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Guardianship and Conservatorship Under the Colorado Uniform Guardianship and Protective Proceedings Act

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Chapter 19

GUARDIANSHIP AND CONSERVATORSHIP UNDER THE COLORADO UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

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SYNOPSIS

EXHIBITS

§ 19.1 • INTRODUCTION

The Colorado Uniform Guardianship and Protective Proceedings Act became effective January 1, 2001, repealing and re-enacting Colorado's prior guardianship and conservatorship statutes.[1] This was the result of recommendations from the Colorado Bar Association Joint Subcommittee on the Uniform Guardianship and Protective Proceedings Act, which was co-chaired by this author and M. Kent Olsen, and consisted of approximately 30 members of the bench and bar, court administrators, guardianship advocacy, and private and nonprofit care management agencies.

Significant developments in the areas of guardianship and conservatorship occurred in the late 1980s and early 1990s, as states revised their guardianship and conservatorship statutes. The 1982 Act, with its emphasis on limited guardianship and conservatorship, was groundbreaking in its support of autonomy. The 2001 version of the Colorado Uniform Guardianship and Protective Proceedings Act builds on these revisions by providing that guardianship and conservatorship should be viewed as a last resort; limited guardianships or conservatorships should be used whenever possible; and the guardian or conservator should always consult with the ward or protected person, to the extent feasible, when making decisions. Many substantive changes from former law, and some departures from the uniform law, are contained in the Colorado Uniform Guardianship and Protective Proceedings Act.

This chapter is designed to provide a basic familiarity with guardianship and conservatorship. After some preliminary comments applicable to both topics, the chapter is divided into two main sections: Guardianship and Conservatorship. Each main section is divided into subheadings dealing with procedural issues and matters of concern to the practitioner. Checklists of forms for guardianship and conservatorship proceedings are included in Exhibits 19A and 19B, respectively, followed by a collec-

tion (Exhibit 19C) of the forms most commonly used. Issues relating to guardianship and conservatorship for minors, guardianship under the Veterans' Administration (Uniform Veterans' Guardianship Act),[2] and settlement of personal injury claims are not treated here.

In Colorado, guardianship is distinguished from conservatorship, unlike in some jurisdictions where the terms may have different meanings than they do here. A guardian has the care and custody of the *person* of an individual, known as the "ward" or "incapacitated person." A conservator is responsible for the *estate or assets* of an individual known as the "protected person." Even so, there are limited circumstances when a guardian may exercise powers over the estate of the person — *e.g.*, the guardian may also be the representative payee for Social Security benefits. Conversely, a conservator may exercise powers normally belonging to a guardian, such as hiring home health-care providers. When dealing with guardianship or conservatorship in another state, the practitioner should understand the differences that may apply in that jurisdiction. Similarly, individuals from outside of Colorado may need to be educated as to the distinctions drawn in this jurisdiction.

Determining whether to file for guardianship or conservatorship only, or both, requires consideration of multiple factors. A guardian may manage the income from public benefits without the need for a conservatorship. For example, the guardian may be appointed as the representative payee to manage the ward's monthly Social Security payments without also appointing a conservator. In such instances, the guardian is still required to account for all assets and income under the guardian's control. If the total personal estate is less than $10,000, and no useful purpose would be served by appointing a conservator, the court may order the distribution of the assets to the guardian, the ward, or a next friend, subject to such conditions, including bond and reports, that the court deems proper.[3]

By the same token, if the respondent does not lack decisional capacity, or has an agent under a health care power of attorney able to make medical decisions, but assets need to be managed, it may only be necessary to move forward with a conservatorship. In the interests of judicial economy, as well as savings to the client or the estate of the protected person, it is advisable to bring both guardianship and conservatorship proceedings at the same time when it is reasonably foreseeable that protection of the person and the assets is appropriate. In any event, should it become necessary later to file for guardianship (or conservatorship if only a guardianship was the initiating action), the proceedings may be consolidated into one matter.[4]

§ 19.2 • A NOTE ON THE USE OF FORMS

Guardianship and conservatorship fall within the jurisdiction of the state's district courts, with the exception of the City and County of Denver, where the Denver Probate Court has exclusive jurisdiction. Practice in these courts has been simplified by the Colorado Supreme Court's adoption of the Colorado Judicial Department (JDF) forms found in Appendix A to the Colorado Rules of Probate Procedure (C.R.P.P.). C.R.P.P. 5 directs that these forms should be used where applicable. The forms are now available on the Colorado State Judicial Branch website and may be downloaded and adapted for use on the computer by going to www.courts.state.co.us and clicking on the "Self Help/Forms" tab, followed by "Conservatorship" or "Guardianship."

The forms and brochures from the State Judicial website may be printed either in Microsoft Word® or PDF format with Adobe Acrobat®. If using computer-generated forms, C.R.P.P. 5 should be reviewed. Use of the checklists and the forms will aid the practitioner in covering all the statutory requirements, but is no substitute for reading the statutes carefully. Combining guardianship and conservatorship petitions into one document should be avoided. The practitioner should take care to follow the format of the approved forms, highlighting where appropriate, underlining blanks to be filled, and including a conspicuous statement in the footer of the documents that the pleadings substantially conform to the approved JDF, stating the form number and effective date. With the adoption of the Colorado Uniform Guardianship and Protective Proceedings Act, many of the forms were changed to comply with the new statute; consequently, references to statutory citations in forms prior to January 2001 for petitions and orders are not accurate.

Practice Pointer

In recent years, the State Court Administrator's Office has taken the lead in reviewing and revising the JDF forms. It is imperative that the practitioner make sure the most recent release of the JDF form is being used whenever filing. (Check the footer on the JDF form for the revision date.) Due to the creation of the new protective proceedings monitor positions in every court, Guardian's Reports (JDF 850) and Conservator's Reports (JDF 885) are receiving heightened scrutiny. Increasingly, reports are being rejected if the most current release is not submitted. Many practitioners provide their clients with a blank copy of the report for future use. Practitioners should alert clients to download the most current JDF form or contact the practitioner's office to ensure they are using the most recent release.

§ 19.3 • GUARDIANSHIP

§ 19.3.1—Incapacity

Guardianship may be established by reason of incapacity for individuals 18 years of age and older. An "incapacitated person" is defined as:

> [A]n individual other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions 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.[5]

Accordingly, regardless of the cause, the petitioner in a guardianship proceeding must establish that the respondent lacks the ability to make or communicate responsible decisions. The burden of proof is upon the petitioning party by clear and convincing evidence.[6] Following such a determination, the court is required by statute to set forth its findings of fact concerning the nature and degree of incapacity, and to consider the least restrictive means of providing protective services based upon the degree of incapacity.[7] If a limited guardianship is imposed, the restrictions will appear upon the Order Appointing Guardian for Adult (JDF 848) and the Letters of Guardianship – Adult (JDF 849).

§ 19.3.2—Duties, Powers, and Limitations of Guardians

The duties, powers, and limitations of the guardian are generally enumerated at C.R.S. §§ 15-14-314 through -317. Unless otherwise limited in the Letters of Guardianship, the guardian has authority to make decisions regarding the ward's support, care, education, health, and welfare. The guardian is entitled to custody of the ward, and may determine the ward's dwelling in Colorado. However, with the adoption of the Colorado Uniform Guardianship and Protective Proceedings Act, the guardian's authority to change the ward's residence outside of this state is now limited, requiring express authorization by the court.[8]

The guardian has no duty to provide from his or her own funds for the support of the ward, unless there is a separate pre-existing duty to do so. Guardians should be instructed to always disclose their guardianship authority to avoid inadvertently assuming personal liability.[9] The guardian is not liable to third parties for the acts of the ward solely due to the relationship, except as specifically provided by law. The guardian is obligated to take reasonable care of the ward's possessions and to initiate protective proceedings for property if in need of protection. A guardian may apply for benefits due to the ward or seek support for the ward. If a conservator is appointed, the conservator may initiate such proceedings. If no conservator is appointed, the guardian has the added duty to account for the ward's money and assets in the guardian's possession or control.[10] The simple check register format typically used in accounting for decedent's estates (JDF 942) is generally sufficient, as opposed to the more involved Conservator's Report (JDF 885).

Unless otherwise restricted, a guardian may admit the ward to a nursing home without the need for a hearing or further court order. By the same token, a carefully drafted order may limit the guardian's ability to authorize such placement in a nursing home without prior court order. Take care to note that specific civil commitment statutes apply for admission of the ward to a mental health-care institution or facility. A guardian cannot authorize mental health care and treatment for mental illness over the objections of the ward without complying with these statutes.[11] Special requirements also exist for wards with developmental disabilities,[12] and for treatment of wards suffering from alcoholism.[13] These restrictions appear on the face of the Order Appointing Guardian for Adult (JDF 848).

The extent to which the guardian may give consent for medical or other professional care is determined by the court, considering the ward's wishes and limiting unnecessary or excessive treatment. The findings of the court should, whenever feasible, grant to the guardian only those powers necessitated by the ward's limitations and demonstrated needs. This is consistent with the underlying philosophy of limited guardianships and least restrictive alternatives as found in the Colorado Uniform Guardianship and Protective Proceedings Act. The order of appointment should encourage the development of the ward's maximum self-reliance and independence.[14]

Sometimes it is appropriate for the guardian's authority to be broad and unlimited, permitting the full authority under the guardianship statutes. In other situations, the authority should be narrowly circumscribed, such as when a medical consent may be required for emergency treatment of a diabetic who is refusing care. Once the ward is re-hydrated and the electrolytes are balanced, the ward is often quite capable of making medical decisions again. Limitations on the guardian's authority may be specific and limited to certain acts, such as authorizing emergency medical treatment or placement decisions. Limitations may also be imposed for a specific period of time, constituting a "trial

guardianship." For example, the court may limit the guardianship to a period of six months, at which time the need for continuing the guardianship or modifying the scope of the guardian's authority will be reviewed by the court.

A court may specifically authorize or direct a guardian to consent to the adoption or marriage of the ward;[15] however, absent such specific authority, a guardian probably does not have such authority. Either a guardian or a conservator may petition the court for authority to commence a dissolution of marriage or legal separation. The court should only grant this authority if the ward consents. The court may also grant the guardian such authority if the ward is incapable of consenting if, after notice and hearing, it is determined to be in the best interest of the ward based upon evidence of abandonment, abuse, exploitation, or other compelling circumstances.[16] If the spouse is also the guardian or conservator, an inherent conflict of interest arises. It may be necessary to appoint a successor or limited guardian, conservator, or guardian *ad litem* to represent the ward's interest through the dissolution of marriage.

Guardians have increased reporting duties under the Colorado Uniform Guardianship and Protective Proceedings Act. Within 30 days of appointment, the guardian is required to provide notice of the appointment with a copy of the Order Appointing Guardian to the respondent and all persons identified in the petition.[17] The Notice of Appointment of Guardian and/or Conservator is a specific form (JDF 812) that must also advise the respondent and interested persons of the right to request termination or modification of the guardianship.

A guardian is also required to file a personal care plan with the court within 60 days of appointment and annually thereafter.[18] The care plan is contained in the Guardian's Report – Adult (JDF 850) and can often be completed by the guardian with minimal involvement by counsel. (*See* § 19.3.15, "Guardian's Report.")

§ 19.3.3—Powers of Attorney Under Guardianships

Powers of attorney for medical decisions pose an interesting issue in the context of guardianship, if not revoked by the court at the hearing. An agent under a pre-existing medical power of attorney is required to consult with the guardian regarding personal care decisions.[19] Such an agent is bound by the same restrictions imposed upon the guardian regarding treatment for mental illness, developmental disabilities, and alcohol abuse under C.R.S. § 15-14-316(4). However, the guardian generally may not revoke or otherwise circumvent medical treatment decisions by the ward's agent pursuant to a validly executed medical power of attorney under C.R.S. § 15-14-506, if signed by the ward prior to the incapacity.[20] A guardian may still seek to have the court remove the agent for medical decision-making purposes, and the guardian retains the right that the principal would have had to revoke, suspend, or terminate an agent's authority for other personal care decisions.[21] This limitation on the guardian's power should be contrasted with that of a conservator, who retains full authority to revoke an agent's authority under powers of attorney for property without the need for court intervention.[22]

Guardians have the ability to delegate their authority to others under a power of attorney for a period not to exceed 12 months. However, a guardian may not delegate the authority to consent to the marriage or adoption of the ward.[23] Use of a power of attorney delegating guardianship authority may be extremely helpful if the guardian resides out of state, travels frequently, or wishes to engage the services of a professional care manager.[24]

§ 19.3.4—Venue

Venue for guardianship proceedings is proper in the place where the respondent resides. If the respondent is already admitted to an institution pursuant to a court order (such as for a mental health certification), then venue may also be had in the county of the court issuing that order.[25] If the respondent is moving into an assisted-living or skilled nursing facility voluntarily, consider whether venue belongs in that county or the county of the individual's former residence. Consequently, consideration should be given prior to filing the guardianship petition as to where most of the continuing activity will occur.

