

11/18/16-AMENDED AND REPORTED OUT TO THE FLOOR

BILL NO. 31-0184

Thirty-first Legislature of the Virgin Islands

August 17, 2015

An Act Amending title 15 Virgin Islands Code adding Article V, Parts 1 through 4 enacting “The Virgin Islands Uniform Guardianship and Protective Proceedings Act” and Part 4A enacting “The Uniform Adult Guardianship and Protective Proceedings Act” and repealing title 15 Virgin Islands Code, chapter 51

PROPOSED BY: Senators Janette Millin Young, Justin Harrigan, Sr.,
Myron D. Jackson and Nereida Rivera-O’Reilly

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 15 Virgin Islands Code is amended by adding Article V, Parts 1, 2, 3, 4 and 4A to read as follows:

“ARTICLE V

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

PART 1. GENERAL PROVISIONS

§ 5-101. Short title. Parts 1-4 of this article may be cited as The Virgin Islands Uniform Guardianship and Protective Proceedings Act.

§ 5-102. Definitions. In Parts 1-4 of this article:

(1) "Conservator" means a person who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.

(2) "Court" means the Family Division of the Superior Court of the Virgin Islands.

(3) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or spouse, or by the Court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

(4) "Incapacitated person" means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

(5) "Legal representative" includes a representative payee, a guardian or conservator acting for a respondent in the Virgin Islands or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, and an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.

(6) "Minor" means an unemancipated individual who has not attained 18 years of age.

(7) "Parent" means a parent whose parental rights have not been terminated.

(8) "Protected person" means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

(9) "Respondent" means an individual for whom the appointment of a guardian or conservator other protective order is sought.

(10) "Ward" means an individual for whom a guardian has been appointed.

§ 5-103. [Reserved.]

1 **§ 5-104. Facility of Transfer.** (a) Unless a person required to transfer money or personal
2 property to a minor knows that a conservator has been appointed or that a proceeding for
3 appointment of a conservator of the estate of the minor is pending, the person may do so, as to an
4 amount or value not exceeding \$5,000 a year, by transferring it to:

5 (1) a person who has the care and custody of the minor and with whom the
6 minor resides;

7 (2) a guardian of the minor;

8 (3) a custodian under the Uniform Transfers To Minors Act; or

9 (4) a financial institution as a deposit in an interest-bearing account or
10 certificate in the sole name of the minor and giving notice of the deposit to the minor.

11 (b) A person who transfers money or property in compliance with this section is not
12 responsible for its proper application.

13 (c) A guardian or other person who receives money or property for a minor under
14 subsection (a)(1) or (2) may only apply it to the support, care, education, health, and welfare of
15 the minor, and may not derive a personal financial benefit except for reimbursement for
16 necessary expenses. Any excess must be preserved for the future support, care, education,
17 health, and welfare of the minor, and any balance must be transferred to the minor upon
18 emancipation or attaining majority.

19 **§ 5-105. Delegation of power by parent or guardian.** A parent or guardian of a minor
20 or incapacitated person, by a power of attorney, may delegate to another person, for a period not
21 exceeding six months, any power regarding care, custody, or property of the minor or ward,
22 except the power to consent to marriage or adoption.

23 **§ 5-106. Subject-matter jurisdiction.** Parts 1-4A of this Article apply to, and the Court
24 has jurisdiction over, guardianship and related proceedings for individuals domiciled or present

1 in the Virgin Islands, protective proceedings for individuals domiciled in or having property
2 located in the Virgin Islands, and property coming into the control of a guardian or conservator
3 who is subject to the laws of the Virgin Islands.

4 **§ 5-107. Transfer of jurisdiction.** (a) After the appointment of a guardian or
5 conservator entry of another protective order for a minor, the Court making the appointment or
6 entering the order may transfer the proceeding to a Court in another judicial division in the
7 Virgin Islands or to another State if the Court is satisfied that a transfer will serve the best
8 interest of the ward or protected person.

9 (b) If a guardianship or protective proceeding is pending in another state or foreign
10 country and a petition for guardianship or protective proceeding is filed the Virgin Islands, the
11 Court shall notify the original court and, after consultation with the original court, assume or
12 decline jurisdiction, whichever is in the best interest of the ward or protected person.

13 (c) A guardian, conservator, or like fiduciary appointed in another State may petition
14 the Court for appointment as a guardian or conservator in the Virgin islands if venue in the
15 Virgin Islands is or will be established. The appointment may be made upon proof of
16 appointment in the other state and presentation of a certified copy of the portion of the court
17 record in the other State specified by the Court of the Virgin Islands. Notice of hearing on the
18 petition, together with a copy of the petition, must be given to the ward or protected person, if
19 the ward or protected person has attained 14 years of age, and to the persons who would be
20 entitled to notice if the regular procedures for appointment of a guardian or conservator under
21 this Article were applicable. The Court shall make the appointment in the Virgin Islands unless
22 it concludes that the appointment would not be in the best interest of the ward or protected
23 person. Upon the filing of an acceptance of office and any required bond, the Court shall issue
24 appropriate letters of guardianship or conservatorship. Within 14 days after an appointment, the

guardian or conservator shall send or deliver a copy of the order of appointment to the ward or protected person, if the ward or protected person has attained 14 years of age, and to all persons given notice of the hearing on the petition.

§ 5-108. Venue. (a) Venue for a guardianship proceeding for a minor is in the judicial division of the Virgin Islands in which the minor resides or is present at the time the proceeding is commenced.

(b) Venue for a guardianship proceeding for an incapacitated person is in the judicial division of the Virgin Islands in which the respondent resides and, if the respondent has been admitted to an institution by order of a court of competent jurisdiction, in the judicial division in which the court is located. Venue for the appointment of an emergency or a temporary substitute guardian of an incapacitated person is also in judicial division in which the respondent is present.

(c) Venue for a protective proceeding is in the judicial division of the Virgin Islands in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in Virgin Islands, in any judicial division of the Virgin Islands in which property of the respondent is located.

(d) If a proceeding under Parts 1-4 of this article brought in more than one judicial division of this Territory, the of the judicial division in which the proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

§ 5-109. [Reserved.]

§ 5-110. Letters of Office. Upon the guardian's filing of an acceptance of office, the Court shall issue appropriate letters of guardianship. Upon the conservator's filing of an acceptance of office and any required bond, the Court shall issue appropriate letters of conservatorship. Letters of guardianship must indicate whether the guardian was appointed by

1 the Court, a parent, or the spouse. Any limitation on the powers of a guardian or conservator or
2 of the assets subject to a conservatorship must be endorsed on the guardian's or conservator's
3 letters.

4 **§ 5-111. Effect of acceptance of appointment.** By accepting appointment, a guardian
5 or conservator submits personally to the jurisdiction of the Court in any proceeding relating to
6 the guardianship or conservatorship. The petitioner shall send or deliver notice of any
7 proceeding to the guardian or conservator at the guardian's or conservator's address shown in the
8 court records and at any other address then known to the petitioner.

9 **§ 5-112. Termination of, or change in guardian's or conservator's appointment.**

10 (a) The appointment of a guardian or conservator terminates upon the death,
11 resignation, or removal of the guardian or conservator or upon termination of the guardianship or
12 conservatorship. A resignation of a guardian or conservator is effective when approved by the
13 Court. A parental or spousal appointment as guardian under an informally probated will
14 terminates if the will is later denied probate in a formal proceeding. Termination of the
15 appointment of a guardian or conservator does not affect the liability of either for previous acts
16 or the obligation to account for money and other assets of the ward or protected person.

17 (b) A ward, protected person, or person interested in the welfare of a ward or
18 protected person may petition for removal of a guardian or conservator on the ground that
19 removal would be in the best interest of the ward or protected person or for other good cause. A
20 guardian or conservator may petition for permission to resign. A petition for removal or
21 permission to resign may include a request for appointment of a successor guardian or
22 conservator.

23 (c) The Court may appoint an additional guardian or conservator at any time, to serve
24 immediately or upon some other designated event, and may appoint a successor guardian or

conservator in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian or conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever last occurs. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.

§ 5-113. Notice. (a) Except as otherwise ordered by the Court for good cause, if notice of a hearing on a petition is required, other than a notice for which specific requirements otherwise provided, the petitioner shall give notice of the time and place of the hearing to the person to be notified. Notice must be given in compliance with Fed. R. Civ. P. 5(b) at least 14 days before the hearing.

(b) Proof of notice must be made before or at the hearing and filed in the proceeding.

(c) A notice under Parts 1-4 of this Article must be given in plain language.

§ 5-114. Waiver of notice. A person may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. However, a respondent, ward, or protected person may not waive notice.

§ 5-115. Guardian ad litem. At any stage of a proceeding, a Court may appoint a guardian ad litem if the Court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. The Court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.

1 **§ 5-116. Request for notice; interested persons.** An interested person not otherwise
2 entitled to notice who desires to be notified before any order is made in a guardianship
3 proceeding, including a proceeding after the appointment of a guardian, or in a protective
4 proceeding, may file a request for notice with the clerk of the court in which the proceeding is
5 pending. The clerk shall send or deliver a copy of the request to the guardian and to the
6 conservator if one has been appointed. A request is not effective unless it contains a statement
7 showing the interest of the person making it and the address of that person or a lawyer to whom
8 notice is to be given. The request is effective only as to proceedings conducted after its filing. A
9 governmental agency paying or planning to pay benefits to the respondent or protected person is
10 an interested person in a protective proceeding.

11 **§ 5-117. Multiple appointments or nominations.** If a respondent or other person makes
12 more than one written appointment or nomination of a guardian or a conservator, the most recent
13 controls.

14 **PART 2. GUARDIANSHIP OF MINOR**

15 **§ 5-201. Appointment and Status of Guardian.** A person becomes a guardian of a
16 minor by parental appointment or upon appointment by the Court. The guardianship continues
17 until terminated, without regard to the location of the guardian or minor ward.

18 **§ 5-202. Parental appointment of guardian.** (a) A guardian may be appointed by will
19 or other signed writing by a parent for any minor child the parent has or may have in the future.
20 The appointment may specify the desired limitations on the powers to be given to the guardian.
21 The appointing parent may revoke or amend the appointment before confirmation by the Court.

22 (b) Upon petition of an appointing parent and a finding that the appointing parent will
23 likely become unable to care for the child within two years, and after notice as provided in

1 section 5-205(a), the Court, before the appointment becomes effective, may confirm the parent's
2 selection of a guardian and terminate the rights of others to object.

3 (c) Subject to section 5-203, the appointment of a guardian becomes effective upon
4 the appointing parent's death, adjudication that the parent is an incapacitated person, or a written
5 determination by a physician who has examined the parent that the parent is no longer able to
6 care for the child, whichever first occurs.

