

TITLE 3  
GUARDIAN AND WARD

CHAPTER 1  
GENERAL PROVISIONS

ARTICLE 1  
GUARDIANS OR CONSERVATORS

**3-1-101. Definitions**

(a) As used in this title, unless otherwise required by the context or unless otherwise defined:

(i) "Ancillary guardian" means a guardian appointed by a court of another state for a ward who is currently a resident of this state;

(ii) "Clerk" means clerk of the district court in the county in which the matter is pending and includes the clerk of the probate court;

(iii) "Conservator" means a person appointed by the court to have the custody and control of the property of a ward;

(iv) "Fiduciary" means a guardian or conservator;

(v) "Guardian" means a person who has qualified as a guardian of a minor or incompetent person pursuant to an appointment by the court to exercise the powers granted by the court. The term includes a plenary, limited, emergency and standby guardian, but does not include a guardian ad litem;

(vi) "Guardian ad litem" means a person appointed by the court to represent the best interests of a respondent during the course of litigation;

(vii) "Guardian of the estate" means "conservator";

(viii) "Guardian of the property" means "conservator";

(ix) "Incompetent person" means an individual who, for reasons other than being a minor, is unable unassisted to properly manage and take care of himself or his property as a result of the medical conditions of advanced age, physical disability, disease, the use of alcohol or controlled

substances, mental illness, mental deficiency or intellectual disability;

(x) "Limited conservatorship" means a conservatorship in which the appointment by the court is limited in scope of duties or duration of appointment;

(xi) "Limited guardianship" means a guardianship in which the appointment by the court is limited in scope of duties or duration of appointment;

(xii) "Mentally incompetent person" means an individual who is unable unassisted to properly manage and take care of himself or his property as the result of mental illness, mental deficiency or intellectual disability;

(xiii) "Plenary conservatorship" means a conservatorship in which the appointment by the court carries the full range of duties allowable by law;

(xiv) "Plenary guardianship" means a guardianship in which the appointment by the court carries the full range of duties allowable by law;

(xv) "Ward" means an individual for whom a guardian or conservator has been appointed by the court or designated under W.S. 3-3-501;

(xvi) "Minor" means an unemancipated individual under the age of majority as defined by W.S. 14-1-101(a);

(xvii) "Person" means an adult individual, or a nonprofit organization with a guardianship program;

(xviii) "Respondent" means an adult or minor individual for whom a guardianship or conservatorship or other protective order is sought.

### **3-1-102. Consent to jurisdiction.**

(a) Except as provided by subsection (b) of this section, by accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or conservator or mailed to

him by certified mail at his address listed in the court records and to his address as then known to the petitioner.

(b) In any matter concerning an adult, the provisions of chapter 8 of this title shall apply and shall supersede the terms of subsection (a) of this section.

### **3-1-103. Venue.**

(a) The venue for a guardianship proceeding is in the place where the minor, incompetent person or mental incompetent resides or is present. If a mentally incompetent person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

(b) The venue for a conservatorship proceeding is in the county where the ward resides, whether or not a guardian has been appointed in another place. If the ward does not reside in this state then venue is in any county where the ward has property.

### **3-1-104. Proceedings against persons suspected of concealing ward's property.**

Upon complaint of a person interested in the estate of the ward, the court may cite any person suspected of concealing, embezzling, converting or conveying property belonging to the ward to appear before the court and answer the complaint in the manner provided by the Wyoming Probate Code.

### **3-1-105. Combining petition for guardian and conservator.**

A petition for the appointment of a guardian and a conservator may be filed and the cause shall be tried as provided in W.S. 3-3-101 through 3-3-104 for the appointment of a conservator. The same person may be appointed to serve as both guardian and conservator.

### **3-1-106. Provisions applicable to all fiduciaries shall govern.**

The provisions of W.S. 2-3-101 through 2-3-504 and 2-3-801 through 2-3-834 govern the appointment, qualification, substitution, removal, oath and bond of a guardian, limited guardian and conservator. A guardian or limited guardian shall not be required to give bond unless the court, for good cause,

finds that the best interest of the ward requires a bond. The court shall then fix the terms and conditions of the guardian's bond.

**3-1-107. Combination of involuntary, voluntary and standby petitions and hearings.**

If prior to the time of hearing on a petition for the appointment of a guardian under W.S. 3-2-101 or for the appointment of a conservator under W.S. 3-3-101, a petition is filed under the provisions of W.S. 3-2-105, 3-2-106, 3-2-302, 3-3-106, 3-3-107 or 3-3-301, the court shall combine the hearings on the petitions and determine who shall be appointed guardian or conservator.

**3-1-108. Guardians ad litem not affected.**

(a) The appointment of a guardian or conservator for a ward does not affect or impair the power of any court to appoint a guardian ad litem to represent the best interests of any minor, incompetent person or mentally incompetent person interested in any matter.

(b) A guardian ad litem appointed in an action brought under this title shall report back to the court within thirty (30) days after appointment as to:

(i) The condition of the proposed ward;

(ii) Recommendations for the court.

(c) The guardian ad litem shall not have the powers of a guardian or conservator nor shall the guardian ad litem act as legal counsel for the proposed ward.

**3-1-109. Limitation of action on bond.**

An action shall not be brought against the sureties on any bond given by a guardian or conservator unless it is commenced within five (5) years from the discharge or removal of the guardian or conservator, but if, at the time of the discharge, the person entitled to bring an action is under any legal disability to sue, the action may be commenced at any time within five (5) years after the disability is removed.

**3-1-110. Order restricting disclosure.**

(a) Upon application, the court may order sealed any portion of a ward's file containing those matters described in W.S. 16-4-203(b) and (d) and any personally identifiable information, including financial information relating to the ward. Sealed records are available for inspection only under court order.

(b) Nothing in this section is intended to limit the guardian's use of confidential information in the interests of the ward.

### **3-1-111. Complaint against guardian or conservator.**

(a) Any person having reason to believe that a guardian or conservator is not properly discharging his duties shall report the allegations and relevant supporting facts in a verified writing to the clerk of the district court that established the guardianship or conservatorship.

(b) The clerk shall immediately send a copy of the complaint report to the guardian or conservator in the manner provided for service of process under Rule 4(r)(2) of the Wyoming Rules of Civil Procedure.

(c) The guardian or conservator shall have twenty (20) days in which to respond to the complaint report.

(d) Upon receipt of the guardian's or conservator's response, or at the expiration of the twenty (20) day response time, whichever occurs earlier, the court shall either dismiss the complaint or set the matter for hearing. The court may dismiss the complaint if the complaint report and response show there is no basis for the allegations that the guardian or conservator is not properly discharging his duties.

(e) Notice of the hearing shall be sent to the complainant, the guardian or conservator and, when ordered by the court, the ward.

(f) At the conclusion of the hearing, or after determining there is no basis for the allegations and no need for a hearing, the court shall issue findings and enter an appropriate order.

(g) The court may, within its discretion, assess court costs and impose attorneys fees against any party in an action instituted under this section.

ARTICLE 2  
RIGHTS AND TITLE OF WARD

**3-1-201. Effect of appointment of guardian or conservator.**

The appointment of a guardian or conservator does not constitute an adjudication that the ward lacks testamentary capacity.

**3-1-202. Powers of the ward.**

(a) A ward who is a minor or a mentally incompetent person for whom a conservator has been appointed does not have the power to convey, encumber or dispose of property in any manner, except:

(i) By will if he possesses the requisite testamentary capacity; or

(ii) As provided by W.S. 2-1-203(a), 13-7-302 and 34.1-4-405.

**3-1-203. Title to ward's property.**

Title to all property of the ward remains in the ward and is subject to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition as provided by law.

**3-1-204. Conservator's right to possession.**

(a) The conservator shall:

(i) Take possession of all the real and personal property of the ward;

(ii) Pay out of the ward's estate the taxes assessed against the ward's property; and

(iii) Collect the income realized from the ward's property.

(b) The conservator may bring an action to determine title to or to gain possession of the ward's property.

**3-1-205. Rights of proposed ward.**

(a) The proposed ward of any involuntary petition for guardianship or conservatorship shall have the right to:

(i) Notice of the filing of the petition;

(ii) An opportunity for a hearing;

(iii) Be present at any hearing regarding the proposed guardianship or conservatorship;

(iv) Have a guardian ad litem appointed in accordance with Rule 17(c) of the Wyoming Rules of Civil Procedure, and to have counsel appointed upon order of the court; and

(v) The least restrictive and most appropriate guardianship or conservatorship suitable to the proposed ward's circumstances.

(b) The rights in subsection (a) of this section may be exercised by the proposed ward, his legal counsel or guardian ad litem.

### **3-1-206. Rights of ward.**

(a) The ward under any guardianship or conservatorship shall have the right to:

(i) The least restrictive and most appropriate guardianship or conservatorship suitable to the ward's circumstances, subject to the order of preference provided by W.S. 3-2-107 and 3-3-105;

(ii) The least restrictive and most appropriate residential, educational and employment environments;

(iii) Freedom from inappropriate physical or chemical restraints; and

(iv) All other rights available to residents of any private or public facility to which the ward is admitted or program in which the ward participates subject to any order of the court.

## CHAPTER 2 GUARDIANSHIPS

### ARTICLE 1

## APPOINTMENT OF GUARDIAN

### **3-2-101. Petition for appointment of guardian.**

(a) Any person may file with the clerk a petition for the appointment of a guardian. The petition shall state:

(i) The name, age and address of the proposed ward;

(ii) The status of the proposed ward as a minor, an incompetent person or a mentally incompetent person and the reasons for the petition;

(iii) The name and address of the proposed guardian, and his qualification as a fit and proper person to serve as guardian;

(iv) The residence of the proposed ward in the county or his presence in the county;

(v) The facts to show that the best interest of the proposed ward requires the appointment of a guardian in this state;

(vi) The name and address of the person or facility having the care, custody or control of the proposed ward; and

(vii) The interests of the petitioner.

(b) The district court may transfer jurisdiction of a petition for appointment of a guardian to the juvenile court if the proposed ward is a child who is under the prior and continuing jurisdiction of the juvenile court.

(c) In any matter concerning an adult, the provisions of chapter 8 of this title shall apply for the purposes of establishing jurisdiction over the matter.

### **3-2-102. Notice; when required; governed by rules of civil procedure.**

(a) Notice of filing of a petition for appointment of an involuntary guardianship shall be served on the proposed ward, his custodian and the proposed guardian.

(b) Notice of filing of a petition for appointment of an involuntary guardianship shall be served on the proposed ward's



parents, agent or fiduciary under a known power of attorney, spouse and adult children who are known or who can be discovered with due diligence, except:

(i) When a petition is filed under W.S. 3-2-108; or

(ii) When for good cause the court determines that no notice is necessary if the proposed ward is under the age of eighteen (18) years.

(c) Notice shall be served on any other person as ordered by the court.

(d) Notice shall be given in accordance with the Wyoming Rules of Civil Procedure and as ordered by the court.

### **3-2-103. Pleadings and trial; rules of civil procedure.**

After the petition is filed, all proceedings are governed by the Wyoming Rules of Civil Procedure and the Wyoming Rules of Evidence. The petitioner, the proposed ward or his custodian may demand a jury trial as provided by the Wyoming Rules of Civil Procedure.

### **3-2-104. Appointment of guardian.**

(a) The court may appoint a guardian if the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by a preponderance of the evidence.

(b) The order appointing a guardian shall state the findings of the court, including:

(i) The reasons why the ward is in need of a guardian;

(ii) The appointment of the guardian;

(iii) The duration of the appointment for a specified term or permanent, subject to W.S. 3-3-1101;

(iv) The limited or plenary duties of the guardian.

### **3-2-105. Appointment of guardian on voluntary petition.**

(a) A guardian may be appointed by the court upon the petition of the proposed ward, including a minor who has reached the age of fourteen (14) years, if the court determines that the appointment is in the best interest of the petitioner.

(b) The petition shall state whether a notice of a petition for involuntary guardianship under W.S. 3-2-101 has been served on the proposed ward.

### **3-2-106. Appointment of a temporary or emergency guardian.**

(a) Upon the filing of a petition for a temporary guardian other than a petition for temporary guardianship for educational, medical care and dental care purposes pursuant to W.S. 3-2-301 through 3-2-303 and after a hearing the court may appoint a temporary guardian subject to any notice and conditions the court prescribes.

(b) Except upon a showing of good cause, an order appointing a temporary guardian of an adult ward shall be limited to not more than ninety (90) days. The court may order an extension of the temporary guardianship for not more than an additional ninety (90) days, or conversion to a guardianship or conservatorship in accordance with W.S. 3-2-101 through 3-2-105 or 3-3-101 through 3-3-106.

(c) Except upon a showing of good cause, an order appointing a temporary guardian of a minor ward shall be limited to not more than one (1) year.

(d) If the court finds that compliance with the procedures specified in this chapter will likely result in substantial harm to the proposed ward's health, safety or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the proposed ward's welfare, may appoint an emergency guardian. Immediately upon receipt of the petition for an emergency guardianship, the court shall appoint a guardian ad litem to represent the proposed ward's best interests in the proceeding. Except as otherwise provided in subsection (e) of this section, reasonable notice of the time and place of a hearing on the petition shall be given to the proposed ward and any other persons as the court directs.