For emergency guardianships, venue is appropriate in any county where the respondent is present. However, even though venue for an emergency guardianship may be proper, the court may not have venue to enter permanent guardianship orders if the respondent is a resident of another state. For example, an aging parent visiting from California is exhibiting signs of early dementia. Her well-intended daughter may obtain an emergency guardianship when her mother starts acting peculiarly and refuses necessary medical treatment. The daughter may not be able to convert the emergency guardianship to a permanent guardianship if venue is lacking. Awkward though it may seem, this provision is designed to prevent forum shopping for the convenience of the petitioning party and protects the respondent's liberty interests by directing the issue of venue to the respondent's home state, where he or she most likely has more significant contacts. On issues regarding jurisdiction, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act should be consulted.[26]

§ 19.3.5—Priority — Who May Serve As Guardian and Who May Not

Statutory priority serves as a guideline in determining who should be appointed as the guardian, once the need for a guardianship is established. The statutory priorities are not binding upon the court. The court can appoint an individual of lower priority or no priority at all (such as a county department of human services) for good cause shown. Among individuals having equal priority, the court should select the person who is best qualified to serve.[27] A guardian must be 21 years of age or older, but need not be a resident of Colorado.[28] The order of priority also changed with the adoption of the Colorado Uniform Guardianship and Protective Proceedings Act so that the spouse is not automatically presumed to have highest priority. The statutory order of priority follows:

1) A guardian already appointed and acting, whether appointed in this state or elsewhere (excluding temporary or emergency guardians);
2) A person nominated as guardian by the respondent, including a specific nomination as guardian if made in a durable power of attorney or a designated beneficiary agreement;
3) An agent appointed under a medical durable power of attorney;
4) An agent appointed under a general durable power of attorney;
5) The spouse of the respondent or a person nominated by will or other signed writing of a deceased spouse;
6) An adult child of the respondent;
7) A parent of the respondent or an individual nominated in the parent's will or other signed writing; and
8) An adult who has resided with the respondent for more than six months immediately preceding the filing of the petition.

In cases where the respondent's nomination of a guardian is at issue, the nomination only creates priority if the respondent had sufficient capacity to express a preference at the time the nomination was made.[29] This serves to temper the effects of undue influence and written instruments executed shortly before or after the individual may have lost capacity. In *In re Estate of Runyon*,[30] where there had been no testimony by the respondent or by medical experts as to the respondent's capacity to nominate, the court of appeals remanded with instructions to hold such an evidentiary hearing.

In addition to establishing priorities among those who may serve as guardians, certain prohibitions exist as to who may not serve. For obvious reasons of inherent conflict of interest, an owner, operator, or employee of a long-term care facility is prohibited from serving as guardian unless related to the respondent by blood, marriage, or adoption.[31]

Unique to Colorado, professionals are generally prohibited from serving in dual roles as both guardian and conservator, guardian and direct service provider, or conservator and direct service provider. This prohibition against serving in dual roles does not apply to family members, ironically. Neither a guardian nor a conservator may hire the same person to act as both care manager and direct service provider, regardless of whether the guardian or conservator is a professional or a family member. In many instances, it may be more cost effective and efficient to have a single professional serving in both capacities as guardian and conservator. The limited availability of qualified professional fiduciaries in some parts of the state may also dictate against such prohibitions. Consequently, the court has a safety valve and may always waive the prohibition for good cause shown and appoint a single professional to serve in both capacities. Increased reporting requirements under the Colorado Uniform Guardianship and Protective Proceedings Act for both guardians and conservators also help to reduce abuse of fiduciary authority by both professionals and family members.

§ 19.3.6—Procedure for Appointment of Guardian by the Court

Once the original Petition for Appointment of Guardian for Adult (JDF 841) is filed with the court and the $164 filing fee is paid, a date is set for hearing on the issues of incapacity and the appropriate guardian. The practitioner will also need to prepare a proposed Order Appointing Guardian for Adult (JDF 848), the Acceptance of Office (JDF 805), and Letters of Guardianship – Adult (JDF 849).

The Letters of Guardianship serve as proof to third parties of the guardian's legal authority. Additional certified copies of the Letters cost $20 each (plus copying charges in some jurisdictions), and it is advisable to initially obtain at least two or three extra copies to save on time and costs later.

If the proposed guardian is a non-resident of Colorado, the Irrevocable Power of Attorney Designating Clerk of Court as Agent for Service of Process (JDF 721) is also required. This enables the court to assert jurisdiction over the non-resident guardian so that neither the court nor others need jump through hoops to serve the guardian.

§ 19.3.7—Acceptance of Office

C.R.S. § 15-14-110 requires guardian and conservator nominees to submit a name-based, criminal history background check through the Colorado Bureau of Investigation and a credit report, both of which shall be paid for by the nominee. The requirements for the Acceptance of Office (JDF 805) differ significantly from the simple Acceptance of Appointment used in decedents' estates. A copy of a driver's license, passport, or other government-issued identification should be attached.

The Acceptance of Office requires extensive disclosure by the nominee by sworn, verified statement containing the state and court of any case:

- If the nominee has been convicted of, pleaded no contest to, or received a deferred sentence for any felony or misdemeanor;
- If temporary civil protection or restraining orders or permanent civil protection or restraining orders have been issued against the nominee;
- If civil judgments have been entered against the nominee; or
- If the nominee has ever been relieved of court-appointed responsibilities.

To obtain a name-based, criminal history check, contact:

Colorado Bureau of Investigations
690 Kipling St., Ste. 3000
Denver, CO 80215
www.cbi.state.co.us

In addition, the nominee must attach a current credit report. Credit reports may be obtained from any of the following credit reporting agencies, although the list is not exclusive:

Equifax, Inc.
www.equifax.com

Experian Information Solutions, Inc.
www.experian.com

TransUnion LLC
www.transunion.com

Public administrators, financial institutions, and state and county agencies are excluded from these requirements. A parent residing with his or her child who is nominated as a guardian is also excluded. The disclosures may be waived for good cause as determined by the court. If the nominee is not a Colorado resident, the statute does not specify whether a criminal background check from the nominee's state of residence will be required. However, the court is free to require additional background information, including a fingerprint-based, criminal history record check.[32]

For good cause, the court may waive any or all of the disclosure requirements when appointing an emergency guardian or a special conservator.

The criminal history check and the credit report both contain specific identifying information. Chief Justice Directive 05-01 provides that this information is not available to the public and that Social Security numbers be redacted. There is no requirement that the Acceptance of Office be submitted to other interested persons, and it is contemplated that this information is for court use only.

It is advisable to prepare and file the Acceptance of Office as early as possible. The practitioner should review the information carefully before submitting the Petition for Appointment of Guardian, as the disclosures may call into question the qualifications or fitness of the nominee to serve in a fiduciary capacity.

§ 19.3.8—Court Visitors

The court visitor performs a vital function in the checks and balances upon the respondent's due process rights. The visitor essentially serves as the "eyes and ears" of the court and is required to inform the court if the respondent requests an attorney or the visitor thinks that appointment of an attorney is advisable. The court must appoint a visitor in every adult guardianship case.[33] The Denver Probate Court charges a visitor fee of $100. In most other Denver metropolitan courts, the visitors charge $25 per hour and bill the petitioning party. Many courts maintain a roster of visitors who must be disinterested persons with such training as the court deems appropriate. Check with the division clerk to determine whether the court issues the Order Appointing Court Visitor (JDF 809), as is the practice in the Denver Probate Court and Denver metropolitan district courts, or whether counsel is expected to prepare the form.

The court visitor is required to interview the respondent in person and explain the substance of the petition. The visitor is instructed to explain the nature, purpose, and effect of the guardianship proceedings as well as the guardian's authority, to the extent that the respondent is able to understand. The visitor is also required to advise the person of the respondent's rights, which include the rights to counsel and to be present at the hearing (JDF 797). The visitor should inform the respondent that the costs and expenses of the guardianship proceeding will be paid from the respondent's assets, unless the court directs otherwise. If the respondent does not have the resources to pay for an attorney, the court will appoint counsel at no cost to the respondent, as the right to counsel is fundamental. The visitor should attempt to ascertain the respondent's views with respect to the proposed guardian and the scope of the guardian's powers.[34] The visitor also interviews the proposed guardian, the physicians, and other caregivers, and should visit the respondent's current home and any proposed change in dwelling. If the practitioner anticipates seeking permission to excuse the respondent from the hearing, it may be advisable to specifically request the court to have the visitor make a recommendation on that issue.

The Court Visitor's Report (JDF 810) should be filed in advance of the hearing. The courts tend to rely heavily upon the Court Visitor's Report, so counsel is well advised to be familiar with the format of the report and the visitor's recommendations. The visitor does not normally appear at the hearing; however, in contested matters, it may be desirable to subpoena the visitor as a witness.

§ 19.3.9—Physicians' Letters and Professional Evaluations

The court of appeals, in the 2015 case of *In the Interest of Neher*,[35] determined that medical evidence is not required to establish the need for conservatorship. Even though *Neher* addresses conservatorships only, the statutory provisions are similar and the court's analysis is quite relevant for guardianships. However, best practices dictate that a doctor's report or other professional evaluation should be attached to the Petition for Appointment of Guardian when it is filed with the court, even though not strictly required by statute. This tends to minimize the filing of casual or frivolous guardianship petitions. However, it is not always possible to include a doctor's report due to an emergency filing or when the respondent refuses to be examined by a physician. The Health Insurance Portability and Accountability Act (HIPAA)[36] makes it difficult to obtain medical records in advance

without the respondent's consent. It may be necessary to file the initial petition without the supporting documentation and then subpoena the medical records. Alternatively, a motion may be filed for a professional evaluation by a physician, psychiatrist, psychologist, or other professional qualified to evaluate the respondent's particular impairment prior to the hearing on permanent orders.[37] The respondent may also request such a professional evaluation.

If the respondent is not cooperative with efforts to obtain an evaluation, it may be necessary to motion the court for a writ of assist directed to law enforcement to transport the respondent to the office of a qualified physician, another evaluator, or a particular hospital. Efforts should be made to coordinate with the evaluator and with law enforcement in order to minimize disruption and trauma for the respondent. The practitioner is encouraged to seek out a law enforcement officer in the particular department who is specially trained as a senior liaison officer or a member of the critical incident team if at all possible. Engaging the assistance of a professional geriatric care manager may also make the process easier and less expensive.

The professional evaluation should include a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any; an evaluation of the respondent's mental and physical condition, and, if appropriate, educational potential, adaptive behavior, and social skills; and a prognosis for improvement and recommendation as to rehabilitation and the date of any assessment or examination that the report is based upon, as set forth at C.R.P.P. 27.1.

Frequently, the physician's letter is conclusory, especially if the doctor has not been trained in assessing for capacity. Care should be taken to obtain appropriate documentation and a thorough evaluation to ensure that due process concerns are met. Functional assessments by geriatric care managers, neuropsychologists, or qualified social workers or other health-care professionals often provide more useful evaluations. The report should be signed by the evaluator and should be on the professional's letterhead. To minimize the costs of litigation, counsel may wish to consider stipulating to the admissibility of the evaluations. This will also serve to save court time. Otherwise, counsel should anticipate that the evaluator or other qualified professionals may need to be called as witnesses in contested proceedings.

§ 19.3.10—Due Process and Notice in Guardianship Proceedings

Particular care must be taken to provide notice and hearing in guardianship proceedings. The personal liberty and property rights of the respondent stand to be materially changed by government action. Due process requirements should not be overlooked. For an excellent discussion of these issues, the practitioner is referred to *Grant v. Johnson*,[38] which resulted in changes to practice in Colorado due to concerns over the inadequacy of notice. The particular notice forms specifically alert the respondent and all interested persons in bold print to the potential loss of autonomy and decision-making authority that may result from the guardianship. The notice must state that the respondent is required to be physically present at the hearing unless excused by the court.

The respondent must be personally served with the Notice of Hearing to Respondent (Adult or Minor) (JDF 807). The affidavit of personal service must then be completed by the process server. Failure to personally serve the respondent deprives the court of jurisdiction, which precludes the court from granting the petition for permanent orders.[39] Failure to serve other interested parties is procedural, and not jurisdictional, and therefore does not prevent the court from appointing a guardian or entering

other protective orders. Emergency guardianships have different notice requirements.[40] (*See* § 19.3.12, "Emergency Guardianship.")

The Notice of Hearing to Interested Persons (JDF 806) is used to provide notice to interested persons other than the respondent and may be served by mail. All Notices of Hearing must be served at least 14 days before the hearing date to comply with minimum due process requirements.[41] Both forms of the Notice of Hearing are served with the guardianship petition attached. However, when filing the Notices of Hearing with the court, the petitions should be omitted.

