

Guardian's Manual



General Information

Regarding Your Responsibilities as a Guardian

User's Manual for Guardians in Colorado

This User's Manual for Guardians in Colorado is a collaborative effort of the staff of the State Court Administrator's Office, the Protective Proceedings Task Force and members of the Colorado Bar Association.

This manual is intended to assist the newly appointed Guardian, to identify your responsibilities and to introduce you to important Guardianship issues. This is not a comprehensive manual. It does not address every situation but was designed to highlight many of the common situations that one may need to address as a Guardian. You are expected to familiarize yourself with the provisions of the Colorado Uniform Guardianship and Protective Proceedings Act, §15-14-101, C.R.S. through §15-14-433, C.R.S. that relate to protective proceedings for minors and adults, the Colorado Rules of Probate Procedure and applicable case law. Changes in the law may have occurred since this manual was published. If you have questions on how to proceed, consult your attorney before acting. By obtaining an attorney's advice before you act, you may avoid more costly legal services later.

It is highly recommended that appropriate professionals be consulted. Even if you do not have an attorney, you are bound by the same rules and procedures as if you did. The cost for professional assistance may be assessed to the ward as long as the expense was incurred for the benefit of the ward.

This work is produced as a public service, and copies of these materials may be reprinted, with acknowledgment, without violation of applicable copyright laws. The User's Manual for Guardians is also available on the Colorado Judicial Branch website at:
http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=164

We would appreciate your feedback. If you have any comments or suggestions, or if you require additional information, please feel free to contact: tony.rodriquez@judicial.state.co.us.

Guardian's Manual Table of Contents

1. Definitions
2. Information Regarding Your Appointment as a Guardian
3. Frequently Asked Questions
4. Resources
5. Report Checklist

Definitions

Advance Directives:	Written instructions prepared by a mentally competent adult concerning medical decisions to be made on behalf of the person who has provided the instructions, allowing someone else to make treatment decisions on his or her behalf. Advance Directives include: Living Will, Medical Durable Power of Attorney, CPR Directive.
Best Interest:	Best interest is what is best for a Ward's well-being, taking into account his or her ascertainable wishes, individual needs and the least restrictive means to achieve care and protection.
Conservator:	A person at least 21 years of age who has been appointed by a court to manage the financial affairs of another person.
Guardian:	A person at least 21 years of age who has been appointed by a court to have the care and custody of an incapacitated person or a minor, or who has qualified pursuant to certain written instruments to have the care and custody of a minor.
Incapacitated Person:	An adult person who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that he or she lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.
Informed Consent:	An agreement to allow something to happen based on full disclosure of facts needed to make a decision, e.g. understanding of risks, alternatives and consequences.
Interested Persons:	Persons identified by Colorado law who are entitled to notice of any request for a court order. This includes a request for a Conservatorship or a Guardianship. The term can vary, depending on the type of request under consideration. It would usually include the spouse and adult children of a respondent, at the very least.
Letters:	A formal document issued by the Court appointing that serves as proof of appointment as Guardian or Conservator.
Minor:	A person who is under the age of 18.
Petitioner:	A person who files a Petition for the Appointment of a Conservator or Guardian.
Representative Payee:	A person or agency chosen by the Social Security Administration to receive and manage the recipient's social security or supplemental security income (SSI) benefits for the recipient who cannot manage his or her own money.
Respondent:	A person who is the subject of a Guardianship or Conservatorship petition.
Ward:	A person for whom a Guardian has been appointed.

Information Regarding Your Appointment as a Guardian & Duties as the Guardian of the Ward

The Guardian shall have access to the Ward's medical records and information to the same extent that the Ward is entitled. The Guardian shall be deemed to be the Ward's personal representative for all purposes relating to Ward's protected health information, as provided in HIPAA, Section 45 CFR 164.502(g)(2).