(e) An emergency guardian may be appointed without notice to the proposed ward or the guardian ad litem only if the court finds by a preponderance of the evidence from affidavit or

testimony that the proposed ward will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian immediately, without notice to the proposed ward or the guardian ad litem, the proposed ward and guardian ad litem shall be given notice of the appointment within forty-eight (48) hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within seventy-two (72) hours after the appointment. Emergency guardians appointed without notice and hearing shall have authority to make medical and medically related decisions only, except emergency guardians shall not have authority with respect to a person who has been made a ward pursuant to this subsection or subsection (d) of this section to:

(i) Execute a durable power of attorney for healthcare for the ward pursuant to W.S. 35-22-403(b);

(ii) Execute an individual instruction for the ward pursuant to W.S. 35-22-403(a);

(iii) Execute a cardiopulmonary resuscitation directive for the ward pursuant to W.S. 35-22-201 through 35-22-208;

(iv) Commit or admit the ward to a mental health facility; or

(v) Direct the withdrawal of life sustaining procedures being used on the ward.

(f) Appointment of an emergency guardian, with or without notice, is not a determination of the proposed ward's incapacity.

(g) At the seventy-two (72) hour hearing to determine the appropriateness of the appointment of an emergency guardian required by subsection (e) of this section, the court may appoint a temporary guardian pursuant to subsection (a) of this section. The court may remove an emergency guardian at any time.

(h) Except as provided in subsections (d) through (g) of this section, all other provisions of this chapter concerning guardians apply to an emergency guardian.

**3-2-107. Who may be appointed as guardian; preference for appointment of guardians.**

(a) The court may appoint any qualified person as guardian of an incompetent person or a minor. The court may not appoint a person to be a guardian of an incompetent person or a minor if the person proposed to act as guardian:

(i) Provides, or is likely to provide during the guardianship period, substantial services to the ward in a professional or business capacity unrelated to the person's authority as a guardian;

(ii) Is, or is likely to become during the guardianship period, a creditor of the ward, other than in the capacity as guardian;

(iii) Has, or is likely to have during the guardianship period, interests that may conflict with those of the ward; or

(iv) Is employed by a person who would be disqualified under paragraphs (i) through (iii) of this subsection.

(b) A person may be appointed as guardian of a respondent, notwithstanding the provisions of subsection (a) of this section that would otherwise disqualify the person, if the person is the spouse, adult child, parent or sibling of the respondent and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the respondent.

(c) Subject to subsection (e) of this section, qualified persons have priority for appointment as guardian of an incompetent person in the following order:

(i) A person nominated by the respondent if at the time of the nomination the respondent has the capacity to make a reasonably intelligent choice;

(ii) The spouse of the respondent;

(iii) A nomination in the will of the respondent's deceased spouse;

(iv) The parent of the respondent;

(v) An adult child of the respondent;

(vi) A person named in the will of the respondent's deceased parent;

(vii) A relative of the respondent with whom the respondent has resided for more than six (6) months during the year preceding the filing of the petition;

(viii) A relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the respondent;

(ix) Any other person whose appointment would be in the best interests of the respondent;

(x) A person with a guardianship program for incompetent persons.

(d) Subject to subsection (e) of this section, qualified persons have priority for appointment as guardian of a minor in the following order:

(i) The parent or parents of the minor;

(ii) The person nominated as guardian in the will of the custodial parent;

(iii) The person requested by a minor who has reached the age of fourteen (14) years;

(iv) Any other person whose appointment would be in the best interests of the minor.

(e) The court shall consider the priorities established in subsections (c) and (d) of this section, but shall not be bound by those priorities. The court shall appoint the person who is best qualified and willing to serve as guardian.

### **3-2-108. Appointment of guardian on a standby basis.**

A petition for the appointment of a guardian of the petitioner on a standby basis may be filed by any person under the same procedure and requirements as provided in W.S. 3-3-301 through 3-3-306 for appointment of a standby conservator, insofar as applicable.

### **3-2-109. Guardian's report.**

(a) The guardian shall present to the court and file in the guardianship proceedings a signed, written, report on the physical condition, including level of disability or functional incapacity, principal residence, treatment, care and activities of the ward, as well as providing a description of those actions the guardian has taken on behalf of the ward:

(i) Within six (6) months of the guardian's appointment;

(ii) Every six (6) months following the initial report;

(iii) Within thirty (30) days of his removal or resignation from, or the termination of, the guardianship;

(iv) At other times as the court may order.

(b) The court shall maintain a calendar for the filing of guardianship reports.

(c) If a guardian's report is not timely filed, the court shall enter an order for the guardian to show cause why the guardian should not be held in contempt.

**3-2-110. Appointment of department of health or the department of family services as guardian.**

(a) The department of health or the department of family services may petition any district court in the state to be appointed guardian of a minor who is in its custody.

(b) If a department in subsection (a) of this section is not the petitioner in a proceeding to appoint a guardian for a ward in its custody, it shall not be appointed guardian unless given prior notice and opportunity for hearing.

**3-2-111. Fees of the guardian.**

(a) The fees of the guardian shall be:

(i) Reasonable and appropriate;

(ii) Set and approved by the court.

(b) The fees of the guardian shall not be approved by the court unless all reports required of the guardian are current.

**3-2-112. Immunity of volunteer guardian.**

Any person who is appointed guardian of a ward pursuant to W.S. 3-2-104, who serves in that capacity without compensation other than reimbursement for out-of-pocket expenses associated with the appointment and who carries out the duties of guardian as set forth in W.S. 3-2-201 in good faith and without willful or wanton misconduct or gross negligence, shall be personally immune from civil liability for any act or omission resulting in damage or injury to the ward.

ARTICLE 2  
POWERS OF GUARDIANS

**3-2-201. Powers and duties of guardian.**

(a) The guardian shall:

(i) Determine and facilitate the least restrictive and most appropriate and available residence for the ward;

(ii) Facilitate the ward's education, social and other activities;

(iii) Subject to the restrictions of W.S. 3-2-202, authorize or expressly withhold authorization of medical or other professional care, treatment or advice;

(iv) Take reasonable care of the ward's personal property;

(v) Commence protective proceedings if necessary to protect the property of the ward;

(vi) Apply to the ward's current needs for support, care and education as much of the money or property paid or delivered to the guardian pursuant to W.S. 3-3-108 as may be appropriate;

(vii) Exercise due care to conserve excess funds for the ward's future needs;

(viii) Pay to the conservator excess funds at least annually;

(ix) Request the court to modify the guardian's range of duties if the changed circumstances of the ward require such modification; and

(x) Following the death of a ward, arrange for the final disposition of the ward's remains according to the ward's expressed wishes if known, if the immediate family is unavailable or unwilling to assume responsibility. For purposes of this paragraph, "immediate family" is defined as parents, spouse, grandparents, siblings and adult children.

(b) The guardian may:

(i) Receive money payable from any conservatorship for the support of the ward;

(ii) Receive money or property of the ward paid or delivered to the guardian pursuant to W.S. 3-3-108;

(iii) Institute proceedings to compel the performance by any person of the duty to support or contribute to the support of the ward;

(iv) Repealed By Laws 1998, ch. 114, § 3.

(v) Repealed By Laws 1998, ch. 114, § 3.

(vi) Consent to the marriage or adoption of the ward.

(c) The guardian is not liable for injury to the ward resulting from the negligence or acts of third persons performed by authority given by the guardian for medical or other professional care, treatment or advice, unless it would have been negligent for a parent to have given that authority.

(d) Funds received by the guardian pursuant to W.S. 3-3-108 shall not be used for compensation for the services of the guardian unless approved as required under W.S. 3-2-111.

(e) The guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his unemancipated minor child. A guardian who is not a parent of the minor is not obligated to expend his own funds for the support of the ward. A guardian who is not the parent of a minor is not liable to third persons for acts of the ward by reason of the relationship of guardian and ward.



**3-2-202. Powers of the guardian subject to approval of the court.**

(a) Upon order of the court, after notice and hearing and appointment of a guardian ad litem, the guardian may:

(i) Commit the ward to a mental health hospital or other mental health facility;

(ii) Consent to the following treatments for the ward:

(A) Electroshock therapy;

(B) Psychosurgery;

(C) Sterilization;

(D) Other long-term or permanent contraception.

(iii) Relinquish the ward's minor child for adoption, provided:

(A) Notice of any hearing was given to the ward and the legal or putative father; and

(B) The ward attended the hearing if the court so ordered.

(iv) Execute any appropriate advance medical directives, including durable power of attorney for health care under W.S. 35-22-403(b) and an individual instruction under W.S. 35-22-403(a).

ARTICLE 3  
TEMPORARY GUARDIANSHIP FOR EDUCATIONAL,  
MEDICAL CARE AND DENTAL CARE PURPOSES

**3-2-301. Definitions.**

(a) As used in this article:

(i) "Caregiver" means a person, other than a natural parent or legal guardian, who is at least eighteen (18) years of age and is the primary physical custodian and a relative of a minor child;

(ii) "Child" means a person under eighteen (18) years of age who is in the primary physical custody of a caregiver;

(iii) "Relative" or "related" means the relationship of parent, stepparent, grandparent, great-grandparent, sibling, stepsibling, half sibling, uncle or aunt.

**3-2-302. Appointment of temporary guardian for educational, medical care and dental care purposes.**

(a) A caregiver of a child may petition for appointment as a temporary guardian of a child for educational, medical care and dental care purposes. The petition shall be verified by affidavit setting forth:

(i) The petitioner's full name, place of residence, the length of time he has been a resident of the county in which the petition is filed and his Wyoming driver's license or identification card number;

(ii) The qualifications of the proposed guardian as a fit and proper person to serve as guardian;

(iii) The name, birth date and place of birth of the child;

(iv) The physical address of the child for the previous one (1) year preceding the filing of the petition, if known;

(v) The full names of the child's natural parents;

(vi) The last known addresses of the child's natural parents;

(vii) The name and address of the person or facility having the care, custody or control of the child;

(viii) A concise statement of the reason for the desired temporary guardianship for educational, medical care and dental care purposes;

(ix) The facts showing the best interest of the child requires the appointment of a guardian for educational, medical care and dental care purposes in this state; and

(x) A concise statement setting forth the attempts made by the petitioner and whether the petitioner has been able to contact the natural parents or other person having legal custody of the child to advise them of the petitioner's intent to enroll the child in school, to authorize medical or dental care or seek a temporary guardianship for educational, medical care and dental care purposes.

(b) A temporary guardian for educational, medical care and dental care purposes may be appointed through an ex parte temporary guardianship order without notice to the child's natural parents if the court finds by a preponderance of the evidence from the petition and testimony, if any testimony is deemed necessary by the court, that temporary guardianship is in the best interest of the child and not detrimental to the interests of any other person and that no other person appears to have authority and willingness to act in the circumstances. The court shall cause the ex parte temporary guardianship order, together with notice of right to a hearing, to be served on the natural parents of the child pursuant to Rule 4 of the Wyoming Rules of Civil Procedure.

(c) The notice of right to a hearing shall clearly inform the child's natural parents that a temporary guardianship for educational, medical care and dental care purposes has been granted to the petitioner and that the natural parents, individually or jointly, have the right to request a full hearing on the temporary guardianship by filing a written request for hearing with the court. A request for full hearing by a natural parent shall be filed with the court and shall be served on the temporary guardian pursuant to Rule 4 of the Wyoming Rules of Civil Procedure. Upon receipt of a request for hearing, the court shall set the full hearing at its earliest convenience.

(d) Except upon a showing of good cause, an ex parte order appointing a temporary guardian of a child for educational, medical care and dental care purposes shall be limited to not more than one (1) year.

### **3-2-303. Notice to court.**

If a child subject to an ex parte order appointing a temporary guardian of a child for educational, medical care and dental care purposes is no longer living in the primary physical custody of the caregiver, the caregiver shall within three (3) business days notify the court in writing of the circumstances

regarding the change in the primary physical custody and the court may make any order it deems appropriate.

CHAPTER 3  
CONSERVATORSHIPS

ARTICLE 1  
OPENING CONSERVATORSHIPS

**3-3-101. Petition for involuntary appointment of conservator.**

(a) Any person may file with the clerk a petition for the involuntary appointment of a conservator. The petition appointment shall state:

- (i) The name, age and address of the proposed ward;
- (ii) The status of the proposed ward as a minor, incompetent person or a mentally incompetent person and the reasons for the petition;
- (iii) The name and address of the proposed conservator, and his qualification to serve as conservator;
- (iv) The name and address of the person or institution having the care, custody or control of the proposed ward;
- (v) The fact that the residence of the proposed ward is in the county, or is a nonresident, or that his residence is unknown;
- (vi) The fact that the best interest of the proposed ward requires the appointment of a conservator in Wyoming;
- (vii) The estimated current value of the real estate, the estimated value of the personal property and the estimated gross annual income of the estate;
- (viii) Any money payable or to become payable to the proposed ward from any source; and
- (ix) The interests of the petitioner.

