

INFORMATION FOR PROSPECTIVE
GUARDIANS AND CONSERVATORS

The staff at the Law Offices of Chester B. McLaughlin, P.C. has prepared the following information for you regarding the guardianship/conservatorship process. Mr. McLaughlin or one of his staff will meet with you and discuss your individual situation and how this process may apply to you.

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TABLE OF CONTENTS

| Chapter | | Page |
|---------|---|------|
| I. | Guardianship of an adult | 3 |
| II. | Guardianship of a person who is disabled as the result of a mental disorder | 4 |
| III. | Guardianship of a minor | 5 |
| IV. | Conservatorship | 7 |
| V. | Considerations in choosing an appropriate guardian or conservator | 11 |
| VI. | Appointment Procedure | 13 |
| VII. | After the appointment | 17 |

CHAPTER I
GUARDIANSHIP OF AN ADULT

A. In general

All guardians must be appointed by the court. Before the court can appoint a guardian for an adult, the court must first determine that the person for whom guardianship is sought (the proposed ward) is an “incapacitated” person. An incapacitated person is a person who is unable to make or communicate responsible decisions concerning his/her person due to a mental or physical disability, chronic use of drugs, chronic intoxication or other cause.

Once the court has determined that the person is incapacitated to make or communicate responsible decisions concerning his person, the court may then appoint a guardian to make those decisions. A person who has had a guardian appointed for him/her is referred to as a ward.

B. Powers and duties of guardian (under A.R.S. Title 14)

A guardian under Title 14 has basically the same powers and duties respecting his/her ward as a parent has respecting a minor child with some limitations. A guardian is not personally or financially liable for the debts or actions of the ward. Generally, the guardian makes the decisions regarding his/her ward’s medical care, where the ward will reside, and the education or training of the ward. Guardianship may not be necessary if a health care power of attorney was completed when the person had capacity or if there is already an appropriate surrogate who can make health care decisions for the person. If no conservator has been appointed, the guardian may receive limited funds on behalf of a ward and apply the funds for the support, care and education of the ward. The guardian may **not** use the ward’s funds to pay himself/herself for room and board furnished to the ward by the guardian or a member of the guardian’s family without prior court approval. If a conservator has been

appointed, any funds in excess of those needed for support, care and education of the ward, shall be paid to the conservator for management.

C. Considerations in guardianship

Guardianship may be appropriate for persons who have a serious mental or physical disability, or for other adults who have impairment to the extent that they cannot make responsible decisions about themselves. However, if the proposed ward suffers from a chronic mental illness, guardianship should be carefully considered and discussed with the attorney for a number of reasons. Guardianship can make it more difficult for the ward to receive inpatient hospital treatment, and a special guardianship (a “Title 14 Guardianship with Mental Health Powers”) may also be needed. Also, if the proposed ward is a management problem, as a practical matter, it may be difficult to control the Ward even with the guardianship. A guardian who does not have mental health powers **CANNOT** commit or “lock up” his ward in an inpatient psychiatric facility. An uncooperative, unmanageable ward is as difficult for a guardian to control as an incorrigible runaway child may be for a parent to control.

CHAPTER II

GUARDIANSHIP WITH MENTAL HEALTH POWERS

A regular (Title 14) guardian is not permitted to admit his or her ward to a mental health facility unless mental health powers are granted by the court. A guardianship with mental health powers is a guardianship for a person who is incapacitated as a result of a mental disorder. A standard Title 14 Guardian may consent to outpatient psychiatric treatment but only a Title 14 Guardian with mental health powers may admit his ward to a level one inpatient psychiatric facility. To appoint a Title 14 Guardian with mental health powers, the Court must find by clear and convincing evidence that the person is incapacitated as a result of a mental disorder and is currently in need of inpatient mental care and treatment, and is need of the continuing care and supervision of a guardian. A person

is incapacitated if he is incapable of making responsible decisions concerning his person. A mental disorder is a substantial disorder of emotional process, thought, cognition or memory (A.R.S. § 36-501 (22)). The court must also find the person is currently in need of inpatient mental health care and treatment (A.R.S. § 14-5312.01 (B)).

