PB-3

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CONSERVATORSHIP TRAINING

VERSION 02/26/2015-PB3

CONSERVATORSHIP

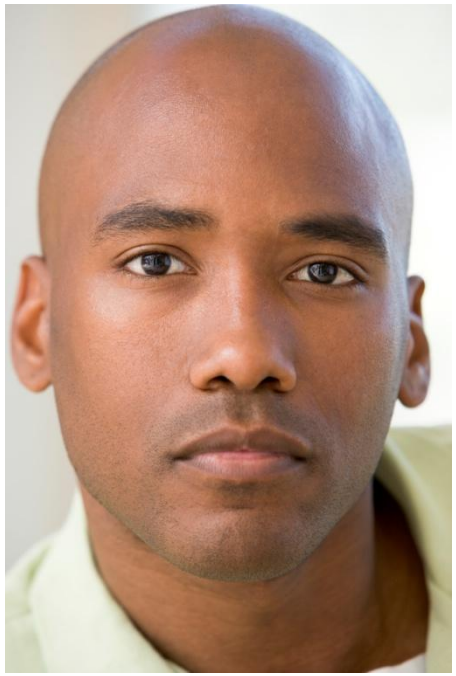
This program was developed under grant number SJI-11-E-008 from the State Justice Institute. The points of view expressed are those of the faculty and do not necessarily represent the official position or policies of the State Justice Institute.

Welcome to Conservatorship Training

After viewing this program you will be able to:

- **Discuss the role and responsibility of the conservator**
- **Explain what a surety bond is and why it is required**
- **List some best practices for managing documents and records**
- **Discuss the importance of understanding projected sustainability**
- **Describe the forms required by the court and the general timeline/order in which to submit those forms**
- **Summarize how substituted judgment is used when making decisions regarding the welfare of the protected person**
- **Recall the steps needed to take when the protected person dies**

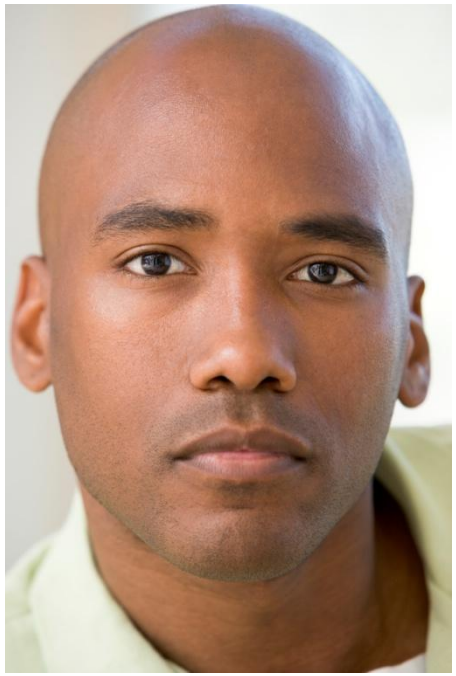
Responsibilities of a Conservator



CONSERVATOR

As a conservator, your first priority is to marshal and protect the assets of the conservatorship estate. When the court tells you to marshal an asset, do you know what they mean? The court wants you to take control of the assets, on behalf and for the benefit of, the conservatorship estate. There are a number of different ways that you can do this.

“Certified” Letters



CONSERVATOR

Form 3. Order to Conservator and Acknowledgement AND INFORMATION TO INTERESTED PERSONS

Name of Person Filing Document: _____
Address: _____
City, State, Zip Code: _____
Telephone Number: _____
Attorney Bar Number (if applicable): _____
Licensed Fiduciary Number (if applicable): _____
Representing [ ] Self [ ] Attorney for: _____

IN THE SUPER THE STATE OF ARIZONA IN AND FOR THE COUNTY F <<COUNTY>>

In the Mat | No. <<Case No.>>

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PERSONS

<<Prote

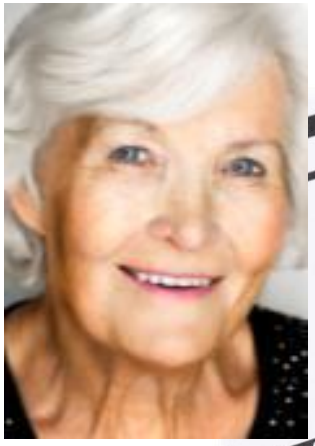
☐ a Minor

☐ an Adult

(Assigned to the Honorable
<<Judicial

One of the first things you need to do is obtain a current “certified” copy of your letters of appointment. A certified copy is a copy issued by the Clerk of the Court in the county where your letters were issued. The certified copy states that it is a true and complete copy of the original letters on file with the issuing court, and that the conservatorship is currently in effect.

Surety Bonds

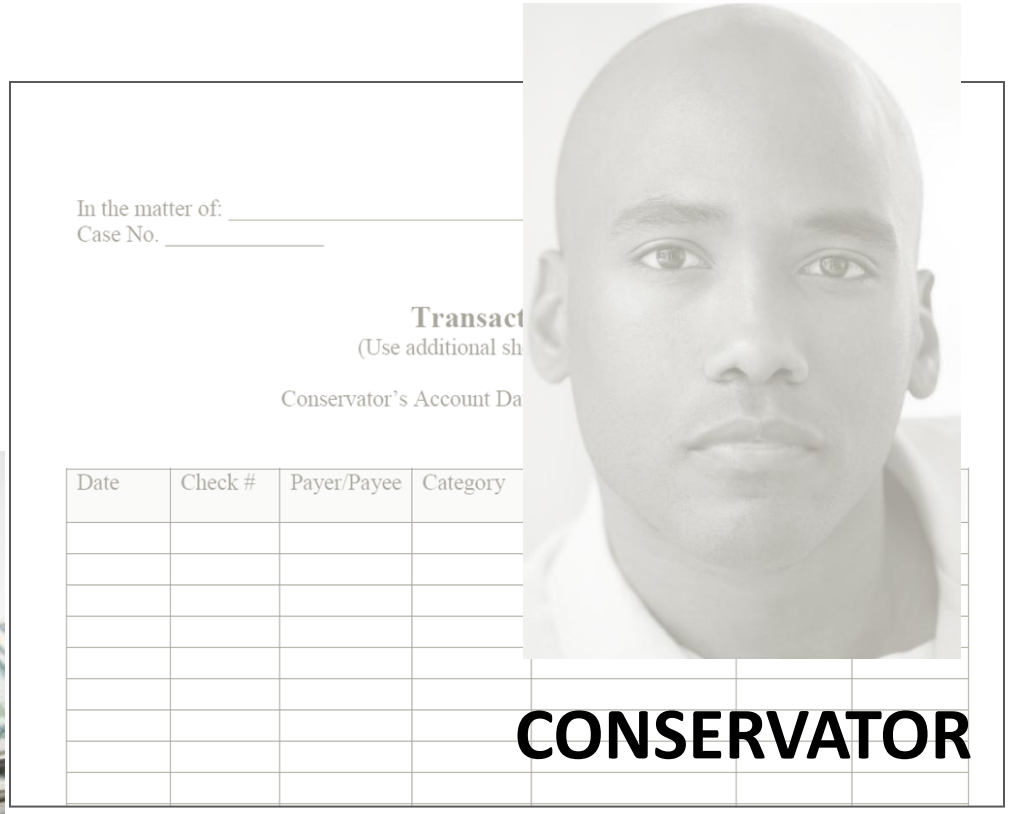


When you are appointed conservator, the court will also order that a surety bond be posted to cover all the assets that belong to the protected person. A bond is an insurance policy so that if the conservator misappropriates the money, invests it badly, or makes some other mistake, the ward will not suffer as a result. The price of that insurance policy can be paid from the ward's money, but the conservator must post the bond.

Surety Bonds

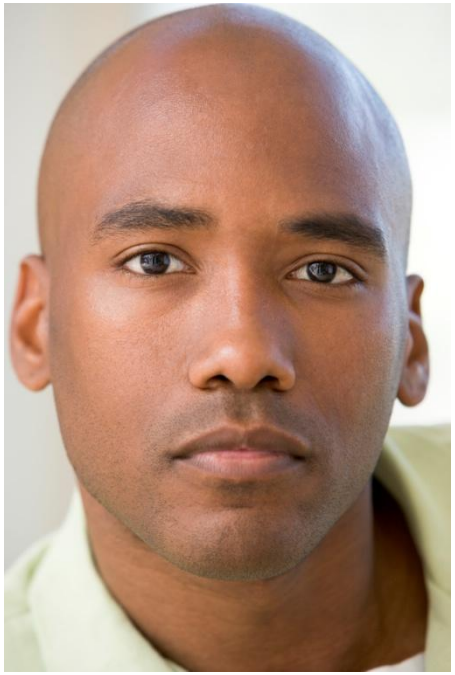
The amount of the bond will ordinarily be the principal value of the ward's property plus one year's anticipated income. If the value of the estate changes, you must request an Order of the Court either reducing or increasing the amount of the bond.

Surety Bonds



If you misuse the ward's funds, do not maintain those funds, or if you do not keep accurate records, the court may require that your bonding company reimburse the ward's account for any losses. The bonding company can then file a lawsuit against the conservator to recover the amount the company was required to pay, including, in some cases, the attorney's fees incurred by the bonding company in seeking the reimbursement. A conservator can be removed by the court when appropriate. Additionally, a conservator who misappropriates funds or engages in theft or fraud may be criminally prosecuted.

“Certified” Letters



CONSERVATOR

Once you have obtained a surety bond and a certified copy of your conservator letters you will want to record your letters with the county recorder in the county where the protected person resides.

