

HANDBOOK FOR GUARDIANS AND CONSERVATORS

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You have been appointed guardian or conservator of someone who is unable to handle his or her personal or financial affairs. This is very important position. Your responsibilities will require a large time commitment from you.

The main responsibilities of the guardian are to decide where the ward ⁽¹⁾ will live and to arrange for meals, medical and personal care, transportation and recreation. The responsibilities of a conservator are to take control of the ward's property, establish a budget, pay the ward's debts when they become due, properly invest the ward's property, and report to the Court about the estate.

All guardianships and conservatorships are under Court supervision. It is the responsibility of the Court to make certain that the guardianship and/or conservatorship is functioning in the best interests of the ward. Probate Commissioners, Court Administrator, Court Investigators (visitors) and the Court Accountant help the Probate Court Judge manage guardianships and conservatorships. Court officers review all files to insure accountings are filed and review the accountings for accuracy. Court visitors personally visit each ward before appointment of a guardian or conservator and upon serious complaint.

Your attorney plays a key role in the guardianship/conservatorship system. You should discuss any questions you have about your responsibilities with your attorney, not Court personnel. You may pay your attorney from conservatorship funds (subject to later Court approval) for helping you in such matters as obtaining your appointment and preparing inventories and accountings. After you have read the entire Handbook, you should meet with your attorney to discuss what tasks you must complete. A close working relationship with your attorney will make your job as guardian/conservator easier.

You may petition the Court to approve payment of fees to you from conservatorship funds for the work you do. You will base your fees on the time you spend, the size of the estate, and the value of your services. You may reimburse yourself for expenses paid out of your own money for the benefit of the ward. However, the court cannot approve payment or reimbursement unless you keep good records of the time you spend on conservatorship matters

(1) For convenience, person for whom a guardian or conservator has been appointed are referred to in the Handbook as your "ward".

and keep receipts for estate expenses. You should write down the date, what you did and how much time you spent.

Final authority to make decisions rests with you (subject in certain cases to the Court's approval). Still, you should make it a practice to discuss all major issues with your ward, your attorney and, if appropriate, other family members. Many disputes brought before the Court are as much a result of a failure to talk with interested parties as they are of an incorrect decision. A few minutes of prior consultation may save many hours of later dispute.

RESPONSIBILITIES AS GUARDIAN

As guardian, you must decide where your ward will live and who will provide meals, personal care, transportation and recreation. Your level of involvement will, of course, depend on the degree of personal supervision needed by your ward. You should try to discuss decisions with your ward before acting. Try to select the alternative that preserves the personal independence, dignity and lifestyle of your ward to the extent consistent with your ultimate responsibilities as guardian.

1. **Place of Residence** – As guardian, you determine where your ward should live (unless the Court has expressly ordered that you ward retains this right). That power is not unlimited. For example, you may not place your ward in an inpatient mental health facility without seeking Court approval. Similarly, you cannot make your ward a "prisoner" by denying the pleasure of visiting family and friends.

Your ward should remain in his or her home if it is possible to make it safe and comfortable for your ward. To make the home safe and comfortable, you may have to change the locks so that no unauthorized person enters the home. You may also have to have the home thoroughly cleaned to eliminate unsanitary or unsafe debris. You should contact the local gas, electricity, water, garbage and telephone companies to make sure these services to the home continue. It may also be necessary to make repairs or modifications to the home.

If your ward will be alone in the residence for more than brief periods of time, you may want to subscribe to an emergency medical

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button response system. With such a system, one touch of a button will bring help to your ward in minutes.

Most wards require some assistance with day-to-day living. This assistance can range from someone to do simple errands (such as buying groceries once a week) up to full 24-hour nursing care. You can hire assistants directly or utilize private agencies. If you hire assistants directly, you will have to verify employment eligibility, file employment tax returns and arrange workers' compensation coverage. Whether you hire the assistant directly or through an agency, you are responsible for establishing guidelines for the assistants and insuring each assistant follows those guidelines.