CHAPTER III

GUARDIANSHIP OF A MINOR

A. Conditions for appointment

The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. If the natural parents consent to the guardianship and there are valid reasons for it, the court generally has little difficulty in finding the parents' rights have been "suspended by circumstances." Other situations where guardianship is appropriate include situations where the natural parents have died, are imprisoned or where their rights have been suspended in a dependency action filed in juvenile court. The court will not grant a guardianship when a parent is missing or will not consent to the guardianship.

B. Alternatives to guardianship

If the circumstances which makes it difficult or impossible for a parent to act are temporary, the parent may sign a special power of attorney delegating his/her responsibilities to another for a period of up to six months. This is especially useful when the parent(s) are planning an extended trip out of state or out of the country. However, some public schools will not accept powers of attorney in connection with registering a child outside the school district where the parents reside. Those schools require that a guardianship be established before they will waive out-of-district tuition fees.

If there is a missing parent or those caring for the child may file a dependency action with the juvenile court asking the court to suspend the missing parent's parental rights. Once the child is found to be a dependent child, a guardianship petition can be filed.

C. Powers and duties of a guardian of a minor

The guardian of a minor has the same powers and duties as the parent of a minor child, with two exceptions:

1. The guardian is not legally obligated to provide for the minor from his own funds. As a practical matter, the guardian will have to provide for the minor unless the minor is entitled to Social Security benefits or has other funds.
2. The guardian is not liable to third parties for the actions of the minor just because he/she is the guardian.

A guardian may arrange where the child will live, how the child will be educated, may give any necessary medical consents, and may consent to the adoption or marriages of the minor. The guardian may receive funds on behalf of the minor and use them for the minor's benefit. If the minor has substantial assets (over \$5,000.00), a conservatorship may also be needed. The guardian is accountable for any funds received on behalf of the minor.

CHAPTER IV

CONSERVATORSHIP

A. In general

Conservatorship is a legal proceeding primarily designed to protect persons with property or income who are unable to manage their financial affairs because of a mental or physical impairment. Conservatorships may also be established for persons who have disappeared, or for minors who have assets that require management or protection. The court may also authorize specific protective arrangements or single transactions in situations where only a few transactions are

necessary to properly resolve financial affairs. A person under conservatorship is referred to as a “protected person.” The property of a protected person is referred to as the “conservatorship estate.”

It is common to have both a guardian and a conservator appointed for a disabled person. The guardian and conservator are usually the same person, but they may be different persons.

B. Considerations in Conservatorship

A conservatorship carries with it requirements for bonding the conservator, filing an inventory of the assets, and making an annual accounting to the court of the receipts and expenditures from the conservatorship funds. Because of the time and expense involved, possible alternatives to conservatorship should be discussed with your attorney before making the decision to proceed. For example, conservatorship may not be necessary if the person can complete a financial power of attorney while the person has capacity to understand the document. A financial power of attorney however, will not protect the person from himself, i.e. if he has a tendency to “waste” assets.

If the proposed conservator is the spouse of the protected person, a conservatorship may not be necessary if all the assets are in both names. Since Arizona is a community property state, wither spouse has the authority to manage the community assets. However, if real estate is involved or if there are assets in the protected person’s name only, conservatorship may then be necessary to effectively manage those assets.

If the only assets of the proposed protected person are Veterans Administration or Social Security benefits, a responsible person may apply to the V.A. or Social Security to be named a “representative payee” without court proceedings. The representative payee would be accountable to the V.A. or Social Security for the benefits received, but no conservatorship would be necessary.

Sometimes, because of dissension and mistrust among the friends and relatives of the proposed protected person, it may be advisable to establish a conservatorship that might otherwise be

unnecessary. All parties then know that the conservator will be properly bonded and accountable to the court.

C. Bonding requirements

All conservators must post a bond with the court. A bond is similar to an insurance policy. The bonding company agrees that, in return for the payment of a yearly premium, they will repay to the estate any funds wrongfully spent by the conservator. However, if the bonding company is forced to pay such a judgement, they will then take legal action against the conservator personally. The bond protects the protected person, not the conservator.

Annual bond premiums vary depending on the size of the estate. The bond premium is payable from estate funds, not by the conservator personally (legal fees connected with the conservatorship are also payable from estate funds).