7 (d) The guardian becomes eligible to act upon the filing of an acceptance of
8 appointment, which must be filed within 30 days after the guardian's appointment becomes
9 effective. The guardian shall:

10 (1) file the acceptance of appointment and a copy of the will with the court of
11 the judicial division in which the will was or could be probated or, in the case of another
12 appointing instrument, file the acceptance of appointment and the appointing instrument
13 with the Court of the judicial division in which the minor resides or is present; and

14 (2) give written notice of the acceptance of appointment to the appointing
15 parent, if living, the minor, if the minor has attained 14 years of age, and a person other
16 than the parent having care and custody of the minor.

17 (e) Unless the appointment was previously confirmed by the Court, the notice given
18 under subsection (d)(2) must include a statement of the right of those notified to terminate the
19 appointment by filing a written objection in the Court as provided in section 5-203.

20 (f) Unless the appointment was previously confirmed by the Court, within 30 days
21 after filing the notice and the appointing instrument, a guardian shall petition the Court for
22 confirmation of the appointment, giving notice in the manner provided in section 5-205(a).

23 (g) The appointment of a guardian by a parent does not supersede the parental rights
24 of either parent. If both parents are dead or have been adjudged incapacitated persons, an

1 appointment by the last parent who died or was adjudged incapacitated has priority. An
2 appointment by a parent which is affected by filing the guardian's acceptance under a will
3 probated in the State of the testator's domicile is effective in the Virgin Islands.

4 (h) The powers of a guardian who timely complies with the requirements of
5 subsections (d) and (f) relate back to give acts by the guardian which are of benefit to the minor
6 and occurred on or after the date the appointment became effective the same effect as those that
7 occurred after the filing of the acceptance of the appointment.

8 (i) The authority of a guardian appointed under this section terminates upon the first
9 to occur of the appointment of a guardian by the Court or the giving of written notice to the
10 guardian of the filing of an objection pursuant to section 5-203.

11 **§ 5-203. Objection by minor or others to parental appointment.** Until the Court has
12 confirmed an appointee under section 5-202, a minor who is the subject of an appointment by a
13 parent and who has attained 14 years of age, the other parent, or a person other than a parent or
14 guardian having care or custody of the minor may prevent or terminate the appointment at any
15 time by filing a written objection in the court in which the appointing instrument is filed and
16 giving notice of the objection to the guardian and any other persons entitled to notice of the
17 acceptance of the appointment. An objection may be withdrawn, and if withdrawn is of no
18 effect. The objection does not preclude judicial appointment of the person selected by the
19 parent. The Court may treat the filing of an objection as a petition for the appointment of an
20 emergency or a temporary guardian under section 5-204, and proceed accordingly.

21 **§ 5-204. Judicial appointment of guardian: conditions for appointment.** (a) A minor
22 or a person interested in the welfare of a minor may petition for appointment of a guardian.

23 (b) The Court may appoint a guardian for a minor if the Court finds the appointment
24 is in the minor's best interest, and:

- (i) the parents' consent;
- (ii) all parental rights have been terminated; or
- (iii) the parents are unwilling or unable to exercise their parental rights.

(c) If a guardian is appointed by a parent pursuant to section 5-202 and the appointment has not been prevented or terminated under section 5-203, that appointee has priority for appointment. However, the Court may proceed with another appointment upon a finding that the appointee under section 5-202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

(d) If necessary and on petition or motion and whether or not the conditions of subsection (b) have been established, the Court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in section 5-113 must be given to the parents and to a minor who has attained 14 years of age. Except as otherwise ordered by the Court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship may not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under section 5-205.

(e) If the Court finds that following the procedures of this part will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the Court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed 30 days and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained 14 years of age, to each living parent of the minor, and a person

1 having care or custody of the minor, if other than a parent. The Court may dispense with the
2 notice if it finds from affidavit or testimony that the minor will be substantially harmed before a
3 hearing can be held on the petition. If the guardian is appointed without notice, notice of the
4 appointment must be given within 48 hours after the appointment and a hearing on the
5 appropriateness of the appointment held within five days after the appointment.

6 **§ 5-205. Judicial appointment of guardian: procedure.** (a) After a petition for
7 appointment of a guardian is filed, the Court shall schedule a hearing, and the petitioner shall
8 give notice of the time and place of the hearing, together with a copy of the petition, to:

9 (1) the minor, if the minor has attained 14 years of age and is not the
10 petitioner;

11 (2) any person alleged to have had the primary care and custody of the minor
12 during the 60 days before the filing of the petition;

13 (3) each living parent of the minor or, if there is none, the adult nearest in
14 kinship that can be found;

15 (4) any person nominated as guardian by the minor if the minor has attained
16 14 years of Age;

17 (5) any appointee of a parent whose appointment has not been prevented or
18 terminated under section 5-203; and

19 (6) any guardian or conservator currently acting for the minor in the Virgin
20 Islands or elsewhere.

21 (b) The Court, upon hearing, shall make the appointment if it finds that a qualified
22 person seeks appointment, venue is proper, the required notices have been given, the conditions
23 of section 5-204(b) have been met, and the best interest of the minor will be served by the

1 appointment. In other cases, the Court may dismiss the proceeding or make any other disposition
2 of the matter that will serve the best interest of the minor.

3 (c) If the Court determines at any stage of the proceeding, before or after
4 appointment, that the interests of the minor are or may be inadequately represented, it may
5 appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the
6 minor has attained 14 years of age.

7 **§ 5-206. Judicial appointment of guardian: priority of minor's nominee; limited**
8 **guardianship.** (a) The Court shall appoint as guardian a person whose appointment will be in
9 the best interest of the minor. The Court shall appoint a person nominated by the minor, if the
10 minor has attained 14 years of age, unless the Court finds the appointment will be contrary to the
11 best interest of the minor.

12 (b) In the interest of developing self-reliance of a ward or for other good cause, the
13 Court, at the time of appointment or later, on its own motion or on motion of the minor ward or
14 other interested person, may limit the powers of a guardian otherwise granted by this part and
15 thereby create a limited guardianship. Following the same procedure, the Court may grant
16 additional powers or withdraw powers previously granted.

17 **§ 5-207. Duties of guardian.** (a) Except as otherwise limited by the Court, a guardian of
18 a minor ward has the duties and responsibilities of a parent regarding the ward's support, care,
19 education, health, and welfare. A guardian shall act at all times in the ward's best interest and
20 exercise reasonable care, diligence, and prudence.

21 (b) A guardian shall:

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

1 (2) take reasonable care of the ward's personal effects and bring a protective
2 proceeding if necessary to protect other property of the ward;

3 (3) expend money of the ward which has been received by the guardian for
4 the ward's current needs for support, care, education, health, and welfare;

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

8 (5) report the condition of the ward and account for money and other assets in
9 the guardian's possession or subject to the guardian's control, as ordered by the Court on
10 application of any person interested in the ward's welfare or as required by court rule; and

11 (6) inform the Court of any change in the ward's custodial dwelling or
12 address.

13 **§ 5-208. Powers of guardian.** (a) Except as otherwise limited by the Court, a guardian
14 of a minor ward has the powers of a parent regarding the ward's support, care, education, health,
15 and welfare.

16 (b) A guardian may:

17 (1) apply for and receive money for the support of the ward otherwise payable
18 to the ward's parent, guardian, or custodian under the terms of any statutory system of
19 benefits or insurance or any private contract, devise, trust, conservatorship, or
20 custodianship;

21 (2) if otherwise consistent with the terms of any order by a court of competent
22 jurisdiction relating to custody of the ward, take custody of the ward and establish the
23 ward's place of custodial dwelling, but may only establish or move the ward's custodial
24 dwelling outside the State upon express authorization of the Court;

(3) if a conservator for the estate of a ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(4) consent to medical or other care, treatment, or service for the ward;

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

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

(c) The Court may specifically authorize the guardian to consent to the adoption of the ward.

§ 5-209. Rights and immunities of guardian. (a) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing provided by the guardian to the ward, but only as approved by the Court. If a conservator, other than the guardian or a person who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

(b) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the guardianship. A guardian is not liable for injury to the ward resulting from the negligence or act of a third person providing medical or other care, treatment, or service for the ward except to the extent that a parent would be liable under the circumstances.

§ 5-210. Termination of guardianship; other proceedings after appointment. (a) A guardianship of a minor terminates upon the minor's death, adoption, emancipation or attainment of majority or as ordered by the Court.

(b) A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained 14 years of age and is not the petitioner, the guardian, and any other person as ordered by the Court.

PART 3. GUARDIANSHIP OF INCAPACITATED PERSON

§ 5-301. Appointment and status of guardian. A person becomes a guardian of an incapacitated person by a parental or spousal appointment or upon appointment by the Court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

§ 5-302. Appointment of guardian by will or other writing. (a) A parent, by will or other signed writing, may appoint a guardian for an unmarried child who the parent believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the Court.

(b) An individual, by will or other signed writing, may appoint a guardian for the individual's spouse who the appointing spouse believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the Court.

(c) The incapacitated person, the person having care or custody of the incapacitated person if other than the appointing parent or spouse, or the adult nearest kinship to the incapacitated person may file a written objection to an appointment, unless the Court has confirmed the appointment under subsection

(d) The filing of the written objection terminates the appointment. An objection may be withdrawn and, if withdrawn, is of no effect. The objection does not preclude judicial appointment of the person selected by the parent or spouse. Notice of the objection must be

1 given to the guardian and any other person entitled to notice of the acceptance of the
2 appointment. The Court may treat the filing of an objection as a petition for the appointment of
3 an emergency guardian under section 5-312 or for the appointment of a limited or unlimited
4 guardian under section 5-304 and proceed accordingly.

5 (e) Upon petition of the appointing parent or spouse, and a finding that appointing
6 parent or spouse will likely become unable to care for the incapacitated person within two years,
7 and after notice as provided in this section, the Court, before the appointment becomes effective,
8 may confirm the appointing parent's or spouse's selection of a guardian and terminate the rights
9 of others to object.

10 **§ 5-303. Appointment of guardian by will or other writing: effectiveness;**
11 **acceptance; confirmation.** (a) The appointment of a guardian under section 5-302 becomes
12 effective upon the death of the appointing parent or spouse, the adjudication of incapacity of the
13 appointing parent or spouse, or a written determination by a physician who has examined the
14 appointing parent or spouse that the appointing parent or spouse is no longer able to care for the
15 incapacitated person, whichever first occurs.

16 (b) A guardian appointed under section 5-302 becomes eligible to act upon the filing
17 of an acceptance of appointment, which must be filed within 30 days after the guardian's
18 appointment becomes effective. The guardian shall:

19 (1) file the notice of acceptance of appointment and a copy of the will with the
20 Court of the judicial district in which the will was or could be probated or, in the case of
21 another appointing instrument, file the acceptance of appointment and the appointing
22 instrument with the Court in the judicial division in which the incapacitated person
23 resides or is present; and

1 (2) give written notice of the acceptance of appointment to the appointing
2 parent or spouse if living, the incapacitated person, a person having care or custody of the
3 incapacitated person other than the appointing parent or spouse, and the adult nearest in
4 kinship.

