

GCA OREGON STANDARDS OF PRACTICE

MISSION STATEMENT

To provide for the exchange of ideas, education and communication between groups and individuals interested in providing or furthering guardianship and conservatorship services or alternative protective services to persons in need of such services.

To promote a broader understanding and acceptance of the qualified guardian and conservator as an integral part of the judicial system.

To promote professional ethics and encourage, establish and maintain high standards of professional education, competence and performance.

DEFINITIONS

Best Interest – That course of action which maximizes what is best for a client and which includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible, given the needs of the client.

Conservator – An individual or organization named by order of the court to exercise any or all powers and rights over the estate of a financially incapable individual.

Fiduciary – A conservator or guardian who has agreed to undertake for another a special obligation of trust and confidence, having the duty to act primarily for another*s benefit and subject to the standard of care imposed by law or contract.

Financially Incapable – A condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance.

Guardian – An individual or organization named by order of the court to exercise any or all powers and rights over the person of an incapacitated individual.

Incapacitated – The condition in which a person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person*s physical health or safety.

Informed Consent – Consent by a patient or a guardian to a surgical or medical procedure after obtaining and understanding the relevant medical facts, and the risks and benefits involved.

Least Restrictive – A mechanism, course of action, or environment which allows the protected person to live, learn and work in a setting which places as few limits as possible on the individual's rights and personal freedoms, and is appropriate to meet the needs identified based on the incapacity of the individual.

Professional Fiduciary – An individual or organization that provides guardianship or conservatorship services as an occupation, and receives funding or compensation for providing those services.

Property – Real and personal, tangible and intangible assets, and includes anything that may be the subject of ownership.

Protected Person – An incapacitated or financially incapable person for whom a court issued protective person has been entered.

Substituted Judgment – The principle of decision-making which requires implementation of the course of action which comports with the individual's known wishes expressed prior to the appointment of the guardian.

STANDARD 1. GENERAL DUTIES OF A FIDUCIARY

A. To act with trust, integrity and good faith in the best interests of the protected person in executing the duties imposed by the appointment of the fiduciary.

B. To keep confidential the affairs of the protected person, except when it is necessary to disclose such affairs for the best interest of the protected person.

C. To file with the court, in a timely manner, all reports required pursuant to statute statutes, regulations, court rule, or the particular court pursuant to whose authority the fiduciary has been appointed.

D. To carry out all duties required by the state statute, regulations, court rule, or the particular court pursuant to whose authority the fiduciary has been appointed.

STANDARD 2. CONFLICTS OF INTEREST

A. A fiduciary shall avoid actual, potential or the appearance of a conflict of interest. A conflict of interest arises where the fiduciary has a personal or pecuniary interest which may compromise or otherwise affect their independent decision making, or which may be perceived as being self-serving, or adverse to the position or best interest of the protected person. Specifically:

1. A fiduciary shall not directly provide housing, medical, legal advocacy to a protected person. However, where a fiduciary can demonstrate a unique circumstance indicating no other entity is available to act as fiduciary, or to provide needed direct services, a limited exception may be allowed with appropriate disclosure and/or approval.

Comment: The fiduciary shall keep in mind that its primary duty is to coordinate and assure the provision of all necessary services to the protected person, rather than to provide those services directly. To ensure that the fiduciary remains free to challenge inappropriate or poorly delivered services and to advocate vigorously on behalf of the protected person, the fiduciary should be independent from all service providers.

2. An individual, business or agency providing services as court visitor or investigator shall not act as fiduciary of that individual.

3. A fiduciary shall not commingle its personal or business funds with the funds of a protected person.

4. A fiduciary may not enter into any transaction in which the fiduciary has a personal or pecuniary interest unless the fiduciary has sought and received court approval before entering into the transaction. (See ORS 125.220)

5. A fiduciary may not sell, transfer or convey property or any interest therein to themselves, an employee, friend, family member, agent or entity in which the fiduciary has a beneficial interest.

6. A fiduciary or their staff shall not borrow funds from the protected person.

Comment: This standard does not prohibit advances made to clients for purposes of off-setting a short-term emergency situation, provided that such advances are made at no interest.

