary Jane, Julie and Kathy have had a chance to list the forms we need, and the list is extensive. I have focused on what I think are the three most important.

Because the proposed statutes are not yet approved, it is difficult to develop forms, but I have tried to aim at what we want the law to be. Even under the current law, there are not many examples to work from. Mary Jane provided many of the Utah Legal Services forms, but they are minimal at best.

Perhaps in reaction to that, these three draft forms are very extensive. Perhaps too extensive. Your review should be for information that is missing, information we don't need, and simpler ways to say things. Don't worry about space, page breaks and other cosmetic problems. I'll fix those when the content is right.

The petition is a single form to serve for appointing a guardian, a conservator or both. Consider whether separate forms are preferable. Also, the last several pages contain the statutory authority of a conservator. We took the approach of wanting the order to expressly statute the authority of a guardian, but perhaps that is not the best approach for a conservator. Currently, the draft simply quotes the statutes. If we want to list all the authority, I would at least edit the language to a simpler statement. And, although this is a petition for appointment of a guardian, I'm concerned that there is nothing about less restrictive alternatives.

This is what I propose to get us started. I anticipate additional forms, and I hope you will identify them as we discuss these.

Encl. Petition to Appoint a Guardian/Conservator  
Petition to Appoint a Temporary Guardian/Conservator  
Guardianship Plan

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

My Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail \_\_\_\_\_

I am the  Petitioner  
 Attorney for the  Petitioner and my Utah Bar number is \_\_\_\_\_

In the District Court of Utah

\_\_\_\_\_ Judicial District \_\_\_\_\_ County

Court Address \_\_\_\_\_

In the Matter of the  
 Guardianship  Conservatorship for  
\_\_\_\_\_  
Respondent

**Petition to Appoint a**  
 **Guardian**  
 **Conservator**  
**for a Protected Person**

Case Number \_\_\_\_\_

Judge \_\_\_\_\_

Commissioner \_\_\_\_\_

**Instructions:** You must attach the following records and forms if they are not already on file with the court.

- Continuation pages (If any, completing paragraphs that don't have enough space. Write the paragraph number on the continuation page.)
- Estimated Estate Value Worksheet
- Request for Appointment of a Lawyer to Represent Respondent.
- Notice of Hearing
- Written nomination (if any) of a guardian or conservator by Respondent, by Respondent's spouse, adult child or parent or by the person currently caring for Respondent.
- Request to Examine Respondent (If you are requesting that Respondent be examined.)

- Request to Appoint a Visitor (If you are requesting that a court visitor be appointed and report to the court.)
- Request that Respondent not Appear at the Hearing (If you are requesting that Respondent not be present during the hearing.)

(1)  I am:       The petitioner is:

the person to be protected. (Called "Respondent" in the rest of this Petition.)

the \_\_\_\_\_ (relationship) of Respondent who is interested in his/her welfare because:

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(Sufficient for conservatorship only.) the \_\_\_\_\_ (relationship) of Respondent who is interested in his/her estate or affairs because:

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(Sufficient for conservatorship only.) \_\_\_\_\_, (name) a person who would be adversely affected by lack of effective management of Respondent's property because:

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(2) Respondent was born on \_\_\_\_\_ (date).

(3) Respondent's address is

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(4) Respondent's residence is

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(5) Respondent's relative of the nearest degree of kinship is \_\_\_\_\_ (name) who resides at:

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- (6) (a)  Respondent currently has no guardian, and there is no action pending in any court for the appointment of a guardian.
- (b)  Respondent currently has no conservator, and there is no action pending in any court for the appointment of a conservator.
- (c)  \_\_\_\_\_ (name) is Respondent's guardian and resides at:
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(d)  \_\_\_\_\_ (name) is Respondent's conservator and resides at:

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- (7) Venue is proper in this county because Respondent
- resides in this county. (Sufficient for both guardianship and conservatorship.)
  - is present in this county. (Sufficient for guardianship, but not conservatorship.)
  - is not a Utah resident, but has property in this county. (Sufficient for conservatorship, but not guardianship.)

