

Appointment of Conservator/Issuance of Protective Order Checklist

The following checklist is based on [MCL 700.5404](#) and [MCL 700.5406](#).

- Before hearing, may order examination of individual if the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication. [MCL 700.5406\(2\)](#).
- Petition filed by:
 - Individual to be protected. [MCL 700.5404\(1\)](#); or
 - A person interested in the individual's estate, affairs, or welfare, including a parent, guardian, custodian; or
 - A person adversely affected by lack of effective management of the individual's property or business affairs. [MCL 700.5404\(1\)](#).
- Petition includes:
 - Petitioner's interest.
 - Name, age, residence, and address of the individual to be protected.
 - Name and address of guardian, if any.
 - Name and address of nearest known relative.
 - General statement of estimated value of the individual's property, including compensation, insurance, and pension.
 - Reason appointment is necessary.

- If seeking conservatorship, name and address of person whose appointment is sought, as well as basis for claim of appointment priority. [MCL 700.5404\(2\)](#).
- Ensure individual to be protected resides in this state, or is present in this state and has a significant connection¹ to this state. [MCL 700.5402a\(1\)](#).
- Schedule hearing. [MCL 700.5406\(2\)](#).
- Venue is proper. [MCL 700.5403\(a\)-\(b\)](#).
- Ensure proper notice has been provided. [MCL 700.5311](#); [MCL 700.5405](#); [MCR 5.125\(C\)\(25\)](#).
- If petition is based on individual's minority (age), may appoint attorney for minor if his or her interests are or may be inadequately represented. [MCL 700.5406\(1\)](#).
- If petition is not based on individual's minority (age), appoint a guardian ad litem unless individual hired counsel or is mentally competent but aged or physically infirm. [MCL 700.5406\(2\)](#).
- May permit use of videoconferencing technology in accordance with [MCR 2.407](#), if requested by a participant or sua sponte.² [MCR 5.140\(A\)](#). "[I]f the subject of the petition wants to be physically present, the court must allow the individual to be present." [MCR 5.140\(C\)](#). A minor has the right to be present at a minor guardianship hearing concerning him or her if the minor is age 14 or older. *Id.*
- Notwithstanding [MCR 2.407\(B\)\(5\)](#) and an individual's right to be present at a hearing on a petition when he or she is the subject of the petition, "the use of videoconferencing technology is presumed in all uncontested petitions or motions in guardianship, conservatorship, protected individual and decedent estates." [MCR 5.140\(C\)](#).

¹ "In determining if the individual for whom a conservator or protective order is sought has a significant connection to this state under [[MCL 700.5402a\(1\)\(b\)](#)], the court shall consider all of the following factors: (a) The wishes of the individual[;] (b) The location of the individual's family and other interested persons[;] (c) The length and time the individual was present in this state and the duration of any absence[;] (d) The location of the individual's property[;] (e) The extent to which the individual has ties to this state, such as voting registration, state tax return filing, vehicle registration, driver license, social relationship, and receipt of services[;] (f) Any other factor the court considers relevant." [MCL 700.5402a\(2\)](#).

² If videoconferencing technology is used, it must be "in accordance with the standards established by the State Court Administrative Office[;]" and the proceeding "must be recorded verbatim by the court." [MCR 5.140\(D\)](#).

- Identify parties and interested persons.
- State history.
- Opening statements (unless waived).
- Petitioner presents witnesses and evidence.
- Respondent presents witnesses and evidence.
- Guardian ad litem, physician, mental health professional, and/or visitor reports to court regarding meeting, examination, and/or evaluation. [MCL 700.5406\(4\)\(c\)](#).
- Make findings:
 - Find whether by clear and convincing evidence, [MCL 700.5406\(7\)](#):
 - If petition involves minor:** Minor owns money or property that requires management or protection; minor has business affairs that may be jeopardized or prevented by minority; or minor needs money for support and education and protection is necessary or desirable to obtain or provide money. [MCL 700.5401\(2\)](#).
 - If petition does not involve minor or individual who is mentally competent but aged or physically infirm:** Individual is unable to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by foreign power³, or disappearance; AND individual has property³ that will be wasted or dissipated unless proper management is provided,⁴ or money is needed for the individual's or dependent's support, care, and welfare and protection is necessary to obtain or provide money. [MCL 700.5401\(3\)](#).

³ When determining for purposes of [MCL 700.5401\(3\)\(b\)](#) whether an individual “has property that will be wasted or dissipated unless proper management is provided,” the court may consider both individually-held assets and jointly-held assets. *In re Brody Conservatorship*, 321 Mich App 332, 340 (2017) (“[t]he probate court did not err when it considered whether the jointly held assets would be subject to waste or dissipation in satisfaction of [MCL 700.5401\(3\)\(b\)](#)”).

⁴ “[T]he Legislature’s use of the word ‘will’ to modify ‘be wasted or dissipated unless proper management is provided’ in [MCL 700.5401\(3\)\(b\)](#) supports the probate court’s decision to focus on the likelihood that assets [would] be prospectively wasted or dissipated if a conservator [were] not appointed.” *Brody*, 321 Mich App at 343 (finding that “[t]he probate court properly concluded that it was unnecessary to find any waste or dissipation had already occurred” before appointing a conservator where the ward’s “disability made her unable to manage her property and business affairs effectively”).

- If petition involves individual who is mentally competent but aged or physically infirm:** The individual is unable to manage his or her property and affairs, has recognized his or her own disability, and has requested conservatorship.
- Petition for conservatorship.** If clear and convincing evidence exists, appoint:
 - Conservator with priority under [MCL 700.5409](#).
 - Professional conservator as described in [MCL 700.5106](#) after determining that:
 - Appointment of a professional fiduciary is in the incapacitated person's best interests, and
 - A preponderance of the evidence finding shows that no persons designated or listed with priority under [MCL 700.5409](#) are competent, suitable, and willing to serve in that fiduciary capacity. *In re Guardianship/Conservatorship of Harold William Gerstler*, 324 Mich App 494, 513-514 (2018). See also [MCL 700.5106\(2\)](#).
- Petition for protective order.** If clear and convincing evidence exists, issue appropriate protective order or arrangement as set out under [MCL 700.5407](#) and [MCL 700.5408](#). *In re Estate of Vansach*, 324 Mich App 371, 384 (2018).

Court form to use:

Order Regarding Petition for Protective Order, PC 644