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Understanding Guardianship & Conservatorship: How They Protect Incapacitated Seniors

Guardianship

What is it?

- A guardian is someone appointed by the court to make personal decisions for an incapacitated person. A guardian by law has all the duties and responsibilities that a parent has with respect to a minor child. The incapacitated person under guardianship is called the "ward". The person seeking to be appointed as guardian must petition the court and prove by clear and convincing evidence in a court hearing that:
    - the person is incapacitated as defined under Arizona law i.e. is "impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, or chronic intoxication to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person", AND
    - the appointment is necessary to provide for the demonstrated needs of the incapacitated person, AND
    - the person's needs cannot be met by less restrictive means, including the use of appropriate technological assistance.

When is guardianship necessary?

- A guardianship is just a tool to get you where you want to go and should be considered a last resort when all else fails to protect an incapacitated person.
- If the incapacitated person has a valid health care power of attorney signed by the person at a time when they had capacity, in most cases you do not need to obtain guardianship over the person. However, health care powers of attorney lack the permanency of a guardianship because they can be revoked by the principal, who is the person for whom the document was created. If the principal is a vulnerable adult and is easily influenced by others, interested persons may try to use undue influence

to get them to change their power of attorney and disputes can arise, creating a "dueling powers of attorney" conflict.

- If there is no valid Health Care Power of Attorney and a guardian has not been appointed, Arizona law dictates in order of priority, a default list of individuals who are authorized to make health care decisions on behalf of an incapacitated person. However, the person with priority may not be the best person to make decisions or is doing a poor job. A person designated by law to make health care decisions for an incapacitated person is called a surrogate. The order of legal priority for surrogates is as follows:

    1. Court-appointed guardian
    2. Agent under validly executed Health Care Power of Attorney
    3. The patient's spouse, unless the patient and spouse are legally separated.
    4. An adult child of the patient. If the patient has more than one adult child, the health care provider shall seek the consent of a majority of the adult children who are reasonably available for consultation.
    5. A parent of the patient.
    6. If the patient is unmarried, the patient's domestic partner.
    7. A brother or sister of the patient.
    8. A close friend of the patient. For the purposes of this paragraph, "close friend" means an adult who has exhibited special care and concern for the patient, who is familiar with the patient's health care views and desires and who is willing and able to become involved in the patient's health care and to act in the patient's best interest.
    9. If no one can be located under 1-8, the patient's attending physician may make health care treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee. If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision.

- In a case where police cooperation is required, for example when an incapacitated person wanders due to dementia and refuses to comply with directives, or has been detained by someone in their home or elsewhere where such detention is not in their best interests and the senior does not have the capacity to consent, the police do not place much credence on powers of attorney and are often hesitant to act without a court order or guardianship.

- A statutory surrogate who is not a guardian with mental health powers, or agent under a health or mental health care power of attorney specifically authorizing the agent to consent to inpatient psychiatric placement, cannot authorize inpatient psychiatric hospitalization.

- A statutory surrogate who is not a guardian or agent under a health care power of attorney cannot authorize the withdrawal of a feeding tube.

- A guardianship may be required to force the incapacitated person's placement in a hospital or long-term care facility against the ward's will.

- A guardianship may be required even though the ward assents (agrees to) the placement but cannot give informed consent to treatment and there is no statutory surrogate willing and able to act, or the facility is uncomfortable with allowing the placement with the statutory surrogate's authority alone, without a power of attorney or court appointed guardian.

- A guardianship may be required to have someone appointed to consent to medical procedures when the incapacitated person is either refusing or unable to consent.

- Even though guardians don't typically handle the finances of their ward, in this presenter's experience IRS will allow a guardian to file tax returns.

What is the procedure for appointing a guardian?

- Any interested person may apply for the appointment of a guardian and the court may appoint any qualified person to act as guardian. However, pursuant to A.R.S. § 14-5311, the following persons are given priority for appointment in the following order:

    1. A guardian or conservator of the person or a fiduciary appointed or recognized by the appropriate court of any jurisdiction in which the incapacitated person resides.

