

Colorado's New Law Regarding Conservatorship for Adults

Effective January 1, 2001, the new law became known as the Colorado Uniform Guardianship and Protective Proceedings Act. In the last newsletter the new law as it affects guardianship was outlined. The new law encompasses not only guardianship but also conservatorship. The new law is very extensive; a summary of some of the major changes to the law will follow. A copy of the complete statute may be downloaded from the Colorado General Assembly Home Page.

The definition of incapacitated person as it pertains to conservatorship in the new law parallels the definition given of incapacity for guardianship. "Incapacitated person means 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."

In order for a conservatorship to be granted the new law states that 1) clear and convincing evidence is required to establish that the individual is unable to manage property and business and affairs; and 2) a preponderance of evidence is required to show that assets will be wasted or dissipated or money is needed for the individual or dependents.

There are new requirements for petitioning for conservatorship and additional information not previously required. The petition now must include: the respondent's principal address, current street address and proposed dwelling if it will change as a result of the appointment; the respondent's ability to effectively receive and evaluate information, a brief description of the nature and extent of the alleged impairment; the name and address of those required to be listed and given notice which includes the respondent, spouse or an adult with whom the respondent has lived for at least six out of the twelve months preceding the petition, adult children and parents, each person responsible for care or custody of the respondent, treating physician and each legal representative of the respondent; the reason why a conservatorship is in the best interest of the person; the name of each proposed conservator; the type of conservatorship requested—if unlimited why a limited conservatorship is not appropriate, if limited, the property to be placed under the conservator's control and any limitation of the conservator.

There will be a new emphasis on and encouragement of limited conservatorship. The new statute recognizes that in many instances control over certain assets will be sufficient to provide appropriate protections.

The new statute provides for greater notice requirements. A copy of the petition must be served personally upon the respondent and must state that the person must be physically present for the hearing, unless excused by the court. It must include the respondent's rights and describe the purpose and consequences of appointment of a conservator.

Before a conservator can be appointed a court visitor is now mandated. Formerly there was no court visitor requirement for conservatorship.

When a conservator is appointed notice of the appointment must be made to the protected person and others within 30 days of the order. The new conservator must file a financial plan and an inventory within 90 days of appointment. Thereafter an annual report is required from the conservator, including information on whether the conservatorship is still necessary and to what extent.

The respondent is now required to attend the hearing unless excused by the court for good reason, it is the petitioner's responsibility to ensure the respondents attendance. In the past there has been no requirement for the respondent to attend. The new statute includes language for reasonable accommodations for the respondent for participation.

Powers of a conservator are clearly defined in the new statute and may provide for full conservatorship or may delegate only certain functions. Also, to assist in a protective situation or single transaction, a "special conservator" may be appointed by the court.

The new statute defines who should be appointed conservator in this priority order: a) a conservator, guardian of the estate, or other fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides; b) the respondent's nominee; c) an agent appointed by the respondent to manage the respondent's property under a durable power of attorney; d) the spouse of the respondent; e) an adult child of the respondent; f) a parent of the respondent; g) an adult with whom the respondent has resided for more than six months immediately before the filing of the petition. In order for the respondent's nomination to receive priority, the person must have sufficient capacity to express a preference at the time of nomination. The court, for good cause, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

It is expressly stated in the new statute that owners, operators or employees of long-term care providers are prohibited from serving as a conservator unless related to the individual by blood, marriage or adoption. Additionally, as with new guardianship provisions, professionals are prohibited from serving in dual capacities as guardian/conservator, guardian/direct service provider, or conservator/direct service provider.

Bonds are mandatory in each conservatorship, unless the court makes a specific finding as to the reason bond is not required.

Upon the death of the protected person the conservator shall make no expenditures without court authorization, unless necessary to preserve the assets of the estate, or for funeral, cremation expenses.

A conservatorship terminates upon death, or upon an order determining that the conservatorship is no longer necessary. The conservator is required to give notice of the death to the court and to any others whom the court has designated for notice. Within 60 days of death, or an order terminating the conservatorship, the conservator is required to file a final report and the petition for discharge. The Decree of Discharge is the legal document that ends the conservator's liability. If this decree is not issued, the conservator's liability remains open.