Record Your Letters

You will also want to record your certified letters in any other county where the protected person may own property. By recording your letters of appointment you are putting the public on notice of your appointment. You are also creating a record that identifies you as the only person entitled to transfer property on behalf of the protected person in the event someone should attempt to sell or make any lien or other encumbrance against the real property.

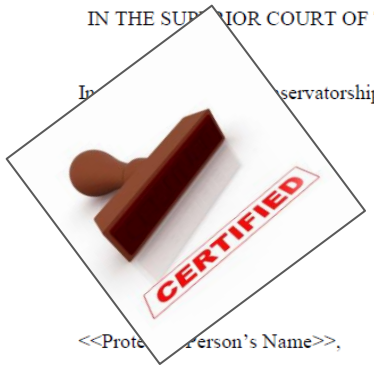
Notice of Filing

Form 3. Order to Conservator and Acknowledgement AND INFORMATION TO INTERESTED PERSONS

Name of Person Filing Document: _____
Address: _____
City, State, Zip Code: _____
Telephone Number: _____
Attorney Bar Number (if applicable): _____
Licensed Fiduciary Number (if applicable): _____
Representing [ ] Self or [ ] Attorney for: _____

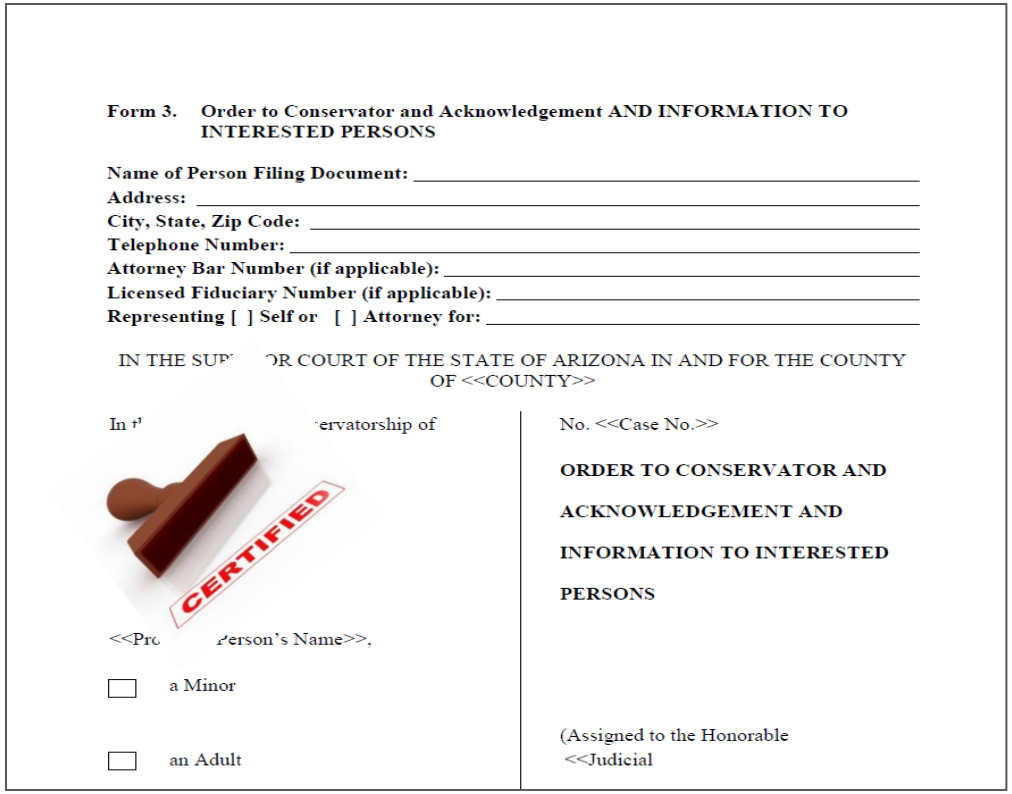
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF <<COUNTY>>

In [illegible] conservatorship of	No. <<Case No.>>
	ORDER TO CONSERVATOR AND ACKNOWLEDGEMENT AND INFORMATION TO INTERESTED PERSONS
<<Protected Person's Name>>,	
☐ a Minor	
☐ an Adult	(Assigned to the Honorable <<Judicial



Once you have received the recorded copy of your letters of appointment back from the recorder's office (there will be a marking on the document that reflects it has been recorded and where that record can be found for future reference), you will need to file a Notice of Filing with the court to show that you have recorded the letters of appointment.

Marshal an Account



Form 3. Order to Conservator and Acknowledgement AND INFORMATION TO INTERESTED PERSONS

Name of Person Filing Document: _____
Address: _____
City, State, Zip Code: _____
Telephone Number: _____
Attorney Bar Number (if applicable): _____
Licensed Fiduciary Number (if applicable): _____
Representing [ ] Self or [ ] Attorney for: _____

IN THE SUP OR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF <<COUNTY>>

In t ervatorship of

No. <<Case No.>>

ORDER TO CONSERVATOR AND ACKNOWLEDGEMENT AND INFORMATION TO INTERESTED PERSONS

CERTIFIED

<<Pro erson's Name>>,

☐ a Minor

☐ an Adult

(Assigned to the Honorable <<Judicial

In order to marshal a bank or brokerage account, you will need to notify the financial institution of your appointment. When you first meet with the financial institution be sure to bring the original, stamped letters or the certified copy of your letters of appointment with you. Most banks' legal departments will want to see a certified copy of your letters of appointment in order to allow you access to the account. Also, if you have access to the protected person's social security number, date of birth and bank account number(s) be sure to bring those with you as well.

How Should Assets be Titled?

Jane Doe, conservatee, by John Doe, conservator

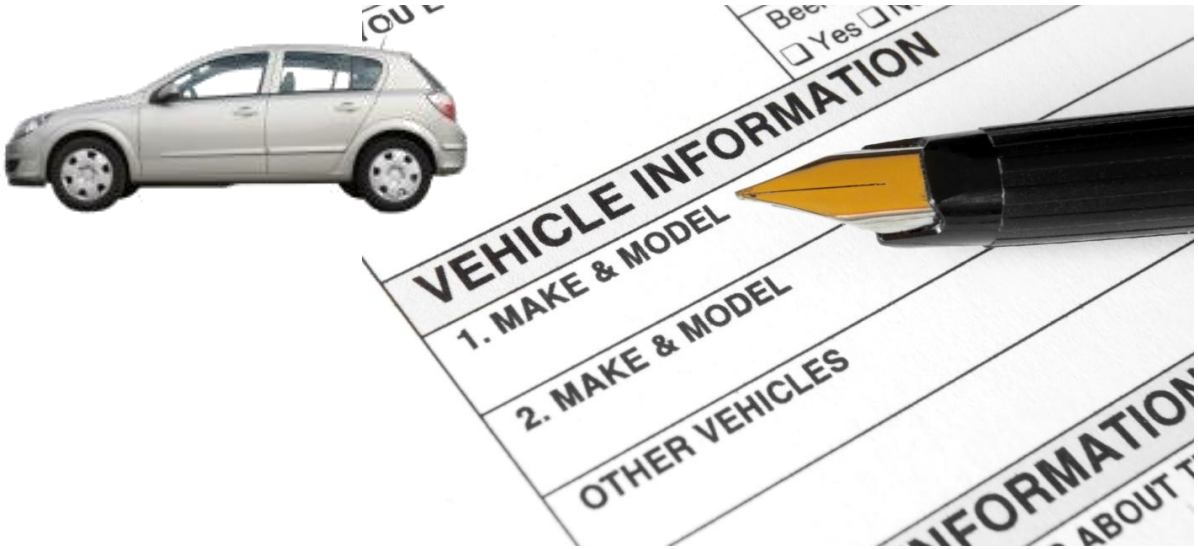
Jane Doe
John Doe, conservator

Once you have presented your letters of appointment, the account(s) will be re-titled into the name of the conservatorship. The way the account is titled depends on the organization; some may title the account as “Jane Doe, conservatee, by John Doe, conservator”; others may title it as “Jane Doe” and then the next line will read “John Doe, conservator.” The purpose of this to notify the organization (bank, brokerage firm, Motor Vehicle Division) that you are the only person who should be dictating how the asset is held, spent, or managed.

Recording Transactions

You should be very careful not to let any other individual have access to any bank accounts you manage. While there is no law that prohibits you from using a debit card or cash to transact business on behalf of the protected person, it is best to avoid using a debit card or cash whenever possible. Debit cards can be easily accessed by another individual and it is difficult to prove that a cash transaction was used for the benefit of the protected person. If it is necessary to use cash for a purchase be sure and keep all receipts to prove the purchase was for the benefit of the protected person.

Re-Title Vehicles



You may also re-title vehicles in the name of the conservatorship. In order to do this, you will need to bring your letters of appointment to the Motor Vehicles Division. The MVD typically requires a certified copy dated within 60 days from the date of the re-title request. Vehicles may be cars, motorcycles, boats, recreational vehicles or motor homes.

