

PROBATE

GUARDIANSHIP & CONSERVATORSHIP FOR ADULTS



Protective Proceedings Overview



Introduction

- **The type of proceedings a Court Visitor is involved with**
- **Guardianship and Conservatorship cases**
- **Action initiated**
- **Timeline of the full proceeding**

What is a Protective Proceeding?

- Protective Proceeding: A legal proceeding initiated to appoint a person to protect the person and/or the property of an individual who cannot effectively manage his or her own affairs.
 - Guardianships
 - Conservatorships



A Few Important Definitions

Petition: “Petition” means a written request to the court for an order after notice (i.e. Petition for Appointment of Guardian for Adult, Petition for Appointment of Conservator for Adult).

Petitioner: “Petitioner” is a person who has filed a written request with the court for an order.

Note: A petitioner will not represent the respondent in court. Meaning, they cannot act as the respondent’s attorney or speak on the respondent's behalf.

Respondent: “Respondent” means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

More Important Definitions

Incapacitated Person: The definition of incapacitated person takes into account the functional abilities, or lack thereof, of the individual. The definition of “Incapacitated Person” is “an individual other than a minor, 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.”

Minor: “Minor” means an un-emancipated individual who has not attained 18 years of age.

GUARDIANSHIP

A guardian may be responsible for the "person" and makes decisions regarding the ward's support, care, education, health and welfare.

Guardian: "Guardian" means an individual at least 21 years of age, resident or nonresident, who qualifies as a guardian of a minor or incapacitated person pursuant to the appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but does not include a guardian ad litem.

Ward: "Ward" describes a person for whom a guardian has been appointed.

CONSERVATORSHIP

A conservator is only responsible for the assets of the protected person.

Conservator: “Conservator” means a person at least 21 years of age, resident or nonresident, who is appointed by a court to manage the estate of a protected person. The term includes a “limited conservator.”

Protected Person: “Protected person” means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

Guardianships and Conservatorships for Adults Why Are They Initiated?



Guardianship of Incapacitated Person
C.R.S. 15-14-301 et seq.

**Protection of Property of Protected Person
(Conservatorship)**
C.R.S. 15-14-401 et seq.

Venue - §15-14-108

Where to File Your Case

Guardianship:

Adult - in the county in which the respondent resides and, if the respondent has been admitted to an institution by a court order of competent jurisdiction, in the county in which the court is located.

Emergency and/or Temporary Substitute Guardian – Adult – in the county in which the respondent is present.

Conservatorship:

Adult and Minor – in the county in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in Colorado, in any county of this state in which property of the respondent is located.

SETTING THE MATTER FOR HEARING

Notice must be given in compliance with Colorado Rules of Probate Procedure at least fourteen days prior to the hearing.

A person may waive notice, however, the respondent, ward or protected person may not waive notice.

Notice of Hearing to Respondent (JDF 807)

If the minor is 12 years of age or older, she/he must be personally served a copy of the petition and notice of hearing.

Notice of Hearing to Interested Persons (JDF 806)

All other interested parties must be given a copy of the petition and notice of hearing.

Who are the interested persons?

Anyone listed in the Petition.

Types of Guardianships and Conservatorships

Unlimited...

Limited...

Emergency...

Special ...

What's the difference?



Unlimited Guardianship - Adult

Duties of Guardian C.R.S. 15-14-314

- Make decisions regarding ward's support, care, education, health and welfare
- Exercise authority only as necessitated by the ward's limitations and, to the extent possible, encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs
- Consider the expressed desires and personal values of the ward to the extent known and at all times act in the ward's best interest
- Become or remain personally acquainted with the ward, and maintain sufficient contact
- Take reasonable care of the ward's personal effects
- Expend money for immediate needs and conserve money for ward's future needs

Powers of Guardian C.R.S. 15-14-315

- Apply for and receive money for ward
- Take custody of the ward and establish custodial dwelling
- Consent to medical or other care
- Consent to adoption or marriage (with court approval)

Unlimited Guardianship – Adult: Mental Health, Alcohol and Drug Treatment

But wait...

- The Guardian does not have the authority to consent to or obtain hospital or institutional care and treatment for mental illness, developmental disability, or alcoholism/substance abuse against the will of the Ward.

Limited Guardianship - Adult

C.R.S. 15-14-311

- Same procedures as an unlimited guardianship
- Focus on specific needs:
 - Guardian should have only those powers necessitated by the ward's limitations and demonstrated needs
- Guardianship should encourage the development of the ward's maximum self-reliance and independence

Emergency Guardianship - Adult

C.R.S. 15-14-312

- Court must find that compliance with the statutory procedures will likely result in substantial harm to the respondent's health, safety, or welfare and that no other person appears to have authority and willingness to act in the circumstances
- Cannot exceed 60 days
- Statute requires the court to appoint an attorney forthwith for the respondent
- If respondent is not present at emergency hearing, respondent must be given notice of the emergency appointment within 48 hours. Court must hold a hearing on the appropriateness of the appointment within 14 days
- **Not a determination of incapacity!**

Unlimited Conservatorship - Adult

Duties of Conservator C.R.S. 15-14-418

- Take into account the limitations of the protected person and encourage the protected person to participate in decisions to the extent possible, to act on the person's own behalf, and to develop or regain the ability to manage the person's own affairs
- File a financial plan for protecting, managing, expending and distributing the income and assets of the protected person's estate, based on the protected person's actual needs and best interest
- In investing an estate, selecting assets of the estate for distribution and invoking powers of revocation or withdrawal, the conservator shall take into account any estate plan of the person known to the conservator

Powers of Conservator C.R.S. 15-14-425

- Collect, hold and retain assets of the estate
- Receive additions to the estate
- Continue or participate in the operation of any business or other enterprise
- Refer to statute for full list of powers and duties

Special Conservator - Adult

- While a petition to establish a conservatorship or other protective order is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent. The court may appoint a Special Conservator to assist in that task.
- The court may appoint a Special Conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The “special conservator” has the authority to confer by the order and shall serve until discharged by order after report to the court.
- A Special Conservatorship expires at the court’s direction, usually right after the transaction has been completed.

