

The court may require that a conservator obtain a fiduciary bond from an insurance company. The bond assures that the conservator faithfully carries out his or her duties, and protects the assets of the conservatorship to the extent of the bond's coverage. However, a bond does not eliminate your financial responsibility. Should the estate be required to recover a loss against the bond due to your breach of fiduciary duties, the bonding company has the right to recover the amount of its liability from you. Check the Order Appointing Conservator to see if a bond is required and the amount of the bond. If required, you may pay the cost of the bond from the protected person's assets.

Speaking of liability, a conservator generally is not personally liable on contracts entered into in the course of the conservatorship, so long as the conservator makes it clear he or she is entering into the contract as a conservator for the protected person's estate. You must carefully read any contract before signing it to ensure that it does not try to hold you personally responsible. On the other hand, you are personally liable for your acts or omissions as a conservator if you are at fault. You also are personally liable to the protected person's estate for inappropriate actions taken with the protected person's funds, as described above.

Compensation and Expenses

You are entitled to reasonable compensation for your services and reimbursement of expenses, payable from the protected person's money. Any compensation you receive is taxable income to you and is a tax-deductible expense for the protected person. Family members often serve without compensation. If compensation is sought, Colorado has not established a schedule or any criteria for "acceptable" compensation. The law simply states that it must be fair and reasonable, which is determined on a case-by-case basis. If seeking compensation, you must keep contemporaneous time records describing the services provided and the time taken to perform these services. If you wish to be compensated for your services, you should first seek and obtain the court's approval.

You are entitled to have a lawyer to advise you as conservator, and you may pay this expense from the protected person's funds. If you incurred legal fees obtaining conservatorship, you may seek permission from the court to be reimbursed from the protected person's money.

Resignation and Termination

While you may seek to resign as conservator, the court must approve your resignation first. Also, the protected person or other interested persons may seek your removal as conservator.

The conservatorship may need to terminate for various reasons:

- the protected person may have recovered and no longer requires assistance;

- the protected person may have died;
- the assets may have been depleted; or
- if the conservatorship was for a minor, it is no longer needed when the minor becomes 21 years old.

Regardless of the reason, the conservator is required to prepare a final report and ask the court to terminate the conservatorship. The final report covers the period since the last accounting and indicates what assets remain in the conservatorship to be distributed.

If the conservatorship is terminated because the protected person has recovered, or has attained 21 years of age, you will transfer the assets into the name of the individual. If the conservatorship is terminated because the protected person has died, you will transfer the remaining conservatorship assets to the personal representative for the probate estate of the protected person, or as otherwise directed by the court. Upon the death of a protected person, you should continue to preserve and protect the conservatorship assets. You may release funds for funeral expenses, but you should take no other action without first obtaining a court order. If you have possession of the protected person's will, you should deliver it to the proper court and inform the protected person's personal representative and heirs.

You should file your final report with the court and ask that it be approved. Next, you should provide the court with proof that the assets have been transferred to their proper places. This is usually done using a "receipt and release," a form you also can find at www.courts.state.co.us. After the court is satisfied that you have performed your duties and responsibilities as required, the court will enter a decree of final discharge, relieving you of any further liability.

Words of Caution

This brochure cannot and does not attempt to answer every question you may have, nor does it provide you with everything you may need to know about being a conservator. It is intended only to provide a simple overview of your general duties and responsibilities as a conservator. If you have questions on how to proceed, you should consult an experienced elder law attorney before acting. Obtaining an attorney's advice before you act may help you avoid the need for more costly legal services later.

(2008) This pamphlet is published as a public service by the Colorado Bar Association. It was updated by Tom Rodriguez in 2008. Its purpose is to inform citizens of their legal rights and obligations and to provide information regarding the legal profession and how it may best serve the community. Changes may have occurred in the law since the time of publication. Before relying on this information, consult an attorney about your individual case.



So Now You Are A Conservator

Sponsored by the Colorado Bar Association

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You have recently been appointed as a conservator. You probably have many questions about your new role. What are your duties and responsibilities? What are your liabilities? This brochure is intended as a general guide for conservators. Should you have more detailed questions about your role as conservator, please consult an experienced elder law or probate attorney.

Introduction

A conservator is a person appointed by the court to manage another person's financial affairs. The person for whom a conservator is appointed is called a "protected person." The protected person's assets and income are generally referred to as the protected person's "estate."

The role of a conservator differs from the role of a guardian. A guardian is appointed to assist with the personal, medical and day-to-day affairs either of a minor or of an adult who has been determined by the court to be incapacitated. Unlike a guardianship, the court may appoint a conservator without finding the person to be incapacitated.

Following your appointment, the clerk of the court prepares a written document called "Letters of Conservatorship," often referenced simply as "Letters," which serve as proof of your authority to act on behalf of the protected person's estate. You should obtain certified copies of your Letters from the clerk, as you will need to present a certified copy to banks and financial institutions where the protected person has accounts. If you need to make any real estate transactions, you should record your Letters in the county where the real estate is located.