**3-3-102. Notice; when required; governed by rules of civil procedure.**

(a) Notice of filing of a petition for appointment of an involuntary conservator shall be served on the proposed ward, his custodian, the proposed conservator and upon the proposed ward's parents, agent or fiduciary under a known power of attorney, adult children and spouse who are known or who can be discovered with due diligence, except:

(i) When a petition is filed under W.S. 3-2-106, 3-3-107 or 3-3-301; or

(ii) When for good cause the court determines that no notice is necessary when the proposed ward is under the age of eighteen (18) years.

(b) Notice shall be served on any other person as ordered by the court.

(c) Notice shall be given in accordance with the Wyoming Rules of Civil Procedure and as ordered by the court.

### **3-3-103. Pleadings and trial; rules of civil procedure.**

After the petition is filed, all proceedings are governed by the Wyoming Rules of Civil Procedure and the Wyoming Rules of Evidence. Petitioner, the proposed ward or his custodian may demand a jury trial as provided by the Wyoming Rules of Civil Procedure.

### **3-3-104. Appointment of conservator.**

(a) The court may appoint a conservator if the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by a preponderance of the evidence.

(b) The order appointing a conservator shall state the findings of the court, including:

(i) Reasons why the ward is in need of a conservator;

(ii) Appointment of the conservator;

(iii) The duration of the appointment for a specified term or permanent, subject to W.S. 3-3-1101;

(iv) The limited or plenary duties of the conservator.

**3-3-105. Preference for appointment of conservator of a minor.**

(a) The appointment of a qualified and suitable conservator of a minor shall be made in the following order of preference:

(i) The parent or parents of the minor;

(ii) The person nominated as conservator in the will of the custodial parent;

(iii) The person requested by a minor who has reached fourteen (14) years of age;

(iv) Any other person who is willing to serve as conservator.

**3-3-106. Appointment of conservator on voluntary petition.**

(a) The court may appoint a conservator upon the petition by the proposed ward if:

(i) The petitioner has reached the age of fourteen (14) years; and

(ii) The court determines that the appointment of a conservator is in the best interest of the petitioner.

(b) The petition shall state whether a notice of involuntary petition for the appointment of a conservator has been served on the proposed ward.

**3-3-107. Appointment of a temporary conservator.**

(a) Upon the filing of a petition for a temporary conservator and after a hearing the court may appoint a temporary conservator subject to any notice and conditions the court prescribes.

(b) Every order appointing a temporary conservator shall be limited to not more than ninety (90) days. The court may order an extension of the temporary conservatorship for not more than an additional ninety (90) days, or conversion to a

guardianship or conservatorship in accordance with W.S. 3-2-105 or 3-3-101 through 3-3-106.

**3-3-108. Payment or delivery of property in lieu of conservatorship.**

(a) Any person under a duty to pay or deliver money or personal property to a minor for whom no conservator has been appointed may pay not more than five thousand dollars (\$5,000.00) per annum or may deliver property of a value not more than five thousand dollars (\$5,000.00) to:

(i) The minor who is married or is emancipated;

(ii) Any person having the care and custody of the minor with whom the minor resides;

(iii) A guardian of the minor; or

(iv) A financial institution incident to a deposit in a federally insured interest bearing account in the sole name of the minor with notice of the deposit to the minor.

(b) The payment or the delivery provided in W.S. 3-3-108 shall not be made if the person has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

(c) Subject to subsection (d) of this section, persons other than the minor or any financial institution under paragraph (a)(iv) of this section, receiving money or property for a minor, shall apply the money or property to the support, care and education of the minor. The money or property shall not be used as compensation to the recipient except for reimbursement of out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be invested for future support of the minor and any balance not so used and any property received for the minor shall be turned over to the minor when he attains majority, is married or is emancipated.

(d) If the person receiving money or property for a minor is the parent of the minor, he shall discharge fully his parental duties of support before reimbursing himself for out-of-pocket expenses as provided under subsection (c) of this section.

(e) Persons who pay or deliver money or property in accordance with provisions of this section are not responsible for the proper application thereof by the recipient.

ARTICLE 2  
CONSERVATORSHIPS FOR ABSENTEES

**3-3-201. Petition for appointment of conservator for absentee.**

(a) Any person may file with the clerk a petition for the appointment of a conservator of the property of the absent owner when the following conditions exist:

(i) A person owns property located in this state and his location is unknown and no provision for care, control and supervision of the property has been made; and

(ii) The property is likely to be lost or damaged or the dependents of the owner are likely to be deprived of means of support because of the absence of the owner.

(b) The petition shall state:

(i) The name, age and last known address of the proposed ward and the names and addresses of the spouse and children of the proposed ward or of his parents if the proposed ward has no spouse or children or if he is a minor. If there are no spouse, children or parents, then the petition shall state the names and addresses of the proposed ward's brothers and sisters. If there are no brothers or sisters, then the petition shall state the names and addresses of the nearest known relatives of the proposed ward;

(ii) The facts concerning the disappearance of the absentee;

(iii) The name and address of the proposed conservator, and his qualifications to serve in that capacity;

(iv) A general description of the property of the proposed ward within the state and of his right to receive property, the estimated present value of the real property, the estimated gross annual income of the estate and whether any money is payable, or to become payable, to the proposed ward from any source;



(v) The facts showing the property of the absentee is likely to be lost or damaged, or his dependents are likely to be deprived of means of support because of his absence, and no proper provision has been made for the care, control and supervision of the property; and

(vi) The interests of the petitioner.

**3-3-202. Original notice governed by rules of civil procedure.**

Notice of the filing of the petition and of the time and place set for the hearing on the petition shall be served upon the absentee by publication as provided by the Wyoming Rules of Civil Procedure.

**3-3-203. Additional notice governed by rules of civil procedure.**

(a) Notice of the filing of the petition and of the time and place set for the hearing on the petition shall also be served as provided by the Wyoming Rules of Civil Procedure on:

(i) The spouse and children of the absentee;

(ii) The testamentary beneficiaries, if known, and intestate heirs of the absentee; or

(iii) The parents or guardian of the absentee if he is a minor.

**3-3-204. Pleadings and trial; rules of civil procedure.**

All proceedings for the appointment of a conservator for an absent person shall be governed by the Wyoming Rules of Civil Procedure and the Wyoming Rules of Evidence.

**3-3-205. Appointment of conservator.**

If the allegations of the petition are proved by a preponderance of the evidence, the court may appoint a conservator.

**3-3-206. Appointment of temporary conservator.**

Upon the filing of a petition for a temporary conservator and after a hearing the court may appoint a temporary conservator subject to any notice and conditions the court prescribes.

ARTICLE 3  
STANDBY CONSERVATORSHIPS

**3-3-301. Voluntary petition for appointment of conservator; standby basis.**

Any adult who is of sound mind may execute a petition for the voluntary appointment of a conservator of his property upon the express condition that the petition shall be acted upon by the court only upon the occurrence of a specified event or on the existence of a described condition of the mental or physical health of the petitioner. The occurrence of the specified event or the existence of the described condition shall be established in the manner directed in the petition.

**3-3-302. Petition may nominate conservator.**

The petition may nominate a person for appointment to serve as conservator, and may request that the appointment be made without bond, or with bond of a certain stated sum. When appointing the conservator the court shall give due regard to the nomination and other requests and recommendations contained in the petition.

**3-3-303. Deposit of petition.**

The petition may be deposited with any person, firm, bank or trust company selected by the petitioner.

**3-3-304. Revocation of petition.**

Any time before the appointment of a conservator, the petition may be revoked by the petitioner if he is of sound mind. Revocation shall be accomplished by the destruction of the petition by the petitioner or by an instrument of revocation acknowledged by the petitioner and delivered to the depository.

**3-3-305. Filing petition upon occurrence of conditions.**

Any time after the deposit of the petition and before its revocation, it may be brought on for hearing upon the filing of a statement verified by the person having possession of the petition showing that the event or the condition provided for in the petition has occurred. The petition and the verified statement shall be filed with the clerk of court of the county in which the person who executed the petition then resides.

**3-3-306. Time of appointment of conservator.**

At the time the verified statement is filed, the court may appoint the conservator nominated in the petition or may set the petition for hearing on notice prescribed by the court.

ARTICLE 4  
FOREIGN CONSERVATORS

**3-3-401. Appointment of ancillary or foreign guardians or conservators.**

(a) When there is no conservatorship, nor any petition therefor pending in this state, a duly qualified foreign conservator or guardian of a nonresident ward may, upon application, be appointed conservator of the property of the person in this state. For good cause shown, the court may appoint a resident conservator to act jointly with a foreign conservator.

(b) When a resident ward has a nonresident guardian or conservator, the guardian or conservator shall:

(i) File a certified copy of the order establishing the guardianship or conservatorship;

(ii) Obtain an order from a Wyoming court appointing him an ancillary guardian or conservator of the ward for as long as the ward is a resident of this state and the person remains the duly appointed guardian or conservator in the other state.

**3-3-402. Petition.**

(a) The petition for appointment of a foreign or ancillary conservator or guardian as conservator in this state shall include:

(i) The names and addresses of the nonresident ward and of the nonresident conservator or guardian;

(ii) The name and address of the resident conservator;

(iii) A certified copy of the letters of conservatorship or of guardianship issued to the foreign conservator or guardian;

(iv) A certified copy of the bond of the foreign conservator or guardian or a certified copy of the order appointing the foreign conservator or guardian showing that no bond was required;

(v) The description and estimated value of the nonresident ward's property in this state; and

(vi) The name and address of the person in possession of the property in this state belonging to the nonresident ward.

### **3-3-403. Personal property.**

The court of the county where the nonresident ward has personal property may authorize the foreign conservator or guardian of a nonresident ward to receive the property upon compliance with the provisions of W.S. 2-11-301 through 2-11-303.

### **3-3-404. Filing of bond.**

The court may require the foreign or ancillary conservator or guardian to file a bond satisfactory to the court. The foreign or ancillary conservator or guardian shall file with the clerk of court his bond as required by the court of this state.

### **3-3-405. Order for delivery.**

Upon the filing of the bond required by the court of this state the court shall order the personal property of the nonresident ward delivered to the foreign conservator or guardian. The foreign conservator or guardian shall execute and file with the court a receipt itemizing the property of the nonresident ward received by him.

### **3-3-406. Recording of bond; notice to court.**

(a) The clerk shall mail to the court which granted the foreign letters of conservatorship or of guardianship copies of:

(i) The letters of conservatorship or guardianship issued by the Wyoming court;

(ii) The bond filed with the Wyoming court; and

(iii) The receipt of the foreign conservator or guardian itemizing property delivered to and received by the foreign conservator or guardian and showing date of delivery.

ARTICLE 5  
CONSERVATORS OF ESTATES OF MINORS AND  
INCOMPETENTS ADMITTED TO STATE INSTITUTIONS

**3-3-501. Designation of conservators; exception.**

(a) The administrator of the Wyoming life resource center is appointed conservator of the estate of:

(i) Each adult admitted to the Wyoming life resource center unless a conservator or other duly authorized agent has already been appointed for the person; and

(ii) Each minor with an estate of more than five thousand dollars (\$5,000.00) admitted to the center unless a conservator has already been appointed for the minor.

(b) The superintendent of the Wyoming state hospital is appointed conservator of the estate of:

(i) Each adult resident adjudged to be a mentally incompetent person unless a conservator or other duly authorized agent has already been appointed for the person; and

(ii) Each minor with an estate of more than five thousand dollars (\$5,000.00) admitted to the institution unless a conservator has already been appointed for the minor.

**3-3-502. Duration of appointment; bonds.**

A conservator appointed under this article shall serve as conservator of the estates of the patients or residents of the institution until a successor has been appointed and qualified or until the conservatorship for any individual ward is otherwise terminated. The conservator's official bond as superintendent of the institution shall be sufficient security for all money and property coming into possession of the conservator unless the director of the department of health requires an additional bond.

**3-3-503. Authority generally; required reports.**

(a) The conservator may:

(i) Receive money or property of the ward paid or delivered to him;

(ii) Disburse funds of the ward necessary for the support, maintenance and general welfare of the ward;

(iii) With the consent and approval of the director of the department of health, invest a reasonable amount of the funds in any investment authorized by Wyoming law, and reconvert the investment into cash when needed for the ward's support and maintenance.

(b) The conservator shall:

(i) Deposit excess funds of the ward in a federally insured interest bearing account in a financial institution of his choice;

(ii) Submit an annual report to the court having jurisdiction accounting for all money and property coming into his possession for the benefit of each ward and itemizing all disbursements made from the ward's assets.

#### **3-3-504. Transfer of funds to court appointed conservator.**

If a conservator for a minor or incompetent person is appointed by a court of this state after the person has been admitted to the Wyoming life resource center or the Wyoming state hospital, the conservatorship created for the ward under this article shall terminate and all money and property of the ward in the possession of the conservator appointed under this article shall be delivered to the court appointed conservator upon proof of his appointment and qualification.

