

TITLE XII – PROBATE

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TITLE XII – PROBATE

ARTICLE 1 – GUARDIANS AND CONSERVATORS

Chapter 1: General Provisions

Sec. 12-1-1 Title

This Article shall be known as the Pueblo of Santa Ana Guardians and Conservators Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-2 Definitions

As used in this Article, the following terms shall have the following meanings:

- A. “Code” means the Pueblo of Santa Ana Guardians and Conservators Code.
- B. “Conservator” means a person who is appointed by the Contemporary Court to manage the estate or financial affairs of a minor or incapacitated person.
- C. “Contemporary Court” means the Pueblo of Santa Ana Contemporary Court.
- D. “Emancipated minor” means an individual between sixteen (16) years of age and eighteen (18) years of age who has entered into a valid marriage, is on active duty with a branch of the armed forces of the United States, or has received a declaration of emancipation from a court of competent jurisdiction.
- E. “Estate” means all the real property and personal property owned by a person.
- F. “Functional impairment” means that a person is unable to manage his or her personal care or is unable to manage his or her estate or financial affairs. A person is unable to manage his or her personal care if the person, as evidenced by recent behavior, is unable to meet his or her needs for medical care, nutrition, clothing, shelter, hygiene, or safety, so that physical injury, illness, or disease has occurred or is likely to occur in the near future. A person is unable to manage his or her estate or financial affairs if the person, as evidenced by recent behavior, has grossly mismanaged his or her income and resources or has a medical inability to manage his or her income or resources that has led or is likely in the near future to lead to financial vulnerability.
- G. “Guardian” means a person who provides for the care, custody, or control of a minor or incapacitated person pursuant to parental or court appointment. A guardian includes a limited, and temporary guardian, but not a guardian ad litem.
- H. “Guardian ad litem” means a person appointed by the Contemporary Court to represent or protect the interests of an incapacitated person in connection with litigation or any other court proceeding.

I. “Incapacitated person” means a person who demonstrates over time either partial or complete functional impairment by reason of a mental, emotional, physical, or developmental disability or dysfunction; brain damage; the infirmities of aging; chronic drug use or chronic intoxication; or other cause, except minority.

J. “Interested person” means a person who has an interest in the welfare of a minor or incapacitated person.

K. “Least restrictive form of intervention” means that the guardianship or conservatorship imposed on a protected person represents only those limitations necessary to provide the needed care and rehabilitative services, and that the protected person shall enjoy the greatest amount of personal freedom and civil liberties possible.

L. “Limited conservator” means a person who manages the estate or financial affairs of a minor or an incapacitated person pursuant to a court appointment in a limited conservatorship.

M. “Limited conservatorship” means the legal authority by which a conservator exercise of some, but not all, of the powers enumerated in Sec. 12-1-60 (General Powers of Conservators) and Sec. 12-1-61 (Additional Powers of Conservator Pursuant to Contemporary Court Order).

N. “Limited guardian” means a person who provides for the care, custody, or control of an incapacitated person pursuant to a court appointment of a limited guardianship, but excludes a guardian ad litem.

O. “Limited guardianship” means the legal authority by which a guardian exercise of some but not all the powers enumerated in Sec. 12-1-28 (Powers and Duties of Guardian of Minor) or Sec. 12-1-42 (General Powers and Duties of Guardian for Incapacitated Person).

P. “Minor” means an individual under eighteen (18) years of age who is not an emancipated minor.

Q. “Pueblo” means the Pueblo of Santa Ana.

R. “Protected person” means a person for whom a guardian or conservator has been appointed.

S. “Qualified health care professional” means a physician, psychologist, physician assistant, nurse practitioner, or other health care practitioner whose training and expertise aid in the assessment of functional impairment.

T. “Visitor” means a person appointed by the Contemporary Court who has no personal interest in the proceeding and who has been trained or has the expertise to appropriately evaluate the needs of a person who is allegedly incapacitated. A visitor may include, but is not limited to, a psychologist, a social worker, a developmental incapacity professional, a physical and occupational therapist, an educator, or a rehabilitation worker.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-3 Jurisdiction

A. The Contemporary Court shall have jurisdiction to establish, modify, and terminate guardianships and conservatorships over members of the Pueblo and non-member Indians residing on Pueblo lands pursuant to the provisions of this Code.

B. A person who accepts an appointment as a guardian or conservator under this Code thereby consents to the jurisdiction of the Contemporary Court for all proceedings relating to the guardianship or conservatorship, regardless of whether such person resides within the jurisdiction of the Contemporary Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-4 Commencement of Proceedings

Proceedings for the appointment of a guardian or conservator shall be commenced in the Contemporary Court by the filing of a petition in the form prescribed by the Contemporary Court, in accordance with the applicable sections of the Contemporary Court Rules of General Procedure and Rules of Civil Procedure and this Code.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-5 Persons Entitled to File Petitions

A. The following persons are entitled to file a petition for the appointment of a guardian or conservator:

1. A family member or caretaker of a proposed protected person;
2. An employee of the Pueblo acting within the scope of his or her employment as authorized by the Pueblo's Tribal Code; or
3. Any current guardian or conservator of the proposed protected person.

B. In addition to the foregoing persons, a person with an interest in the welfare, estate, or financial affairs of a proposed protected person, including a person who would be adversely affected by a lack of effective management of the property or financial affairs of a proposed protected person, is entitled to file a petition for the appointment of a conservator.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-6 Notice of Proceedings

A. Within ten (10) days after the filing of a petition for the appointment of a conservator or guardian, the Contemporary Court shall give notice of the proceedings to the following persons:

1. The proposed protected person, but not minors under fourteen (14) years old;

2. The counsel for the proposed protected person, if known;
3. If the petition is for a person alleged to be incapacitated, the spouse, parents, adult children, guardian, or caretaker of the alleged incapacitated person, or if there is no spouse, parents, adult children, guardian, or caretaker, the closest known relative of the proposed protected person;
4. If the petition is for a minor, the parents or guardian of the minor, or if there are no parents or guardian, the caretaker of the minor and the closest known relative of the minor;
5. If the petition is for the appointment of a conservator, to the known creditors of the protected person; and
6. Any proposed guardian or conservator.

B. Notice shall be given either personally or by written notice sent by certified mail, return receipt requested, and postage prepaid.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-7 Hearings on Appointment of Guardian or Conservator

A. The Contemporary Court shall schedule and conduct a hearing to consider the petition to appoint a guardian or conservator.

B. Notice of the hearing shall be provided to the same persons entitled to receive notice pursuant to Sec. 12-1-6 (Notice of Proceedings) and in the same manner.

C. All proceedings under this Code shall be governed by the Contemporary Court Rules of General Procedure and the Pueblo of Contemporary Court Rules of Civil Procedure that are not in conflict with this Code. The Contemporary Court Rules of Evidence shall apply to all hearings and no hearsay evidence that is not otherwise admissible in the Contemporary Court shall be admitted into evidence except as otherwise provided in this Code.

