

## HELPFUL INFORMATION ABOUT THE ROLE AND RESPONSIBILITIES of a GUARDIAN and CONSERVATOR

### I. ROLE of the GUARDIAN and CONSERVATOR

Your role as the court-appointed guardian and conservator is to listen to the protected person / ward and ensure that their preferences are being met as long as it does not cause harm. As guardian, your role is similar to that of a parent: you are entrusted to watch and protect the ward, and ensure the ward's security.

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 guardian is derived from the court order you received, state law, (Arizona Revised Statutes §§ 14-5209, 5311, 5312), the Arizona Rules of Probate Procedure (Rule 30), and the Arizona Code of Judicial Administration (AJCA § 3-302, Forms). 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 both the guardian and conservator places you in a position to make decisions for the ward/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 person 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 guardian /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 ward/protected person, you should be prepared to defend that position.

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

When making decisions using substituted judgment, you have an obligation to discuss with the ward the decision you are going to make. To the extent that the ward can understand the issue at hand, you have an obligation to discuss the decision you are going to make with the ward, and listen to their preferences in that situation. For example, if you believe it would be appropriate to liquidate an asset belonging to the ward; 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 ward. As guardian/conservator, it is important to consider the following. Has the ward 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 ward. To the extent that the ward's wishes, preferences and values are not known and cannot be ascertained with reasonable diligence, then the guardian/conservator must act in accordance with the ward's best interests.

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

3. **INFORMED CONSENT:** means a person's agreement to a particular course of action based on a full disclosure of facts needed to make decisions intelligently. Informed consent is used particularly in making medical decisions. In order for consent to be "informed consent," you must have received adequate information about the issue you are being asked to consider – and - you must enter into the decision voluntarily and without feeling coerced.

The Arizona Supreme Court Guardianship training module, found at the Arizona Supreme Court's website under "Public Services" / "Seniors/Probate Law," has an excellent discussion of the issue of informed consent. A review of the training module may assist you in your informed consent decision making.

In making a decision using informed consent, the following steps should be used in the process.

- Gather information about the medical issue you are being asked to consider
- Get a clear understanding of the medical issue for which informed consent is being sought.
- Determine the underlying medical problem that is causing the doctor to suggest this form of treatment.
- Advise the ward of the decision that is required.
- Determine, to the extent possible, the ward's current preferences.
- List the possible outcomes of each alternative decision.
- Consider the benefits and risks of each alternative.
- Ask "Does this decision need to be made now rather than later?"
- Ask "What is the least restrictive alternative?"
- Obtain a second opinion, if necessary.
- Obtain written documentation of all reports relevant to each decision.

## B. CONFIDENTIALITY

As guardian/conservator, another role you have is maintaining the ward or protected person's confidential information. Confidential information concerning the ward 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 GUARDIAN and CONSERVATOR

Your responsibilities as a guardian/conservator begin on the date of your appointment, whether it is a temporary or permanent appointment. As a guardian, your responsibilities include that of coordinating services for your ward, including medical services, and ensuring your ward's benefits are being received. As conservator, your responsibilities involve managing the assets of the ward/protected person as a prudent person would. In other words, the conservator must ensure that the money and assets of the ward are used only for the benefit of the ward. The conservator must ensure that the assets of the ward are invested properly and appropriately to maintain the ward's current living circumstances.

## **A. GUARDIANSHIP RESPONSIBILITIES**

**1. FIRST PRIORITY:** REVIEW the entire Guardianship Training Module on the Arizona State Court website, the training module explains in greater detail each responsibility outlined below.

### **2. COORDINATE SERVICES to ensure ward's health, education and welfare**

- a. Medical care: you must ensure the ward's medical needs are met This includes
  - i. Coordinating medical and dental appointments
  - ii. Coordinating prescriptions
- b. Education: you must ensure the ward finishes school (if possible), and
  - i. Coordinate additional training, if necessary

### **3. ENSURE BENEFITS ARE RECEIVED**

- a. Research the ward's eligibility for benefits, if necessary.
- b. Check to ensure all benefits This includes
  - Medicare
  - AHCCCS
  - ALTCS
  - Veteran's benefits
  - Department of Developmental Disabilities
  - Supplemental health insurance
  - Medicare Part D

### **4. GUARDIAN of a MINOR SHALL:**

- a. Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities and physical and mental health.
- b. Take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.
- c. Apply any available monies of the ward to the ward's current needs for support, care and education.
- d. Conserve any excess monies for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs.
- e. Report the condition of the ward and of the ward's estate which has been subject to his possession or control, as ordered by the court on petition of any person interested in the ward's welfare or as required by court rule.

## **B. CONSERVATORSHIP RESPONSIBILITIES**

**Note that the below listed conservator responsibilities are further explained in subsequent pages of this Part 4 instruction packet.**

**1. 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.

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

**2. MARSHAL AND PROTECT ASSETS OF THE ESTATE.** The court wants you take control of the Ward'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:

- a. Meet with the Ward's financial institution(s) to share information about your Conservatorship.
- b. Fiduciary powers: A conservator is to act as a fiduciary and shall observe the standard of care applicable to trustees as described by Arizona Revised Statute §§ 14-10804 and 14-10806.

**3. INVENTORY** the Protected Person's assets.

**4. CREATE a nine (9) month ESTATE BUDGET** for the 1<sup>st</sup> year reporting period.

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

**6. RECORDKEEPING:**

- a. ORGANIZE the Protected Person's records.
- b. MAINTAIN Protected Person's records.

**7. NOTIFY COURT,** Service Providers and the U.S. Postal Service of the change of Ward's address to your address.

### **III. SUMMARY**

Your roles and responsibilities as the guardian and conservator involve important legal and fiduciary obligations. To fulfill these obligations, regularly review the Guardianship, Conservator and Fiduciary training guides.