Your Responsibility to the Protected Person

Your role as a conservator is serious business and should not be taken lightly. If you fail to act in the best interests of the protected person, the court can suspend or remove you as conservator and may assess fines and/or surcharges against you, which means that you will have to repay any funds you have misappropriated or mishandled. You could even be charged with crimes for inappropriate actions.

As a conservator, you have a fiduciary duty to the protected person. You owe the duty of undivided loyalty to the protected person, and you may not engage in self-dealing, which means that you may not personally profit from the assets you control. You also are required to exercise due care. You must handle the conservatorship assets prudently, using reasonable care and caution when investing and managing the assets under your control. If the conservatorship estate contains sufficient assets to warrant investments, you would be prudent to rely upon an experienced financial advisor to diversify and structure an investment

portfolio, balancing risks and returns. Likewise, while you may not delegate all of your responsibilities, you are permitted to delegate some responsibilities to a qualified person, such as hiring a CPA to prepare tax returns or a realtor to sell real estate.

You must keep the protected person's property separate from your own property to avoid "commingling." You should rent a separate safe deposit box for conservatorship property and documents, rather than storing those items in your own safe deposit box. You should title all accounts in "[your name] as conservator for [the protected person]," and use a specific checking or savings account for conservatorship transactions. This should also make it easier for you to track spending and prepare the required reports discussed below. You should try to avoid writing checks to "cash" or to yourself, but, if you do, be sure to keep careful records of the items and/or services purchased with the protected person's funds.

As a conservator, you step into the shoes of the protected person. Unless your authority is limited by the court's appointing order or subsequent orders, you have broad powers to act on behalf of the protected person's financial interests. However, you may not take certain actions without prior approval of the court. For example, you cannot make gifts unless;

- there are sufficient funds to provide for the needs of the protected person,
- the gifts are those that an adult protected person would be expected to make (such as birthday gifts for relatives), and
- the combined gifts do not exceed 20% of the protected person's income for that year.

Also, you cannot change beneficiaries or surrender for cash value the protected person's retirement plans, insurance policies or annuities without first obtaining permission from the court. You will need court permission to make a will or a trust for the protected person. With the court's permission, you may consent to the adoption or marriage of the protected person, or seek a divorce on behalf of the protected person. Additionally, you should seek permission from the court before selling assets that are not easily replaceable, such as real estate or items of personal property, in order to limit the your liability to the protected person and those who may inherit his or her estate.

Unless limited by the Letters, Order Appointing Conservator or any subsequent order of the court, you may spend conservatorship money for the support, care, education, health and welfare of the protected person. You may also provide reasonable payments to the protected person's dependants, including child support and spousal maintenance. Your authority to use estate funds, along with the amount of proposed

expenditure, may depend upon the source of the funds and the reason the funds were received. For example, if the funds were received by a minor as a result of a personal injury settlement, the use of these funds would normally be limited to paying any healthcare bills not covered by insurance, paying for the minor's extraordinary needs and preserving any surplus for the minor's later use. In such cases, the conservatorship funds would not normally be used for day-to-day living expenses since receipt of the personal injury money does not affect the surviving parent's continuing obligation of support. However, if the funds were for life-insurance or other proceeds relating to the death of a parent who was the family bread-winner, you might spend conservatorship funds more liberally to assist with the minor's basic support.

Conservators often get themselves into trouble when differentiating between acceptable and unacceptable expenditures. You should review the Order and your Letters carefully. If you are uncertain, seek the advice of an experienced elder law or probate attorney before making the expenditure.

Your Responsibility to the Courts

Within 90 days of your appointment, you must file an inventory of the conservatorship assets under your control. Also within 90 days, you must file a financial plan, which is basically a budget for the upcoming year. In the financial plan, you will list the protected person's monthly income and expenses, and describe how you plan to manage the assets under your control. Once you have gathered the required financial information, you will have to determine whether the protected person's income is sufficient to cover his or her expenses, or whether non-cash assets will have to be sold to pay for the protected person's care. Upon submitting your financial plan, you should request that the court approve it. Once approved, you must faithfully follow the financial plan. Otherwise, the court may remove you as the conservator and/or assess surcharges or other sanctions against you should the conservatorship suffer losses as a result of your failure to follow the approved financial plan. If the protected person's financial situation changes, you must amend the financial plan appropriately and seek the court's approval of the amended financial plan.

At least once a year, you are required to file a conservator's report detailing the conservatorship's income and expenditures over the last accounting period. In the conservator's report, you also must provide a comparison between actual expenditures and the court-approved financial plan. You can obtain these forms through the website for the Colorado Judicial Branch by going to www.courts.state.co.us and clicking on the "Self-Help Center." You must file these reports with the court and mail copies to those persons identified in the order. Check the Order Appointing Conservator for the deadlines for filing these reports and the list of persons who are to receive copies.