D. There is a legal presumption of capacity for adults alleged to be incapacitated. The burden of proof in proceedings under this Code shall be on the petitioner or movant to prove the allegations set forth in the petition or motion.

E. The Contemporary Court may appoint a guardian or conservator for an incapacitated person or a minor only if the allegations set forth in a petition to appoint a guardian or conservator have been established by clear and convincing evidence.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-8 Notice of Federal Restriction on Right to Possess or Receive a Firearm or Ammunition

A. An adult who is subject to an order appointing a full guardian under Sec. 12-1-38 (Order of Appointment of Guardian of Incapacitated Person) or a full conservator under Sec. 12-

1-54 (Order Appointing a Conservator) that includes a finding that the person is totally incapacitated shall be give written notice that the person is prohibited under federal law from receiving or possessing a firearm or ammunition as provided by 18 U.S.C. § 922(g)(4) and its implementing regulations, currently found at 27 C.F.R. Part 478.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-9 Appointment of Attorney for Minors

If, at any time in a proceeding to appoint a guardian for a minor or conservator due to minority, the Contemporary Court finds that the minor who is the subject of the proceeding is or may be inadequately represented, the Contemporary Court may appoint an attorney to represent the minor, giving consideration to the preferences of a minor who is fourteen (14) years of age or older. An attorney appointed by the Contemporary Court to represent a minor shall represent and protect the interests of the minor.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-10 Appointment of Guardian ad Litem for Incapacitated Persons

Unless an alleged incapacitated person already has an attorney of their own choice, the Contemporary Court shall appoint an attorney to represent the alleged incapacitated person in the proceedings. The court-appointed attorney in the proceeding shall have the duties of a guardian ad litem, as set forth in Sec. 12-1-11.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-11 Duties of a Guardian ad Litem

- A. A guardian ad litem shall:
1. act in the best interests of the alleged incapacitated person;
 2. not have conflicts of interests or relationship with alleged incapacitated person that could affect their representation;
 3. interview in person the alleged incapacitated person prior to any hearing scheduled by the Contemporary Court;
 4. present the alleged incapacitated person's declared position to the Contemporary Court;
 5. interview the qualified health care professional, the visitor, and the proposed guardian or conservator;
 6. review all reports, including any medical reports submitted by a qualified health care professional and any reports by a visitor;
 7. obtain independent medical or psychological assessments, if necessary; and

8. file a written report with the Contemporary Court prior to the hearing on the petition for appointment of a guardian or conservator.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-12 Termination of Guardian ad Litem

Unless otherwise ordered by the Contemporary Court, the duties of the guardian ad litem terminate and the guardian ad litem is discharged from duties upon entry of the order appointing a guardian or conservator, and acceptance of the appointment by the guardian or conservator.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-13 Confidentiality and Access to Court Records

A. The existence of a guardianship proceeding for an adult, the existence of a guardianship for an adult, the existence of a conservatorship proceeding, and the existence of a conservatorship are not matters of public record.

B. The following persons are entitled to access court records of the proceeding and resulting guardianship or conservatorship: the alleged incapacitated person or protected person or minor that is the subject of the proceeding, whether or not a guardian or conservator is appointed; an attorney representing or designated by the alleged incapacitated person or protected person or minor; and any person entitled to notice of the proceeding under Sec. 12-1-6 (Notice of Proceedings). A person not otherwise entitled to access court records under this subsection may, for good cause, petition the Contemporary Court for access to the court records. The Contemporary Court shall only grant access if access is in the best interest of the alleged incapacitated person or minor that is the subject of the proceeding and does not endanger the welfare or financial interests of the alleged incapacitated person or minor.

C. The reports by a qualified health care professional, visitor, and guardian ad litem, and annual reports by a guardian or conservator, are all confidential and shall be sealed on filing, but are available to:

1. the Contemporary Court;
2. the alleged incapacitated person or minor who is the subject of the report or evaluation, without limitation as to use;
3. the petitioner, visitor, guardian ad litem and an attorney of record for purposes of the proceeding;
4. unless the Contemporary Court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances in which the alleged incapacitated person is the principal; and
5. any other person if it is in the public interest, as determined by the Contemporary Court, or for a purpose the Contemporary Court orders for good cause.

D. Notwithstanding any other provisions in this section, the following information shall not be publicly disclosed: diagnostic information, treatment information, or other medical or psychological information.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-14 Limitations on Incapacitated Person's Consent to the Appointment of a Guardian or Conservator

An alleged incapacitated person shall not be permitted by the Contemporary Court to consent to the appointment of a guardian or conservator. All the procedural safeguards contained in this Code regarding the appointment of a guardian or conservator for an incapacitated person shall apply in every guardianship or conservatorship proceeding.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-15 Letters of Guardianship or Conservatorship

A. The Contemporary Court shall issue a letter of guardianship or a letter of conservatorship, as applicable, to all guardians and conservators it appoints under this Code.

B. Letters of guardianship or conservatorship shall contain:

1. the names, addresses and telephone numbers of the guardian or conservator;
2. the name, address and telephone number of the protected person; and
3. the scope of the guardianship or conservatorship, including the specific legal limitations imposed by the Contemporary Court on the powers of the guardian or conservator.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-16 Audits

Each guardian and conservator of a protected person shall fully comply with the requirements of any audit of an account, inventory, report, or property of a protected person ordered by the Contemporary Court or any other lawful authority.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-17 Jurisdiction Over Proceedings Subsequent to Appointment of Guardian

A. After a guardian has been appointed, the court where the protected person resides has concurrent jurisdiction over proceedings relating to the guardianship with the court that appointed the guardian or in which acceptance of a testamentary appointment of guardianship was filed.

B. The Contemporary Court may consult with another court having jurisdiction to determine whether it is in the best interests of the protected person to retain jurisdiction or transfer the proceedings to the other court.

Sec. 12-1-18 Proceedings to Modify or Terminate a Guardianship or Conservatorship

A. The Contemporary Court may modify or terminate the appointment of any guardian under this Code as it determines necessary to protect the best interests of a protected person.

B. The Contemporary Court may modify or terminate the appointment of a conservator for good cause.

C. A request for modification or termination may be made by any person that is entitled to file a petition for guardianship or conservatorship under this Code, the guardian or conservator, the minor protected person fourteen (14) years old or older, or the incapacitated protected person, or any other interested person.

D. The Contemporary Court shall hold a hearing on any such request and provide notice of such hearing to the protected person, the guardian or conservator, and any other person as ordered by the Contemporary Court.

E. After appropriate notice is given and a hearing is held, the Contemporary Court may modify or terminate the guardianship or conservatorship and make any further order that may be appropriate.

