

## Video 4 Conservator Orientation

Welcome to the New Mexico Court's orientation program for conservators. The court appreciates the commitment you have made to serve as the conservator of a protected person.

This video will discuss:

- the duties, ethical considerations, and other responsibilities of a conservator;
- the different types of conservatorship; and
- the rights of a protected person.

### **WHAT IS A CONSERVATOR?**

A conservator is a person appointed by a judge to manage another adult's finances and property. This may be due to disability, mental illness, disease, chronic substance or alcohol abuse, or any other cause.

But what exactly does a conservator do? As a conservator, your powers and duties are described in the judge's Order, which is issued after the judge holds a hearing. It's your responsibility to understand what the Order says and what you can and cannot do. You should ask questions about the Order during the hearing. Afterwards, if you still have questions, you can call or write a letter to the judge's office.

After the judge issues the Order appointing you as the conservator, you will need to file an Acceptance of Appointment with the court. The court clerk will then issue you "Letters of Conservatorship". This is an official legal document proving that the judge has given you the authority to make decisions on behalf of the protected person. Please keep the original Letters of Conservatorship in a safe place. You can present them to banks and financial institutions as proof that you have the authority to access the protected person's accounts.

### **TWO FORMS OF CONSERVATORSHIP**

Let's turn briefly to the two types of conservatorship. The judge's Order appointing you as conservator will state whether you are a "limited" or a "full" conservator.

A limited conservator only has specific responsibilities and the protected person retains all powers not specifically given to the limited conservator. For example, the judge may have found that the protected person is capable of managing their own income and daily expenses, but needs a conservator to manage their property, such as a house, or investment and retirement accounts. You must carefully review the judge's Order to understand the powers granted to you and the powers kept by the protected person.

A full conservator is responsible for making all financial decisions for the protected person. However, full conservators *must* still consult with the protected person about their finances and involve them in decisions as much as possible.

## Video 4 Conservator Orientation

### **DUTIES OF A CONSERVATOR**

Once you obtain your Letters of Conservatorship, you have accepted the powers and responsibilities as conservator. These powers and duties depend on the protected person's specific needs and may include financial responsibilities like:

- Managing their accounts, such as bank accounts and retirement accounts;
- Ensuring their bills are paid;
- Distributing money to ensure their needs are being met;
- Managing their investments and other estate assets;
- Buying, selling or managing real property, such as land, homes, and buildings; and
- Handling claims by or against the estate or protected person.

Your duties could also include:

- Employing professionals to assist with your conservator duties; and
- Working with a guardian, if one has been appointed, to ensure that the protected person's personal care and needs are being met.

Conservators need certain skills to be successful. You should make financial decisions that are individualized, which means that each decision is based on the particular needs of the protected person. This includes keeping all money and property of the protected person in accounts separate from your own personal accounts or the accounts of others; maintaining good records of financial transactions, which means keeping all receipts, bills of sale, and other financial documents for at least seven years; accurately keeping track of income and expenses, which includes paying bills and filing taxes on time; and making sure the protected person's property is insured.

If the protected person's expenses are greater than their income, you will need to develop a plan for meeting their current and future needs. The plan could involve selling property or applying for state or federal benefits on the protected person's behalf. If you're faced with making important decisions, such as selling property, you should consider getting court approval first. Having these financial skills is necessary to be a successful conservator.

There are also important ethical considerations that you must keep in mind when making decisions for or on behalf of a protected person. Above all else, you must treat the protected person with dignity, and respect their ethical and cultural values. This includes making individualized decisions for the protected person based on their particular needs. You must also act in the protected person's best interest and advocate for the person's goals, needs, and preferences. This means you make decisions for a protected person that best reflect what *they* prefer, or that reflect *their* lifestyle and beliefs.

Conservators make these decisions even if they would not make them for themselves.

## Video 4 Conservator Orientation

Remember to:

- Manage the protected person's finances wisely—as if you were managing your own; and
- Advocate for the protected person's goals, needs, and preferences—unless doing so would substantially harm their property or finances.

You cannot benefit from a financial decision made on behalf of the protected person—in other words, you cannot have transactions between the protected person's estate and your own without the judge's approval. For example, if you choose to sell a vehicle that belongs to the protected person, you cannot buy it for yourself with your own money unless you have obtained prior approval from the judge.