"Interested persons" is a flexible term under the Colorado Probate Code and may vary depending upon the particular purpose and proceeding.[42] The guardianship petition should identify all those interested persons required to be given notice in addition to the respondent,[43] including:

- The respondent's spouse;
- If there is no spouse, then an adult who has been living with the respondent for at least six months in the year before the petition is filed;
- All adult children and parents;
- If there is no spouse, adult child, or parent, then at least one adult in the closest degree of kinship to the respondent who can be found with reasonable effort;
- The respondent's treating physician;
- Each person responsible for the respondent's care or custody;
- Each legal representative;[44]
- Each person nominated as guardian by the respondent; and
- Each person nominated as guardian by the petitioner.

While the foregoing identifies the minimum requirements of the statute, there is no such thing as too much notice. The practitioner should not hesitate to include stepchildren, adult siblings, nieces and nephews, ex-spouses, in-laws, or friends and neighbors who may have significant connections to the respondent, even if their position may be antagonistic to that of the petitioner. Any person may ask the court for permission to participate in the guardianship proceeding, which the court may grant in the best interest of the respondent.[45]

§ 19.3.11—Waivers of Service or Notice

The respondent is not permitted to waive notice.[46] Personal service may not be avoided merely because the petitioner claims that the respondent would not understand the papers or it would be too upsetting. This change under the Colorado Uniform Guardianship and Protective Proceedings Act ensures compliance with basic due process considerations. Other interested parties may still waive service (JDF 719). Once a guardianship is established, the court may modify the ongoing notice requirements if satisfied that it would be in the best interests of the respondent.

§ 19.3.12—Emergency Guardianship

The concept of emergency guardianship replaces the former provisions relating to "temporary guardianship." An emergency guardian may be appointed without strict compliance with due process notice provisions only if the court finds that substantial harm to the respondent's health, safety, or welfare would likely occur without such intervention, and that no one else appears to have the authority

and willingness to act.[47] Most true medical crises do not require appointment of an emergency guardian as doctors generally have the right to treat an individual in accordance with accepted medical standards in life-threatening situations.

Emergency guardianship is limited to 60 days. This short leash helps minimize abuse of the emergency guardianship process. However, if permanent orders cannot enter within 60 days and the ongoing protection of a guardian is still required, the court may consider extending the guardianship until a full hearing can be conducted.

Appointment of counsel to represent the respondent throughout the emergency guardianship is mandatory immediately upon appointment of an emergency guardian. This also helps protect the respondent's due process interests. The respondent has the right to hearing on the appointment of the emergency guardian, which must be conducted within 14 days of the court's receipt of the request for hearing. This tracks current due process safeguards found in the mental health code. *Ex parte* appointment of an emergency guardian should be supported by testimony, not merely affidavit, that the respondent would be substantially harmed if the appointment were delayed.

Advance notice is not required for an emergency guardianship, but best practice dictates providing such notice whenever possible. Use the Notice of Hearing to Respondent (Adult or Minor) (JDF 807) and Notice of Hearing to Interested Persons (JDF 806) to provide such advance notice whenever feasible, attaching a copy of the Petition for Appointment of Guardian for Adult (JDF 841). If the respondent is not present at the hearing, regardless of whether advance notice is given, notice of the appointment of an emergency guardian must be given to the respondent within 48 hours after the appointment. Use the Notice of Appointment of Emergency Guardian and Notice of Right to Hearing (JDF 844) for this purpose, attaching the Order Appointing Emergency Guardian for Adult (JDF 843).

Appointment of an emergency guardian is not a determination of incapacity, and the emergency guardian's authority should be limited to the powers specified in the order of appointment.

Presently, there is little uniformity among the courts as to what circumstances constitute an emergency sufficient to dispense with due process requirements. In this author's experience, emergency appointments have been made for medical treatment decisions when no proxy or agent was available; for emergency placement in a nursing home for evaluation; for placement due to eviction or loss of a caregiver; for protection against financial, emotional, and physical abuse; and for protection against self-neglect when support services have been refused. The need for an emergency guardian should be elaborated upon in the petition on JDF 841. Best practice suggests modifying the caption of the petition to read, for example, "Forthwith Petition for Appointment of Emergency Guardian."

Check with the probate registrar or division clerk as to local practice and procedure. Some courts will docket a hearing on a forthwith basis, while others will leave it to counsel to find a judge available to hear the matter on an expedited basis. Be sure to bring the matter to the attention of the probate registrar or the division clerk and request assistance in expediting the case. Denver Probate Court also has an expedited docket for cases that are not emergent but could become critical if set upon the court's routine docket.

Whenever seeking appointment of an emergency guardian, consider whether 14 days' notice could be provided without the likelihood of substantial harm to the respondent. If the court can accommodate an expedited hearing with 14 days' notice, it may be possible to avoid the time and expense of an emergency hearing and mandatory appointment of counsel, as well as the second hearing on permanent orders.

§ 19.3.13—Rights of the Respondent

The respondent has a variety of rights in guardianship proceedings and is entitled to be present in person at court hearings. In fact, the respondent is required to attend the proceedings unless excused by the court for good cause. The respondent is also entitled to present evidence and subpoena witnesses and documents. The respondent may examine witnesses — including the court-appointed physician, psychologist, or other evaluator and the court visitor — and otherwise participate in the hearing.[48] The hearing may be held in a manner that reasonably accommodates the respondent. Some courts may be willing to hold the hearing in the hospital or nursing home, or may permit parties to attend by telephone. In some instances, reasonable accommodation may mean providing an assistive hearing device if the respondent suffers from hearing loss, or a translator if English is not the respondent's first language. Counsel should always seek the court's guidance on such matters well in advance of the hearing.

The respondent has the right to be represented by counsel.[49] Although the appointment of counsel is mandatory in emergency guardianships, the court does not automatically appoint counsel otherwise. If the respondent requests counsel, the determination of whether to appoint counsel is not discretionary with the court, even if it appears that the respondent is unable to maintain an attorney-client relationship.[50] Appointment of counsel is also mandatory if recommended by the visitor or should the court determine that the respondent needs such representation. The use of the court visitor serves as another check on right to counsel, helping to protect the respondent's due process interests. Counsel should review the Visitor's Report and should confer with court staff in advance should the visitor recommend appointment of an attorney, or a guardian *ad litem*, as it may be necessary to reschedule the hearing on permanent orders.

The respondent's right to counsel prior to being adjudicated an incapacitated person has been long established under *Estate of Milstein*.[51] Important statutory changes effective August 10, 2016, with the adoption of C.R.S. § 15-14-319 make it clear that the right to counsel may be extended post-adjudication. However, if the court finds by clear and convincing evidence that the ward lacks sufficient capacity to provide informed consent for representation, a guardian *ad litem* is to be appointed. The right to counsel is retained for the limited purpose of interlocutory appeal of the court's decision as to the right to counsel. The adoption of this new provision restates the court's inherent right to appoint counsel for the ward should the court determine that the ward needs such representation.

It is important to understand the distinction between the role of court-appointed counsel and that of the guardian *ad litem*. Counsel for the respondent must advocate zealously in representing the respondent's wishes; however, the guardian *ad litem* serves as an officer of the court, advising as to the best interests of the respondent, regardless of the respondent's wishes.[52] The role of the guardian *ad litem* is separate and distinct from that of the attorney representing the incapacitated person and should not be confused.[53] Counsel for the respondent should also bear in mind that fiduciary obligations may be implied pursuant to Colo. RPC 1.14 regarding clients under a disability.[54]

The court may determine the amount of compensation to be paid to counsel out of the estate of the respondent. However, if the respondent cannot afford to pay fees, the court will make appropriations from state judicial funds to pay for counsel. Fees due court-appointed visitors, attorneys, physicians, and guardians *ad litem* are set by the court.[55] Waivers of fees and court costs are available generally based upon the *petitioning* party's assets, not the assets of the respondent. To waive fees, submit a Motion to File Without Payment and Supporting Financial Affidavit (JDF 205) and Finding and Order Concerning Payment of Fees (JDF 206).

§ 19.3.14—Findings and Order Appointing Guardian

The findings of the court should be set forth in the Order Appointing Guardian for Adult (JDF 848). (If appointing an emergency guardian, use JDF 843.) Appointment of a guardian is only made if the court finds by clear and convincing evidence that the respondent is an incapacitated person, as defined by statute, and that the needs of the respondent cannot be met by less restrictive means including the use of reasonably available technological assistance. The Order Appointing Guardian should be submitted to the court in advance of the hearing whenever possible.

The form of the Order Appointing Guardian also sets forth the nature and degree of incapacity, as well as the limitations or restrictions imposed upon the guardian. The legislature directed that the court grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs, and enter orders that will encourage the development of the ward's maximum self-reliance and independence.[56] To this end, the practitioner is encouraged to craft the guardianship creatively, limiting the powers of the guardian whenever possible and appropriate, thus preserving the dignity and self-esteem of the ward as much as practicable. For instance, a guardian may be restricted from placing a fairly lucid and self-sufficient individual in a care facility without further hearing, if support services can be provided to safely maintain the individual in his or her own home.

The Order Appointing Guardian also directs to whom future notices must be provided. A Notice of Appointment of Guardian and/or Conservator (JDF 812) must be delivered to the respondent and all parties identified in the initial petition within 30 days of the appointment. A copy of the Order Appointing Guardian is attached to the Notice of Appointment.

In addition, the Order Appointing Guardian will specify the due date of the initial Guardian's Report – Adult (JDF 850), typically within 60 days from the date of appointment, and the date due annually thereafter. The Order Appointing Guardian should also specify who should receive the Guardian's Report.

The courts are increasingly making use of various means to advise newly appointed guardians of their duties and responsibilities. In some jurisdictions, the Acknowledgment of Responsibilities – Conservator and/or Guardian (JDF 800) must first be completed and signed, acknowledging that the guardian understands the fiduciary duties and reporting requirements before Letters of Guardianship will issue. A Guardian's Manual is available from the courts or may be downloaded from the Colorado State Judicial Branch website.[57] The Guardian's Manual reinforces various duties the guardian has and may assist in completing the annual Guardian's Report.

§ 19.3.15—Guardian's Report

The initial Guardian's Report – Adult (JDF 850) is due within 60 days of appointment.[58] The same form is used for the annual Guardian's Report as is used for the initial Guardian's Report, thus making it easier to complete and to compare and contrast from year to year. Most guardians are probably quite capable of completing the Guardian's Report with a minimum of involvement from the attorney. The Guardian's Report should contain:

- The current mental, physical, and social condition of the ward;
- The living arrangements for all addresses of the ward during the reporting period;
- The medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;
- A summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;
- Whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest;
- Plans for future care; and
- A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

Counsel for the guardian should always review the Guardian's Report before it is filed to ensure that it has been completed satisfactorily and to assist with any questions the guardian may have or issues that should be brought to the court's attention. Be sure that the certificate of service at the end of the Guardian's Report includes all interested persons specified in the Order Appointing Conservator.

There is no statutory requirement that the Guardian's Report be specifically approved by the court; however, if the respondent is not in agreement with the care plan or if other interested parties are antagonistic, it may be prudent to do so. If it is anticipated that the care plan outlined in the Guardian's Report will be uncontested, it may be set for hearing on the court's "non-appearance docket" in accordance with C.R.P.P. 8.8. The matter is set on the court's non-appearance docket at least 14 days from the date of the certificate of mailing. It is not necessary for parties to appear at this hearing, as no testimony will be taken. However, if a party wishes to object to a care plan laid out in the Guardian's Report, the objection must be filed with the court on or before the non-appearance date. If an objection is filed in writing at or prior to the hearing, the burden is upon the objecting party within the next 14 days to set the matter for an appearance hearing; otherwise, the objection is dismissed with prejudice.

The motion to allow the Guardian's Report should be set on the court's non-appearance docket and served by mail on all interested parties with a Notice of Non-Appearance Hearing Pursuant to C.R.P.P. 8.8 (JDF 712). The certificate of mailing included on JDF 712 is sufficient for proof of service in these types of matters. Uncontested amendments to the care plan outlined in the Guardian's Report may be handled through the non-appearance docket, even if the original plan was adopted after notice and hearing.

In addition to the requirement of the Guardian's Report, the guardian is also required to account for the ward's assets if the guardian controls property or income of the ward.[59] The same accounting form that is used in decedent's estates (JDF 942) is suitable for these purposes and should be

filed along with the Guardian's Report. If the only asset handled by the guardian is the ward's Social Security earnings, the report submitted to the Social Security Administration is likely sufficient.

In the event of a significant change in the care plan, best practice is to provide the court and interested parties with a status report. For instance, if the ward can no longer be maintained at home with support services and is transferred to a skilled nursing facility, it is appropriate to submit a status report to that effect. One requirement imposed since the adoption of the Colorado Uniform Guardianship and Protective Proceedings Act requires the guardian to advise the court upon the death of the ward.[60] Use Notice of Death (JDF 853) for this purpose.