(8) The priority for appointment established by law is:

Name	Qualification
	<input type="checkbox"/> Guardian <input type="checkbox"/> Conservator appointed by the _____ court of the state of _____ in which Respondent resides.
	Nominated by Respondent by signed written instrument before the claimed incapacity.
	Nominated by Respondent by any other means.
	Respondent's spouse or person nominated by spouse's will or other writing.
	Respondent's adult child(ren).

Name	Qualification
	Respondent's parent or person nominated by parent's will or other writing.
	Respondent's relative with whom Respondent has resided for the last 6 months.
	Person nominated by the person caring for Respondent.
	Specialized care professional.

(9) I have provided a general description of Respondent's estate in the Estimated Estate Value Worksheet, which I incorporate into this petition. I estimate the value of Respondent's estate to be \$\_\_\_\_\_. (Attach Estimated Estate Value Worksheet.)

(10)  (Necessary for appointing a guardian for an adult.) The appointment of a guardian is necessary or desirable as a means of providing continuing care and supervision for Respondent.

(11)  (Necessary for a protective order or appointing a conservator for an adult.) Respondent is unable to manage his/her property effectively, AND

(a) Respondent has property that will be wasted or dissipated unless proper management is provided, OR

(b) Protection is necessary or desirable to obtain or provide funds needed for the support, care, and welfare of

Respondent.

those entitled to be supported by Respondent.

(12)  (Necessary for a protective order or appointing a conservator for a minor.) Respondent is a minor, AND

s/he owns property that requires management or protection which cannot except by a protective order, OR

s/he has or may have business affairs which may be jeopardized or prevented by minority, OR

protection is necessary or desirable to obtain or provide funds needed for his/her support and education.



(16) Respondent's functional limitations leave him/her at risk of:

- (a) his/her property being dissipated;
- (b) being unable to provide for his/her support;
- (c) being financially exploited;
- (d) being abused or neglected, including self abuse; or
- (e) having his/her rights violated.

(17) Respondent has \_\_\_\_\_ (name of physical or mental illness, disability, condition, or syndrome) and the prognosis is:

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(18) Respondent is  able  not able to evaluate the consequences of alternative decisions. (Explain.)

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(19) Respondent  can  cannot manage the activities of daily living through training, education, support services, mental and physical health care, medication, therapy, assistants, assistive devices, or other means that s/he will accept. (Explain.)

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(20) Explain the nature and extent of the demands placed on Respondent by the need for care.

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(21) Explain the nature and extent of the demands placed on Respondent by his/her property.

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(22) Describe any planning by Respondent for surrogate health care and financial decision making (such as an advance health care directive, a power of attorney, a trust, or a jointly held account).

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(23) What are Respondent's preferences regarding the appointment of a guardian or conservator?

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(24) Explain any other factors that the court should consider in deciding whether Respondent is incapacitated and needs a guardian or conservator.

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(25)  I request that the court find that Respondent:

is incapacitated. (Necessary for appointing a guardian. Sufficient for a protective order or appointing a conservator.)

is confined or detained. (Sufficient for a protective order or appointing a conservator.)

has disappeared. (Sufficient for a protective order or appointing a conservator.)

has requested the appointment of a conservator. (Sufficient for a protective order or appointing a conservator.)

(26) I request that the court appoint \_\_\_\_\_ (name) as  
 guardian  conservator for Respondent. The proposed fiduciary's address is:

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(27) The proposed fiduciary is Respondent's \_\_\_\_\_  
(relationship) and is interested in Respondent's welfare because:

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(28) I request that the proposed fiduciary serve

without bond.

with bond in the amount of \$\_\_\_\_\_.