#### **3-3-505. Transfer of funds to successor upon termination of appointment as superintendent.**

Upon termination of his appointment as superintendent of the institution, a conservator appointed under this article shall transfer to his successor all funds and property which he holds as conservator.

#### **3-3-506. Transfer of funds upon discharge, etc., of minor or incompetent.**

Upon termination of the conservatorship by the death of the ward or by his discharge from the institution, all assets of the ward in the possession of a conservator appointed under this article shall be delivered to the person entitled by law to receive them.

ARTICLE 6  
DUTIES AND POWERS OF CONSERVATOR

**3-3-601. General duties of conservator.**

The conservator of the estate shall protect and preserve it, invest it prudently, account for it as provided in the Wyoming statutes, expend it for the benefit of the ward and perform all other duties required by law. At the termination of the conservatorship, the conservator shall deliver the assets of the ward to the person entitled to receive them.

**3-3-602. Inventory of ward's property.**

Within ninety (90) days after the date of his appointment, or, within additional time allowed by the court, a conservator shall file in the court a verified inventory of all of the property of the ward which has come into his possession or of which he has knowledge. When any property of the ward not listed in the inventory comes into the possession or to the knowledge of the conservator, he shall include the after discovered property in his next accounting.

**3-3-603. Disposition of will by conservator.**

When the conservator receives an instrument purporting to be the will of the ward he shall immediately deliver it to the court.

**3-3-604. Court order to preserve testamentary intent of ward.**

The court may read the instrument purporting to be the will of the ward which the conservator delivered to the court. With or without notice as it may determine, the court may enter any orders it deems advisable for the proper administration of the conservatorship in light of the expressed testamentary intent of the ward.

**3-3-605. Court to file sealed copy and deliver will to conservator.**

A copy of an instrument purporting to be the will of a ward coming into the possession of the court under W.S. 3-3-603, shall be made, sealed and deposited in the file of the conservatorship. The original copy of the will shall be sealed and returned to the conservator.

**3-3-606. Powers of conservator without order of court.**

- (a) Without prior order of the court the conservator may:
  - (i) Collect, receive, receipt for any principal or income;
  - (ii) Enforce, defend against or prosecute any claim by or against the ward or the conservator;
  - (iii) Sue on and defend claims in favor of or against the ward or the conservator;
  - (iv) Sell and transfer personal property of a perishable nature and personal property for which there is a regularly established market;
  - (v) Vote at corporate meetings in person or by proxy;
  - (vi) Receive additional property from any source;
  - (vii) Continue to hold any investment or other property originally received by him, and any increase thereof, pending the timely filing of the first annual report;
  - (viii) Apply the principal, income and profits of the estate of the ward, to the extent necessary, for the comfortable and suitable maintenance, education, support and care of the ward in an amount proportionate to the value of his estate or his condition in life taking into account any parental duty of support as provided in W.S. 3-3-607;
  - (ix) Invest the funds belonging to the ward;
  - (x) Pay the funds to or for the benefit of the ward in any of the following ways:
    - (A) Directly to the ward;
    - (B) Directly to the provider for the maintenance, support, education and care of the ward;



(C) To the legal guardian of the person of the ward; or

(D) To anyone who at the time has the custody and care of the person of the ward.

(xi) Appear for and represent the ward in all legal proceedings, unless another person is appointed for that purpose, and prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties;

(xii) Request the court to modify the conservator's range of duties if the changed circumstances of the ward require such modifications.

**3-3-607. Powers of conservator subject to the approval of the court.**

(a) Upon order of the court after hearing and notice as prescribed by the court the conservator may:

(i) Apply any portion of the income or of the estate of the ward for the support of any person for whose support the ward is legally liable;

(ii) Compromise or settle any claim by or against the ward or the conservator, and adjust, arbitrate or compromise claims in favor of or against the ward or conservator;

(iii) Apply the income and profits of the minor ward for his maintenance, care, support and education if the court finds that the parent of the minor ward should be relieved of the obligation of parental support;

(iv) Do any other thing that the court determines to be in the best interest of the ward and his estate;

(v) Sell, mortgage, exchange, pledge or lease real and personal property belonging to the ward, including the homestead and exempt personal property when it appears to be in the best interest of the ward, in the same manner and by the same procedure provided by title 2, Wyoming statutes for the sale, mortgage, exchange, pledge and lease by personal representatives in administration of estates of decedents;

(vi) Create a written revocable inter vivos trust, with a corporate trustee whose principal place of business is in Wyoming and which has trust powers under or in accordance with the laws of Wyoming, and transfer to the trust any part or all of the assets belonging to the ward. The trust shall provide by its terms that it may be revoked at any time by the court in which event the trustee shall deliver all of the trust assets then in its possession in accordance with the order of the court.

**3-3-608. Appointment of attorney in compromise of personal injury settlements.**

Notwithstanding the provisions of W.S. 3-3-607(a)(ii), prior to authorizing a compromise of a claim for damages on account of personal injuries to the ward, the court may order an independent investigation by an attorney other than the attorney for the conservator. The cost of the investigation, including a reasonable attorney fee, shall be taxed as part of the cost of the conservatorship.

**3-3-609. Powers of conservators; same as fiduciaries.**

Except as expressly modified in title 3, Wyoming statutes, a conservator has the powers relating to all fiduciaries as provided in title 2, Wyoming statutes.

**3-3-610. Breach of contracts.**

A conservator may breach contracts of the ward entered into by the ward prior to the appointment of the conservator after notice and hearing and order of the court for good cause. The conservator shall incur the same liability of the ward's estate for the breach as the ward would have incurred for the breach had he been competent.

**3-3-611. Tort liability of conservator.**

The fact that a person is a conservator or a guardian shall not in itself make him personally liable for damages for the acts of his ward.

ARTICLE 7  
CLAIMS

**3-3-701. Claims against the ward.**

Claims against the ward accruing before or after the appointment of the conservator, and whether arising in contract or tort after being allowed or established as provided in W.S. 3-3-701 through 3-3-711, shall be paid by the conservator from the assets of the conservatorship.

### **3-3-702. Filing of claim; exceptions.**

(a) All claims against the ward shall be filed in duplicate with the clerk of the court in which the conservatorship was created. If only one (1) copy of a claim is filed, the clerk shall make a duplicate and shall charge the claimant a reasonable fee.

(b) The clerk shall forthwith transmit to the conservator one (1) copy of each claim filed.

(c) Any claim not in excess of two hundred dollars (\$200.00) may be allowed by the conservator without the filing of the claim by the creditor. The conservator is accountable to the court for paying a claim under this subsection.

(d) Valid contract claims arising in the ordinary course of the conduct of the business or affairs of the ward by the conservator may be paid by the conservator without requiring affidavit or filing.

### **3-3-703. Affidavit and supporting documentation.**

(a) When a claim is filed with the clerk it shall be supported by satisfactory vouchers or other evidence supporting the claim, and by the affidavit of the claimant or someone in his behalf that the account is justly due, or if it is not due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the claim to the knowledge of the affiant. If the claim is not due when filed or is contingent, an explanation of the claim shall be stated.

(b) If the claim is founded on a bond, bill, note or other instrument, a copy of the instrument shall accompany the claim. The original instrument shall be exhibited to the conservator if demanded, unless it is lost or destroyed, in which case the claimant shall accompany his claim by his affidavit containing a copy or particular description of the instrument and stating its loss or destruction. If the claim, or any part thereof, is secured by a mortgage or other lien which has been recorded or

filed in the office of the county clerk in the county in which the land or property affected by it is situate, it is sufficient to describe the mortgage or lien and refer to the date, filing number and volume and page of its record.

#### **3-3-704. Claims of conservators.**

(a) If the conservator is a creditor of the ward, he shall file his claim as other creditors and the court shall appoint a competent person as temporary conservator to represent the ward in the matter allowing or disallowing the claim. The same procedure shall be followed in the case of joint conservators, where all of the conservators are creditors of the ward. If one (1) of the joint conservators is not a creditor of the ward, the disinterested conservator shall represent the ward in the matter of allowing or disallowing the claim against the estate by a conservator.

(b) The temporary conservator shall investigate the claim and report his findings to the court and his recommendation whether the claim should be allowed or disallowed. If the court disallows the claim, it shall be treated as a rejected claim.

#### **3-3-705. Claims; statutes of limitations.**

(a) The filing of a claim in the conservatorship tolls the statute of limitations applicable to the claim until the claim is rejected by the conservator.

(b) It is within the discretion of the conservator to determine whether or not the applicable statute of limitations shall be invoked to bar a claim which he believes to be just, and his decision as to invoking the statute shall be final.

#### **3-3-706. Allowance and rejection of claims.**

(a) Within sixty (60) days after the filing of a claim, the conservator shall either allow the claim in a writing filed with the clerk, or reject the claim in whole or in part in a writing filed with the clerk.

(b) When a claim has been filed with the clerk and is rejected in whole or in part, the conservator shall, immediately upon rejection, notify the claimant by certified mail.

#### **3-3-707. Action precluded until claim rejected; exception.**

No holder of a claim against a ward shall maintain any action thereon unless the claim is first rejected in whole or in part by the conservator and the rejection filed with the clerk.

### **3-3-708. Compelling payment of claims.**

(a) No claimant may compel payment of his claim until it has been duly filed and allowed by the conservator or reduced to judgment and a certified copy of the judgment filed with the clerk.

(b) Any judgment rendered upon any claim for money only establishes the claim as if it had been allowed by the conservator. The judgment shall order that the conservator pay the amount adjudged to be due, to the extent of assets available, to satisfy claims against the ward, augmented by any liability insurance proceeds available as to the claim.

(c) If judgment is for the recovery of real or personal property or the enforcement of lien thereon, no execution shall issue until ten (10) days after a certified copy of the judgment has been filed with the clerk.

### **3-3-709. Judgments; execution and levy.**

(a) When a judgment has been entered against the ward prior to the appointment of a conservator, no execution shall issue thereon after the conservator is appointed unless the judgment is for the recovery of real or personal property or the enforcement of a lien. A judgment against the ward for the recovery of money shall be filed with the clerk as any other claim. If execution is levied upon any property of the ward before the appointment of a conservator, the property may be sold for the satisfaction of the judgment and the officer making the sale shall account to the conservator for any surplus realized from the sale.

(b) A judgment rendered against a ward for whom a conservator is appointed after verdict or decision on an issue of fact, but before judgment is entered, shall be filed with the clerk as any other claim.

(c) No execution shall issue upon nor any levy be made against any property of the estate of a ward under any judgment against the ward or conservator, unless the judgment is for the recovery of real or personal property or the enforcement of a lien.

(d) This section shall not be construed to prevent the enforcement of a mortgage, pledge or other lien upon property in an appropriate proceeding.

**3-3-710. Pending actions against the ward.**

Any action, including any counterclaim in any pending action, pending against the ward at the time the conservator is appointed, shall be considered a claim filed in accordance with the provisions of W.S. 3-3-702 and 3-3-703, if notice of substitution of the conservator as a party to the action is served on the conservator and a duplicate of proof of service of the notice of the substitution is filed with the clerk.

**3-3-711. Payment of claims in insolvent conservatorship.**

When it appears the assets of the ward are insufficient to pay in full all claims against the ward, the conservator shall report the relevant facts to the court. The court shall, upon hearing, with notice to all persons who have filed claims, order the pro rata payment of claims giving claimants the same priority, if any, as they would have if the ward were not under conservatorship. Priority of payment shall be given to court costs and other costs of administration of the conservatorship.

ARTICLE 8  
GIFTS

**3-3-801. Conservator may make gifts.**

For good cause shown and under order of court, a conservator may make gifts on behalf of the ward out of the assets of the ward to persons or religious, educational, scientific, charitable or other nonprofit organizations to whom or to which gifts were regularly made prior to the appointment of the conservator. The making of gifts from the assets of the ward shall not foreseeably impair the ability to provide adequately for the best interests of the ward.

ARTICLE 9  
CONSERVATOR'S REPORT

**3-3-901. Conservator shall report and account.**

(a) A conservator shall present to the court and file in the conservatorship proceedings a written verified report and accounting of his administration:

(i) Annually, within sixty (60) days following the anniversary date of his appointment, unless the court otherwise orders on good cause shown;

(ii) Upon filing his resignation and before his resignation is accepted by the court;

(iii) Within thirty (30) days following the date of his removal;

(iv) Within sixty (60) days following the date of termination of the conservatorship, unless that time is extended by the court;

(v) At other times as the court may order.

### **3-3-902. Requirement of report and accounting.**

(a) The report and accounting required by W.S. 3-3-901 shall account for all of the assets, property and income of the ward during the period since the close of the last previous accounting, and shall include the following information so far as applicable:

(i) The balance of funds on hand at the close of the previous accounting, and all amounts received from whatever source during the period covered by the accounting;

(ii) An itemized account of all disbursements made during the period covered by the accounting;

(iii) Changes in investments since the last previous report, including a list of all assets and recommendations of the conservator for the retention or disposition of any property held by the conservator;

(iv) The amount of the bond of the conservator and the name of the surety;

(v) The residence or physical location of the ward;

(vi) The general physical and mental conditions of the ward;

(vii) A description of those duties the conservator is exercising under W.S. 3-3-606 and 3-3-607; and

(viii) Such other information necessary to show the condition of the affairs of the conservatorship.