    2. An individual or corporation nominated by the incapacitated person if the person has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.

    3. The person nominated to serve as guardian in the incapacitated person's most recent durable power of attorney or health care power of attorney.

    4. The spouse of the incapacitated person.

    5. An adult child of the incapacitated person.

    6. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.

    7. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months before the filing of the petition.

    8. The nominee of a person who is caring for or paying benefits to the incapacitated person.

9. If the incapacitated person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veterans' services.

10. A licensed private fiduciary.

11. A licensed public fiduciary.

- The court may pass over a person who has priority, for good cause. Good cause may include a determination that (a) the protected person's power of attorney is invalid, (b) honoring the protected person's power of attorney would not be in the physical, emotional or financial best interest of the protected person, and/or (c) the estimated cost of the fiduciary and associated professional fees would adversely affect the ability to provide for the protected person's reasonable and necessary living expenses. Another example of good cause would be if the person with priority is exploiting or abusing the protected person.

- More than one person may be appointed and serve as co-guardian, which provides flexibility if they are authorized to act independently, and when one of the co-guardians becomes incapacitated or dies, the remaining guardian can act alone. Co-guardians share decision-making for the ward and neither co-guardian's rights or responsibilities are superior except as otherwise ordered by the court.

- A report by a physician, nurse or psychologist is required in support of the petition.

- A court investigator must meet separately with the proposed ward and proposed guardian.

- An attorney is appointed by the court for the proposed ward who can contest the petition.

    - If the ward has the capacity to select his or her own attorney, then he can select his own attorney. Otherwise an attorney must be appointed by the court. In Yavapai County, generally the attorney for the petitioner selects an attorney who is willing to serve and that attorney is appointed by the court. The court-appointed attorney is required to visit the ward prior to the hearing and advise the proposed ward of his or her right to object to the proceedings. The attorney must represent the client in accordance with the clients' wishes unless the client is unable to express his or her wishes in a clear manner, in which case the attorney acts as a guardian ad litem.

    - The court-appointed attorney may withdraw after an initial guardianship or conservatorship appointment is made, subject to the court's approval.

- Notice requirements:

    - Parties to be served:

        - The alleged incapacitated person and his spouse, parents, and adult children;
        - Any person who has served as guardian and conservator or who has the custody and care of the alleged incapacitated person;
        - In case no other person is notified, at least one of the person's closest adult relatives if any can be found;
        - Any person who has filed a demand for notice.

    - Manner of service:

        - Notice must be served personally on the alleged incapacitated person and the person's spouse and parents if they can be found.

        - Notice to all other persons may be mailed or hand-delivered. If the address or the identity of the person is not known, then service can be made by publication. A.R.S. § 14-1401.

        - A minimum of 14 days' notice must be given in all cases. A.R.S. § 14-1401.

- Health Professional Report. A report by a registered nurse, physician, or psychologist, supporting the need for the guardianship, must be filed with the petition.

- Training for Non-Licensed Fiduciaries:

    - All prospective guardians who are not licensed fiduciaries must complete a training program prior to being appointed as guardian. Therefore, any family member seeking guardianship appointment MUST complete this training before the previously prepared "Letters of Guardianship" are issued. The training can be completed in approximately 30 minutes online at https://www.azcourts.gov/probate/Training/Probate-Training-Non-Licensed-Fiduciaries. A Certificate of Completion will be issued to the proposed guardian online immediately after the training course is completed. The Certificate of Completion must then be filed with the Court. It is recommended that this be completed prior to the hearing on the petition, so there are no delays in the issuance of the "Letters of Guardianship".

- The Hearing:

    - Generally the hearing is pretty informal, although some testimony from the petitioner is required. If the proposed ward or a person entitled to notice objects at the time of the initial hearing or objects in writing at least three days prior to the hearing, then the matter will be reset for a contested hearing and a schedule for getting legal discovery (depositions, requests for production of documents, requests for admissions, subpoenas, and interrogatories) will also be ordered.

