

STATE OF MAINE

_____ COUNTY PROBATE COURT

DOCKET NO. _____

In Re: _____
Respondent

ORDER OF APPOINTMENT OF
GUARDIAN AND
CONSERVATOR (ADULT)

On petition for the appointment of a Guardian and Conservator for the above-named Respondent, and after hearing, the Court finds (1) that venue for this proceeding is proper; (2) by clear and convincing evidence that the Respondent was given proper notice of the hearing on the petition;¹ and (3) that all other notices were properly given or waived.²

Guardian for the Respondent:

1. The Court finds by clear and convincing evidence that the Respondent lacks the ability to meet essential requirements for physical health, safety or self-care because
 - a. the Respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance or supported decision making that provide adequate protection for the Respondent;
 - b. the Respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternatives; and
 - c. the appointment is necessary or desirable as a means of enabling the Respondent to meet essential requirements for physical health, safety or self-care.³

2. The Court hereby appoints the following person(s) as Guardian for the Respondent. Co-Guardians shall each serve immediately and shall make decisions jointly unless otherwise specified below:⁴

The person(s) hereby appointed has/have priority to serve, or the Court otherwise finds that such person(s) is/are best qualified to serve as Guardian or appointment of such person(s) is in the Respondent's best interest.⁵

3. The Court hereby establishes a:

Full Guardianship. The Guardian has all powers available under the Maine Uniform Guardianship, Conservatorship and Protective Proceedings Act.⁶ The basis for granting a full guardianship and the specific findings that support the conclusion that a limited guardianship would not meet the functional needs of the Respondent are as follows:⁷

Limited Guardianship. The powers granted to the Guardian are as follows:⁸

4. Unless otherwise provided below or by subsequent order of the Court, the Guardian may not (a) consent to the adoption of the Respondent;⁹ (b) consent or withhold consent to the marriage of the Respondent if the Respondent's right to marry has been removed or made subject to conditions under Paragraph 5 of this Order;¹⁰ (c) petition for divorce, dissolution or annulment of the marriage of the Respondent or for a declaration of invalidity of the Respondent's marriage;¹¹ (d) support or oppose a petition for divorce, dissolution or annulment of marriage of the Respondent or for a declaration of invalidity of the Respondent's marriage;¹² (e) unless generally set forth in the Guardian's Plan or unless the Guardian complies with the notice provisions of 18-C M.R.S. § 5-314(5)(D)(3), move the permanent place of dwelling of the Respondent to a nursing home, mental health facility or other facility that places restrictions on the individual's ability to leave or have visitors;¹³ (f) establish or move the place of dwelling of the Respondent outside this State;¹⁴ (g) unless generally set forth in the Guardian's Plan or the Guardian gives notice of the action in accordance with 18-C M.R.S. § 5-314(5)(F), take action that would result in the sale of or surrender the lease to the primary dwelling of the Respondent;¹⁵ (h) revoke or amend a power of attorney for health care or an advance health care directive or power of attorney for finances executed by the Respondent;¹⁶ (i) initiate the commitment of the Respondent to a mental health facility except in accordance with the State's

procedure for involuntary civil commitment under Title 34-B, chapter 3, subchapter 4, article 3;¹⁷ (j) restrict the ability of the Respondent to communicate, visit or interact with others, including receiving visitors or making or receiving telephone calls, personal mail or electronic communications, including through social media, or participating in social activities, unless a protective order or a protective arrangement instead of guardianship is in effect that limits contact between the Respondent and a person, or the Guardian has good cause to believe restriction is necessary because interaction with the person poses a risk of significant physical, psychological or financial harm to the Respondent and the Guardian complies with the notice requirements of 18-C M.R.S. § 5-315(3)(C).¹⁸

5. Unless otherwise provided below, the Respondent retains the right to vote and the right to marry.¹⁹

The Court hereby finds that the Respondent cannot communicate, with or without support, a specific desire to participate in the voting process, and hereby removes Respondent's right to vote.