At some point in time it may no longer be feasible, for either physical or financial reasons, for your ward to continue to live in his/her own home. If this occurs, it is your responsibility to find a place for your ward and arrange for the move. Before you sign a written agreement for a new placement, you may wish to have it reviewed by your attorney. You are not personally liable for your ward's care costs just because you are his/her guardian. You should refuse to sign any documents if they include a promise that you will pay for his/her care from your own funds. Even if your ward is placed in a care facility, it remains your responsibility to make sure that your ward receives appropriate health care, nutrition, grooming, recreation and social stimulation. You should visit the facility periodically and regularly review your ward's chart with the nursing shift supervisor to ensure that your ward receives proper care.

2. **Nutrition** – Proper nutrition is essential to the physical and mental well-being of your ward. Ask your ward about his/her likes and dislikes. Also, consult with your ward's physician to decide what types of food and beverages should and should not be provided. Have the physician or a qualified nutritionist prepare a diet plan. Then arrange for the purchase and preparation of the appropriate food and beverages.

Very often your ward will not be capable of preparing his or her own meals. Several community organizations may be available to deliver prepared meals to a ward's home. There are also senior centers throughout the state that provide at least one hot meal as part of the daily program.

3. **Health Care** – You are responsible for making decisions regarding your ward's medical care and treatment. You must consent to any medical treatment before it is provided to your ward, unless it is an emergency. Emergencies are situations where your ward has a medical condition which, if not immediately

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diagnosed and treated, will lead to serious disability or death. If it is not an emergency, your consent must precede any treatment.

You should always act in good faith and base your decision on medical advice. You may not place your ward in an inpatient mental health facility (unless the Court has appointed you as guardian under both Title 14 and Title 36, A.R.S.).

Usually you will continue to use the health care providers your ward has used in the past, so long as these persons have the qualifications to provide the required care. If your ward suffers from a medical problem (such as Alzheimer's disease or alcoholism), you should educate yourself about the illness, what is likely to happen and what can be done to reduce adverse effects.

Many wards have executed a living will or a durable power of attorney for health care. These documents specify what actions to take regarding prolonging life through life support systems. If you are confident that your ward had the capacity to understand the document when it was signed, you should respect his or her wishes. You should seek direction from the Court when you are not sure whether your ward understood the document. If you believe that the person designated in the power of attorney is not acting in the best interests of your ward, you can ask the Court to revoke the power.

You should make sure that your ward has appropriate health insurance. This may include Medicare, a health maintenance organization ("HMO"), Medicare supplemental health insurance, long-term care insurance, and, if your ward is eligible, AHCCCS and ALTCSS coverage.

4. **Recreation** – A ward's disabilities may make it difficult to continue many activities that have been sources of happiness over the years. Lack of outside stimuli often results in accelerating your ward's physical and mental decline.

You have a duty to ensure that your ward has appropriate social and intellectual stimulation and the physical means of enjoying it. Talk to your ward about what he or she would like to do. If your ward likes to read, make sure that reading material is available and that your ward has properly fitted glasses and a reading light. Large print books and

books on audio tapes are available at most libraries and bookstores. If your ward enjoys music, make sure that a radio or stereo is available. When your ward has hearing problems, make sure he or she has a working hearing aid. If your ward shares a room with someone, make sure he or she has earphones. Other sources of pleasure are favorite food and drink, lotions and powders, and, for some, television.

Encourage your ward to call and write family and friends. Similarly, encourage them to visit or write back. Encourage family and friends to take your ward on periodic outings. Even extremely impaired people enjoy being taken to restaurants, to the park and out for drives. Some organizations will make daily telephone calls to your ward to check on his/her welfare. Many churches have volunteers who will visit your ward regularly. If it is appropriate, you should encourage and arrange for your ward to attend a senior center that offers a variety of daily activities.

5. **Control** – If your ward is a danger to others, you should take all the reasonable steps necessary to reduce the danger. For example, your ward should not drive if he/she is unable to safely operate a motor vehicle. If your ward has a violent temper, he/she should not have access to guns or other lethal weapons. If you are negligent in your attempts to control your ward you may have to pay, with your own funds, any damages caused to others by your failure to control your ward. Because of this, you may want liability insurance to protect yourself.