5 (c) Unless the appointment was previously confirmed by the Court, the notice given
6 under subsection (b)(2) must include a statement of the right of those notified to terminate the
7 appointment by filing a written objection as provided in section 5-302.

8 (d) An appointment effected by filing the guardian's acceptance under a will probated
9 in the State of the testator's domicile is effective in the Virgin Islands.

10 (e) Unless the appointment was previously confirmed by the Court, within 30 days
11 after filing the notice and the appointing instrument, a guardian appointed under section 5-302
12 shall file a petition in the Court for confirmation of the appointment. Notice of the filing must be
13 given in the manner provided in section 5-309.

14 (f) The authority of a guardian appointed under section 5-302 terminates upon the
15 appointment of a guardian by the Court or the giving of written notice to the guardian of the
16 filing of an objection pursuant to section 5-302, whichever first occurs.

17 (g) The appointment of a guardian under this section is not a determination of
18 incapacity.

19 (h) The powers of a guardian who timely complies with the requirements of
20 subsections (b) and (e) relate back to give acts by the guardian which are of benefit to the
21 incapacitated person and occurred on or after the date the appointment became effective the same
22 effect as those that occurred after the filing of the acceptance of appointment.

1 **§ 5-304. Judicial appointment of guardian: petition.** (a) An individual or a person
2 interested in the individual's welfare may petition for a determination of incapacity, in whole or
3 in part, and for the appointment of a limited or unlimited guardian for the individual.

4 (b) The petition must set forth the petitioner's name, residence, current address if
5 different, relationship to the respondent, and interest in the appointment and, to the extent
6 known, state or contain the following with respect to the respondent and the relief requested:

7 (1) the respondent's name, age, principal residence, current street address,
8 and, if different, the address of the dwelling in which it is proposed that the respondent
9 will reside if the appointment is made;

10 (2) the name and address of the respondent's:

11 (A) spouse, or if the respondent has none, an adult with whom the
12 respondent has resided for more than six months before the filing of the petition;
13 and

14 (B) adult children or, if the respondent has none, the respondent's
15 parents and adult brothers and sisters, or if the respondent has none, at least one of
16 the adults nearest in kinship to the respondent who can be found;

17 (3) the name and address of any person responsible for care or custody of the
18 respondent;

19 (4) the name and address of any legal representative of the respondent;

20 (5) the name and address of any person nominated as guardian by the
21 respondent;

22 (6) the name and address of any proposed guardian and the reason why the
23 proposed guardian should be selected;

1 (7) the reason why guardianship is necessary, including a brief description of
2 the nature and extent of the respondent's alleged incapacity;

3 (8) if an unlimited guardianship is requested, the reason why limited
4 guardianship is inappropriate and, if a limited guardianship is requested, the powers to be
5 granted to the limited guardian; and

6 (9) a general statement of the respondent's property with an estimate of its
7 value, including any insurance or pension, and the source and amount of any other
8 anticipated income or receipts.

9 **§ 5-305. Judicial appointment of guardian: preliminaries to hearing.** (a) Upon
10 receipt of a petition to establish a guardianship, the Court shall set a date and time for hearing the
11 petition and appoint a visitor. The duties and reporting requirements of the visitor are limited to
12 the relief requested in the petition. The visitor must be an individual having training or
13 experience in the type of incapacity alleged.

14 (b) Unless the respondent is represented by a lawyer, the Court shall appoint a lawyer
15 to represent the respondent in the proceeding.

16 (c) The visitor shall interview the respondent in person and, to the extent that the
17 respondent is able to understand:

18 (1) explain to the respondent the substance of the petition, the nature, purpose,
19 and effect of the proceeding, the respondent's rights at the hearing, and the general
20 powers and duties of a guardian;

21 (2) determine the respondent's views about the proposed guardian, the
22 proposed guardian's powers and duties, and the scope and duration of the proposed
23 guardianship;

1 (3) inform the respondent of the right to employ and consult with a lawyer at
2 the respondent's own expense and the right to request a court-appointed lawyer; and

3 (4) inform the respondent that all costs and expenses of the proceeding,
4 including respondent's attorney's fees, will be paid from the respondent's estate.

5 (d) In addition to the duties imposed by subsection (c) the visitor shall:

6 (1) interview the petitioner and the proposed guardian;

7 (2) visit the respondent's present dwelling and any dwelling in which the
8 respondent will live if the appointment is made;

9 (3) obtain information from any physician or other person who is known to
10 have treated, advised, or assessed the respondent's relevant physical or mental condition;
11 and

12 (4) make any other investigation the Court directs.

13 (e) The visitor shall promptly file a report in writing with the Court, which must
14 include:

15 (1) a summary of daily functions the respondent can manage without
16 assistance, could manage with the assistance of supportive services or benefits, including
17 use of appropriate technological assistance, and cannot manage;

18 (2) recommendations regarding the appropriateness of guardianship, including
19 as to whether less restrictive means of intervention are available, the type of
20 guardianship, and, if a limited guardianship, the powers to be granted to the limited
21 guardian;

22 (3) a statement of the qualifications of the proposed guardian, together with a
23 statement as to whether the respondent approves or disapproves of the guardian, and the
24 powers and duties proposed or the scope of the guardianship;

(4) a statement as to whether the proposed dwelling meets the respondent's individual needs;

(5) a recommendation as to whether a professional evaluation or further evaluation is necessary; and

(6) any other matters the Court directs.

§ 5-306. Judicial appointment of guardian: professional evaluation. At or before a hearing under this part, the Court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the Court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the Court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the Court. Unless otherwise directed by the Court, the report must contain:

(1) a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations;

(2) an evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(3) a prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and

(4) the date of any assessment or examination upon which the report is based.

§ 5-307. Confidentiality of records. The written report of a visitor and any professional evaluation are confidential and must be sealed upon filing, but are available to:

(1) the Court;

(2) the respondent without limitation as to use;

(3) the petitioner, the visitor, and the petitioner's and respondent's lawyers, for purposes of the proceeding; and

(4) other persons for such purposes as the Court may order for good cause.

§5-308. Judicial appointment of guardian: presence and rights at hearing. (a) Unless excused by the Court for good cause, the proposed guardian shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the Court for good cause. The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the visitor; and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The Court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The Court may attach appropriate conditions to the participation.

§ 5-309. Notice. (a) A copy of a petition for guardianship and notice of the hearing on the petition must be served personally on the respondent. The notice must include a statement that the respondent must be physically present unless excused by the Court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the Court from granting the petition.

(b) In a proceeding to establish a guardianship, notice of the hearing must be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a guardian or the making of a protective order.

1 (c) Notice of the hearing on a petition for an order after appointment of a guardian,
2 together with a copy of the petition, must be given to the ward, the guardian, and any other
3 person the Court directs.

4 (d) A guardian shall give notice of the filing of the guardian's report, together with a
5 copy of the report, to the ward and any other person the Court directs. The notice must be
6 delivered or sent within 14 days after the filing of the report.

7 **§ 5-310. Who may be guardian; priorities.** (a) Subject to subsection (c), the Court in
8 appointing a guardian shall consider persons otherwise qualified in the following order of
9 priority:

10 (1) a guardian, other than a temporary or emergency guardian, currently
11 acting for the respondent in the Virgin Islands or elsewhere;

12 (2) a person nominated as guardian by the respondent, including the
13 respondent's most recent nomination made in a durable power of attorney, if at the time
14 of the nomination the respondent had sufficient capacity to express a preference;

15 (3) an agent appointed by the respondent under the durable power of attorney
16 for health care;

17 (4) the spouse of the respondent or a person nominated by will or other signed
18 writing of a deceased spouse;

19 (5) an adult child of the respondent;

20 (6) a parent of the respondent, or an individual nominated by will or other
21 signed writing of a deceased parent; and

22 (7) an adult with whom the respondent has resided for more than six months
23 before the filing of the petition.

(b) With respect to persons having equal priority, the Court shall select the one it considers best qualified. The Court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

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

§ 5-311. Findings; order of appointment. (a) The Court may:

(1) appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

(A) the respondent is an incapacitated person; and

(B) the respondent's identified needs cannot be met by less restrictive means, including use of appropriate technological assistance; or

(2) with appropriate findings, treat the petition as one for a protective order under section 5-401, enter any other appropriate order, or dismiss the proceeding.

(b) The Court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

(c) Within 14 days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

§ 5-312. Emergency guardian. (a) If the Court finds that compliance with the procedures of this part will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the

1 circumstances, the Court, on petition by a person interested in the respondent's welfare, may
2 appoint an emergency guardian whose authority may not exceed 60 days and who may exercise
3 only the powers specified in the order. Immediately upon receipt of the petition for an emergency
4 guardianship, the Court shall appoint a lawyer to represent the respondent in the proceeding.
5 Except as otherwise provided in subsection (b), reasonable notice of the time and place of a
6 hearing on the petition must be given to the respondent and any other persons as the Court
7 directs.

8 (b) An emergency guardian may be appointed without notice to the respondent and
9 the respondent's lawyer only if the Court finds from affidavit or testimony that the respondent
10 will be substantially harmed before a hearing on the appointment can be held. If the Court
11 appoints an emergency guardian without notice to the respondent, the respondent must be given
12 notice of the appointment within 48 hours after the appointment. The Court shall hold a hearing
13 on the appropriateness of the appointment within five days after the appointment.

14 (c) Appointment of an emergency guardian, with or without notice, is not a
15 determination of the respondent's incapacity.

16 (d) The Court may remove an emergency guardian at any time. An emergency
17 guardian shall make any report the Court requires. In other respects, the provisions of this article
18 concerning guardians apply to an emergency guardian.

19 **§ 5-313. Temporary substitute guardian.** (a) If the Court finds that a guardian is not
20 effectively performing the guardian's duties and that the welfare of the ward requires immediate
21 action, it may appoint a temporary substitute guardian for the ward for a specified period not
22 exceeding six months. Except as otherwise ordered by the Court, a temporary substitute
23 guardian so appointed has the powers set forth in the previous order of appointment. The
24 authority of any unlimited or limited guardian previously appointed by the Court is suspended as

1 long as a temporary substitute guardian has authority. If an appointment is made without
2 previous notice to the ward or the affected guardian, the Court, within five days after
3 appointment, shall inform the ward or guardian of the appointment.

4 (b) The Court may remove a temporary substitute guardian at any time. A temporary
5 substitute guardian shall make any report the Court requires. In other respects, the provisions of
6 this Article concerning guardians apply to a temporary substitute guardian.