The Court hereby places conditions on the Respondent's right to marry. The conditions placed on the Respondent's right to marry, and the Court's findings that support the conditions on the right to marry are as follows:

The Court hereby removes the Respondent's right to marry. The Court's findings that support the removal of the right to marry are as follows:

6. The Court hereby appoints the following person(s) as successor Guardian to the Guardian(s) named in Paragraph 2 above.²⁰

The successor Guardian shall serve upon the following future event:²¹

The successor Guardian hereby appointed shall succeed to the predecessor Guardian's powers as provided in Paragraphs 3 and 4 above OR the successor Guardian's powers shall be modified from those provided in Paragraphs 3 and 4 as follows:²²

7. The Guardian shall provide notice to the spouse, domestic partner and/or adult children of the individual under guardianship, unless modified below, and to others listed in this paragraph, and access to reports and plans pertaining to the individual subject to guardianship, as required in 18-C M.R.S. § 5-310(5) (A) through (I).

The provision of notices and access to reports and plans provided in 18-C M.R.S. § 5-310(6) to one or more of the Respondent's spouse, domestic partner, and/or adult child(ren) would be contrary to the preferences or prior directions of the Respondent or not in the best interest of the Respondent, as follows:²³

The following additional person(s) is/are entitled to notices and/or to access to reports and plans as provided below:²⁴

8. The Court has reviewed the Guardian's Plan submitted with the petition, and such Plan is hereby approved.²⁵ The Guardian shall provide a copy of the Plan to the individual subject to guardianship and to all persons entitled to notice as provided in paragraph 7 of this Order.

9. The Guardian shall at least annually submit to the Court a Report in a record regarding the condition of the Respondent and accounting for money and other property in the Guardian's possession or subject to the Guardian's control. The Guardian shall provide a copy of the report to the individual subject to guardianship and to all persons entitled to notice as provided for in paragraph 7 of this Order.²⁶

10. The Guardian shall give a copy of this Order together with a notice of the right to request termination or modification to the Respondent and to all other persons given notice under 18-C M.R.S. § 5-303 not later than 14 days after the date of this Order.²⁷

Conservator for the Respondent:

11. The Court finds by clear and convincing evidence that the Respondent is unable to manage property or financial affairs because²⁸

Of a limitation in the ability to receive and evaluate information or make or communicate decisions even with the use of appropriate supportive services, technological assistance and supported decision making that provide adequate protection for the Respondent; OR

The Respondent is missing, detained or unable to return to the United States;

AND appointment of a conservator is necessary to

Avoid harm to the Respondent or significant dissipation of the property of the Respondent; OR

Obtain or provide money needed for the support, care, education, health or welfare of the Respondent, or of an individual entitled to the Respondent's support, and protection is necessary or desirable to obtain or provide money for the purpose;

AND the Respondent's identified needs cannot be met by less restrictive alternatives.

12. The Court hereby appoints the following person(s) as Conservator for the property and financial affairs of Respondent. Co-Conservators shall each serve immediately and shall make decisions jointly unless otherwise specified below:²⁹

The person(s) hereby appointed has/have priority to serve, or the Court otherwise finds that such person(s) is/are best qualified to serve as Conservator or appointment of such person(s) is in the Respondent's best interest.³⁰

13. The Court hereby establishes a:

Full Conservatorship. The Conservator has all powers available under the Maine Uniform Guardianship, Conservatorship and Protective Proceedings Act.³¹ The basis for granting a full conservatorship and the specific findings that support the Court's conclusion that a limited conservatorship would not meet the functional needs of the Respondent are as follows:³²

Limited Conservatorship. The property placed under the control of the Conservator and the powers granted to the Conservator are as follows:³³