Documents to File Within 90 Days

PERSONAL PROPERTY

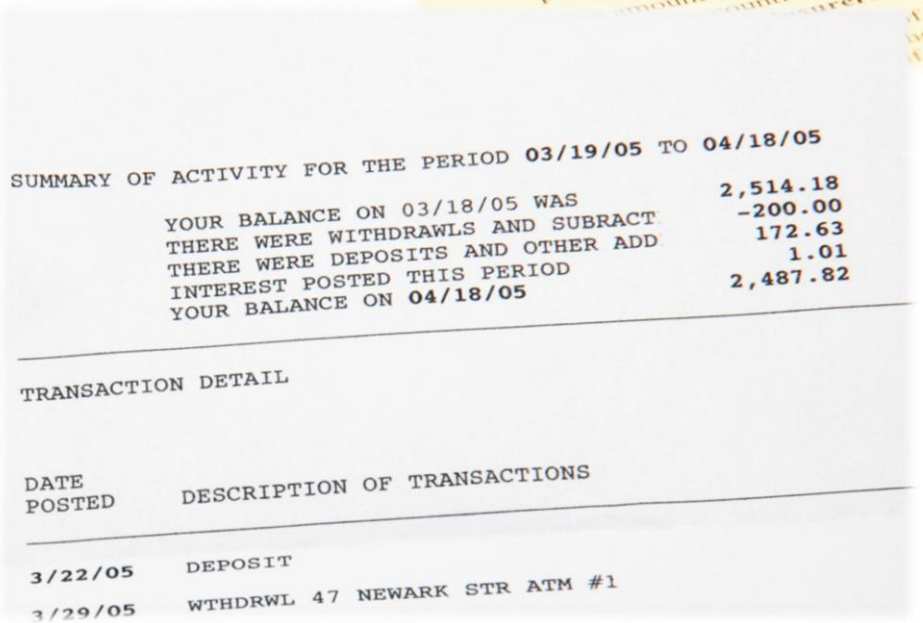
Include Vehicles (year, make, model), Business Ownership Interests, and Household Items and Personal Effects, Art or Jewelry (itemize), and other (itemize).

Property Description	Property Detail	Community OR Separate Property	Estimated Value in Dollars	Current Balance Owed
Car	2008 GMC Yukon	separate	$25,605	0
Pearl necklass	14" strand 5mm	separate	$1,200	0
Saphire ring	14k gold, 1/2ctw stor	separate	$2,500	0
Royal Dalton Vase	22"H, blue batik	separate	$10,000	0
1 couch	tan leather	separate	$500	0
Painting	36x36 signed	separate	$250	0
1 coffee table	round, wood	separate	$250	0

- **Bank accounts**
- **Brokerage accounts**
- **Annuities**
- **Life insurance policies (the cash surrender value)**
- **Real property (homes, vacant land, and burial plots)**
- **Automobiles**
- **Jewelry/Artwork/Antiques**
- **Household items**
- **Cash/Coins**

There are certain documents that need to be filed within 90 days of your appointment as conservator. Among these documents is an inventory of the protected person's assets. The value listed on the inventory for a particular asset is the value as of your first date of appointment, whether temporary or permanent. All assets of the protected person’s estate should be listed on the inventory. This list should include, but is not limited to the assets shown on your screen.

How to Determine the Value of Assets?



The (cash) value of bank accounts, brokerage accounts, annuities and/or life insurance policies will be the value on the date you were appointed. A reliable way to determine the value of an automobile would be to use the Kelley Blue Book valuation.

Provide a Reasonable Estimate

Determining the value of other assets may be a little more difficult. Appraisals may be obtained for homes, jewelry, artwork or antiques. Appraisals can be very costly so if it is not your intent to liquidate the asset in the very near future, it may be best to provide a reasonable estimate of the assets value as the value can change significantly in a very short period of time, such as with real estate. If you provide an estimate for the value be sure to make note of this on the inventory.

Assets Detail

How much detail should you include?

PERSONAL PROPERTY

Include Vehicles (year, make, model), Business Ownership Interests, and Household Items and Personal Effects, Art or Jewelry (itemize), and other (itemize).

Property Description	Property Detail	Community OR Separate Property	Estimated Value in Dollars	Current Balance Owed
Car	2008 GMC Yukon	separate	$25,605	0
Pearl necklass	14" strand 5mm	separate	$1,200	0
Saphire ring	14k gold, 1/2ctw stor	separate	$2,500	0
Royal Dalton Vase	22"H, blue batik	separate	$10,000	0
1 couch	tan leather	separate	$500	0
Painting	36x36 signed	separate	$250	0
1 coffee table	round, wood	separate	$250	0

You should include as much detail as is necessary to reasonably indentify the asset. For example, if the protected person has a checking account at Bank of America, you would document it as “Bank of America” and provide the checking account number.

Documenting Assets

PERSONAL PROPERTY

Include Vehicles (year, make, model), Business Ownership Interests, and Household Items and Personal Effects, Art or Jewelry (itemize), and other (itemize).

Property Description	Property Detail	Community OR Separate Property	Estimated Value in Dollars	Current Balance Owed
Car	2008 GMC Yukon	separate	$25,605	0
Pearl necklass	14" strand 5mm	separate	$1,200	0
Saphire ring	14k gold, 1/2ctw stor	separate	$2,500	0
Royal Dalton Vase	22"H, blue batik	separate	$10,000	0
1 couch	tan leather	separate		0
Painting	36x36 signed	separate		0
1 cofi		separ		0

When documenting an automobile, you should include the make, model, year and vehicle identification number (VIN). You should include the address and parcel number for real estate.

Documenting household items on an inventory is a little more difficult. Some will include a lump sum value of miscellaneous household property and others will include details such as one sofa, one end table and one coffee table. No matter the amount of detail you choose to include for household items, you should always photograph or video tape the personal property.

Credit Report

Appendix A: Inventory of Conservatorship
Instructions and Form

In the matter of: _____
Case No. _____

INVENTORY
(Use additional sheets if necessary)

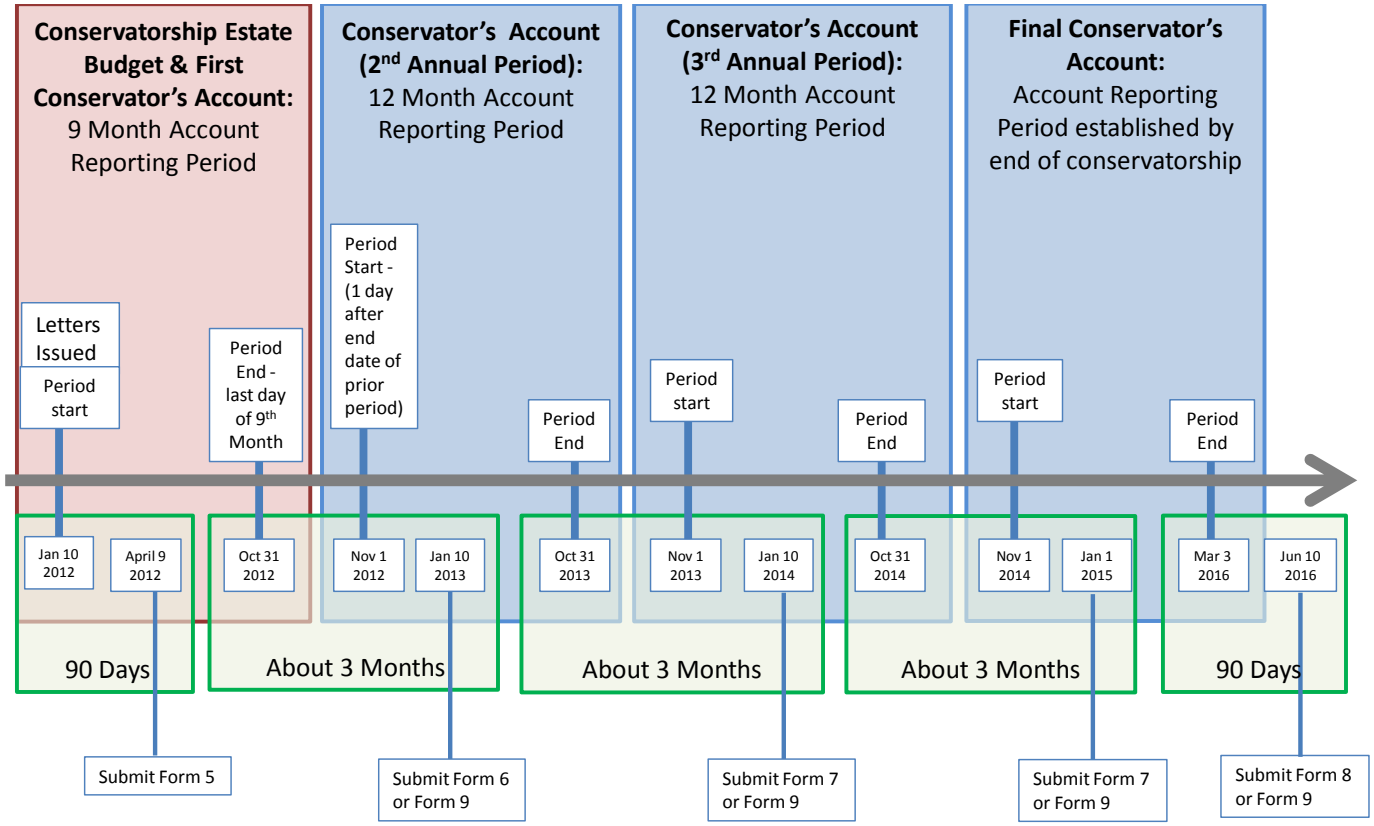
Inventory Date: _____

CHECKING ACCOUNTS, SAVINGS ACCOUNTS, MONEY
Include both Restricted and Unrestricted Bank Accounts

Name of Bank	Bank Address	Account Type	Name Accoun Unde
ANY Bank	11 South Rd	Savings	John Doe
	This Town AZ 12345		

As the conservator, you must include a copy of the protected person's credit report from a credit reporting agency when you file your inventory. The credit report must be dated within ninety (90) days of filing it with the court. You may obtain a copy of the credit report by writing a letter to the credit reporting agency or you may obtain one free of charge from AnnualCreditReport.com.

