

## **Guardianship Monitoring Program - Guardian Duties and Responsibilities**

### **Serving as a Guardian or Conservator**

- Serving as a Guardian
- Serving as a Conservator
- Terms to Know

This information is designed to help you understand your responsibilities as a court-appointed guardian and/or conservator and was produced for the Idaho Commission on Aging in cooperation with the Idaho Department of Law Enforcement. Additional funding was provided by AARP.

Because of the general nature of this information, it is not a substitute for legal advice. The statutes on guardianship and conservatorship are found at Title 15 of the Idaho Code.

Idaho Code Section 15-5-419 requires annual reports. Consult your attorney to answer specific questions.

### **Serving as a Guardian**

#### **Your Rights and Duties as a Guardian**

A guardian provides for the personal care and well-being of a person called a ward. A guardian's rights and responsibilities are much like those of a parent for a child. A guardian is appointed by the court to make decisions for the ward including basic care, residence, maintenance (i.e. doctor appointments), and responsibilities for personal effects such as clothing, furniture, and vehicles. The guardian also ensures that the ward's medical, social, and emotional needs are met. If a conservator has not been appointed for the ward, there is also some financial responsibility such as paying basic utilities and medical bills out of the ward's estate.

If the ward needs help in some, but not all areas of decision making, a limited guardianship may be ordered by the court. Under the Idaho Code, a guardianship is ordered by the court only to the extent required by the ward's actual limitations. A limited guardian has only those powers and duties specified in the court order. In an emergency, the court may appoint a temporary guardian who serves for no more than 6 months and has the rights and duties as a full-time guardian. If the ward does not have a conservator, the guardian may take on some of the duties

and responsibilities normally undertaken by a conservator regarding the ward's property and must report to the court on an annual basis.

### **Guides to Help Decision Making**

As guardian, you are called upon to make many decisions. Your role is to assist the ward in making personal decisions. If your ward is unable to communicate, try to reach the decision that your ward would have made if he or she were able to choose. It's what the ward would do, not you, that serves as your guide, as long as the decision is in the ward's best interest.

Another guide to help you is known as "the least restrictive alternative." That means that you and your ward choose the alternative that will restrict your ward's freedom the least. This will preserve the ward's independence to the fullest extent possible. Involve your ward in making decisions. Dignity is a right the ward does not lose when a guardian is appointed.

### **Medical Care Decisions**

As guardian, you will work closely with the ward's doctor or other health care providers. You may be called upon to give consent for medical treatment. Obtain as much information as you can about your ward's preferences. You can do this by asking your ward directly. If your ward is unable to communicate and has a durable power of attorney for health care, or is unable to communicate and in a terminal medical condition, you must honor the directives contained in those documents. If such documents are not available, speak with the ward's family and friends about the ward's medical treatment preferences. If no information about medical treatment preference is available, consider the tenets of any religion practiced by your ward.

Ask questions regarding medical alternatives and the risk posed by a proposed medical treatment. If a proposed surgical technique or drug therapy is controversial, get the permission of the court before you authorize treatment. Prior approval from the court must also be established regarding the following:

- Consenting to medical or surgical treatment, the effect of which permanently prohibits the conception of children by the ward unless the treatment or procedures are necessary to protect the physical health of the ward and would be prescribed for a person who is not developmentally disabled;
- Withholding consent to life-saving treatment or procedures;
- Consenting to experimental surgery, procedures, or medications.

## **Living Arrangements**

If possible, keep your ward living at home. Services may be available locally to provide meals, transportation, or in-home assistance. If your ward is no longer safe at home, it may be necessary to move the ward to a more protected setting. Consult the ward's doctor for recommendations concerning placement in a facility that will best meet the needs of your ward. After placement in a facility, regularly visit your ward and consult with staff to assure that your ward's needs are being met. Regardless of the living situation you select, you bear the ultimate responsibility that your ward is safe, comfortable, and receiving health care, nutrition, grooming, and recreation.

## **Your Ward's Rights**

A ward retains certain rights even though a guardian is appointed. To the extent that wards can exercise their rights, allow them to do so to encourage the maximum self-reliance and independence. As guardian, allow the ward to make as many decisions as possible. Make every effort to safeguard the ward's privacy. Keep in mind that your ward still has the right to self-esteem.