14. Unless otherwise ordered below, the Conservator must give notice to persons entitled to notice under 18-C M.R.S. § 5-403(4) and receive specific authorization by the Court before the Conservator may exercise with respect to the conservatorship the power to: (a) make gifts, except gifts of *de minimus value* and as provided in 18-C M.R.S. § 5-421(2)(Y), (b) sell, encumber an interest in or surrender a lease to the primary dwelling of the Respondent; (c) convey, release or disclaim contingent or expectant interests in property, including marital property and any right of survivorship incident to joint tenancy; (d) exercise or release a power of appointment; (e) create a revocable or irrevocable trust of property of the conservatorship estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the Respondent; (f) exercise a right to elect an option or change a beneficiary under an insurance policy or annuity or surrender the policy or annuity for its cash value; (g) exercise a right to an elective share in the estate of a deceased spouse or domestic partner of the Respondent or to renounce or disclaim a property interest; (h) grant a creditor a priority for payment over creditors of the same or higher class if the creditor is providing property or services used to meet the basic living and care needs of the Respondent and preferential treatment otherwise

would be impermissible under 18-C M.R.S. § 5-428(5); and (i) make, modify, amend or revoke the will of the individual subject to conservatorship:³⁴

15. The Court hereby appoints the following person(s) as successor Conservator to the Conservator(s) named in Paragraph 13 above.³⁵

The successor Conservator shall serve upon the following future event:³⁶

The successor Conservator hereby appointed shall succeed to the predecessor Conservator's powers as provided in Paragraphs 14 and 15 above OR the Successor Conservator's powers shall be modified from those provided in Paragraphs 14 and 15 above as follows:³⁷

16. The Conservator shall provide notice to the spouse, domestic partner and/or adult children of the individual under conservatorship, unless modified below, and to others listed in this paragraph, and access to reports and plans pertaining to the individual subject to conservatorship as provided in 18-C M.R.S. § 5-411(5) & (6).

The provision of notices and access to reports and plans provided in 18-C M.R.S. § 5-411(5) to one or more of the Respondent's spouse, domestic partner, and/or adult child(ren) would be contrary to the preferences or prior directions of the Respondent or is not in the best interest of the Respondent, as follows:³⁸

The following additional person(s) is/are entitled to notices and to access to reports and plans as provided below:³⁹

18. The Conservator shall furnish a bond with a personal/corporate surety in the amount of \$ _____ and/or an alternative asset-protection arrangement as follows:⁴⁰

OR

No bond or alternative asset-protection arrangement is required because:

The estate is valued at less than \$50,000 and the Court does not otherwise find that a bond is required;⁴¹

Conservator is a regulated financial service institution qualified to do trust business in this state;⁴²

Conservator is Respondent's spouse and the Court, in its discretion, waives the requirement of a bond or alternative asset-protection arrangement;⁴³ or

A bond or other asset-protection arrangement is not necessary to protect the interests of the Respondent for the following reason(s):⁴⁴

19. The Conservator shall file an Inventory with the Court within 90 days according to law.⁴⁵

20. The Conservator shall file a Report in a record with the Court regarding the administration of the conservatorship estate annually, on resignation or removal, on termination of the conservatorship, and/or as follows:⁴⁶

21. The Conservator shall give a copy of this Order together with a notice of the right to request termination or modification to the Respondent unless the Respondent is missing, and to all other persons given notice under 18-C M.R.S. § 5-403 not later than 14 days after the date of this Order.⁴⁷

Pursuant to M.R.Prob.P. 79(a) and at the specific direction of the Court, the Register shall enter on the docket that this Order is incorporated by reference.

Dated: _____

Judge of Probate

¹ 18-C M.R.S. §§ 5-310(1); 5-303(2); 5-411(2); 5-403(2).

² 18-C M.R.S. §§ 5-303(3); 5-302(2)(A)-(C); 5-403(3); 5-402(2)(A)-(C).

³ 18-C M.R.S. §§ 5-310(1)(A); 5-301(1)(A).