The amount of the bond is determined by the size of the estate plus one year's estimated income. Bond premiums generally range from ½% to 1% of the value of the unrestricted conservatorship assets plus one year's annual income. Restrictions on bank accounts and the sale of property are methods that can be used to reduce the amount of the conservator's bond, or in some cases, eliminate the bond requirement entirely. A bank account may be restricted so that no withdrawals can be made without prior court order, and a conservator may be restricted from selling property without prior court approval. Since these restrictions put a portion of the estate outside the conservator's direct control, assets that are restricted are not included in the estate for bond calculation purposes. Restricted accounts are commonly used in conservatorships for minors, since parents provide support for the minor and the funds are not needed for that purpose.

There are disadvantages connected with such restrictions. If the restricted funds are needed for the ward, a petition must be filed to obtain court authorization to withdraw the necessary funds. If real

property is restricted, and the conservator then decides that it should be sold, the proposed sale must be approved by the court before it is final. Since there court proceedings involve legal fees which would likely exceed the bond premium savings, the conservator should be confident that the restricted assets will not be needed to pay for the protected person's care before deciding to have assets restricted.

D. Powers and duties of a conservator

A conservator manages the financial affairs of the protected person. The conservator must first collect all the assets of the protected person, and submit an inventory of the estate to the court. The inventory is due 90 days after the date of the conservator's appointment.

The conservator must use the estate funds only for the support, care and benefit of the protected person and those legally dependent on the protected person. If a guardian has been appointed, the conservator works with the guardian on decisions that have financial implications. The conservator pays the bills of the protected person from estate funds, and may disallow bills that the conservator feels are not appropriate estate expenses. The conservator must maintain accurate and complete records of all receipts to and expenditures from the estate. Depending on the circumstances, the conservator may pay the protected person in allowance for spending money for minor personal needs or place funds in a nursing home patient trust account for that purpose.

A conservator must file an accounting with the court at least once a year. The accounting is subject to court approval, and interested parties are entitled to object to it if they feel it is inadequate or if they feel some expenditure was inappropriate. If the conservator has kept proper records, the annual accounting should present no problem. It does involve a yearly court proceeding and legal fees, expenses to be considered along with the yearly bond premium.

There are some things that a conservator may not do. The conservator may not loan or pay himself/herself funds from the estate, or make such loans or payments to the conservator's family

members. The conservator may not make gifts from estate funds without prior court approval. The conservator may not commingle estate funds with his/her own personal funds. If the conservator is the parent of a protected person who is a minor, he/she may not use the minor's funds to provide support for the minor, or to provide things that it is the parent's legal duty to provide, unless otherwise previously approved by the court. The Conservator is, however, like a guardian, entitled to reasonable compensation from the estate.

If the conservator has any question about an expenditure, he/she should discuss the matter with the attorney before making the expenditure. The attorney will be able to advise the conservator about the expenditure, and may be able to obtain court approval if necessary.

CHAPTER V

CHOOSING AN APPROPRIATE GUARDIAN OR CONSERVATOR

Any competent person can serve as a guardian or conservator, but he or she must be able to act in the ward's best interests. Persons who are not disqualified have priority for appointment in the following order:

1. A guardian or conservator of the person or a fiduciary appointed recognized by the appropriate court of any jurisdiction in which the incapacitated/protected person resides
2. An individual or corporation nominated by the incapacitated/protected person if the person has, in the opinion of the court, sufficient mental capacity to make intelligent choice.
3. The person nominated in the incapacitated/protected person's most recent durable power of attorney.
4. The Spouse if the incapacitated/protected person

5. An adult child of the incapacitated/protected person
6. A Parent of the incapacitated/protected person, including a person nominated by will or other writing signed by a deceased parent
7. Any Relative with whom the incapacitated/protected person has resided for more than six (6) months.
8. The Nominee of person who is caring for or paying benefits to the incapacitated/protected person.
9. If the incapacitated/protected person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veteran's services.
10. A fiduciary, guardian or conservator

The Court may also give preference to other family members unless it is contrary to the incapacitated/protected person's wishes or his/her best interest. If a person who does not have priority wishes to be guardian or conservator, the person who has higher priority must consent or be disqualified.

In considering who should be guardian and/or conservator, it is important to recognize the amount of time and commitment that is required. It is helpful if the guardian and/or conservator have a positive relationship with the ward and can work with the ward. The issue of geographical proximity should be considered as well.