STANDARD 3. DUTIES OF THE GUARDIAN

A. GENERAL DUTIES OF A GUARDIAN

The guardian shall have the following duties and obligations to the protected person, unless otherwise limited by the court:

1. To see that the protected person is appropriately housed.

Comment: Performance of this duty shall involve consideration and compliance with the provisions of Standard 3C.

Comment: Proper performance of this duty requires the guardian to have contact with the protected person pursuant to the provisions of Standard 3E.

2. To ensure that provision is made for the support, care, comfort, health, and maintenance of the protected person. This includes the duty to make certain that the protected person has applied for any financial, health care, or other public or private benefits for which they may be eligible.

Comment: The guardian has the duty to become knowledgeable, or seek out the Assistance of knowledgeable persons, regarding existing services and legal entitlements to which the protected person may be eligible and obtain appropriate entitlements.

3. To make reasonable efforts to secure for the protected person: medical, psychological and social services, training, education, social, and vocational opportunities that are appropriate and that will maximize the protected person's potential for self-reliance and independence.

4. To the extent that the guardian of the person has been authorized by the court to manage the protected person's property, the guardian shall adhere to the requirements of Standard 4.

B. INITIAL STEPS

1. In the absence of a need for immediate action, meet with the protected person in a timely manner after their appointment.

2. Communicate to the protected person the role of the guardian.

3. Assess the physical and social situation the educational, vocational, medical, and recreational needs, likes and preferences, living conditions, and the support systems available to the protected person.

4. Gather information which is necessary for the guardian to effectively identify and provide needed services for the protected person. This information may include:

a. Client biographical information.

b. Functional assessment.

c. Medical information.

d. An inventory of written and oral advance medical directives.

e. Notify relevant agencies, service providers and individuals of the appointment of a guardian.

f. Develop a plan to address the individual needs of the protected person. The plan shall be designed to encourage the development of maximum self-reliance and independence of the protected person.

g. Any other pertinent information.

C. PROTECTED PERSON'S LIVING SITUATION

1. The Guardian shall carefully determine the appropriate living situation of the protected person. The following factors should be examined and evaluated in this determination:

- a. The care needs of the protected person.
- b. The individual's wishes with respect to their living situation.
- c. The resources available to secure alternative care settings.
- d. The most appropriate and least restrictive care setting.

Comment: In making a determination of any living situation, specific considerations may include:

- (1) The opportunity for active habilitation and rehabilitation to maximize the protected person's highest potential for independent living.
- (2) The atmosphere and physical condition of the living situation.
- (3) Treatment of the protected person by staff and other residents.
- (4) The appropriateness of the peer group and cultural milieu.
- (5) Opportunity for privacy, independence and exercise of self-determination.
- (6) Compliance with state and federal laws pertaining to the living environment.
- (7) The effect a change in living situation would have on the protected person's psychological, emotional, social, and physical condition.
- (8) The geographical proximity of the living situation to visiting family and friends, and its on the guardian's ability to see to the care, comfort, and maintenance of the protected person.

2. A guardian shall be aware of state and federal laws and regulations pertaining to the involuntary transfer or discharge of residents of facilities and shall pursue reasonable administrative and judicial remedies available under such laws if the Guardian feels the transfer or discharge is not in the best interests of the protected person.

D. SECURING AND AUTHORIZING MEDICAL SERVICES

1. A guardian has the duty to actively promote and monitor the protected person's which demand attention, and to pursue and authorize appropriate medical treatment.

Comment: Determining appropriate medical treatment will include consideration of the prior written and oral advance directives of the protected person, and may include withholding or withdrawal of treatment.

2. Substituted Judgment. The guardian shall act consistently with the specific declarations and desires of the protected person regarding medical care and treatment, as expressed prior to the appointment of the guardian. If the protected person made no specific declaration of intent prior to appointment of a guardian, the guardian should use whatever general knowledge they have of the protected person to make a decision based on a substituted judgment standard, which includes consideration of the known wishes of the protected person.

Comment: In determining any of the above factors, the guardian should consider information arising out of personal contact with the protected person, information arising out of the contact of family or close friends with the protected person, information and opinions imparted by attending physician(s) and/or relevant medical professionals, and all other relevant information.

3. Best Interest. Where reliable evidence of either the protected person's prior specific or general wishes does not exist, the guardian should make a decision based on the perceived best interest of the protected person. In determining the best interests of the protected person the guardian should consider the current wishes of the protected person.

