

Chapter 25

Conservatorship of Adults

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SYNOPSIS

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25-1. Introduction

What is a conservator? You may have heard the term, but do you understand what it means? A conservator is a type of trustee or fiduciary who is appointed by the court for an individual who is unable to manage his or her own financial affairs. Confusion arises because in some states, such as California, the term “conservator” is used interchangeably with the term “guardian.” Other states, such as Texas and Florida, use the term “guardian” to also mean a conservator.

Colorado distinguishes between these two terms. Here, a conservator is placed in charge of a person’s financial matters, while a guardian is placed in charge of the care and custody of a person and is responsible for making health care and placement decisions. Guardianship requires a determination of incapacity for an adult. (Minors need a guardian appointed because they are not legally competent until they reach age 18 — the age of

majority.) Conservatorship, on the other hand, does not require that the person be found incapacitated or incompetent, although the two proceedings often go hand-in-hand.

It is important to understand that the appointment of a conservator affects a person's property rights, while the appointment of a guardian affects a person's civil liberties and personal freedoms. Since these are all constitutionally protected interests, they can only be taken away or limited by a court of competent jurisdiction, and only after due process is provided, which requires notice and a hearing. Certain safeguards are built into the law and the procedures required for imposing a conservatorship. The court retains jurisdiction over these matters and requires conservators to report on the finances of the protected person at least annually.

If the conservator is not acting in the best interest of the protected person, or is mismanaging the assets, the court may suspend or remove the conservator. The court may also impose a fine or surcharge, which means the conservator will have to repay the funds that were misappropriated. In some cases, the conservator may even be charged with a crime for taking advantage of an at-risk adult. Assuming the role and duties of a conservator is serious business and should not be done lightly.

25-2. Alternatives to Conservatorship

There are alternatives to conservatorship that should be considered first. Financial powers of attorney are very flexible and inexpensive. A power of attorney can give an agent the legal authority to manage the finances and act on behalf of the principal, who is the person granting the authority. However, at the time the principal signs the power of attorney, the principal must have sufficient capacity to know and understand what the document authorizes. If an individual is already incapacitated, or subject to undue influence, it may be too late to rely upon powers of attorney.

Forms for financial powers of attorney can be found in office supply stores, and many versions are available in software packages and on the internet. However, relying upon powers of attorney without fully understanding their uses and potential for abuse can be penny-wise and pound foolish. While powers of attorney can be simple and useful tools, they can also wreak devastating results. An agent with a duly signed power of attorney can empty out your bank accounts, sell your investments, and even sell your house.

For limited purposes, a joint bank account may also be a simple alternative. With joint bank accounts, either party named on the title to the account may write checks, regardless of what the funds are used for. However, joint bank accounts, just like powers of attorney, may be abused. On top of that, when adding someone else's name to your account as a joint tenant, that person is entitled to ownership of everything in the account upon your death — regardless of what your will says.

With both financial powers of attorney and joint bank accounts, there is no court involvement and therefore no court oversight. It is very important to make sure that your agent or joint tenant understands the legal obligation to furnish you with information about his or her activities. It is also wise to make sure that a trusted friend or family member has the right to this information in the event of your incapacity or disability. Studies have con-

sistently found that financial abuse of the elderly happens under the guise of a power of attorney. Unfortunately, most of this exploitation happens at the hands of family members. This suggests that it may be wise to have several sets of eyes watching your financial affairs when you are no longer able to do so. You may also wish to consider turning to a professional fiduciary to take on this role. Often lawyers are needed to fix the damage done by trying to do things the easy way. By then it may be too late for the courts to do anything but preserve what's left of your assets.

Finally, one other alternative to conservatorship is the use of trusts. When creating a trust, you may designate who will be your trustee. You may even be your own trustee while you have the capacity and ability to manage your own assets. Upon your incapacity, a successor trustee can take over managing your assets. Trusts are also very flexible and can be used to hold specific assets or everything you own. Unlike conservatorships, trusts are private and generally only require court involvement if there are problems. However, there may also be significant tax ramifications in using a trust. Transferring your assets into trust may jeopardize your ability to qualify for Medicaid. Since there are often complex legal and tax matters involved, it is generally advisable to have an attorney work with you in the drafting and administration of the trust.