7 **§ 5-314. Duties of guardian.** (a) Except as otherwise limited by the Court, a guardian
8 shall make decisions regarding the ward's support, care, education, health, and welfare. A
9 guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent
10 possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and
11 develop or regain the capacity to manage the ward's personal affairs. A guardian, in making
12 decisions, shall consider the expressed desires and personal values of the ward to the extent
13 known to the guardian. A guardian at all times shall act in the ward's best interest and exercise
14 reasonable care, diligence, and prudence.

15 (b) A guardian shall:

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

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

21 (3) expend money of the ward that has been received by the guardian for the
22 ward's current needs for support, care, education, health, and welfare;

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

(5) immediately notify the Court if the ward's condition has changed so that the ward is capable of exercising rights previously removed; and

(6) inform the Court of any change in the ward's custodial dwelling or address.

§ 5-315. Powers of guardian. (a) Except as otherwise limited by the Court, a guardian may:

(1) apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

(2) if otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's place of dwelling outside the Virgin Islands upon express authorization of the Court;

(3) if a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(4) consent to medical or other care, treatment, or service for the ward;

(5) consent to the marriage or divorce of the ward;

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

(b) The Court may specifically authorize the guardian to consent to the adoption of the ward.

§ 5-316. Rights and immunities of guardian; limitations. (a) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing provided to the ward, but only as approved by order of the Court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the Court.

(b) A guardian need not use the guardian's personal funds for the ward's expenses. 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 party.

(c) A guardian, without authorization of the Court, may not revoke a power of attorney for health care of which the ward is the principal. If a power of attorney for health care is in effect, absent an order of the Court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

(d) A guardian may not initiate the commitment of a ward to a mental health-care facility except in accordance with the Virgin Islands' procedure for involuntary civil commitment.

§ 5-317. Reports; monitoring of guardianship. (a) Within 30 days after appointment, a guardian shall report to the Court in writing on the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control. A guardian

1 shall report at least annually thereafter and whenever ordered by the Court. A report must state
2 or contain:

- 3 (1) the current mental, physical, and social condition of the ward;
- 4 (2) the living arrangements for all addresses of the ward during the reporting
5 period;
- 6 (3) the medical, educational, vocational, and other services provided to the
7 ward and the guardian's opinion as to the adequacy of the ward's care;
- 8 (4) a summary of the guardian's visits with the ward and activities on the
9 ward's behalf and the extent to which the ward has participated in decision-making;
- 10 (5) if the ward is institutionalized, whether the guardian considers the current
11 plan for care, treatment, or habilitation to be in the ward's best interest;
- 12 (6) plans for future care; and
- 13 (7) a recommendation as to the need for continued guardianship and any
14 recommended changes in the scope of the guardianship.

15 (b) The Court may appoint a visitor to review a report, interview the ward or
16 guardian, and make any other investigation the Court directs.

17 (c) The Court shall establish a system for monitoring guardianships, including the
18 filing and review of annual reports.

19 **§ 5-318. Termination or modification of guardianship.** (a) A guardianship terminates
20 upon the death of the ward or upon order of the Court.

21 (b) On petition of a ward, a guardian, or another person interested in the ward's
22 welfare, the Court may terminate a guardianship if the ward no longer needs the assistance or
23 protection of a guardian. The Court may modify the type of appointment or powers granted to
24 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 unless it is proven that continuation of the guardianship is in the best interest of the ward.

PART 4. PROTECTION OF PROPERTY OF PROTECTED PERSON

§ 5-401. Protective proceeding. Upon petition and after notice and hearing, the Court may appoint a limited or unlimited conservator or make any other protective order provided in this part in relation to the estate and affairs of:

(1) a minor, if the Court determines that the minor owns money or property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be put at risk or prevented because of the minor's age, or that money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or

(2) any individual, including a minor, if the Court determines that, for reasons other than age:

(A) by clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or make decisions, even with the use of appropriate technological assistance, or because the individual is missing, detained, or unable to return to the United States; and

(B) by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.

§ 5-402. Jurisdiction over business affairs of protected person. After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservatorship or other protective order;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of the Virgin Islands must be managed, expended, or distributed to or for the use of the protected person, individuals who are in fact dependent upon the protected person, or other claimants; and

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

§ 5-403. Original petition for appointment of conservator or other protective order.

(a) The following may petition for the appointment of a conservator or for any other appropriate protective order:

(1) the person to be protected;

(2) an individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian; or

(3) a person who would be adversely affected by lack of effective management of the property and business affairs of the person to be protected.

1 (b) A petition under subsection (a) must set forth the petitioner's name, residence,
2 current address if different, relationship to the respondent, and interest in the appointment or
3 other protective order, and, to the extent known, state or contain the following with respect to the
4 respondent and the relief requested:

5 (1) the respondent's name, age, principal residence, current street address,
6 and, if different, the address of the dwelling where it is proposed that the respondent will
7 reside if the appointment is made;

8 (2) if the petition alleges impairment in the respondent's ability to receive and
9 evaluate information, a brief description of the nature and extent of the respondent's
10 alleged impairment;

11 (3) if the petition alleges that the respondent is missing, detained, or unable to
12 return to the United States, a statement of the relevant circumstances, including the time
13 and nature of the disappearance or detention and a description of any search or inquiry
14 concerning the respondent's whereabouts;

15 (4) the name and address of the respondent's:

16 (A) spouse or, if the respondent has none, an adult with whom the
17 respondent has resided for more than six months before the filing of the petition;
18 and

19 (B) adult children or, if the respondent has none, the respondent's
20 parents and adult brothers and sisters or, if the respondent has none, at least one of
21 the adults nearest in kinship to the respondent who can be found;

22 (5) the name and address of the person responsible for care or custody of the
23 respondent;

24 (6) the name and address of any legal representative of the respondent;

(7) a general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts; and

(8) the reason why a conservatorship or other protective order is in the best interest of the respondent.

(c) If a conservatorship is requested, the petition must also set forth to the extent known:

(1) the name and address of any proposed conservator and the reason why the proposed conservator should be selected;

(2) the name and address of any person nominated as conservator by the respondent if the respondent has attained 14 years of age; and

(3) the type of conservatorship requested and, if an unlimited conservatorship, the reason why limited conservatorship is inappropriate or, if a limited conservatorship, the property to be placed under the conservator's control and any limitation on the conservator's powers and duties.

§ 5-404. Notice. (a) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent, but if the respondent's whereabouts is unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must include a statement that the respondent must be physically present unless excused by the Court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the Court from granting the petition.

1 (b) In a proceeding to establish a conservatorship or for another protective order,
2 notice of the hearing must be given to the persons listed in the petition. Failure to give notice
3 under this subsection does not preclude the appointment of a conservator or the making of
4 another protective order.

5 (c) Notice of the hearing on a petition for an order after appointment of a conservator
6 or making of another protective order, together with a copy of the petition, must be given to the
7 protected person, if the protected person has attained 14 years of age and is not missing,
8 detained, or unable to return to the United States, any conservator of the protected person's
9 estate, and any other person as ordered by the Court.

10 (d) A conservator shall give notice of the filing of the conservator's inventory, report,
11 or plan of conservatorship, together with a copy of the inventory, report, or plan of
12 conservatorship to the protected person and any other person the Court directs. The notice must
13 be delivered or sent within 14 days after the filing of the inventory, report, or plan of
14 conservatorship.

15 **§ 5-405. Original petition: minors; preliminaries to hearing.** (a) Upon the filing of a
16 petition to establish a conservatorship or for another protective order for the reason that the
17 respondent is a minor, the Court shall set a date for hearing. If the Court determines at any stage
18 of the proceeding that the interests of the minor are or may be inadequately represented, it may
19 appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the
20 minor has attained 14 years of age.

21 (b) While a petition to establish a conservatorship or for another protective order is
22 pending, after preliminary hearing and without notice to others, the Court may make orders to
23 preserve and apply the property of the minor as may be required for the support of the minor or

1 individuals who are in fact dependent upon the minor. The Court may appoint a master to assist
2 in that task.

3 **§ 5-406. Original petition: preliminaries to hearing.** (a) Upon the filing of a petition
4 for a conservatorship or other protective order for a respondent for reasons other than being a
5 minor, the Court shall set a date for hearing. The Court shall appoint a visitor unless the petition
6 does not request the appointment of a conservator and the respondent is represented by a lawyer.
7 The duties and reporting requirements of the visitor are limited to the relief requested in the
8 petition. The visitor must be an individual having training or experience in the type of incapacity
9 alleged.

10 (b) Unless the respondent is represented by a lawyer, the Court shall appoint a lawyer
11 to represent the respondent in the proceeding.

12 (c) The visitor shall interview the respondent in person and, to the extent that the
13 respondent is able to understand:

14 (1) explain to the respondent the substance of the petition and the nature,
15 purpose, and effect of the proceeding;

16 (2) if the appointment of a conservator is requested, inform the respondent of
17 the general powers and duties of a conservator and determine the respondent's views
18 regarding the proposed conservator, the proposed conservator's powers and duties, and
19 the scope and duration of the proposed conservatorship;

20 (3) inform the respondent of the respondent's rights, including the right to
21 employ and consult with a lawyer at the respondent's own expense, and the right to
22 request a court-appointed lawyer; and

23 (4) inform the respondent that all costs and expenses of the proceeding,
24 including respondent's attorney's fees, will be paid from the respondent's estate.

1 (d) In addition to the duties imposed by subsection (c), the visitor shall:

2 (1) interview the petitioner and the proposed conservator, if any; and

3 (2) make any other investigation the Court directs.

4 (e) The visitor shall promptly file a report with the Court which must include:

5 (1) recommendations regarding the appropriateness of a conservatorship,
6 including whether less restrictive means of intervention are available, the type of
7 conservatorship, and, if a limited conservatorship, the powers and duties to be granted the
8 limited conservator, and the assets over which the conservator should be granted
9 authority;

10 (2) a statement of the qualifications of the proposed conservator, together with
11 a statement as to whether the respondent approves or disapproves of the proposed
12 conservator, and a statement of the powers and duties proposed or the scope of the
13 conservatorship;

14 (3) a recommendation as to whether a professional evaluation or further
15 evaluation is necessary; and

16 (4) any other matters the Court directs.

17 (f) The Court may also appoint a physician, psychologist, or other individual
18 qualified to evaluate the alleged impairment to conduct an examination of the respondent.

19 (g) While a petition to establish a conservatorship or for another protective order is
20 pending, after preliminary hearing and without notice to others, the Court may issue orders to
21 preserve and apply the property of the respondent as may be required for the support of the
22 respondent or individuals who are in fact dependent upon the respondent. The Court may
23 appoint a master to assist in that task.