- If the court grants the petition, the court will issue a written order appointing the guardian, and the proposed guardian must file an acceptance of the appointment after which time Letters of Guardianship are issued by the probate registrar of the court. Further obligations of the guardian are set forth in the "Order to Guardian," which is signed by the guardian and the court.

- A guardianship lasts for the lifetime of the ward, unless it is terminated prior to that time.

- The guardian will be required to file annual guardian's and health care professional's reports with the court. However, there is no court hearing to consider the reports.

- **Temporary Guardianship.**

  - **Standard for Appointment:** A temporary guardian for an alleged incapacitated person may be appointed if an emergency exists and the welfare of the ward is found to require immediate action.

  - **Filing Requirements:** The request for both temporary and permanent guardianship must be made in the petition if the petitioner wants a temporary emergency guardian appointed.

  - **Non-licensed Fiduciary Training:** If appointment is made on an emergency/temporary basis, the guardian must complete his or her non-licensed fiduciary training within 30 days of appointment.

  - **Notice requirements.**

    - **With Notice:** In Yavapai County, the court will always appoint the emergency temporary guardian without notice.

    - **Without Notice:** The court may enter an order appointing a temporary guardian without notice if immediate or irreparable injury, loss or damage will result before the proposed ward or the court-appointed attorney can be heard. Other procedural requirements for obtaining a hearing without notice are set forth in A.R.S. § 14-5310.

  - **Duration of appointment:** An order appointing a temporary guardian without notice is effective for up to 30 days. A temporary guardian appointed after a hearing with notice may be appointed for a period of up to six (6) months. However, normally the temporary guardian will be appointed until the date of the permanent hearing.

- **Mental Health Guardianship.**

  - **Reasons for Obtaining Mental Health Powers for the Guardian:** A Title 14 guardian with mental health powers may admit his ward to an inpatient psychiatric facility and obtaining legal authority for inpatient psychiatric

hospitalization for an incapacitated person is the only reason to seek this additional guardian power. With respect to seniors specifically, even if a person does not have history of mental illness, there can sometimes be a need for psychiatric hospitalization because of psychosis (delusions and/or visual or auditory hallucinations) associated with, for example, dementia, a toxic cocktail of prescribed medications, depression and suicidal ideation brought on by aging with social isolation, and even by a urinary tract infection. This kind of guardianship can become necessary if the incapacitated person becomes unmanageable in the home, or they cannot be placed in a facility without psychiatric stabilization or the facility is not able to manage the incapacitated person's difficult behaviors (wandering, hitting, and /or general non-compliance). One particular problem in Yavapai County is that there are no geriatric psychiatric hospitals here for treatment of guardianship wards, so seniors who need inpatient psychiatric care may have to go to the Valley for placement.

- **Health Professional Report.** A written report by a physician specializing in psychiatry, or a psychologist, supporting the need for guardianship must be filed with the petition.

- **Required Court Findings:** To appoint a Title 14 guardian with mental health powers, the court must find that the person is incapacitated as a result of a mental disorder. A mental disorder is defined as a substantial disorder of thought, cognition, memory or emotional process. The court must also find that the person is currently in need of inpatient mental health care and treatment.

- **Emergency Placement in a Psychiatric Hospital:** Any surrogate, even if they do not have specific authority to consent to psychiatric hospitalization, may still consent on behalf of the incapacitated person to place him or her in a psychiatric facility on an emergency basis, but must file for a mental health guardianship within 48 hours of admission unless a civil commitment proceeding is initiated or the person has a validly executed a health or mental health care power of attorney that specifically includes the authority to consent to inpatient psychiatric treatment.

    - If the guardian places the ward in an inpatient psychiatric facility then he must give notice of the placement to the ward's attorney within forty-eight (48) hours. The attorney for the Ward may request a hearing in which case the court must schedule the hearing within three days of the request.