25-3. Court Process

A conservatorship is a legal proceeding, which is started by filing a petition for the appointment of a conservator. The filing fee with the court is \$164 (in 2017). The person filing this pleading is the "petitioner" and is responsible for paying the filing fee. The person who is alleged to need the protection of a conservator is the "respondent" or "protected person." The petition is filed in the county where the respondent lives. A supporting doctor's letter should be attached to the petition. If the respondent is also incapacitated and no one has legal authority to make medical decisions for the respondent, a guardianship petition should be filed at the same time. This saves having to pay another filing fee later on. (See Chapter 26, "Guardianship of Adults," for more information.)

Many courts have packets of information with instructions for simple and uncontested conservatorships. More detailed information is also available on the internet from the Colorado State Judicial Branch website at www.courts.state.co.us and by clicking on "Forms" then "Conservatorship." Most courts now have Self-Help Centers staffed by Self-Represented Litigant Coordinators ("Sherlocks") who are trained to provide limited assistance. (See Exhibit 25A for a list of the Self-Help Centers.) Court staff are often very helpful, but remember, they cannot give legal advice. Often, family or friends may be able to follow the rules and file the pleadings without the assistance of counsel. However, if the respondent is objecting to the imposition of a conservator, an attorney must be appointed by the court to represent the respondent.

To further protect due process, the court will appoint a court visitor, who is required to meet personally with the respondent. The court visitor serves as eyes and ears for the court and files a written report. The court visitor tries to inform the respondent about the nature of the proceedings and interviews the respondent as to his or her wishes. The court visitor advises the respondent about the right to be present at the hearing, to cross-examine

witnesses, to introduce testimony, and to have a medical or psychological evaluation performed. The court visitor also advises that the respondent has the right to be represented by counsel at his or her own expense. If the assets are insufficient, the representation is at the state's expense. If the respondent tells the court visitor that he or she wants an attorney, the court must appoint one. The fees charged by the court visitor must be paid by the petitioner prior to the hearing. In Denver, the court visitor charges a flat fee of \$200. In other counties, an hourly fee may be charged.

Due process requires reasonable advance notice of the hearing. The respondent must be personally served with the notice of hearing and the petition for appointment of a conservator. Other interested parties must also be given advance notice, but this may be mailed. Interested persons include the respondent's spouse and all adult children, agents under powers of attorney, representative payees and other legal representatives, anyone the respondent has nominated to serve as conservator, and the respondent's primary care physician. If there is no spouse but the respondent has lived with someone during the previous six months, that person should be given notice as well. In the absence of immediate family, notice may have to be given to the closest relative by degree of kinship.

Without going into all the technicalities, at the hearing, the petitioner has the burden of proof to establish by clear and convincing evidence that the respondent is unable to manage his or her property due to some form of incapacity or deficit. The petitioner must also show that the respondent has assets that will be wasted or dissipated without proper management, or that the respondent or the respondent's dependents need funds for support, and that the appointment of a conservator will facilitate getting those funds.

25-4. Acceptance of Office

An individual nominated to serve as the conservator generally must submit an Acceptance of Office form. This requires the nominee to sign an affidavit disclosing any criminal history and judgments against him or her, among other things. The nominee is also required to submit a credit report, a name-based Colorado Bureau of Investigation criminal background check, and a copy of his or her driver's license or passport.

25-5. Responsibilities

Once an order of appointment is entered, the conservator has many duties and responsibilities. The court often requires the conservator to first obtain a fiduciary bond from an insurance company. The cost of the bond is payable out of the conservatorship assets. The purpose of the bond is to assure that the conservator faithfully carries out his or her duties and to preserve the assets covered by the bond. The bond company often reviews the accountings and reports that the conservator files more carefully than a court's staff has time to allow.

