

CONSERVATORSHIP

4

What to do **AFTER** the Court Hearing (Adult or Minor)

(Instructions)

SELF-SERVICE CENTER
FOR APPOINTMENT OF A PERMANENT CONSERVATOR
FOR AN ADULT OR MINOR

PART 4: What to do after the Court Hearing
(Instructions Only)

This packet contains instructions on what to do after the court hearing for appointment of a permanent conservator for an adult or minor.

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SELF-SERVICE CENTER

PROCEDURES: WHAT TO DO AFTER THE COURT HEARING REGARDING CONSERVATORSHIP-OF AN ADULT OR MINOR

STEP 1 What to do after the hearing is over:

A. GO TO THE CLERK, PROBATE REGISTER. If the Judge/Commissioner grants the PETITION FOR APPOINTMENT OF A CONSERVATOR, you will need to take the **originals** of the following:

- THE ORDER OF APPOINTMENT OF A CONSERVATOR,
- THE LETTERS OF APPOINTMENT, **AND**
- THE ACCEPTANCE OF LETTERS OF APPOINTMENT.

When you take the documents listed above, the clerk will:

- Review the ORDER OF APPOINTMENT,
- Complete the LETTERS,
- Have you sign the ACCEPTANCE, **AND**
- File the originals.

Note: You should ask the Clerk to *certify* a copy of the LETTERS to prove that you have the appointment and authority from the court.

There is a **certification fee plus a copy fee per page** to do this. Cash, VISA/MasterCard debit or credit cards, money order, or personal in-state check made payable to the "Clerk of Superior Court, Probate Registrar" are acceptable forms of payment.

Go online to <http://clerkofcourt.maricopa.gov/fees.asp> or the Self-Service Center for a list of current fees.

If you cannot afford the filing fee and/or the fee for having the papers served by the Sheriff or by publication, you may request a **deferral** (payment plan) when you file your papers with the Clerk of the Court. **Deferral Applications** are available at **no charge** from the Self-Service Center.

B. BOND: *If* the Judge/Commissioner did not waive the bond and ordered that you post a bond for a certain amount, call bonding company, purchase the bond, and file the original bond with the court. **DO THIS IMMEDIATELY** after the order is signed, because no LETTERS will be issued without the bond.

C. LETTERS OF APPOINTMENT. Keep a **certified copy** of the LETTERS to show anyone who needs to know that you have authority from the court to act as conservator, and what that authority is.

D. ORDER OF APPOINTMENT. Keep a copy of this to remember what the Judge/Commissioner ordered you to do in this case.

E. ORDER TO CONSERVATORS. Keep a copy of this Order and read it often. This ORDER contains the general instructions about what you are required to do as conservator. Be sure you know your obligations, and what you are required to do under the law.

STEP 2 What *else* to do after the court hearing:

If for some reason the Court did not waive the bond and ordered you to post a bond and to file an ANNUAL ACCOUNTING, you are required to do the following:

A. INVENTORY AND APPRAISEMENT* and PROOF OF MAILING

INVENTORY AND APPRAISEMENT: File this document no later than **90 days** after the date of the temporary or permanent LETTERS OF APPOINTMENT, to list all the assets and debts of the protected person.

Note: Mail a copy to the protected person, if 14 or older, and to other “interested persons”.

B. ANNUAL ACCOUNTING* and PETITION FOR APPROVAL OF ANNUAL ACCOUNTING:

***WARNING**

- Documents defined as “*confidential*” require *special handling*.
- Follow “Special Handling Instructions for Confidential Documents” (next page).

1. The ***first*** Accounting* must cover the time period *from the date the first LETTERS OF APPOINTMENT (temporary or permanent) were signed by the Clerk through the last day of the NINTH (9th) month after, and must be filed on or before the anniversary of the date on the LETTERS.*
2. The Annual Accounting for each year after the first should cover the next 12 months after the previous report period, and must be filed on or before the anniversary of the date of the LETTERS.

Note: The Accounting must be approved by the Judge/Commissioner.

When you want to be discharged (released from duty) as conservator, you must file a FINAL ACCOUNTING and PETITION FOR APPROVAL. These forms are available at the Self-Service Center in the packets “***Petition for Approval of Annual Accounting***,” and “***Petition for Discharge and/or Termination and Release of Funds***”.

C. PROOF OF RESTRICTED ACCOUNT: If the Judge ordered you to put some or all of the person’s money into a restricted account, obey this Order right away. Then file the PROOF OF RESTRICTED ACCOUNT signed by the manager at the bank or financial institution that will show the account was properly established.

