

GUIDANCE FOR NEW AND EXISTING CONSERVATORS* COMPLIANCE WITH THE REQUIREMENTS OF HF 610

Presentation Outline

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I. Duties of Conservator under HF 610

The Probate Code § 633.641 currently provides: *“It is the duty of the conservator of the estate to protect and preserve it, to invest it prudently, to account for it as herein provided, and to perform all other duties required of the conservatorship by law, and at the termination of the conservatorship, to deliver the assets of the ward to the person entitled thereto.”* Probate Code HF 610 § 633.641(1) similarly provides that the conservator *“is a fiduciary and has duties of prudence and loyalty to the protected person.”*

In addition, HF 610 § 633.641(2) provides that a conservator has a duty to consider any estate plan or other document expressive of protected person’s investment and distributive intent in investing and distributing protected person’s assets. HF 610 § 633.641(4) also retains the requirement in existing Probate Code § 633.641 requiring a conservator to report assets and income to Department of Human Services if a protected person is receiving Medicaid assistance.

II. Problems with Existing Court Monitoring of Conservators and Conservatorships

A. Retrospective reporting to the court by conservators

1. The Probate Code § 633.670 currently provides that once a conservator is appointed by the court, the conservator must file an inventory of the protected person’s assets and thereafter must file annual reports and accountings. The conservator’s annual report looks backward and describes actions the conservator has taken over the past year. Therefore, the court’s review of the conservator’s actions is essentially retrospective in nature, that is the court is asked to ratify actions described in the report after the conservator has already taken them. Importantly, the court has no real oversight over the actions of the conservator until the filing of the first annual report.

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2. Because of the retrospective nature of reporting to the court by the conservators, the court is usually not in a position to prevent misfeasance or malfeasance by conservators before it happens. By the time misfeasance or malfeasance is discovered, if at all, the assets all too often have disappeared or dissipated with no chance for their recovery.

B. Inadequate information provided court in annual reports

The current form used by conservators for the required annual reports all too often does not result in the reporting of information that gives a very complete picture of the protected person's financial affairs or the conservator's management of the protected person's assets. Consequently, the court frequently lacks the information that it needs for informed decision making as to the appropriateness of the conservator's actions.

C. Lack of proactive court review of annual reports

It has been reported that some judges "rubber stamp" annual reports without the thorough review needed to ensure the financial affairs of the protected person are being appropriately managed.

III. HR 610's Response to Court Monitoring Problems

A. Goal of HF 610 regarding establishing conservatorship

The overarching goal of HF 610 is to strengthen and enhance the protections for highly vulnerable Iowans under conservatorship—both adults with diminished decision-making capacity and minors—through more effective and efficient court monitoring and oversight of established conservatorships. The Iowa Supreme Court on Guardianship and Conservatorship Reform Task Force found that such monitoring and oversight are needed to ensure the accountability of conservators and to prevent as well as identify and remedy misfeasance and malfeasance with respect to the assets of protected persons by conservators.¹

B. Requirement of an initial financial management plan

1. In response to the foregoing problems with existing court monitoring and oversight, HF 610 § 633.670 requires prospective and proactive court review of financial affairs of the protected person, as well as the informed granting of the authority and the powers to be exercised by a conservator.
2. The vehicle for such court review is contained in HF 610 § 633.670. It sets forth the new requirement that within 90 days of appointment, a conservator must file an initial financial plan for protection, management, investment, and expenditure of the protected person's assets together with an inventory of the protected person's assets. Once the plan and the authority and powers needed to carry out the plan are approved

by the court, the conservator can exercise the authority and powers described in the plan without further court order subject to modification in subsequent annual reports.

3. HF 610 § 633.670 specifically provides:

1. A conservator shall file an initial plan for protecting, managing, investing, expending, and distributing the assets of the conservatorship estate within ninety days after appointment. The plan must be based on the needs of the protected person and take into account the best interest of the protected person as well as the protected person's preference, values, and prior directions to the extent known to, or reasonably ascertainable by, the conservator.

a. The initial plan shall include all of the following:

(1) A budget containing projected expenses and resources, including an estimate of the total amount of fees the conservator anticipates charging per year and a statement or list of the amount the conservator proposes to charge for each service the conservator anticipates providing to the protected person.

(2) A statement as to how the conservator will involve the protected person in decisions about management of the conservatorship estate.