Geographical separation can make it difficult for the guardian to properly look after his/her ward's needs. If funds permit, an out-of-state guardian can hire a geriatric case manager in Arizona to monitor the ward's needs, and act as the "eyes and ears" of the guardian. If the proposed guardian intends to move the ward out-of-state once the guardianship is established, guardianship should instead be sought in the state where the ward will live.

Out-of-state conservatorships are often not a good idea, for the same reasons. However, if there is a local guardian or some other way to monitor the protected person's financial needs, such an arrangement might be considered.

Occasionally two or more people wish to be appointed as co-guardians and/or co-conservators. Unless they are the parents of a minor or disabled child (and sometimes even then), there can be problems with such an arrangement. They may not be able to agree on the decisions that must be made, and there may be misunderstandings as to what responsibilities each must take. There are also advantages. Each can act independently of the other in most matters, so one can take care of things when the other is not available. Such arrangements can also provide continuity upon the death of one co-guardian/co-conservator. The pros and cons of this type of appointment must be considered in terms of the individual situation and should be discussed with the attorney.

CHAPTER VI

APPOINTMENT PROCEDURE

A. Guardianship of an adult

The guardianship procedure is initiated by filing a petition for appointment. The petition is generally filed by the proposed guardian, and must contain certain information about the proposed guardian and ward. Once the petition is filed, a hearing date is set approximately 4-6 weeks away. Notice of the time and place of the hearing must be given to the proposed ward and his spouse, parents and adult children, any person who is serving as guardian and conservator, or who has care and custody of the ward, or if none, at least one of the Ward's closed adult relatives, if any. A copy of the notice of hearing and petition must be served on the proposed ward by a process server. In some cases, a copy of the notice must be published in a local newspaper. The court filing fee and the costs of serving and publishing the notices are paid through the attorney by the Petitioner (the proposed

guardian) or by the estate if there is also a conservatorship. If the ward has no funds, the proposed guardian is responsible for payment of his or her attorney's fees as well as the costs incurred in the guardianship proceedings. Before the hearing, the law requires that the proposed guardian complete an affidavit disclosing certain background information to assist the court in determining whether he or she will be an appropriate guardian.

The law requires that an attorney and court investigator be appointed in each guardianship proceeding. The attorney is appointed by the court to represent the wishes and interests of the proposed ward. The attorney will interview the proposed ward before the hearing, and may also contact the proposed guardian. The fee of the court-appointed attorney must be paid by the estate if there are sufficient funds. If not, the court pays the fee of the court-appointed attorney. The court investigator is a "social worker" employed by the court. The investigator will interview the proposed ward and the proposed guardian before the hearing in order to make sure the guardianship is necessary and appropriate, and then will file a written report with the court setting forth recommendations. There is a fee charged to the estate for the court investigator's services.

A report from a physician, psychologist or registered nurse must also be submitted to the court. Usually, the proposed ward's treating physician is appointed to prepare the report. This person should outline in his/her report the conditions that make the proposed ward unable to make his/her own decisions, and include an opinion as to whether a guardian should be appointed. Specifically, the report must provide the following information:

1. A specific description of the physical, psychiatric or psychological diagnosis of the person.
2. A comprehensive assessment listing any functional impairments of the person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions regarding himself.

3. An analysis of the tasks of daily living the person is capable of performing without direction or with minimal direction.
4. A list of all medications the person is receiving, the dosage of the medications and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge.
5. A prognosis for improvement in the person's condition and a recommendation for the most appropriate rehabilitation plan or care plan.
6. Other information the physician, psychologist or registered nurse deems appropriate.

After the petition is filed, a hearing is set before a court commissioner. The proposed guardian and attorneys should be present at the hearing. The proposed ward also has a right to be present at the hearing, although often he or she does not attend the hearing. If the court-appointed attorney or any notified party objects at the hearing to the guardianship/conservatorship, the case is set for a hearing before the commissioner or judge as a "contested matter," and witnesses may be called to testify at that hearing by any party.

If the matter is not contested, the reports of the attorney, physician and court investigator are reviewed by a commissioner at the hearing. The proposed guardian must briefly testify, confirming the facts contained in the petition. If all is in order, the court will sign the order appointing the guardian. The clerk's office will then issue "Letters of Guardianship." That document is the official document evidencing the guardian's appointment.