D. FEE STATEMENT: If you are charging a fee or claiming reimbursement for expenses, you must fill out the FEE STATEMENT and file it with the court.

IMPORTANT! SPECIAL HANDLING INSTRUCTIONS* for

CONFIDENTIAL DOCUMENTS*

DOCUMENTS DEFINED OR DESIGNATED AS “CONFIDENTIAL DOCUMENTS” BE SUBMITTED TO THE CLERK IN SEPARATE, UN-SEALED (9”x12”) ENVELOPES.*

The following are documents are defined as “Confidential”:

- Probate Information form
- Medical Reports and Records
- Inventories and Appraisements
- Accountings
- Credit Reports
- Any other document ordered by the court to be “confidential”.

A separate envelope is required for *each* confidential document and the following information must appear on the outside of each envelope:

1. **Case Name and Number** (“In the Matter of xxxxx” and “PB 2009xxxxxx”),
2. **Name of the document** (“Annual Accounting”, “Annual Report”, “Medical Records”. etc.)
3. **Name of the party filing the document**, and
4. **the words “Confidential Document”**

“CONFIDENTIAL INFORMATION” in Non-CONFIDENTIAL DOCUMENTS*

DOCUMENTS NOT LABELED AND SUBMITTED AS “CONFIDENTIAL” SHOULD NOT CONTAIN CONFIDENTIAL INFORMATION,* *such as:*

- the Social Security Number of a living person, and/or
- any financial account numbers, including those for credit card, bank and brokerage accounts, insurance policy and annuity contract numbers, etc. as well, *unless only the last 4 digits are displayed.*

The Court may order (or you may file a motion to *request* that the Court order) that:

1. a document containing confidential information be filed as “a confidential document”, or
2. confidential information contained in a non-confidential document be *redacted* (covered up or hidden).

* Required by **Arizona Rules of Probate Procedure** (Rule 7)

SELF-SERVICE CENTER
PROCEDURES REGARDING
PROOF BY DEPOSITORY OF RESTRICTED ACCOUNT
(CONSERVATORSHIP)

1. **WHEN YOU NEED A PROOF BY DEPOSITORY:** If you are a conservator of a ward's money, you might have asked the Judge/Commissioner to order that some or all of the assets be restricted. If the Judge/Commissioner granted the restriction, you need to prove to the Judge/Commissioner that you obeyed the Order and had the assets placed in a restricted account. This court document is called the PROOF OF RESTRICTED ACCOUNT.
 2. **WHEN AND HOW TO GET A "PROOF OF RESTRICTED ACCOUNT:**
Immediately after the Judge/Commissioner orders the restriction, take the money to a bank or other financial institution and inform the manager or staff that:
 - You are a conservator under court order. Bring with you a **certified copy** of the LETTERS OF APPOINTMENT.
 - You want the money placed in a restricted account as stipulated by the ORDER. Bring a copy of the ORDER authorizing the restriction. There are certain terms in the ORDER you and the financial institution need to obey.
 - After the money is deposited in a restricted account, have the bank or financial institution manager sign the PROOF OF RESTRICTED ACCOUNT, which must also be notarized. **Keep the original to give it to the court.**
 3. **FILING THE PROOF BY DEPOSITORY:** After the PROOF OF RESTRICTED ACCOUNT is signed and notarized, file the original with the **Clerk of the Court, Probate Registrar**. You should also send a copy to **Probate Court Administration**.
- Note:** You should also send a copy to the office of the Judge/Commissioner who signed the Order for the restricted account.
4. **WHAT ABOUT THE BOND:** Once the account is established and the PROOF OF RESTRICTED ACCOUNT is filed, you might qualify to have the bond reduced or dissolved, depending on the estate and what the ORDER said. If so, you might need an extra **conformed (date-stamped) copy** of the PROOF OF RESTRICTED indicating that the restricted account is established and the proof is filed in the court records.
 5. **OTHER HELP:** If you still have questions about this procedure, you can ask a lawyer for legal advice. You can look up a lawyer in the telephone book under "attorneys." Also, the Self-Service Center has a list of lawyers who will help you help yourself. The list shows where the lawyers are located, how much they charge, and what their experience is.

PUBLIC FIDUCIARY FEE GUIDELINES

APRIL 2008

The Arizona Rules of Probate Procedure (ARPP), effective January 1, 2009, allow for “reasonable” fee arrangements, whether hourly or otherwise. ARPP Rule 33, governing compensation to fiduciaries, states that a fiduciary may be required to submit a detailed statement of services provided, and if not on an hourly basis, explanation of the fee arrangements and how the fee amount was calculated.