◆ Your Duties and Limitations as the Guardian:

- ◆ Arrange for care and protection.
- ◆ Decide on living arrangements.
- ◆ Arrange for food, clothes, personal care items, spiritual needs, housekeeping, transportation and recreation.
- ◆ Arrange for health care.
- ◆ Maintain sufficient contact with the Ward so that you are aware of his or her capacities, limitations, needs, opportunities and physical and mental health. To the extent possible, encourage the Ward to participate in decision-making. When making decisions for the Ward, consider his or her expressed desires and personal values.
- ◆ If you are the guardian for a minor, you have the duties and responsibilities of a parent regarding the minors support, care, education, health, and welfare, unless the Court order says otherwise. This includes authority to sign school consent forms such as enrollment, sports/activity participation, etc.
- ◆ Consider whether the Ward needs a Conservator to manage his or her financial affairs.
- ◆ Evaluate and consider application for public benefits if the Ward does not have a Conservator.
- ◆ Do not deposit the Ward's money into your own account.
- ◆ Immediately notify the Court if an adult Ward's condition has changed so that he or she is capable of exercising rights previously removed.
- ◆ Immediately notify the Court of a change in your address or the Ward's address and of the Ward's death.
- ◆ You may not change the Ward's place of residence from the State of Colorado without a Court order.
- ◆ Special procedures must be followed to obtain hospital or institutional care and treatment for mental illness of a Ward, to obtain care and treatment from an approved service agency for a Ward with developmental disabilities, and to obtain care and treatment for alcoholism or substance abuse. You do not have authority to consent to any such care or treatment against the Ward's will.

(NOTE: This list is not complete but highlights the typical areas of responsibility)

◆ **Record Keeping:**

- ◆ You may wish to establish a time sheet tracking time spent with the Ward.
- ◆ You must maintain all records for the duration of the Guardianship. This may include medical reports, housing expenses, SSI income or any other sources of income, expenses paid to professionals, etc. Maintain supporting documentation, such as bank statement and check copies, credit card statements and receipts, sales receipts, and other such forms of proof that support your reports. The Court and Interested Persons can request documentation from the Guardian at any time.
- ◆ Subject to review by the Court, you may be entitled to reasonable compensation, which may have tax consequences to you and/or the Ward.

◆ **Complete and file with the Court required reports.**

- ◆ File the Initial Guardian's Report. (This is required for Adult Guardianships only.) See the order of appointment for the due dates of filing.
- ◆ File Annual Guardian's Report as ordered. Check the order of appointment for the due dates.
- ◆ Provide copies of the Initial and/or Annual Guardian's Report to Interested Persons as identified in the order of appointment.

Frequently Asked Questions

The following are frequently asked questions to assist you with your appointment as a Guardian. Consult with an attorney if you have questions that are not addressed here.

What is the cost to obtain certified copies of Letters and Orders from the Clerk's Office?

The number of Letters required depends on the circumstances. The cost is \$20.75 apiece.

What is the difference between a guardian and conservator?

Guardian: Assists with personal affairs, such as housing and health care.

Conservator: Assists with the financial affairs.

What happens to bank accounts?

It depends on the nature or the reason for the account. For example: if the account was established as a matter of convenience so the co-owner can write checks for the protected person, most likely the account should be transferred to the conservatorship. If it was established for estate planning purposes, no changes may be necessary.

What about business situations?

Call a lawyer.

When I was appointed, I was handed a stack/notebook full of paperwork. Why?

The law requires that you file reports with the Court. This User's Manual is designed to help guide and assist you with the process and provide you with instructions and forms for the reporting requirements. Refer to the Court's order for the dates that all reports are due.

Where can I get more of these blank reporting forms?

All forms are available, free of charge, in the Self-Help section on the Colorado Judicial Department's website:

http://www.courts.state.co.us/Forms/Forms_List.cfm/Form_Type_ID/130

You may also get blank forms at the clerk's office for a charge of .75 cents per page.

I need more copies of my proof of appointment. Where can I get them and what is the cost?

You may obtain copies at the clerk's office for a charge of .75 cents per page. If you need any of the documents certified, there is an additional charge of \$20.00 per document.

I need help completing all these reports. Can the clerks help me?

Court clerks are not allowed to give legal advice or assist with the completion of forms. If you need assistance, it is highly advised that you seek the advice of a lawyer.

Am I personally liable for the Ward's expenses and what about their actions?

A Guardian need not use the Guardian's personal funds for the Ward's expenses. A Guardian is not liable to a third person for acts of the Ward solely because of the relationship as Guardian.

I'm very worried about the Ward's safety when they drive. What can I do?

As the Guardian, you are charged with making decisions that are in the best interests of the Ward, including restricting driving privileges. You should speak with the Ward's physician about your concerns. He or she can help you decide what to do. You can also contact the Department of Motor Vehicles to discuss possible revocation of the Ward's driver's license.

What documentation do I need in order to add the Minor to my health insurance, car insurance, etc.?

Provide certified copies of the Letters of Guardianship.

Can I pay myself?