    - The attorney appointed by the court remains assigned to the case until discharged unless the court discharges him on the grounds that continued representation of the Ward is no longer necessary or desirable.

    - The ward has the right to an independent psychiatric or psychological evaluation and the cost of this evaluation will be paid for by the county if the patient has insufficient funds to pay for the cost. The court may accept

a report based on an evaluation conducted by the facility if the court finds the report meets the requirements of the evaluation.

- The duration of a Title 14 guardianship with mental health powers is in the discretion of the court. However, the guardian must file an evaluation report annually by a physician or psychologist who meets the requirements of the statute. The report must indicate whether the ward will likely need inpatient mental health care and treatment within the next year. If the report is not filed in court or indicates that the patient does not need inpatient mental health care treatment the guardian's authority to consent to treatment ceases. If the report supports the continuation of the guardianship, then the guardian's authority to consent to treatment continues. However, the court-appointed attorney can contest the continuation if he files a request for a court hearing. The hearing must be set within ten days after the report is filed.

- An alternative to mental health guardianship is involuntary court-ordered treatment under Title 36 of the Arizona Revised Statutes. The downside is that the family loses control because it is the county that brings the action to commit the person, but this type of commitment may make it easier to access public services.

How does guardianship impact the ward's legal rights?

- On the appointment of a guardian, the court may determine that the ward's privilege to obtain or retain a driver license should be suspended and issue an order suspending the privilege. However, if the court is presented with sufficient medical or other evidence to establish that the ward's incapacity does not prevent the ward from safely operating a motor vehicle, it may decline to suspend the ward's privilege to obtain or retain a driver license and issue an order allowing the ward to obtain or retain a driver license.

- Pursuant to the Arizona Constitution Article 7 Section 2 (C), once a person has been adjudicated as an incapacitated person, the person is no longer qualified to vote at any election. Once a person is deemed incapacitated, which is a requirement for a guardian to be appointed, the ward loses his ability to vote. A person for whom a limited guardian is appointed may retain the right to vote if the person files a petition to retain voting rights, a hearing is held, and the judge determines by clear and convincing evidence that the person retains sufficient understanding to exercise the right to vote.

- The ward's rights to make his medical and placement decisions are taken away from him unless there is a limited guardianship in which case the court can specify time limits on the guardianship and/or limitations on the guardian's powers. Although the guardian is required to take into consideration the ward's wishes, ultimately the guardian must base his decisions on what is in the best interests of the ward.

What are the guardian's duties and powers?

- The guardian has powers and responsibilities similar to those of a parent of a minor child, except that the guardian is not legally obligated to contribute to the support of the ward from the guardian's own funds.
- Unless the order appointing the guardian provides otherwise, the guardian's duties and responsibilities include (but are not limited to) making appropriate arrangements to see that the ward's personal needs (such as food, clothing and shelter) are met.
- The guardian is responsible for making decisions concerning the ward's educational, social and religious activities. If the ward is 14 years of age or older, the guardian must take into account the ward's preferences to the extent they are known to the guardian or can be discovered with a reasonable amount of effort.
- The guardian is responsible for making decisions concerning the ward's medical needs, including but not limited to the decision to place the ward in a nursing home or other health care facility and the employment of doctors, nurses, or other professionals to provide for the ward's health care needs. However, the guardian must use the least restrictive means and environment available which meet the ward's needs.
- The guardian may arrange for medical care to be provided even if the ward does not wish to have it, but the guardian may not place the ward in a level one behavioral health facility against the ward's will unless the Court specifically has authorized the guardian to consent to such placement.
- The guardian typically makes healthcare and placement decisions for the ward but is not permitted to manage the finances of the ward, except that the guardian can receive a limited amount of money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward. As a general rule, "limited amount" means that the ward does not receive income (from all sources) exceeding $10,000.00 per year, does not accumulate excess funds exceeding that amount, and does not own real property. If more than these amounts come into the guardian's possession, or are accumulated by the guardian, the guardian is required to petition the court for the appointment of a conservator.
- The guardian cannot accept any compensation of any kind for placing the ward in a particular nursing home or other care facility, using a certain doctor, or using a certain lawyer. "Compensation" includes, but is not limited to, direct or indirect payments of money, "kickbacks," gifts, favors, and other kinds of personal benefits. If the guardian believes a certain placement or service, that might otherwise be considered self-dealing or a conflict of interest, is in the best interest of the ward, the guardian must document to the court their reasoning for selecting such placement or service and obtain court approval.
- The guardian is required to report annually, in writing, with respect to the ward's residence, physical and mental health, whether there still is a need for a guardian, and if there is no conservator, the ward's financial situation. The report is due each year on the anniversary date of the issuance of the Letters of Appointment as permanent guardian.