Budget



As the conservator, you must include a budget at the time of filing your inventory unless waived by the court. The first budget will be for the same time frame as your first annual account reporting period. If a budget is required, a new budget must be submitted to the court every year thereafter with the annual account.

Exceeding the Budget

In the matter of:		Case No.	

Form 5: Conservatorship Estate Budget

SCHEDULE 1: Statement of Receipts and Disbursements

Calculate for a 9 Month Account Reporting Period

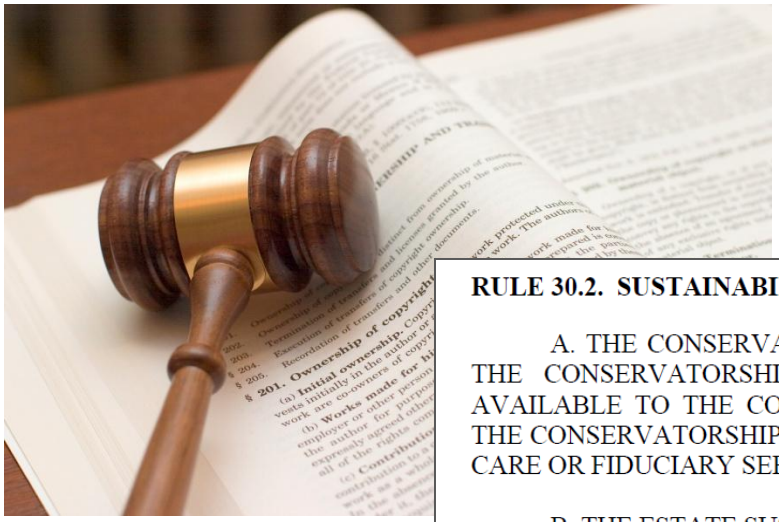
		Column A	Column B	Column C	Column D	Column E	Column F	Column G
		Past	Present				Future	
		Actual Results Prior Period:	Budget Period Just Ended:	Actual Results Period Just Ended:	Change from Budget Column C minus Column B	Change as Percent Column D divided by Column B and multiplied by 100	Budget Current Year:	Budget Chang From Actual Results Period Just Ended Column F minus Column C
1	Start Date of Account Reporting Period: (Example: 07/01/2011)							
2	End Date of Account Reporting Period:							
	Receipts (Money Received):							
3	Retirement and Disability Income							
4	Annuities, Structured Settlements, and Trust Income							
5	Wages and Earned Income							
6	Investment and Business Income							
7	Other Receipts (Attach WS A)						0.00	
8	Total Receipts (Add lines 3 through 7)						**0.00**	
9	Assets/Liabilities as Receipts							
10	Total Income Included in Receipts (Line 8 minus line 9)						**0.00**	
	Disbursements (Money Spent):							
	Money Spent for Protected Person:							
11	Food, Clothing, and Shelter							
12	Medical Costs							
13	Personal Allowance							
14	Payments on Debt							
15	Discretionary Expenses							
16	Other Disbursements for Protected Person (Attach WS A)						0.00	
17	Total Disbursements for Protected Person (Add lines 11 through 16)						**0.00**	
	Money Spent for Administrative Fees & Costs:							
18	Fiduciary Fees and Costs							
19	Fiduciary's Attorney Fees and Costs							
20	Protected Person's Attorney Fees and Costs							
21	Other Administrative Fees and Costs (Attach WS A)						0.00	

The budget shall be completed on the form prescribed by the supreme court and can be located in the probate section of the supreme court's website. You will need to monitor the budget closely to ensure that you are not exceeding any particular expense category by $2,000 or 10% of the budgeted amount, whichever is less. If you reasonably believe you may exceed the budget, you must notify the court, and all interested parties, of the reason you will exceed the stated budget amount within thirty (30) days.

Projected Sustainability

As the conservator, you must disclose to the court whether the estimated expenses of the estate exceed the annual income and if so, whether the other assets available to the protected person are sufficient to sustain the person during the time period the protected person needs care or fiduciary services. In other words, does the protected person have sufficient income and assets to meet their needs for the estimated remainder of their lifetime?

Projected Sustainability



RULE 30.2. SUSTAINABILITY OF CONSERVATORSHIP

A. THE CONSERVATOR SHALL 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.

B. THE ESTATE SUSTAINABILITY SHALL BE CALCULATED AS FOLLOWS:

[AVAILABLE ASSETS MINUS LIABILITIES OF THE ESTATE] ***DIVIDED BY*** [ANNUAL EXPENDITURES MINUS ANNUAL INCOME] ***EQUALS*** ESTATE SUSTAINABILITY

C. IF THE ASSETS ARE NOT SUFFICIENT TO SUSTAIN THE ESTATE, THE CONSERVATOR SHALL ALSO DISCLOSE THE MANAGEMENT PLAN FOR THE NON-SUSTAINABLE CONSERVATORSHIP.

D. THE INFORMATION REQUIRED BY THIS RULE SHALL BE A GOOD FAITH PROJECTION BASED UPON THE INFORMATION THAT IS REASONABLY AVAILABLE TO

In order to determine the potential sustainability of the protected person's estate you will need to use a calculation outlined in the Arizona Rules of Probate Procedure, Rule 30.2 as follows on the succeeding pages.

Projected Sustainability

$$\frac{\$120{,}000 + \$20{,}000 - \$65{,}000}{\$45{,}000 - \$20{,}000} = \text{Estate Sustainability}$$

$$\frac{\$75{,}000}{\$25{,}000} = \text{Estate Sustainability of 3 years}$$

Thus, if based on the conservator's knowledge of the protected person's medical condition and age, the conservatorship is not sustainable, the conservator shall explain how the protected person's expenses will be managed after three years.

The following example describes how the required disclosure is calculated: Assume a protected person's estate consists of a residence with a fair market value of $120,000, $20,000 in bank accounts and a $65,000 mortgage. Further, assume that same protected person has annual expenses (including fiduciary and attorney fees) of $45,000 and an annual income of $20,000. From this example we can see the conservatorship is sustainable for 3 years.

Recordkeeping

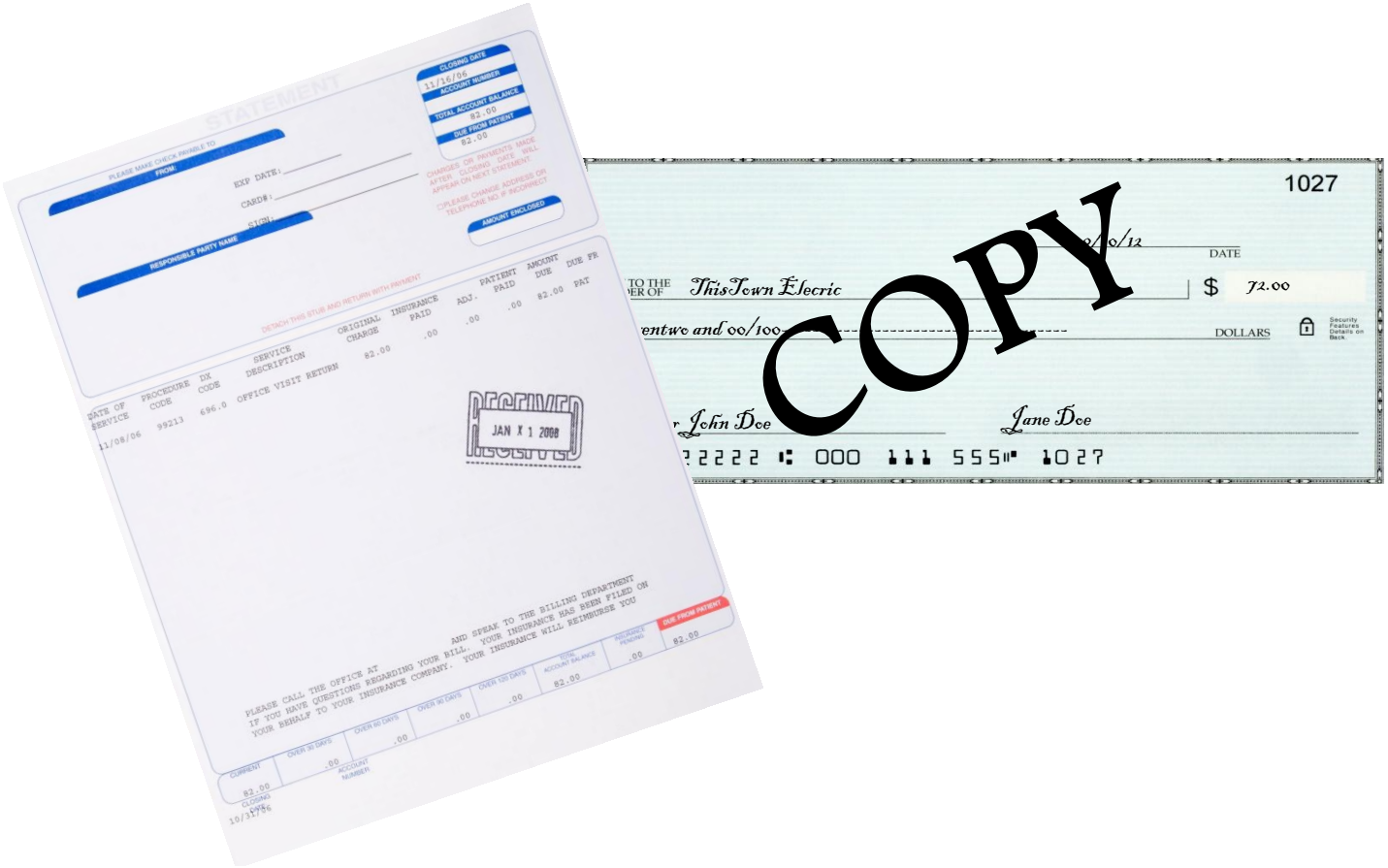
What types of records should you keep?