What is a Court Visitor?

An individual appointed by the court, when a Petition for Appointment of Guardian and/or Conservator for Adult has been filed with the court.

A Court Visitor is:

- One who will interview certain parties in these cases, known as protective proceedings, and report back to the court
- One who is required to stick to the scope of the Petition, and the Order Appointing Court Visitor
- One who will play a vital role in the procedure for appointment of a guardian and/or conservator
- Disinterested observer

Note: Court Visitors must be paid prior to the court hearing for appointment of a guardian and/or conservator.



The Role of the Court Visitor

INTERVIEWS /COLLECTS INFORMATION

Court Visitor acts as the eyes and ears of the court to interview the respondent, petitioner, nominated guardian/conservator and any other interested persons.

INFORMS RESPONDENT

Court Visitor explains the substance of the petition to the respondent and informs respondent of rights.

MAKES RECOMMENDATIONS TO THE COURT

The Court Visitor will file a report and make recommendations to the court on:

- The need for an attorney or GAL appointment for the respondent
- The appropriateness of guardianship/conservatorship and the qualifications of the proposed guardian/conservator

Interviewing Parties



The Court Visitor shall interview the respondent in person.

To the extent that the respondent is able to understand, the Court Visitor will explain the following:

- The substance of the petition
- The nature, purpose and effect of the proceeding
- If the appointment of a **guardian** is requested, explain to the respondent the respondent's rights at the hearing, the general powers and duties of a guardian, and determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship

INTERVIEWING PARTIES

If the appointment of a conservator is requested, the Court Visitor shall inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship.

In both guardianship and conservatorship proceedings, the Court Visitor shall inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer.

INTERVIEWING PARTIES

The Court Visitor shall inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate unless the court directs otherwise.

For guardianship cases, the Court Visitor will visit the respondent's present dwelling and any dwelling in which the respondent will live, if known, if the appointment is made.

For guardianship cases, the Court Visitor will also obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition.

Interview the petitioner and the proposed guardian and/or proposed conservator.

The Court Visitor will also make any other investigations the court directs.

Court Visitors, GAL, and Court Appointed Attorney

What are the differences between a Court Visitor, Guardian ad Litem (GAL) and a court appointed attorney?

A court appointed attorney advocates on behalf of the party for whom he or she was appointed (i.e. attorney to represent the respondent).

A GAL is appointed to identify and advocate on behalf of interests that would otherwise be inadequately represented. A GAL is appointed to represent the best interests of a respondent (i.e. attorney to represent the best interests of the respondent).

A Court Visitor is a disinterested third party investigating on behalf of the court.

The Life of a Protective Proceeding



- Petitioner files a case
- Court Visitor gets appointed by the court in adult cases only
 - Note that there is no statutory authority to appoint a court visitor in guardianship or conservatorship cases for minors.
- Court Visitor interviews certain parties to the case and files a written report with the court
- Court may take action based on Court Visitor's Report
- Hearing is scheduled. Notice of Hearing must be served on the respondent. Notice of Hearing will be provided to all interested parties
- Hearing is held for appointment of guardian and/or conservator, sometimes referred to as the "Fiduciary"
- Once appointment is made, the guardian and/or conservator will be required to file an Acknowledgement of Responsibilities (JDF 800). This must be done before Letters of Appointment will be issued

- Upon the appointment of a guardian and/or a conservator, the case will then be monitored by the court until the case is terminated
- State law requires that the guardian and/or conservator file initial reports, as well as annual report every year
- A Guardian's Manual is available on-line as a guide
- For conservatorship cases, a conservator will explain how they spent and collected the financial affairs of the protected person. *You need to be aware your case may be considered for audit*
- A Conservator's Manual is available on-line as a guide
- A conservator should establish a bookkeeping system that records all deposits and expenses paid on behalf of the protected party
- The above manuals as well as list of resources can be found on the Colorado Judicial Branch website

HELPFUL TIPS

Be sure to thoroughly read the instructions that apply to the type of case you will be filing with the court.

Guardianship and/or conservatorship for an adult.

For details regarding personal service, also known as process of service, and quick guide flow charts for guardianship and conservatorship, please refer to the Colorado Judicial Branch website at

www.courts.state.co.us.

On this website, you will also find a link to the Probate Video titled 'You as a Conservator'.

HELPFUL TIPS

Should you have any questions after reading the instructions and becoming familiar with the court forms and processes, be sure to contact the court in the county in which you plan on filing the petition. All court phone numbers and locations are also located on the Colorado Judicial Branch website.

CONCLUSION

Should you choose to represent yourself, you are subject to the same rules and procedures as an attorney. Therefore, should you need help you should seek the legal advice of an attorney.