## **Reports to the Courts and Others**

The law requires that you report to the court at least annually on how your ward is doing (Annual Status Report of the Ward, Annual Account of Wards Estate) and that you alert the court of any changes such as address and telephone number, etc. You may wish to keep a log of activities or a diary of your visits and notable events to help you make your report.

To assist you, some of the reporting forms can be found on this website, or you may obtain them from the Clerk of the Court. If you wish to use the form, make copies of the blank form and use the sample for future reports. At the time of your appointment, the court may order that you provide copies of your report to other interested parties. Keep a copy of your report for your records.

In addition to your report, inform the family and other interested persons of any significant changes concerning your ward. In the event your ward dies, notify the interested parties and the court at once. Provide a final account as conservator as well as a final status report of the ward as guardian.

## **Terminating a Guardianship**

Guardianships end in several ways. To resign, a guardian must ask the court for approval. If the ward still needs a guardian, the duties of the resigning guardian continue until a new guardian is appointed. The ward or the guardian may die. Sometimes the guardian will ask the court to end the guardianship because the ward no longer needs a guardian. When a minor child reaches the age of 18, the guardianship ends. In rare cases, the court may remove guardians who do not fulfill their responsibilities. Consult your lawyer on the procedure to follow if you need to resign as a guardian.

## **Special Consideration for a Guardian of a Minor Child**

Parents have certain legal obligations for their children; they are the “natural guardians” for their children and need no court appointment. A court-appointed guardian for a minor child steps into the shoes of parents who are unavailable. Frequently, a guardian of a minor handles support money to be used for the care and education of the minor. The guardian who handles funds on behalf of a minor has an obligation to account for assets to the court as well as the status of the ward on an annual basis. When the minor becomes 18 years of age, marries, or is adopted, the guardianship ends. If there is a conservatorship in place, submit a final account as well as a letter from the ward stating that he/she did receive the remainder of the estate from the conservator.

## **Finances and Compensation**

You are not financially responsible for the ward’s expenses. You are entitled to be reimbursed for any personal funds that you spend on the ward’s necessary expenses. While family members often serve without compensation, with approval from the court, guardians may also receive reasonable compensation for services. What is reasonable compensation depends upon the services being provided and the skill of the guardian. Good record keeping is essential to establish your claim for compensation.

## **Your Liability as a Guardian**

Generally, a guardian will not be liable for actions taken in the best interests of the ward. As guardian, you are responsible for the care, custody, and welfare of your ward. You are liable if you were personally at fault and your ward was damaged by your carelessness. If the Board of

Community Guardians has been appointed guardian and you are performing the duties of guardian at the request of and on the behalf of the Board, you have additional protection from personal liability. Understanding your responsibilities and using common sense will prevent problems. Consult your lawyer to answer specific questions.

## **Serving as a Conservator**

### **Your Rights and Duties as a Conservator**

A conservator takes care of the property of a person in need of protection. That person may be a minor child who will need protection until reaching age 18 or an adult who is not able to manage property.

The property of a protected person is called that person's estate and includes all types of assets: real property (home and land), furniture, cash, bank accounts, certificates of deposit, stocks, bonds, retirement benefits, motor homes, motor vehicles, and valuables such as jewelry, furs, and art.

As with a guardian, the court may limit the authority of the conservator. Generally, as a conservator, you have the authority to enter into contracts on behalf of the protected person, which are in that person's best interests. On signing any contract or financial document, specify that you are signing as conservator for the protected person to clarify that you are not personally responsible for the obligation. You are not required to use your money to pay the expenses of the protected person. You are required to use care and common sense in handling the protected person's estate.

### **Handling a Protected Person's Estate Safely and Prudently**

The conservator is responsible for the safe and wise management of the property of the estate. You are required to invest prudently. The law requires you to use the care in managing the estate that a prudent person would use in dealing with the property of another. To ensure that safety of the estate, inform third parties holding the protected person's assets that you are the conservator. If the protected person owns land, record the conservator's Letters of Conservatorship in the office of the county recorder in which the land is located to protect the title to real property.

Likewise, you will want to have the bank records reflect your authority as conservator on all of the protected person's financial accounts. Be certain all bank records retain the protected person's social security number. Inform the protected person's sources of regular income (i.e., the Social Security Administration and any pension administrators) of the conservatorship and have future payments made in your name as conservator of the protected person's estate.