F. The grounds for modification or termination of any guardianship or conservatorship must be established by clear and convincing evidence, and the Contemporary Court shall not appoint or increase the duties or responsibilities of a guardian or conservator unless all the procedural safeguards for the rights of the protected person under this Code have been met.

G. Any person who knowingly interferes with transmission of a request for modification or termination of a guardianship or conservatorship to the Contemporary Court may be adjudged guilty of contempt of court.

Sec. 12-1-19 Termination of Appointment of Guardian or Conservator

A. A guardian or conservator's authority and responsibility terminate in the following situations:

1. Upon the death, resignation, or removal of the guardian or conservator;
2. When the protected person is a minor, upon the minor's death, adoption, emancipation, marriage, active duty enlistment with a branch of the armed forces of the United States, or attainment of majority; or

3. When the protected person is an incapacitated person, upon the incapacitated person's death or upon a determination by the Contemporary Court that the incapacitated person is no longer incapacitated.

B. Upon the death of the protected person, the guardian or conservator shall submit notice to the appointing court.

C. Termination does not affect the guardian or conservator's liability for prior acts, nor the guardian or conservator's obligation to account for money and property of the protected person.

D. Resignation of a guardian or conservator does not terminate the guardianship or conservatorship until it has been approved by the Contemporary Court.

E. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-20 Grievance Against Guardian or Conservator

A. A protected person or interested person who believes that a guardian or conservator is breaching the guardian's or conservator's duties or otherwise acting in a manner inconsistent with this Code may file a grievance in the Contemporary Court.

B. The Contemporary Court shall review the grievance and the Contemporary Court's records relating to the guardianship or conservatorship, and shall schedule a hearing if the grievance supports a reasonable belief that removal of the guardian or conservator and appointment of a successor may be appropriate, or that termination or modification of the guardianship or conservatorship may be appropriate.

C. The Contemporary Court may then take any action supported by clear and convincing evidence, including ordering the guardian or conservator to provide the Contemporary Court with a report, accounting, inventory, or other specified information; appointing a guardian ad litem; modifying or terminating the guardianship or conservatorship; or removing the guardian or conservator and appointing a successor.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-21 Temporary Delegation of Powers by Parent or Guardian

A parent or a guardian of a minor or incapacitated person, by an acknowledged power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody, or property of the minor or incapacitated person, except the power to consent to marriage or adoption of the minor or incapacitated person.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Chapter 2: Guardianship of Minors

Sec. 12-1-22 Appointment of Guardian of Minor

A person becomes a guardian of a minor by parental appointment or upon appointment by the Contemporary Court. The guardianship status continues until terminated in accordance with this Code, without regard to the location from time to time of the guardian or minor protected person.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-23 Parental Appointment of Guardian of Minor

A. The parent of a minor may appoint a guardian for the minor by will, or other writing signed by the parent and attested by at least two witnesses.

B. Subject to the right of the minor under Sec. 12-1-24 (Objection by Minor of Fourteen (14) Years or Older to Parental Appointment), a parental appointment becomes effective when the guardian's acceptance is filed in the court in which a nominating instrument is probated, or, in the case of a non-testamentary nominating instrument, in the court at the place where the minor resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

C. A parental appointment effected by filing the guardian's acceptance under a will probated in the jurisdiction of the testator's domicile is effective in the Pueblo.

D. Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor and to the person having the minor's care or the minor's nearest adult relative. If the minor is fourteen (14) years of age or older, the notice shall state that the appointment may be terminated by filing a written objection in the court, as provided in Sec. 12-1-24 (Objection by Minor of Fourteen (14) Years or Older to Parental Appointment).

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-24 Objection by Minor of Fourteen (14) Years or Older to Parental Appointment

A minor who is fourteen (14) years old or older may prevent the parental appointment of a guardian or may cause a parental appointment to terminate by filing in the Contemporary Court a written objection to the appointment, either before it is accepted or after its acceptance. An objection may be withdrawn at any time. An objection does not prevent the Contemporary Court from appointing the guardian selected by the parent as the minor's guardian in accordance with the procedures in this Chapter.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-25 Conditions for Court Appointment of Guardian of Minor; Temporary Guardian of Minor

A. The Contemporary Court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order.

B. A guardian, appointed as provided in Sec. 12-1-23 (Parental Appointment of Guardian of Minor), whose appointment has not been prevented or terminated under Sec. 12-1-24 (Objection by Minor of Fourteen (14) Years or Older to Parental Appointment), has priority over any guardian who may be appointed by the Contemporary Court, but the court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within thirty (30) days after notice of the guardianship proceeding.

C. If necessary, and upon appropriate petition or application, the Contemporary Court may appoint a temporary guardian, who shall have the full authority of a guardian of a minor, but the authority of a temporary guardian may not last longer than six months. The appointment of a temporary guardian for a minor may occur even though the conditions described in subsection A of this Section have not been established.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-26 Procedure for Court Appointment of Guardian of Minor

The Contemporary Court shall appoint a guardian for a minor if, following the requisite notices and a hearing held in accordance with Sec. 12-1-7 (Hearing on Appointment of Guardian or Conservator), the Contemporary Court finds that the requirements of Sec. 12-1-25 (Conditions for Court Appointment of Guardian of Minor; Temporary Guardian of Minor) have been met and the best interests of the minor will be served by the requested appointment. In other cases, the Contemporary Court may dismiss the proceedings, or make any other disposition of the matter that will serve the best interests of the minor.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-27 Court Appointment of Guardian of Minor

The Contemporary Court may appoint as guardian for a minor any person whose appointment would be in the best interests of the minor and who is willing to serve in that capacity. The Contemporary Court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-28 Powers and Duties of Guardian of Minor

A. A guardian of a minor has the powers and responsibilities of a parent regarding the minor's support, care and education, but a guardian is not personally liable for the minor's expenses and is not liable to third persons by reason of the relationship for acts of the minor.

B. In particular and without qualifying the foregoing, a guardian shall:

1. become or remain personally acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capacities, limitations, needs, opportunities, and physical and mental health;
2. take reasonable care of the minor's personal effects and commence conservatorship proceedings if necessary to protect the estate or financial affairs of the minor;
3. apply any available money of the minor to the minor's current needs for support, care, and education;
4. conserve any excess money of the minor for the minor's future needs, but if a conservator has been appointed for the estate of the minor, the guardian, at least quarterly, shall pay to the conservator money of the minor to be conserved for the minor's future needs; and
5. report on the condition of the minor and of the minor's estate and financial affairs that have been subject to the guardian's possession or control, as ordered by the Contemporary Court.

