

# UNLICENSED FIDUCIARY TRAINING MANUAL



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**IMPORTANT NOTICE**

**TRAINING REQUIREMENT**

**Effective September 1, 2012**

The Arizona Supreme Court requires that any person who is not a state-licensed fiduciary (or a financial institution) must complete a training program approved by the Supreme Court **before** Letters of Appointment to serve as a guardian, conservator, or personal representative can be issued by the Clerk of the Court.

**TRAINING SHOULD BE COMPLETED BEFORE THE COURT HEARING.**

The fiduciary may for good reason request additional time to complete the training.

**You may access and complete the training FREE online at:**  
<http://www.azcourts.gov/probate/Training.aspx>

Go to the section for “**Non-licensed Fiduciaries**” and click on the link to access a narrated slide-show presentation of the materials applicable to your situation.

**AFTER reviewing the materials, you will need to inform the Court that you have completed the training by filing either the Certificate available at the end of the online training, or the Declaration of Completion form available at the end of this training manual, or from either the Probate Filing Counter or the Self-Service Center. If you have questions about the training, contact the Probate Clerk at 602-506-3668.**

# **Probate Fiduciary Training Manual**

After viewing the contents of this manual you will be able to:

- Recall the qualifying requirements
- Discuss the differences among the 3 roles
- List the basic responsibilities for each role
- Describe the order of priority for assigning each role

## **Unlicensed Fiduciary Roles**

As an unlicensed fiduciary you may be appointed in one of 3 roles: Guardian, Conservator or Personal Representative. These roles have similarities, but also distinct differences. This overview is designed to help you determine the responsibilities associated with your appointed role.

## **GUARDIANSHIP**

### **➤ What is a Guardian?**

A guardian is responsible for making personal decisions for an individual deemed incapacitated by the Superior Court, typically referred to as the “ward.” The guardian of a ward has the same rights and responsibilities as a parent does to an un-emancipated minor, except that the guardian does not have any liability to a third party. In other words, a guardian is not responsible for the debts or actions of their ward that a parent is for their child.

### **➤ Qualify for Appointment**

A person must first qualify in order to be considered for appointment as someone’s guardian. They must attest (or swear) that they have never been convicted of a felony, never been removed as a guardian for wrongdoing, and that they understand the responsibilities of being a guardian.

### **➤ Priority of Appointment**

The court has the ability to pass over an individual who has a higher priority if the court believes there is a valid reason to do so. For example, if the court determines that the durable or healthcare power of attorney presented by the proposed ward’s spouse is not a valid document, the proposed ward did not have the legal capacity to execute the document, or the spouse used undue influence to get the proposed ward to sign the document, the court may instead appoint the proposed ward’s adult child.

### **➤ General Responsibilities**

The guardian is responsible for making all medical and personal decisions on behalf of the ward. For example, the guardian must consent to medical treatment, determine where the ward will live while maintaining their current standard of living, and ensure that they are receiving the education and training that they would be entitled to and which may increase their quality of life.

# **CONSERVATORSHIP**

## **➤ What is a Conservatorship?**

A conservator is an individual who is responsible for managing the assets – for example, money, brokerage accounts, homes, or businesses - of a “ward” or “protected person.” A ward is an individual who has been determined to be incapacitated by the superior court. A protected person is someone who has not had a guardian appointed and has not been declared incapacitated by the superior court but the court has determined that they need assistance in managing their assets. The court determines that someone needs protection if they have assets that may be wasted or lost because they cannot protect the assets themselves due to a number of reasons including mental illness, mental deficiency or chronic intoxication.

## **➤ Priority of Appointment**

Just as when being appointed a guardian, an individual who wants to be appointed as conservator must first show the court that they are qualified. They must prove they have never been convicted of a felony, never been removed as conservator due to wrongdoing, and understand the role of a conservator. Once the court has determined that an individual is qualified, the court may also assign priority to the individual based on given criteria.

### **1<sup>st</sup> Level - A conservator who has been appointed in ANOTHER jurisdiction where the protected person resides.**

A first level priority may be assigned to a conservator who has been appointed in ANOTHER jurisdiction where the protected person resides. This is different than the guardianship priority statute as it distinguishes between someone who has already been appointed in any jurisdiction, including the one where the petition may currently be pending, and one appointed in another jurisdiction, such as another county or state.

### **2<sup>nd</sup> Level - Nominated by protected person**

A second level priority is assigned to someone nominated by the proposed person in need of protection if the court determines that the individual has the mental capacity to make the nomination.

### **3<sup>rd</sup> Level - Nominated in protected person’s power of attorney**

A third level priority is an individual nominated in the proposed protected person’s durable power of attorney.

Additional levels of priority are assigned based on a certain set of criteria. However, as in a guardianship proceeding, the court has the ability to pass over an individual who has a higher priority if the court believes there is a valid reason to do so.