- If the ward's physical address changes, the guardian must notify the court by updating the Probate Information Form within three days of learning of the change in the ward's physical address. If the ward dies, the guardian must notify the court in writing of the ward's death within ten days of learning that the ward has died.
- The guardian must be conscious at all times of the needs and best interests of the ward. If the circumstances which made a guardianship necessary should end, the guardian is responsible for petitioning the court to terminate the guardianship and obtaining their discharge as guardian. Even if the guardianship should terminate by operation of law (for example, upon the death of the ward), the guardian will not be discharged from their responsibilities until they have obtained an order from the court discharging them.

Conservatorship

What is it?

- A conservator is appointed by the court to manage the estate and financial affairs of a person in need of protection by the court. A person for whom a conservator is appointed is called a protected person.

When is conservatorship necessary?

- A conservatorship may be necessary if no financial power of attorney or trust exists, nobody else has legal access to the person's assets to pay for the person's care and support, and the person is unable to manage their own finances due to incapacity. As a result, the incapacitated person may be failing to pay his bills endangering his financial and personal well-being, and/or unable to monitor their investments and make investment decisions, and/or to maintain any real property they own. There are common problems this author has seen that can arise when the incapacitated person does not have a trust or has failed to fund it, and/or when there is no power of attorney. These include when real property needs to be sold, when access to retirement plans is necessary and there is no power of attorney, or when the person did a trust but failed to title particular assets in the trust that need to be accessed. A conservatorship can even become necessary to just to file tax returns.

- If someone is financially exploiting the person, a conservatorship is usually necessary in order to stop the exploitation. In some cases, however, there may be other ways to stop the exploitation. If the person has a trust then the person can be removed as trustee according to the terms of the trust due to incapacity and a successor trustee can take over and remove the incapacitated person on his or her accounts as the acting trustee and request the bank to put them, as the successor trustee, on the title to the accounts. Keep in mind, however, that retirement plans cannot be titled into the name of a trust, and therefore, in exploitation cases, sometimes a limited conservatorship may be required for the retirement plans even if the trust assets are not under the supervision of the court.

- A conservatorship can become necessary if the incapacitated person is wasting or dissipating their own assets even though there is no financial exploitation by someone else occurring. This can happen, for example, if a person with bi-polar disease goes on a manic spending spree, or an incapacitated person is losing, hoarding and hiding, or misplacing large amounts of cash, or is mistakenly paying bills twice or writing out the wrong amounts on checks to pay vendors.

- It should be noted that when exploitation or irresponsible spending is a problem, a financial power of attorney will not cure the problem. A financial power of attorney will give another person the ability to handle the incapacitated person's finances but does not take any authority away from the incapacitated person to handle his own financial affairs.

What is the procedure for appointment of a conservator?

- The person seeking to be appointed as conservator must petition the court and prove by a preponderance of the evidence in a court hearing that:
    - The proposed protected person is unable to manage his/her estate and affairs effectively due to incapacity, and
    - The person's assets will be wasted or dissipated without proper management, **OR** funds are needed for the support, care and welfare of the person or their dependents and that such protection is necessary or desirable.