C. In addition, a guardian may:

1. receive money or property paid for the support or benefit of the minor and made payable to or delivered to the minor's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship;
2. if consistent with the terms of any order by the Contemporary Court relating to detention or commitment of the minor, take custody of the minor and establish the minor's place of residence on or off Pueblo lands;
3. if no conservator for the minor has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person with a duty to support the minor or to pay sums for the welfare of the minor;
4. consent to medical or other professional care, treatment, or advice for the minor without liability by reason of the consent for injury to the minor resulting from the negligence or acts of third persons unless a parent would have been liable under the same circumstances;
5. at the request of a minor sixteen years or older, provide written consent for the minor to marry;
6. consent to the adoption of a minor; and
7. if reasonable under all of the circumstances, delegate to the minor certain responsibilities for decisions affecting the minor's well-being.

Sec. 12-1-29 Limited Guardianship of a Minor

A. In the interest of developing self-reliance on the part of a minor or for other good cause, the Contemporary Court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the minor or other interested person, may limit the powers of a guardian otherwise conferred by Sec. 12-1-28 (Powers and Duties of Guardian of Minor) and thereby create a limited guardianship.

B. In accordance with Sec. 12-1-15 (Letters of Guardianship), any limitation on the statutory power of a guardian of a minor must be endorsed on the guardian's letters or, in the case of a guardian by parental appointment, must be reflected in letters that are issued at the time any limitation is imposed. Following the same procedure, a limitation may be removed and appropriate letters issued.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-30 Compensation of Guardian of Minor

A guardian is entitled to reasonable compensation from the minor's income or estate for services as guardian and to reimbursement for room, board and clothing personally provided to the minor, but only as approved by order of the Contemporary Court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the minor, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the Contemporary Court, subject to any limitations placed on the conservator's authority by court order.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Chapter 3: Guardianship of Incapacitated Persons

Sec. 12-1-31 When Guardianship for an Incapacitated Person is to be Used

Guardianship for an incapacitated person shall be used only as is necessary to promote and to protect the wellbeing of the person, shall be designed to encourage the development of maximum self-reliance and independence of the person and shall be ordered only to the extent necessitated by the person's actual functional mental and physical limitations. An incapacitated person for whom a guardian has been appointed retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the Contemporary Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-32 Appointment of Guardian for Incapacitated Person

A. The spouse of a married incapacitated person may appoint by will, or other writing signed by the spouse and attested by at least two witnesses, a guardian of the incapacitated person.

B. The parent of an unmarried incapacitated person may appoint by will, or other writing signed by the parent and attested by at least two witnesses, a guardian of the incapacitated person. If both parents are dead, an effective appointment by the parent who died later has priority.

C. An effective appointment by a spouse has priority over an appointment by a parent.

D. A spousal or parental appointment becomes effective when, the guardian, after having given seven (7) days prior written notice of intention to do so to the incapacitated person and to the person having care of the incapacitated person or to the nearest adult relative, files acceptance of appointment in the Contemporary Court. The notice shall state that the appointment may be terminated by filing a written objection in the Contemporary Court.

E. An appointment effected by filing the guardian's acceptance under a will probated in the jurisdiction of testator's domicile is effective in the Pueblo of Santa Ana.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-33 Objection to Appointment of Guardian for an Incapacitated Person

A spousal or parental appointment of a guardian for an incapacitated person is terminated upon the filing by the incapacitated person of a written objection to the appointment in the Contemporary Court. But an objection does not prevent the Contemporary Court from appointing the parental or spousal nominee as the guardian for an incapacitated person in accordance with court appointment procedures of this Chapter.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-34 Petition for Court Appointment of a Guardian of an Incapacitated Person

A. A petition for the court appointment of a guardian of an incapacitated person shall state the petitioner's name, principal residence, current street address, if different, relationship to the alleged incapacitated person, interest in the appointment, the name and address of any attorney representing the petitioner and, to the extent known, the following:

1. the alleged incapacitated person's name, age, principal residence, current street address, if different, and, if different, address of the dwelling in which it is proposed that the alleged incapacitated person will reside if the petition is granted;

2. the name and address of the alleged incapacitated person's:

- a. spouse, or, if the alleged incapacitated person has none, an adult with whom the alleged incapacitated person is in a long-term relationship of indefinite duration in which the individual has demonstrated an actual commitment to the alleged incapacitated person similar to the commitment of a spouse and in which the individual and the alleged incapacitated person considers himself or herself to be responsible for each other's well-being;

b. adult children or, if none, each parent and adult sibling of the alleged incapacitated person or, if none, at least one adult nearest in kinship to the alleged incapacitated person who can be found with reasonable diligence; and

c. adult stepchildren whom the alleged incapacitated person actively parented during the stepchildren's minor years and with whom the alleged incapacitated person had an ongoing relationship in the two-year period immediately preceding the filing of the petition;

3. the name and current address of each of the following, if applicable:

a. a person responsible for care of the alleged incapacitated person;

b. any attorney currently representing the alleged incapacitated person;

c. any representative payee appointed by the federal Social Security Administration for the alleged incapacitated person;

d. a guardian or conservator acting for the alleged incapacitated person in New Mexico or in another jurisdiction;

e. a trustee or custodian of a trust or custodianship of which the alleged incapacitated person is a beneficiary;

f. any fiduciary for the alleged incapacitated person appointed by the federal Department of Veterans Affairs;

g. an agent designated under a power of attorney for health care in which the alleged incapacitated person is identified as the principal;

h. an agent designated under a power of attorney for finances in which the alleged incapacitated person is identified as the principal;

i. a person nominated as guardian by the alleged incapacitated person;

j. a person nominated as guardian by the alleged incapacitated person's parent or spouse in a will or other signed record;

k. a proposed guardian and the reason the proposed guardian should be selected; and

l. a person known to have routinely assisted the alleged incapacitated person with decision making during the six months immediately preceding the filing of the petition;

4. the reason a guardianship is necessary, including a brief description of:

a. the nature and extent of the alleged incapacitated person's alleged need;

b. any least restrictive alternative for meeting the alleged incapacitated person's alleged need that has been considered or implemented;

c. if no least restrictive alternative has been considered or implemented, the reason it has not been considered or implemented; and

d. the reason a least restrictive alternative instead of guardianship is insufficient to meet the alleged incapacitated person's alleged need;

5. whether the petitioner seeks a limited guardianship or full guardianship;

6. if the petitioner seeks a full guardianship, the reason a limited guardianship or protective arrangement instead of guardianship is not appropriate;

7. if a limited guardianship is requested, the powers to be granted to the guardian;

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

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

10. whether the alleged incapacitated person needs an interpreter, translator or other form of support to communicate effectively with the Contemporary Court or understand court proceedings.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-35 Appointment of Qualified Health Care Professional for Guardianship Proceeding

A. The person alleged to be incapacitated shall be examined by a qualified health care professional appointed by the Contemporary Court who shall submit a report in writing to the court.