(29)  I request that the court provide the guardian with the following authority, which is the least restrictive means of accommodating Respondent's functional limitations:

- (a) make health care decisions using the substituted judgment standard or the best interest standard, whichever applies in the circumstances, except as restricted by law;
  - (b) consent to admission to a licensed health care facility for short term placement for the purpose of assessment, rehabilitative care, or respite care;
  - (c) admit Respondent to a licensed health care facility for long-term custodial placement;
  - (d) make arrangements for Respondent's support, care, comfort, education and welfare;
  - (e) take custody of Respondent and make arrangements for a dwelling place;
  - (f) take reasonable care of Respondent's personal effects;
  - (g) file an action for the appointment of a conservator or entry of a protective order under the Utah Guardianship and Protective Proceedings Act; and
  - (h) make the following decisions and give the following consents on behalf of Respondent, which are necessary to accommodate his/her particular functional limitations.
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(30)  There will be no conservator for Respondent, and I request that the court provide the guardian with the following authority, which is the least restrictive means of accommodating Respondent's functional limitations:

- (a) take control of and manage a savings account or checking account;
- (b) apply for, start proceedings for, receive and compel delivery of property due the ward or benefits to which the ward may be entitled, of not more than \$10,000 per year;
- (c) obtain legal advice and representation on behalf of Respondent;
- (d) pay Respondent's debts;
- (e) give gifts, donations or contributions on behalf of Respondent, except as restricted by law;
- (f) file tax returns on behalf of Respondent and pay Respondent's taxes; and

(g) provide for the support, care, comfort, education and welfare of the following people, who Respondent is legally obligated to support.

Name	Relationship

(31) I request that the court enter the following protective order:

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(32)  I request that the court provide the conservator with the following authority, which is the least restrictive means of accommodating Respondent's functional limitations:

**75-5-408. Permissible court orders.**

- to make gifts,
- to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety,
- to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment,
- to enter into contracts,
- to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life,
- to exercise options of the disabled person to purchase securities or other property,

- to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value,
- to exercise his right to an elective share in the estate of his deceased spouse, and
- to renounce any interest by testate or intestate succession or by inter vivos transfer.

**75-5-424. Powers of conservator in administration.**

- (a) Collect, hold, and retain assets of the estate, including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;
- (b) Receive additions to the estate;
- (c) Continue or participate in the operation of any business or other enterprise;
- (d) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;
- (e) Invest and reinvest estate assets in accordance with Subsection (2) above;
- (f) Deposit estate funds in a bank including a bank operated by the conservator;
- (g) Acquire or dispose of an estate asset, including land in another state, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (h) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- (i) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;
- (j) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;
- (k) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

- (l) Grant an option involving disposition of an estate asset or take an option for the acquisition of any asset;
- (m) Vote a security, in person or by general or limited proxy;
- (n) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (o) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (p) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;
- (q) Insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;
- (r) Borrow money to be repaid from estate assets or otherwise; and advance money for the protection of the estate or the protected person, and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;
- (s) Pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
- (t) Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (u) Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (v) Pay any sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian, or if none, to a relative or other person with custody of his person;
- (w) Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist him in the performance of his administrative duties; act upon their

recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(x) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(y) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

**75-5-425. Distributive duties and powers of conservator.**

(1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to:

(i) The size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(ii) The accustomed standard of living of the protected person and members of his household; and

(iii) Other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this Subsection (1) may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to

the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by Subsection (1), a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts which do not exceed in total for any year 20% of the income from the estate.

(3) When a minor who has not been adjudged disabled under Subsection 75-5-401(1)(b) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(4) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(5) 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 his possession, inform the executor or a beneficiary named in the will that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to it. If after 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice as provided in Section 75-3-310, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Section 75-3-308 and Chapter 3, Parts 6 through 10, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

**75-7-814. Specific powers of trustee.**

(1) Without limiting the authority conferred by Section 75-7-813, a trustee may:

- (a) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (b) acquire or sell property, for cash or on credit, at public or private sale;
- (c) exchange, partition, or otherwise change the character of trust property;
- (d) deposit trust money in an account in a regulated financial service institution;
- (e) borrow money, with or without security from any financial institution, including a financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (f) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- (g) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
  - (i) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
  - (ii) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
  - (iii) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and
  - (iv) deposit the securities with a depository or other regulated financial service institution;
- (h) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;
- (i) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

