

Guardianship / Conservatorship

- **Guardianship**
 - A fiduciary relationship created by a court in which the Guardian is authorized to make all significant decisions affecting the Ward's physical custody, education, health, activities, personal relationships, and general welfare
 - Court will issue an Order Appointing Guardian, Letters of Guardianship, or other similar instrument appointing the Guardian – typically it must be certified by the Court Clerk
- **Conservatorship**
 - A fiduciary relationship created by a court in which the Conservator is authorized to take title to and manage a Protected Person's property (real and personal)
 - Court will issue an Order Appointing Conservator, Letters of Conservatorship, or other similar instrument appointing the Conservator – typically it must be certified by the Court Clerk

Guardianship / Conservatorship

A guardianship and/or conservatorship is necessary when the incapacitated person did not execute valid or thorough enough legal documents before he or she become incapacitated (i.e. lack of POA, insufficient POA).

Incapacity – “a person who is impaired by intoxicant, by mental illness or deficiency, or by physical illness or disability to the extent that personal decision-making is impossible”⁶⁰

Defined in Colorado law as

“an individual other than a minor who is unable to effectively receive or evaluate information or both or make or communicate decision to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.”

Guardianship / Conservatorship

The Elder can nominate someone for each role, but the court retains total discretion. Typically the court is considering these factors:

- Criminal and civil suit history (felonies, misdemeanors, civil judgments, etc.)
- Credit report, bankruptcy filings, criminal background checks
- Preference of the ward or protected person

Typically the Guardian or Conservator will be:

- Family member or friend
- Public administrator
- Professional fiduciary
- Trust company or bank
- State or county agency

Guardianship / Conservatorship

Duties

- Guardian
 - Duties and responsibilities equal to those of a parent with regard to support, care, education, health, and welfare
- Conservator
 - Duties and responsibilities of a trustee or financial fiduciary to manage, preserve, and disburse property

Guardianship / Conservatorship

Abuse

- Guardians are in a position of trust and authority at least as great as any typical caregiver and the potential is for abuse of the kind typical of caregivers
 - Physical abuse
 - Neglect
 - Financial exploitation
- Conservators, like an agent with a POA, have access and authority sufficient to give them means and opportunity to exploit the property of the Protected Person.
 - Financial exploitation is the primary danger, although other possibilities exist (i.e. neglect).
- If you suspect a Guardian or Conservator is misusing the power granted to them by court order, take action and report it.

[1] The Elder Justice Coalition. Retrieved July 22, 2012 from: <http://www.elderjusticeallition.com>

[2] BFOCAL, Stoppel, Lori A., March-April 2010. Vol. 31, No. 4. "Elder Abuse Prevention: Elder Justice Act Becomes Law, But Victory is Only Partial". Retrieved July 22, 2012 from: http://www.americanbar.org/content/dam/aba/information/special_publications/etp/etp_publications/etp_vol_31_no_4_authcheck_dam.pdf

[3] American Psychological Association. The Elder Justice Act (S. 2070) & H.R. 1245. Retrieved July 22, 2012 from: <http://www.apa.org/force/2010/07/20/elder-justice-facts.aspx>

[4] 2009 Alzheimer's Disease Facts and Figures

[5] USA Today, March 24, 2009

[6] Black's Law Dictionary, 8th Edition