A successful conservator must also make decisions which place the fewest restrictions on the protected person's freedom and rights. Keep all information concerning the protected person confidential, except if it's necessary to secure financing or to obtain financial records, or to obtain state or federal benefits. Comply with all laws and court orders, including your ongoing responsibility to the judge for reporting on the decisions you make; and ask the judge to change or terminate the conservatorship when circumstances change.

Ultimately, to be a successful conservator, you should be aware of your limits and ability to serve effectively. The court understands that circumstances change—and sometimes, the guardian or conservator becomes unable to serve. In that case, you must contact the judge as soon as possible to arrange for another guardian or conservator, or perhaps another person who can assist.

### **EXAMPLE SCENARIO**

Let's look at an example of a conservator:

Andrew lives in his own home and can manage his daily living activities by himself. He has a brain injury but is otherwise healthy and active. However, Andrew has a hard time balancing his checkbook and paying bills on time. He's been evicted several times for forgetting to pay his rent. Seeing as Andrew is unable to manage his finances, his niece, Karen, was appointed conservator. Karen pays all of Andrew's bills, reviews Andrew's income and expenses through online accounts, and regularly monitors all of his finances. Because Andrew works, Karen has set up two bank accounts for him. The primary account is for his work income and larger expenses, which Karen uses to pay his bills. The smaller account lets Andrew have access to money to spend however he chooses, but he won't be able to overspend or be taken advantage of by others. Karen also works closely with Andrew's medical and social service providers to evaluate whether Andrew is getting the appropriate services he needs.

### **GETTING PAID**

As a conservator, you are entitled to reasonable compensation for your services, but you are not required to take it. If you do get paid for your work as a conservator, you must document how this amount was decided. For example, if you choose to keep track of your time and charge an

## Video 4 Conservator Orientation

hourly rate, you would document those decisions and keep a record of any money you pay yourself. The judge may review how much you are paid to determine if this amount is appropriate.

### **WORKING WITH GUARDIANS**

Along with you as a conservator, the court may have also appointed a guardian for the protected person; or you may be both the guardian and the conservator. Unlike a conservator, a guardian is responsible for the personal care decisions of the protected person. If a separate guardian has been appointed, you must work with that guardian to make sure they have the ability to pay for the protected person's needs.

For example, you may have to transfer money to the guardian to pay for things like everyday expenses—including food, transportation, and activities for the protected person. Remember, you remain accountable for all money transferred to the guardian. You *must* account for how much money you transfer to the guardian and how that money is used.

### **CHANGES TO YOUR CONSERVATORSHIP**

The court recognizes that things change and sometimes a conservatorship needs to be modified or terminated. There are a few key instances where this might occur. For example, if you are a limited conservator and notice that the protected person is no longer able to handle the finances the judge gave them control over, you may ask the judge to change the conservatorship to a full conservatorship, so you are able to manage more aspects of the protected person's finances.

In another situation, you may think that the protected person is able to start managing certain aspects of their own finances. In this case, you can ask the judge to change the conservatorship to a limited conservatorship, so the protected person can begin to manage more aspects of their finances.

Additionally, if the protected person no longer needs any assistance with their finances, or if the protected person dies, the conservatorship needs to be terminated. In either of these cases, you must ask the judge to terminate the conservatorship and submit a final conservator's report. This final report should detail everything you handled as a conservator since the filing of the last annual report until the date of termination. You should file the final report as soon as possible after the event terminating the conservatorship occurs.

As a conservator, you must ultimately act for the sole benefit of the protected person and put their interests first. This means keeping the protected person's assets separate from your own and everyone else's, as well as keeping detailed and accurate financial records on behalf of the protected person—retaining those records for seven years. You can't just walk away from your duties; so if you no longer feel you are able or willing to serve as conservator, you must ask the judge to appoint a new conservator and file a final conservator's report.

Remember, you are not alone. If you have a question about your responsibilities, you may ask the judge for direction, especially if a difficult problem arises. More information is available

## Video 4 Conservator Orientation

from the New Mexico Guardianship Association's website and its publication, *Alternatives to Guardianship and Conservatorship* and *Handbook for Guardians and Conservators*.

Your role as conservator is important. The court thanks you for taking on the responsibility of caring for a protected person and doing your best to ensure their well-being, safety, and dignity.