### **4<sup>th</sup> Level - The proposed protected person’s spouse**

### **5<sup>th</sup> Level - The proposed protected person’s adult child**

### **6<sup>th</sup> Level - The parent of the proposed protected person or an individual nominated in the Last Will and Testament of the deceased parent**

**7<sup>th</sup> Level - Any relative who the proposed protected person has lived with for the six months prior to the petition.**

**8<sup>th</sup> Level - Someone nominated by an individual proving care to or paying benefits for the proposed protected person.**

**9<sup>th</sup> Level - If the proposed protected person is a veteran or the spouse of a veteran, than the Department of Veterans Affairs**

**10<sup>th</sup> Level - A fiduciary who is licensed by the Arizona Supreme Court who is NOT the public fiduciary**

**11<sup>th</sup> Level - The public fiduciary**

### ➤ **General Responsibilities**

The conservator has the responsibility to manage the assets of the protected person as a prudent man would. In other words, the conservator must ensure that the money and assets of the protected person are used only for the benefit of the protected person. The conservator must ensure that the assets of the protected person are invested properly and appropriately to maintain the protected person's current living circumstances.

### ➤ **Endorsement**

Finally, an individual who has been appointed as the conservator may petition the court to allow their letters of conservatorship to be "endorsed." This means that the court grants the same authority to the conservator that a personal representative has and that they may administer the estate of the decedent in accordance with the Last Will and Testament of the decedent, or by the laws of the State of Arizona. A conservator must wait 40 days from the date of death of the decedent before they apply to have their letters of conservatorship endorsed. There are a number of provisions to allow individuals with an interest in the estate to nominate an individual they believe is more appropriate to act.

## **PERSONAL REPRESENTATIVE**

### ➤ **What is a Personal Representative?**

A personal representative (also known as an executor or administrator in other states) is a person responsible for handling the assets of a deceased, the decedent, and individual.

### ➤ **Priority of Appointment**

The court may assign priority to the individual appointed as personal representative based on a certain set of criteria.

1. The person nominated in the Last Will and Testament
2. The surviving spouse who is also a devisee (Devisee is a person named in the Will to receive property of the decedent)
3. Other devisees of the Will
4. The surviving spouse
5. Other heirs of the decedent (An heir is someone who is authorized to receive the property of a decedent by law such as children, grandchildren, siblings, etc. Just because someone is an "heir at law" does not mean they are the devisee of a Will.)
6. If the decedent was a veteran or the spouse of a veteran, the Department of Veteran's Affairs

7. Any creditor if a probate has not been initiated 45 days after the death of the decedent
8. The public fiduciary

➤ **Testate versus Intestate**

Testate administration means the decedent left a valid Last Will and Testament and the personal representative shall administer the assets of the estate in accordance with the provisions of the Last Will and Testament. An intestate estate is one in which an individual dies without leaving a valid Last Will and Testament and their assets pass according to what is referred to as “intestate succession.” This is a provision in the law that outlines who is to receive the property of the decedent; typically, the spouse, children, grandchildren, parents, siblings, nieces/nephews, cousins, or other relatives.

➤ **General Responsibilities**

The personal representative is responsible for distributing the property of the decedent based on either the terms of the Last Will and Testament or the laws of the State of Arizona if the decedent died without a Will. The personal representative must protect the property of the decedent for the benefit of the beneficiaries.

**Thank you for viewing this training manual. The welfare of the ward and/or protected person is of utmost importance to the court. For more information about Probate please visit the Judicial Branch website devoted to Probate at [www.azcourts.gov/probate](http://www.azcourts.gov/probate).**

Your Name: \_\_\_\_\_  
Your Address: \_\_\_\_\_  
Your City, Zip Code: \_\_\_\_\_  
Your Telephone No. \_\_\_\_\_  
Represents  Self OR  Attorney for: \_\_\_\_\_  
State Bar Number (if applicable): \_\_\_\_\_

FOR CLERK'S USE ONLY

## SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

In the Matter of the Estate of \_\_\_\_\_

Case Number PB: \_\_\_\_\_

### DECLARATION OF COMPLETION OF TRAINING for NON-LICENSED FIDUCIARIES

A  Deceased or  Protected Person

**Rule 27.1 of the Arizona Rules of Probate Procedure** requires that a person to be appointed guardian, conservator, or personal representative of an estate, who is neither a state-licensed fiduciary nor a corporation, complete a training program approved by the Supreme Court of this state before permanent **Letters of Appointment** are issued.

### UNDER PENALTY OF PERJURY

I state to the Court that in accord with Rule 27.1 of the Arizona Rules of Probate Procedure, I have completed the required training for non-licensed, non-corporate fiduciaries, as indicated below: (Check all that apply and provide applicable information.)

- |  |                       |
|--|-----------------------|
| <input type="checkbox"/> Unlicensed Fiduciary    | Date completed: _____ |
| <input type="checkbox"/> Conservatorship         | Date completed: _____ |
| <input type="checkbox"/> Personal Representative | Date completed: _____ |
| <input type="checkbox"/> Guardianship            | Date completed: _____ |

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

**INSTRUCTIONS:** Fill out this Declaration completely and provide accurate information. Make at least one copy. You will need to file the original with the Clerk of Court and provide a copy to the Probate Registrar before receiving any *permanent* letters of appointment.