§ 19.3.16—Appointment by Will or Other Written Instrument

Under prior law, the spouse and parents of an incapacitated person were permitted to make an appointment of a guardian in a will, or in a separate written instrument signed by the spouse or parent and attested by two witnesses.[61] Many courts refused to make such administrative appointments, as it was impossible to reconcile these provisions with due process requirements of notice and hearing. Colorado no longer has such provisions, and all adult guardianships require judicial appointment after notice and hearing. By contrast, guardianship for minors still allows testamentary appointment and appointment by written instrument as the nature of incapacity is due to minority and does not entail the same due process considerations.[62]

§ 19.3.17—Termination of Guardianship

Senate Bill 11-083 was passed effective August 10, 2011, significantly amending C.R.S. § 15-14-318, outlining specific procedures for termination or modification of a guardianship when initiated by the ward. The procedures include the filing of a written guardian's report that may address whether an attorney, guardian *ad litem*, or visitor should be appointed for the ward; whether additional investigation or evaluation should be conducted; and whether and to what extent the guardian should be involved in the termination proceedings. Practitioners are advised to review any amendments and revisions to the statute carefully before commencing an action to terminate or modify the guardianship.

The authority of a guardian terminates upon the death of the ward. No final Guardian's Report is required; however, the guardian is required to promptly advise the court of the ward's death (use JDF 853). The authority of a particular guardian may also be terminated upon the guardian's death or incapacity, upon the removal or resignation of the guardian, or upon the determination that the ward is no longer incapacitated.[63] A guardian may be removed upon petition of the ward or any person interested in his or her welfare, if in the best interest of the ward. The guardian may also petition the court to resign, and the court may make appropriate orders for the appointment of a successor guardian. Bear in mind that resignation by a guardian may not always be granted by the court, particularly if the primary reason is lack of funds to pay the guardian's fees or expenses.

The court may also direct a resigning guardian to propose a suitable successor so that the ward's interests continue to be protected. In any event, termination of a guardianship does not affect the liability of a guardian for prior acts or the obligation to account for the assets of the ward. There are no formal procedures outlined in the statutes to obtain a decree of discharge as to the guardian's liabilities.

If continuity of guardianship authority is required, the court may appoint a co-guardian or a successor guardian in advance who may assume authority by filing an acceptance of appointment.[64]

§ 19.4 • CONSERVATORSHIP

§ 19.4.1—Protected Persons

Again, bear in mind the distinction between guardianship and conservatorship as discussed in the introduction to this chapter. The conservator normally exercises authority only over the assets or estate of a "protected person."[65] However, a conservator may exercise quasi-guardian-type authority through the purse strings — *e.g.*, hiring homemaker or visiting nurses services. The statutory framework distinguishes between protected persons (conservatorships and protective proceedings) and wards (guardianships for incapacitated persons), although the terms are frequently used interchangeably, if not correctly. When dealing with the elderly, the authority of the conservator should not be confused with that of the guardian, even though one individual may serve in both capacities. An order appointing a conservator is not a determination of incapacity as to the protected person.[66] If a conservator will be required in addition to a guardian, the practitioner should consider filing both petitions together to save court time and expense. A separate filing fee of $164 may be required for each petition, unless filed at the same time.

§ 19.4.2—Protective Proceedings

Protective proceedings also encompass other protective orders besides conservatorship. These include authorizing single transactions or specific authority to preserve and protect assets. The process for appointing a conservator is referred to as "protective proceedings."[67] The statutory requirements to appoint a conservator differ somewhat from those necessary to appoint a guardian and consist of two tiers. First, a conservator may be appointed if the court determines by clear and convincing evidence that the protected person is unable to manage his or her property due to an inability to effectively receive or evaluate information or both, or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance.[68] This standard tracks the definition of incapacitated person,[69] even though conservatorship does not result in a determination of incapacity. A conservator may also be appointed for an individual who is missing, detained, or unable to return to this country without the need to establish incapacity. Second, it must be established by a preponderance of evidence that the protected person has property that will be wasted or dissipated without proper management, or the protected person needs funds for his or her support, care, and welfare, or that of his or her dependents, and protection will facilitate getting those funds.[70]

In certain situations where the assets are less than $10,000, use of the small estate proceedings under C.R.S. § 15-14-118 may be a more appropriate and cost-effective alternative. Consideration should also be given to use of C.R.S. § 15-14-412 to authorize a protective arrangement or single transaction, which may be another appropriate alternative to full conservatorship.

§ 19.4.3—Venue

Venue for the purposes of conservatorship, or protective proceedings, differs slightly from that of guardianship. Venue for protective proceedings is appropriate in the respondent's county of residence, regardless of whether a guardian has been appointed elsewhere. If the respondent is a non-resident, then venue can be had in any county where the respondent has property.[71]

§ 19.4.4—Priority — Who May Serve As Conservator

Priorities for purposes of conservatorship differ subtly from those in guardianship. In either type of proceeding, the statutory priorities remain as guidelines that are not binding upon the court. The court can appoint an individual of lower priority or no priority at all (such as the judicial district's public administrator or a private fiduciary) for good cause shown.[72] Among individuals having equal priority, the court should select the person who is best qualified to serve. A conservator must be 21 years of age or older, but need not be a resident of Colorado.[73] As with priorities under guardianships, the order of priority changed with the adoption of the Colorado Uniform Guardianship and Protective Proceedings Act so that the spouse is not automatically presumed to have highest priority. The statutory order of priority[74] for appointment as conservator follows:

1) A conservator, guardian of the estate, or other court-appointed fiduciary from the jurisdiction where the protected person resides;
2) A person nominated as conservator by the respondent, including a specific nomination as conservator if made in a durable power of attorney;
3) An agent appointed under a general durable power of attorney for property or in a designated beneficiary agreement;
4) The spouse of the respondent;
5) An adult child of the respondent;
6) A parent of the respondent; and
7) An adult who has resided with the respondent for more than six months immediately preceding the filing of the petition.

In addition, a pre-existing conservator, spouse, adult child, or parent may transfer his or her priority to a third party by written designation.[75] There is no comparable right to transfer priority under guardianship unless the spouse or parent is predeceased. Where the respondent's nomination of a conservator is at issue, the nomination only creates priority if the respondent had sufficient capacity to express a preference at the time the nomination was made.[76] This serves to temper the effects of undue influence and written instruments executed shortly before or after the individual may have lost capacity. In *In re Estate of Runyon*,[77] where there had been no testimony by the respondent or by medical experts as to the respondent's capacity to nominate, the court of appeals remanded with instructions to hold such an evidentiary hearing.

In addition to establishing priorities among those who may serve as conservators, certain prohibitions exist as to who may serve. For obvious reasons of inherent conflict of interest, an owner, operator, or employee of a long-term care facility is prohibited from serving as conservator unless related to the respondent by blood, marriage, or adoption.[78]

The general prohibition against professionals serving in dual roles applies in conservatorships as well as guardianships. Professionals generally may not serve as both conservator and guardian, conservator and direct service provider, or guardian and direct service provider.[79] This prohibition against serving in dual roles does not apply to family members, ironically. Neither a conservator nor guardian may hire the same person to act as both care manager and direct service provider, regardless of whether the conservator or guardian is a professional or a family member. In many instances, it may be more cost effective and efficient to have a single professional serving in both capacities as conservator and guardian. The limited availability of qualified professional fiduciaries in some parts of the state may

also dictate against such prohibitions. Consequently, the court has a safety valve and may always waive the prohibition for good cause shown and appoint a single professional to serve in both capacities. Increased reporting requirements under the Colorado Uniform Guardianship and Protective Proceedings Act for both conservators and guardians also help to reduce abuse of fiduciary authority by both professionals and family members.

§ 19.4.5—Procedure for Court Appointment of Conservator

The Petition for Appointment of Conservator – Adult (JDF 876) may be filed by the respondent, anyone interested in the respondent's affairs, or anyone adversely affected by the lack of management over the respondent's assets, which would include creditors. The petition should specify the basic information identifying the respondent and the petitioning party, including the nature of the petitioner's interest. A statement as to the property and its approximate value, and the income of the respondent, should be included along with an explanation of the need for a conservator. The proposed conservator should be identified and the basis for that person's priority stated.[80]

After the Petition for Appointment of Conservator – Adult is filed and the $164 filing fee paid, the matter is set for hearing. The practitioner also must prepare a proposed Order Appointing Conservator for Adult (JDF 878), the Acceptance of Office (JDF 805), and Letters of Conservatorship – Adult (JDF 880).

The Letters of Conservatorship serve as proof to third parties of the conservator's legal authority. Unlike Letters of Guardianship, where only a few certified copies may be needed, practice dictates that several certified copies of the Letters of Conservatorship are often necessary, as each out-of-state financial institution, insurance company, and brokerage house is likely to insist on having a certified copy. If the conservatorship estate will include real property, it is advisable to record the Letters of Conservatorship to establish public record of the conservator's authority and to limit unauthorized loans against the property.

If the proposed conservator is a non-resident of Colorado, the Irrevocable Power of Attorney Designating Clerk of Court as Agent for Service of Process (JDF 721) is also required. This enables the court to assert jurisdiction over the non-resident conservator so that neither the court nor others need jump through hoops to serve the conservator.

§ 19.4.6—Acceptance of Office

See § 19.3.7, "Acceptance of Office."

§ 19.4.7—Court Visitors

A change from the previous statute makes appointment of a visitor mandatory for adult protective proceedings, with one narrow exception.[81] The court visitor performs a vital function in the checks and balances upon the respondent's due process rights. The visitor essentially serves as the "eyes and ears" of the court and is required to advise the court if the respondent requests an attorney or the visitor thinks that appointment of an attorney is advisable. The Denver Probate Court charges a visitor fee of $100. In most other Denver metropolitan courts, the visitors charge $25 per hour and bill the petitioning party. Many courts maintain a roster of visitors, who must be disinterested persons with such training as the court deems appropriate. Check with the division clerk to determine whether the court issues the Order Appointing Court Visitor (JDF 809), as is the practice in the Denver Probate Court and Denver metropolitan district courts, or whether counsel is expected to prepare the form.

The court visitor is required to interview the respondent in person and explain the substance of the petition. The visitor is instructed to explain the nature, purpose, and effect of the conservatorship proceedings as well as the conservator's authority, to the extent that the respondent is able to understand. The visitor is required to advise the person of the respondent's rights, which include the rights to counsel and to be present at the hearing (JDF 798). The visitor should also inform the respondent that the costs and expenses of the conservatorship proceeding will be paid from the respondent's assets, unless the court directs otherwise. If the respondent lacks the resources to pay for an attorney, the court will appoint counsel at no cost to the respondent, as the right to counsel is fundamental. The visitor should attempt to ascertain the respondent's views with respect to the proposed conservator and the scope of the conservator's powers.[82] The visitor also interviews the proposed conservator, physicians, and other caregivers, and should visit the respondent's current home and any proposed change in dwelling. If the practitioner anticipates seeking permission to excuse the respondent from the hearing, it may be advisable to specifically request the court to have the visitor make a recommendation on that issue.

The Court Visitor's Report (JDF 810) should be filed in advance of the hearing. The courts tend to rely heavily upon the Court Visitor's Report, so counsel is well advised to be familiar with the format of the report and the visitor's recommendations. The visitor does not normally appear at the hearing; however, in contested matters, it may be desirable to subpoena the visitor as a witness.

§ 19.4.8—Physicians' Letters and Professional Evaluations

In 2015, the court of appeals determined that medical evidence is not required to establish the need for conservatorship.[83] However, best practices dictate that a doctor's report or other professional evaluation should be attached to the Petition for Appointment of Conservator when it is filed with the court, even though not strictly required by statute. This tends to minimize the filing of casual or frivolous conservatorship petitions. However, it is not always possible to include a doctor's report due to an emergency filing or when the respondent refuses to be examined by a physician. HIPAA[84] makes it difficult to obtain medical records in advance without the respondent's consent. In such circumstances, it may be necessary to file a motion for a professional evaluation by a physician, psychiatrist, psychologist, or other professional qualified to evaluate the respondent's particular impairment prior to the hearing on permanent orders.[85] The respondent may also request such a professional evaluation.[86]

The professional evaluation should include a description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any; an evaluation of the respondent's mental and physical condition, and, if appropriate, educational potential, adaptive behavior, and social skills; and a prognosis for improvement and recommendation as to rehabilitation and the date of any assessment or examination that the report is based upon, as set forth at C.R.P.P. 27.1.

Frequently, the physician's letter is conclusory, especially if the doctor has not been trained in assessing for capacity. Care should be taken to obtain appropriate documentation and a thorough evaluation to ensure that due process concerns are met. Functional assessments by geriatric care managers, neuropsychologists, or qualified social workers or other health-care professionals often provide more useful evaluations. The report should be signed by the evaluator and should be on the professional's letterhead. To minimize the costs of litigation, counsel may wish to consider stipulating to the admissibility of the evaluations. This will also serve to save court time. Otherwise, counsel should anticipate that the evaluator or other qualified professionals may need to be called as witnesses in contested proceedings.