You are required to keep records of all income and expenses you manage as the conservator of the protected person's estate. You will need to keep copies of all bank statements, brokerage statements, invoices, receipts, and any other record you need to support your efforts as conservator.

Recordkeeping

Receipts are vital in that they show what was actually acquired, not just how much was paid. This can be used by the court to establish the fact that the expense benefited the protected person.

Invoices



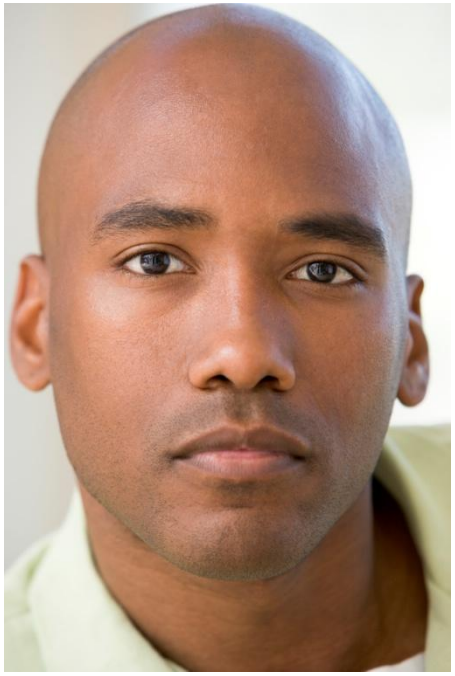
Here are a few good practice tips for you as a conservator: first, develop and maintain a bookkeeping and receipt storage system for all the protected person's documents. Second, attach a copy of any check used to pay an invoice to a copy of that invoice in your records. This will ensure all parties know the expenses you are making are for the benefit of the protected person.

Original Papers

- Documents to maintain:
- Life insurance policies
- Insurance cards
    - Health, Car, Home
- Deeds
- Titles
- Birth certificates
- Death certificates

You should maintain the original papers for all important documents, such as life insurance policies, deeds, titles, birth certificates, death certificates and insurance cards (health insurance, car insurance).

Maintain Records



CONSERVATOR

The length of time you maintain records for the protected person depends on a number of factors. At a minimum, it is recommended you keep all records regarding your activities as a conservator for as long as you are acting as conservator. Keep in mind however, that other laws may require you keep records for longer periods of time.

Maintain Records

- You owe additional tax and situations (2), (3), and (4), below, do not apply to you; keep records for 3 years.
- You do not report income that you should report, and it is more than 25% of the gross income shown on your return; keep records for 6 years.
- You file a fraudulent return; keep records indefinitely.
- You do not file a return; keep records indefinitely.
- You file a claim for credit or refund* after you file your return; keep records for 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later.
- You file a claim for a loss from worthless securities or bad debt deduction; keep records for 7 years.
- Keep all employment tax records for at least 4 years after the date that the tax becomes due or is paid, whichever is later.

The typical recommendation is to follow the record retention requirements outlined by the Internal Revenue Service. The most recent information from the IRS indicates "**Note:** Keep copies of your filed tax returns. They help in preparing future tax returns and making computations if you file an amended return."

Pay/Transfer on Death

As the conservator, you have an obligation to maintain the estate plan of the protected person. Assets titled as payable-on-death or transfer-on-death to an individual are considered part of the protected person's estate plan. When you discover assets that are titled in this manner, you need to use those assets only after all other assets have been exhausted.

Pay/Transfer on Death

Checking account

Savings account

Brokerage account

IRA

For example, if you have a checking account, savings account, brokerage account, and an IRA, and that IRA has a payable on death beneficiary, you must use all the other assets to maintain the protected person's welfare first, before you use the assets held in the IRA. The reason for doing this is to protect that asset and have it available for the beneficiary, thereby fulfilling the protected person's final wish.

Recordkeeping

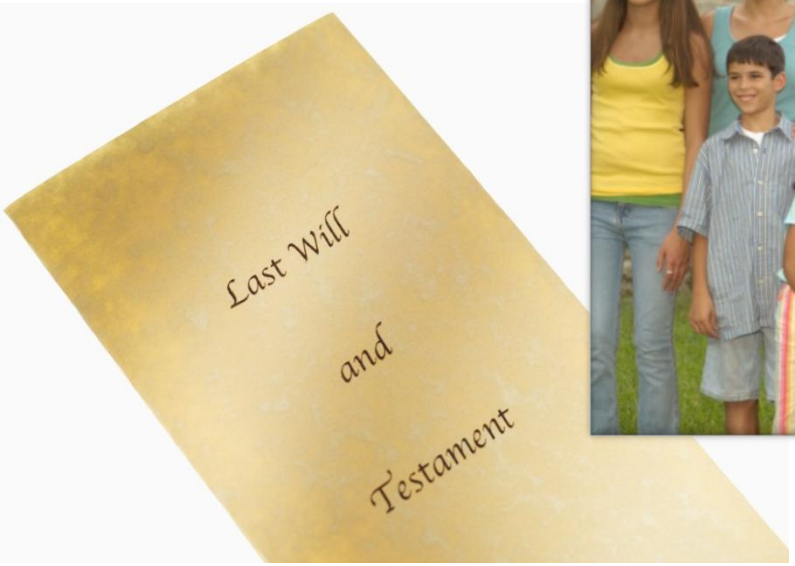
What types of records should you keep?

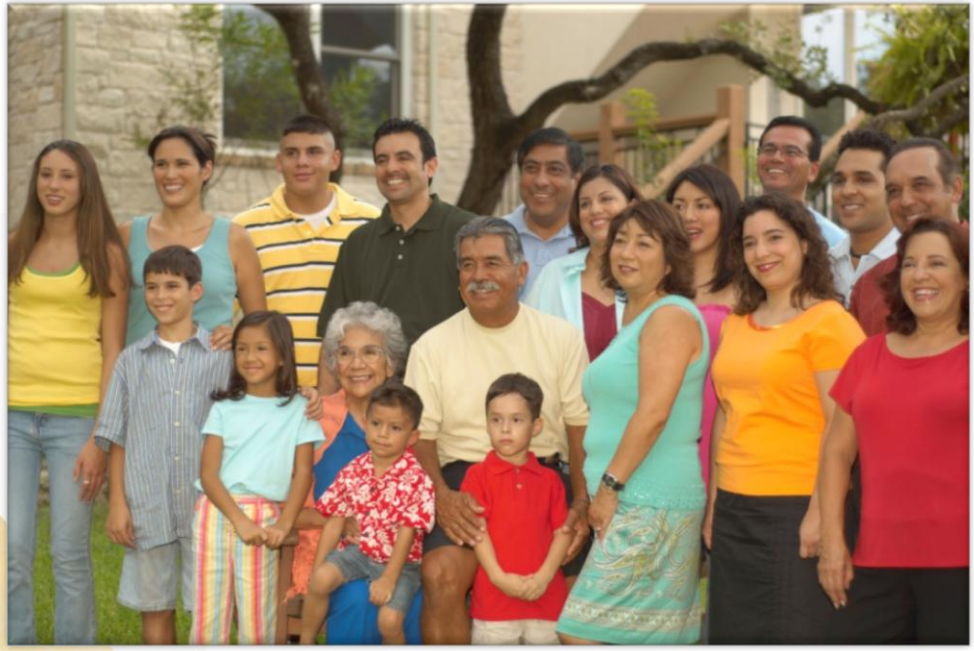
Keep any record that supports your effort as conservator:

- **Bank statements**
- **Brokerage statements**
- **Invoices**
- **Receipts**

You are required to keep records of all income and expenses you manage as the conservator of the protected person's estate. You will need to keep copies of all bank statements, brokerage statements, invoices, receipts, and any other record you need to support your efforts as conservator.

Pay/Transfer on Death





This also applies to assets that are specifically gifted to a particular person in either the Last Will and Testament or trust of the protected person. You should be familiar with these documents and any designated beneficiaries named within them.

Restricted Assets

What does it mean if the court "restricts" an asset?

FORM 10. PROOF OF RESTRICTED ACCOUNT FROM FINANCIAL INSTITUTION

Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Comp.# (if applicable): _____

ARIZONA SUPERIOR COURT, _____ COUNTY

In the Matter of the Conservatorship of:	**Case No.** **PROOF OF RESTRICTED ACCOUNT FROM FINANCIAL INSTITUTION**

When a court restricts an asset it means that you are not allowed to use, sell, or transfer that asset without the court's approval. The court can restrict any asset of the protected person's estate but typically restrict bank accounts, brokerage accounts or real property. When the court restricts an asset, the restriction is outlined on your letters of appointment so that all parties know what you can and cannot do as conservator.

Restricted Assets

FORM 10. PROOF OF RESTRICTED ACCOUNT FROM FINANCIAL INSTITUTION

Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Comp.# (if applicable): _____

ARIZONA SUPERIOR COURT, _____ COUNTY

In the Matter of the Conservatorship of:	**Case No.** **PROOF OF RESTRICTED ACCOUNT FROM FINANCIAL INSTITUTION**

If the court restricts an asset you will not need to bond for it. However, if you request that the restriction be lifted, the court will order that a bond be posted for that now unrestricted asset.