4. Informed Consent. The guardian shall make an informed judgment and shall not consent to treatment until the following information has been gathered:

- a. the reason for, and nature of, the treatment;
- b. the benefit/necessity of the treatment;
- c. the possible risks and side effects of the treatment;
- d. alternative treatments or measures that are available and their respective risks, side effects and benefits.

E. PERSONAL CONTACT AND ONGOING RESPONSIBILITIES

1. The guardian shall maintain a specific plan to address the individual needs of the protected person.

Comment: Through personal contact with the protected person, the guardian shall continually monitor the situation, assessing the continued effectiveness of the current plan. The guardian shall promptly make necessary changes in the protected person's situation, or secure services, in order to ensure that the needs of the protected person are being met.

2. A guardian shall work cooperatively with other surrogate decision-makers, including another guardian or conservator to further the interests of the protected person.

3. Guardians (or their designees) shall have contact with or related to the protected person, sufficient to responsibly address the unique needs, cares and concerns of each protected person.
4. Responsible execution of a guardian's responsibility shall consist of, but is not limited to, the following:
 - a. Communication with the protected person. In communications with the protected person the guardian shall make every effort to ascertain the protected person's satisfaction with the current living situation, the extent of the protected person's current disability or impairment, and the current needs and desires of the protected person.
 - b. Participation in conferences with service providers/care givers. Where applicable, this may include communications with physicians, psychologists, nurses, social workers, care givers, physical or occupational therapists, teachers, and residence operators. If care conferences are held at the living site, the guardian shall ask to be informed of their scheduling. The guardian, or designee, shall make every attempt to attend and participate in care conferences concerning protected persons. If unable to attend, the guardian shall obtain information about what occurred at the conference.
 - c. Examinations of any charts or notes kept regarding the protected person.
 - d. Assessment of the appropriateness of maintaining the protected person in the current living situation considering social, psychological, educational and vocational, and health and personal care needs.
 - e. Assessment of protected person's physical appearance and psychological and emotional state.
 - f. Assessment of the repair, cleanliness, and safety of the living situation.
 - g. Assessment of the adequacy and condition of the protected person's clothing and personal possessions.
5. The guardian shall keep a written summary of significant contact relating to the protected person. This summary shall be kept in a reasonable manner accessible for use by the fiduciary and shall describe the date and the nature of the contact.

STANDARD 4. DUTIES OF THE CONSERVATOR

A. GENERAL DUTIES OF A CONSERVATOR

The conservator shall have the following duties and obligations to the protected person, unless otherwise limited by the court:

1. Perform duties responsibly and honestly for the primary benefit of the protected person, and where appropriate, for the support of their dependents.
2. Post and maintain a surety bond sufficient for the protection of the protected person's estate, unless specifically waived by the court.
3. Employ prudent accounting procedures in compliance with applicable statutes, regulations and policies.
4. Identify, take possession of, and manage the assets and income of the protected person. Management includes, but is not limited to, the holding, investment, disposition, and/or abandonment of the conservatorship assets.
5. Expend assets and funds of the estate for the support, education, care or benefit of the protected person and their dependents.
6. Ensure that all goods and services purchased on behalf of the protected person are properly delivered and rendered.
7. Identify and ratify or avoid contracts, transactions and other obligations of the protected person, including those initiated prior to the protected person's incapacity.
8. Prosecute, defend or settle legal actions and claims of the protected person.
9. Allow the protected person the opportunity to retain and manage property and funds as appropriate to their needs and capacities.

Comment: Whenever possible, clients should be allowed this opportunity. Amounts as little as \$5 or \$10 may be beneficial in promoting feelings of independence and self-autonomy.

10. A conservator shall work cooperatively with other surrogate decision-makers, including the guardian or other conservator to determine and further the best interests and quality of life of the protected person.

11. A fiduciary shall provide services in the most efficient and cost effective manner possible.

Comment: The fiduciary should implement direct deposits and similar efficiencies whenever available and possible.

12. Where a fiduciary serves several protected persons, the fiduciary may combine the funds of multiple clients into a single account, provided the fiduciary possesses sufficient accounting capacity to maintain separate, accurate, and complete accountings of each protected person's funds in the account.

13. Conservators, or their designees, shall have contact with or related to the protected person, sufficient to responsibly address the unique needs, cares and concerns of each protected person.