A Guardian is entitled to reasonable compensation for his or her services. The hourly rate is determined on a case-by-case basis. It is important to keep a record of the time spent and the service provided. Family members usually serve without compensation. Time spent for friendship and companionship should not normally be billed to the Ward. Compensation paid to the Guardian is treated as taxable income to the Guardian and as a tax-deductible expense for the Ward.

A Guardian is also entitled to reimbursement for expenses paid from the Guardian's own funds. You are required to maintain supporting documentation for all disbursements. The Court or any Interested Persons may request copies at any time.

Compensation and reimbursement for expenses must be approved by the Court unless someone else has been appointed as Conservator. In that case, the Conservator may approve payment.

The Ward lives with me. May I charge rent?

You may charge a reasonable amount for rent and other living expenses. These expenditures should be submitted to the Court for approval. There may be tax consequences to such payments.

The Ward cannot live alone and I can't take care of him/her myself. What do I do now?

As the Guardian, you are charged with making decisions that are in the best interests of the Ward, including housing decisions such as nursing home placement. It is important that you educate yourself about the Ward's needs and the resources available.

I have to leave town for a while. Can I designate someone to make decisions for the Ward in my absence?

The Guardian may delegate to another person, for a period not exceeding 12 months, any powers regarding care, custody or property of a Ward, except the power to consent to marriage or adoption. Instructions (JDF 750) and a form (JDF 751) are available on the Self-Help section on the Colorado Judicial Department's website:

http://www.courts.state.co.us/Forms/Forms_List.cfm/Form_Type_ID/148

My siblings and I are arguing about the way I'm taking care of the Ward. What can I do?

Your siblings have the right to take any of their concerns to the Court. Until the Court says otherwise, you have the power to make decisions about the Ward's care, etc.

What happens when the Ward dies?

Promptly notify the Court by filing a Notice of Death (JDF 853).

What if the Ward gets well and doesn't need my help any longer?

You or the Ward may file a Petition for Termination of Guardianship (JDF 852). Generally, a hearing will be required with the Ward present, unless excused for good cause.

What would happen if I didn't file the required reports or didn't comply with court orders?

The Court will impose sanctions, which may include your removal as Guardian, fines, contempt of court, arrest and/or imprisonment.

What if I need to move? Can I take the Ward with me?

Within Colorado: http://www.courts.state.co.us/Forms/Forms_List.cfm/Form_Type_ID/112

Promptly notify the Court of the new address.

Outside the State of Colorado: The Guardian may not establish or move the Ward's custodial dwelling outside the State of Colorado without a Court order. To transfer the guardianship to another state, file a Petition to Transfer Guardianship/Conservatorship from Colorado to Receiving State (JDF 787) with the Colorado Court where the guardianship was established. Once a Provisional Order is issued in Colorado approving the transfer, file a Petition to Accept Guardianship/Conservatorship in the state where you want the guardianship to be transferred.

What if I need to move the Ward to another County or State in order to qualify for services, school programs, etc.?

The same rules as above apply.

How do I get copies of birth certificates, social security cards, etc., for the Ward?

Provide certified copies of the Letters of Guardianship to the appropriate agency. See the Resources page for links to many agencies' websites. (For birth certificates for people born in Colorado, see the Colorado Department of Public Health and Environment website. For information about social security cards, see the Social Security Administration website.)

There was mention of "reasonably available technological assistance"? What does that mean to my Ward and me?

This means that a guardianship will not be established for an adult person who could satisfy their essential requirements for physical health, safety or self-care if only they had appropriate and reasonably available technological assistance. For example, if a hearing aid or a wheel chair is all that a person needs to function independently, then a guardianship will be denied.

If I am not allowed to obtain hospital or institutional treatment for mental illness, developmental disability or alcoholism, against the will of the Ward, what are my options?

Contact the County Attorney or the agency who handles mental health cases in the county where the Ward resides.

What if the Ward wishes to get married?

The Guardian for a minor can consent to the marriage. The Guardian for an adult, must petition the Court for approval of the marriage.

What if the Ward gets married without my knowledge?

The Guardian may file for a Dissolution of Marriage or an Annulment (Invalidity of Marriage) as appropriate.

How do I become the Representative Payee for social security benefits?

Contact the Office of Social Security Administration and provide certified copies of Letters of Guardianship.

Can I claim the Ward as an exemption on my tax return?

Consult with a tax advisor.

As the Guardian for a minor, am I entitled to child support from the biological parents?

