

# So Now You Are A Conservator

If you are reading this brochure, you are likely either considering accepting appointment as a conservator or you have been recently appointed by a Court. Conservators have many responsibilities, and in addition to carrying out any specific Court orders, are responsible for managing, preserving and administering assets owned by and for the benefit of a protected person. A protected person is the party whom the Court has deemed as unable to effectively manage his or her own property, and in order to preserve, manage and administer the protected person's assets for his or her benefit, the Court appoints a conservator.

Under Colorado law, a conservator is deemed to be a fiduciary, and as such, held to a very high standard of care. A conservator is accountable to the protected person, other interested persons, and the Court, and is expected to act prudently and in the best interests of the protected person at all times.

This brochure is intended to give general information to conservators regarding their duties and responsibilities, and is not intended to be legal advice specific to your situation. Given the very serious risks of harm to the protected person and personal liability, if you are uncertain about any of your responsibilities, rights or powers as a conservator, you are strongly encouraged to consult with an attorney

## Conservatorship v. Guardianship

Generally, guardianships and conservatorships are both legal proceedings that are initiated to establish an individual's inability to manage their personal and financial affairs, and result in the taking of that individual's rights.

- Conservatorship is a legal proceeding where the Court takes away the protected person's rights and appoints a conservator to manage and protect the assets of the protected person.
- Guardianship is a legal proceeding where an individual's civil liberties are taken away and given to a guardian to make decisions regarding the health and welfare of the ward.

There are many instances when a guardianship and conservatorship are requested at the same time by the petitioner. If a petition is filed requesting both, the actions may be consolidated and only one hearing is required to address both petitions. One person may serve as both a guardian and conservator, but if not, both are expected to work together in the best interests of the ward/protected person.

## What is your authority?

Your authority is evidenced by two documents: "Letters of Conservatorship" and the "Order Appointing Conservator."

The conservatorship may be limited in duration, scope, level of Court involvement, and usually involves the filing of an Inventory and Financial Plan and an annual Conservator's Report.

Upon appointment, you will be asked to review and sign an Acknowledgment form that summarizes your appointment and responsibilities and outlines specific due dates for reports to file with the Court. It is very important that any reports requested by the Court are filed on or before the due date.

Once appointed, you have the authority to take title to the protected person's assets and control their financial affairs. The assets that you control are referred to as the "conservatorship estate." In most situations it is necessary to disclose your conservator/protected person relationship, and you are encouraged to indicate when you are acting as the conservator by using the title after their name when you sign documents.

The accounts should be re-titled as: "enter your name" as conservator for "enter name of protected person". Once you have control of all of the protected person's assets (or the assets designated by the Court), you then have the authority to manage and administer the assets for the protected person's benefit.

A conservatorship may end for several reasons, including the protected person regaining capacity to manage their financial affairs, upon the death of the protected person, the resignation, removal, or death of the conservator, or a date set by the Court. A conservator continues to have duties to the conservatorship estate after the protected person's death, and must ensure delivery of the protected person's assets to the personal representative of the protected person's estate. You will be required to file documents with the Court and interested persons regarding the termination of the conservatorship.

## Your duties as conservator — Ethical and Administrative

### *Ethical Duties*

- You have a fiduciary duty to the protected person, meaning that you must always act in the best interest of and with undivided loyalty to the protected person, avoid transactions that cause a conflict of interest, and administer the conservatorship estate with care and prudence.
- You must always act in the best interest of the protected person. You should not enter into transactions in which you will benefit at the expense of the protected

person. In some instances, you may need to get the approval of the Court before finalizing any transactions.

- You must keep the conservatorship estate separate from your own assets, and the assets must be readily indefinable.
- You must manage the conservatorship estate as a prudent person would in similar circumstances. You are ultimately accountable and may employ the use of professionals and other agents in order to carry out your duties, unless otherwise specified by the Court,
- The Court may require you to obtain a type of insurance policy called a “fiduciary bond.” The bond assures that the protected person’s assets are protected in the event that you fail to carry out your duties and there is a loss to the conservatorship estate. If a bond is required, it is generally paid for with the protected person’s funds.

#### *Administrative Duties*

- **Required Reports to File with the Court and Interested Persons.**
  1. You must submit an Inventory and Financial Plan (JDF 882). The purpose of this report is to identify the assets of the protected person and to present a plan to the Court on how you plan to manage the assets of the conservatorship estate. This report is usually due within 60 days from appointment.
  2. You must submit a Conservator’s Report (JDF 885) annually. The purpose is to present a complete accounting of all financial transactions and to present a current status of the conservatorship estate during the accounting period, usually one year.
- **Accounting.** You must set up and keep complete financial records. The accounting system and reports to the Court should reflect in detail all income, disbursements, and liabilities, and should show the opening and closing balances for all accounts for the reporting period. You should maintain all supporting documentation in the event that the Court or interested persons request to review the financial activity.
- **Taxes.** In most cases you are managing all or most of the protected person’s assets, and are required to file any required tax returns.
- **Trust Asset Management and Growth.** You must keep the conservatorship estate’s assets invested, and you will be held to a higher standard of care than if you were investing your own funds. Colorado law requires con-

servators to follow the “prudent investor rule,” meaning that you must invest as a prudent person would in a similar situation. In effect, the “prudent investor rule” generally means that you will diversify the investments, balance the need for income versus long-term principal growth, not make risky investments, and continue to re-evaluate and consider new advice on an ongoing basis.

- **Distributions to Protected Person or on Protected Person’s Behalf.** You will make distributions to the protected person for their care and expenses or to third parties directly who provide some beneficial service to the protected person. The terms under which distributions must or may be made can be restricted by the Court, or may be made mandatory for the protected person’s health, education, and maintenance. You may have discretion for whatever you determine to be in the best interest of the protected person. Under certain circumstances you may be personally liable for improper distributions, and may be compelled by a Court to make a distribution at the protected person’s or interested person’s request.

#### **Personal Liability**

You may be personally liable to the protected person or a third party in certain circumstances, including when the relationship is not disclosed, you are directly at fault, grossly negligent, or acted criminally. In some situations, you may be personally liable even though your improper actions were not intentional or negligent, and for that reason, many conservators secure Errors and Omissions insurance.

#### **Compensation and Expenses**

You are entitled to reasonable compensation and reimbursement of out-of-pocket expenses from the conservatorship estate for acts on behalf of the protected person for the duration of the conservatorship. Reasonable compensation is determined on a case-by-case basis, and good record keeping and accounting is absolutely necessary. Any compensation is considered income to you, and as such, is generally taken as a tax deduction by the protected person.

In addition to your own fees and expenses, you may hire professionals, including an attorney, accountant, etc. as you manage the assets of the conservatorship. Fees, anticipated expenses, and professional fees are usually included in the initial Financial Plan, and are approved or denied by the Court.

*Sponsored by the*