- (j) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;
- (k) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;
- (l) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;
- (m) with respect to possible liability for violation of environmental law:
  - (i) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;
  - (ii) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;
  - (iii) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;
  - (iv) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and
  - (v) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;
  - (n) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;
  - (o) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;
  - (p) exercise elections with respect to federal, state, and local taxes;
  - (q) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;
  - (r) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the

circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(s) pledge trust property to guarantee loans made by others to the beneficiary;

(t) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(u) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(i) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(ii) paying it to the beneficiary's custodian under Title 75, Chapter 5a, Uniform Transfers to Minors Act;

(iii) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(iv) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(v) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(w) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(y) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(z) on termination of the trust, exercise the powers appropriate to finalize the administration of the trust and distribute the trust property to the persons entitled to it.

(2) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances.

(33)  Respondent should not have the right to vote in federal, state, county or municipal elections because s/he is unable to communicate, with or without accommodation, the specific desire to participate in the voting process.

I declare under criminal penalty of Utah Code Section 78B-5-705 that this Petition to Appoint a Guardian/Conservator for a Protected Person is true and correct.

Date \_\_\_\_\_ Sign here ► \_\_\_\_\_

Typed or printed name \_\_\_\_\_

<b>Certificate of Service</b>			
I certify that I served a copy of this Petition to Appoint a Guardian/Conservator for a Protected Person on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Other Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic File		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

<b>Certificate of Service</b>			
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Date \_\_\_\_\_ Sign here ► \_\_\_\_\_  
 Typed or printed name \_\_\_\_\_

My Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
E-mail \_\_\_\_\_

I am the  Petitioner  
 Attorney for the Petitioner and my Utah Bar number is \_\_\_\_\_

In the District Court of Utah

\_\_\_\_\_ Judicial District \_\_\_\_\_ County

Court Address \_\_\_\_\_

In the Matter of the  
 Guardianship  Conservatorship for  
\_\_\_\_\_  
Respondent

**Petition to Appoint a Temporary**

**Guardian**  
 **Conservator**

**for a Protected Person**

Case Number \_\_\_\_\_

Judge \_\_\_\_\_

Commissioner \_\_\_\_\_

**Instructions:** You must attach the following records and forms if they are not already on file with the court.

- Continuation pages (If any, completing paragraphs that don't have enough space. Write the paragraph number on the continuation page.)
- Petition to Appoint a Guardian/Conservator and all supporting records and forms.

(1)  Following the procedures for the regular appointment of a  guardian  conservator would likely result in substantial harm to Respondent's health or safety because:

\_\_\_\_\_  
\_\_\_\_\_

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(2)  No other person appears to have authority to act.

(3)  The welfare of Respondent requires immediate action because:

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(4)  The appointment would be in Respondent's best interest because:

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(5)  Respondent will be substantially harmed before a hearing can be held because: (Necessary only if requesting that the court make the temporary appointment without prior notice and hearing.)

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(6) I request that the court appoint \_\_\_\_\_ (name) as  
 guardian  conservator for Respondent. The proposed fiduciary's address is:

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(7) The proposed fiduciary is Respondent's \_\_\_\_\_  
(relationship) and is interested in Respondent's welfare because:

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(8) I request that the appointment be for \_\_\_\_\_ days (no more than 60) and terminate on \_\_\_\_\_ (date), unless earlier terminated by the court.

(9) I request that the fiduciary be able to exercise only the following authority:

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I declare under criminal penalty of Utah Code Section 78B-5-705 that this Petition to Appoint a Temporary Guardian/Conservator is true and correct.

