

INFORMATION ABOUT THE ROLE AND RESPONSIBILITIES OF A CONSERVATOR

I. ROLE of the CONSERVATOR

Your role as the Conservator is to listen to the protected person and ensure that their preferences are being met as long as it does not cause harm. As a court-appointed conservator, you are also required to file reports with the court which provide an account of the protected person's finances.

Your authority as the conservator is derived from the court order you received, state law, (Arizona Revised Statutes §§ 14-5418, 5419), the Arizona Rules of Probate Procedure (Rule 38), and the Arizona Code of Judicial Administration (AJCA § 3-302, Forms). The forms, schedules, and worksheets listed in the ACJA are the required forms pursuant to Rule 38(B) Arizona Rules of Probate Procedure.

A. DECISIONMAKER

Your role as the conservator places you in a position to make decisions for the protected person in one of two ways; using either substituted judgment or the best interest standard.

It is never easy to make a decision for another adult that goes against their wishes, but you must keep in mind that your friend or family member no longer has the ability to truly understand the consequences of their decision. This is why the court appointed you as the conservator – to make the tough decisions. You need to remember that if you make a decision that is in contrast to the stated or demonstrated preferences of the protected person, you should be prepared to defend that position.

1. **SUBSTITUTED JUDGMENT:** means making the decision that the protected person would make if they had the capacity to do so.

When making decisions using substituted judgment, you have an obligation to discuss with the protected person the decision you are going to make. To the extent that the protected person can understand the issue at hand, you have an obligation to discuss the decision you are going to make with the protected person, and listen to their preferences in that situation. For example, if you believe it would be appropriate to liquidate an asset belonging to the protected person; you should discuss this with them. Try to put it in terms that they have the ability to understand. Discuss the benefits and the consequences of the decision you are about to make. Listen to their preferences and the reason for making the decision.

When using substituted judgment, it is also helpful to talk to other family members or friends about conversations they have had with the protected person. As Conservator, it is important to consider the following. Has the protected person ever talked about their preference for liquidation of their assets? Did they want that particular asset to be

set aside as a gift for a friend or family member? Your job is to determine what their preferences were when they were still capable of making those decisions.

2. **BEST INTEREST STANDARD:** means exercising reasonable care, diligence and prudence when making decisions for the protected person. To the extent that the protected person's wishes, preferences and values are not known and cannot be ascertained with reasonable diligence, then the Conservator must act in accordance with the person's best interests.

For example, with a person who has been disabled since birth or in situations where the protected person's preferences may cause harm or serious injury, your decision would be based on what you believe to be in the protected person's best interest. Another example is a Conservator of a minor who has the role of acting as a parent regarding the protected person's support, care, education, health, and welfare; and must act at all times in the protected person's best interest using reasonable care, diligence, and prudence.

B. CONFIDENTIALITY

As Conservator, another role you have is maintaining the protected person's confidential information. Confidential information concerning the protected person is information on documents (or the entire document) that is intended to be kept secret. Confidential information is not available to the public for inspection.

1. **Confidential information** includes:

- A social security number of a living person;
- Any account number for a financial account (unless limited to the last 4 digits only). The term "financial account" includes
 - credit card account
 - debit card account
 - bank account
 - brokerage account
 - insurance policy
 - annuity contract
- Any other information determined by the court to be confidential.

2. **Confidential documents include:**

- The probate information coversheet
- Medical reports and records
- Budgets filed
- Inventories and appraisements
- Accountings
- Credit report

3. **Special Handling of Confidential Information and Confidential Documents**

All Form 5 information, documents and attachments are **confidential** and require special handling. When filing confidential information and documents with the Clerk's Office, place the original document in an envelope that bears the case name and number, the name of the document being filed, the name of the party filing the document, and the label "Confidential Document."

II. RESPONSIBILITIES of a CONSERVATOR

Your responsibilities as a conservator begin on the date of your appointment, whether it is a temporary or permanent appointment. The conservator has the responsibility to manage the assets of the protected person as a prudent person would. In other words, the conservator must ensure that the money and assets of the protected person are used only for the benefit of the protected person. The conservator must ensure that the assets of the protected person are invested properly and appropriately to maintain the protected person's current living circumstances.

A. FIRST PRIORITY: REVIEW the entire Conservatorship Training Module on the Arizona State Court website. The Training Module explains in greater detail, each responsibility outlined below.

1. Post the surety bond.
2. Obtain certified copies of your letters of Appointment from the Probate Court Clerk.
3. Record the Letters of Appointment at one (or more) County Recorders' office.
4. File a "Notice of Filing" with the court to show the court you recorded the Letters of Appointment.

B. MARSHAL AND PROTECT ASSETS OF THE ESTATE. The court wants you take control of the Protected Person's assets, on behalf of and for the benefit of the conservatorship estate. There are a number of ways to marshal and protect assets of the estate:

1. Meet with the Protected Person's financial institution(s) to share information about your Conservatorship.

C. INVENTORY the Protected Person's assets.

D. CREATE a nine (9) month **ESTATE BUDGET** for the 1st year reporting period.

E. FILE at the Court the Inventory and Budget with Form PBC95f in this packet.

F. RECORDKEEPING:

1. ORGANIZE the Protected Person's records.
2. MAINTAIN Protected Person's records.

G. NOTIFY COURT, Service Providers and the U.S. Postal Service of the change of Protected Person's address to your address.

III. SUMMARY

Your roles and responsibilities as the Conservator involve important legal obligations. To fulfill these obligations, regularly review the Conservator and Fiduciary training guides found on the Arizona State Court's website.