6. **Guardian's Reports** – If your ward is an adult, you must file an annual report with the Court describing your ward's residence, physical and mental health, whether there is still a need for a guardian and (if there is no conservator) your ward's financial situation. You must mail copies of your report to your ward, your ward's conservator (if any), your ward's spouse (or parents if your ward is unmarried), the Court-appointed attorney and any interested party who has filed a demand for notice with the Court.

You must notify the Court whenever you change your address. Failure to keep the Court advised of your whereabouts may lead to your removal as guardian or even your arrest or the imposition of fines.

RESPONSIBILITIES OF CONSERVATOR OF THE ESTATE

As conservator, you will manage and use your ward's property primarily for his/her benefit. Your secondary consideration will be the benefit of your ward's

Legal dependents (such as a spouse or minor children). You must:

- 1) take control of the property and make sure that it is adequately protected against loss;
- 2) establish (in consultation with the guardian and/or your ward) a budget;
- 3) pay your ward's debts as they become due;
- 4) invest the property in investments suitable to your ward's circumstances;
- 5) annually report to the Court about the assets, receipts and disbursements of the estate.

Much of this can be done without prior Court approval. However, there are certain acts that require prior Court approval. If you have any doubts, you should contact your attorney before taking action.

1. Take control of Property

Your Letters of Conservatorship are the legal document giving you the authority to take all the actions described here. You should have enough certified copies to show one to each bank, stockbroker, stock transfer agent and other officials you will deal with. Many of these officials will make a copy and return the certified letters to you, but some will want to retain a certified copy.

Your first duty as conservator is to take control of your ward's property. Identify what your ward owns and arrange for transfer of title into the conservatorship's name. Your ward's property may include cash, uncashed checks, bank accounts, stocks, bonds, notes receivable, partnership interests, life insurance policies, real estate, furniture, jewelry, automobiles and the right to receive payments from the government, insurance companies, employers and trusts.

You should immediately open a checking account and, if appropriate, a savings or money market account titled as "(Ward's name), by (Your name) as Conservator." This account will serve as a place to deposit funds you collect. You should also consider opening a safe deposit box to hold documents and property of independent value. You must use your ward's Social Security Number for the accounts, not your own. Use the checking account to deposit all receipts and pay all expenses. Separately record each receipt and each expenditure in the checkbook

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register so that you will later have the details necessary for the accounting you will submit to the Court. If the checking account balance is larger than immediate needs, you should deposit the unneeded funds in an interest-bearing account. The law requires you to always keep your ward's property separate from your own property. You may never use your ward's property for your own benefit; anytime you benefit in any way from the conservatorship, although your ward may also benefit, you should secure prior Court approval.

The best source of information about assets is probably your ward. You should review all his/her financial records with your ward, including current bank and broker statements, income tax returns, account ledgers, deeds and insurance policies. You have a right to enter your ward's safe deposit box and remove the contents. If the box is rented with another person, that other person should be present when the box is opened.

You also have a right to interview other people who may have knowledge of your ward's property, such as your ward's accountant and stockbroker. You may want to send a letter to all banks and savings and loan associations in the area to find out what accounts your ward owned as of the date of your appointment. You should transfer the funds in each account to the conservatorship accounts. Financial institutions must waive early withdrawal penalties on time deposits made by your ward before the conservatorship started. However, you should always check with the financial institution before you withdraw fines from an account; the interest rate in a long standing account may be advantageous. You should limit the total deposits to \$100,000.00 with any one financial institution. If your ward is going to be receiving wages or a monthly allowance, you may want to keep one small checking account open in his/her name and direct monthly bank statements to your own address.

Although your ward's stocks and bonds will ordinarily be in a safe deposit box or with a broker, it is not uncommon to find certificates in your ward's home. Therefore, you should make a careful search of the home. If you believe that your ward owns a security but you are unable to locate the certificate, you should write to the company and obtain a replacement certificate.