B. The report shall:

1. describe the nature and degree of the alleged incapacitated person's incapacity, if any,

2. the level of the alleged incapacitated person's intellectual, developmental and social functioning; and

3. contain observations, with supporting data, regarding the alleged incapacitated person's ability to make health care decisions and manage the activities of daily living.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-36 Appointment of Visitor for Guardianship Proceeding

A. The Contemporary Court shall appoint a visitor who shall interview the person alleged to be incapacitated and the proposed guardian.

B. The visitor shall visit the present place of residence of the person alleged to be incapacitated and the place where it is proposed the alleged incapacitated person will reside if the requested appointment is made.

C. The visitor shall evaluate the needs of the person alleged to be incapacitated and shall submit a written report to the Contemporary Court.

D. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed guardian. The report to the Contemporary Court shall also include recommendations regarding:

1. those aspects of personal care that the alleged incapacitated person can manage without supervision or assistance;

2. those aspects of personal care that the alleged incapacitated person could manage with the supervision or assistance of support services and benefits; and

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

E. Unless otherwise ordered by the Contemporary Court, the appointment of the visitor terminates and the visitor is discharged from the visitor's duties upon entry of an order on the guardianship petition.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-37 Hearing on Court Appointment of Guardian for Incapacitated Person

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

B. At a hearing conducted pursuant to this section, the person alleged to be incapacitated may:

1. present evidence and subpoena witnesses and documents;

2. examine witnesses, including a court-appointed guardian ad litem, qualified health care professional and visitor; and

3. otherwise participate in the hearing.

C. The Contemporary Court, at the hearing on the petition for appointment for a guardian under this Chapter shall:

1. inquire into the nature and extent of the functional limitations of the alleged incapacitated person; and
2. ascertain the alleged incapacitated person's capacity to care for the alleged incapacitated person's own self.

D. The Contemporary Court upon request or its own motion may conduct hearings at the location of the alleged incapacitated person who is unable to be present in court.

E. The issue of whether a guardian shall be appointed for the alleged incapacitated person shall be determined by the Contemporary Court at an open hearing unless, for good cause, the court determines otherwise.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-38 Order of Appointment of Guardian of Incapacitated Person

A. The Contemporary Court may appoint a guardian or a limited guardian if it finds, based on clear and convincing evidence, that:

1. the person has a complete or partial functional impairment, as defined in this Code;
2. the guardianship is necessary as a means of providing continuing care, supervision and rehabilitation of the incapacitated person;
3. there are no available alternative resources that are suitable with respect to the alleged incapacitated person's welfare, safety and rehabilitation;
4. the guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the alleged incapacitated person; and
5. the proposed guardian is both qualified and suitable, has reviewed the proposed order of appointment and is willing to serve.

B. If the Contemporary Court determines that the subject of the proceeding is not an incapacitated person, as defined under this Code, it shall dismiss the petition.

C. The Contemporary Court may enter any other appropriate order consistent with the findings of this section.

D. A copy of the order appointing the guardian shall be furnished to the proposed guardian, the incapacitated person and the incapacitated person's counsel.

E. The order shall contain the name and address of the guardian as well as notice of the incapacitated person's right to appeal the guardianship appointment and of the right to seek alteration or termination of the guardianship at any time. The order shall also contain the notice required by Sec. 12-1-8 (Notice of Federal Restriction on Right to Possess or Receive a Firearm or Ammunition).

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-39 Appointment of Limited Guardian for an Incapacitated Person

If the Contemporary Court appoints a limited guardian, the court shall specify those powers that the limited guardian shall have and may further restrict each power so as to permit the protected person to care for the protected person's own self in accordance with the protected person's ability to do so. A person for whom a limited guardian has been appointed retains all legal and civil rights except those that have been specifically granted to the limited guardian by the court. The limited guardian shall exercise supervisory powers over the protected person in a manner that is the least restrictive form of intervention consistent with the order of the court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-40 Preferences for Appointment of Guardian for an Incapacitated Person

A. The order of preference for appointment as guardian for an incapacitated person is:

1. a guardian, other than a temporary guardian, currently acting for the incapacitated person;
2. a person, as far as known or as can be reasonably ascertained, previously nominated or designated in a writing signed by the incapacitated person prior to incapacity that has not been revoked by the incapacitated person or terminated by a court;
3. the spouse of the incapacitated person;
4. an adult child of the incapacitated person;
5. a parent of the incapacitated person;
6. a person nominated by will or other writing signed by a deceased parent;
7. any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition;
8. a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person; and
9. any other qualified person.

B. With respect to persons having equal priority, the Contemporary Court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person and for good cause shown, may pass over a person having priority and appoint a person having a lower priority under this section and shall take into consideration:

1. the preference of the incapacitated person, giving weight to preferences expressed in writing by the person while having capacity;
2. the geographic location of the proposed guardian;
3. the relationship of the proposed guardian to the incapacitated person;
4. the ability of the proposed guardian to carry out the powers and duties of the guardianship; and
5. potential financial conflicts of interest between the incapacitated person and proposed guardian.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-41 Restrictions on Guardians of Incapacitated Person

A. The following persons shall not be appointed as a guardian of an incapacitated person:

1. any individual who operates or is an employee of a boarding home, residential care home, nursing home, group home or other similar facility in which the incapacitated person resides, except an employee may serve as a guardian if he or she is related to the incapacitated person; and
2. a professional guardian.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-42 General Powers and Duties of Guardian for Incapacitated Person

A. A guardian is not legally obligated to provide from the guardian's own funds for the protected person and is not liable to third persons for acts of the protected person solely by reason of the guardianship.

B. In particular and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the Contemporary Court:

1. to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the protected person, a guardian is entitled to custody of the protected person and may establish the protected person's place of residence on or off Pueblo lands. If the guardian establishes the protected person's place of residence off Pueblo lands, the guardian must notify the court of the new residence;

2. if entitled to custody of the protected person, a guardian shall make provision for the care, comfort and maintenance of the protected person and, whenever appropriate, arrange for training and education;

3. the guardian shall take reasonable care of the protected person's clothing, furniture, vehicles and other personal effects and commence conservatorship proceedings if other property of the protected person is in need of protection;

4. if no other person is entitled to make health care decisions for the protected person, then the guardian shall make health care decisions for the protected person. In exercising health care powers, a guardian may consent or withhold consent that may be necessary to enable the protected person to receive or refuse medical or other professional care, counsel, treatment or service. That decision shall be made in accordance with the values of the protected person, if known, or the best interests of the protected person if the values are not known;

5. if no conservator for the protected person has been appointed, if the Contemporary Court has determined that a conservatorship is not appropriate and if a guardian appointed by the court has been granted authority to make financial decisions on behalf of the protected person in the order of appointment and in the letters of guardianship, the guardian has the following powers and duties:

a. to institute proceedings to compel any person under a duty to support the protected person or to pay sums for the welfare of the protected person to perform that duty;

b. to receive money and tangible property deliverable to the protected person and apply the money and property for support, care and education of the protected person, but the guardian shall not use funds from the protected person's estate for room and board that the guardian or the guardian's spouse, parent or child has furnished the protected person, unless a charge for the service is approved by order of the Contemporary Court made upon notice to at least one of the next of kin of the protected person, if notice is possible;

c. to serve as advocate and decision maker for the protected person in any disputes with persons or organizations, including financial institutions, regarding the protected person's finances;

d. to obtain information regarding the protected person's assets and income from persons or organizations handling the protected person's finances;

e. to file an initial inventory of all property belonging to the protected person within ninety (90) days after appointment; and

f. to exercise care to conserve any excess for the protected person's needs and include in the guardian's reports to the Contemporary Court a description of decisions made regarding the protected person's finances and property; and

6. the guardian shall exercise the guardian's supervisory powers over the protected person in a manner that is least restrictive of the protected person's personal freedom and consistent with the need for supervision.