## ARTICLE 10 COSTS AND ACCOUNTS

### **3-3-1001. Payment of court costs.**

No order shall be entered approving an annual report of a guardian or conservator until the court costs which have been incurred in the guardianship or conservatorship have been paid or provided for.

### **3-3-1002. Court costs of guardianship.**

The ward or his estate shall be charged with the court costs of a guardianship of a ward, including the reasonable fees of the guardian and the attorney for the guardian.

### **3-3-1003. Court costs of conservatorship.**

The ward or his estate shall be charged with the court costs of a conservatorship for a ward, including the reasonable fees of the conservator and the attorney for the conservator.

### **3-3-1004. Settlement of accounts.**

The court shall settle each account filed by a conservator by allowing or disallowing it, either in whole or in part, or by surcharging the account against the conservator.

## ARTICLE 11 TERMINATION OF GUARDIANSHIPS AND CONSERVATORSHIPS

### **3-3-1101. Cause for termination.**

(a) A guardianship shall cease, and a conservatorship shall terminate, upon the occurrence of any of the following circumstances:

(i) If upon attaining the age of majority when the ward is a minor who has not been adjudged an incompetent person or a mentally incompetent person;



(ii) The death of the ward, subject to W.S. 3-2-109(a) (iii) and 3-2-201(a) (x);

(iii) A determination by the court that the ward is competent and capable of managing his property and affairs, and that the continuance of the guardianship or conservatorship is not in his best interest;

(iv) A determination by the court that the guardian or conservator is not acting in the best interest of the ward. In such case, the court shall appoint another guardian or conservator;

(v) Upon determination by the court that the conservatorship or guardianship is no longer necessary for any other reason.

### **3-3-1102. Assets exhausted.**

(a) When the assets of the estate of the ward do not exceed the amount of charges and claims against them, the court may direct the conservator to proceed to terminate the conservatorship.

(b) When the assets of a minor ward are exhausted or consist of only personal property of an aggregate value not in excess of five thousand dollars (\$5,000.00), the court, upon application or upon its own motion, may terminate the conservatorship and direct the conservator to deliver the property to the parent or other person having custody of a minor ward for the use of the ward after payment of allowed claims and expenses of administration. Delivery of the property has the same force and effect as if delivery had been made to the ward after he attains majority.

### **3-3-1103. Accounting to ward; notice of hearing.**

Upon termination of a conservatorship, the conservator shall pay the costs of administration and render a full and complete accounting to the ward or his personal representative and to the court. Notice of hearing on the final report of a conservator shall be served on the ward or his personal representative unless notice is waived. Notice shall be served at the time and in the manner prescribed by the court.

### **3-3-1104. Delivery of assets.**

Upon termination of a conservatorship, all assets of the ward shall be delivered, under direction of the court, to the person or persons entitled thereto.

**3-3-1105. Petition to terminate.**

(a) At any time, not less than six (6) months after the appointment of a guardian or conservator, the ward may petition the court alleging that he is no longer a proper subject of the guardianship or conservatorship and asking that the guardianship or conservatorship be terminated.

(b) If any petition for termination of guardianship or conservatorship is denied, no other petition for termination may be filed until six (6) months have elapsed since the denial of the former petition.

**3-3-1106. Discharge of conservator and release of bond.**

Upon settlement of the final accounting of a conservator and upon determination that the property of the ward has been delivered to the person or persons lawfully entitled thereto, the court shall discharge the conservator and discharge the surety on the bond of the conservator.

**3-3-1107. Termination of guardianships; reintegration plan.**

(a) Upon the filing of a petition for termination of guardianship by a parent, the court shall consider the best interests of the child while giving deference to the rebuttable presumption that a fit parent is entitled to custody of their child.

(b) If the parent was found unfit at the time the guardianship was ordered, upon the parent's successful petition for the termination of guardianship the court may create a reintegration plan to impose any necessary requirements to facilitate the child's return to the parent including:

(i) Establishing a graduated visitation schedule for the parent;

(ii) Requiring the parent to attend a parenting class or other appropriate education or treatment designed to address the problems that contributed to the necessity for a

guardianship and to pay all or part of the cost of the class, education or treatment in accordance with the parent's ability to pay;

(iii) Any other provision the court deems necessary.

#### CHAPTER 4 LIMITED GUARDIANS

**3-4-101. Repealed By Laws 1998, ch. 114, § 3.**

**3-4-102. Repealed By Laws 1998, ch. 114, § 3.**

**3-4-103. Repealed By Laws 1998, ch. 114, § 3.**

**3-4-104. Repealed By Laws 1998, ch. 114, § 3.**

**3-4-105. Repealed By Laws 1998, ch. 114, § 3.**

**3-4-106. Repealed By Laws 1998, ch. 114, § 3.**

**3-4-107. Repealed By Laws 1998, ch. 114, § 3.**

**3-4-108. Repealed By Laws 1998, ch. 114, § 3.**

**3-4-109. Repealed By Laws 1998, ch. 114, § 3.**

#### CHAPTER 5 DURABLE POWER OF ATTORNEY

##### ARTICLE 1 IN GENERAL

**3-5-101. Repealed by Laws 2017, ch. 117, § 3.**

**3-5-102. Repealed by Laws 2017, ch. 117, § 3.**

**3-5-103. Revocation of power of attorney by recordation.**

Unless the power of attorney otherwise specifically provides, any power of attorney executed prior to January 1, 2018 may be revoked either in the same manner as a power of attorney executed on or after January 1, 2018 or by recording an instrument of revocation with a true copy of the power of attorney attached, in the office of the county clerk of the county in which the principal resides. Constructive notice of

the revocation is given from and after the date of recording the instrument of revocation.

ARTICLE 2  
DURABLE POWER OF ATTORNEY FOR HEALTH CARE

**3-5-201. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-202. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-203. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-204. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-205. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-206. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-207. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-208. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-209. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-210. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-211. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-212. Repealed By Laws 2005, ch. 161, § 3.**

**3-5-213. Repealed By Laws 2005, ch. 161, § 3.**

CHAPTER 6  
VETERANS' GUARDIANSHIP

**3-6-101. Short title.**

This act may be cited as the "Uniform Veterans' Guardianship Act".

**3-6-102. Definitions.**

(a) As used in this act:

(i) The term "person" includes a partnership, corporation or an association;

(ii) The term "bureau" means the United States veterans' bureau or its successor;

(iii) The terms "estate" and "income" shall include only moneys received by the guardian from the bureau and all earnings, interest and profits derived therefrom;

(iv) The term "benefits" shall mean all moneys payable by the United States through the bureau;

(v) The term "director" means the director of the United States veterans' bureau or his successor;

(vi) The term "ward" means a beneficiary of the bureau;

(vii) The term "guardian" as used herein shall mean any person acting as a fiduciary for a ward.

**3-6-103. Appointment, confirmation or removal of guardian; administrator of veterans' affairs party in interest.**

(a) Whenever, pursuant to any law of the United States or regulation of the bureau, the director requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided.

(b) The administrator of veterans' affairs, or his successor, is and shall be a party in interest in any proceeding, heretofore or hereafter brought under the Uniform Veterans' Guardianship Act of this state for the appointment, confirmation, or removal of any guardian of the person or estate, or of both, of a minor, or insane or other mentally incompetent person, to whom or in whose behalf benefits have been paid or are payable by the veterans' administration or its predecessors or successors, and in any suit or other proceeding arising out of the administration of such person's estate, or in which the purpose thereof is to remove the disability of minority or of mental incompetency of such person.

**3-6-104. Guardian limited to 5 wards; exceptions.**

(a) Except as hereinafter provided it shall be unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five (5) wards. In any case, upon presentation of a petition

by an attorney of the bureau under this section alleging that a guardian is acting in a fiduciary capacity for more than five (5) wards and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge such guardian in said case.

(b) The limitations of this section shall not apply where the guardian is a bank or trust company acting for the wards' estates only. An individual may be guardian of more than five (5) wards if they are all members of the same family.

**3-6-105. Petition for appointment of guardian; contents thereof.**

(a) A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the person so entitled shall neglect or refuse to file such a petition within thirty (30) days after mailing of notice by the bureau to the last known address of such person indicating the necessity for the same a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this state.

(b) The petition for appointment shall set forth the name, age, place of residence of the ward, the names and places of residence of the nearest relatives, if known, and the fact that such ward is entitled to receive moneys payable by or through the bureau and shall set forth the amount of moneys then due and the amount of probable future payments.

(c) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

(d) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent on examination by the bureau in accordance with the laws and regulations governing the bureau.

**3-6-106. Prima facie evidence of necessity for appointment; certificate of minor's age and that appointment condition precedent to payments.**

Where a petition is filed for the appointment of a guardian of a minor ward a certificate of the director, or his representative, setting forth the age of such minor as shown by the records of the bureau and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the bureau, shall be prima facie evidence of the necessity for such appointment.

**3-6-107. Prima facie evidence of necessity for appointment; certificate of incompetency and that appointment condition precedent to payments.**

Where a petition is filed for the appointment of a guardian of a mentally incompetent ward a certificate of the director, or his representative, setting forth the fact that such person has been rated incompetent by the bureau on examination in accordance with the laws and regulations governing such bureau, and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person by the bureau, shall be prima facie evidence of the necessity for such appointment.

**3-6-108. Notice upon filing of petition.**

Upon the filing of a petition for the appointment of a guardian, under the provisions of this act, the court shall cause such notice to be given as provided by law.

**3-6-109. Guardian to be fit and proper person; bond required.**

Before making appointment under the provisions of this act the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum then due and estimated to become payable during the ensuing year. The said bond shall be in the form and be conditioned as required of guardians appointed under the guardianship laws of this state. The court shall have power from time to time to require the guardian to file an additional bond. Where a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.

**3-6-110. Annual accounting; copy of accounts and pleadings to be filed with bureau; notice of hearing; administration of property from other sources.**

(a) Every guardian, who has received or shall receive on account of his ward, any moneys from the veterans' administration, its predecessors or successor, shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath, of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the veterans' administration having jurisdiction over the area in which such court is located. A duplicate signed copy or certified copy of any petition, motion, or other pleading which is filed in the guardianship proceedings, or in any proceeding for the purpose of removing the disability of minority or of mental incompetency, shall be furnished by the person filing the same, to the office of the veterans' administration concerned. The court shall fix a time and place for the hearing on such account, petition, or other pleading, not less than fifteen (15) days nor more than thirty (30) days from the date of filing same, and notice thereof shall be given by the court to the aforesaid veterans' administration office not less than fifteen (15) days prior to the date fixed for the hearing. Notice of such hearing shall in like manner be given to the guardian.

(b) Any guardian appointed under this act shall be accountable for property derived from sources other than the veterans' administration and shall be accountable as is or may be required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the veterans' administration; provided, however, that he may at his option administer the same as provided in this act and include an accounting for such assets and income in the same account required with respect to assets derived from the veterans' administration, and if so included, the procedure with respect thereto shall be that hereinabove prescribed.

**3-6-111. Removal for failure to file accounts.**

If any guardian shall fail to file any account of the moneys received by him from the bureau on account of his ward within



thirty (30) days after such account is required by either the court or the bureau, or shall fail to furnish the bureau a copy of his accounts as required by this act, such failure shall be grounds for removal.

### **3-6-112. Compensation of guardian.**

Compensation payable to guardian shall not exceed five percent (5%) of the income of the ward during any year. In the event of extraordinary services rendered by such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office in the bureau in the manner provided in W.S. 3-6-110. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond.

### **3-6-113. Investment of surplus money; notice to bureau.**

(a) It shall be the duty of such guardians to invest and keep invested their ward's surplus money, but only in the securities or other property, and in the manner hereinafter indicated, and in which securities or other property the guardian has no interest. The investments, except those provided in paragraphs (i) and (ii) of this subsection hereof, shall be made only upon the prior approval of the court, after notice to the veterans' administration as provided in W.S. 3-6-110, as amended:

(i) Direct obligations of this state and of the United States government, and obligations, the interest and principal of which are both unconditionally guaranteed by the United States government;

(ii) The bonds of this state or of any other state, or any county, school districts, city, or town in the United States with a population of not less than one thousand (1,000) inhabitants; and where the laws do not permit such counties, cities, school districts, or towns to become indebted in excess of six percent (6%) of the assessed valuation of property for taxation therein, and where the total indebtedness of such county, school districts, city, or municipality, does not exceed six percent (6%) of the assessed valuation of property for taxation at the time of such investment: provided always, there has been no default for more than thirty (30) days during the

preceding ten (10) years upon any bonds of the issuing state, county, city or town;

(iii) In the legally issued notes of the owner of the fee simple title to improved, unencumbered real property located in this state secured by first mortgage or deed of trust thereon: provided, that the total debt secured by such encumbrances shall not exceed sixty percent (60%) of the actual cash value of such real property at the time of such investment unless such loan be insured and while held by the guardian remain insured, by the federal housing administrator in accordance with the National Housing Act;

(iv) In the entire fee simple title to real estate or lease of real estate in this state and the purchase of all necessary equipment, but only as a home for the ward, or as a home for his dependent family, or to rehabilitate the ward, or to protect his interests. Such purchase or lease of real estate or other investment provided in this paragraph shall not be made except upon the entry of an order of the court after hearing upon verified petition. Notice of such hearing shall be given the veterans' administration as provided in W.S. 3-6-110, as amended. Title shall be taken in the ward's name. This paragraph shall not be construed to limit the right of the guardian, on behalf of his ward, to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of a lien held by or for the ward, or at a tax or a trustee's sale, to protect the ward's right in the property so foreclosed or sold, or at a sale under partition decree, if necessary to protect the ward's interest in such property.