1 **§ 5-407. Confidentiality of records.** The written report of a visitor and any professional
2 evaluation are confidential and must be sealed upon filing, but are available to:

- 3 (1) the Court;
- 4 (2) the respondent without limitation as to use;
- 5 (3) the petitioner, the visitor, and the petitioner's and respondent's lawyers, for
6 purposes of the proceeding; and
- 7 (4) other persons for such purposes as the Court may order for good cause.

8 **§ 5-408. Original petition: procedure at hearing.** (a) Unless excused by the Court for
9 good cause, a proposed conservator shall attend the hearing. The respondent shall attend and
10 participate in the hearing, unless excused by the Court for good cause. The respondent may
11 present evidence and subpoena witnesses and documents, examine witnesses, including any
12 court-appointed physician, psychologist, or other individual qualified to evaluate the alleged
13 impairment, and the visitor, and otherwise participate in the hearing. The hearing may be held in
14 a location convenient to the respondent and may be closed upon request of the respondent and a
15 showing of good cause.

16 (b) Any person may request permission to participate in the proceeding. The Court
17 may grant the request, with or without hearing, upon determining that the best interest of the
18 respondent will be served. The Court may attach appropriate conditions to the participation.

19 **§ 5-409. Original petition: orders.** (a) If a proceeding is brought for the reason that the
20 respondent is a minor, after a hearing on the petition, upon finding that the appointment of a
21 conservator or other protective order is in the best interest of the minor, the Court shall make an
22 appointment or other appropriate protective order.

23 (b) If a proceeding is brought for reasons other than that the respondent is a minor,
24 after a hearing on the petition, upon finding that a basis exists for a conservatorship or other

1 protective order, the Court shall make the least restrictive order consistent with its findings. The
2 Court shall make orders necessitated by the protected person's limitations and demonstrated
3 needs, including appointive and other orders that will encourage the development of maximum
4 self-reliance and independence of the protected person.

5 (c) Within 14 days after an appointment, the conservator shall deliver or send a copy
6 of the order of appointment, together with a statement of the right to seek termination or
7 modification, to the protected person, if the protected person has attained 14 years of age and is
8 not missing, detained, or unable to return to the United States, and to all other persons given
9 notice of the petition.

10 (d) The appointment of a conservator or the entry of another protective order is not a
11 determination of incapacity of the protected person.

12 **§ 5-410. Powers of court.** (a) After hearing and upon determining that a basis for a
13 conservatorship or other protective order exists, the Court has the following powers, which may
14 be exercised directly or through a conservator:

15 (1) with respect to a minor for reasons of age, all the powers over the estate
16 and business affairs of the minor which may be necessary for the best interest of the
17 minor and members of the minor's immediate family; and

18 (2) with respect to an adult, or to a minor for reasons other than age, for the
19 benefit of the protected person and individuals who are in fact dependent on the protected
20 person for support, all the powers over the estate and business affairs of the protected
21 person which the person could exercise if the person were an adult, present, and not
22 under conservatorship or other protective order.

(b) Subject to section 5-110 requiring endorsement of limitations on the letters of office, the Court may limit at any time the powers of a conservator otherwise conferred and may remove or modify any limitation.

§ 5-411. Required court approval. (a) After notice to interested persons and upon express authorization of the Court, a conservator may:

- (1) make gifts, except as otherwise provided in section 5-427(b);
- (2) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;
- (3) exercise or release a power of appointment;
- (4) create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or 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 for their cash value;
- (6) exercise any right to 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; and
- (7) make, amend, or revoke the protected person's will.

(b) a conservator, in making, amending, or revoking the protected person's will, shall comply with the requirements chapter 1 of this title.

(c) the Court, in exercising or in approving a conservator's exercise of the powers listed in subsection (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 in fact dependent on the protected person for support and the interest of creditors;

(2) Possible reduction of income, estate, inheritance, or other tax liabilities;

(3) eligibility for governmental assistance;

(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; and

(7) any other factors the Court considers relevant.

(d) Without authorization of the Court, a conservator may not revoke or amend a durable power of attorney of which the protected person is the principal. If a durable power of attorney is in effect, absent a court order to the contrary, a decision of the agent takes precedence over that of a conservator.

§ 5-412. Protective arrangements and single transactions. (a) If a basis is established for a protective order with respect to an individual, the Court, without appointing a conservator, may:

(1) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:

(A) payment, delivery, deposit, or retention of funds or property;

(B) sale, mortgage, lease, or other transfer of property;

(C) purchase of an annuity;

(D) making a contract for life care, deposit contract, or contract for training and education; or

(E) addition to or establishment of a suitable trust; and

(2) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.

(b) In deciding whether to approve a protective arrangement or other transaction under this section, the Court shall consider the factors described in section 5-411(c).

(c) The Court may appoint a master to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The master has the authority conferred by the order and shall serve until discharged by order after report to the Court.

§ 5-413. Who may be conservator: priorities. (a) Except as otherwise provided in subsection (d), the Court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:

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

(2) a person nominated as conservator by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if the respondent has attained 14 years of age and at the time of the nomination had sufficient capacity to express a preference;

(3) an agent appointed by the respondent to manage the respondent's property under a durable power of attorney;

(4) the spouse of the respondent;

(5) an adult child of the respondent;

(6) a parent of the respondent;

(7) and an adult with whom the respondent has resided for more than six months before the filing of the petition.

(b) A person having priority under subsection (a) (1), (4), (5), or (6) may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.

(c) With respect to persons having equal priority, the Court shall select the one it considers best qualified. The Court, acting in the best interest of the protected person, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(d) An owner, operator, or employee of a long-term care facility at which the respondent is receiving care may not be appointed as conservator unless related to the respondent by blood, marriage, or adoption.

§ 5-414. Petition for order subsequent to appointment. (a) A protected person or a person interested in the welfare of a protected person may file a petition in the appointing Court for an order:

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

(2) requiring an accounting for the administration of the protected person's estate;

(3) directing distribution;

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

(5) modifying the type of appointment or powers granted to the conservator if the extent of protection or management previously granted is currently excessive or insufficient or the protected person's ability to manage the estate and business affairs has so changed as to warrant the action; or

(6) granting other appropriate relief

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

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

§ 5-415. Bond. The Court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties as it may specify. Unless otherwise directed by the Court, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the Court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. The Court, in place of sureties on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

§ 5-416. Terms and requirements of bond. (a) The following rules apply to any bond required:

(1) Except as otherwise provided by the terms of the bond, sureties and the conservator are jointly and severally liable.

(2) By executing the bond of a conservator, a surety submits to the jurisdiction of the court that issued letters to the primary obligor in any proceeding

1 pertaining to the fiduciary duties of the conservator in which the surety is named as a
2 party. Notice of any proceeding must be sent or delivered to the surety at the address
3 shown in the court records at the place where the bond is filed and to any other address
4 then known to the petitioner.

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

8 (4) The bond of the conservator may be proceeded against until liability under
9 the bond is exhausted.

10 (b) A proceeding may not be brought against a surety on any matter as to which an
11 action or proceeding against the primary obligor is barred.

12 **§ 5-417. Compensation and expenses.** If not otherwise compensated for services
13 rendered, a guardian, conservator, lawyer for the respondent, lawyer whose services resulted in a
14 protective order or in an order beneficial to a protected person's estate, or any other person
15 appointed by the Court is entitled to reasonable compensation from the estate. Compensation
16 may be paid and expenses reimbursed without court order. If the Court determines that the
17 compensation is excessive or the expenses are inappropriate, the excessive or inappropriate
18 amount must be repaid to the estate.

19 **§ 5-418. General duties of conservator; plan.** (a) A conservator, in relation to powers
20 conferred by this part or implicit in the title acquired by virtue of the proceeding, is a fiduciary
21 and shall observe the standards of care applicable to a trustee.

22 (b) A conservator may exercise authority only as necessitated by the limitations of the
23 protected person, and to the extent possible, shall encourage the person to participate in

1 decisions, act in the person's own behalf, and develop or regain the ability to manage the person's
2 estate and business affairs.

3 (c) Within 60 days after appointment, a conservator shall file with the appointing
4 Court a plan for protecting, managing, expending, and distributing the assets of the protected
5 person's estate. The plan must be based on the actual needs of the person and take into
6 consideration the best interest of the person. The conservator shall include in the plan steps to
7 develop or restore the person's ability to manage the person's property, an estimate of the
8 duration of the conservatorship, and projections of expenses and resources.

9 (d) In investing an estate, selecting assets of the estate for distribution, and invoking
10 powers of revocation or withdrawal available for the use and benefit of the protected person and
11 exercisable by the conservator, a conservator shall take into account any estate plan of the person
12 known to the conservator and may examine the will and any other donatives, nominative, or
13 other appointive instrument of the person.

14 **§ 5-419. Inventory; records.** (a) Within 60 days after appointment, a conservator shall
15 prepare and file with the appointing Court a detailed inventory of the estate subject to the
16 conservatorship, together with an oath or affirmation that the inventory is believed to be
17 complete and accurate as far as information permits.

18 (b) A conservator shall keep records of the administration of the estate and make
19 them available for examination on reasonable request of an interested person.

20 **§ 5-420. Reports; appointment of visitor; monitoring.** (a) A conservator shall report to
21 the Court for administration of the estate annually unless the Court otherwise directs, upon
22 resignation or removal, upon termination of the conservatorship, and at other times as the Court
23 directs. An order, after notice and hearing, allowing an intermediate report of a conservator
24 adjudicates liabilities concerning the matters adequately disclosed in the accounting. An order,

1 after notice and hearing, allowing a final report adjudicates all previously unsettled liabilities
2 relating to the conservatorship.

3 (b) A report must contain:

4 (1) a list of the assets of the estate under the conservator's control and a list of
5 the receipts, disbursements, and distributions during the period for which the report is
6 made;

7 (2) a list of the services provided to the protected person; and

8 (3) any recommended changes in the plan for the conservatorship as well as a
9 recommendation as to the continued need for conservatorship and any recommended
10 changes in the scope of the conservatorship.

11 (c) The Court may appoint a visitor to review a report or plan, interview the protected
12 person or conservator, and make any other investigation the Court directs. In connection with a
13 report, the Court may order a conservator to submit the assets of the estate to an appropriate
14 examination to be made in a manner the Court directs.

15 (d) The Court shall establish a system for monitoring conservatorships, including the
16 filing and review of conservators' reports and plans.

17 **§ 5-421. Title by appointment.** (a) The appointment of a conservator vests title in the
18 conservator as trustee to all property of the protected person, or to the part thereof specified in
19 the order, held at the time of appointment or thereafter acquired. An order vesting title in the
20 conservator to only a part of the property of the protected person creates a conservatorship
21 limited to assets specified in the order.

22 (b) Letters of conservatorship are evidence of vesting title of the protected person's
23 assets in the conservator. An order terminating a conservatorship transfers title to assets

1 remaining subject to the conservatorship, including any described in the order, to the formerly
2 protected person or the person's successors.