The fee schedule below was approved by the Superior Court in Maricopa County for the Office of the Public Fiduciary in Maricopa County (Administrative Order 2008-053), in April 2008.

- **It is not binding on private fiduciaries but may be useful as an informal guide as to what may be considered a reasonable fee.**
- **Note that the Office of the Public Fiduciary *will object to* a claim for excessive fees.**

EXAMPLE FEE SCHEDULE

| Service Provided | Fee Allowed |
|--|--------------------------------------|
| 1. Setup fee for a guardian, conservator, or guardian/conservator for referral, investigation, and setup, allowed in the first year only. | \$900 total (Allowed once) |
| 2. Annual Report/Accounting or Final Accounting | \$375/annually |
| 3. Hourly Fees for Services: | |
| Maricopa County Public Fiduciary | \$ 145.00 |
| Assistant Public Fiduciary | \$ 125.00 |
| Estate Administration Manager | \$ 95.00 |
| Estate Operations Manager | \$ 95.00 |
| Guardian Administration Manager | \$ 95.00 |
| Estate/Guardian Administrators | \$ 85.00 |
| Benefits Case Management | \$ 55.00 |
| Burial Case Management | \$ 55.00 |
| Benefits Case Investigation | \$ 55.00 |
| Chief Investigator | \$ 85.00 |
| Property Management | \$ 60.00 |
| Tax Preparation [1040, 140, Final 1041, Final 141] | \$ 85.00 |
| Tax Preparation [1040A, 140A, 140PTC, 1041, 141] | \$ 55.00 |

NOTES:

- A. Extraordinary fees must be justified by a showing of necessity and billed at a reasonable hourly rate.
- B. Extraordinary costs must be necessary, reasonable, and documented.
- C. Any anticipated extraordinary fees must be explained in the estate management plan and on the fiduciary's itemized fee statement and affidavit.
- D. Companionship services should not exceed \$15.00 an hour plus mileage at \$0.29/mile. These are companionship services over and above the once monthly social worker contact already covered by the annual fee for guardian. (See #2 under suggested fee schedule.)
- E. Contract or "out-sourced" services (those services not performed by an employee of the fiduciary) provided to the ward or protected person for such things as accounting services, tax preparation, visitation, guardianship services, investment management and bookkeeping shall be billed to the ward in the same amount as paid by the fiduciary for each such service.

The Court does not endorse the practice of a fiduciary "marking up" or adding a profit margin to services which the fiduciary does not provide with the fiduciary's own employees. For example, if the fiduciary used an outside accountant to prepare the accounting for a fee of \$250.00, the fiduciary is allowed to charge the ward only the \$250.00. The fiduciary is allowed to charge for any related services provided by the fiduciary such as supervision or monitoring of the contract service provider.

B. FIDUCIARY DUTIES - FIRST YEAR TYPICAL SERVICES

1. Pre-Court Appointment

- a. Meet prospective client and assess client's physical and mental status, need for guardianship, conservatorship, or both; assess placement needs.
- b. Contact family/friends regarding referral, prospective client's status, possible court proceedings, and willingness to serve.
- c. Obtain financial information. (When the referral is from Adult Protective Services or an attorney, this information is usually complete. If the referral is from another source, such as a hospital social worker, this information may be incomplete.) You may need to establish a relationship with the prospective client to review client financial records. (Financial records may be in "good condition" or in bags, boxes, and under beds.)
- d. Contact physician for medical opinion and to obtain medical report. (May require taking prospective client to physician' office).
- e. Meet with attorney to provide case information and begin legal proceedings.
- f. Monitor prospective client (when necessary) pending court proceedings.

2. Obtain Court Appointment

- a. Attend hearing.
- b. Obtain surety bond.
- c. Obtain certified copies of Letters.

3. Post Court Appointment

- a. Record Letters, if there is real property.
- b. Change the mailing address for client's mail.
- c. Obtain all insurance information.
- d. Contact all financial institutions to close accounts, transfer funds, supersede on accounts, restrict accounts and change mailing address for statements, etc.