The conservator is required to file an inventory and financial plan within 90 days of appointment. The inventory is a snapshot of all the assets under the conservator's control

as of the date of appointment. The financial plan is a budget that describes the protected person's monthly income and expenses, as well as how the assets under the conservator's control will be managed. Once this information is gathered, it should be possible to determine whether the protected person's income is sufficient to cover expenses, or whether assets will need to be sold to pay for his or her care. The financial plan should be reviewed and approved by the court, and should be followed faithfully. Failure to do so may create significant problems for the conservator, including removal or surcharge. If the protected person's situation changes, the financial plan should be amended and again approved by the court.

At least once a year, the conservator is required to file a conservator's report, detailing the income and expenditures over the past accounting period. The conservator's report provides a comparison between actual expenditures and the court-approved financial plan. It should be easy to determine at a glance whether the financial plan has been carefully followed and whether there have been extraordinary expenditures. The conservator's report should also indicate whether the financial plan is adequate to meet the protected person's needs or whether it should be amended. In recent years, each court in Colorado has added staff whose job it is to review the conservator reports. These Protected Proceedings Monitors closely scrutinize the reports and alert the court if problems are seen.

25-6. Duties

A conservator is a type of fiduciary and has power and authority much like that of a trustee. Fiduciary duties include that of undivided loyalty to the person whose interests the conservator protects. The conservator may not engage in "self-dealing," which means profiting off the assets controlled. Although a conservator is entitled to reasonable compensation, family members often serve without pay. In any event, compensation paid to the conservator must first be authorized and approved by the court.

The conservator has a duty to exercise due care. The conservator must handle the conservatorship assets prudently, using reasonable care and caution in investing and managing the assets under the conservator's care. If there are sufficient assets to warrant investments, it may be prudent to rely upon a financial advisor to diversify and structure an investment portfolio, balancing risk and return. Sometimes it may be necessary to liquidate investments or even to sell the protected person's house. Any time there is a significant change in financial matters, it is advisable to seek court approval. This will limit the conservator's liability to the protected person and those who may inherit his or her estate.

25-7. Terminating Conservatorship

A conservatorship may need to terminate for various reasons: (1) the protected person may have regained capacity and no longer require assistance and oversight; (2) the protected person may have died; (3) the assets may have been depleted; or (4) if the conservatorship was for a minor, it is no longer needed when the minor becomes 21 years old. When such an event arises, the conservator is then required to prepare and file a final report and

petition for the termination of the conservatorship. The final report covers the period since the last accounting and indicates what assets remain in the conservatorship to be distributed. After the death of the protected person, the conservator generally should take no action, other than to pay for funeral expenses and to preserve and protect the assets remaining, without obtaining a court order.

If the conservatorship terminated because the protected person is no longer incapacitated, then the assets should be transferred back into the name of the individual. If the conservatorship terminated because the protected person has died, then the assets are turned over to the personal representative of the individual's estate or as directed by the court. The conservator should ask the court to approve the final report, and then provide the court with proof that the assets have been distributed in accordance with the court's order. Once this is accomplished and the court is satisfied that the conservator has fulfilled all of the duties and obligations required, a decree of discharge will be entered, relieving the conservator of any further liability.

25-8. Resources

Colorado State Judicial Branch

Office of the State Court Administrator
1300 Broadway, Ste. 1200
Denver, CO 80203
(720) 625-5000
www.courts.state.co.us

Exhibit 25A.