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

7 **§ 5-422. Protected person's interest inalienable.** (a) Except as otherwise provided in
8 subsections (c) and (d), the interest of a protected person in property vested in a conservator is
9 not transferable or assignable by the protected person. An attempted transfer or assignment by
10 the protected person, although ineffective to affect property rights, may give rise to a claim
11 against the protected person for restitution or damages which, subject to presentation and
12 allowance, may be satisfied as provided in section 5-429.

13 (b) Property vested in a conservator by appointment and the interest of the protected
14 person in that property are not subject to levy, garnishment, or similar process for claims against
15 the protected person unless allowed under section 5-429.

16 (c) A person without knowledge of the conservatorship who in good, faith and for
17 security or substantially equivalent value receives delivery from a protected person of tangible
18 personal property of a type normally transferred by delivery of possession, is protected as if the
19 protected person or transferee had valid title.

20 (d) A third party who deals with the protected person with respect to property vested
21 in a conservator is entitled to any protection provided in other law.

22 **§ 5-423. Sale, encumbrance, or other transaction involving conflict of interest.** Any
23 transaction involving the conservatorship estate which is affected by a substantial conflict
24 between the conservator's fiduciary and personal interests is voidable unless the transaction is

1 expressly authorized by the Court after notice to interested persons. A transaction affected by a
2 substantial conflict between personal and fiduciary interests includes any sale, encumbrance, or
3 other transaction involving the conservatorship estate entered into by the conservator, the spouse,
4 descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the
5 conservator has a substantial beneficial interest.

6 **§ 5-424. Protection of person dealing with conservator.** (a) A person who assists or
7 deals with a conservator in good faith and for value in any transaction other than one requiring a
8 court order under section 5-410 or section 5-411 is protected as though the conservator properly
9 exercised the power. That a person knowingly deals with a conservator does not alone require
10 the person to inquire into the existence of a power or the propriety of its exercise, but restrictions
11 on powers of conservators which are endorsed on letters as provided in section 5-110 are
12 effective as to third persons. A person who pays or delivers assets to a conservator is not
13 responsible for their proper application.

14 (b) Protection provided by this section extends to any procedural irregularity or
15 jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a
16 substitute for protection provided to persons assisting or dealing with a conservator by
17 comparable provisions in other law relating to commercial transactions or to simplifying
18 transfers of securities by fiduciaries.

19 **§ 5-425. Powers of conservator in administration.** (a) Except as otherwise qualified or
20 limited by the Court in its order of appointment and endorsed on the letters, a conservator has all
21 of the powers granted in this section and any additional powers granted by law to a trustee in the
22 Virgin Islands.

23 (b) A conservator, acting reasonably and in an effort to accomplish the purpose of the
24 appointment, and without further court authorization or confirmation, may:

1 (1) collect, hold, and retain assets of the estate, including assets in which the
2 conservator has a personal interest and real property in another State, until the
3 conservator considers that disposition of an asset should be made;

4 (2) receive additions to the estate;

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

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

8 (5) invest assets of the estate as though the conservator were a trustee;

9 (6) deposit money of the estate in a financial institution, including one
10 operated by the conservator;

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

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

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

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

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

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

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

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

8 (15) sell or exercise stock subscription or conversion rights;

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

12 (17) hold a security in the name of a nominee or in other form without
13 disclosure of the conservatorship so that title to the security may pass by delivery;

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

16 (19) borrow money, with or without security, to be repaid from the estate or
17 otherwise and advance money for the protection of the estate or the protected person and
18 for all expenses, losses, and liability sustained in the administration of the estate or
19 because of the holding or ownership of any assets, for which the conservator has a lien on
20 the estate as against the protected person for advances so made;

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

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

(22) allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;

(23) pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:

(A) to the guardian of the distributee;

(B) to a distributee's custodian under the Uniform Transfers to Minors Act; or

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

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

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

§ 5-426. Delegation. (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 trustee 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 trust if performed by the conservator.

(c) A conservator who complies with subsections (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 law of the Virgin Islands an agent submits to the jurisdiction of the courts of the Virgin Islands.

§ 5-427. Principles of distribution by conservator. (a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment or contrary to the plan filed pursuant to section 5-418, 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 the following rules:

(1) A 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,

1 and, if the protected person is a minor, the conservator shall consider recommendations
2 made by a parent.

3 (2) A conservator may not be surcharged for money paid to persons
4 furnishing support, care, education, or benefit to a protected person, or an individual who
5 is in fact dependent on the protected person, in accordance with the recommendations of
6 a parent or guardian of the protected person unless the conservator knows that the parent
7 or guardian derives personal financial benefit therefrom, including relief from any
8 personal duty of support, or the recommendations are not in the best interest of the
9 protected person.

10 (3) In making distributions under this subsection, the conservator shall
11 consider:

12 (A) the size of the estate, the estimated duration of the conservatorship,
13 and the likelihood that the protected person, at some future time, may be fully
14 self-sufficient and able to

15 (B) the accustomed standard of living of the protected person and
16 individuals who are in fact dependent on the protected person; and

17 (C) other money or sources used for the support of the protected
18 person.

19 (4) Money expended under this subsection may be paid by the conservator to
20 any person, including the protected person, as reimbursement for expenditures that the
21 conservator might have made, or in advance for services to be rendered to protected
22 person if it is reasonable to expect the services will be performed and advance payments
23 are customary or reasonably necessary under the circumstances.

(b) If an estate is ample to provide for the distributions authorized by subsection (a), a conservator for a protected person other than a minor may make gifts that the protected person might have been expected to make, in amounts that do not exceed in the aggregate for any calendar year 20 percent of the income of the estate in that year.

§ 5-428. Death of protected person. (a) If a protected person dies, the conservator shall deliver to the Court for safekeeping any will of the protected person which may have come into the conservator's possession, inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it.

(b) If a personal representative has not been appointed within 40 days after the death of a protected person and an application or petition for appointment is not before the Court, the conservator may apply to exercise powers and duties of a personal representative in order to administer and distribute the decedent's estate. Upon application for an order conferring upon the conservator the powers of a personal representative, after notice given by the conservator to any person nominated as personal representative by any will of which the applicant is aware, the Court may grant the application upon determining that there is no objection and endorse the letters of conservatorship 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.

(c) The issuance of an order under this section has the effect of an order of appointment of a personal representative. However, the estate in the name of the conservator, after administration, may be distributed to the decedent's successors without retransfer to the conservator as personal representative.

§ 5-429. Presentation and allowance of claims. (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 subsection (d). A claimant may present a claim by:

(1) sending or delivering to the conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(2) filing a written statement of the claim, in a form acceptable to the Court, with the clerk of Court and sending or delivering a copy of the statement to the conservator.

(b) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the Court, whichever first occurs. 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 under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until 30 days after its disallowance.

(c) A claimant whose claim has not been paid may petition the Court for determination of the claim at any time before it is barred by a statute of limitations and, upon due proof, procure an order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.

(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) 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;

(4) claims arising before the conservatorship; and

(5) 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.

(f) If assets of the conservatorship are adequate to meet all existing claims, the Court, acting in the best interest of the protected person, may order the conservator to grant a security interest in the conservatorship estate for the payment of any or all claims at a future date.

§ 5-430. Personal liability of conservator. (a) Except as otherwise agreed, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.

(b) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if personally at fault.

(c) Claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

1 (d) A question of liability between the estate and the conservator personally may be
2 determined in a proceeding for accounting, surcharge, or indemnification, or in another
3 appropriate proceeding or action.

4 (e) A conservator is not personally liable for any environmental condition on or
5 injury resulting from any environmental condition on land solely by reason of an acquisition of
6 title under Section 5-421.

7 **§ 5-431. Termination of proceedings.** (a) A conservatorship terminates upon the death
8 of the protected person or upon order of the Court. Unless created for reasons other than that the
9 protected person is a minor, a conservatorship created for a minor also terminates when the
10 protected person attains majority or is emancipated.

11 (b) Upon the death of a protected person, the conservator shall conclude the
12 administration of the estate by distribution to the person's successors. The conservator shall file
13 a final report and petition for discharge within 30 days after distribution.

14 (c) On petition of a protected person, a conservator, or another person interested in a
15 protected person's welfare, the Court may terminate the conservatorship if the protected person
16 no longer needs the assistance or protection of a conservator. Termination of the conservatorship
17 does not affect a conservator's liability for previous acts or the obligation to account for funds
18 and assets of the protected person.

19 (d) Except as otherwise ordered by the Court for good cause, before terminating a
20 conservatorship, the Court shall follow the same procedures to safeguard the rights of the
21 protected person that apply to a petition for conservatorship. Upon the establishment of a prima
22 facie case for termination, the Court shall order termination unless it is proved that continuation
23 of the conservatorship is in the best interest of the protected person.

(e) Upon termination of a conservatorship and whether or not formally distributed by the conservator, title to assets of the estate passes to the formerly protected person or the person's successors. 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.

§ 5-432. Payment of debt and delivery of property to foreign conservator without local proceeding. (a) A person who is indebted to or has the possession of tangible or intangible property of a protected person may pay the debt or deliver the property to a foreign conservator, guardian of the estate, or other court-appointed fiduciary of the State of residence of the protected person. Payment or delivery may be made only upon proof of appointment and presentation of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding relating to the protected person is not pending in the Virgin Islands and the foreign fiduciary is entitled to payment or to receive delivery.

(b) Payment or delivery in accordance with subsection (a) discharges the debtor or possessor, absent knowledge of any protective proceeding pending in the Virgin Islands.

§ 5-433. Foreign conservator: proof of authority; bond; powers. If a conservator has not been appointed in the Virgin Islands and a petition in a protective proceeding is not pending in the Virgin Islands, a conservator appointed in the jurisdiction in which the protected person resides may file in a court of the Virgin Islands, in a judicial division in which property belonging to the protected person is located, authenticated copies of letters of appointment and of

any bond. Thereafter, the conservator may exercise all powers of a conservator appointed in the Virgin Islands as to property in the Virgin Islands and may maintain actions and proceedings in the Virgin Islands subject to any conditions otherwise imposed upon nonresident parties.

§5-434. (a) Article V, parts 1-4 apply to guardianship proceedings commenced on or after their effective date.

(b) This article must be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this article among the jurisdictions enacting it.

(c) Unless displaced by the particular provisions of this article, the principles of law and equity supplement its provisions.

“PART 4A. UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE

PROCEEDINGS JURISDICTION

I. GENERAL PROVISIONS

§5-441. This part may be cited as the Virgin Islands Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§502.5-442. Definitions. In this part:

(1) “Adult” means an individual who has attained 18 years of age.

(2) “Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under part 4 of this article.

