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SO NOW YOU ARE A CONSERVATOR

If you are reading this pamphlet, you are likely either considering accepting appointment as a Conservator or you have been appointed by a Court after an application and hearing. Conservators have many responsibilities, and in addition to carrying out any specific Court orders, are responsible for managing, preserving, and administering assets owned by and for the benefit of a Protected Person. A Protected Person is the party whom the Court has deemed as unable to effectively manage his or her own property, and in order to preserve, manage, and administer the Protected Person's assets for his or her benefit, the Court appoints a Conservator.

Under Colorado law, a Conservator is deemed to be a fiduciary, and as such, held to a very high standard of care. A Conservator is accountable to the Protected Person, other Interested Persons, and the Court, and is expected to act prudently and in the best interests of the Protected Person at all times. A Conservatorship may involve a variety of duties, situations, and parties, and requires diligent management of the Protected Person's assets, interests, and financial needs. Finally, unless otherwise instructed by the Court, a Conservator must provide annual reports and accountings to the Court and all Interested Persons.

This pamphlet is intended to give general information to Conservators and individuals considering accepting appointment as a Conservator, and is not intended to be legal advice specific to your situation. If you have questions beyond the scope of this pamphlet, you are strongly encouraged to consult with an attorney.

Conservatorship v. Guardianship

Generally, Conservatorships and Guardianships are both legal proceedings that are initiated to establish an individual's inability to manage their affairs, and result in the taking of that individual's rights. In a Conservatorship, the Court takes away the Protected Person's property rights and appoints a Conservator to exercise the Protected Person's property rights for them. A Guardianship, on the other hand, is a legal proceeding in which an individual's civil liberties are taken away and given to a Guardian to exercise (decisions regarding the health and welfare).

The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibility vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

There are many cases in which a Guardianship and Conservatorship are sought. A Guardian may also be the Conservator, but if not, the two fiduciaries are expected to work together in the best interests of the Ward/Protected Person. If both are sought, the actions may be consolidated and only one hearing is required to address both Petitions.

A Conservator's Authority

A Conservator's authority is evidenced by two documents—the “Letters of Conservatorship” and the “Order Appointing Conservator.” The Conservatorship may be limited in duration, scope, level of Court involvement, and usually involves at least an annual reporting and accounting requirement. The Court's direction is given with the intent to maximize the Protected Person's independence and involvement, and may require specific actions to achieve this standard. It is important to read the Court's Order thoroughly and comply with the terms of the appointment.

Once appointed, the Conservator usually has the authority to take title to the Protected Person's assets and control of their financial affairs. The assets that the Conservator has control of are referred to as the “Conservatorship Estate.” In most situations, it is necessary to disclose the Conservator/Protected Person relationship, and Conservator's are encouraged to indicate when they are acting as Conservator by using the title after their name when they sign documents. Once the Conservator has control of all of the Protected Person's assets (or the assets designated by the Court), he or she then has the authority to manage and administer the assets for the Protected Person's benefit.

A Conservatorship may end for several reasons, including the Protected Person regaining capacity to manage his or her financial affairs, upon the death of the Protected Person, the resignation, removal, or death of the Conservator, or a date set by the Court. A Conservator continues to have duties to the estate after the Protected Person's death, and must ensure delivery of the Protected Person's assets to the Personal Representative of the Protected Person's estate. It is prudent for a Conservator to ask the Court to appoint a Successor Conservator upon the happening of some event, usually the Conservator's death, to avoid unnecessary disruption of the management of the Protected Person's assets and financial needs.

A Conservator's Duties

Ethical Duties

Generally speaking, a Conservator owes a fiduciary duty to the Protected Person, meaning that the Conservator must always act in the best interest of and with undivided loyalty to the Protected Person, avoid transactions that cause a conflict of interest, and administer the Conservatorship Estate with care and prudence.

A Conservator must always act in the best interest of the Protected Person. A Conservator should not enter into transactions in which he or she will benefit at the expense of the Protected Person. In addition, even if a transaction is fair and in the best interests of the Protected Person, the Conservator must get Court approval for such transactions. A Conservator must keep the estate's assets separate from his or her own property, and the estate's assets must be readily indefinable.

