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*Estate, Trust, Tax and
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Special Report

Guardianship and Conservatorship

In Colorado, a guardianship is a legal proceeding through which a guardian is appointed to make personal care decisions for an individual. The individual subject to a guardianship is referred to as the "ward."

A conservatorship is a legal proceeding where the court appoints a conservator to manage, preserve, and protect an individual's assets. The individual subject to a conservatorship is referred to as the "protected person." Prior to the appointment of a guardian or conservator, the individual is called the "respondent." The individual seeking to be appointed as guardian and/or conservator is referred to as the "petitioner."

The guardianship and conservatorship procedures in Colorado are similar, and oftentimes both are requested at the same time by the petitioner. Guardianships and conservatorships are both initiated through the filing of a petition for appointment of a guardian and/or conservator typically with the Colorado district court in the county where the respondent resides. The petition may request the appointment of either a limited or unlimited guardian or conservator. A limited appointment is limited to a specific requested authority. For example, one could petition the court to be appointed as a limited conservator for purposes of selling real estate. Most often, however, petitioners are seeking unlimited appointments.

Furthermore, a petition could also seek the appointment of an emergency guardian or special conservator when exigent circumstances exist and compliance with certain court procedures will result in substantial personal or financial harm to the respondent. The petitions require specific inclusion of certain information, including a description of why a guardianship or conservatorship is necessary. In addition, the petitions include a check the box item indicating a letter from the respondent's physician is attached supporting the appointment of a guardian or conservator.

After filing the appropriate petitions, the court will appoint a court visitor to investigate the allegations within the petitions. The court visitor is typically a social worker or an attorney depending on which county you are in. The court visitor will interview the respondent as well as family members and obtain necessary medical information from the respondent's healthcare providers. After this investigation, the visitor will prepare a report to the court giving recommendations as to whether a guardian and/or conservator is necessary and whether the petitioner is the appropriate party to serve as guardian and/or conservator.

Prior to the court appointing a guardian or conservator, a court hearing is required. The respondent is required to attend the hearing unless excused for good cause by the court. The nature of the hearing depends upon whether the guardianship or conservatorship is contested or uncontested. The hearing could be contested by the respondent objecting to the appointment of a guardian or conservator, or there could be individuals competing to be appointed as the respondent's guardian or conservator (e.g. siblings battling to be appointed as Mom's guardian and conservator). In either case in order for a court to appoint a guardian, the court must find by clear and convincing evidence that the respondent is an "incapacitated person."

Incapacitated person is defined in Colorado as an individual other than a minor (age 18), who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance. The courts rely heavily on medical or psychological evidence to determine whether the respondent is an incapacitated person. Prior to appointing a guardian, the court must also find, again by clear and convincing evidence, that the respondent's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance.

With respect to the appointment of a conservator, the court must make the following findings: (1) by clear and convincing evidence, the individual is unable to manage property and business affairs because the individual is unable to effectively receive or evaluation information or both or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance; and (2) by a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided. The standard for appointment of a guardian is more stringent than the conservatorship standard, because with the appointment of a guardian the respondent loses certain civil liberties.

Once a guardian or conservator is appointed, the individual's authority to act is evidenced by documents entitled: "Letters of Guardianship," "Letters of Conservatorship," and "Order Appointing Guardian (or Conservator)." The conservator will utilize these documents at the outset to establish a conservatorship account(s) with a financial institution. Within sixty days of appointment, the guardian is required to file an initial Guardian's Report. Thereafter, the guardian is required to file annual reports with the court. No later than ninety days after appointment, a conservator must file an initial Conservator's Inventory with Financial Plan and annual reports must be filed with the court after this initial filing. The court will require a conservator to post a bond unless it makes specific findings of reasons not warranting the bond (e.g. minimal liquid assets).

Both the guardianship and conservatorship statutes in Colorado provide for the powers of the guardian and conservator as well specific actions which requiring court approval. Accordingly, it is important for guardians and conservators to understand the authority they have been granted by the court pursuant to Colorado law in addition to their reporting requirements.