§ 19.4.9—Due Process and Notice in Protective Proceedings

Notice requirements must be given special attention, as with guardianships. Due process requires a minimum of 14 days' advance notice, unless an emergency exists that warrants appointment of a special conservator without notice and hearing. In emergencies such as the shutoff of utilities or imminent eviction, follow the procedures for special conservatorships. Again, the practitioner is referred to *Grant v. Johnson* for an excellent discussion of notice issues.[87] Largely in response to due process concerns raised in *Grant*, a particular form of notice of hearing was adopted for use when serving the protected person, which specifically alerts the individual in bold print to the potential loss of control over financial affairs. The notice must state that the respondent is required to be physically present at the hearing unless excused by the court.

The respondent must be personally served with the Notice of Hearing to Respondent (Adult or Minor) (JDF 807). The affidavit of personal service must then be completed by the process server. As with guardianships, failure to personally serve the respondent deprives the court of jurisdiction, which precludes the court from granting the petition for permanent orders.[88] Failure to serve other interested parties is procedural, and not jurisdictional, and therefore does not prevent the court from appointing a conservator or entering other protective orders.[89] Special conservatorships, the corollary to emergency guardianships, may be had without prior notice and hearing if circumstances warrant; however, the special conservator's authority is limited to only that authority granted in the order of appointment.[90] (*See* § 19.4.11, "Special Conservatorship.")

The Notice of Hearing to Interested Persons (JDF 806) is used to provide notice to interested persons other than the respondent and may be served by mail. All Notices of Hearing must be served at least 14 days before the hearing date to comply with minimum due process requirements.[91] Both forms of the Notice of Hearing are served with the conservatorship petition attached. However, when filing the Notices of Hearing with the court, the petitions should be omitted.

"Interested persons" is a flexible term under the Colorado Probate Code and may vary depending upon the particular purpose and proceeding. Notice requirements may be considerably expanded from those required in guardianship. Prudent practice dictates that the practitioner confirm with the court whether a narrow or expanded interpretation is given to the notice statutes in conservatorship. If the more expansive interpretation is required by the court, then notice must be given to all "interested persons" as defined in the Colorado Probate Code.[92] This would include the respondent, the respondent's spouse, heirs, devisees, children, creditors, beneficiaries, and others with a property right or claim against the estate. If a narrower interpretation is employed, notice need only be given to the respondent and the other individuals identified in the Petition for Appointment of Conservator – Adult (JDF 876), which include:

- The respondent's spouse;
- If there is no spouse, then an adult who has been living with the respondent for at least six months in the year before the petition is filed;
- All adult children and parents;
- If there is no spouse, adult child, or parent, then at least one adult in the closest degree of kinship to the respondent who can be found with reasonable effort;
- The respondent's treating physician;
- Each person responsible for the respondent's care or custody;

- Each legal representative;
- Each person nominated as conservator by the respondent; and
- Each person nominated as conservator by the petitioner.

Even for the purposes of this narrower definition, any legal representative must be included. "Legal representative" is a defined term under the Colorado Uniform Guardianship and Protective Proceedings Act at C.R.S. § 15-14-102(6), which includes representative payees under Social Security, pre-existing guardians and conservators, trustees of trusts of which the respondent is a beneficiary, custodians of custodianship property of which the respondent is a beneficiary, and agents under a power of attorney, whether for health care or property. In addition, if the respondent is already receiving Medicaid benefits or eligibility is contemplated under the conservatorship, the Colorado Department of Health Care Policy and Financing is also considered an interested person and must be given notice.[93]

While the foregoing identifies the minimum requirements of the statute, there is no such thing as too much notice. The practitioner should not hesitate to include stepchildren, adult siblings, nieces and nephews, ex-spouses, in-laws, or friends and neighbors who may have significant connections to the respondent, even if their position may be antagonistic to that of the petitioner. Any person may ask the court for permission to participate in the conservatorship proceeding, which the court may grant in the best interest of the respondent.[94]

Due process also requires attendance at the conservatorship hearing. To that extent, the law imposes upon the petitioning party an affirmative duty to make every reasonable effort to ensure the respondent's attendance at the hearing.[95] For good cause, the court may waive the appearance of the respondent, but such motion should be filed well in advance of the hearing.

§ 19.4.10—Waivers of Service or Notice

The respondent is not permitted to waive notice.[96] Personal service may not be avoided merely because the petitioner claims that the respondent would not understand the papers or it would be too upsetting. This change under the Colorado Uniform Guardianship and Protective Proceedings Act ensures compliance with basic due process considerations. Other interested parties may still waive service (JDF 719). Once a conservatorship is established, the court may modify the ongoing notice requirements if satisfied that it would be in the best interests of the respondent.

§ 19.4.11—Special Conservatorship

Special conservatorship under the Colorado Uniform Guardianship and Protective Proceedings Act replaces the former provisions for "temporary" or emergency conservatorships and may be much more limiting than the former statutes. The special conservatorship provisions allow the court to issue orders to preserve and apply the property of the respondent for the support of the respondent or the respondent's dependents by appointing a special conservator. Such orders may be issued after a preliminary hearing without notice to others, while a petition for appointment of a conservator or other protective order is pending.[97] Use the same basic petition as for initiating a routine conservatorship (JDF 876); however, modify the caption to alert the court if a forthwith hearing is requested in order to appoint a special conservator. Care should be taken to ensure that the Order Appointing Special Conservator – Adult or Minor (JDF 877) specifies what authority is granted to the special conservator, as third parties will appropriately view this as a form of limited conservatorship, only acknowledging the authority set forth in the appointing order and Letters of Special Conservatorship – Adult (JDF

880). This use of the special conservatorship is not time limited by statute in the fashion that an emergency guardianship is restricted to 60 days. Rather, the limitation is based upon the authority and the pendency of the next hearing date.

Another provision permits the court to appoint a special conservator to assist in the accomplishment of a protective arrangement or other authorized transaction.[98] This authority will be set forth with specificity in the Order Appointing Special Conservator – Adult or Minor (JDF 877). An example for such use would be the sale of the marital residence held in joint tenancy where the husband is incapacitated and the wife has no power of attorney under which she could convey title. The court can authorize the wife to act as special conservator on behalf of her husband and direct that the proceeds are to be deposited into their joint account. Since the wife may continue to manage the funds in the joint account, a full conservatorship may not be warranted.

Unlike an emergency guardianship, the special conservatorship statutes do not contain any mandatory appointment of counsel provisions, nor are there any extraordinary notice requirements. However, the court may always exercise its discretion to appoint counsel and impose notice requirements greater than those set forth in the statutes.

In the event that time is of the essence, it is important to address the bond requirement with the court at the first hearing. The statutory presumption of bond[99] must often be waived in case of emergency. (*See* § 19.4.14, "Bond.") It may take several days or weeks to obtain an appropriate conservator or fiduciary bond. This delays the issuance of the Letters of Special Conservatorship, because the bond must first be filed with the court. This effectively prevents the special conservator from acting until the letters are issued.

§ 19.4.12—Rights of the Respondent in Protective Proceedings

The rights of the respondent in protective proceedings mirror those in guardianship. The respondent is entitled to be present in person at court hearings, and is required to attend unless excused by the court for good cause.[100] The respondent is also entitled to present evidence and subpoena witnesses and documents. The respondent may examine witnesses, including the court-appointed physician, psychologist, or other evaluator, and the court visitor and otherwise participate in the hearing. The hearing may be held in a manner that reasonably accommodates the respondent. Some courts may be willing to hold the hearing in the hospital or nursing home, or may permit parties to attend by telephone. In some instances, reasonable accommodation may mean providing an assistive hearing device if the respondent suffers from hearing loss, or a translator if English is not the respondent's first language. Counsel should always seek the court's guidance on such matters well in advance of the hearing.

The respondent has the right to counsel, and the court must appoint an attorney if so requested by the respondent or the court visitor.[101] As indicated in § 19.4.11, "Special Conservatorship," there is no mandatory appointment of counsel in the event of an emergency appointment. However, the court always has the discretion to appoint counsel or a guardian *ad litem* to protect the interests of the respondent. If the respondent requests counsel, the determination of whether to appoint counsel is not discretionary with the court, even if it appears that the respondent is unable to maintain an attorney-client relationship.[102]

The respondent's right to counsel prior to being adjudicated a protected person has been long established under *Estate of Milstein*.[103] Important statutory changes effective August 10, 2016, with the adoption of C.R.S. § 15-14-434 make it clear that the right to counsel may be extended post-adjudication. However, if the court finds by clear and convincing evidence that the protected person lacks sufficient capacity to provide informed consent for representation, a guardian *ad litem* is to be appointed. The right to counsel is retained for the limited purpose of interlocutory appeal of the court's decision as to the right to counsel. The adoption of this new provision restates the court's inherent right to appoint counsel for the protected person should the court determine that the protected person needs such representation.

It is important to understand the distinction between the role of court-appointed counsel and that of the guardian *ad litem*. Counsel for the respondent must advocate zealously in representing the respondent's wishes; however, the guardian *ad litem* serves as an officer of the court, advising as to the best interests of the respondent, regardless of the respondent's wishes.[104] The role of the guardian *ad litem* is separate and distinct from that of the attorney representing the protected person and should not be confused.[105] Counsel for the respondent should also bear in mind that fiduciary obligations may be implied pursuant to Colo. RPC 1.14 regarding clients under a disability.[106]

§ 19.4.13—Findings and Order Appointing Conservator

The findings of the court should be set forth in the Order Appointing Conservator for Adult (JDF 878). If a special conservator is sought, use the Order Appointing Special Conservator – Adult or Minor (JDF 877). Appointment of a conservator is only made if the court finds by clear and convincing evidence that a basis exists for imposing the conservatorship because the respondent is unable to manage property and business affairs due to an inability to effectively receive or evaluate information or both or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance. (Note that this is essentially the same standard as required to establish incapacity for guardianship; however, no legal determination of incapacity results from imposition of conservatorship alone.[107]) Alternatively, the court may impose a conservatorship because the respondent is missing, detained, or unable to return to the United States.

In addition, the court must find by a preponderance of evidence that the respondent has property that will be wasted or dissipated without proper management, or that the respondent or his or her dependents require money for support, care, education, health, and welfare. Such protection must be necessary or desirable to obtain or provide money. The form of order allows for the practitioner to insert other bases to support a request for a single transaction or other protective orders.

The court must find that the relief granted is the least restrictive alternative consistent with the court's findings as necessitated by the respondent's limitations and demonstrated needs. The order must be designed to encourage the development of maximum self-reliance and independence of the respondent.[108] The court must find that the appointment of a conservator will be in the best interests of the respondent.[109] The Order Appointing Conservator should be submitted to the court in advance of the hearing whenever possible.

In addition, the Order Appointing Conservator will specify the due date of the initial Conservator's Inventory with Financial Plan and Motion for Approval (JDF 882), typically within 90 days from the date of appointment. The conservator will also be directed when to file the

Conservator's Report (JDF 885), typically on an annual basis thereafter. The Order Appointing Conservator should also specify who should receive these filings. The conservator is required to serve a Notice of Appointment of Guardian and/or Conservator (JDF 812) along with the Order Appointing Conservator on the protected person and all others specified in the appointing order within 30 days after appointment.

The courts are increasingly making use of various means to advise newly appointed conservators of their duties and responsibilities. In some jurisdictions, the Acknowledgment of Responsibilities – Conservator and/or Guardian (JDF 800) must first be completed and signed, acknowledging that the conservator understands the fiduciary duties and reporting requirements before Letters of Conservatorship will issue. A Conservator's Manual is available from the courts or may be downloaded from the Colorado State Judicial Branch website.[110] The Conservator's Manual reinforces various duties the conservator has and may assist in completing the Inventory with Financial Plan and the annual Conservator's Report.

§ 19.4.14—Bond

Before the Letters of Conservatorship can issue, proof of the conservator's bond must be filed with the court. A conservator's bond, also referred to as a fiduciary or probate bond, is required to ensure the faithful discharge of the conservator's fiduciary duties. With the adoption of the Colorado Uniform Guardianship and Protective Proceedings Act, the matter of a bond for the conservator has become presumptive rather than permissive. Unless the court makes specific findings as to why a bond should not be required, the court typically will impose a bond.[111] Currently, the premiums for a conservator's bond may be found at rates ranging from $460 to $600 per $100,000 annually. The cost of the bond is an expense of the conservatorship estate.

Reasons for waiving the bond vary among the different courts. If the waiver or reduction of bond is requested, the court may require the conservator to furnish a credit report or other financial statements to support the request.[112] If the conservator is an experienced professional fiduciary known to the court, the bond may be waived. Alternatively, the professional may have a general bond or other insurance that may satisfy the court and other parties. The fact that the conservator is a family member, in and of itself, may not justify waiving the bond. Exploitation most often happens at the hands of a family member. Another reason given for waiving bond is that the conservatorship assets are relatively modest, thus not justifying the expense.