14. The conservator shall keep a written summary of significant contact relating to the protected person. This summary shall be kept in a reasonable manner accessible for use by the fiduciary and shall describe the date and the nature of the contact.

B. INITIAL STEPS

1. An inventory of property and income. A fiduciary having proper authority shall list all the property of the protected person, including the amount and type of benefits currently received, the existence and condition of assets, income, pensions, and other financial resources and their location.

2. Design a budget.

3. Communicate to the protected person the role of the conservator.

4. Notify relevant agencies, service providers and individuals of the appointment of the conservator.

5. Review existing assets, investments and estate plans to determine and create an appropriate investment strategy within a reasonable time of receiving cash or securities. In developing an investment plan, specific considerations may include:

- (a) Client's age and health status.
- (b) Monthly income and expenses.
- (c) Value of the portfolio or cash assets.
- (d) Dollar amount of assets available for investing.
- (e) Time frames for investing.
- (f) Client's previous investment strategies.
- (g) Investment goals to be accomplished.

C. INVESTMENT AND MANAGEMENT OF ASSETS

1. A conservator shall invest and manage the assets of the protected person as a prudent investor would by considering the needs, obligations and other circumstances of the protected person. In satisfying this standard, the conservator shall exercise reasonable care, skill and caution.

2. A conservator's investment and management decisions respecting individual assets must be evaluated not in isolation, but in the context of the conservatorship's portfolio as a whole, and as a part of the overall

investment strategy, having risk and return objectives reasonably suited to the circumstances of the conservatorship.

3. In investing and managing assets, the conservator shall consider any of the following facts and circumstances existing at the time of the decision, which are relevant to the circumstances of the conservatorship:

- a. General economic conditions.
- b. The possible effect of inflation or deflation.
- c. The expected tax consequences of investment decisions or strategies.
- d. The role that each investment or course of action plays within the overall conservatorship portfolio.
- e. The expected total return from income and the appreciation of capital.
- f. The needs for liquidity, regularity of income and preservation or appreciation of capital.
- g. An asset's special relationship or special value, if any, to the purposes of the conservatorship or to the protected person personally.

4. The conservator shall make a reasonable effort to verify facts relevant to the investment and management of the assets.

5. A conservator who has special skills or expertise has a duty to use those special skills or expertise.

Comment: a "professional" conservator is held to a higher standard than an individual who is not a "professional" conservator.

6. A conservator shall diversify the investment of the conservatorship assets unless the conservator reasonably determines that, because of special circumstances, the purpose and needs of the conservatorship would be better served without diversifying.

7. Within a reasonable time after accepting appointment as conservator or receiving assets, a conservator shall review the assets and make and implement decisions concerning the retention and disposition of assets in order to bring the conservatorship portfolio into compliance with the purpose, needs and circumstances of the conservatorship.

8. In deciding to dispose, liquidate, retain or obtain assets, and particularly in the disposition of the protected person's residence, the conservator shall consider the following factors:

- a. The ability of the protected person to maintain the property.
- b. The availability and appropriateness of alternatives to the disposition of the property.

- c. The likelihood that such property may deteriorate or be subject to waste or dissipation.
- d. The benefit versus the liability and costs of maintaining the property.
- e. The impact of the transaction on the protected person's future entitlement to public benefits.

9. A conservator shall invest and manage the conservatorship assets solely in the interest of the protected person.

10. In investing and managing conservatorship assets, a conservator may Only incur costs that are appropriate and reasonable in relation to the specific assets, the needs of the conservatorship, and the skills of the conservator.

11. A conservator may employ persons, including investment advisors or agents, accountants or auditors to advise or assist the conservator in the investment and management of the conservatorship assets. A conservator may delegate investment and management functions that a prudent conservator of comparable skills could properly delegate under the circumstances. The conservator shall exercise reasonable care, skill and caution in:

- a. Selecting an agent.
- b. Establishing the scope and terms of the delegation, consistent the purpose, needs, and circumstances of the conservatorship.
- c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

STANDARD 5. RIGHTS OF PROTECTED PERSONS

A. A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court.

1. The right to exercise control over all aspects of their life not delegated to a guardian by the court.
2. The right to be treated with dignity and respect.
3. The right to guardianship or conservatorship services suited to their abilities and needs.
4. The right to privacy — the right to privacy shall include but is not limited to the right to bodily privacy, the right to reasonable unimpeded, private, and uncensored communications with others by mail and telephone, and the right to visit with persons of their choice.