- Any interested person may apply for the appointment of a conservator and the court may appoint any qualified person to act as conservator. However, pursuant to A.R.S. § 14-5410, the following persons are given priority for appointment in the following order:

    1. A guardian or conservator of the person or a fiduciary appointed or recognized by the appropriate court of any jurisdiction in which the incapacitated person resides.
    2. An individual or corporation nominated by the incapacitated person if the person is at least fourteen years old and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice.
    3. The person nominated to serve as conservator in the incapacitated person's most recent durable power of attorney.
    4. The spouse of the incapacitated person.
    5. An adult child of the incapacitated person.
    6. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.

7. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months before the filing of the petition.

8. The nominee of a person who is caring for or paying benefits to the incapacitated person.

9. If the incapacitated person is a veteran, the spouse of a veteran or the minor child of a veteran, the department of veterans' services.

10. A licensed private fiduciary.

11. A licensed public fiduciary.

- The court may pass over a person who has priority, for good cause. Good cause may include a determination that (a) the protected person's power of attorney is invalid, (b) honoring the protected person's power of attorney would not be in the physical, emotional or financial best interest of the protected person, and/or (c) the estimated cost of the fiduciary and associated professional fees would adversely affect the ability to provide for the protected person's reasonable and necessary living expenses. Another example of good cause would be if the person with priority is exploiting or abusing the protected person.

- More than one person may be appointed and serve as co-conservator, which provides flexibility if they can act independently, and when one of the co-conservators becomes incapacitated or dies, the remaining conservator can act alone. Co-conservators share decision-making for estate and financial affairs of the protected person and neither co-conservator's rights or responsibilities are superior except as otherwise ordered by the court.

- **Health Professional Report.** When filing for conservatorship a health professional's report in support of the need for conservatorship is not legally required but it is highly recommended and most judges are going to expect that a report be filed.

- **Notice and Service Requirements.** The notice and service requirements for conservatorship are the same as the requirements in guardianship proceedings (see above).

- **Training for Non-Licensed Fiduciaries:** As with guardianship, proposed conservators who are not non-licensed fiduciaries are required to complete the training program for non-licensed fiduciaries. There is also a training module for conservators located online at https://www.azcourts.gov/probate/Training/Probate-Training-Non-Licensed-Fiduciaries. If appointment is made on an emergency/temporary basis, the conservator must complete his or her non-licensed fiduciary training within 30 days of appointment.

- The Hearing:

- As with guardianship proceedings, if the proposed protected person or a person entitled to notice objects at the time of the initial hearing or objects in writing at least three days prior to the hearing, the hearing will be reset and a discovery schedule will be set.

- If the court grants the petition, the court will issue a written order appointing the conservator, and the proposed conservator must file an acceptance of the appointment after which time Letters of Conservatorship are issued by the probate registrar of the court. Further obligations of the conservator are set forth in the "Order to Conservator," which is signed by the conservator and the court.

- **Temporary Conservatorship:** As with guardianships, temporary conservatorship appointments may also be made in the event of an emergency if immediate or irreparable injury loss or damage will result if a temporary order is not issued. The procedures are the same as for temporary guardianship (see above).

- **Petition for Single Transaction Authority:** In some cases, the petitioner may not want to go through the expense and hassle of being appointed as a conservator on a permanent basis. He or she may only need the court to authorize a single transaction. For example, if a house is held in joint tenancy by a married couple and one spouse is incapacitated and the house needs to be sold, the competent spouse may petition the court to request the court to authorize the sale of the house and the placement of the proceeds in a joint account. There is no guarantee, however, that the court will not require a full conservatorship with the annual accountings. Whether the court will grant the Petition for Single Transaction Authority depends on the circumstances of the case.

What are the conservator's duties and responsibilities?

- **Bond:** In most cases, the conservator must be bonded for the value of the estate to which he has access without court order.