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

D. Unless authorized by the Contemporary Court by specific order, a guardian for an adult shall not revoke or amend a power of attorney for health care or power of attorney for finances signed by the adult. If a power of attorney for health care is in effect, unless there is a court order to the contrary, a health care decision of a person with authority under a power of attorney takes precedence over that of the guardian, and the guardian shall cooperate with the authorized person to the extent feasible. If a power of attorney for finances is in effect, unless there is a court order to the contrary, a decision by the person authorized under the power of attorney for finances takes precedence over that of the guardian, and the guardian shall cooperate with the authorized person to the extent feasible.

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

1. authorized by the Contemporary Court by specific order; or
2. the guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological, or financial harm to the protected person and the restriction is:
 - a. for a period of not more than seven (7) business days if the person has a family or preexisting social relationship with the protected person; or
 - b. for a period of not more than sixty (60) days if the person does not have a family or preexisting social relationship with the protected person.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-43 Annual Reports by Guardians of Incapacitated Persons

A. The guardian of an incapacitated person shall file an initial report with the Contemporary Court within ninety (90) days after the guardian's appointment.

B. Thereafter, the guardian shall file an annual report within thirty (30) days of the anniversary date of the guardian's appointment.

C. A copy of the guardian's report shall also be submitted to the incapacitated person and to the incapacitated person's conservator, if any.

D. The report shall include information concerning the progress and condition of the incapacitated person, including:

1. the incapacitated person's health, medical and dental care, residence, education, employment and habitation;
2. the manner in which the guardian carried out the guardian's powers and fulfilled the guardian's duties, including information on any financial decisions made by the guardian; and
3. the guardian's opinion regarding the continued need for guardianship.

E. Any guardian may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in the report provided for in this section.

F. A guardian may be fined twenty-five dollars (\$25.00) per day for an overdue interim or annual report.

G. The Contemporary Court shall not waive the requirement of an annual report under any circumstance but may grant an extension of time not to exceed an additional sixty (60) days from the date the report is due. The court may require the filing of more than one report annually.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-44 Review of Guardianship of Incapacitated Person

A. At any time following the appointment of a guardian, but not later than ten (10) years after the initial appointment of a guardian for a protected person and every ten (10) years thereafter, the Contemporary Court shall:

1. hold a status hearing, after notice to the guardian, the protected person and appropriate interested persons, to review the status of the protected person's capacity and the continued need for a guardian; or
2. appoint a court investigator to assess the protected person's capacity. The court investigator shall prepare a detailed report to the court regarding the status of the protected person's capacity and the continued need for a guardian. Any report shall be made available to the guardian, the protected person and interested persons identified by the court.

B. If the Contemporary Court is unable to contact either the guardian or the protected person and neither appears for the status hearing scheduled, the Contemporary Court shall appoint a guardian ad litem to investigate and report to the court as to the status of the protected person and the guardian. Any report shall be made available to the guardian, the protected person and appropriate interested persons, if known to the court.

C. Following the status hearing or the court's report from the court investigator or guardian ad litem on the status of the protected person and the guardian, the Contemporary Court may enter an appropriate order; provided that, in entering an order that increases the guardian's authority or reduces the autonomy of the protected person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in this Chapter.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-45 Temporary Guardian of Incapacitated Person

A. When a petition for guardianship has been filed, but adherence to the procedures set forth in this Chapter would cause serious, immediate, and irreparable harm to the alleged incapacitated person's physical health, and no other person appears to have authority and willingness to act in the circumstances, the Contemporary Court may appoint a temporary guardian prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon motion of the petitioner, the Contemporary Court shall schedule a hearing on the appointment of a temporary guardian for the earliest possible date, appoint an attorney to represent the alleged incapacitated person in the proceeding, and give notice as provided in Sec. 12-1-6 (Notice of Proceedings). Upon a finding that serious, immediate, and irreparable harm to the alleged incapacitated person's health would result during the pendency of petition, the Contemporary Court shall appoint a temporary guardian and shall specify the temporary guardian's powers in order to prevent serious, immediate, and irreparable harm to the alleged incapacitated person. The duration of the temporary guardianship shall not exceed sixty (60) days, except that upon order of the Contemporary Court, the temporary guardianship may be extended for not more than thirty (30) days.

C. A temporary guardian may be appointed without notice to the alleged incapacitated person and the alleged incapacitated person's attorney only if it clearly appears from specific facts shown by affidavit or sworn testimony that serious, immediate, and irreparable harm will result to the alleged incapacitated person before a hearing on the appointment of a temporary guardian can be held. If the Contemporary Court appoints a temporary guardian without notice to the alleged incapacitated person, the alleged incapacitated person must be given notice of the appointment within twenty-four (24) hours after the appointment. The Contemporary Court shall hold a hearing on the appropriateness of the appointment within five (5) days after the appointment. On two (2) days' notice to the party who obtained the appointment of a temporary guardian without notice, or on such shorter notice to that party as the Contemporary Court may prescribe, the alleged incapacitated person or his attorney may appear and move for dissolution or modification of the Contemporary Court's order, and, in that event, the Contemporary Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

D. Appointment of a temporary guardian, with or without notice, shall have the effect of limiting the legal rights of the proposed protected person, but shall not be evidence of incapacity.