Make sure that real property and personal property such as antiques, furs, and artwork are properly insured. You may decide that leaving certain items of valuable property with the protected person outweighs the risk of loss of those items. Otherwise, deposit valuable jewelry, stamp and coin collections, or other small objects of substantial value in a safe deposit box in the name of the conservatorship. Keeping the protected person's motor vehicles can pose insurance and liability problems that you will want to review with your attorney.

### **Bonds**

The court may require that you post a bond to ensure the safety of the assets you handle as a conservator. A surety bond acts like an insurance policy for the estate. The cost of the bond is paid for by the estate. The court may require other security to ensure your performance as conservator.

### **Conflicts of Interest**

As a conservator you are a fiduciary. That means that you have accepted the responsibility to faithfully handle another person's affairs. If what is best for the protected person conflicts with your own interests, consult with your attorney about getting court approval in advance for your course of action. Always keep the protected person's money separate from your own or anyone else's. Never use or borrow the protected person's money or property for yourself or third parties without getting permission from the court in advance to do so.

### **Expenditures**

The conservator has the duty to pay from the protected person's estate the day-to-day bills and other valid claims such as property taxes and employment taxes. You may find it advisable to hire a tax preparer to help you prepare tax returns. The protected person may be legally obligated to support a dependent. Consult with your attorney for advice. If you are considering

a large or unusual expenditure, seek court permission in advance of making such an expenditure.

### **Record Keeping**

Keeping good records is an essential part of serving as a conservator. Set up files to keep legal documents, tax records, paid bills, unpaid bills, correspondence, and other papers. Negotiable instruments, deeds, and wills are best placed in a safe deposit box in the name of the conservatorship. Open a checking account in the name of the conservatorship to deposit all income and pay bills. Completely describe each entry in the checkbook. If the balance in the checking account accumulates beyond the protected person's needs, transfer the excess into an interest bearing account in the name of the conservatorship. If you need to withdraw funds from the investment account, obtain the courts permission to do so and then transfer them into the checking account.

### **The Protected Person's Rights**

To the extent that the protected person is capable of paying routine bills or maintaining a small checking account, encourage him or her to do so. It provides the protected person with a high level of self-esteem. Involve protected persons in the management of their estate as much as possible, and keep them informed regarding finances and other matters. Make sure that the protected person has sufficient money on hand to pay for daily personal needs. You will want to obtain a copy of the protected person's will or trust so that you can honor the estate plan. If family members express concern about the cost of care for the protected person, your responsibility is to the protected person, not to the heirs.

### **Court Obligations: Inventory**

Within 90 days of your appointment as conservator, you are required to file an inventory with the court listing all the property of the estate. Sometimes the financial affairs of the protected person are in disarray, and your first task is to locate all the assets and make sense of the disorder. Once you have a complete list of assets, consult your lawyer to prepare the inventory to be filed with the court. If you discover more property at any time in the future, file an amended inventory with the court.

### **Annual Account**

Each year following your appointment as conservator, you must account to the court for your handling of the protected person's estate. You are required to account for all of the income the protected person received during the year and all of the payments you made on behalf of the protected person. You will also let the court know of any changes to the inventory of the estate that happened during the year. Present all justification information with your report.

### **Terminating a Conservatorship**

When a minor reaches the age of 18 or when an adult protected person dies or improves sufficiently to no longer need a conservator, notify the court in writing. Consult with your attorney on the proper procedures to turn over the estate and close the conservatorship. You will prepare a final account and ask the court to discharge you as conservator. You may need to record a copy of the order terminating the conservatorship with the county recorder where the protected person owned land to clear title to that property.

A conservator may petition the court to resign, but the conservator's duties continue until a new conservator is appointed. The court may remove conservators who fail to perform their duties. If the protected person dies, the conservator has the obligation to turn over the estate to the appropriate persons.

### **Special Consideration for Conservators of Minors**

Inheritances and lawsuit settlements of minor children often require the appointment of a conservator, usually a parent or family member. The existence of a minor's estate does not relieve parents of their legal obligation to support their child. A parent or a family member serving as conservator is held to the same standards as other conservators, i.e., safeguarding and prudently investing the property; not using or borrowing the minor's assets; filing an inventory and annual account, and seeking prior court approval for non-routine expenditures.