A Conservator must manage the estate as a prudent person in similar circumstances would, and, while the Conservator is ultimately accountable and unless otherwise specified by the Court, he or she may employ the use of professionals and other agents in order to carry out his or her duties.

The Court may require the Conservator to obtain a type of insurance policy called a “fiduciary bond.” The bond assures that the Protected Person’s assets are protected in the event that the Conservator fails to carry out his or her duties and there is a loss to Conservatorship Estate. If a bond is required, it is generally paid for with the Protected Person’s funds.

Administrative Duties

In addition to the ethical duties above, a Conservator has many administrative duties. Such duties include:

- **Reporting and Accounting to Court and Interested Persons**—Unless the Court orders otherwise, Conservators must submit a Financial Plan and Estate Inventory to the Court, and must file annual reports that involve complete accountings of financial transactions involving the Conservatorship Estate (forms available at www.courts.state.co.us). In addition to filing these documents with the Court, the Conservator must send them to all Interested Persons as dictated in the original Order of Appointment and/or any subsequent orders.
- **Accounting**—A Conservator must set up and keep complete financial records. The accounting system and reports to the Court should reflect in detail all income, disbursements, and liabilities, and should show the opening and closing balances for all accounts for the accounting period.
- **Taxes**—In most cases, the Conservator is managing all or most of the Protected Person’s assets, and is required to file any required tax returns.
- **Trust Asset Management and Growth**—A Conservator must keep the Estate’s assets invested, and will be held to a higher standard of care than if he or she were investing their own funds. Colorado law requires Conservators to follow the “prudent investor rule,” meaning that the Conservator must invest as a prudent person would in a similar situation. In effect, the prudent investor rule generally means that the Conservator will diversify the investments, balance the need for income versus long-term principal growth, not make risky investments, and continue to reevaluate and consider new advice on an ongoing basis.
- **Distributions to Protected Person or on Protected Person’s Behalf**—A Conservator is often to make distributions to the Protected Person for their care and expenses or to third parties directly who provide some beneficial service to the Protected Person. The terms under which distributions must or may be made can be restricted by the Court, or may be made mandatory for the Protected Person’s health, education, and maintenance, or in the Conservator’s discretion for whatever the Conservator deems to be in the best interest of the Protected Person. Under certain circumstances, a Conservator may be personally liable for improper distributions, and may be compelled by a Court to make a distribution at the Protected Person’s or Interested Person’s request.

A Conservator’s Personal Liability

A Conservator may be personally liable to the Protected Person or a third party in certain circumstances, including when the relationship is not disclosed, if the Conservator is directly at fault, was grossly negligent, or acted criminally. In some situations, a Conservator may be personally liable even though their improper actions were not intentional or negligent, and for that

reason, many Conservators secure Errors and Omissions insurance.

Compensation and Expenses

A Conservator is entitled to reasonable compensation and reimbursement of expenses from the Conservatorship Estate for acts on behalf of the Protected Person for the duration of the Conservatorship. Reasonable compensation is determined on a case-by-case basis, and good record keeping and accounting is absolutely necessary. Any compensation is considered income to the Conservator, and as such, is generally taken as a tax deduction by the Protected Person and is claimed as income by the Conservator.

A Conservator will likely incur expenses related to the administration of the Conservatorship Estate in addition to their own fee, and may hire professionals, including an attorney, to advise them as a Conservator, with the Protected Person's assets. Conservator fees, anticipated administration expenses, and professional advisement fees are usually included in the initial Financial Plan, and therefore are approved or denied by the Court.

Words Of Caution

These guidelines cannot tell you everything you need to know about being a Conservator, and are simply intended to alert you to your duties and responsibilities as a Conservator. Given the very serious risks of harm to the Protected Person and personal liability, if you are uncertain about any of your responsibilities, rights, or powers as a Conservator, you are strongly encouraged to consult with an attorney. It is often less complicated and expensive to get advice to prevent a problem than it is to defend a problem later.

This pamphlet is published as a public service by the Colorado Bar Association. It was updated Casey L. Williams in 2010. 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. This document, as well as other useful information, can be found at www.cobar.org