Proof of Restricted Account

FORM 10. PROOF OF RESTRICTED ACCOUNT FROM FINANCIAL INSTITUTION

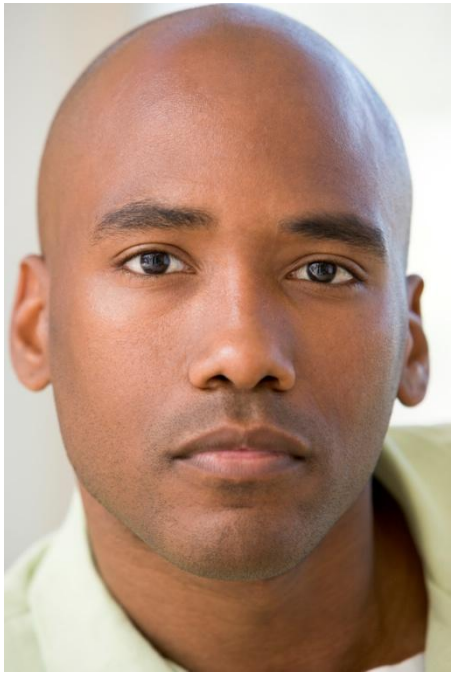
Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Comp.# (if applicable): _____

ARIZONA SUPERIOR COURT, _____ COUNTY

In the Matter of the Conservatorship of:	**Case No.** **PROOF OF RESTRICTED ACCOUNT FROM FINANCIAL INSTITUTION**

When the court restricts a bank or brokerage account, you must file a “Proof of Restricted Account” form with the court. This form outlines where the account is held, the account number and the current balance of the account. The form is signed by an officer or manager of the financial institution and indicates that the financial institution understands that the court has restricted the account and they will not allow anyone to remove funds from the account without an order from the court.

Restricted Real Property



CONSERVATOR

Form 3. Order to Conservator and Acknowledgement AND INFORMATION TO INTERESTED PERSONS

Name of Person Filing Document: _____
Address: _____
City, State, Zip Code: _____
Telephone Number: _____
Attorney Bar Number (if applicable): _____
Licensed Fiduciary Number (if applicable): _____
Representing [ ] Self or [ ] Attorney for: _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF <<COUNTY>>

In the Matter of the Conservatorship of

<<Protected Person's Name>>,

☐ a Minor

☐ an Adult

No.

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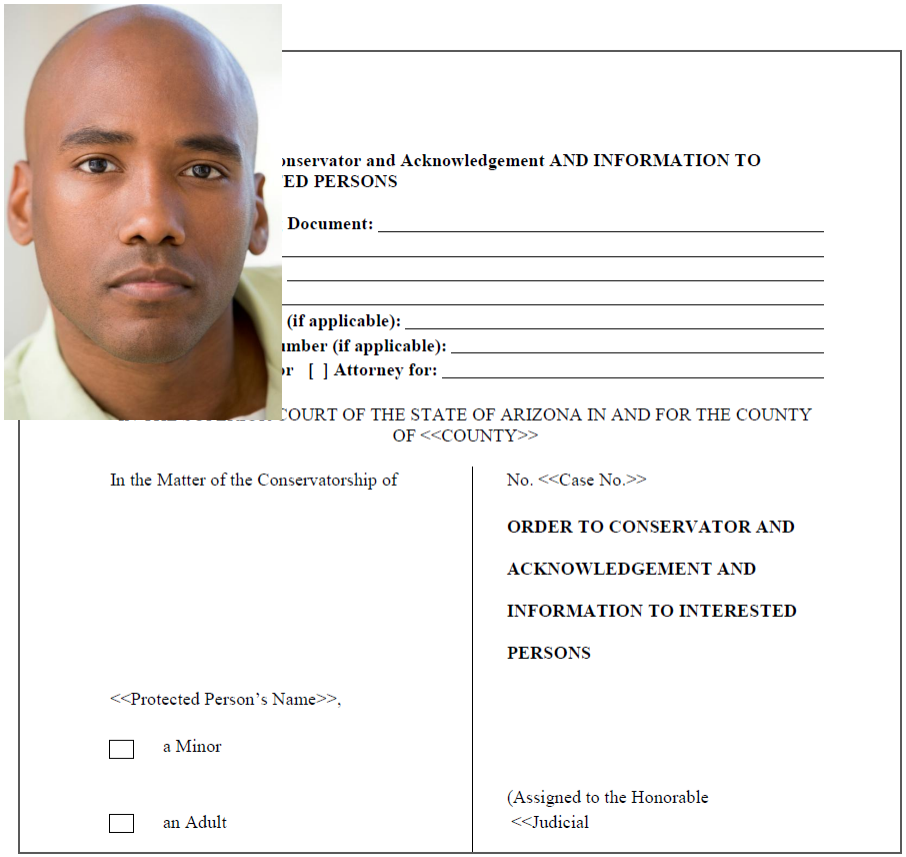
If there is a restriction on the protected person's real property this will be contained in the conservator's letters of appointment. When such an asset restriction exits, a title company should not allow the conservator to execute a sale document without providing an order from the court authorizing the conservator to do so.

Notice to Service Providers


onservator and Acknowledgement AND INFORMATION TO
ED PERSONS

Document: _____

(if applicable): _____
umber (if applicable): _____
or [ ] Attorney for: _____

COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY
OF <<COUNTY>>

In the Matter of the Conservatorship of

<<Protected Person's Name>>,

☐ a Minor

☐ an Adult

No. <<Case No.>>

ORDER TO CONSERVATOR AND ACKNOWLEDGEMENT AND INFORMATION TO INTERESTED PERSONS

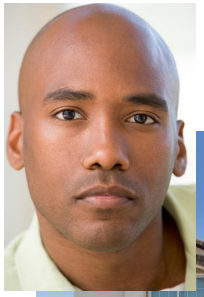
(Assigned to the Honorable
<<Judicial

Ensures payments to service providers are made on time

Ensures service providers only take direction from you

When contacting the protected person's service providers to request future statements be sent to your address for payment, it is a good practice to provide a copy of your letters of appointment as conservator for their records. This request should be made as soon as practicable after your appointment. This will ensure that you receive the information necessary to pay the financial obligations of the protected person, as well as ensure that the providers only take direction from you regarding the account.

Change of Address



You should also process a “change of address” request with the United States Postal Service to ensure that you receive all correspondence of the protected person. This will ensure that you are aware of all debts owed by the protected person, and that you are aware of all assets of the protected person.

Annual Account Information

In the matter of:		Case No.	

Form 7: Conservator's Account

SCHEDULE 3: Statement of Sustainability of Conservatorship

(Refer to Form 7 Instructions)

		Column A	*Column B*	*Column C*	*Column D*	*Column E*
		Sustainability Estimated in Prior Period SCHEDULE 3:	Updated Sustainability Estimated	Change from Prior Schedule 3 Column B minus Column A	Change as Percent Column C divided by Column A and multiplied by 100	Explanation of Adjustment in Column B
1	Report Date of Sustainability Estimate (Example: 07/01/2011):					
	Net Assets Available to Conservatorship:					
2	Net Assets (See SCHEDULE 2, line 19)					
3	Adjustments ***See Worksheet C***					
4	Adjusted Net Assets (Add lines 2 and 3)					
	Recurring Net Income/(Net Expenses):					
5	Net Income/(Net Expenses) (See SCHEDULE 1, line 27)					
6	Adjustments ***See Worksheet C***					
7	Adjusted Net Income/(Net Expenses) (Add lines 5 and 6)					

If line 7 is equal to or greater than zero, the Conservatorship is estimated to be sustainable; DO NOT complete lines 8 through 10 in that Column.

8	Enter Adjusted Net Assets (Line 4)		
9	Enter Adjusted Net Expenses (Absolute Value of line 7)		
10	Estimated Years of Sustainability (Line 8 divided by line 9)		
11	Conservatorship is Sustainable		

12	Management Plan from Prior Period	Management Plan Going Forward

The annual account contains a listing of all financial transactions that have taken place in the previous year of your administration as conservator. It contains information about the beginning value of all assets held by the protected person's estate as of the date of your appointment as well as the ending balance of the assets as of the last date of the account reporting period. The transactions (receipts, disbursements, gains, losses and other adjustments) outline what happened in the middle to cause the beginning and ending balances to change.

Additional Accounts

In the matter of:		Case No.	

Form 5: Conservatorship Estate Budget

SCHEDULE 3: Statement of Sustainability of Conservatorship

All Calculations are for a 9 Month Account Period

(Refer to Form 5 Instructions)

	Column A	Column B	Column C	Column D	Column E
	Sustainability Estimated in Form 5 SCHEDULE 3:	Original Sustainability Estimate	Change from Prior Schedule 3 Column B minus Column A	Change as Percent Column C divided by Column A and multiplied by 100	Explanation of Adjustment in Column B
1 Report Date of Sustainability Estimate (Example: 07/01/2011)					
Net Assets Available to Conservatorship:					
2 Net Assets (See SCHEDULE 2, line 19)					
3 Adjustments: ***See Worksheet C***					
4 Adjusted Net Assets (Add lines 2 and 3)					
Recurring Net Income/(Net Expenses):					
5 Net Income/(Net Expenses) (See SCHEDULE 1, line 27)					
6 Adjustments: ***See Worksheet C***					
7 Adjusted Net Income/(Net Expenses) (Add lines 5 and 6)					

If line 7 is equal to or greater than zero, the Conservatorship is estimated to be sustainable; DO NOT complete lines 8 through 10 in that Column.