Property that is co-owned with another person (such as a joint bank account) or co-controlled by another person acting under a power of attorney creates special problems. If the ONLY other owner is your ward's spouse, you (with the help of your attorney) should find out whether the funds are community property. The spouse, if legally capable, may also have a right to control and manage the community property. You can petition the Court for permission to

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allow your ward's spouse to manage community property. Normally, joint tenancy accounts are owned by the named account holders in proportion to the contributions each joint tenant made to the account. Joint tenancy accounts also have an effect on the estate plan of your ward, and you must take your ward's estate plan into account when investing or selling assets and paying your ward's bills. You will need to determine why your ward used joint tenancy accounts and whether the other joint tenant contributed any part of the account. Before dividing or closing a joint tenancy account, you should consult with your attorney. If none of the funds belong to the other joint tenant, you may transfer the funds to a new account with the joint tenant named as a P.O.D. (payable on death) beneficiary. If you cannot reach an agreement about what belongs to your ward, consider taking control of the entire property to prevent the other owner(s) from disposing of the property. As conservator, you have the authority to revoke any financial powers of attorney previously signed by your ward. You should consult your attorney for assistance in preparing and recording a revocation and in notifying the person named in the power of attorney.

You should deposit valuable jewelry, stamp and coin collections and other small objects of substantial value in the conservatorship safe deposit box; unless you decide that the benefits of leaving such property with your ward outweigh the risks of loss. You should store valuable furs, antiques and art work and excess furniture in an insured warehouse if there is no immediate need for these items at your ward's home. You should also decide whether other people hold property that belongs to your ward. For example, your ward may have lent to others furniture, art work or other items, and it is necessary for you to decide whether such items should be reclaimed. You may want to take photographs of all your ward's valuable personal and household effects for insurance purposes.

You should get the title to your ward's automobile and make sure that no unauthorized person drives it. No one should drive the automobile unless it is adequately insured. If you decide to store the automobile in a garage, remember to keep the registration current.

Your ward may receive payments from the government, insurance companies, (former) employers and trusts. You should contact the Social Security Administration, Civil Service Retirement System and the

Veterans Administration to find out whether your ward is eligible for benefits and arrange for checks to be sent to you as the conservator. If your ward receives retirement or disability benefits from an employer or an insurance company, contact the payer and have benefits sent directly to you. If your ward is a beneficiary of a trust, you should review the terms of the trust with the trustee and have trust distributions sent directly to you. Consult with your attorney if your ward was a trustee.

Record a certified copy of your Letters of Conservatorship in the County Recorder's Office of each Arizona County where you ward owns real estate, and also in the county where you ward resides. This will help prevent any unauthorized sale or mortgaging of the property. Consult with your attorney if your ward owns real estate outside Arizona. If the property is rental property, you should direct the tenants to pay rent to you.

For automobiles, real estate and household effects, you should insure the property against fire, theft and other hazards (for its replacement value), as well as liability to third parties (including workers' compensation claims of household help). You may insure the property, your ward and yourself without prior Court approval.

2. Prepare the Inventory

You must file an inventory of all assets owned by your ward at the time of your appointment (no matter where located) within 90 days after your appointment. The inventory and appraisal:

- advises the Court of the extent of your ward's estate;
- helps the Court set your bond;
- serves as the starting point for your annual accountings.

If you are not sure of the value of an asset, you may want to have the asset appraised. Unless you are planning to sell real property, you may use the County Assessor's full cash value for inventory purposes. If you must obtain Court approval for a sale of real property, you will need to obtain a formal appraisal by a certified appraiser. You do not always have to obtain formal appraisals, but the inventory entry for each item should state whether the value is estimated, an assessed value or an appraised value.

3. Establish a Budget

You should prepare a budget for your ward with the guardian and, if possible,

with your ward. The budget should project income from all sources, including income from investments and employment and income from the government, insurance companies, (former) employers and trusts. It should also project housing, food, clothing, personal care, in-home assistants, medical care, transportation, insurance, utilities, taxes, entertainment, estate administrative costs (such as bond premiums, conservator fees, accounting fees, and attorney fees) and, if authorized, support of your ward's legal dependents. In establishing a budget, you should remember your sole responsibility is to your ward and those entitled by law to support from your ward. You should not deprive your ward of any reasonable item merely to allow his/her heirs to inherit more property. Your responsibility is to your ward, not to the heirs.