(3) If ordered by the court, any step the conservator plans to take to develop or restore the ability of the protected person to manage the conservatorship estate.

(4) An estimate of the duration of the conservatorship.

b. Within two days after filing the initial plan, the conservator shall give notice of the filing of the initial plan with a copy of the plan to the protected person, the protected person's attorney and court advisor, if any, and others as directed by the court. The notice must state that any person entitled to a copy of the plan must file any objections to the plan not later than fifteen days after it is filed.

c. At least twenty days after the plan has been filed, the court shall review and determine whether the plan should be approved or revised, after considering objections filed and whether the plan is consistent with the conservator's powers and duties.

d. After approval by the court, the conservator shall provide a copy of the approved plan and order approving the plan to the protected person, the protected person's attorney and court advisor, if any, and others as directed by the court.

e. The conservator shall file an amended plan when there has been a significant change in circumstances or the conservator seeks to deviate significantly from the plan. Before the amended plan is implemented, the provisions for court approval of the plan shall be followed as provided in paragraphs "b", "c", and "d".

2. A conservator shall file an inventory of the protected person's assets within ninety days after appointment which includes an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. Copies of the inventory shall be provided to the protected person, the protected person's attorney and court advisor, if any, and others as directed by the court. When the conservator receives additional property of the protected person, or becomes aware of its existence, a description of the property shall be included in the conservator's next annual report.

3. A conservator shall file a written and verified report for the period since the end of the preceding report period. The court shall not waive these reports.

a. These reports shall include all of the following:

(1) Balance of funds on hand at the beginning and end of the period.

(2) Disbursements made.

(3) Changes in the conservator's plan.

(4) List of assets as of the end of the period.

(5) Bond amount and surety's name.

(6) Residence and physical location of the protected person.

(7) General physical and mental condition of the protected person.

(8) Other information reflecting the condition of the conservatorship estate.

b. These reports shall be filed:

(1) On an annual basis within sixty days of the end of the reporting period unless the court

orders an extension for good cause shown in accordance with the rules of probate procedure.

(2) Within thirty days following removal of the conservator.

(3) Upon the conservator's filing of a resignation and before the resignation is accepted by the court.

(4) Within sixty days following the termination of the conservatorship.

(5) At other times as ordered by the court.

c. Reports required by this section shall be served on the protected person's attorney and court advisor, if any, and the veterans administration if the protected person is receiving veterans benefits.

4. The requirement that a conservator file an initial plan and an inventory is designed to encourage the conservator to identify the assets, liabilities, income sources, and expenses of the protected person, and proactively to develop a plan for meeting the protected person's financial needs and the financial management of the protected person's assets for the period prior to the required filing of the next annual report.
5. The initial plan requirement will enable the court to determine whether the conservator has developed an appropriate plan and will furnish the court with a benchmark to evaluate conservator's future performance.
6. Most importantly the plan increases the ability of the court to prevent misappropriation and misuse of the protected person's assets by identifying proposed actions on the part of the conservator that pose a serious risk of such misappropriation and misuse.

C. Procedural issues regarding initial plan and inventory

1. HF 610 § 633.670(1) specifies that the plan and inventory must be filed with the court by the conservator within 90 days after appointment.
2. Within 2 days after filing the plan, the conservator must give notice of filing and a copy of the initial plan to:
 - the protected person;
 - the protected person's attorney;
 - the court visitor, if any; and
 - any other person as directed by the court.
3. Any person entitled to a plan has 15 days after filing of the plan to file any objections.
4. The court must review the plan at least 20 days after filing to either approve or revise.
5. The conservator must file an amended plan whenever:
 - There has been a significant change in circumstances, or
 - The conservator plans to deviate significantly from the plan.

6. The same deadlines are specified for an amended plan as for an initial plan.
7. In addition, HF 610 § 633.670(3) requires a conservator to provide copies of the report to the veterans administration if the protected person is receiving veterans benefits.

D. Contents of initial plan

1. HF 610 § 633.670(1) specifies that the initial plan “*shall include:*”
 - A budget including
 - projected expenses,
 - projected resources,
 - estimated conservator fees per year, and
 - statement, or list, of the amount the conservator proposes to charge for each service;
 - A statement by the conservator as to how the conservator plans to involve the protected person in decisions about the management of the protected person’s assets;
 - If ordered by the court, steps the conservator plans to take to restore the protected person’s ability to manage his/her own financial affairs; and
 - An estimate of the duration of the conservatorship.