(3) “Court” or “Family Division” means the Family Division of the Superior Court of the Virgin Islands.”

(4) “Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under this Article.

(5) “Guardianship order” means an order appointing a guardian.

1 (6) “Guardianship proceeding” means a judicial proceeding in which an order for the
2 appointment of a guardian is sought or has been issued.

3 (7) “Incapacitated person” means an adult for whom a guardian has been appointed.

4 (8) “Party” means the respondent, petitioner, guardian, conservator, or any other
5 person allowed by the court to participate in a guardianship or protective proceeding.

6 (9) “Person,” except in the term, “incapacitated person” or “protected person”, means
7 an individual, corporation, business trust, estate, trust, partnership, limited liability company,
8 association, joint venture, public corporation, government or governmental subdivision, agency,
9 or instrumentality, or any other legal or commercial entity.

10 (10) “Protected person” means an adult for whom a protective order has been issued.

11 (11) “Protective order” means an order appointing a conservator or other order related
12 to management of an adult’s property.

13 (12) “Protective proceeding” means a judicial proceeding in which a protective order
14 is sought or has been issued.

15 (13) “Record” means information that is inscribed on a tangible medium or that is
16 stored in an electronic or other medium and is retrievable in perceivable form.

17 (14) “Respondent” means an adult for whom a protective order or the appointment of a
18 guardian is sought.

19 (15) “State” means a state of the United States, the District of Columbia, Puerto Rico,
20 the Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession
21 subject to the jurisdiction of the United States.

22 (16) “Territory” means the Virgin Islands, as defined in section 2 (a) of the Revised
23 Organic Act of the Virgin Islands.

1 **§ 5-443. International application of chapter.** The Court may treat a foreign country
2 as if it were a state for the purpose of applying this chapter.

3 **§5-444. Communication between courts.**

4 (a) The Court may communicate with a court in another state concerning a
5 proceeding arising under this chapter. The Court may allow the parties to participate in the
6 communication. Except as otherwise provided in subsection (b), the Court shall make a record
7 of the communication. The record may be limited to the fact that the communication occurred.

8 (b) The Court may communicate with courts in other states concerning schedules,
9 calendars, court records, and other administrative matters without making a record.

10 **§ 5-445. Cooperation between courts.** (a) In a guardianship or protective proceeding in
11 this Territory, the Court may request the appropriate court of another state to do any of the
12 following:

- 13 (1) Hold an evidentiary hearing;
- 14 (2) Order a person in that state to produce evidence or give testimony
15 pursuant to procedures of that state;
- 16 (3) order that an evaluation or assessment be made of the respondent;
- 17 (4) Order any appropriate investigation of a person involved in a proceeding;
- 18 (5) forward to Court a certified copy of the transcript or other record of a
19 hearing under paragraph (1) or any other proceeding, any evidence otherwise produced
20 under paragraph (2), and any evaluation or assessment prepared in compliance with an
21 order under paragraph (3) or (4);
- 22 (6) Issue any order necessary to assure the appearance in the proceeding of a
23 person whose presence is necessary for the Court to make a determination, including the
24 respondent or the incapacitated or protected person;

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R 160.103.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), the Family Division has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

§5-446. Taking testimony in another state.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The Court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, the Court may permit a witness located in another state to be deposed or to testify by telephone or audio-visual or other electronic means. The Family Division shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to the Court by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

II. JURISDICTION

§ 5-451. Definitions; significant connection factors.

(a) In this subpart:

1 (1) “Emergency” means a circumstance that likely will result in substantial
2 harm to a respondent’s health, safety, or welfare, and for which the appointment of a
3 guardian is necessary because no other person has authority and is willing to act on the
4 respondent’s behalf.

5 (2) “Home state” means the state in which the respondent was physically
6 present, including any period of temporary absence, for at least six consecutive months
7 immediately before the filing of a petition for a protective order or the appointment of a
8 guardian; or if none, the state in which the respondent was physically present, including
9 any period of temporary absence, for at least six consecutive months ending within the
10 six months prior to the filing of the petition.

11 (3) “Significant-connection state” means a state, other than the home state,
12 with which a respondent has a significant connection other than mere physical presence
13 and in which substantial evidence concerning the respondent is available.

14 (b) In determining under sections 5-453 and 5-461(e) whether a respondent has a
15 significant connection with a particular state, the Court shall consider:

16 (1) The location of the respondent’s family and other persons required to be
17 notified of the guardianship or protective proceeding;

18 (2) The length of time the respondent at any time was physically present in
19 the state and the duration of any absence;

20 (3) The location of the respondent’s property; and

21 (4) The extent to which the respondent has ties to the state such as voting
22 registration, state or local tax return filing, vehicle registration, driver’s license, social
23 relationship, and receipt of services.

1 **§5-452 Exclusive basis.** This subpart provides the exclusive jurisdictional basis for the
2 Court to appoint a guardian or issue a protective order for an adult.

3 **§ 5-453. Jurisdiction.** The Court has jurisdiction to appoint a guardian or issue a
4 protective order for a respondent if:

5 (1) The Virgin Islands is the respondent's home state;

6 (2) On the date the petition is filed, the Territory is a significant-connection state and:

7 (A) The respondent does not have a home state, or a court of the respondent's
8 home state has declined to exercise jurisdiction because this Territory is a more
9 appropriate forum; or

10 (B) The respondent has a home state, a petition for an appointment or order is
11 not pending in a court of that state or another significant-connection state, and, before the
12 Family Division makes the appointment or issues the order:

13 (i) a petition for an appointment or order is not filed in the
14 respondent's home state;

15 (ii) an objection to the court's jurisdiction is not filed by a person
16 required to be notified of the proceeding; and;

17 (iii) the Family Division concludes that it is an appropriate forum under
18 the factors set forth in section 5-456;

19 (3) This Territory does not have jurisdiction under either paragraph (1) or (2), the
20 respondent's home state and all significant-connection states have declined to exercise
21 jurisdiction because this Territory is the more appropriate forum, and jurisdiction in the Territory
22 is consistent with the Revised Organic of the Virgin Islands and the Constitution of the United
23 States; or

24 (4) The requirements for special jurisdiction under section 5-454 are met.

1 **§514. Special jurisdiction.**

2 (a) A court of the Virgin Islands lacking jurisdiction under section 5-453 (1) through
3 (3) has special jurisdiction to do any of the following:

4 (1) appoint a guardian in an emergency for a term not exceeding 90days for a
5 respondent who is physically present in this state;

6 (2) issue a protective order with respect to real or tangible personal property
7 located in the Virgin Islands

8 (3) appoint a guardian or conservator for an incapacitated or protected person
9 for whom a provisional order to transfer the proceeding from another state has been
10 issued under procedures similar to section 5-461.

11 (b) If a petition for the appointment of a guardian in an emergency is brought in the
12 Virgin Islands and the Virgin Islands was not the respondent's home state on the date the petition
13 was filed, the Court shall dismiss the proceeding at the request of the court of the home state, if
14 any, whether dismissal is requested before or after the emergency appointment.

15 **§5-455 Exclusive and continuing jurisdiction.** Except as otherwise provided in section
16 5-454, a court that has appointed a guardian or issued a protective order consistent with this
17 chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the
18 court or the appointment or order expires by its own terms.

19 **§5-456. Appropriate forum.** A court of the Virgin Islands having jurisdiction under
20 section 5-453 to appoint a guardian or issue a protective order may decline to exercise its
21 jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

22 (b) If the Court declines to exercise its jurisdiction under subsection (a), it shall either
23 dismiss or stay the proceeding. The Court may impose any condition the Court considers just

1 and proper, including the condition that a petition for the appointment of a guardian or issuance
2 of a protective order be filed promptly in another state.

3 (c) In determining whether it is an appropriate forum, the Court shall consider all
4 relevant factors, including:

- 5 (1) any expressed preference of the respondent;
- 6 (2) whether abuse, neglect, or exploitation of the respondent has occurred or
7 is likely to occur and which state could best protect the respondent from the abuse,
8 neglect, or exploitation;
- 9 (3) the length of time the respondent was physically present in or was a legal
10 resident of this or another state;
- 11 (4) the distance of the respondent from the court in each state;
- 12 (5) the financial circumstances of the respondent's estate;
- 13 (6) the nature and location of the evidence;
- 14 (7) the ability of the court in each state to decide the issue expeditiously and
15 the procedures necessary to present evidence;
- 16 (8) the familiarity of the court of each state with the facts and issues in the
17 proceeding; and
- 18 (9) if an appointment were made, the court's ability to monitor the conduct of
19 the guardian or conservator.

20 **§ 5-457. Jurisdiction declined by reason of conduct.**

21 (a) If at any time the Court determines that it acquired jurisdiction to appoint a
22 guardian or issue a protective order because of unjustifiable conduct, the Court may:

- 23 (1) decline to exercise jurisdiction;

1 (2) exercise jurisdiction for the limited purpose of fashioning an appropriate
2 remedy to ensure the health, safety, and welfare of the respondent or the protection of the
3 respondent's property or prevent a repetition of the unjustifiable conduct, including
4 staying the proceeding until a petition for the appointment of a guardian or issuance of a
5 protective order is filed in a court of another state having jurisdiction; or

6 (3) continue to exercise jurisdiction after considering:

7 (A) the extent to which the respondent and all persons required to be
8 notified of the proceedings have acquiesced in the exercise of the court's
9 jurisdiction;

10 (B) whether it is a more appropriate forum than the court of any other
11 state under the factors set forth in section 5-456 (c); and

12 (C) whether the court of any other state would have jurisdiction under
13 factual circumstances in substantial conformity with the jurisdictional standards
14 of section 5-453.

15 (b) If the Court determines that it acquired jurisdiction to appoint a guardian or issue
16 a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable
17 conduct, it may assess against that party necessary and reasonable expenses, including attorney's
18 fees, investigative fees, court costs, communication expenses, witness fees and expenses, and
19 travel expenses. The Court may not assess fees, costs, or expenses of any kind against
20 Government of the Virgin Islands or a department, agency, or instrumentality of the Government
21 unless authorized by law other than this part.

22 **§ 5-458. Notice of proceeding.** If a petition for the appointment of a guardian or
23 issuance of a protective order is brought in the Virgin Islands and the Virgin Islands was not the
24 respondent's home state on the date the petition was filed, in addition to complying with the

1 notice requirements of the Virgin Islands, notice of the petition must be given to those persons
2 who would be entitled to notice of the petition if a proceeding were brought in the respondent's
3 home state. The notice must be given in the same manner as notice is required to be given in the
4 Virgin Islands.