The court may require that a conservator present a written plan explaining how the minor's funds will be managed. The court may require that you obtain a bond to insure your performance as conservator. The cost of the bond may be paid by the minor's estate.

If no guardian is appointed and parents are unavailable, the conservator of a minor has the rights and duties of a guardian of the minor child. When the minor turns 18 years of age, the

conservatorship should be closed with court approval of a final account and distribution of the property to the young adult.

### **Your Compensation as a Conservator**

Often family members serve as conservator without compensation. A conservator is entitled to reasonable compensation from the estate. What is reasonable compensation depends on the types of service being provided and the skill of the conservator. The court will review the compensation paid to a conservator in the annual account filed by the conservator.

As a conservator you are entitled to have your out-of-pocket expenses paid by the estate. Again, good record keeping is essential to establish your reasonable out-of-pocket expenses.

### **Your Liability as a Conservator**

Generally, as conservator you will not be liable for your management of the protected person's estate as long as you act like a prudent person dealing with the property of another. Exercise sound judgement, and manage the state carefully, cautiously, and sensibly. If you do not do so, you may be liable for any damage you cause to the estate. You are not required to have any special skills to act as conservator. However, if you do have special skills, you must use those skills in managing the estate.

You may also be liable if you do not maintain proper records. You must keep records showing what you did with the protected person's property and income. Good records are essential to protect you in the event that your management of the estate is questioned. You may be ordered to reimburse the estate if you cannot show what you did with the estate assets, even if you know that you used them for legitimate expenses.

It is important to keep your assets separate from those of the protected person. Do not deposit any estate funds into your account or any of your funds into the estate account. Do not borrow any money or property from the estate. Do not pay your personal expenses from the estate or pay estate expenses with your money. Keep the estate separate and use it only for the benefit of the protected person. If the Board of Community Guardians has been appointed conservator and you are performing the duties of conservator at the request of and on behalf of the Board, you have additional protection from personal liability.

Understanding your responsibilities, keeping good records, and using common sense will prevent problems. Manage the estate property as you would want someone else to handle your property. Consult your attorney to answer your specific questions.

### Terms To Know

- **Annual Account** - report of a conservator filed with the court showing income to and payments from an estate, as well as changes in the inventory.
- **Annual Report** - report of a guardian filed with the court on the current condition of a ward.
- **Bond** - a type of insurance that the court may require which is paid for by, and covers the estate of a protected person.
- **Conservator** - a person or institution appointed by the court to manage the estate of a protected person.
- **Conservatorship** - a court-created legal relationship that gives a person or institution the authority to handle the property of a protected person.
- **Court Visitor** - a person appointed by the court to visit the alleged incapacitated person and report to the court.
- **Durable Power of Attorney for Health Care** - a legal document by which one person gives another the legal authority to another to make health care decisions. This power of attorney is effective even after the giver no longer has legal capacity.
- **Estate** - all property and assets, of any kind, belonging to a person.
- **Fiduciary** - a special relationship of trust between two people; a person having legal responsibilities for another.
- **Guardian** - a person appointed by the court or by a will to take care of another person called the ward.
- **Guardianship** - a court-created legal relationship that gives a person the authority to take care of an incapacitated person or minor.
- **Guardian ad litem** - an attorney appointed by the court to represent the alleged incapacitated/protected person who does not already have an attorney.
- **Incapacitated Person** - a person who cannot make or communicate responsible personal decisions because of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except being a minor.
- **Letters of Guardianship/Conservatorship** - the court document in which the guardian/conservator accepts duties and which authorizes him or her to act.
- **Living Will** - a legal document by which a person expresses medical care desires in the event of terminal illness.
- **Minor** - a child under the age of 18 years whom under the law does not have the legal capacity to manage his or her affairs.
- **Protected Person** - a person who cannot effectively manage financial affairs because of mental illness, mental deficiency, physical illness or disability, chronic use of drugs,

chronic intoxication, or other cause. A minor child may require protection because of legal disability arising from minority.

- **Representative Payee** - a person named by a federal agency such as the Veteran's or Social Security Administration to receive and account for another person's benefits.
- **Ward** - a person for whom a guardian has been appointed.

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