E. Institute Model forms relating to initial plan requirement

1. The following model forms related to the initial plan requirement have been prepared by the Institute on Guardianship and Conservatorship (with assistance and input from judges and practitioners) for use by judges and conservators:
 - Model Form One: Court Order Appointing Conservator and Establishing Initial Authority,
 - Model Form Two: Conservator’s Initial Financial Management Plan, and
 - Model Form Three: Court Order Approving Initial Plan and Establishing Authority of Conservator.
2. These forms are included in Appendix A of this paper.

F. Best practices regarding initial plan requirement

1. New conservatorships
 - In the order appointing a new conservator, the court should expressly authorize the conservator to exercise any powers reasonably necessary to allow the

conservator to prepare and submit the required initial plan for subsequent court review and approval. If any additional appropriate powers are identified during hearing on petition for appointment of conservator, the court can provide authority for such powers in the order appointing the conservator.

- Model Form One: Court Order Appointing Conservator and Establishing Initial Authority mentioned above and contained in Appendix A of this paper is intended to be used for this purpose.

2. Existing Conservatorships

- Since the filing of an initial financial management plan for review and approval by the court is a new requirement of HF 610, existing conservators of already established conservatorships obviously have not filed and obtained court approval of plans. However, there are simple solutions to the temporary problem of bringing existing conservatorships into compliance HF 610 prior to its effective date of January 1, 2020.
- If an existing conservator's next annual report is due before January 1, 2020, the conservator should include in the annual report the information that would be included in an initial financial management plan.
- If an existing conservator's annual report is due after January 1, 2020, the conservator can apply to the court for an order extending the conservator's authority to continue managing the conservatorship in the current manner after January 1, 2020, pending the court's approval of the newly required financial management plan in the conservator's next annual report.
- Model Form Four: Conservator's Application for Order Clarifying Authority and Model Form Five: Court Order Clarifying Authority have been prepared by the Institute on Guardianship and Conservatorship (with assistance from judges and practitioners) for use by conservators and judges for this purpose.
- These forms are included in Appendix A of this paper.
- Alternatively, the conservator can file an application with the court for explicit authority to exercise specific powers after January 1, 2020, pending the court's approval of the newly required financial management plan in the conservator's next annual report.

IV. Annual Reports and Other Required Conservator Reports

1. HF 610 § 633.670(3) retains the requirement under current Probate Code 633.670(1) that conservators must file annual reports.
2. HF 610 § 633.670 (3), unlike the current Code, expressly states that this reporting requirement cannot be waived by the court. In accordance with a recommendation of the Guardianship and Conservatorship Reform Task Force, the Supreme Court adopted Rule of Probate Procedure 7.8 prohibiting waivers of reporting requirements. Waivers are prohibited because they negatively impact the court's ability to fulfill its monitoring function which is integral to the responsibilities of the court to protect

- vulnerable adults and minors under conservatorship. Underlying the waiver prohibition also is the view that annual reporting is not unduly burdensome for fiduciaries such as conservators and serves as a reminder to them of the seriousness of the responsibility they took on when they agreed to serve as conservators.
3. HF 610 § 633.670(3) specifies that the conservator must file the annual report within 60 days at the end of the reporting period and specifies that it must set forth the following:
 - balance of funds on hand at beginning and end of annual period,
 - list of disbursements made,
 - changes in the conservator’s initial plan,
 - assets as of end of annual period,
 - bond amount and surety’s name,
 - residence and physical location of protected person,
 - description of physical and mental condition of protected person, and
 - any other information reflecting the condition of the protected person’s financial condition.
 4. Best practice – For complex conservatorships, it may be a best practice to file an amended financial management plan with each annual report to ensure that the conservator’s plan for ongoing management of the protected person’s financial affairs is appropriate and that the conservator has the authority and powers needed to implement the plan.
 5. The conservator also must file the following other written reports:
 - within 30 days after removal of conservator;
 - upon resignation of conservator, but before the court approves resignation;
 - within 60 days after termination of conservatorship; and
 - any other time as required by the court.