Date \_\_\_\_\_ Sign here ► \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Certificate of Service			
I certify that I served a copy of this Petition to Appoint a Temporary Guardian/Conservator on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Other Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic File		

<b>Certificate of Service</b>			
I certify that I served a copy of this Petition to Appoint a Temporary Guardian/Conservator on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
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Date \_\_\_\_\_ Sign here ► \_\_\_\_\_  
 Typed or printed name \_\_\_\_\_

My Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_  
Email \_\_\_\_\_

I am the  Guardian  
 Attorney for the Guardian and my Utah Bar number is \_\_\_\_\_

In the District Court of Utah

\_\_\_\_\_ Judicial District \_\_\_\_\_ County

Court Address \_\_\_\_\_

In the Matter of the

Guardianship  Conservatorship for

\_\_\_\_\_  
Respondent

**Guardianship Plan**

Case Number \_\_\_\_\_

Judge \_\_\_\_\_

(This is a private record. CJA 4-202.02)

**Instructions:** You must attach the following records and forms if they are not already filed with the court.

- Continuation pages (If any, completing paragraphs in this Guardianship Plan that don't have enough space. Write the paragraph number on the continuation page.)

The guardianship plan must be based on the court order. You may make minor changes without consulting the court, but any substantial change requires court approval. Decisions and acts that the court finds to be substantially contrary to the plan may be grounds for contempt of court. A guardianship plan is in effect when approved by the court until it is replaced by another approved plan. The guardian may file a motion to approve a replacement plan based on a substantial change.

- (1) Have you consulted with the protected person in developing this plan?  
 Yes  No

**Guardian's Authority**

- (2) Describe the authority the court gave you.

- Make health care decisions using the substituted judgment standard or the best interest standard, whichever applies in the circumstances.
  - Consent to admission to a licensed health care facility for short term placement for the purpose of assessment, rehabilitative care, or respite care.
  - Admit the protected person to a licensed health care facility for long-term custodial placement.
  - Make arrangements for the support, care, comfort, education and welfare of the protected person;
  - Take custody of the protected person and make arrangements for a dwelling place.
  - Take reasonable care of the protected person's personal effects.
  - File an action for the appointment of a conservator or entry of a protective order.
  - Take control of and manage a savings account or checking account.
  - Apply for, start proceedings for, receive and compel delivery of property due the protected person or benefits to which the protected person may be entitled, up to \$10,000 per year.
  - Obtain legal advice and representation on behalf of the protected person.
  - Pay the protected person's debts.
  - Give gifts, donations or contributions on behalf of the protected person.
  - File tax returns on behalf of the protected person and pay taxes owed by the protected person.
  - Provide for the support, care, comfort, education and welfare of a person the protected person is legally obligated to support.
  - Other (Describe)
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- 

(3) Does the protected person retain the right to vote?  Yes  No

(4) Describe the rights retained by the protected person and how you will ensure they can be exercised.

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(5) Describe any restrictions on the protected person's physical liberty, communications or social activities permitted by the court order and how you will impose those restrictions.

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(6) Describe any issues, concerns or unmet needs about your authority.

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(7)  I understand that I cannot pay myself from the protected person's estate for any services that I or my family provides to the protected person, including room and board, unless the court or the conservator approves it.

**Protected Person's Personal Care**

(8) Describe any instructions or preferences that the protected person has provided about his/her personal care.

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(9) Where is the protected person residing now?

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(10) What kind of facility is it?

- private residence owned by \_\_\_\_\_ (name)
  - assisted living
  - nursing home
  - Other (Describe)
- 
- 
- 

(11) Do you want to change the protected person's residence?  Yes  No

If yes, does the protected person agree?  Yes  No

If yes, when and why?

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(12) What personal effects (such as, clothing, furniture, vehicles, etc.) need maintaining or supervision?

(13) Do you want to sell or dispose of any personal effects?  Yes  No

If yes, does the protected person agree?  Yes  No

If yes, when and why?

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(14) Describe any activities you want the protected person to pursue (such as, visits with friends or family, work opportunities, education opportunities, or recreation opportunities).

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(15) Describe any services you want to use.

- The protected person can provide necessary care for himself/herself.
  - I plan to obtain the following services in order to assist the protected person in regaining lost capacities:
    - Physical/occupational/ speech therapies
    - Vocational rehabilitation or supported work programs
    - Educational services
    - Personal care (e.g., home health care)
    - Other (Describe)
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(16) Describe any issues, concerns or unmet needs in the protected person's functioning, work, family network or social network.