Colorado Self-help Centers

Colorado Self-Help Centers

Additional information can be found at https://www.courts.state.co.us/Self_Help/resources.cfm

County	Address	Self-Represented Litigant Coordinator
Adams	Adams Combined Court 1100 Judicial Center Drive Brighton, CO 80601	Barb and Christa 17shrc@judicial.state.co.us
Alamosa	Alamosa Combined Court 702 Fourth Street Alamosa, CO 81101	Kaylene Guymon 12selfhelp@judicial.state.co.us 719-589-7621
Arapahoe	Arapahoe Combined Court 7325 S. Potomac St. Centennial, CO 80112	Alison Ruggiero & Bradly Halm 18courthelpcenter@judicial.state.co.us 720-568-4844
Archuleta	Archuleta Combined Court 449 San Juan St. Pagosa Springs, CO 81147	Lindsay Patterson 6thselfhelp@judicial.state.co.us 970-385-6179
Baca	Baca Combined Court 301 S Main Suite 300 Lamar, CO 81052	Richard Chandler 719-336-8928
Bent	Bent Combined Court 13 W Third St Room 207 La Junta, CO 81050	Jeremy Dowell Jeremy.dowell@judicial.state.co.us 719-456-1353
Boulder	Boulder Combined Court 1777 Sixth Street Boulder, CO 80302	Donna Powell & Tania Papp BoulderCourtSelfHelp@judicial.state.co.us 303-441-4741
Broomfield	Broomfield Combined Court 17 Descombes Dr. Broomfield, CO 80020	Theresa Lopez 17shrc@judicial.state.co.us
Chaffee	Chaffee Combined Court 142 Crestone Ave Salida, CO 81201	Miriam Jebe miriam.jebe@judicial.state.co.us 719- 539-2561 Ext-234
Cheyenne	Cheyenne Combined Court 301 S Main Suite 300 Lamar, CO 81052	Richard Chandler 719-336-7424
Clear Creek	Clear Creek Combined Court 405 Argentine, P.O. Box 367 Georgetown, CO 80444	Mary Perry 05SelfHelp@judicial.state.co.us 970-547-2635
Conejos	Conejos Combined Court 6683 County Road 13 Conejos, Colorado 81129	Kaylene Guymon 12selfhelp@judicial.state.co.us 719-589-7621
Costilla	Costilla Combined Court 304 Main Street San Luis, Colorado 81152	Kaylene Guymon 12selfhelp@judicial.state.co.us 719-589-7621
Crowley	Crowley Combined Court 13 W Third St Room 207 La Junta, CO 81050	Jeremy Dowell Jeremy.dowell@judicial.state.co.us 719-267-4468
Custer	Custer Combined Court 205 S 6 th St Westcliffe, CO 81252	Miriam Jebe miriam.jebe@judicial.state.co.us 719-539-2561 Ext-234

Colorado Self-Help Centers

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Delta	Delta Combined Court 501 Palmer St. Delta, CO 81616	Annie Trujillo 970-252-4312
Denver County Court	1437 Bannock St., Room 281 Denver, CO 80203	DCCSelfHelp@denvergov.org Evictions, small claims, protection orders, name changes
Denver District Court	1437 Bannock Street, Rm 281 Denver, Colorado 80202	720-865-8440 Domestic, Sealing cases
Denver Probate Court	1437 Bannock Street, Rm 281 Denver, Colorado 80202	720-865-8746 Guardianships, Conservatorships, Estates
Denver Juvenile Court	520 W. Colfax, Rm 125 Denver, CO 80202	720-337-0583
Dolores	Montezuma County Court 601 N Mildred Road Cortez, CO 81321	Donna Hilse Donna.hilse@judicial.state.co.us 970-564-5029
	Montezuma District Court 109 W. Main St. Cortez, CO 81321	Donna Hilse Donna.hilse@judicial.state.co.us 970-564-5073
Douglas	Douglas Combined Court 4000 Justice Way Ste. 2009 Castle Rock, CO 80109	Selena Cassiday 18courthelpcenter@judicial.state.co.us 720-437-6112
Eagle	Eagle Combined Court 885 Chambers Ave Eagle, CO 81631	Mary Perry 05SelfHelp@judicial.state.co.us 970-547-2635
Elbert		Selena Cassiday 18courthelpcenter@judicial.state.co.us 720-437-6112
El Paso	El Paso Combined Court 270 S. Tejon Colorado Springs, CO 80901	Lisa A. Younger Anderson 04SelfHelp@judicial.state.co.us Shay Johnson shanneyvie.johnson@judicial.state.co.us Fax: 719-452-5105
Fremont	Fremont Combined Court 136 Justice Center Rd Canon City, CO 81212	Rebecca Casey rebecca.casey@judicial.state.co.us 719-204-2222
Garfield	Garfield Combined Court 109 8 th Street, Ste 104 Glenwood Springs, CO 81601	Rachael Leable 09selfhelp@judicial.state.co.us 970-928-3061
Gilpin	Gilpin Combined Court 100 Jefferson County Pkwy Golden, CO 80401	Brigitte, Melissa or Alicia 01selfhelp@judicial.state.co.us 720-772-2501
Grand	Grand Combined Court 307 Moffat Avenue PO Box 192 Hot Sulphur Springs, CO 80451	Linda Manguso Linda.manguso@judicial.state.co.us 970-725-3357 www.courts.state.co.us/14SelfHelp

