

So Now You Are A Guardian

If you are reading this brochure, you are likely either considering accepting appointment as a guardian or you have recently been appointed by a Court. Guardians have many responsibilities, and in addition to carrying out any specific Court orders, are responsible for the ward's general welfare and care. Guardians are usually given the authority over where the ward resides, their educational and/or vocational development, and medical decisions after the Court finds that, due to mental or physical incapacity the ward is unable to do so for his or her self.

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

This brochure is intended to give general information to guardians 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 ward and personal liability, if you are uncertain about any of your responsibilities, rights, or powers as a guardian, you are strongly encouraged to consult with an attorney.

Guardianship v. Conservatorship

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. In some situations, if there are not enough assets to warrant the appointment of a conservator, the guardian may be given authority to manage the ward's assets. 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 Guardianship" and the "Order Appointing Guardian." The guardianship may be limited in duration, scope, level of Court involvement, and usually involves the filing of an Initial Guardian's Report/Care Plan and an Annual Guardian's Report.

The Court's direction is given with the intent to maximize the ward's independence and involvement, and may require specific actions to achieve this standard. It is important that you read the Court's Order thoroughly and comply with the terms of the order of appointment.

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 will usually have the authority to make most or all decisions related to the ward's health, education, and welfare. You may usually sign legal documents on behalf of the ward, choose an appropriate living situation for the ward, and grant, withhold, and withdraw consent to medical treatment. In most situations it is necessary to discontinue the guardian/ward relationship.

A guardianship may end for several reasons, including the ward regaining capacity to manage their personal affairs, upon the death of the ward, the resignation, removal, or death of the guardian, or a date set by the Court. A guardian's duties to the ward continue until a successor guardian is appointed or otherwise directed by the Court.

Your Duties as Guardian— Ethical and Administrative

Ethical Duties

- Generally speaking, a guardian owes a fiduciary duty to the ward, meaning that the guardian must always act in the best interest of and with undivided loyalty to the ward, avoid transactions that cause a conflict of interest, and make all decisions with care and prudence.
- You have a fiduciary duty to the ward, meaning that you must always act in the best interest of and with undivided loyalty to the ward, avoid transactions that cause a conflict of interest, and to make all decisions with care and prudence.
- You must always act in the best interest of the ward, and you must make efforts to include the ward in all decisions and encourage self-sufficiency.

- You are expected to consider the ward’s known and reasonable desires and personal values when making decisions on behalf of the ward, and must become and/or remain personally acquainted with the ward.
- You may make decisions and manage any of the ward’s assets. If so, such decisions must be made 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.** You must submit an initial care plan and annual reports that require a thorough description of the ward’s wellbeing, growth, health needs, financial resources available for care, any changes in your life or ward’s life, and the need for the guardianship to continue. The required form is JDF 850 and is available at courts.state.co.us. The due date for the reports will be identified within the Order and also on the Acknowledgment form. It is very important that you file the reports on or before the due date to the Court and send a copy to all interested persons as identified in the original Order of Appointment and/or any subsequent orders.
- **Accounting.** If there are not enough assets to appoint a conservator, you are given the authority over the ward’s assets and must set up and keep complete financial records. You will need to report the financial activity in the annual report and 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.** If a conservator is not appointed, you are managing all or most of the ward’s affairs, and you required to file any required tax returns on the ward’s behalf.
- **Distributions to ward or on ward’s behalf.** You may make distributions to the ward for their care and expenses or to third parties directly who provide a service to the ward. The terms under which distributions must or may be made can be restricted by the Court, or may be made mandatory for the ward’s health, education, and maintenance. Under certain circumstances you may be personally liable for improper distributions, and may be compelled by a Court to make a distribution at the ward’s or interested person’s request.

Personal Liability

You may be personally liable to the ward 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 their improper actions were not intentional or negligent, and for that reason, some guardians secure Errors and Omissions insurance.

Compensation and Expenses

You are entitled to reasonable compensation and reimbursement of out-of-pocket expenses from the guardianship estate for acts on behalf of the ward during the guardianship. 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 ward. In addition to your own fee, you may hire professionals, including an attorney, accountant, etc. as you manage the guardianship.

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