The amount of the bond is based upon the aggregate value of the conservatorship assets under the conservator's control, plus one year's estimated income. The amount of bond may be reduced by placing appropriate restrictions on certain assets.[113] Creative use of restrictions often results in significant reduction in the amount of the bond required. For example, a common restriction on the conservator's authority limits the sale of real estate without prior court authorization. In such cases, the value of the real estate can be excluded from the amount of the bond. Another means to reduce the risk to the estate is to seek an order placing assets in restricted accounts that require a court approval to withdraw funds. Use the Order for Deposit of Funds to Restricted Account (JDF 866). This requires the bank or brokerage house to acknowledge the court's jurisdiction and not release funds without a certified copy of an order authorizing withdrawal (JDF 867). Another means to reduce the value of the assets under bond is to restrict access to principal, but to allow the income to be paid over into the conservator's operating account.

Interested parties may seek to have the amount of the bond increased or decreased periodically. For instance, once the sale of restricted real estate has been approved, the net proceeds are unrestricted and may need to be considered in increasing the value of the bond. By the same token, the costs of nursing home care, which can easily exceed $72,000 annually, significantly decrease the value of the assets available, which would justify a reduction in the amount of bond.

The underwriter of the bond, or surety, typically pays much closer attention to the conservator's reporting than does the court. This becomes important because the statutory requirement for the courts to establish a monitoring system was not accompanied by an increase in judicial budgets to do so.[114] The courts must increasingly rely on other interested parties, and their counsel, to help monitor protective proceedings. This is also why the Conservator's Inventory with Financial Plan and Conservator's Report require more disclosure than previously. The surety becomes jointly and severally liable on the bond just as is the conservator for breach of fiduciary duty.[115] The surety is not liable if the action against the conservator is barred.[116] The surety becomes an interested person and should be included on all notices and filings in the protective proceedings, particularly the Conservator's Inventory with Financial Plan and Conservator Reports.[117]

§ 19.4.15—Continuing Review — Inventory, Financial Plan, and Conservator's Report

The court must determine the frequency and scope of its review, which will generally be contained in the Order Appointing Conservator for Adult (JDF 878). If not otherwise specified, annual accountings are routine. The conservator acts as a fiduciary and is required to observe the standard of care of a trustee.[118] The conservatorship is subject to the ongoing scrutiny of the court.

Within 90 days of appointment, a Conservator's Inventory with Financial Plan and Motion for Approval (JDF 882) is required to be filed with the court. It must be furnished to the protected person and anyone else specified in the appointing order, all of whom should be included in the certificate of service.

In cases prior to the Uniform Guardianship and Protective Proceedings Act, financial plans were not mandated by statute. It had been common practice in Denver Probate Court and El Paso County District Court to require the conservator to submit a financial plan for the management of the assets. Professional conservators have historically prepared financial plans as a matter of course, even if not required by the court. This practice standard has been incorporated into the statutory framework, and the financial plan is now required in all conservatorships after January 2001.[119] The Conservator's Inventory with Financial Plan and Motion for Approval (JDF 882) should be reviewed very carefully by the practitioner. The financial plan is simply a budget that sets forth projected income and expenditures. Use of the financial plan provides added protection for the conservator against claims for breach of fiduciary duty by obtaining court approval and adhering to its terms. The beginning figures for the financial plan should match up with those from the inventory. Monthly expenses should be identified and budgeted. Expenses that are not incurred on a monthly basis, such as taxes or insurance, should be annualized and divided by 12 to produce comparable monthly figures.

The financial plan should include assets and income, as well as expenditures to maintain the protected person, including nursing home or assisted-living costs, assistance in the home, therapies, medical expenses, care management, property management, food, clothing, guardian's fees, conservator's fees, other professional fees, and the like. If the conservator intends to liquidate or reinvest assets,

the court should be advised in the financial plan. If counsel will have ongoing involvement, consideration should be given to budgeting a certain amount for legal fees in the financial plan as well.

The financial plan should take into account the limitations of the protected person and, if so ordered by the court, encourage the participation of the protected person. Consistent with the concept of limited conservatorship, the protected person is to be encouraged to act in his or her own behalf and to work toward regaining the ability to manage his or her own affairs. In reality, this is much more difficult to accomplish than in theory.

As the need arises, the financial plan may be amended or modified upon notice and hearing. The conservator is required to amend the financial plan whenever there is a change in circumstance that requires a substantial deviation from the existing financial plan.[120] If it is anticipated that the matter will be uncontested, this type of situation lends itself well to informal administration though use of "non-appearance hearings."[121] Counsel sets the matter on the court's non-appearance docket. The hearing date must be at least 14 days from the date of the certificate of mailing, in accordance with C.R.P.P. 8.8. It is not necessary for parties to appear at this hearing, except to file an objection, which may be done by mail or e-filing. Generally, no testimony will be taken. If an objection is filed in writing at or prior to the hearing, the burden is upon the objecting party within the next 14 days to set the matter for an appearance hearing; otherwise, the objection is dismissed with prejudice. The motion or petition should be set on the court's non-appearance docket and served by mail on all interested or required parties with Notice of Non-Appearance Hearing Pursuant to C.R.P.P. 8.8 (JDF 712). The certificate of mailing included in JDF 712 is sufficient for proof of service in these types of matters.

For older cases predating the Colorado Uniform Guardianship and Protective Proceedings Act in 2001, the conservator generally was required only to file an annual accounting (JDF 942). This form of accounting is nothing more than a check register and is the same form that is still used for accountings in decedent's estates. Unless the court orders otherwise, the conservator may continue to file this form complying with the original order of appointment.[122] The starting point for the accounting should correlate to the information submitted in the inventory. Each subsequent accounting will begin with the cash balance on hand at the close of the previous accounting period.

For conservatorships established in 2001 or later, the accounting has been replaced with the requirement to prepare an annual Conservator's Report.[123] The Conservator's Report (JDF 885) incorporates the check register format, but also requires the conservator to summarize the information contained in the check register into a meaningful report. It requires the conservator to compare the revenue and disbursements from the previous year. The first annual Conservator's Report should compare figures from the Financial Plan. Thereafter, the comparison should be from the preceding year's Conservator's Report. While this entails more work by the conservator, it will enable the court and other interested parties to easily review and identify areas of concern.

§ 19.4.16—Powers and Duties of Conservators

The conservator has all the powers conferred by part four of the Colorado Probate Code (C.R.S. §§ 15-14-401, *et seq.*) and the Fiduciaries' Powers Act (C.R.S. §§ 15-1-801, *et seq.*). The conservator may exercise all the powers over the estate and business affairs of the protected person that the person could exercise if not under the court's protection.[124] However, the authority of the conservator may be limited or restricted by the court, in which case the limitations or restrictions appear on the Order Appointing Conservator and on the Letters of Conservatorship.

It is important for a conservator to understand the meaning of serving as a fiduciary. A conservator is held to the same standard of care as a trustee.[125] The conservator owes a duty of undivided loyalty to the protected person. A conservator also has a duty to avoid self-dealing. The conservator may not benefit from the fiduciary role, except as expressly approved by the court. (*See* § 19.4.18, "Compensation.") The conservator may pay the reasonable fees of the visitor, guardian, or physician, or other person appointed by the court involved in the protected proceedings. The reasonable fees and expenses of the lawyer for the respondent, lawyer for the petitioner, or other lawyer whose services resulted in a protective order or other benefit to the respondent or the respondent's estate, are also payable by the conservator. In a special conservatorship, compensation may only be paid with court approval.

The powers and duties of a conservator are described in detail in various sections of the Uniform Guardianship and Protective Proceedings Act.[126] Unless otherwise restricted in the Letters of Conservatorship or the financial plan, the conservator may expend or distribute income or principal of the estate without court approval if it is for the support, education, care, or benefit of the protected person and his or her dependents.[127] Thus, a spouse or dependent children may be provided for out of the estate of the protected person.

The conservator is required to consider the accustomed standard of living of the protected person, as well as the wishes of the guardian as they relate to the appropriate standard of support, education, and benefit for the protected person. The conservator should also make expenditures on a reasonable basis in light of the size of the estate, the duration of the conservatorship, and the likelihood that the protected person may be able to resume managing his or her own affairs.

The conservator may engage in limited gifting on behalf of the protected person, if the estate is large enough and such gifts are consistent with those that the protected person might have been expected to make. The conservator need not obtain express court approval for gifts that do not exceed in the aggregate 20 percent of the income of the estate.[128] For gifts that exceed this limitation, the conservator should seek specific authority from the court.[129]

The Colorado Uniform Guardianship and Protective Proceedings Act permits the conservator to make, amend, or revoke the protected person's will, after notice to interested persons and with express authority from the court.[130] A variety of issues must be taken into consideration when doing so.[131]

§ 19.4.17—Powers of Attorney in Conservatorships

Special mention must be made regarding the role of financial powers of attorney and conservatorships. Frequently, a conservatorship must be instituted to revoke a power of attorney. If the protected person has a valid, previously executed durable power of attorney for financial matters, the agent is required to consult with the conservator on matters concerning the financial decisions for the protected person. However, the conservator has authority, without court involvement, to continue, modify, or revoke the power of attorney.[132]

The conservator should inform the agent that the agent should cease acting unless given written authorization to do so by the conservator. The agent is required to report to the conservator and account for the actions taken as agent. If an agent refuses to comply, the agent is liable to the conservatorship estate for all costs incurred in attempting to obtain compliance.[133]

A conservator may also delegate to an agent limited authority to act on behalf of the conservator if a prudent trustee could do the same.[134] A conservator must exercise reasonable care, skill, and caution in doing so, and must periodically review the agent's performance.

§ 19.4.18—Compensation

A conservator is entitled to reasonable compensation and reimbursement for expenses incurred in the performance of the conservatorship role. If the court determines that compensation or expenses are excessive, the amounts must be repaid to the estate.[135] Family members often serve without compensation. However, if compensation is contemplated, the conservator should maintain accurate and detailed records of the time and services provided. Often, family members are quite naive as to the amount of time and energy required to assume the role of conservator, so it is prudent to advise early on that they keep detailed time and expense logs. Compensation paid to the conservator will be taxable income.

Compensation may be paid to the conservator without express court approval, but prudent practice dictates obtaining court approval, either through the financial plan for a budgeted amount or specific motions to approve compensation and expenses incurred. A conservator may always petition the court for instructions concerning his or her fiduciary responsibilities.[136]

§ 19.4.19—Administrative Matters

The appointment vests in the conservator title as trustee to all property of the protected person unless otherwise restricted.[137] It is prudent to provide notice to third parties holding those assets or who are otherwise indebted to the protected person. Certified copies of the Letters of Conservatorship should promptly be recorded in any county where the protected person holds real estate.[138] Certified copies should also be delivered to financial institutions, life insurance companies, governmental agencies, stock transfer agents, business concerns, tenants, trustees, and others who may hold assets of or have obligations due to the protected person. This helps reduce the likelihood of transactions occurring that are unauthorized by the conservator. It also puts creditors on notice that the person is under the court's protection.

Bank accounts, stocks, bonds, and other investments should be re-titled in the name of the conservatorship. Typically, the new account will read, "Estate of John Doe, Protected Person." Another means of indicating that an individual is subject to the court's protection is to title the asset "Jane Doe, Conservator for the benefit of John Doe, Conservatee." Various financial institutions will have their own idiosyncrasies. It is important to guard against commingling the conservatorship assets with the personal property of the conservator. The conservator should always disclose that he or she is acting in a fiduciary capacity and not individually when acting on behalf of the protected person.

Property that is vested in the conservator is not subject to levy, garnishment, or similar process for claims unless allowed by statute, the conservator, or the court.[139] The conservator may pay from the estate claims that are made against the protected person arising before or after the creation of the conservatorship. A claim may be presented to the conservator or filed with the court. A claim is considered allowed if not disallowed in writing by the conservator within 63 days. If the claim is disallowed, the claimant may petition the court. The conservator claim statute also sets forth a specific order of priority for payment of claims if the conservatorship estate is not adequate to pay all claims.[140]

§ 19.4.20—Termination of Conservatorship

Senate Bill 11-083 was passed effective August 10, 2011, significantly amending C.R.S. § 15-14-431, outlining specific procedures for termination or modification of a conservatorship when initiated by the protected person. The procedures include the filing of a written conservator's report, which may address whether an attorney, guardian *ad litem*, or visitor should be appointed for the ward; whether additional investigation or evaluation should be conducted; and whether and to what extent the conservator should be involved in the termination proceedings. Practitioners are advised to review any amendments and revisions to the statute carefully before commencing an action to terminate or modify the conservatorship.

Unlike a guardianship, which terminates automatically upon the death of the ward, a conservatorship requires continuing administration until the conservator winds up affairs. A conservatorship may also terminate if the protected person regains the ability to manage his or her affairs. The liability of the conservator continues until the final Conservator's Report is allowed by the court and the conservator is discharged.