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Gunnison	Gunnison Combined Court 200 E. Virginia Avenue Gunnison, CO 81230	Annie Trujillo 970-252-4312
Hinsdale	Hinsdale Combined Court 317 Henson Lake City, CO 81235	Annie Trujillo 970-252-4312
Huerfano	Huerfano Combined Court 401 Main St, Suite 304 Walsenburg, CO 81089	Curtis Montoya 719-680-7333
Jackson	Jackson Combined Court 396 Lafever St. Walden CO 80480	Jacqueline Marro & Megan Einerson 08selfhelp@judicial.state.co.us 970-494-3500
Jefferson	Jefferson Combined Court 100 Jefferson County Pkwy Golden, CO 80401	Brigitte, Melissa or Alicia 01selfhelp@judicial.state.co.us 720-772-2501
Kiowa	Kiowa Combined Court 1305 Goff Street Eads CO 81036	Richard Chandler 719-336-8928
Kit Carson	Kit Carson Combined Court 251 16 th St. Suite 301 Burlington, CO 80807	Dawn Gerk 13selfhelp@judicial.state.co.us 970-526-3978
Lake	Lake Combined Court 505 Harrison Ave. P.O. Box 55 Leadville, CO 80461	Mary Perry 05SelfHelp@judicial.state.co.us 970-547-2635
La Plata	La Plata Combined Court 1060 E. 2nd Ave Durango, CO 81301	Lindsay Patterson 6thSelfHelp@judicial.state.co.us 970-385-6179
Larimer	Larimer Combined Court 201 La Porte Ave Ft Collins, CO 80521	Jacqueline Marro & Megan Einerson 08selfhelp@judicial.state.co.us 970-494-3500
Las Animas	Las Animas Combined Court 200 E 1 st Street, Suite 304 Trinidad, CO 81082	Curtis Montoya 719-680-7333
Lincoln		Selena Cassiday 18courthelpcenter@judicial.state.co.us 720-437-6112
Logan	Logan Combined Court 110 N Riverview Road Sterling, CO 80751	Dawn Gerk 13selfhelp@judicial.state.co.us 970-526-3978
Mesa	Mesa Combined Court 125 North Spruce St Grand Junction, CO 81501	21selfhelp@judicial.state.co.us
Mineral	Alamosa Combined Court 702 Fourth Street Alamosa, Colorado 81101	Kaylene Guymon 12selfhelp@judicial.state.co.us 719-589-7621