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(17) Describe short term and long term goals for the personal care of the protected person.

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**Health Care, Including Mental Health**

(18) Describe the protected person's instructions or preferences about his/her health care. Describe the protected person's religious, moral, conscientious, or cultural values that might affect decisions about health care.

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(19) Has a health care agent been appointed?  Yes  No.

(20) If a health care agent has been appointed, describe the nature and frequency of planned communications and the method you will use for resolving disputes.

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(21) Provide names of the protected person's key health care professionals.

Name	Specialty

(22) Describe any physical or mental examinations necessary to determine the protected person's health care needs.

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(23) Describe health care services, including mental health care, to be provided (such as, primary care visits, specialists, equipment, therapy, counseling, medications, etc.)

(24) Does the protected person have a "Do Not Resuscitate" provision in place?

Yes  No  I do not know

(25) Describe any issues, concerns or unmet needs for the protected person's health care.

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(26) Describe short term and long term goals for the protected person's health care.

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**Financial**

(27) Has a conservator been appointed?  Yes  No.

(28) If a conservator has been appointed, describe the nature and frequency of planned communications and the method to be used for resolving disputes.

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**Complete the following only if there is no conservator.**

(29) Describe the protected person's estimated:

Total assets \$ \_\_\_\_\_  
Annual income \$ \_\_\_\_\_  
Annual expenses \$ \_\_\_\_\_

(30) Describe any insurance and private or governmental benefits that the protected person may be eligible for.

- retirement and medical benefits from a job
- other benefits from past employers, unions or other organizations

- Social Security (Disability Benefits, SSI, SSA, Medicare)
  - Veterans' benefits
  - State benefits (such as, Public Assistance, Food Stamps, and TANF Benefits)
  - Other (Describe)
- 
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- 

(31)  I know the insurance and private or governmental benefits that the protected person may be eligible for, and I know how to apply for these benefits. I will make sure the protected person receives these benefits.

I plan to investigate whether the protected person has any insurance or is eligible for any private or government benefits.

(32) Is there an estate plan?  Yes  No.

If yes, describe how you intend to preserve it.

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(33) Describe how the protected person's financial needs will be met, including whether assets will need to be sold.

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(34) Describe any debts that are owed to the protected person.

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Do you intend to pursue claims for those debts?  Yes  No

How? (Note whether litigation is necessary.)

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(35) Describe any debts that are owed by the protected person. How do you intend to pay those debts?

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(36) Does the protected person have a duty to support anyone?

Name	Relationship

Describe how funds for supporting others will be administered.

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(37) Describe any issues, concerns or unmet needs about the protected person's estate.

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(38) Describe short term and long term goals for the protected person's estate.

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**Decision-Making**

(39) Describe the protected person’s history and values that will guide decisions. (For example, religious, moral, conscientious, or cultural values or work history, military history, or history of abuse.)

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(40)  In making decisions for the protected person, I will make the decision that s/he would have made when competent unless:

- (a) following his/her wishes would cause him/her substantial harm;
- (b) I cannot determine his/her wishes; or
- (c) s/he has never had capacity.

In which case I will make the decision that is the least intrusive, least restrictive, and most normalizing course of action to accommodate the protected person’s particular functional limitations.

I declare under criminal penalty of Utah Code Section 78B-5-705 that this Guardianship Plan is true and correct.

Date \_\_\_\_\_ Sign here ► \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Certificate of Service			
I certify that I served a copy of this [Form Name] on the following people.			
Person’s Name	Method of Service	Served at this Address	Served on this Date

<b>Certificate of Service</b>			
I certify that I served a copy of this [Form Name] on the following people.			
Person's Name	Method of Service	Served at this Address	Served on this Date
(Protected person or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Conservator or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Interested Party or Attorney)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
(Clerk of Court)	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic File		

Date \_\_\_\_\_ Sign here ► \_\_\_\_\_

Typed or printed name \_\_\_\_\_