5. The right to have personal desires, preferences, and opinions given due consideration in decisions being made by the fiduciary.
6. The right to petition the court for termination or modification of the protective proceeding — notification of this right shall include an explanation of the steps necessary to initiate the procedure.
7. The right to procreate.
8. The right to retain an attorney.
9. The right to have access to personal records.

Comment: The protected person may also have additional rights. The guardian has a duty to request guidance from the court with respect to such additional rights and, where such rights are not clearly removed, to inform the protected person of the existence of such rights. These additional rights may include, but are not limited to:

- a. The right to marry.
- b. The right to vote.
- c. The right to execute a will.

B. The guardian shall work to help the protected person attain these rights and shall respect these rights at all times.

STANDARD 6. LIMITATION OR TERMINATION OF PROTECTIVE PROCEEDING

A. A fiduciary has an obligation to petition the court for limitation or termination of the protective order when the protected person no longer meets the standard pursuant to which the initial protective order was imposed, or when there is an effective less restrictive alternative available.

B. Upon the death of a protected person the guardian shall undertake to perform the following activities where relevant to the authority granted:

1. Notify the court of the death of the protected person according to statutory requirements.
2. Make reasonable attempts to contact family Members or friends who have had contact with the protected person.
3. The guardian may control the disposition of the remains of the protected person as provided by law.

C. Upon the death of a protected person, the conservator shall:

1. Notify any agency providing benefits to the protected person [or beneficiary] including the Social Security Administration, the Veterans Administration, and other state or federal benefit administrations.

2. Apply for burial funds, if necessary.
3. Submit a final accounting of the protected person's estate to the court or other authorizing agency.
4. Deliver any Will of the deceased protected person that may have come into the possession of the conservator to the personal representative named in the Will or deliver the Will to the court for safekeeping. If the conservator delivers the Will to the court for safekeeping, the conservator must inform any personal representative named in the Will that the conservator has made that deliver.
5. Retain and administer the estate for delivery to the Personal Representative or other person entitled to the estate.

STANDARD 7. QUALIFICATIONS AND REQUIREMENTS OF PROFESSIONAL FIDUCIARIES

- A. An individual professional fiduciary shall have the following qualifications:
 1. Be a high school graduate or possess the GED equivalent.
 2. Have one year of relevant work experience related to fiduciary services; or a degree from an accredited college, the degree shall pertain to fiduciary services; or certification by the National Guardianship Association.
 3. Be bondable in the State of Oregon.
 4. Not have engaged in a criminal act or conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the fiduciary's honesty, trustworthiness, or fitness to act.
 5. Undertake a criminal record and reference check of all staff with responsibility for client care and/or client assets.
- B. An organization or entity which serves as a professional fiduciary shall have the following qualification:
 1. Be duly and properly organized under the laws of the State of Oregon to perform the services for which the organization has been created.
 2. Undertake a criminal record and reference check of all staff with responsibility for client care and/or client assets.
- C. Continuing Education.
 1. Individual fiduciaries shall attend and successfully complete 10 or more hours of annual continuing education pertaining to related subjects.

2. The professional program staff (both volunteer and paid) of organizational fiduciaries shall attend and successfully complete 10 or more hours of annual continuing education pertaining to related subjects.

D. Death/Disability. A fiduciary has an obligation to formulate and implement a plan to provide for the continuation of services to protect and safeguard the interests of the protected individuals in the event of the death or disability of the fiduciary.

E. Availability.

1. A guardian, or designee, shall be available to provide emergency and on-call services 24 hours a day, seven days a week.

2. A conservator shall take reasonable steps to provide timely service and availability.

STANDARD 8. FEES FOR SERVICES

A. A fiduciary shall only charge reasonable fee for services provided.

B. Factors to be considered in determining the reasonableness of a fee include:

1. The time required.

2. The novelty and difficulty of the issues presented.

3. The skill required to perform the services properly.

4. The fees customarily charged in the locality for similar services.

5. The value of the estate involved, and the results obtained.

6. The experience, reputation, and ability of the fiduciary providing the services.

Comment: Pro Bono Services. The GCA encourages member to offer some services on a pro bono basis to individuals in the community with a limited or no ability to pay for fiduciary services.