8 Enter Adjusted Net Assets (Line 4)		
9 Enter Adjusted Net Expenses (Absolute Value of line 7)		
10 Estimated Years of Sustainability (Line 8 divided by line 9)		
11 Conservatorship is Sustainable		

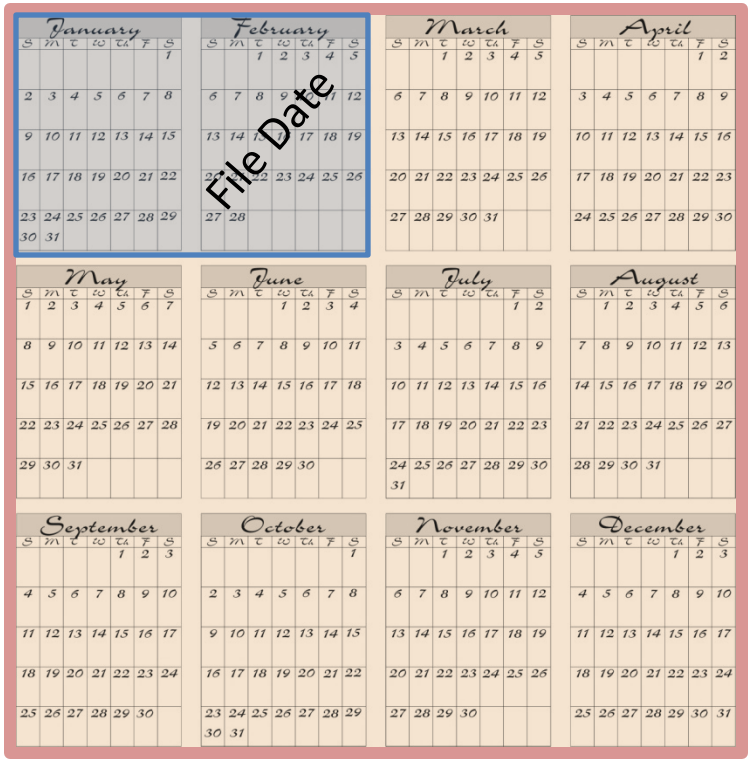
12 Management Plan From Prior Period	Management Plan Going Forward

NOTICE TO RECIPIENT OF THIS SCHEDULE:

The Conservator's estimates and analyses of Adjusted Net Assets, Adjusted Net Income/(Net Expenses), and Protected Person's Life Expectancy are good faith estimates based upon the information that is reasonably available to the Conservator concerning the Protected Person. This information is provided for the limited purpose of assisting the Court in its oversight of this Conservatorship.

In addition to the annual account, the conservator is responsible for providing a budget and a sustainability projection.

When to File the Annual Account



Your account must be filed by the first anniversary date of your permanent appointment. In other words, if you are appointed as the temporary conservator on January 1 and the permanent conservator on February 1, your account must be filed by February 1 the following year, but will include all transactions from January 1 forward.

First Account

The first annual account should include all activity from the date of the first appointment (temporary or permanent if no temporary conservatorship established) through and including the last day of the ninth month following the permanent appointment. Using the example above, if you were appointed as the temporary conservator on January 1 and the permanent conservator on February 1, your account reporting period would be from January 1 through November 30 (the last day of the ninth month following your permanent appointment). If you were appointed as the permanent conservator on January 1, your first account would go from January 1 through October 31.

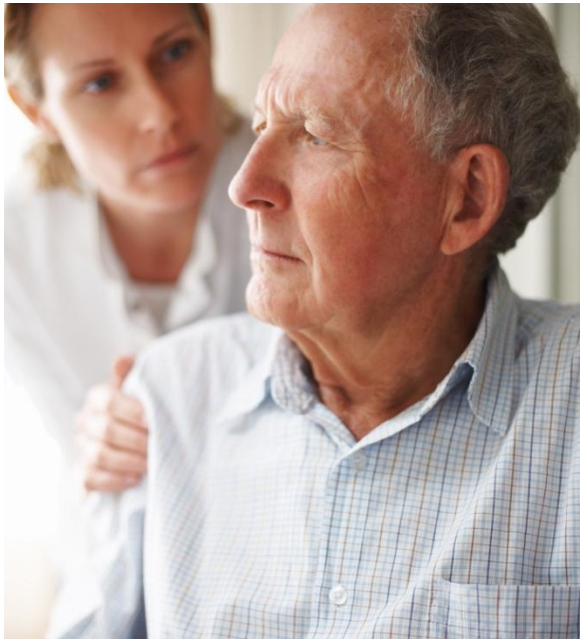
Subsequent Accounting

Each subsequent account will be from one day after the ending day through the same ending day as the previous year's account reporting period. For example, if the first account reporting period ends December 31, 2012 then the second account reporting period would cover from January 1, 2013 to December 31, 2013.

At the time of death of the protected person, the conservator is required to file the final account within 90 days from the date of death. The time frame for that account will be from the ending date of the previous account reporting period through the date of death.

Best Interest Vs. Substituted Judgment

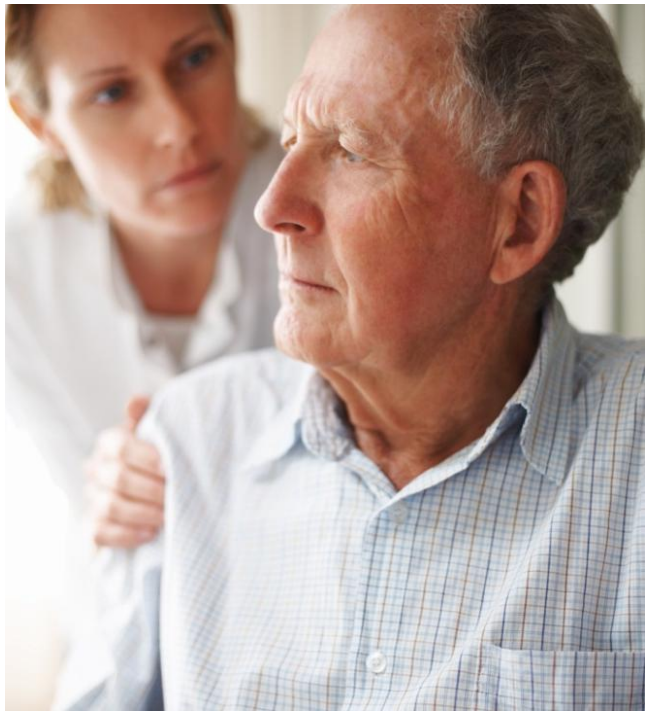
Best Interest



Substituted Judgment

Your role as the conservator is to listen to the protected person and ensure that their preferences are being met as long as it does not cause harm. You are in a position to make decisions for the protected person in one of two ways; using either substituted judgment or the best interest standard.

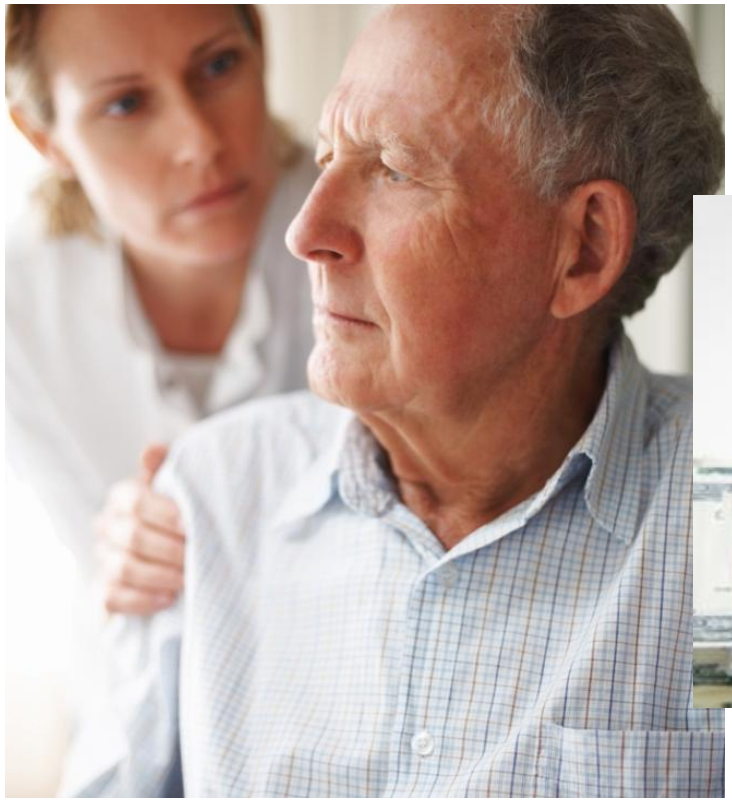
Substituted Judgment



You have an obligation to discuss the decision you are going to make with the protected person.

When making decisions using substituted judgment you are doing exactly as it sounds; making the decision that the protected person would make if they had the capacity to do so. To the extent the protected person can understand the issue at hand, you have an obligation to discuss the decision you are going to make with the protected person and listen to their preferences in that situation. For example, you believe it would be appropriate to liquidate an asset belonging to the protected person, you should discuss this with them. Try to put it in terms that they have the ability to understand. Discuss the benefits and the consequences of the decision you are about to make. Listen to their preferences and the reason for making the decision.

Stated Preferences



When using substituted judgment it is also helpful to talk to other family members or friends about conversations they have had with the protected person. Has the protected person ever talked about their preference for liquidation of their assets? Did they want that particular asset to be set aside as a gift for a friend or family member? Your job is to determine what their preferences were when they were still capable of making those decisions.