5 **§ 5-459. Proceedings in more than one state.** Except for a petition for the appointment
6 of a guardian in an emergency or issuance of a protective order limited to property located in the
7 Virgin Islands under section 5-544 (a) (1) or (a) (2), if a petition for the appointment of a
8 guardian or issuance of a protective order is filed in the Virgin Islands and in another state and
9 neither petition has been dismissed or withdrawn, the following rules apply:

10 (1) If the Family Division has jurisdiction under section 5-453, it may proceed
11 with the case unless a court in another state acquires jurisdiction under provisions similar
12 to section 5-453 before the appointment or issuance of the order.

13 (2) If the Family Division does not have jurisdiction under section 5-453,
14 whether at the time the petition is filed or at any time before the appointment or issuance
15 of the order, the Family Division shall stay the proceeding and communicate with the
16 court in the other state. If the court in the other state has jurisdiction, the Family Division
17 shall dismiss the petition unless the court in the other state determines that the Family
18 Division is a more appropriate forum.

19 **III. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP**

20 **§ 5-561. Transfer of guardianship or conservatorship to another state.**

21 (a) A guardian or conservator appointed in the Virgin Islands may petition the Court
22 to transfer the guardianship or conservatorship to another state.

1 (b) Notice of a petition under subsection (a) must be given to the persons that would
2 be entitled to notice of a petition in the Virgin Islands for the appointment of a guardian or
3 conservator.

4 (c) On the Court's own motion or on request of the guardian or conservator, the
5 incapacitated or protected person, or other person required to be notified of the petition, the
6 Court shall hold a hearing on a petition filed pursuant to subsection (a).

7 (d) The Court shall issue an order provisionally granting a petition to transfer a
8 guardianship and shall direct the guardian to petition for guardianship in the other state if the
9 Court is satisfied that the guardianship will be accepted by the court in the other state and the
10 Family Division finds that:

11 (1) the incapacitated person is physically present in or is reasonably expected
12 to move permanently to the other state;

13 (2) an objection to the transfer has not been made or, if an objection has been
14 made, the objector has not established that the transfer would be contrary to the interests
15 of the incapacitated person; and

16 (3) plans for care and services for the incapacitated person in the other state
17 are reasonable and sufficient.

18 (e) The Court shall issue a provisional order granting a petition to transfer a
19 conservatorship and shall direct the conservator to petition for conservatorship in the other state
20 if the Court is satisfied that the conservatorship will be accepted by the court of the other state
21 and the court finds that:

22 (1) the protected person is physically present in or is reasonably expected to
23 move permanently to the other state, or the protected person has a significant connection
24 to the other state considering the factors in section 5-451(b);

1 (2) an objection to the transfer has not been made or, if an objection has been
2 made, the objector has not established that the transfer would be contrary to the interests
3 of the protected person; and

4 (3) adequate arrangements will be made for management of the protected
5 person's property.

6 (f) The Court shall issue a final order confirming the transfer and terminating the
7 guardianship or conservatorship upon its receipt of:

8 (1) a provisional order accepting the proceeding from the court to which the
9 proceeding is to be transferred which is issued under provisions similar to section 5-462;
10 and

11 (2) the documents required to terminate a guardianship or conservatorship in
12 the Territory.

13 **§ 5-462. Accepting guardianship or conservatorship transferred from another state.**

14 (a) To confirm transfer of a guardianship or conservatorship transferred to the Virgin
15 Islands under provisions similar to section 5-461, the guardian or conservator must petition the
16 Family Division to accept the guardianship or conservatorship. The petition must include a
17 certified copy of the other state's provisional order of transfer.

18 (b) Notice of a petition under subsection (a) must be given to those persons that
19 would be entitled to notice if the petition were a petition for the appointment of a guardian or
20 issuance of a protective order in both the transferring state and the Virgin Islands. The notice
21 must be given in the same manner as notice is required to be given in the Virgin Islands.

22 (c) On the Court's own motion or on request of the guardian or conservator, the
23 incapacitated or protected person, or other person required to be notified of the proceeding, the
24 Court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The Court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in the Virgin Islands.

(e) The Court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in the Virgin Islands upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 5-461 transferring the proceeding to the Virgin Islands.

(f) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the Court shall determine whether the guardianship or conservatorship needs to be modified to conform to Virgin Islands law.

(g) In granting a petition under this section, the Court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by Court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in Virgin Islands under this article, if the Court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

IV. REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

§ 5-471. Registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in the Virgin

1 Islands, the guardian appointed in the other state, after giving notice to the appointing court of an
2 intent to register, may register the guardianship order in Virgin Islands by filing as a foreign
3 judgment in the Court in any judicial division in which property belonging to the protected
4 person is located, certified copies of the order and letters of office.

5 **§5-472. Registration of protective orders.** If a conservator has been appointed in
6 another state and a petition for a protective order is not pending in the Virgin Islands , the
7 conservator appointed in the other state, after giving notice to the appointing court of an intent to
8 register, may register the protective order in this state by filing as a foreign judgment in a court
9 of this Territory, in the judicial division in which property belonging to the protected person is
10 located, certified copies of the order and letters of office and of any bond.

11 **§5-473. Effect of registration.** (a) Upon registration of a guardianship or protective
12 order from another state, the guardian or conservator may exercise in this Territory all powers
13 authorized in the order of appointment except as prohibited under the laws of the Virgin Islands,
14 including maintaining actions and proceedings in the Virgin Islands and, if the guardian or
15 conservator is not a resident of the Virgin Islands, subject to any conditions imposed upon non-
16 resident parties.

17 (b) The Court may grant any relief available under this part and other law of the
18 Virgin Islands to enforce a registered order.

19 **V. APPLICABILITY; MISCELLANEOUS PROVISIONS**

20 **§5-481. Applicability.** This subpart applies to adult guardianship and protective
21 proceedings begun on or after January 1, 2017.

22 (b) Subparts I, III, and IV and sections 5-482 and 5-483 apply to proceedings begun
23 before January 1, 2017, regardless of whether a guardianship or protective order has been issued.

1 **§5-482. Uniformity of application and construction.** In applying and construing this
 2 article, as a uniform law, consideration must be given to the need to promote uniformity of the
 3 law with respect to its subject matter among states that enact it.

4 **§5-483. Relation to the Electronic Signatures in Global and National Commerce Act.**
 5 This article modifies, limits, and supersedes the federal Electronic Signatures in Global and
 6 National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or
 7 supersede section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery
 8 of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

9 **SECTION 2.** Title 15 Virgin Islands Code, chapter 51 is repealed.

10 **SECTION 3.** This act takes effect January1, 2017.

11 **BILL SUMMARY**

12 This bill would update the Territory's guardianship law. As the Uniform Law
 13 Commission's summary of the Act explains, guardians and conservators are court-appointed
 14 officials, or officials chosen by parents for minors or incapacitated adults who are in the care of
 15 their parents. Guardians may be appointed to care for unemancipated minors who have lost their
 16 parents to death or incapacitation or for whom parental authority has been legally terminated.
 17 Guardians may also be appointed to care for adults who have become incapacitated and who
 18 cannot, therefore, take care of themselves. Guardians care for the person, who is called a ward,
 19 under this bill.

20 Under this proposed act, conservators are appointed to receive, invest, manage, and
 21 disburse property held for a minor or an incapacitated person. Conservators are like trustees of a
 22 trust and are fiduciaries, who must receive, invest, manage and disburse property in the interests
 23 of the protected person. Under this proposed act, the incapacitated person or minor for whom a
 24 conservator is appointed is called a protected person.

25 Much this bill provides procedures for appointment of guardians and conservators. A
 26 person who may need a guardian or conservator cannot be subjected to a court appointed one
 27 without a hearing in which the respondent (alleged incapacitated person or minor) must be
 28 present if at all possible, may be represented by counsel, may present evidence and cross-
 29 examine witnesses. This bill gives the court broad discretion to appoint counsel for the
 30 respondent and there must be a visitor to report to the court. Under this proposed uniform law,
 31 every effort is made to provide a respondent with a fair and impartial proceeding.

32 The Uniform Guardianship and Protective Proceedings Act provides for limited
 33 guardianships and conservatorships. A guardian or conservator obtains only the powers over the

ward or protected person that are the least restrictive possible. The objective is to provide maximum personal freedom from authority for the ward or protected person.

The rest the Act is devoted to the powers, duties and liabilities of guardians and conservators. These powers are generally exercised under the jurisdiction of the court that has appointed a guardian or conservator. The Uniform guardianship and Protective Proceedings Act emphasizes due process and fair proceedings, and limiting the power of guardians and conservators.

Part 4A of Article V of the bill enacts the Virgin Islands Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, a uniform law adopted by the Uniform Law Commission at its July 27 – August 3, 2007, annual meeting. Forty jurisdictions, including Puerto Rico, have enacted this uniform Act. The bill, in enacting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, primarily provides procedures and rules for addressing jurisdictional, transfer and enforcement issues relating to adult guardianships and protective proceedings. If adopted this bill would provide procedures to resolve interstate jurisdiction controversies. The bill establishes a process for determining which state will have jurisdiction to appoint a guardian or conservator if there is a conflict by declaring that the individual's "home state" has primary jurisdiction, followed by a state in which the individual has a "significant-connection." The bill provides that under certain prescribed circumstances, if another state is the more appropriate forum, it would be selected as having jurisdiction over the matter.

The bill is intended to facilitate transfers of guardianship cases among jurisdictions. The bill sets forth a procedure for transferring a guardianship or conservatorship to another state and for accepting a transfer, helping to reduce expenses and save time while protecting persons and their property from potential abuse.

Under this uniform law, protective orders from other jurisdictions would be recognized and enforced by the courts of the Virgin Islands. In turn, this uniform law would help to facilitate Virgin Islands enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register these orders in other states. A further objective of this uniform law is to facilitate communication and advance cooperation between courts of different jurisdictions. This bill also provides for communication between courts and parties of other states, records of the communications, and jurisdiction to respond to requests for assistance from courts in other states.

The bill also addresses emergency situations and other special cases. The bill authorizes a court in the state where the individual is physically present to appoint a guardian in an emergency.

Part 4A is organized into five subparts. Subpart I contains definitions and provisions designed to facilitate cooperation between courts in different states. Subpart II contains the principal provisions of the bill. It designates which court has jurisdiction to appoint a guardian or conservator or issue another type of protective order and contains definitions applicable only to that article. Its primary objective is to assure that an appointment or order is made or issued in only one state except in cases of emergency or in situations where the individual owns property located in multiple states.

1 Subpart III establishes a procedure for transferring a guardianship or conservatorship
2 proceedings from one state to another state. Subpart IV provides for the enforcement of guardianship
3 and protective orders in other states.
4

5 Subpart V contains the miscellaneous provisions. They include a section governing the
6 applicability of the Act and the boilerplate provisions common to all uniform acts.

7 Section 2 of the bill repeals conflicting and superfluous code provisions. Section 3
8 designates the effective date of the Act as January 1, 2017.
9

10
11 **BR15-0022-1/June 30, 2015/YLT**
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28