B. Guardianship with Mental Health Powers.

The procedure for appointment of a Guardian with mental health powers is identical to the procedure for appointment of a standard guardian except a mental health expert opinion is required for a guardianship with mental health powers. The mental health expert may either be a physician or a Doctor of Osteopathy specializing in psychiatry, or a licensed psychologist. (A.R.S. § 14-5312.01 (B)). Guardianships with mental health powers are usually conducted on an emergency or temporary basis,

which is described below. If the proposed ward is admitted into an inpatient psychiatric hospital, either voluntarily or involuntarily, he must be discharged if a petition for court ordered evaluation or temporary guardianship with mental health powers is not filed within forty-eight (48) hours, or on the following court day if the forty-eight (48) hours expires on a weekend or holiday.

C. Guardianship of a minor

The procedure is initiated by the proposed guardian filing a petition for appointment with the court. A hearing date will be set, usually 4-6 weeks from the time the petition is filed unless finger prints are required. In most cases, consents to the guardianship must be obtained from the natural parents. Notice of the time and place of the hearing must be given to certain relatives and other persons required by law. Notice of the hearing must be given to the minor if he/she is 14 years of age or older. In some cases, the notice must be published in a local newspaper. The court filing fee and the cost of publishing the notice are paid by the petitioner through the attorney. The petitioner is also responsible for paying the legal fees incurred in the guardianship proceeding.

If the proposed guardian is not a blood relative, the guardian must submit to a finger print check and the results given to the court before the appointment can be made. This process takes about 14 weeks.

At the hearing, the petitioner will have to briefly testify verifying the information contained in the petition. If everything is in order, the court will sign the order appointing the guardian. The clerk's office will then issue "Letters of Guardianship," the document which is the official document evidencing the guardian's appointment.

D. Conservatorship

The procedure is initiated by the proposed conservator filing a petition for appointment

with the court. The petition must contain a list of assets and income of the proposed protected person, and an estimate of the value of assets. A hearing date will be set approximately 4-6 weeks away. Notice of the time and place of the hearing must be given to certain relatives and other persons required by law. A copy of the notice of hearing must be served on the proposed protected person by a process server. In some cases, a copy of the notice of hearing must be published in a local newspaper. The court filing fee and the costs of serving and publishing the notice are paid by the conservatorship estate through the attorney. The Petitioner is generally asked to advance to the attorney the legal fees and costs incurred during the conservatorship proceedings, but may be reimbursed from the conservatorship estate upon appointment.

Before the hearing, the law requires that the proposed conservator complete an affidavit disclosing certain background information to assist the court in determining whether he or she will be an appropriate conservator.

The law requires that an attorney be appointed to represent the proposed protected person in the conservatorship proceedings, unless the proposed protected person is a minor. The court-appointed attorney will interview the proposed protected person before the hearing and will represent his/her wishes and interests at the court hearing. The attorney may also contact the proposed conservator prior to the hearing. The fee of the court-appointed attorney is paid by the conservatorship estate.

After the petition is filed, a hearing is set. The attorneys and proposed conservator should be present. The proposed ward also has a right to be present at the hearing. If there is an objection by the court-appointed attorney or any other interested party, the matter is reset as a contested hearing. Otherwise, at the hearing the proposed conservator must briefly testify, verifying the information contained in the petition. The court will want to know specific information about the estate assets and

income in order to set the proper bond. If everything is in order, the court will sign the order appointing the conservator and setting the bond at that time. If a bond has not already been obtained, the conservator will have to obtain one from a bonding company and have it approved by the court. Upon presentation of the signed order or certified copy and approved bond, the clerk, on the first floor of the court building will issue the “Letters of Conservatorship.” This is the official document evidencing the conservatorship’s appointment.

E. Emergency Guardianship/Conservatorship with or without notice

If an alleged incapacitated/protected person has no guardian or conservator and an emergency exists, or if an appointed guardian or conservator is not effectively performing their duties and the welfare of the proposed ward is found to require immediate action, the proposed ward, Ward, or any person interested in the welfare of the proposed ward, may petition for a finding of interim incapacity or protection and for the appointment of a temporary guardian or conservator. If an emergency petition is filed requesting a temporary appointment, a petition for permanent appointment must also be filed.