⁴ Include name and address of each Guardian hereby appointed. The Court may appoint a co-guardian to serve immediately or when a designated future event occurs. 18-C M.R.S. § 5-110(1), (4).

⁵ 18-C M.R.S. § 5-309(1)-(3).

⁶ 18-C M.R.S. §§ 5-102(9), 5-314(1).

⁷ 18-C M.R.S. § 5-310(3).

⁸ 18-C M.R.S. § 5-310(4).

⁹ 18-C M.R.S. § 5-314(2).

¹⁰ 18-C M.R.S. § 5-314(3)(A).

¹¹ 18-C M.R.S. § 5-314(3)(B).

¹² 18-C M.R.S. § 5-314(3)(C).

¹³ 18-C M.R.S. § 5-314(5)(D).

¹⁴ 18-C M.R.S. § 5-314(5)(E). The move or establishment must also be consistent with the guardian's plan.

¹⁵ 18-C M.R.S. § 5-314(5)(F).

¹⁶ 18-C M.R.S. § 5-315(1). If a power of attorney for health care or an advance health care directive is in effect, unless the Court orders to the contrary, a health care decision of an agent takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible. If a power of attorney for finances is in effect, unless the Court orders to the contrary, a decision by the agent that the agent is authorized to make under the power of attorney for finances takes precedence over that of the guardian and the guardian shall cooperate with the agent to the extent feasible.

¹⁷ 18-C M.R.S. § 5-315(2).

¹⁸ 18-C M.R.S. § 5-315(3).

¹⁹ 18-C M.R.S. § 5-310(2).

²⁰ 18-C M.R.S. § 5-111. Include name and address of each successor Guardian hereby appointed.

²¹ 18-C M.R.S. § 5-111(3).

²² 18-C M.R.S. § 5-111(4).

²³ 18-C M.R.S. § 5-310(6). Except as modified in this paragraph, the Respondent's spouse or domestic partner, if any, and adult children, if any, are entitled to the notices and to access to reports and plans provided in 18-C M.R.S. § 5-310(5).

²⁴ 18-C M.R.S. § 5-310(5).

²⁵ 18-C M.R.S. § 5-316(1), (4).

²⁶ 18-C M.R.S. § 5-317.

²⁷ 18-C M.R.S. § 5-311.

²⁸ 18-C M.R.S. §§ 5-401(2), 5-411(2)(A).

²⁹ Include name and address of each Conservator hereby appointed. The Court may appoint a co-Conservator to serve immediately or when a designated future event occurs. 18-C M.R.S. § 5-110(1).

³⁰ 18-C M.R.S. § 5-410(1)-(3).

³¹ 18-C M.R.S. § 5-102(8); 5-421.

³² 18-C M.R.S. § 5-411(3).

³³ 18-C M.R.S. § 5-411(4).

³⁴ 18-C M.R.S. § 5-414.

³⁵ 18-C M.R.S. § 5-111. Include name and address of each successor Conservator hereby appointed.

³⁶ 18-C M.R.S. § 5-111(3).

³⁷ 18-C M.R.S. § 5-111(4).

³⁸ 18-C M.R.S. § 5-411(6). Except as modified in this paragraph, the Respondent's spouse or domestic partner, if any, and adult children, if any, are entitled to the notices and to access to reports and plans provided in 18-C M.R.S. § 5-411(5).

³⁹ 18-C M.R.S. § 5-411(5).

⁴⁰ 18-C M.R.S. § 5-416.

⁴¹ 18-C M.R.S. § 5-416(1).

⁴² 18-C M.R.S. § 5-416(3).

⁴³ 18-C M.R.S. § 5-416(4).

⁴⁴ 18-C M.R.S. § 5-416(1).

⁴⁵ 18-C M.R.S. § 5-420.

⁴⁶ 18-C M.R.S. § 5-423.

⁴⁷ 18-C M.R.S. § 5-412.

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