- e. Change Payee for Social Security payments.
- f. Contact all sources of income to change mailing addresses.
- g. Contact all medical insurance companies and other insurance companies to obtain information on coverage and to change mailing address.
- h. If real property, obtain condition of title report and appraisal, if necessary.
- l. If real property, contact Assessor and County Treasurer to change mailing address of all records.
- j. If there is an automobile, obtain title or duplicate title and check liability insurance coverage.
- k. If stocks and bonds, either transfer into street name in a brokerage account or change mailing addresses on all issues. Obtain "basis" information when possible.
- l. If furniture/personal property, list and obtain appraisal when necessary.
- m. Determine tax status, obtain copies of prior years' returns.
- n. Determine testamentary status, obtain original or copy of will.
- o. Determine funeral arrangements.
- p. Obtain information required for death certificate.
- q. Prepare inventory for filing with court.

4. Nursing Home Placement. Supervise and coordinate client's needs.

- a. Medical, dental and optical appointments.
- b. Medical treatments.
- c. Medication.
- d. Social and emotional needs.
- e. Clothing and personal items.

C. FIDUCIARY DUTIES - EXTRAORDINARY SERVICES

1. Home Placement (Provide 24 Hours On Call Services)

- a. Obtain staff.
- b. Supervise staff.
- c. Schedule staff.
- d. Prepare payroll.
 - i. Compute withholdings on paychecks.
 - ii. Prepare quarterly and yearly reports.
 - iii. Obtain workers' compensation coverage.
 - iv. Obtain unemployment coverage.
- e. Maintain house.
- f. Maintain auto, if necessary.
- g. Oversee household monies.
 - i. Obtain receipts.
 - ii. Reconcile monthly.
- h. Supervise and coordinate client's personal needs.
 - i. Nutrition.
 - ii. Hair appointments.
 - iii. Medication.
 - iv. Medical treatments.

2. Adult Foster Care Placement: Supervise and Coordinate Client's Needs.

- a. Medical, dental, and optical appointments.
- b. Medical treatments.
- c. Medication.
- d. Social and emotional needs.
- e. Clothing and personal items.

3. Companionship Services (See Notes D and E above regarding charges)

- a. Social visits.
- b. Accompany for lunch, walks, shopping.
- c. Prepare correspondence.

- d. Routine physician visits or follow-up and status reporting.

D. FACTORS THAT MAY MAKE FIDUCIARY SERVICES EXTRAORDINARY

1. Review of papers and documents, which are in disarray, to identify and locate assets.
2. Notification of banks and financial institutions of estate status.
3. Obtaining insurance record information.
4. Sorting through boxes or files for information.
5. Degree of ease in accessing information.
6. Sizeable number of financial institutions to contact.
7. Family disagreement or dissention.
8. Character and values of family members, business associates of the ward and others.
9. Level of cooperation from client/ward.
10. Medical or placement crisis with the ward.
11. Level of monitoring required by ward.

E. CHECKLIST FOR EVALUATION OF FEES (for evaluation of cases with fees in question)

1. What are the total administrative expenses? Attorney's fees, fiduciary fees, accountant, investment advisor, tax preparation, etc.
2. What is the make-up of the estate and its gross value? Cash, stocks, bonds, a business, real estate, art, antiques, collections.
3. What is the estate income?
4. What kind of management of assets was required?
5. Did real estate require more than routine management?
6. Did a business have to be run?
7. Who performed the various tasks? Were the tasks appropriate to the person performing them? Were billed tasks performed by an attorney which could have been performed by a paralegal, secretary, runner, accountant?
8. Was the time spent on any task excessive?
9. Were the tasks performed necessary? (In a probate, for example, could the property have been distributed by affidavit? Was a formal, court-approved accounting necessary?)
10. In a guardianship or conservatorship, what aspects of the ward's condition required unusual time and effort?
11. Who are the relatives/heirs/devisees? Did contentiousness among interested persons cause unusual expenditures of time and effort?
12. Is the hourly rate acceptable?
13. Are the attorney's and fiduciary's records of time spent and tasks performed complete and specific?
14. Are there duplications of time?
15. Was research billed in areas which should not have required research?
16. Are there steps an attorney should have taken to eliminate the need for litigation or unusual activities? A recent memorandum decision reverses a trial court's allowance of fees in a conservatorship because the attorney did not act "with reasonable care to avoid the unnecessary use of his service by the guardian and conservator". The attorney billed for services necessitated by the conservator's failure to perform and the attorney was therefore in breach of his fiduciary duties under Fickett because he did not act quickly to have the conservator (his client) removed. In the Matter of the Guardianship and Conservatorship of Harsh, Maricopa County Public Fiduciary v Finks, 1 CA-CV 92-0118 (1994).
17. Are the persons who received a copy of the accounting or petition for fees sufficiently competent or sophisticated to object, or is their interest (financial or otherwise) such that it's not worth the hassle?