- E. The Contemporary Court may remove a temporary guardian at any time.
- F. A temporary guardian shall make any report the Contemporary Court requires.
- G. The provisions of this Code concerning the duties and responsibilities of guardians apply to a temporary guardian.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-46 Compensation and Expenses

If not otherwise compensated for services rendered, any visitor, attorney, qualified health care professional, or guardian appointed in a guardianship proceeding is entitled to reasonable compensation from the estate of the incapacitated person.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Chapter 4: Conservatorship of Incapacitated Persons and Minors

Sec. 12-1-47 Grounds for Conservatorship for Incapacitated Persons

A. The Contemporary Court may appoint a conservator for an incapacitated person if the Contemporary Court finds that:

1. the person meets the definition of an incapacitated person under this Code;
2. the incapacitated person has property that may be wasted or dissipated unless proper management is provided;
3. funds are needed for the support, care, and welfare of the incapacitated person or those entitled to be supported by him or her; and
4. protection is necessary or desirable to obtain or provide funds.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-48 Grounds for Conservatorship for Minors

A. The Contemporary Court may appoint a conservator for a minor if the Contemporary Court finds that the minor is in need of a conservator because:

1. the minor owns property that requires management or protection that cannot otherwise be managed or protected;
2. the minor has or may have financial affairs that may be jeopardized or prevented by his or her minority; or
3. funds are needed for a minor's support and education and that protection is necessary or desirable to obtain or provide funds.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-49 Petition for Conservatorship

- A. A petition for conservatorship shall set forth:
1. the name, address, and interest of the petitioner;
 2. the name, address, and condition of the proposed protected person;
 3. the factual basis for alleging that the proposed protected person is an incapacitated person or a minor in need of a conservator;
 4. the reason conservatorship is necessary, including a brief description of:
 - a. if known, a general statement of the proposed protected person's property with an estimate of its value, including any insurance or pension and the source and amount of other anticipated income or receipts;
 - b. the nature and extent of the proposed protected person's alleged need;
 - c. any less restrictive alternative for meeting the proposed protected person's alleged need that has been considered or implemented;
 - d. if no less restrictive alternatives have been considered or implemented, the reason less restrictive alternatives have not been considered or implemented;
 - e. the reason a less restrictive alternative is insufficient to meet the proposed protected person's need;
 5. whether the petitioner seeks a limited conservatorship or a full conservatorship and if the petitioner seeks a full conservatorship, the reason a limited conservatorship would be insufficient; and
 6. the name, address, and qualifications of any proposed conservator and the reasons the proposed conservator should be appointed.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-50 Appointment of Qualified Health Care Professional for Conservatorship Proceeding

- A. If the petition is for the appointment of a conservator for an incapacitated person, the proposed protected person shall be examined by a qualified health care professional appointed by the Contemporary Court who shall submit a report in writing to the court.
- B. The report shall:

1. describe the nature and degree of the person's incapacity, if any, and the level of the intellectual, developmental and social functioning of the person to be protected; and

2. contain observations, with supporting data, regarding the ability of the person to be protected to manage his or her estate or financial affairs.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-51 Appointment of Visitor for Conservatorship Proceeding

A. If the petition is for the appointment of a conservator for an incapacitated person, the Contemporary Court shall also appoint a visitor who shall interview the person seeking appointment as conservator and the proposed protected person.

B. The visitor shall also visit the present place of residence of the proposed protected person.

C. The visitor shall evaluate the needs of the proposed protected person and shall submit a written report to the Contemporary Court.

D. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed conservator.

E. The report shall also include recommendations regarding:

1. those aspects of the proposed protected person's financial affairs that the proposed protected person can manage without supervision or assistance;

2. those aspects of the proposed protected person's financial affairs that the proposed protected person could manage with the supervision or assistance of support services and benefits; and

3. those aspects of his or her financial affairs that the proposed protected person is unable to manage even with the supervision or assistance of support services and benefits.

F. Unless otherwise ordered by the Contemporary Court, the appointment of the visitor terminates and the visitor is discharged from his or her duties upon the Contemporary Court's entry of an order on the conservatorship petition.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-52 Conservatorship Hearing

A. The proposed protected person shall be present at the hearing on the issues raised by the petition and any response to the petition, unless the Contemporary Court determines it is not in the best interest of the proposed protected person because of a threat to the health or safety of the proposed protected person.

B. The Contemporary Court upon request or its own motion may conduct hearings at a location convenient to the proposed protected person if he or she is unable to be present in court.

C. At conservatorship hearing, the person to be protected may:

1. present evidence and subpoena witnesses and documents;
2. examine witnesses, including a court-appointed guardian ad litem, qualified health care professional and visitor; and
3. otherwise participate in the hearing.

D. At the conservatorship hearing, the Contemporary Court shall:

1. inquire into the nature and extent of the functional limitations of the person to be protected; and
2. ascertain the person's capacity to manage the person's financial affairs.

E. The issue of whether a conservator shall be appointed for the alleged incapacitated person shall be determined by the Contemporary Court at an open hearing unless, for good cause, the court determines otherwise.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-53 Findings Regarding Conservatorship Petition

A. The Contemporary Court shall issue an order in writing that sets forth its findings with respect to the petition for a conservator.

B. If the Contemporary Court finds that the proposed protected person possesses the capacity to manage his or her estate or financial affairs, or both, the court shall dismiss the petition.

C. If the Contemporary Court determines that the incapacitated person is able to manage some but not all aspects of his or her estate and financial affairs, the court shall appoint a limited conservator. The Contemporary Court shall specify those powers that the limited conservator shall have and may further restrict each power so as to permit the incapacitated person to care for his estate and financial affairs in accordance with his or her ability to do so.

D. The Contemporary Court may enter an order appointing a conservator only if it is satisfied, after notice and hearing, that:

1. the proposed protected person is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;
2. the conservatorship is necessary as a means of effectively managing the estate or financial affairs, or both, of the proposed protected person;

3. there are not available alternative resources that would enable the effective management of the estate and financial affairs of the proposed protected person;
4. the conservatorship is appropriate as the least restrictive form of intervention consistent with the preservation of the property of the person to be protected; and
5. the proposed conservator is both qualified and suitable and is willing to serve.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-54 Order Appointing a Conservator

A. A Contemporary Court order appointing a conservator shall encourage the development of maximum self-reliance and independence of an incapacitated person and orders shall only be entered to the extent necessitated by the incapacitated person's mental and adaptive limitations and other conditions warranting the procedure.

B. An order appointing a conservator shall set forth:

1. whether the conservatorship is temporary, limited, or full;
2. the scope and limitations, with particularity, on the authority and powers of the conservator;
3. requirements that a conservator make regular reports to the Contemporary Court, no less frequently than annually, and account to the Contemporary Court regarding the status of the protected person's estate and financial affairs, including notice that the conservator may be fined twenty-five dollars (\$25.00) per day for an overdue report and account;
4. that the Contemporary Court may require a conservator to submit to a physical check of the property in the conservator's control, to be made in any manner the Contemporary Court deems reasonable and necessary;
5. that a conservator shall fully comply with the requirements of any audit of an account, inventory, report or property of a protected person;
6. the name and address of the conservator;
7. notice to the protected person of the right to appeal the appointment and the right to seek alteration or termination of the conservatorship at any time;
8. other additional requirements established by the evidence as reasonable and necessary to protect the protected person's estate and financial affairs;
9. The notice required by Sec. 12-1-8 (Notice of Federal Restriction on Right to Possess or Receive a Firearm or Ammunition).