    - Some assets may be restricted (i.e. the conservator cannot access them without an additional court order), which reduces the bond amount and premium and offers additional protection for the incapacitated person. Normally, assets which are not going to be used to pay for care or other expenses during the next year and a half or so can be restricted. For example, a home is often restricted from sale or encumbrance without a court order unless the conservator anticipates selling the property in the near future.

- **Duty to collect and retitle assets:** Once the conservator is appointed, he should investigate all of the ward's assets and retitle them into the name of the conservatorship with his name listed on the assets as the conservator. If the assets are ordered to be restricted, then he will need to file proof with the court that the assets have been in fact been restricted by the financial institution. If there is real property, then the Letters of Conservatorship will have to be recorded with the county recorder's office.

- **Inventory:** Within 90 days of the conservator's appointment, he or she must prepare and file an inventory of the property owned by the protected person and their values as of the date of the appointment. Along with the inventory, a copy of the protected person's consumer credit report must also be filed. The report must be from a credit reporting agency and dated within 90 days before the filing of the inventory. A.R.S. § 14-5418.

- **Sustainability Report:** With the inventory and each conservator's account (see below), the conservator must prepare and file a sustainability report regarding the conservatorship. The report must disclose whether the annual expenses of the conservatorship exceed income and, if so, whether the assets available to the conservator less liabilities are sufficient to sustain the conservatorship for the duration of time the protected person needs care or fiduciary services. See Rule 30.2 of the Arizona Rules of Probate Procedure. Forms can be located at www.azcourts.gov/probate/probateforms.

- **Budget:** The conservator must also prepare and file a conservatorship estate budget (details regarding the anticipated income and anticipated costs)by no later than the date the inventory is due, and thereafter with each conservator's account (see below). See Rule 30.2 of the Arizona Rules of Probate Procedure. Forms can be located at www.azcourts.gov/probate/probateforms.

- **Accounting:** In most cases, the conservator will be required to file annual accountings with the court. Annual accountings must reflect all activity relating to the conservatorship estate within the accounting period and must describe all money and property received or disbursed by the conservator during that period. As to money and property received, the conservator must provide the date of each receipt, the source of the receipt, the purpose of the receipt, and the amount of the receipt. As to money and property disbursed, the conservator must provide the date of each disbursement, the payee/distributee, the purpose of the disbursement, and the amount of the disbursement. With each account that the conservator files, he or she also must submit a bank statement or financial account statement that supports the ending balances of each bank or financial account shown on the conservator account filed with the court.

    - The first accounting period runs from the date the conservator's letters were first issued through and including the last day of the ninth month after the date the conservator's permanent letters were issued and must be filed with the court on or before the anniversary date of the issuance of the conservator's permanent letters.

    - Subsequent accountings run from the ending date of the most recent previously filed account through and including the last date of the twelfth month thereafter, and must be filed with the court on or before the anniversary date of the issuance of the conservator's permanent letters.

Public and Private Fiduciaries

- In some cases there may be no family members or anyone else who is willing and able to serve as guardian and conservator, or it is in the best interests of the incapacitated person that a neutral third party serve as guardian and/or conservator. In these cases, if there are sufficient funds in the protected person's estate or trust, a professional private fiduciary licensed by the Arizona Supreme Court can be appointed as conservator. For persons of more modest means, and as a last resort, the public fiduciary in the county where the person resides or is present can be appointed by the court to serve. Fees are charged against the estate by both public and private fiduciaries. While the fees charged by private fiduciaries can be considerable, the statutorily set fees charged by the public fiduciary are minimal.

Fees and Costs

- Any person who is not related to the proposed ward or protected person and who will charge a fee for their services as guardian or conservator must be licensed by the Supreme Court. This requirement does not apply to financial institutions, family members, or non-related court appointed fiduciaries serving without charging fees or compensation.

- In Yavapai County the court-appointed attorney's fees are paid out of the estate unless there are insufficient funds with which to pay him. In that event, the court pays the attorney a nominal fee.

- There are also other costs associated with the guardianship and conservatorship process. The court investigator is paid by the estate and there are filing fees and service of process fees.