V. Conservators’ Authority and Exercise of Powers Without Prior Court Approval

A. General provisions of Probate Code applicable to all fiduciaries §§ 633.63–633.162

1. HF 610 did **NOT** repeal Probate Code §§ 633.63–633.162 captioned “General Provisions Relating to Fiduciaries.” These sections authorize “*fiduciaries*” to exercise a number of powers without prior court approval. The Probate Code § 633.3(17) defines “*fiduciary*” as including a conservator, and HF 610 § 633.641 expressly states that a conservator is a fiduciary.
2. Since the enactment of HF 610 on May 1 and continuing after it becomes effective on January 1, 2020, new and existing conservators have and will continue to have the

- authority and powers enumerated in the Probate Code's General Provisions Relating to Fiduciaries.
3. These provisions deal with the following authority and powers of conservators (and other fiduciaries):
 - 633.67 Powers of surviving cofiduciary.
 - 633.68 Powers of successor fiduciary.
 - 633.77 Receipts by one fiduciary.
 - 633.78 Fiduciary written request and third-party protection.
 - 633.81 Suit by and against a fiduciary.
 - 633.82 Designation of attorney.
 - 633.84 Delegation of authority.
 - 633.87 Deposit of money in banks.
 - 633.89 Power of fiduciary or custodian to deposit securities.
 - 633.90 Power of a fiduciary to access digital assets.
 - 633.95 Release of liens and mortgages.
 - 633.96 Specific performance voluntary.
 - 633.110 Receipts taken.
 - 633.123A Investments in investment companies and investment trusts.
 - 633.124 Investment may be held in name of nominee of bank or trust company.
 - 633.127 Establishment of common trust funds.
 - 633.144 Mortgages and judgments.
 - 633.156 Deposits by corporate fiduciaries.

 4. Among the specific powers that conservators commonly need to exercise and will continue to be able to exercise without prior court approval include, but are not limited to, the following:
 - Making of bank deposits—§ 633.87 expressly allows conservators as fiduciaries to deposit money in banks.
 - Making of request to third party about assets of protected party—§ 633.78 expressly allows conservator to submit written requests to third parties for information concerning protected person's assets held by third parties and to obtain the protected person's property from the third parties.
 - Designation of an attorney—§ 633.82 expressly allows conservators to designate an attorney to assist in the administration of the conservatorship.
 - Holding mutual funds as investments—§ 633.123 permits conservators as fiduciaries to hold mutual funds.

- Holding of securities in nominee name—§ 633.124 permits conservators as fiduciaries to hold securities in nominee name.
5. HF 610 did repeal existing Probate Code § 633.649, which read: “*Except as expressly modified herein, conservators shall have the powers relating to all fiduciaries as set out in §§ 633.63 through 633.162.*” However, the repeal of this section by HF 610 was not intended to and does not strip conservators of existing conservatorships of all the enumerated powers contained in §§ 633.63 through 633.162 as of its effective date of January 1, 2020.

B. HF 610 repeal of § 633.646

1. HF 610 repeals existing Probate Code § 633.646, which authorized conservators to exercise five powers without a prior court order.
2. The repeal of § 633.646 will have limited impact on the authority and the powers of new or existing conservators.
 - HF 610 repealed § 633.646(1), providing that conservator could collect and receive any principal or income without prior court order, and § 633.646(4), providing that the conservator could receive other property from any source without prior court order. As it has been noted, however, the general Probate Code provision § 633.78, remains in effect, which provides that a conservator may present a written request to any person for the purpose of obtaining property owned by the protected person or for information about such property needed to perform the conservator’s duties.
 - HF 610 repealed § 633.646(1) authorizing a conservator to enforce, defend against or prosecute any claim by or against the ward or the conservator; to sue on and defend claims in favor of, or against, the ward or the conservator without a prior court order. As it has been noted, however, the general Probate Code provision § 633.81 remains in effect, and provides a fiduciary with authority to “*sue, be sued and defend in such capacity,*” which is virtually identical to the repealed § 633.646(1).
 - HF 610 repealed § 633.646(2) authorizing the sale or transfer of perishable personal property. However, the need to exercise this power without prior court order is extraordinarily rare in the vast majority of conservatorships. Similarly, although HF 610 repealed § 633.644(3) authorizing voting at corporate meetings, the need to exercise this power without a prior court order is not that common. In the event that there is a crucial vote in which a vote on behalf of the protected person will matter, affirmative authority from the court can easily be sought.
 - Further, the requirements of HF 610 with respect to proactive court oversight of conservatorships negate much of the need for the repealed § 633.646(5), which allowed a conservator to hold assets for up to a year until the filing of the annual report. However, as it has been pointed out, HF 610 requires the conservator to file an initial financial management plan within 90 days of appointment, and the

plan must set forth the conservator's proactive plan for managing the protected person's assets. In short, HF 610 better protects the protected person's assets than § 633.646(5).

