

compensation, you must keep contemporaneous time records, describing the services provided and the time taken to perform these services. A guardian's compensation must be either approved by the court or paid by a conservator who is not affiliated with the guardian.

You are entitled to have a lawyer to advise you in your capacity as guardian, and you may pay this expense from the ward's funds. If you incurred legal fees obtaining guardianship, you may seek permission from the court to be reimbursed from the ward's money.

Resignation and Termination

While you may seek to resign as guardian, the court must approve your resignation first. The ward or other interested persons may seek your removal as guardian. A guardianship usually terminates on the death of the ward (adults) or the attainment of the age of majority (minors). You are required to notify the court immediately if the ward dies. You should ask that the court discharge you as guardian should you resign, or at the time the guardianship terminates.

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 guardian. It is intended only to provide a simple overview of your general duties and responsibilities as a guardian. If you have questions on how to proceed, you should consult an experienced elder law or probate attorney before acting. Obtaining an attorney's advice before you act may 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 Guardian

Sponsored by the Colorado Bar Association

So Now You Are a Guardian

You recently have been appointed as a guardian for another person. 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 guardians. Should you have more detailed questions about your role as conservator, please consult an experienced elder law or probate attorney.

Introduction

A guardian is appointed by the court to assist with the personal, medical and day-to-day affairs of either a minor or an adult who has been determined by the court to be incapacitated. The person for whom a guardian is appointed is called a "ward."

In certain states, a guardian may manage financial matters for the ward. However, except for limited circumstances explained below, that is not the case in Colorado. A "conservator" is appointed to manage another person's finances. A conservator is different from a guardian.

Following your appointment, the clerk of the court prepares a written document called "Letters of Guardianship," often referenced simply as "Letters," which serves as proof of your authority to act on behalf of the ward. You should obtain certified copies of your Letters from the clerk, as you will need to present a certified copy to healthcare providers, schools and governmental agencies, etc.

Your Responsibility to the Ward

Your responsibilities will vary with the ward's circumstances. If your ward is a minor, your responsibilities may include deciding where the child lives and attends school. You may be required to sign school enrollment papers, medical consents, and other legal documents. If your ward is an incapacitated adult, you may be responsible for making decisions about where the ward will live (including placing the ward in a nursing facility or obtaining necessary in-home care for the ward), choosing a doctor and consenting to medical care, and generally ensuring that the basic daily needs of your ward are met, including food, clothing and shelter. You are not personally responsible for paying for the ward's care. However, you may be held personally liable if you do not state that you are acting as the ward's guardian, or if you make a personal guarantee in your individual capacity when you contract for goods and services on the ward's behalf.

You may make decisions for the ward as allowed within the scope of your authority granted by the court in the Order Appointing Guardian and the Letters. Please review the Order and Letters carefully, and, if you have any questions about your authority in a situation in which the ward's health and/or wellbeing are not in immediate danger, consult with legal counsel before making a decision. As a general rule, you have no greater powers than are necessary to serve the needs of your ward. You should make decisions after consulting with the ward and, to the greatest extent possible, taking into

account the ward's wishes and personal values. You should encourage the ward to participate in decision-making and, when possible, you also should encourage and assist the ward in developing or regaining the ability to manage his or her own affairs.

If the ward has an agent under a medical power of attorney, you may not revoke the medical power of attorney without an order from the court. If a medical power of attorney exists and has not been revoked, the agent still has authority to make medical decisions for the ward, as well.

If a conservator has not been appointed, you may need to address some basic financial management for the ward. If no conservator is appointed, a guardian usually can manage the ward's public benefits. A guardian can take legal action to compel a person to support the ward, such as seeking child support.

As a guardian, you cannot give certain consents on the ward's behalf. Specifically, you cannot consent on behalf of the ward to involuntary treatment for mental health, developmental disabilities or substance abuse.

You may delegate to another person, for a period not to exceed one year, most powers regarding the care, custody or property of the ward. However, you should use this procedure only when you are going to be on vacation or otherwise unavailable to perform your duties as guardian.

Your Responsibility to the Courts

You must prepare and file an initial guardian's report within 60 days of your appointment. Thereafter, you must file a guardian's report each year. If you manage some or all of the ward's money as guardian, you also need to complete an inventory and annual accounting forms. You can obtain these forms on the web at www.courts.state.co.us and clicking on the "Self-Help Center." You must file these reports with the court and mail them to those persons identified in the Order. Check the Order Appointing Guardian for the deadlines for filing these reports and the list of persons who should receive copies.

You must obtain court permission before moving the ward out of state. You should inform the court immediately if the ward changes addresses within the state. With the court's permission, a guardian may consent to the adoption or marriage of the ward, or seek a divorce on behalf of the ward. If the ward's condition changes significantly, you should inform the court immediately. The court may include other requirements or restrictions on your authority in the Order.

Compensation and Expenses

You are entitled to reasonable compensation for your services and reimbursement of expenses, payable from the ward's money. Any compensation you receive is taxable income to you, and is a tax-deductible expense for the ward. 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