**3-6-114. Support and maintenance of persons other than ward.**

A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper office of the bureau in the manner provided in W.S. 3-6-110.

**3-6-115. Certified copies of public records.**

Whenever a copy of any public record is required by the bureau to be used in determining the eligibility of any person to participate in benefits made available by such bureau, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any

person acting on his behalf or the representative of such bureau with a certified copy of such record.

**3-6-116. Repealed by Laws 1981, Sp. Sess., ch. 24, § 2.**

**3-6-117. Discharge of guardian.**

When a minor ward for whom a guardian has been appointed under the provisions of this act or other laws of this state shall have attained his or her majority, and if incompetent shall be declared competent by the bureau and the court, and when any incompetent ward, not a minor, shall be declared competent by said bureau and the court, the guardian shall upon making a satisfactory accounting be discharged upon a petition filed for that purpose.

**3-6-118. Construction and applicability.**

This act shall be construed liberally to secure the beneficial intents and purposes thereof, and shall apply only to beneficiaries of the bureau.

**3-6-119. Interpretation.**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

#### CHAPTER 7 PUBLIC GUARDIANSHIP

**3-7-101. Repealed By Laws 1998, ch. 114, § 3.**

**3-7-102. Repealed By Laws 1998, ch. 114, § 3.**

**3-7-103. Repealed By Laws 1998, ch. 114, § 3.**

**3-7-104. Repealed By Laws 1998, ch. 114, § 3.**

**3-7-105. Repealed By Laws 1998, ch. 114, § 3.**

#### CHAPTER 8 UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

#### ARTICLE 1 GENERAL PROVISIONS

### **3-8-101. Short title.**

This act may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

### **3-8-102. Definitions.**

(a) As used in this act:

(i) "Adult" means an individual who has attained eighteen (18) years of age;

(ii) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under W.S. 3-3-101 through 3-3-1106;

(iii) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under W.S. 3-2-101 through 3-2-303;

(iv) "Guardianship order" means an order appointing a guardian;

(v) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued;

(vi) "Incompetent person" means an adult for whom a guardian has been appointed;

(vii) "Party" means the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding;

(viii) "Protected person" means an adult for whom a protective order has been issued;

(ix) "Protective order" means an order appointing a conservator or other order related to management of an adult's property;

(x) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued;

(xi) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(xii) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought;

(xiii) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States;

(xiv) "This act" means W.S. 3-8-101 through 3-8-502.

### **3-8-103. International application of act.**

A court of this state may treat a foreign country as if it were a state for the purpose of applying this article and articles 2, 3 and 5 of this act.

### **3-8-104. Communication between courts.**

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

(b) Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

### **3-8-105. Cooperation between courts.**

(a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(i) Hold an evidentiary hearing;

(ii) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(iii) Order that an evaluation or assessment be made of the respondent;

(iv) Order any appropriate investigation of a person involved in a proceeding;

(v) Forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (i) of this subsection or any other proceeding, any evidence otherwise produced under paragraph (ii) of this subsection, and any evaluation or assessment prepared in compliance with an order under paragraph (iii) or (iv) of this subsection;

(vi) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incompetent or protected person;

(vii) 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, as amended.

(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) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

### **3-8-106. 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, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state 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 a court of this state 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.

## ARTICLE 2 JURISDICTION

### **3-8-201. Definitions; significant connection factors.**

(a) As used in this article:

(i) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety or welfare and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(ii) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months prior to the filing of the petition;

(iii) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under W.S. 3-8-203 and 3-8-301(e) whether a respondent has a significant connection with a particular state, the court shall consider:

(i) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

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

(iii) The location of the respondent's property; and

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

### **3-8-202. Exclusive basis.**

This act provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

### **3-8-203. Jurisdiction.**

(a) A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(i) This state is the respondent's home state;

(ii) On the date the petition is filed, this state is a significant-connection state and:

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

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

(I) A petition for an appointment or order is not filed in the respondent's home state;

(II) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(III) The court in this state concludes that it is an appropriate forum under the factors set forth in W.S. 3-8-206.

(iii) This state does not have jurisdiction under either paragraph (i) or (ii) of this subsection, the respondent's home state and all significant connection states have declined to exercise jurisdiction because this state is the



more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(iv) The requirements for special jurisdiction under W.S. 3-8-204 are met.

### **3-8-204. Special jurisdiction.**

(a) A court of this state lacking jurisdiction under W.S. 3-8-203(a) (i) through (iii) has special jurisdiction to do any of the following:

(i) Appoint a guardian in an emergency for a term not exceeding ninety (90) days for a respondent who is physically present in this state;

(ii) Issue a protective order with respect to real or tangible personal property located in this state;

(iii) Appoint a guardian or conservator for an incompetent or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to W.S. 3-8-301.

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

### **3-8-205. Exclusive and continuing jurisdiction.**

Except as otherwise provided in W.S. 3-8-204, a court that has appointed a guardian or issued a protective order consistent with this act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

### **3-8-206. Appropriate forum.**

(a) A court of this state having jurisdiction under W.S. 3-8-203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under subsection (a) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

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

(i) Any expressed preference of the respondent;

(ii) Whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;

(iii) The length of time the respondent was physically present in or was a legal resident of this or another state;

(iv) The distance of the respondent from the court in each state;

(v) The financial circumstances of the respondent's estate;

(vi) The nature and location of the evidence;

(vii) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(viii) The familiarity of the court of each state with the facts and issues in the proceeding; and

(ix) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

### **3-8-207. Jurisdiction declined by reason of conduct.**

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

(i) Decline to exercise jurisdiction;

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

(iii) Continue to exercise jurisdiction after considering:

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

(B) Whether it is a more appropriate forum than the court of any other state under the factors set forth in W.S. 3-8-206(c); and

(C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of W.S. 3-8-203.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this state or a governmental subdivision, agency or instrumentality of this state unless authorized by law other than this act.

### **3-8-208. Notice of proceeding.**

If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition shall be given to any person who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be

given in the same manner as notice is required to be given in this state.

**3-8-209. Proceedings in more than one state.**

(a) Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under W.S. 3-8-204(a)(i) or (ii), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules shall apply:

(i) If the court in this state has jurisdiction under W.S. 3-8-203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to that section before the appointment or issuance of the order;

(ii) If the court in this state does not have jurisdiction under W.S. 3-8-203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

ARTICLE 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

**3-8-301. Transfer of guardianship or conservatorship to another state.**

(a) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) of this section shall be given to any person that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the guardian or conservator, the incompetent or protected person or other person required to be notified of the petition, the court

shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

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

(i) The incompetent person is physically present in or is reasonably expected to move permanently to the other state;

(ii) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incompetent person; and

(iii) Plans for care and services for the incompetent person in the other state are reasonable and sufficient.

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

(i) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in W.S. 3-8-201(b);

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

(iii) Adequate arrangements will be made for management of the protected person's property.

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

(i) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to W.S. 3-8-302; and

(ii) The documents required to terminate a guardianship or conservatorship in this state.

**3-8-302. Accepting guardianship or conservatorship transferred from another state.**

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to W.S. 3-8-301, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

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

(c) On the court's own motion or on request of the guardian or conservator, the incompetent or protected person or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) of this section unless:

(i) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incompetent or protected person; or

(ii) The guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to W.S. 3-8-301 transferring the proceeding to this state.

(f) Not later than ninety (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 the law of this state.

(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 incompetent or protected person's incompetency and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state shall not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under W.S. 3-2-101 through 3-3-1106 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

(j) In granting a petition under this section, the court may require any report or impose any duty under W.S. 3-2-109, 3-2-201, 3-2-202, 3-3-601 through 3-3-611 or 3-3-901 and 3-3-902.

#### ARTICLE 4

#### REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

##### **3-8-401. 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 this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

##### **3-8-402. Registration of protective orders.**

If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located,

certified copies of the order and letters of office and of any bond.

### **3-8-403. Effect of registration.**

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this act and other law of this state to enforce a registered order.

(c) Any court in this state issuing a guardianship or protective order pursuant to this act may require the guardian or conservator to file a certified copy of any report or accounting the guardian or conservator files with the court.

## **ARTICLE 5 MISCELLANEOUS PROVISIONS**

### **3-8-501. Application.**

(a) This act shall apply to any guardianship and protective proceeding begun on or after the effective date of this act.

(b) Articles 1, 3 and 4 of this act shall apply to any proceeding begun before the effective date of this act, regardless of whether a guardianship or protective order has been issued.

### **3-8-502. Relation to electronic signatures in global and national commerce act.**

This act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001, et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. section 7001(c) or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

## **CHAPTER 9**



UNIFORM POWER OF ATTORNEY ACT

ARTICLE 1  
General provisions

**3-9-101. Short title.**

This act may be cited as the "Uniform Power of Attorney Act."

**3-9-102. Definitions.**

(a) As used in this act:

(i) "Agent" means a person granted authority to act for a principal under a power of attorney whether denominated an agent, attorney-in-fact or otherwise. "Agent" includes an original agent, coagent, successor agent and a person to which an agent's authority is delegated;

(ii) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity;

(iii) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(iv) "Good faith" means honesty in fact;

(v) "Incapacity" means inability of a person to manage property or business affairs because the person:

(A) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(B) Is:

(I) Missing;

(II) Detained, including incarcerated in a penal system; or

(III) Outside the United States and unable to return.

(vi) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal whether or not the term power of attorney is used;

(vii) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors or the creditors of the principal's estate. "Presently exercisable general power of appointment" includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified period but only after the occurrence of the specified event, the satisfaction of the ascertainable standard or the passage of the specified period. "Presently exercisable general power of appointment" does not include a power exercisable in a fiduciary capacity or a power exercisable only by will;

(viii) "Principal" means a person who grants authority to an agent in a power of attorney;

(ix) "Property" means anything that may be the subject of ownership whether real or personal, or legal or equitable, or any interest or right therein;

(x) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(xi) "Sign" means, with present intent to authenticate or adopt a record, to:

(A) Execute or adopt a tangible symbol; or

(B) Attach to or logically associate with the record an electronic sound, symbol or process.

(xii) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

(xiii) "Stocks and bonds" means stocks, bonds, mutual funds and all other types of securities and financial instruments whether held directly, indirectly or in any other

manner. "Stocks and bonds" does not include commodity futures contracts and call or put options on stocks or stock indexes;

(xiv) "This act" means W.S. 3-9-101 through 3-9-403.

### **3-9-103. Applicability.**

(a) This act applies to all powers of attorney except:

(i) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(ii) A power to make health care decisions;

(iii) A proxy or other delegation to exercise voting rights or management rights with respect to an entity;

(iv) A power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose.

### **3-9-104. Power of attorney is durable.**

(a) A power of attorney created on or after the effective date of this act is durable unless it expressly provides that it is terminated by the incapacity of the principal.

(b) A power of attorney existing on the effective date of this act is durable only if on that day the power of attorney is durable in accordance with the law existing on the day of execution of the power of attorney.

### **3-9-105. Execution of power of attorney.**

A power of attorney shall be signed by the principal or in the principal's conscious presence by another person who is directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other person authorized by law to take acknowledgments.

### **3-9-106. Validity of power of attorney.**

(a) A power of attorney executed in this state on or after the effective date of this act is valid if its execution complies with W.S. 3-9-105.

(b) A power of attorney executed in this state before the effective date of this act is valid if its execution complied with the law of this state as it existed at the time of execution.

(c) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with the:

(i) Law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to W.S. 3-9-107; or

(ii) Requirements of W.S. 19-11-202 or any requirements for a military power of attorney pursuant to 10 U.S.C. section 1044b.

(d) Except as otherwise provided by law other than this act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

### **3-9-107. Meaning and effect of power of attorney.**

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

### **3-9-108. Nomination of conservator or guardian; relation of agent to court appointed fiduciary.**

(a) In a power of attorney, a principal may nominate a conservator of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(b) If, after a principal executes a power of attorney, a court appoints a conservator of the principal's estate or other fiduciary charged with the management of some or all of the

principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended or terminated by the court.

**3-9-109. When power of attorney effective.**

(a) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(b) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one (1) or more persons to determine in a writing or other record that the event or contingency has occurred.

(c) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(i) A physician or licensed psychologist that the principal is incapacitated within the meaning of W.S. 3-9-102(a) (v) (A); or

(ii) An attorney at law, a judge or an appropriate governmental official that the principal is incapacitated within the meaning of W.S. 3-9-102(a) (v) (B).