- Given that the primary goal of HF 610 is to provide additional and stronger safeguards against the misfeasance or malfeasance of the protected person's assets by a conservator, the new provisions of HF 610 requiring enhanced court review and advance approval of the authority and powers to be exercised by conservators should assuage any remaining concerns about the repeal of § 633.646.

C. Conservator's authority and exercise of powers requiring prior court approval

1. Turning to the authority and powers of a conservator requiring prior court approval, once again it must be emphasized that HF 610 § 633.670 contains the new requirement that a conservator must file within 90 days of appointment an initial financial plan for protection, management, investment, and expenditure of the protected person's assets together with an inventory of the protected person's assets. Once the plan is approved by the court and the court has granted the conservator the necessary authority and powers to carry out the plan, the conservator can exercise the authority and powers described in the plan and order without further court order, subject to modification in subsequent annual reports.
2. HF 610 also repeals Probate Code § 633.647 which lists seven powers that a conservator can exercise subject to court approval. However, HF 610 § 633.642 contains a similar listing of eight powers that a conservator can exercise subject to court approval.

VI. Issuance and Use of Letters of Appointment

A. Significance of letters of appointment under current law

1. The current Probate Code 633.178 currently provides: "*Upon filing of an oath of office or certification and a bond, if any is required, the clerk shall issue letters under seal of the court, giving the fiduciary the powers **authorized by law.***" (emphasis added).
2. The letters of appointment issued under current law are typically no more than a page in length and lack substantive detail regarding the specific powers that a conservator may exercise.
3. Under current law, letters of appointment are not evidence of a conservator's plenary authority to engage in any and all transactions, as such plenary authority does not exist. Letters of appointment typically lack any substantive detail as to the nature and extent of the conservator's authority, and they **DO NOT** inform third parties as to what a conservator can or cannot do.

4. Many of the powers commonly exercised by conservators with regard to transactions with third parties may only be done with court approval, and hence the exercise of these powers is not “*authorized by law*” absent a court order. Thus, even under current law, prudent third parties must request proof of court authorization of the conservator’s power to engage in such transactions involving the exercise of such powers.

B. Effect of HF 610 on letters of appointment

1. HF 610 is designed to customize conservator’s authority and powers according to the needs of each individual situation. To make letters of appointment more effective in protecting the protected person’s assets they should either reflect the authority and powers granted to the conservator or the order granting the authority and powers to the conservator should be attached to the letters.
2. As it has been pointed out, HF 610 requires that a conservator proactively set forth a plan to manage the protected person’s assets, and that the courts approve the plan and provide the conservator with authority to act to implement the plan. A revision of the current form used for letters of appointment may be advisable so that the letters contain an explanation of the powers held by a conservator so that third parties will know the nature and extent of a conservator’s authority.

VII. HF 610 and Financial Institutions

A paper prepared by Michel Nelson for the Iowa Academy of Trust and Estate Counsel asserts that HF 610 renders letters of appointment moot. According to Nelson: “*With the inherent powers applicable currently, providing a copy of the conservator’s letters of appointment was sufficient to have third parties do what the conservator asked on behalf of the protected party,*” and that “*the letters alone are meaningless starting in 2020.*”² And the paper goes on to assert that “*[i]t is highly likely that effective January 1, 2020, financial institutions will freeze existing conservatorship accounts unless the conservator has already provided them with evidence of court issued authority to operate the account in the manner it has been.*”³ (Emphasis in original.) However, this concern, as expressed, is misleading about not only the effects of HF 610 but also current law.

First, as mentioned above, the powers “inherent” in all fiduciaries specified in general Probate Code provisions §§ 633.63 through 633.162 still apply without the need for further court order. Therefore, any letters of appointment should be sufficient proof to third parties of the conservator’s authority to engage in any such transactions, as they are “authorized” by §§ 633.63 through 633.162.