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-55 Service of Conservatorship Order

A. Upon entry of an order appointing a conservator, a copy of the order shall be furnished to the protected person, that person's counsel, and the petitioner.

B. In the case of an order appointing a conservator for an incapacitated person, a copy of the order shall also be furnished to the adult's spouse, or if none, the adult children or next of kin, surrogate, guardian, if any.

C. In the case of an order appointing a conservator for a minor, a copy of the order shall also be furnished to the minor's parents or guardian.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-56 Preferences in Appointing a Conservator for a Minor

A. The order of preference for appointment as conservator for a minor is:

1. the parents of a minor;
2. a current guardian proposed to be appointed conservator;
3. any person nominated as conservator for a minor by a will executed by the custodial parent of a minor;
4. any person requested by a minor fourteen (14) years of age or older; and
5. a family member.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-57 Preferences for Appointment of Conservator for an Incapacitated Person

A. The order of preference for appointment as conservator for an incapacitated person is:

1. a spouse;
2. a current guardian proposed to be appointed conservator;
3. a parent or adult child;
4. a person nominated by the will of a deceased parent; and
5. a family member.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-58 Rights of Protected Person

A person for whom a conservator has been appointed retains all legal and civil rights except those that have been specifically granted to the conservator by the Contemporary Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-59 General Duties of Conservator to Protected Person

In the exercise of a conservator's powers, a conservator shall act in the interest of the protected person. The conservator shall exercise supervisory powers over the estate and financial affairs of the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the Contemporary Court.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-60 General Powers of Conservators

A conservator, acting reasonably in efforts to accomplish the purposes for which he or she was appointed, may act without Contemporary Court authorization or confirmation, to:

- A. Collect, hold, and retain assets of the estate including land wherever situated, until, in his or her judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he or she is personally interested;
- B. Receive additions to the estate;
- C. Continue or participate in the operation of any business or other enterprise;
- D. Deposit estate funds in a bank including a bank operated by the conservator;
- E. Insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;
- F. Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
- G. Pay any sum distributable to a protected person or dependent of the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or, if none, to a relative or other person with custody of the person, subject to any requirements that may be established by the court; and
- H. Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-61 Additional Powers of Conservator Pursuant to Contemporary Court Order

Upon authorization by the Contemporary Court a conservator may exercise the following powers:

- A. Acquire an undivided interest in any estate asset in which the conservator, in any fiduciary capacity holds an undivided interest;
- B. Invest and reinvest estate assets and funds as would a trustee;
- C. Acquire or dispose of an estate asset, including non-trust land wherever situated, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset in connection with the exercise of any power vested in the conservator;
- D. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;
- E. Vote a security, in person or by general or limited proxy;
- F. Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or to assist him or her in the performance of his or her administrative duties;
- G. Act upon their recommendation without independent investigation; and, instead of acting personally, employ one or more agents to perform any act or administration, whether or not discretionary;
- H. Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and
- I. Prosecute claims of the protected person including those for his personal injury.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-62 Protective Arrangements and Single Transactions

A. If, after notice and hearing on a petition for a conservator under this Code, the Contemporary Court finds that a basis exists to appoint a conservator to protect the estate and financial affairs of a minor or incapacitated person, the Contemporary Court may, instead of appointing a conservator:

1. authorize or direct a person to execute a transaction necessary to protect the financial interest or property of the proposed protected person; or
2. issue an order to restrict access to a proposed protected person's property by a specified person where the Contemporary Court finds by clear and convincing evidence:

a. the person, through fraud, coercion, duress or the use of deception and control, caused or attempted to cause an action that would have resulted in financial harm to the proposed protected person's property; and

b. the person poses a serious risk of substantial financial harm to the proposed protected person's property.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-63 Temporary Conservatorship

A. When a petition for conservatorship has been filed, but adherence to the procedures set forth in this Chapter would cause serious, immediate, and irreparable harm to the estate or financial interests of the person to be protected, and no other person appears to have authority and willingness to act in the circumstances, the Contemporary Court may appoint a temporary conservator prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon motion of the petitioner, the Contemporary Court shall schedule a hearing on the appointment of a temporary conservator for the earliest possible date, appoint an attorney to represent the alleged incapacitated person in the proceeding, and give notice as provided in Sec. 12-1-6 (Notice of Proceedings). Upon a finding that serious, immediate, and irreparable harm to the estate and financial interests of the person to be protected would result during the pendency of petition, the Contemporary Court shall appoint a temporary conservator and shall specify the temporary conservator's powers in order to prevent serious, immediate, and irreparable harm to the property of the person to be protected. The duration of the temporary conservatorship shall not exceed sixty (60) days, except that upon order of the Contemporary Court, the temporary conservatorship may be extended for not more than thirty (30) days.

C. A temporary conservator may be appointed without notice to the person to be protected and that person's attorney only if it clearly appears from specific facts shown by affidavit or sworn testimony that serious, immediate, and irreparable harm will result to the estate or financial interests of the person to be protected before a hearing on the appointment of a temporary conservator can be held. If the Contemporary Court appoints a temporary conservator without notice to the person to be protected, that person must be given notice of the appointment within twenty-four (24) hours after the appointment. The Contemporary Court shall hold a hearing on the appropriateness of the appointment within five (5) days after the appointment. On two (2) days' notice to the party who obtained the appointment of a temporary conservator without notice, or on such shorter notice to that party as the Contemporary Court may prescribe, the person to be protected or his attorney may appear and move dissolution or modification of the Contemporary Court's order, and, in that event, the Contemporary Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

D. Appointment of a temporary conservator, with or without notice, shall have the effect of limiting the legal rights of the proposed protected person, but shall not be evidence of incapacity.

E. The Contemporary Court may remove a temporary conservator at any time.

F. A temporary conservator shall make any report the Contemporary Court requires.

G. The provisions of this Code concerning the duties and responsibilities of conservators apply to a temporary conservator.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-64 Annual Report and Account

A. Every conservator shall file an annual report and account with the Contemporary Court within thirty (30) days of the anniversary date of the conservator's appointment, upon the conservator's resignation or removal, or upon termination of the conservatorship. A copy of the annual report and account shall also be mailed to the incapacitated person's guardian, if any. The report shall include information concerning the progress and condition of the person under conservatorship, a report on the manner in which the conservator carried out the conservator's powers and fulfilled the conservator's duties, and the conservator's opinion regarding the continued need for conservatorship.

B. A conservator may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in the report provided for in subsection A of this section.

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

D. The conservator may be fined twenty-five dollars (\$25.00) per day for an overdue report and account.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.

Sec. 12-1-65 Compensation and Expenses

If not otherwise compensated for services rendered, any visitor, attorney, physician, or conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

Enacted by Resolution No. 2022-R-39, adopted December 17, 2022.