(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, sections 1171 through 1179 of the Social Security Act, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

**3-9-110. Termination of power of attorney or agent's authority.**

(a) A power of attorney terminates when the:

(i) Principal dies;

(ii) Principal becomes incapacitated, if the power of attorney is not durable;

(iii) Principal revokes the power of attorney;

(iv) Power of attorney provides that it terminates;

(v) Purpose of the power of attorney is accomplished;  
or

(vi) Principal revokes the agent's authority or the agent dies, becomes incapacitated or resigns and the power of attorney does not provide for another agent to act under the power of attorney.

(b) An agent's authority terminates when:

(i) The principal revokes the authority;

(ii) The agent dies, becomes incapacitated or resigns;

(iii) An action is filed for the dissolution or annulment of the agent's marriage to the principal or an action is filed for legal separation, unless the power of attorney otherwise provides; or

(iv) The power of attorney terminates.

(c) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b) of this section, notwithstanding a lapse of time since the execution of the power of attorney.

(d) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(e) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power

of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(f) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

### **3-9-111. Coagents and successor agents.**

(a) A principal may designate two (2) or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(b) A principal may designate one (1) or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve or declines to serve. A principal may grant authority to designate one (1) or more successor agents to an agent or other person designated by name, office or function. Unless the power of attorney otherwise provides, a successor agent:

(i) Has the same authority as that granted to the original agent;

(ii) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve or have declined to serve.

(c) Except as otherwise provided in the power of attorney and subsection (d) of this section, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(d) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

### **3-9-112. Reimbursement and compensation of agent.**

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

### **3-9-113. Agent's acceptance.**

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

### **3-9-114. Agent's duties.**

(a) Notwithstanding any provisions in the power of attorney, an agent that has accepted appointment shall act:

(i) In accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(ii) In good faith;

(iii) Only within the scope of authority granted in the power of attorney.

(b) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(i) Act loyally for the principal's benefit;

(ii) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(iii) Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances;

(iv) Keep a record of all receipts, disbursements and transactions made on behalf of the principal;

(v) Cooperate with any person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known



by the agent and, otherwise, act in the principal's best interest;

(vi) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(A) The value and nature of the principal's property;

(B) The principal's foreseeable obligations and need for maintenance of the property;

(C) Minimization of taxes, including income, estate, inheritance, generation skipping transfer and gift taxes;

(D) Eligibility for a benefit, program or assistance under a statute or regulation.

(c) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(d) An agent that acts with care, competence and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise shall be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

(f) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(g) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty (30) days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty (30) days.

### **3-9-115. Exoneration of agent.**

(a) A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(i) Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(ii) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

### **3-9-116. Judicial relief.**

(a) The following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(i) The principal or the agent;

(ii) A guardian, conservator or other fiduciary acting for the principal;

(iii) A person authorized to make health care decisions for the principal;

(iv) The principal's spouse, parent or descendant;

(v) A person who would qualify as a presumptive heir of the principal;

(vi) A person named as a beneficiary to receive any property, benefit or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(vii) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare;

(viii) A person asked to accept the power of attorney.

(b) Upon motion by the principal, the court shall dismiss a petition filed under this section unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

### **3-9-117. Agent's liability.**

(a) An agent that violates this act is liable to the principal or the principal's successors in interest for the amount required to:

(i) Restore the value of the principal's property to what it would have been had the violation not occurred; and

(ii) Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

### **3-9-118. Agent's resignation; notice.**

(a) Unless the power of attorney otherwise provides, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

(i) To the conservator or guardian of the principal if one (1) has been appointed and a coagent or successor agent; or

(ii) To any one (1) of the following if there is no person described in paragraph (i) of this subsection:

(A) The principal's caregiver;

(B) Another person reasonably believed by the agent to have sufficient interest in the principal's welfare;

(C) A governmental agency having authority to protect the welfare of the principal.

**3-9-119. Acceptance of and reliance upon acknowledged power of attorney.**

(a) A person that in good faith accepts a purportedly acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under W.S. 3-9-105 that the signature is genuine.

(b) A person that in good faith accepts a purportedly acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid or terminated, that the purported agent's authority is void, invalid or terminated or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect and the agent had not exceeded and improperly exercised the authority.

(c) A person that is asked to accept an acknowledged power of attorney may request and rely upon without further investigation an:

(i) Agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney;

(ii) English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English.

(d) A certification or translation requested under this section shall be provided at the principal's expense.

(e) For purposes of this section and W.S. 3-9-120:

(i) "Acknowledged" means purportedly verified before a notary public or other person authorized to take acknowledgements;

(ii) A person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, principal or agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

**3-9-120. Liability for refusal to accept acknowledged power of attorney.**

(a) Except as otherwise provided in subsection (b) of this section, a person that is asked to accept an acknowledged power of attorney shall:

(i) Accept the acknowledged power of attorney or request a certification or translation under W.S. 3-9-119(c) not later than seven (7) business days after presentation of the power of attorney for acceptance;

(ii) If the person requests a certification or translation under W.S. 3-9-119(c), accept the power of attorney not later than five (5) business days after receipt of the certification or translation; and

(iii) Not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(b) A person may refuse an acknowledged power of attorney if:

(i) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(ii) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

(iii) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(iv) A request for a certification or translation under W.S. 3-9-119(c) is refused;

(v) The person in good faith believes the power is not valid or the agent does not have the authority to perform

the act requested whether or not a certification or translation under W.S. 3-9-119(c) has been requested or provided; or

(vi) The person makes, or has actual knowledge that another person has made, a report to a governmental agency having authority to protect the welfare of the principal stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or a person acting for or with the agent.

(c) A person who refuses to accept an acknowledged power of attorney in violation of this section is subject to the following:

(i) A court order mandating acceptance of the power of attorney;

(ii) Liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

### **3-9-121. Principles of law and equity.**

Unless displaced by a provision of this act, the principles of law and equity supplement this act.

### **3-9-122. Laws applicable to financial institutions and entities.**

This act does not supersede any other law applicable to financial institutions or other entities. The other law controls if inconsistent with this act.

### **3-9-123. Remedies under other law.**

The remedies under this act are not exclusive and do not abrogate any right or remedy under the law of this state other than this act.

## ARTICLE 2 AUTHORITY

### **3-9-201. Authority that requires specific grant; grant of general authority.**

(a) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(i) Create, amend, revoke or terminate an inter vivos trust;

(ii) Make a gift;

(iii) Create or change rights of survivorship;

(iv) Create or change a beneficiary designation;

(v) Delegate authority granted under the power of attorney;

(vi) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(vii) Exercise fiduciary powers the principal has authority to delegate;

(viii) Disclaim property, including a power of appointment.

(b) Notwithstanding a grant of authority to do an act described in subsection (a) of this section and unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse or descendant of the principal shall not exercise authority under a power of attorney to create in the agent, or in a person to whom the agent owes a legal obligation of support, an interest in the principal's property whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

(c) Subject to subsections (a), (b), (d) and (e) of this section, if a power of attorney grants to an agent authority to do all the acts a principal may do, the agent has the general authority described in W.S. 3-9-204 through 3-9-216.

(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to W.S. 3-9-217.

(e) Subject to subsections (a), (b) and (d) of this section, if the subjects described in W.S. 3-9-204 through 3-9-217 over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Authority granted in a power of attorney is exercisable with respect to property the principal has when the power of attorney is executed or later acquires whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(g) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

### **3-9-202. Incorporation of authority.**

(a) An agent has authority described in this act if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in W.S. 3-9-204 through 3-9-217 or cites the section in which the authority is described.

(b) A reference in a power of attorney to general authority with respect to the descriptive term for a subject stated in W.S. 3-9-204 through 3-9-217 or a citation to a section of W.S. 3-9-204 through 3-9-217 incorporates the entire section as if it were set out in full in the power of attorney.

(c) A principal may modify authority incorporated by reference.

### **3-9-203. Construction of authority generally.**

(a) Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in W.S. 3-9-204 through 3-9-217 or that grants to an agent authority to do all the acts a principal may do pursuant to W.S. 3-9-201(c), a principal authorizes the agent, with respect to the subject, to:

(i) Demand, receive and obtain by litigation or otherwise any money or other thing of value to which the principal is, may become or claims to be entitled to and



conserve, invest, disburse or use anything so received or obtained for the purposes intended;

(ii) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release or modify the contract or any other contract made by or on behalf of the principal;

(iii) Execute, acknowledge, seal, deliver, file or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching the schedule to the power of attorney;

(iv) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(v) Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

(vi) Engage, compensate and discharge an attorney, accountant, discretionary investment manager, expert witness or other advisor;

(vii) Prepare, execute and file a record, report or other document to safeguard or promote the principal's interest under a statute or regulation;

(viii) Communicate with any representative or employee of a government or governmental subdivision, agency or instrumentality on behalf of the principal;

(ix) Access communications intended for and communicate on behalf of the principal whether by mail, electronic transmission, telephone or other means;

(x) Do any lawful act with respect to the subject and all property related to the subject.

**3-9-204. Real property.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

(i) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject an interest in real property or a right incident to real property;

(ii) Sell, exchange, quitclaim, release, surrender, retain title for security, encumber, partition, consent to partitioning, subject to an easement or covenant, subdivide, apply for zoning or other governmental permits, plat or consent to platting, develop, grant an option concerning, lease, sublease, contribute to an entity in exchange for an interest in that entity, convey with or without covenants, representations or warranties, or otherwise grant or dispose of an interest in real property or a right incident to real property;

(iii) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(iv) Release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other claim to real property which exists or is asserted;

(v) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(A) Insuring against liability, casualty or other loss;

(B) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(C) Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) Purchasing supplies, hiring assistance or labor and making repairs or alterations to the real property.

(vi) Use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(vii) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(A) Selling or otherwise disposing of the stocks and bonds or other property;

(B) Exercising or selling an option, right of conversion or similar right with respect to the stocks and bonds or other property;

(C) Exercising any voting rights in person or by proxy.

(viii) Change the form of title of an interest in or right incident to real property;

(ix) Dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest.

### **3-9-205. Tangible personal property.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(i) Demand, buy, receive, accept as a gift or as security for an extension of credit or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(ii) Sell, exchange, quitclaim, release, surrender, create a security interest in, grant options concerning, lease, sublease, convey with or without covenants, representations or warranties, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(iii) Grant a security interest in tangible personal property or an interest in tangible personal property as

security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(iv) Release, assign, satisfy or enforce by litigation or otherwise a security interest, lien or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property;

(v) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) Insuring against liability, casualty or other loss;

(B) Obtaining or regaining possession of or protecting the property or interest by litigation or otherwise;

(C) Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) Moving the property from place to place;

(E) Storing the property for hire or on a gratuitous bailment;

(F) Using and making repairs, alterations or improvements to the property.

(vi) Change the form of title of an interest in tangible personal property.

### **3-9-206. Stocks and bonds.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

(i) Buy, sell and exchange stocks and bonds;

(ii) Establish, continue, modify or terminate an account with respect to stocks and bonds;

(iii) Pledge stocks and bonds as security to borrow, pay, renew or extend the time of payment of a debt of the principal;

(iv) Receive certificates and other evidences of ownership with respect to stocks and bonds;

(v) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts and consent to limitations on the right to vote.

### **3-9-207. Commodities and options.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

(i) Buy, sell, exchange, assign, settle and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange;

(ii) Establish, continue, modify and terminate option accounts.

### **3-9-208. Banks and other financial institutions.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

(i) Continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;

(ii) Establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;

(iii) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(iv) Withdraw by check, order, electronic funds transfer or otherwise any money or property of the principal deposited with or left in the custody of a financial institution;

(v) Receive statements of account, vouchers, notices and similar documents from a financial institution and act with respect to the statements, vouchers, notices and similar documents;

(vi) Enter a safe deposit box or vault and withdraw or add to the contents;

(vii) Borrow money and pledge as security personal property of the principal necessary to borrow the money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(viii) Make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions and accept a draft drawn by a person upon the principal and pay the draft when due;

(ix) Receive for the principal and act upon a sight draft, warehouse receipt or other document of title whether tangible or electronic or other negotiable or nonnegotiable instrument;

(x) Apply for, receive and use letters of credit, credit and debit cards, electronic transaction authorizations and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit;

(xi) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

### **3-9-209. Operation of entity or business.**

(a) Subject to the terms of a document or an agreement governing an entity or an entity ownership interest and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

(i) Operate, buy, sell, enlarge, reduce or terminate an ownership interest;

(ii) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege or option the principal has, may have or claims to have;

(iii) Enforce the terms of an ownership agreement;

(iv) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

(v) Exercise in person or by proxy or enforce by litigation or otherwise a right, power, privilege or option the principal has or claims to have as the holder of stocks and bonds;

(vi) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

(vii) With respect to an entity or business owned solely by the principal:

(A) Continue, modify, renegotiate, extend and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

(B) Determine the:

(I) Location of the entity's or business's operation;

(II) Nature and extent of the entity's or business's operation;

(III) Methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in the entity's or business's operation;

(IV) Amount and types of insurance carried by the entity or business;

(V) Mode of engaging, compensating and dealing with the entity's or business's employees and accountants, attorneys or other advisors.