Second, and most importantly, as mentioned above, even under current law, letters of appointment are not evidence of a conservator’s plenary authority to engage in any and all transactions. Third parties, such as financial institutions, who currently rely upon the mere presentation of letters of appointment are doing so at their own peril, as the letters of appointment lack any substantive detail as to the nature and extent of the conservator’s

authority. Many of the powers commonly exercised by conservators with regard to transactions with third parties may only be done with court approval, and hence the exercise of these powers is not “authorized by law” absent a court order. Thus, even under current law, prudent third parties must request proof of court authorization of the conservator’s power to engage in such transactions involving the exercise of such powers.

Third, Nelson declares that “*financial institutions will refuse to release financial information to an appointed conservator unless a court has authorized a conservator to obtain such information.*”⁴ However, Nelson ignores the existence of general Probate Code provision § 633.78, which specifically authorizes a fiduciary to make a written request to a third party for information and/or delivery of property held by the third party. HF 610 did not change § 633.78 and under that provision a conservator may still request information from financial institutions or any other third party. Nevertheless, third parties must be more thoroughly educated about what authority conservators make a request for information and/or the delivery of the property of a protected person.

Fourth, Nelson ignores the provisions of Article 3 of the Iowa Uniform Commercial Code (UCC) governing negotiable instruments and the law of contracts as it pertains to bank account agreements. Numerous provisions of the UCC govern bank transactions undertaken by fiduciaries, including, but not limited to:

- 554.3307 - Notice of breach of fiduciary duty;
- 554.3308 - Proof of signatures and status as holder in due course;
- 554.3402 - Signature by representative (If a person acting as a representative signs an instrument, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument.);
- 554.3409 – Acceptance of draft (“Acceptance” means the [bank’s] signed agreement to pay a draft as presented.);
- 554.3413 – Obligation of acceptor (The acceptor of a draft is obliged to pay the draft according to its terms at the time it was accepted,);
- 554.3417 – Presentment warranties;
- 554.3501 – Presentment;
- 554.3502 – Dishonor;

In addition to the above UCC provisions, all or nearly all agreements between banks and customers contain provisions addressing fiduciary accounts. Below is a sample portion of an account agreement commonly used in Iowa banks. The pertinent language plainly absolves the bank from any liability concerning authority of the fiduciary in signing checks⁵:

“Fiduciary Accounts. Accounts may be opened by a person acting in a fiduciary capacity. A fiduciary is someone who is appointed to act on behalf of and for the benefit of another. We are not responsible for the actions of a fiduciary, including the misuse of funds. This account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. You understand that by merely opening such an account, we are not acting in the capacity of a trustee in connection with the trust nor do we undertake any obligation to monitor or enforce the terms of the trust or letters.”

Thus, for existing conservatorships with existing bank accounts, the combination of the provisions of the UCC and the existing account agreements should reassure financial institutions that they do not need to freeze conservatorship bank accounts as a result of HF 610.

Since the filing of an initial financial management plan for review and approval by the court is a new requirement of HF 610, existing conservators of already established conservatorships obviously have not filed and obtained court approval of plans. As it has been recommended previously, if an existing conservator’s next annual report is due before January 1, 2020, the conservator should include in the annual report what should be included in an initial financial management plan. (See pp. 5-6 *infra.*)

If an existing conservator’s annual report is due after January 1, 2020, however, it has been pointed out that there is a simple solution to the temporary problem of bringing existing conservatorships into compliance with HF 610 prior to its effective date of January 1, 2020. The conservator could apply to the court for an order clarifying that the conservator has authority to continue conducting the financial affairs and managing the assets of the protected person’s in the same manner that they have been managed until the court’s approval of the newly required financial management plan in the conservator’s next annual report. An Institute model form for this purpose has been developed by the Institute on Guardianship and Conservatorship and is included in Appendix A of this paper. (See pp. 5-6 *infra.*)

VIII. Issuance of Iowa Supreme Court Forms

A. Supreme Court forms related to conservatorships

1. On August 20, 2019, the Iowa Supreme Court issued an administrative Order amending Iowa Court Rule 7.11 by deleting certain forms and issuing and authorizing the use of new forms for implementation of HF 610. The Order made the forms effective immediately on a temporary basis, subject to approval by the Iowa Legislative Council, and upon the effective date of HF 610 and HF 591 (minor guardianship bill).
2. From a review of the Court’s Order and the Rule 7.11 forms, it appears that the relevant conservatorship forms are intended to do the following:

Form 2 – Conservator’s Initial/Amended Plan – a generic initial or amended plan to fulfill the requirements of Iowa Code § 633.670(1) and (3);
Form 3 – Notice of Filing of Conservator’s Initial/Amended Plan – a form to notify the court and relevant others of the filing of the initial or amended plan, as required by Iowa Code § 633.670(1)(b);
Form 4 – Inventory of Protected Person – a generic form for filing of an inventory of assets as required by Iowa Code § 633.670(2);
Form 5 – Conservator’s Report – a generic form for filing of the annual report as required by Iowa Code § 633.670(3);
Form 6 – Conservator’s Request for Approval for Other Action On Behalf of Protected Person – a new form that allows conservators to request authority for those items requiring prior court approval under Iowa Code § 633.642 (see above).

B. Observations regarding Supreme Court conservatorship forms

1. The Supreme Court Rule 7.11 forms appear to attempt to model the style and format of the forms used under the pre-HF 610 system, and with the exception of Form 6 (discussed below) only provide for the reporting of the minimum statutorily required content.
2. The Court-created Rule 7.11 forms, although containing the statutorily-required minimum information, lack the specificity of the Institute model forms. The Supreme Court Form 2, Conservator’s Initial/Amended Plan, could be improved to help a conservator provide the court a more complete and full picture of the protected person’s/minor’s financial status and assets, the proposed financial management plan, and the authority and powers necessary needed to carry out the plan. This would be especially important for the many family members and other lay conservators who do not have or seek legal counsel for assistance in performing their duties. Most importantly, this form is in need of improvement so as to furnish courts with the information they need to effectively and efficiently monitor conservatorships.
3. Prior to issuance of these forms, the Supreme Court was made aware of the concerns raised by a member of the Iowa Academy of Trusts and Estates Counsel concerning the alleged lack of authority of existing conservators to act after January 1, 2020. Despite this knowledge, the Supreme Court apparently did not consider it necessary to address those concerns through the issuance of its 8/20/19 administrative Order or the forms it created.
4. The last box of Form 6 (“Other action”) allows the Form 6 to be used by a conservator to request authority for almost any proposed or desired act. Presumably, IF an existing conservator is concerned about a lack of authority to act after the effective date of HF 610 and before the filing of its first financial management plan, Form 6 could be used to request such authority by checking the “Other action” box and reciting in the narrative explanation section the authority it is seeking.

C. Best practice

For complex conservatorships, it may be a best practice to file an amended financial management plan with each annual report to ensure that the conservator's plan for the ongoing management of the protected person's financial affairs is appropriate and that the conservator has the authority and powers needed to implement the plan.

VI. Conclusion

House File 610 is reform legislation enacted to strengthen and enhance the substantive and procedural protections afforded vulnerable adults and minors under conservatorship in order to safeguard their assets against conservator misfeasance and malfeasance. HF 610 calls for more proactive prospective planning on the part of conservators to meet the needs of protected persons for financial management of their assets, and more proactive prospective court oversight of the authority and powers exercised by conservators to ensure their accountability.

Systemic change is challenging, especially for those who have been accustomed to operating for many years under the existing Probate Code framework. Unfortunately, the implementation of HF 610 is being hampered by misconceptions and misinformation about its conservatorship provisions.

But the unanimous passage of House File 610 through both chambers of the General Assembly and its signature by the Governor signify that it is now the public policy and law of the State of Iowa to strengthen and enhance the substantive and procedural protections afforded vulnerable adults and minors under conservatorship. The time has come for all those involved with conservatorships to begin to work together to implement the mandates of HF 610 for the protection of highly vulnerable adults with diminished capacity and children.

¹ See IOWA SUPREME COURT GUARDIANSHIP AND CONSERVATORSHIP TASK FORCE, FINAL REPORT 89-15 (August 2017)

² Michel Nelson, "*Conservatorship Provisions of New 633 Law effective January 1, 2020*," 3. (prepared for members of Iowa Academy of Trust and Estate Counsel, May 15, 2019).

³ *Id.*

⁴ *Id.*

⁵ Wolters Kluwer Financial Services, VMP Bankers System, Terms and Conditions IA, TC-IA 1/1/2018 (1801.00)