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Moffat	Moffat Combined Court 221 W. Victory Way; Suite 300 Craig CO 81625	Tatiana Achcar-Szyba 14SelfHelp@judicial.state.co.us 970-824-8254 www.courts.state.co.us/14SelfHelp
Montezuma	Montezuma County Court 601 N Mildred Road Cortez, CO 81321 Montezuma District Court 109 W. Main St. Cortez, CO 81321	Donna Hilse Donna.hilse@judicial.state.co.us 970-564-5029 Donna.hilse@judicial.state.co.us 970-564-5073
Montrose	Montrose Combined Court 1200 N. Grand Ave. Montrose, CO 81401	Annie Trujillo 970-252-4312
Morgan	Morgan Combined Court 400 Warner St. Fort Morgan, CO 80701	Dawn Gerk 13selfhelp@judicial.state.co.us 970-526-3978
Otero	Otero Combined Court 13 W. 3 rd St. La Junta, CO 81050	Jeremy Dowell Jeremy.dowell@judicial.state.co.us 719-384-4951
Ouray	Ouray Combined Court 541 S. 5 th St. Ouray, CO 81427	Annie Trujillo 970-252-4312
Park	Park Combined Court 300 4 th St Fairplay, CO 80440	Miriam Jebe miriam.jebe@judicial.state.co.us 719-539-2561 Ext-234
Phillips	Phillips Combined Court 221 S. Intercean Holyoke, CO 80734	Dawn Gerk 13selfhelp@judicial.state.co.us 970-526-3978
Pitkin	Pitkin Combined Court 506 E Main, Suite 300 Aspen, CO 81611	Rachael Leable 09selfhelp@judicial.state.co.us 970-928-3061
Prowers	Prowers Combined Court 301 S Main, Suite 300 Lamar, CO 81052	Richard Chandler 719-336-8928
Pueblo	Pueblo Combined Court 501 N. Elizabeth Pueblo, CO 81003	Pam Bufmack & Zachary Bratton 719-404-8752
Rio Blanco	Rio Blanco Combined Court 555 Main St. Meeker, CO 81641	Rachael Leable 09selfhelp@judicial.state.co.us 970-928-3061
Rio Grande	Rio Grande Combined Court 925 Sixth Street Room 204 Del Norte, Colorado 81132	Kaylene Guymon 12selfhelp@judicial.state.co.us 719-589-7621

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Routt	Routt Combined Court 1955 Shield Drive Unit 200 Steamboat Springs, CO 80487	Tatiana Achcar-Szyba 14SelfHelp@judicial.state.co.us 970-879-5020 www.courts.state.co.us/14SelfHelp
Saguache	Saguache Combined Court 501 Christy Avenue Saguache, Colorado 81149	Kaylene Guymon 12selfhelp@judicial.state.co.us 719-589-7621
San Juan	San Juan Combined Court 1557 Greene Street Silverton, CO 81433	Lindsay Patterson 6thselfhelp@judicial.state.co.us 970-385-6179
San Miguel	San Miguel Combined Court 305 W. Colorado Ave. Telluride, CO 81435	Annie Trujillo 970-252-4312
Sedgwick	Sedgwick Combined Court 3 rd and Pine Julesburg, CO 80737	Dawn Gerk 13selfhelp@judicial.state.co.us 970-526-3978
Summit	501 N. Park Avenue P.O. Box 269 Breckenridge CO 80424	Mary Perry 05SelfHelp@judicial.state.co.us 970-547-2635
Teller	Teller Combined Court 101 W. Bennett Ave. Cripple Creek, CO 80813	Lori McLeod Lori.mcleod@judicial.state.co.us 719-686-8013
Washington	Washington Combined Court 26861 Hwy 34 Akron, CO 80720	Dawn Gerk 13selfhelp@judicial.state.co.us 970-526-3978
Weld	Weld Combined Court 915 10 th Street Greeley, CO 80632 First Floor, Centennial Building	Crystal Derschon Miriam Ceja Hernandez
Yuma	Yuma Combined Court 310 Ash Street Suite L Wray, CO 80758	Dawn Gerk 13selfhelp@judicial.state.co.us 970-526-3978
Court of Appeals and Supreme Court	Court of Appeals 2 East 14 th Avenue Denver, CO 80203	Sean Slagle Appeals.selfhelp@judicial.state.co.us 720-625-5107
State Court Administrators Office	1300 Broadway Suite 1200 Denver, CO 80203	Penny Wagner Program Coordinator Penny.wagner@judicial.state.co.us 720-625-5612

Don't know what district you are in? Go to https://www.courts.state.co.us/Self_Help/center.cfm