You will need to discuss with your attorney and the guardian how to pay expenses. Usually, it is simpler for the conservator to pay expenses directly, and you should arrange to have bills sent directly to you. There may be situations or expenses where it is simpler to pay money to the guardian, or even to your ward, to allow that person to pay the expenses. For example, your ward may benefit from having a small checking account with which to pay monthly utility bills. However, if your ward will pay the utility bills, you should ask the utility to notify you before taking any action for non- payment.

If you receive a bill for your ward which you do not believe is valid, you must take action within 90 days. You should consult your attorney regarding the proper procedure to disallow such a claim.

4. Make Suitable Investments

Review you ward's investments (perhaps with a qualified financial consultant) to decide whether they are appropriate in light of your ward's age, life expectancy, income requirements and estate size. You must manage your ward's estate prudently and should avoid risky investment. The safety of the investment is more important than receiving a high rate of return. If the Court later decides that you invested unwisely, you may have to repay any loss. You should review any proposed changes with your ward and be sensitive to your ward's perception of what is a risky investment. Before acting on any proposed sale or purchase, you should consult with your attorney to decide whether you should ask for Court approval.

The Court is unlikely to approve unsecured loans, loans to relatives (even if secured) or obligations of foreign countries or foreign corporations. If you must obtain Court approval for the sale of real property, and you decide that the sale is necessary, be sure that the listing agreement and contract for sale indicate the requirement of Court approval.

When the conservatorship needs cash, you must choose between raising the cash by borrowing, by the sale of assets, or both. You must obtain prior Court approval to borrow money. No Court approval is required to withdraw funds from or sell the following investments:

- deposits in a federally insured bank, savings and loan association, or credit union in Arizona (unless access to the account has been restricted by the Court);
- Federal and Arizona obligations, the obligations of Federal agencies and Arizona political subdivisions (e.g., counties and cities);
- stocks, bonds and other securities listed and sold on an established stock or bond exchange in the United States.

You will not require prior Court approval to sell personal and household effects. However, you should not rush to sell household effects just because it appears likely that your ward will be placed in a nursing home. Usually you will wait for a period after nursing home placement before disposing of property. This gives your ward time to adapt to the home. Once you decide to dispose of property, do not just distribute it among family members, even if they will inherit the property after your ward's death.

Often, the sale of real property requires prior Court approval and you should consult your attorney before making any final decision to sell. If the sale requires Court confirmation, you will have to submit the sale agreement for approval. You may use an agent to sell property, but be sure to tell the agent in advance if the sale will be subject to Court confirmation. You do not need Court approval to rent out the property.

5. Pay Taxes

As conservator of the estate, you will file tax returns for your ward. You may hire and pay a tax preparer to prepare the returns without prior Court approval. If you suspect that tax returns are not current, you should contact the Internal Revenue Service and Arizona Department of Revenue to obtain copies of prior returns and to find out what returns are missing.

There are penalties for both failure to file a return and failure to pay the tax. Sometimes a penalty may be waived if the conservator shows that the failure to file was due to reasonable cause (such as the ward's incapacity) and not due to willful neglect. The fact that the conservatorship has been created may be sufficient grounds for waiving the penalty. After your appointment, you may be personally liable for any later failure to file returns. You should also pay real estate taxes, personal property taxes and unemployment taxes (e.g., for in-home help when due).

6. Account to the Court

Unless the Court says otherwise, you must file an accounting with the Court each year and when the conservatorship is terminated. If possible, you should review the accounting with your ward before the Court hearing. All fees paid to the conservator and the conservator's attorney are subject to Court review and approval as part of the accounting process.

The accounting must show all receipts and expenditures, investment transactions and property left at the end of the accounting period. Therefore, you must keep detailed records and documentation (e.g., receipts, copies of paid bills). A detailed check register may be sufficient.