A temporary guardianship and/or conservatorship can be granted by the court after hearing without the normal notice and waiting period that is required for a permanent guardianship/conservatorship if an emergency exists, such that immediate and irreparable injury or damage will result if notice to the ward or the ward’s attorney is required before appointment. Upon filing an emergency petition, a hearing date is usually set within 7 days. For temporary appointment, a physician’s report or report of mental health expert is still required unless the requirement of the report is waived by the court. The emergency appointment order is usually effective until the date set for permanent hearing.

CHAPTER VII

AFTER THE APPOINTMENT

A. Guardianship of an adult

The guardian must report to the court on the anniversary date of his/her appointment. Our office will notify you in advance each year if we continue to represent you. We will send you the blank forms, review them when completed and file them for you. The report must include the following:

1. The type, name and address of the home or facility where the ward lives and the name of the person in charge of the home.
2. The number of times the guardian has seen the ward in the last twelve months.
3. The date the guardian last saw the ward.
4. The name and address of the ward's physician.
5. The date the ward was last seen by a physician.
6. A copy of the ward's physician's report to the guardian or, if none exists, a summary of the physician's observations on the ward's physical and mental condition.
7. Major changes in the ward's physical or mental condition observed by the guardian in the last year.
8. The guardian's opinion as to whether the guardianship should be continued.
9. A summary of the services provided to the ward by a governmental agency and the name of the individual responsible for the ward's affairs with that agency.

Although the guardian must file annual reports, the appointment is permanent, and terminates only on the death of the ward or when terminated by a court order. If the ward dies, the guardian should notify the attorney, who can then determine what needs to be done to close the

guardianship. The guardian must also notify the Court of any change of address of the guardian or ward, so please let your attorney know of any address changes.

If the guardian decides the guardianship is no longer necessary, the guardian must file a petition with the court asking that the guardianship be terminated. If the ward decides he/she no longer needs a guardian, he/she may simply write to the court requesting that the guardianship be terminated. If the ward gives such a letter to the guardian or another person, it must be forwarded to the court. Upon receiving the petition of the guardian or the request of the ward, the court will hold a hearing to determine whether the guardianship should be terminated.

If the guardian dies, or is no longer willing or able to serve, a petition must be filed with the court to appoint a successor guardian. If there were originally two co-guardians and one dies, or is unable to act, the other can continue to act as guardian without further court proceedings.

If the guardian and ward both move from Arizona, the guardianship does not automatically terminate. The guardian should, however, consult with an attorney in the new locality to determine whether it is necessary or advisable to set up a guardianship in the new state.

B. Guardianship with Mental Health Powers

A regular guardianship will automatically continue until papers are filed in the Court to specifically close the case, however a guardian's authority to consent to inpatient treatment, including placement in a level one behavioral health facility and medical, psychiatric and psychological treatment associated with that placement pursuant to A.R.S. §14-5312.01, will expire in one year from the date of permanent appointment, unless you move to continue it for another year. The expiration of this special authority will not affect the appointment as Guardian, but will negate the guardian's authority pursuant to A.R.S. §14-5312.01. If the guardian feels that additional powers should be renewed, an updated Report of Mental Health Expert will need to be submitted along with a report from the guardian. The report of

mental health expert will need to set forth the Ward's current mental condition and the expert's opinion regarding the likelihood that the Ward will require hospitalization during the following year. If the expert supports the renewal of the mental health powers, a motion can be filed with the Court to extend the powers for another year. The Court will rule on the motion and a court hearing is usually not necessary unless requested by Ward's court-appointed attorney.

If a motion to renew the mental health powers is not filed on a timely basis, the guardian loses his/her authority, and it may be necessary to start the entire process all over again; therefore, it is important that the renewal order be obtained prior to expiration of the previous order. You should start the process of obtaining the report and filing for renewal at least 60 days prior to the expiration of the order. We calendar this for you if we continue to act as your attorney. If the mental health powers are not renewed, the guardian must report to the Court on the anniversary date of appointment as described above.

C. Guardian of a minor

A guardian of a minor does not need to report to the Court unless specifically ordered by the court. The guardianship continues until the child reaches age 18. When the child turns 18, the guardian should contact the attorney, who can take appropriate action to terminate the guardianship.

If, for any reason, a new guardian needs to be appointed before the child reaches age 18, a petition must be filed with the court to appoint a successor guardian, using the same procedure as in the original appointment proceeding.