If a Conservator has not been appointed and the Court order does not limit your authority to do so, you may commence a proceeding or take other appropriate action to compel the parents to support the minor. Contact Social Services for information.

What happens if the minor commits a crime?

As the Guardian, you should help the minor obtain legal representation. Absent your agreement, you would not normally be personally liable for the legal fees.

What happens if the parents of the minor (who weren't able to take care of him/her) suddenly want the child back and I don't feel they are capable of taking proper care of the child?

The Parents can file a motion to modify or terminate a Guardianship. The Court will hold a hearing and review the facts of the case. At the hearing, you should let the Court know about your concerns.

Resources

AARP in Colorado	http://www.aarp.org/states/co/ 1-888 687-2277
ARC of Colorado	http://www.thearcofco.org/
ARC of the United States	http://www.thearc.org/NetCommunity/Page.aspx?pid=183
Actuarial Table	www.ssa.gov/OACT/STATS/table4c6.html
Alliance Colorado (Community Center Boards)	http://alliancecolorado.org/
Alzheimer's Association (Metro Denver)	www.alzco.org 303 813-1669
Alzheimer's Association	www.alz.org 1-800-272-3900
Administration on Aging	www.aoa.gov
Americans with Disabilities Act	www.ada.gov
Autism Society of America, Colorado Chapter	http://www.autismcolorado.org/
Benefits Check Up Colorado	www.benefitscheckup.com 1-866-550-2752
Brain Injury Association of Colorado	http://www.biacolorado.org/
Cerebral Palsy of Colorado	http://www.cpcoco.org/
Colorado Bar Association	www.cobar.org 303 860-1115

Colorado Cross-Disability Coalition <http://www.ccdonline.org/>

Colorado Dept of Public Health and Environment www.cdphe.state.co.us
1-800-866-7689 – within Colorado only

Colorado Developmental Disabilities Council <http://www.coddc.org/>

Colorado Division of Insurance www.dora.state.co.us/insurance
303-894-7490 in the Denver-Metro area
1-800-930-3745 from other parts of Colorado.

Colorado Fund for People with Disabilities <http://www.cfpdtrust.org/>

Colorado Judicial Branch www.courts.state.co.us

Community House Services, Inc. 303-831-4046

Consortium for Citizens with Disabilities <http://www.c-c-d.org/>

County Department of Social Services www.cdhs.state.co.us/servicebycounty.htm

Denver Regional Council of Governments www.drcog.org
303 455-1000

Division of Aging and Adult Services <http://www.cdhs.state.co.us/aas/>
1-888-866-4243 – within Colorado only

Elder Care Locator <http://www.eldercare.gov/Eldercare/Public/Home.asp>

Elder Law General Aging Smart Podcast <http://www.elderlawanswers.com/PodCast/PodCast.asp>

Equal Employment Opportunity Commission www.eeoc.gov
1-800-669-4000

Guardianship Alliance of Colorado www.guardianshipallianceofcolorado.org
303 423-2898

Harrison Memorial Animal Hospital	http://cvmf.org/displaycommon.cfm?an=1&subarticlenbr=27
Healthy Aging for Older Adults	www.cdc.gov/aging/ 1-800-311-3435
Hero Alliance People with Disabilities Seeking Home Ownership	http://www.heroalliance.org/
National Guardianship Association	www.guardianship.org
Legal Center for People with Disabilities & Older People	http://www.thelegalcenter.org/
Medicare	www.medicare.gov 1-800-Medicare
Mile High Down Syndrome Association	http://www.mhdsa.org/
Senior Housing Options	www.seniorhousingoptions.org 303 595-4464
Social Security Administration	www.socialsecurity.gov 1-800-772-1213
Social Security Office – Denver Region	http://www.socialsecurity.gov/denver/
The Colorado Consumer Line	www.ago.state.co.us
Attorney General's Office	1-800-222-4444
United Way	http://national.unitedway.org/

PREPARING TO FILE YOUR REPORT

The following is a checklist designed to help you prepare for the filing of your Guardian Report.

To facilitate electronic reproduction of documents please type or legibly print your report in black ink.

- Does your report have the case number, the Ward's name and your address filled in at the top?
- If you or the Ward moved, did you indicate the address change?
- Did you sign the report? If there are co-guardians, did they all sign the report?
- Did you keep copies of receipts and disbursements for possible future court review?
- Did you provide copies of the report to all Interested Persons as identified in the order of appointment and complete the certificate of service indicating that you did so?