(C) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business;

(D) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business.

(viii) Put additional capital into an entity or business in which the principal has an interest;

(ix) Join in a plan of reorganization, consolidation, conversion, domestication or merger of the entity or business;

(x) Sell or liquidate all or part of an entity or business;

(xi) Establish the value of an entity or business under a buyout agreement to which the principal is a party;

(xii) Prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments;

(xiii) Pay, compromise or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

### **3-9-210. Insurance and annuities.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(i) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract procured by or on behalf of the principal which insures or



provides an annuity to either the principal or another person whether or not the principal is a beneficiary under the contract;

(ii) Procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, children and other dependents and select the amount, type of insurance or annuity and mode of payment;

(iii) Pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;

(iv) Apply for and receive a loan secured by a contract of insurance or annuity;

(v) Surrender and receive the cash surrender value on a contract of insurance or annuity;

(vi) Exercise an election;

(vii) Exercise investment powers available under a contract of insurance or annuity;

(viii) Change the manner of paying premiums on a contract of insurance or annuity;

(ix) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this subsection;

(x) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(xi) Collect, sell, assign, hypothecate, borrow against or pledge the interest of the principal in a contract of insurance or annuity;

(xii) Select the form and timing of the payment of proceeds from a contract of insurance or annuity;

(xiii) Pay, from proceeds or otherwise, compromise or contest and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

**3-9-211. Estates, trusts and other beneficial interests.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts and other beneficial interests authorizes the agent to:

(i) Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment from an estate, trust or other beneficial interest;

(ii) Demand or obtain any money or other thing of value to which the principal is, may become or claims to be entitled to by reason of an estate, trust or other beneficial interest, by litigation or otherwise;

(iii) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(iv) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to ascertain the meaning, validity or effect of a deed, will, declaration of trust or other instrument or transaction affecting the interest of the principal;

(v) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to remove, substitute or surcharge a fiduciary;

(vi) Conserve, invest, disburse or use anything received for an authorized purpose;

(vii) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities and other property to the trustee of a revocable trust created by the principal as settlor.

(b) As used in this section, "estate, trust or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow or custodianship or a fund from which the principal is, may become or claims to be entitled to a share or payment.

### **3-9-212. Claims and litigation.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(i) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability or seek an injunction, specific performance or other relief;

(ii) Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

(iii) Seek an attachment, garnishment, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree;

(iv) Make or accept a tender, offer of judgment or admission of facts, submit a controversy on an agreed statement of facts, consent to examination and bind the principal in litigation;

(v) Submit to alternative dispute resolution, settle and propose or accept a compromise;

(vi) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;

(vii) Act for the principal with respect to bankruptcy or insolvency whether voluntary or involuntary concerning the principal or some other person or with respect to a reorganization, receivership or application for the

appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value;

(viii) Pay a judgment, award or order against the principal or a settlement made in connection with a claim or litigation;

(ix) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

### **3-9-213. Personal and family maintenance.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(i) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and the following persons whether living when the power of attorney is executed or later born:

(A) The principal's children;

(B) Other persons legally entitled to be supported by the principal;

(C) The persons whom the principal has customarily supported or indicated the intent to support.

(ii) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(iii) Provide living quarters for the persons described in paragraph (i) of this subsection by:

(A) Purchase, lease or other contract; or

(B) Paying the operating costs, including interest, amortization payments, repairs, improvements and taxes for premises owned by the principal or occupied by those persons.

(iv) Provide normal domestic help, usual vacations and travel expenses and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational

education, and other current living costs for the persons described in paragraph (i) of this subsection;

(v) Pay expenses for necessary health care and custodial care on behalf of the persons described in paragraph (i) of this subsection;

(vi) Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, sections 1171 through 1179 of the Social Security Act, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

(vii) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing the automobiles or other means of transportation for the persons described in paragraph (i) of this subsection;

(viii) Maintain credit and debit accounts for the convenience of the persons described in paragraph (i) of this subsection and open new accounts;

(ix) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or continue contributions to those organizations.

(b) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this act.

**3-9-214. Benefits from governmental programs or civil or military service.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(i) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to

the principal, including allowances and reimbursements for transportation of the persons described in W.S. 3-9-213(a)(i) and for shipment of those persons' household effects;

(ii) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument for that purpose;

(iii) Enroll in, apply for, select, reject, change, amend or discontinue, on the principal's behalf, a benefit or program;

(iv) Prepare, file and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled to receive under a statute or regulation;

(v) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation;

(vi) Receive the financial proceeds of a claim described in paragraph (iv) of this subsection and conserve, invest, disburse or use for a lawful purpose anything so received.

(b) As used in this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute or regulation including social security, medicare and medicaid.

### **3-9-215. Retirement plans.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(i) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(ii) Make a rollover including a direct trustee-to-trustee rollover of benefits from one (1) retirement plan to another;

(iii) Establish a retirement plan in the principal's name;

(iv) Make contributions to a retirement plan;

(v) Exercise investment powers available under a retirement plan;

(vi) Borrow from, sell assets to or purchase assets from a retirement plan.

(b) As used in this section, "retirement plan" means a plan or account created by an employer, the principal or another person to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary or owner, including a plan or account under the following sections of the Internal Revenue Code:

(i) An individual retirement account under 26 U.S.C. section 408;

(ii) A Roth individual retirement account under 26 U.S.C. section 408A;

(iii) A deemed individual retirement account under 26 U.S.C. section 408(q);

(iv) An annuity or mutual fund custodial account under 26 U.S.C. section 403(b);

(v) A pension, profit sharing, stock bonus or other retirement plan qualified under 26 U.S.C. section 401(a);

(vi) A deferred compensation plan under 26 U.S.C. section 457(b);

(vii) A nonqualified deferred compensation plan under 26 U.S.C. section 409A.

### **3-9-216. Taxes.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(i) Prepare, sign and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax related documents, including receipts, offers, waivers, consents, including consents and agreements under section 2032A of the Internal Revenue Code, closing agreements and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five (25) tax years;

(ii) Pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(iii) Exercise any election available to the principal under federal, state, local or foreign tax law;

(iv) Act for the principal in all tax matters for all periods before the Internal Revenue Service or other taxing authority.

### **3-9-217. Gifts.**

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent to:

(i) Make outright to, or for the benefit of, a person a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under section 2503(b) of the Internal Revenue Code without regard to whether the federal gift tax exclusion applies to the gift or if the principal's spouse agrees to consent to a split gift pursuant to section 2513 of the Internal Revenue Code in an amount per donee not to exceed twice the annual federal gift tax exclusion limit;



(ii) Consent, pursuant to section 2513 of the Internal Revenue Code, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(b) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

(i) The value and nature of the principal's property;

(ii) The principal's foreseeable obligations and need for maintenance of the property;

(iii) Minimization of taxes, including income, estate, inheritance, generation skipping transfer and gift taxes;

(iv) Eligibility for a benefit, program or assistance under a statute or regulation;

(v) The principal's personal history of making or joining in making gifts.

(c) As used in this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the federal Uniform Transfers to Minors Act and a tuition savings account or prepaid tuition plan as defined under section 529 of the Internal Revenue Code.

### ARTICLE 3 STATUTORY FORMS

#### **3-9-301. Statutory form power of attorney.**

(a) A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this act:

|                                  |
|----------------------------------|
| STATE OF                         |
| WYOMING                          |
| STATUTORY FORM POWER OF ATTORNEY |
| IMPORTANT                        |

INFORMATION This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the

Uniform Power of Attorney Act, W.S. 3-9-101 through 3-9-403. This power of attorney does not authorize the agent to make health care decisions for you. You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you. Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions. This form provides for designation of one (1) agent. If you wish to name more than one (1) agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions. If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent. This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions. If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT I (name of principal) name the following person as my agent: Name of Agent: Agent's address: Agent's Telephone Number:

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL) If my agent is unable or unwilling to act for me, I name as my successor agent: Name of Successor Agent: Successor Agent's Address: Successor Agent's Telephone Number: If my successor agent is unable or unwilling to act for me, I name as my second successor agent: Name of Second Successor Agent: Second Successor Agent's Address: Second Successor Agent's Telephone Number:

GRANT OF GENERAL AUTHORITY I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, W.S. 3-9-101 through 3-9-403: (INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.) (...)

Real Property  
(...) Tangible Personal Property (...)

|  |
|--|
| (...) Stocks and Bonds   |
| (...) Commodities and Options  |
| (...) Banks and Other Financial Institutions                           |
| (...) Operation of Entity or Business                                  |
| (...) Insurance and Annuities  |
| (...) Estates, Trusts and Other Beneficial Interests                   |
| (...) Claims and Litigation  |
| (...) Personal and Family Maintenance                                  |
| (...) Benefits from Governmental Programs or Civil or Military Service |
| (...) Retirement Plans   |

(...) Taxes (...)

|                              |
|------------------------------|
| (...) All Preceding Subjects |
|------------------------------|

GRANT OF SPECIFIC AUTHORITY (OPTIONAL) My agent MAY NOT do any of the

following specific acts for me UNLESS I have INITIALED the specific authority listed below: (CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

(...) Create, amend, revoke or terminate an inter vivos trust  
(...) Make a gift, subject to the limitations of the Uniform Power of Attorney Act, W.S. 3-9-217, and any special instructions in this power of attorney (...) Create or change rights of survivorship (...) Create or change a beneficiary designation (...) Authorize another person to exercise the authority granted under this power of attorney  
(...) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan (...) Exercise fiduciary powers that the principal has authority to delegate (...) Disclaim or refuse an interest in property, including a power of appointment  
LIMITATION ON AGENT'S AUTHORITY An agent that is not my ancestor, spouse or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions. SPECIAL INSTRUCTIONS (OPTIONAL)  
You may give special instructions on the following lines:

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EFFECTIVE DATE This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.  
NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL) If it becomes necessary for a court to appoint a conservator of my estate or guardian of my person, I nominate the following person(s) for appointment: Name of Nominee for conservator of my estate:  
Nominee's Address: Nominee's Telephone Number: Name of Nominee for guardian of my person: Nominee's Address:  
Nominee's Telephone Number: RELIANCE ON THIS POWER OF ATTORNEY Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid. SIGNATURE  
AND ACKNOWLEDGMENT Your Signature and Date: Your Name Printed: Your Address: Your Telephone Number:  
State of: County of: This document was acknowledged before me on (Date), by (Name of Principal). (Seal, if any) Signature of Notary: My commission expires:  
IMPORTANT INFORMATION FOR AGENT Agent's Duties When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the

principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You shall:

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney; and
- (4) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner: (Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you shall also:

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) Act with care, competence and diligence;
- (4) Keep a record of all receipts, disbursements and transactions made on behalf of the principal;
- (5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (6) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

**Termination of Agent's Authority** You shall stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) Death of the principal;
- (2) The principal's revocation of the power of attorney or your authority;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished; or
- (5) If you are married to the principal, a legal action is filed with a court to end your marriage or for your legal separation unless the Special Instructions in this power of attorney state that such action will not terminate your authority.

**Liability of Agent** The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, W.S. 3-9-101 through 3-9-403. If you violate the Uniform Power of Attorney Act, W.S. 3-9-101 through 3-9-403, or act outside the authority granted, you may be liable for any damages caused by your violation. If there is anything about this document or your duties that you do not understand, you should seek legal advice.

**3-9-302. Agent's certification.**

(a) The following optional form may be used by an agent to certify facts concerning a power of attorney:

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY  
AND AGENT'S AUTHORITY

State of:

County of:

I, (Name of Agent), certify under penalty of perjury that (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated (Date).

I further certify that to my knowledge:

(1) The Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) If the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) (Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature:

Date:

Agent's Name Printed:

Agent's Address:

Agent's Telephone Number:

This document was acknowledged before me on (Date), by (Name of Agent).

(Seal, if any)

Signature of Notary:

My commission expires:

ARTICLE 4  
MISCELLANEOUS PROVISIONS

**3-9-401. Uniformity of application and construction.**

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

**3-9-402. Relation to electronic signatures in global and national commerce act.**

This act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

**3-9-403. Effect on existing powers of attorney.**

(a) Except as otherwise provided in this act, this act applies to a:

(i) Power of attorney created before, on or after the effective date of this act;

(ii) Judicial proceeding concerning a power of attorney commenced on or after the effective date of this act;

(iii) Judicial proceeding concerning a power of attorney commenced before the effective date of this act unless the court finds that application of a provision of this act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

(b) Except as otherwise provided by this act, an act done before the effective date of this act is not affected by this act.

(c) A power of attorney properly executed and valid on the effective date of this act shall remain valid and enforceable and shall be construed according to the terms contained therein and accepted and relied upon in accordance with the provisions of W.S. 3-9-119.

(d) A power of attorney created prior to the effective date of this act or existing on the effective date of this act is durable as determined pursuant to W.S. 3-9-104 and is otherwise construed and applied in accordance with this act.