C. Conservatorship

There are a number of things a conservator is required to do after appointment. It is very important that the conservator be aware of all his/her responsibilities and duties.

1. **Record keeping**

The conservator must keep conservatorship funds in separate bank account(s) titled in the name of the protected person by the conservator, not co-mingled with the conservator's own funds. The conservator should keep detailed records of each receipt and expenditure, and should avoid dealing in cash since it is difficult to document cash transactions. The conservator should have the bank return all cancelled checks each month. If the conservator has any questions about a particular transaction, he/she should consult the attorney before entering into the transaction.

The conservator must be careful about investing the conservatorship assets. Cash assets should be invested conservatively. The conservator should seek professional financial and tax advice if handling a substantial estate. Loans to the conservator, friends, relatives or any other person are not permitted, no matter what the interest rate, and regardless of whether or not the protected person approves of the loan. Gifts of conservatorship funds are not permitted unless previously approved by the court, regardless of whether or not the protected person approves of the gift. Although a conservator is entitled to charge a reasonable hourly fee for his/her services, the size of the fee is subject to court approval and should be discussed with the attorney before withdrawing it from the conservatorship estate. If the conservator plans to charge the estate of his/her services, the conservator should keep detailed records of the time spent on conservatorship matters, itemized by date, activity and time spent. Fifteen dollars (\$15.00) an hour will usually be considered a reasonable fee. Care should be taken not to spend excessive amounts of time handling minor estate matters.

Conservators are held to a very high standard of care in dealing with conservatorship assets. Improper management or inadequate record keeping may result in legal proceedings against the conservator personally. If the conservator has any doubt as to the correctness of any action, or

about the adequacy of his records, he/she should discuss the matter with the attorney as soon as possible, preferably before taking action. The attorney can advise the conservator and help him/her to avoid problems later on.

2. Court Filing Requirements

The conservator must file with the court an inventory of the assets of the protected person within 90 days after his/her appointment. The inventory must list each asset and its value as of the date the conservator was appointed. If the conservator cannot accurately estimate the value of an asset (such as jewelry, real property or antiques), the conservator should have the item appraised by a qualified appraiser.

Every conservator is required to file an annual account of his/her administration of the estate each year which is due to be filed with the Court ninety days after the anniversary date of his/her appointment. The accounting must show the inventory value of the total estate at the beginning of the accounting period, all receipts and disbursements during the accounting period, and the assets on hand at the end of the accounting period. A petition for approval of the accounting must be filed with the court, and a hearing will be held to consider the accounting. A copy of the accounting must be sent to the protected person, and to the guardian, if the guardian is someone other than the conservator (if the same person is both guardian and conservator then the spouse must be notified or if the incapacitated person is not married, then a parent or adult child must be notified). Interested parties may object to the accounting at the hearing if they feel it is improper. If no objections are made and the court considers the accounting to be proper, it will be approved.

3. Termination of Conservatorship

If the protected person dies, the conservator may not pay out any estate funds after

death, other than to make and pay for reasonable funeral arrangements if no other person is willing to do so. The conservator may continue to receive funds due to the estate until a personal representative is appointed or other appropriate action is taken. The conservator will have to file a final accounting of the estate and have it approved by the court before being discharged as conservator. The conservator's bond remains in effect until exonerated by the court.

If the conservator dies or otherwise becomes unwilling or unable to serve, a petition for appointment of a successor conservator must be filed with the court, using the same procedures as with the original appointment. If there are two co-conservators, the surviving co-conservator may continue to act after the death of one co-conservator.

If the protected person regains the ability to manage his/her assets, the conservator must petition the court to terminate the conservatorship and return control of the assets to the protected person.

If the protected person is a minor who is not disabled, the minor is entitled to the conservatorship funds when he/she reaches age 18. The conservator must file a final accounting with the court and have it approved before being discharged. The conservator should consult with the attorney regarding the receipt and other documents needed before distributing the funds to the minor. If the minor is disabled and is unable to manage the funds at age 18, the conservator should consult with the attorney about further legal proceedings.

If the conservator and the protected person both move from Arizona, the conservator remains responsible to the Arizona court. The conservator should establish a conservatorship in the new state of residence, transfer the assets there, and close the Arizona conservatorship by filing a final accounting. The conservator will need to work with an attorney in the new state as well as the Arizona attorney to complete such a transfer.