Upon the death of the protected person, the conservator is required to give notice to the court and other interested persons.[141] Use JDF 853 for this purpose. The conservator is directed by statute to wind up the conservatorship administration, file a final Conservator's Report, and petition for discharge within 63 days of the protected person's date of death.[142] During this period, the conservator should not make expenditures other than for funeral, cremation, or burial costs, and to preserve the assets of the estate, unless authorized by the court.[143]

The Petition for Termination of Conservatorship (JDF 888) may be filed by the conservator, the protected person, or any other interested person.[144] When filing the Petition for Termination of Conservatorship, a Final Conservator's Report (JDF 885) and a proposed Order to Terminate Conservatorship (JDF 890) should be tendered to the court as well. Consult with the registrar, as some courts will permit termination to be set on the non-appearance docket.

An order allowing an interim Conservator's Report adjudicates the liabilities of the conservator for matters considered in connection with that filing. Similarly, an order allowing the final Conservator's Report adjudicates the obligations of the conservator with respect to all previously unsettled liabilities.[145] The Order to Terminate Conservatorship should provide for payment of all fees, costs, and expenses of administration, so that all loose ends of the conservator's administration may be tied up.[146] In the event the decedent's estate is insufficient to pay all claims, the unpaid fees and expenses of a guardianship and conservatorship are treated as priority claims as costs of administration and are paid pursuant to C.R.S. § 15-12-805.[147]

Upon approval, the Order to Terminate Conservatorship (JDF 890) is issued by the court. If the protected person's disability has ended, then the court typically orders the remaining assets to be restored to the individual. If the protected person has died, the order directs the conservator to turn over the assets to the protected person's personal representative or successors. The conservator must then file a Receipt and Release (JDF 731) or such other proof of distribution as the court may require. Then, once satisfied that the conservator has met all conditions and discharged his or her fiduciary duties, a Decree of Final Discharge (JDF 730) is issued, discharging the conservator and the surety on the bond from all liability.

NOTES

1. HB 00-1375.
2. C.R.S. §§ 28-5-201, *et seq.*
3. C.R.S. § 15-14-118.
4. C.R.S. § 15-14-109.
5. C.R.S. § 15-14-102(5).
6. C.R.S. § 15-14-311(1)(a) and *Sabrosky v. Denver Dep't of Social Services*, 781 P.2d 106 (Colo. 1989).
7. C.R.S. § 15-14-304(1).
8. C.R.S. § 15-14-315(1)(b).
9. Nursing homes may seek to enforce contractual obligations for the costs of care for the ward personally against a guardian who signs an admission contract individually without disclosing his or her guardianship authority.
10. C.R.S. § 15-14-317(1).
11. C.R.S. §§ 27-10-101, *et seq.*
12. C.R.S. §§ 27-10.5-101, *et seq.*
13. C.R.S. §§ 25-1-101, *et seq.*
14. C.R.S. § 15-14-311(2).
15. C.R.S. § 15-14-315(2).
16. C.R.S. §§ 15-14-315.5 and -415.5.
17. C.R.S. § 15-14-311(3).
18. C.R.S. § 15-14-317.
19. C.R.S. § 15-14-609(3)(a).
20. C.R.S. § 15-14-316(3).
21. C.R.S. § 15-14-501(1).
22. C.R.S. §§ 15-14-421(6)(a) and -708(2).
23. C.R.S. § 15-14-105.
24. *See* JDF 750 and JDF 751; *see also* Form 2 in *Colorado Estate Planning Forms* (*Orange Book Forms*), Seventh Ed. (CLE in Colorado, Inc. Supp. 2016).
25. C.R.S. § 15-14-108(2).
26. C.R.S. §§ 15-14.5-101 through -503.
27. C.R.S. § 15-14-310.
28. C.R.S. § 15-14-102(4).
29. C.R.S. § 15-14-310(2).
30. *In re Estate of Runyon*, 2014 COA 181.
31. C.R.S. § 15-14-310(4).
32. C.R.S. § 15-14-110(5), as amended effective July 16, 2005.
33. C.R.S. § 15-14-305(1).
34. C.R.S. § 15-14-305(3).
35. *In the Interest of Neher*, 2015 COA 103.
36. 45 C.F.R. pts. 160 and 164.
37. C.R.S. § 15-14-306.
38. See *Grant v. Johnson*, 757 F. Supp. 1127 (D. Or. 1991), for discussion of lack of due process with respect to appointment of temporary guardianship. The Oregon statute closely paralleled the Colorado Probate Code when this case was decided.
39. C.R.S. § 15-14-309(1).
40. C.R.S. § 15-14-312.
41. C.R.S. §§ 15-14-113 and 15-10-401; C.R.P.P. 8.
42. C.R.S. § 15-10-201(27).
43. C.R.S. § 15-14-304(2)(a) through (f).
44. "Legal representative" is a defined term under the Colorado Uniform Guardianship and Protective Proceedings Act at C.R.S. § 15-14-102(6), which includes representative payees under Social Security, pre-exist-

ing guardians and conservators, trustees of trusts of which the respondent is a beneficiary, custodians of custodianship property of which the respondent is a beneficiary, and agents under a power of attorney, whether for health care or property.

45. C.R.S. § 15-14-308(2).
46. C.R.S. § 15-14-114.
47. C.R.S. § 15-14-312.
48. C.R.S. § 15-14-308.
49. C.R.S. § 15-14-305(2).
50. *Estate of Milstein v. Ayers*, 955 P.2d 78 (Colo. App. 1998).
51. *Id.*
52. C.R.S. § 15-14-115.
53. *Estate of Milstein*, 955 P.2d 78.
54. *See* Kathleen A. Negri, "The Advocate's Role in Representing a Client Subject to Temporary Protective Orders," 29 *Colo. Law.* 63 (June 2000).
55. C.R.S. § 15-14-303(6).
56. C.R.S. § 15-14-311(2).
57. *Available at* www.courts.state.co.us/Forms/Index.cfm, then click "Guardian & Conservator," "Manuals," and "Guardian's Manual."
58. C.R.S. § 15-14-317.
59. C.R.S. § 15-14-317(1).
60. C.R.S. § 15-14-314(2)(g).
61. C.R.S. 1973 § 15-14-301, repealed and reenacted 2000, effective January 1, 2001.
62. C.R.S. § 15-14-202.
63. C.R.S. §§ 15-14-112 and -318.
64. C.R.S. § 15-14-112(3).
65. C.R.S. § 15-14-101(11).
66. C.R.S. § 15-14-409(4).
67. C.R.S. § 15-14-401.
68. C.R.S. § 15-14-401(1)(b)(I).
69. C.R.S. § 15-14-102(5).
70. C.R.S. § 15-14-401(1)(b)(II).
71. C.R.S. § 15-14-108(3).
72. C.R.S. § 15-14-413(4).
73. C.R.S. § 15-14-102(2).
74. C.R.S. § 15-14-413(1).
75. C.R.S. § 15-14-413(3).
76. C.R.S. § 15-14-413(2).
77. *Runyon*, 2014 COA 181.
78. C.R.S. § 15-14-413(5).
79. C.R.S. § 15-14-413(6).
80. C.R.S. § 15-14-413.
81. C.R.S. § 15-14-406. If the petition does not request appointment of a conservator (for example, a petition to authorize a single transaction) and the respondent is represented by counsel, then appointment of a visitor is not mandatory.
82. C.R.S. § 15-14-306(3).
83. *Neher*, 2015 COA 103.
84. 45 C.F.R. pts. 160 and 164.
85. C.R.S. § 15-14-406(6).
86. C.R.S. § 15-14-406.5.
87. See *Grant v. Johnson*, 757 F. Supp. 1127 (D. Or. 1991), for discussion of lack of due process with respect to appointment of temporary guardianship. The Oregon statute closely paralleled the Colorado Probate Code when this case was decided.
88. C.R.S. § 15-14-404(1).

89. C.R.S. § 15-14-404(2).
90. C.R.S. §§ 15-14-405(2) and -406(7).
91. C.R.S. §§ 15-14-113 and 15-10-401; C.R.P.P. 8.
92. C.R.S. § 15-10-201(27).
93. 10 C.C.R. 2505-10, § 8.100.7.G.10.
94. C.R.S. § 15-14-408(2).
95. C.R.S. § 15-14-408(3).
96. C.R.S. § 15-14-114.
97. C.R.S. § 15-14-406(6).
98. C.R.S. § 15-14-412(3).
99. C.R.S. §§ 15-14-415 and -416.
100. C.R.S. § 15-14-408(1).
101. C.R.S. § 15-14-406(2).
102. *Estate of Milstein*, 955 P.2d 78.
103. *Id.*
104. C.R.S. § 15-14-115.
105. *Estate of Milstein*, 955 P.2d 78.
106. *See* Negri, *supra* n. 54.
107. C.R.S. § 15-14-409(4).
108. C.R.S. § 15-14-409(2).
109. C.R.S. § 15-14-403(2)(h).
110. *Available at* www.courts.state.co.us/Forms/Index.cfm, then click "Guardian & Conservator," "Manuals," and "Conservator's Manual."
111. C.R.S. § 15-14-415.
112. C.R.S. § 15-14-416(3).
113. C.R.S. § 15-14-415.
114. C.R.S. § 15-14-420(4).
115. C.R.S. § 15-14-416(1)(a).
116. C.R.S. § 15-14-416(2).
117. C.R.S. § 15-14-416(1)(b).
118. C.R.S. § 15-16-302.
119. C.R.S. § 15-14-418.
120. C.R.S. § 15-14-419(5).
121. C.R.P.P. 8.8.
122. C.R.S. § 15-17-103.
123. C.R.S. § 15-14-420.
124. C.R.S. § 15-14-410(1)(b).
125. C.R.S. § 15-14-418(1).
126. C.R.S. §§ 15-14-410 through -412, -418, -425, -426, and -427.
127. C.R.S. § 15-14-427(1).
128. C.R.S. § 15-14-427(2).
129. C.R.S. § 15-14-411(1)(a).
130. C.R.S. § 15-14-411(1)(g).
131. C.R.S. § 15-14-411(3)(a) through (g).
132. C.R.S. § 15-14-501(1).
133. C.R.S. § 15-14-421(5) and (6).
134. C.R.S. § 15-14-426.
135. C.R.S. § 15-14-417(1).
136. C.R.S. § 15-14-413(2) and (3).
137. C.R.S. § 15-14-421.
138. C.R.S. § 15-14-421(3).
139. C.R.S. §§ 15-14-422(2) and -429.
140. C.R.S. § 15-14-429(4).

141. C.R.S. § 15-14-431(1).
142. C.R.S. § 15-14-431(2).
143. C.R.S. § 15-14-428(2).
144. C.R.S. § 15-14-431.
145. C.R.S. § 15-14-420(1).
146. C.R.S. § 15-14-431(5).
147. C.R.S. § 15-14-417(5).

EXHIBIT 19A • EMERGENCY GUARDIANSHIP AND GUARDIANSHIP FORMS CHECKLIST

All forms listed below are included on the CD that accompanies this book.

Guardianship for Minor
(By Judicial Appointment)

JDF #	Title of Pleading	Statute or Colo. Rules of Probate Procedure	Comment
824	Petition for Appointment of Guardian for Minor	15-14-204	Use for judicial appointment of guardian. Not for appointment by will or other writing. (Use JDF 820.)
825	Consent of Parent	15-14-204	Parents must consent or be given notice, unless parental rights have been terminated.
826	Consent or Nomination of Minor	15-14-205(1)(d)	Use if minor is age 12 or older.
714	Affidavit Re Due Diligence and Proof of Publication		Use if parent cannot be found and/or paternity is truly unknown.
716	Notice of Hearing by Publication	15-10-401(1)(c) and (3)	Publish at least 1 x week for 3 weeks, with last date being at least 14 days prior to hearing.
719	Waiver of Notice	15-14-114	Parents and custodians may waive.
721	Irrevocable Power of Attorney	C.R.P.P. 26	Required if guardian is non-resident.
805	Acceptance of Office	15-14-110	File prior to hearing. File as exhibits (1) CBI background report; (2) credit report; and (3) driver's license, passport, or other government-issued ID. *Redact SS# and account #s.*
806	Notice of Hearing to Interested Persons	15-14-113	Serve parents, persons having custody of minor, and minor's nominee 14 days before hearing. File all notices prior to hearing.
807	Notice of Hearing to Respondent (Adult or Minor)	15-14-113, -205(1), C.R.C.P. 4	If age 12 or older, minor should be personally served (unless minor is also petitioner).
827	Order Appointing Guardian for Minor	15-14-204(2), -205(2)	Valid until minor's 18th birthday, unless otherwise limited.
828	Order Appointing Temporary Guardian for Minor	15-14-204(4)	Temporary guardianship is limited to 6 months.
829	Order Appointing Emergency Guardian for Minor	15-14-204(5)	Emergency guardianship is limited to 60 days.
830	Letters of Guardianship – Minor	15-14-204, -207	Same format of letters is used for permanent, temporary, and emergency guardianship.
834	Guardian's Report – Minor	15-14-207(e)	Reports are not mandatory, but are increasingly used by the court. Notify court of change of address.
835	Petition for Termination of Guardianship for Minor	15-14-210	Use only if terminating prior to minor's 18th birthday, *e.g.*, emancipation, adoption, or death of minor.
836	Order for Termination of Guardianship for Minor	15-14-210	May also be used if parent resumes responsibilities.