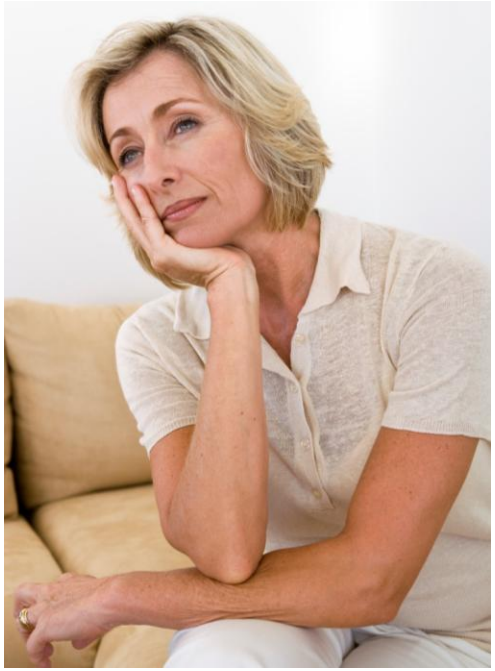
Lifetime Disabled Vs. Adult Disabled

Making decisions using substituted judgment may be easier for a conservator dealing with an elderly disabled individual as opposed to an adult who has been disabled since birth. When dealing with an elderly individual, they were likely competent at one time, and had the ability to understand cause and effect relationships. As such, they may have discussed their preferences in the past, and you may have a better understanding of what they would want now.

Lifetime Disabled Vs. Adult Disabled

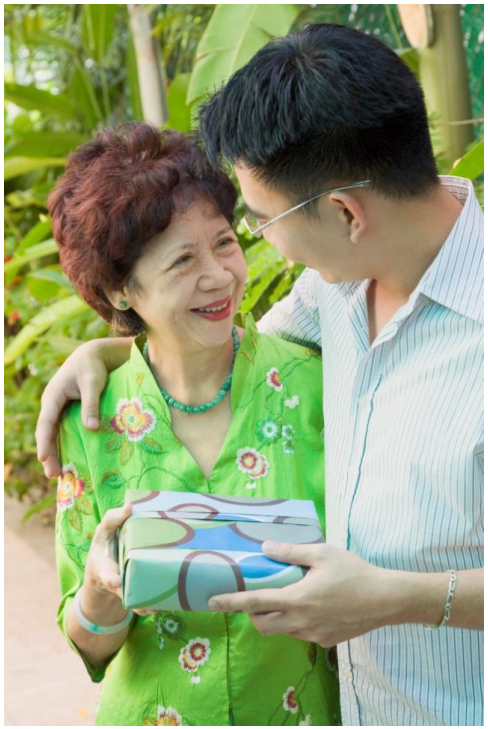
With an individual who has been disabled since birth, this may be more difficult. In those situations (or in situations where the protected person's preferences may cause serious harm or injury) you would be making your decision based on what you believe to be in the protected person's best interest.

Tough Decisions



It is never easy to make a decision for another adult that goes against their wishes but you must keep in mind that your friend or family member no longer has the ability to truly understand the consequences of their decision. This is why the court appointed you as the conservator – to make the tough decisions. Ultimately, the decision is yours but if you are making a decision that is in contrast to the stated or demonstrated preferences of the protected person, you should be prepared to defend that decision.

Accepting Gifts



Can you accept gifts from the protected person?

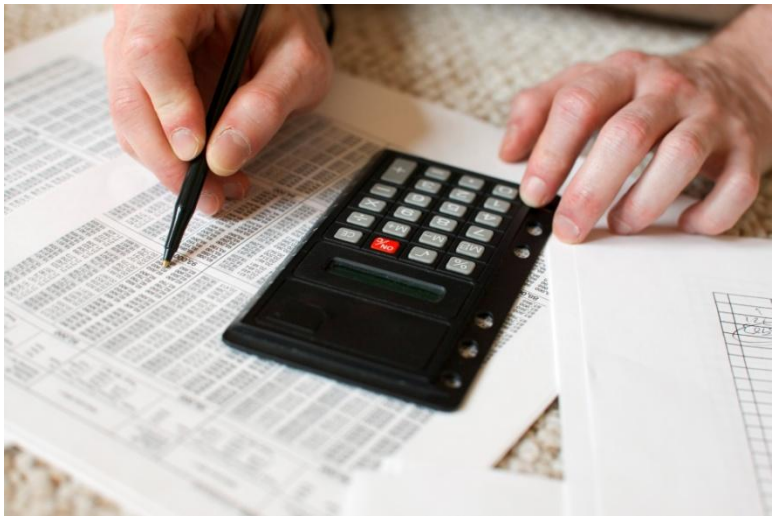
The disclosure statement you must file as the conservator indicates that you have not accepted a gift from someone, who is not related to you by blood, of more than $100.00. That being said, it is typically looked at as a conflict of interest for you to accept any gift from the protected person without first seeking court approval. The general rule is that you cannot and should not accept gifts from the protected person.

Giving Gifts

- **The protected person's estate plan**
- **Whether there is a pattern of prior gifting**
- **The potential tax savings if the gifts are authorized**
- **The size of the estate**
- **The protected person's income and expenses**
- **The physical and mental condition and life expectancy of the protected person (the court wants to ensure that the gift would not diminish the protected person's ability to meet their needs during the course of their lifetime)**
- **The likelihood that the protected person's disability may cease or improve**
- **The likelihood that the protected person would make this gift if they were able to consent (this is an example of how substituted judgment comes into play in your decision making process)**
- **The ability of the protected person to consent to the gifts**

If you are seeking authority to provide a gift to someone from the protected person, you should be prepared to supply the court with all the information shown on this page. Keep in mind, if you, as the conservator, authorize and pay a gift without court approval, you could be held liable and be required to reimburse the estate for the value of the gift.

Payment for Conservatorship



You are entitled to payment for your time as the conservator. If you intend to seek compensation from the estate of the protected person, you are required to file a Notice of Compensation with the court. This will outline what you intend to charge as your hourly rate and why you believe you are entitled to that rate. The court may review your fees on an annual basis. You are also entitled to reimbursement from the protected person's estate for any money you pay out of pocket for their benefit. For example, if you pay for a filing fee with the court, you would be entitled to be reimbursed for that expense.

Can You Hire an Attorney?

You may hire an attorney and you are entitled to have the fees for that attorney paid for by the protected person's estate as long as the court determines that the fees are reasonable and necessary. Just as you would have to file a Notice of Compensation with the court, any attorney who intends to seek compensation from the ward's estate must also file the notice with the court.

When the Protected Person Dies

When the protected person dies, you must file a Notice of Death with the court within ten (10) days after the date of death. You must then file your final account with the court within 90 days from the date that the protected person died. The final account will go through the date of death of the protected person.

When the Protected Person Dies

Form 8. FINAL CONSERVATOR'S ACCOUNT (Cover Sheet)

Name of Person Filing Document: _____
Address: _____
City, State, Zip Code: _____
Telephone Number: _____
Attorney Bar Number (if applicable): _____
Licensed Fiduciary Number (if applicable): _____
Representing Self or Attorney for: _____

IN THE SUPERIOR COURT OF THE STA
AND FOR THE COUNTY OF «C

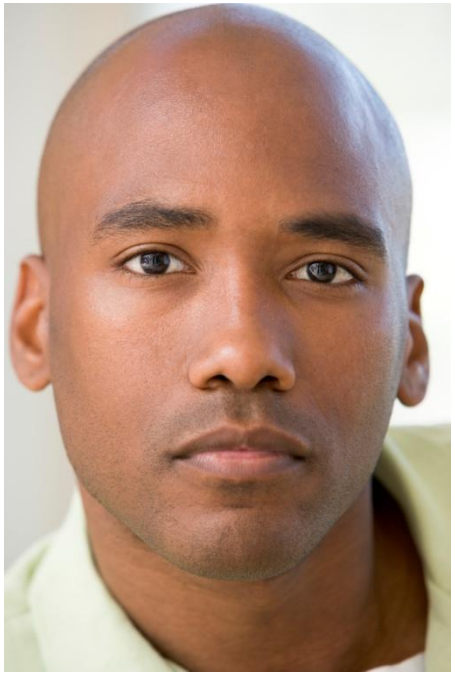
IN THE MATTER OF THE
CONSERVATORSHIP FOR

«Protected Person's Name»,

☐ a Minor
☐ an Adult

You may then be required to file a second, supplemental final account which shows the court what you did with the assets of the protected person's estate from the date of death until you turn the assets over to either the beneficiaries (on payable on death or transfer on death accounts) or to the individual responsible for managing the estate of the deceased protected person.

When the Protected Person Dies



CONSERVATOR

Unlike a guardian, your authority as conservator does not end on the day that the protected person dies. You still have the authority and responsibility to manage and protect the assets of the protected person. You want to ensure that you are only paying for necessary expenses of the protected person's estate after they pass away. For example, you may pay for burial or funeral services; you may pay to protect the assets of the protected person (such as insurance on assets or utilities on a home) or the final medical expenses of the protected person.

When the Protected Person Dies

You want to be very careful in what you pay for and when as there are specific provisions under the law as to what creditors get paid first and what happens if there are not enough assets in the estate to pay all creditors. If you are in doubt, seek legal advice.

Thank You

Thank you for viewing this training video. 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

Certificate of Completion

By virtue of accessing this on-line program and printing and submitting this certificate for the training module

Conservatorship

The user attests to viewing the program in its entirety.

_____
Printed Name

_____
Date

_____
Signature

Arizona State Supreme Court