1. If appointment of guardian is by will or separate writing, then judicial appointment is not necessary. *See* JDF 820, JDF 821, and JDF 822.
2. Consider use of power of attorney delegating authority of parent or guardian for greater flexibility. *See* JDF 750 and JDF 751. Delegation of authority is limited to 12 months.
3. If guardian becomes incapacitated, wishes to resign, or is deceased, a successor guardian is still necessary. The guardianship does not terminate. Motion court for appointment of co-guardian or successor guardian.
4. If guardianship is for reasons other than minority (developmental disabilities, mental health, brain injury, etc.), guardianship for adult should be filed to continue after 18th birthday.

Guardianship for Minor
(By Will or Written Instrument)

JDF #	Title of Pleading	Statute or Colo. Rules of Probate Procedure	Comment
820	Instructions for Appointment of Guardian for Minor by Will or Other Signed Writing	15-14-202	Check local procedure. Court may not issue order or letters without complying with requirements for judicial appointment of guardian. See Note 1, below.
822	Petition for Confirmation of Appointment of Guardian	15-14-202	Must be filed with court within 30 days of filing affidavit, JDF 821. Use upon death or incapacity of last surviving parent. Incapacity may be determined by court or physician.
821	Affidavit of Acceptance of Appointment by Written Instrument as Guardian for Minor	15-14-202	File within 30 days of death or incapacity of last surviving parent/guardian. File with copy of appointing instrument, whether will or other signed writing. Guardian has authority to act unless an objection by minor or other interested person is filed prior to court confirmation.
826	Consent or Nomination of Minor	15-14-203	Use if minor is 12 years of age or older. If minor objects, then proceed by judicial appointment.

1. Check local procedure. Statutes do not contemplate orders or letters being issued by the court. Some registrars may be willing to issue letters to evidence court's "confirmation" of guardian's authority. If third parties will not accept guardian's authority, consider proceeding with judicial appointment.

2. If guardian becomes incapacitated, wishes to resign, or is deceased, a successor guardian is still necessary. The guardianship does not terminate. Motion court for appointment of co-guardian or successor guardian.

3. If guardianship is for reasons other than minority (developmental disabilities, mental health, brain injury, etc.), guardianship for adult should be filed to continue after 18th birthday.

Emergency Guardianship Adult — JDF Forms Checklist

JDF #	Title of Pleading	Statute or Colo. Rules of Probate Procedure	Comment
841	Petition for Appointment of Guardian for Adult	15-14-312, -304	Modify caption as appropriate: *Forthwith* Petition for Appointment of *Emergency* Guardian, and contact registrar or division clerk. Authority of emergency guardian should be limited and not exceed 60 days. Include request for permanent guardian or file an amended petition if necessary.
	Physician's Letter or Professional Evaluation	15-14-306 and C.R.P.P. 27.1	File as exhibit to petition whenever possible. If not available, subpoena records, or file Motion for Evaluation.
	Powers of Attorney / Nomination of Guardian	15-14-304(d) and (e)	File as exhibit to petition if applicable.
805	Acceptance of Office	15-14-110	File prior to hearing. File as exhibits (1) CBI background report; (2) credit report; and (3) driver's license, passport, or other government-issued ID. *Redact SS# and account #s.*
721	Irrevocable Power of Attorney Designating Clerk of Court as Agent	C.R.P.P. 26	Required if guardian is non-resident.
843	Order Appointing Emergency Guardian for Adult	15-14-312	Includes mandatory appointment of counsel. Check with division clerk to determine whether the court maintains roster of respondent's counsel. This order must be served within 48 hours if respondent was not present at hearing. Use JDF 844.
849	Letters of Guardianship – Adult	15-14-312	Check box for emergency guardian and note that letters expire within 60 days. The court may impose other restrictions contained in the Order Appointing Emergency Guardian.
844	Notice of Appointment of Emergency Guardian and Notice of Right to Hearing	15-14-312	Serve on respondent within 48 hours if not present at hearing. Serve on other interested persons as directed by court.

An emergency guardianship expires in 60 days. If guardianship will be ongoing or permanent, set hearing on permanent orders as soon as possible but within 60 days. See Guardianship for Adult Forms Checklist for additional notice and filing requirements.

If emergency guardianship is no longer necessary, best practice dictates filing a short status report with the court.

Guardianship for Adult — JDF Forms Checklist

JDF #	Title of Pleading	Statute or Colo. Rules of Probate Procedure	Comment
841	Petition for Appointment of Guardian for Adult	15-14-304, -312	Use also for emergency guardianship. See Emergency Guardianship Checklist.
	Physician's Letter or Professional Evaluation	15-14-306 and C.R.P.P. 27.1	File as exhibit to petition whenever possible. If unavailable, subpoena records or file Motion for Evaluation.
	Powers of Attorney / Nomination of Guardian	15-14-304(d) and (e)	File as exhibit to petition, if applicable.
805	Acceptance of Office	15-14-110	File prior to hearing. File as exhibits (1) CBI background report; (2) credit report; and (3) driver's license, passport, or other government-issued ID. *Redact SS# and account #s.*
721	Irrevocable Power of Attorney Designating Clerk of Court as Agent	C.R.P.P. 26	Required if guardian is non-resident.
807	Notice of Hearing to Respondent with Personal Service Affidavit (Adult or Minor)	15-14-113, -309(1)	Personal service on respondent 14 days prior to hearing. Respondent may not waive service. 15-14-114.
806	Notice of Hearing to Interested Persons	15-14-113, -309(2), -304(2)	Service by mail 14 days. File all notices prior to hearing.
714	Affidavit Re Due Diligence and Proof of Publication		Use to support Notice of Hearing by Publication if interested person cannot be found.
716	Notice of Hearing by Publication	15-10-401(1)(c), (3)	Publish at least 1 x week for 3 weeks, with last date being at least 14 days prior to hearing.
719	Waiver of Notice	15-14-114	Respondent may not waive service.
809	Order Appointing Court Visitor	15-14-305	Confirm that court will prepare.
810	Court Visitor's Report	15-14-305	Confirm that visitor has filed prior to hearing.
797	Rights of Respondent in Appointment of Guardian/Conservator	15-14-305	Visitor provides this information to respondent.
799	Information for Respondent in Appointment of Guardian	15-14-305	Additional information provided by visitor to respondent in guardianship proceedings.
848	Order Appointing Guardian for Adult	15-14-311	Prepare for court. Consider appropriate restrictions on authority of guardian.
849	Letters of Guardianship – Adult	15-14-110	Prepare for court. Anticipate number of certified copies client may need.
800	Acknowledgment of Responsibilities – Conservator and/or Guardian		This is a new form that some courts may use to help ensure that the guardian understands the duties imposed.
812	Notice of Appointment of Guardian and/or Conservator	15-14-309	Due within 30 days of appointment. Mail to respondent and others listed in petition. Attach Order (JDF 848).
850	Guardian's Report – Adult	15-14-317	Due 60 days after appointment and annually thereafter.

MODIFICATION OF GUARDIANSHIP			**GUARDIANSHIP (continued)**
855	Petition for Modification of Guardianship – Adult and Minor	15-14-314(2)(e)	For example, use for permission to move ward's residence out of state, or if ward regains capacity or ability to exercise rights previously removed.
856	Order for Modification of Guardianship		Use with JDF 855.
857	Petition for Appointment of Co-Guardian or Successor Guardian	15-14-112(1) through (3)	Check with division clerk to determine type of notice required. Personal service should not be required again, but depending on the issues, a non-appearance hearing may be allowed in some courts.
858	Order Appointing Co-Guardian or Successor Guardian		Use with JDF 857. Amended letters will also need to be issued.
TERMINATING GUARDIANSHIP			
852	Petition for Termination of Guardianship – Adult	15-14-318	If ward no longer meets the statutory standard for establishing guardianship, it may be terminated. File evaluation as exhibit, if appropriate.
854	Order for Termination of Guardianship – Adult	15-14-318	Consider whether a Decree of Final Discharge may be appropriate. (See JDF 730 to adapt for use here.)
711 or 712	Notice of Hearing or Notice of Non-Appearance Hearing Pursuant to C.R.P.P. 8.8	15-14-318	Confer with division clerk to determine type of notice required. Personal service should not be required again, but depending on the issues, a non-appearance hearing may be allowed in some courts.
853	Notice of Death	15-14-314(2)(g)	Death automatically terminates guardian's authority by operation of law, but guardian is *required* to promptly notify court of ward's death. Note: Some courts have required a copy of death certificate, though statute does not require it.

EXHIBIT 19B • CONSERVATORSHIP FORMS CHECKLIST

All forms listed below are included on the CD that accompanies this book.

Conservatorship for Minor

JDF #	Title of Pleading	Statute or Colo. Rules of Probate Procedure	Comment
861	Petition for Appointment of Conservator – Minor	15-14-401, -405, or -412(3)	Use only if minor is under 18 years of age. Use also for minor special conservator or single transaction.
805	Acceptance of Office	15-14-110	File prior to hearing. Attach CBI background report, credit report, and driver's license, passport, or other government-issued ID. *Redact SS# and account #s.*
721	Irrevocable Power of Attorney Designating Clerk of Court as Agent	C.R.P.P. 26	Required if conservator is non-resident.
807	Notice of Hearing to Respondent w/ Personal Service Affidavit (Adult or Minor)	15-14-113, -404(1)	Personal service on minor if age 12 or older 14 days prior to hearing. Minor may not waive service. 15-14-114.
806	Notice of Hearing to Interested Persons	15-14-113, -404(2)	Service by mail 14 days. Include parents unless rights have been terminated or they are petitioners. File all notices prior to hearing.
714	Affidavit Re Due Diligence and Proof of Publication	15-10-401(1)(c), (3)	Use to support Notice of Hearing by Publication if interested person cannot be found.
716	Notice of Hearing by Publication	15-10-401(1)(c), (3)	Publish at least 1 x week for 3 weeks, with last date being at least 14 days prior to hearing.
719	Waiver of Notice	15-14-114	Minor/respondent may not waive service.
862	Order Appointing Conservator – Minor	15-14-409	Prepare for court and carefully specify restrictions if any. Conservatorship continues until minor is 21.
877	Order Appointing Special Conservator – Adult or Minor	15-14-405(2), -412(3)	The authority of the special conservator must be carefully stated. Reasonable notice should be provided when possible, but is not required in emergency.
Form Deleted	Bond of Conservator	15-14-415, -416, and -110, C.R.P.P. 29	Bond is required unless waived for good cause. Surety on bond usually has own form that may be filed with the court before letters will issue.
863	Letters of Conservatorship – Minor	15-14-110	Prepare for court. Anticipate number of certified copies required.
800	Acknowledgment of Responsibilities – Conservator and/or Guardian		This is a new form that some courts may use to help ensure that the conservator understands the duties imposed.
812	Notice of Appointment of Guardian and/or Conservator	15-14-409(3)	Due within 30 days of appointment. Mail to respondent. and others listed in petition. Attach order.
882	Conservator's Financial Plan with Inventory and Motion for Approval	15-14-418 and -419, C.R.P.P. 28	Due within 60 days. Consolidates former CPC 20 and 29-FP. Motion to Approve should not be necessary as court is required to approve, but best practices may suggest setting it for non-appearance hearing.
883	Order Re Conservator's Financial Plan	15-14-418 and -419, C.R.P.P. 28	Prepare for court. Court should review and approve within 30 days unless set sooner for non-appearance.
885	Conservator's Report	15-14-420, C.R.P.P. 2(3), 31(b), 31.1	Due annually. Consider filing Motion to Allow as permitted at 15-14-420(1) to settle liabilities.

RESTRICTED ACCOUNTS			**CONSERVATORSHIP Adult & Minor (continued)**
866	Order for Deposit of Funds to Restricted Account	15-14-415	Use restricted accounts as alternative to bond.
867	Acknowledgment of Deposit of Funds to Restricted Account	15-14-415	Must be filed with the court to verify compliance with JDF 866.
868	Motion to Withdraw Funds from Restricted Account	15-14-415	May be used with JDF 712, Notice of Non-Appearance Hearing, reasonable and uncontested.
869	Order Allowing Withdrawal of Funds from Restricted Account	15-14-415	File with JDF 868.
870	Restricted Account Log	15-14-415	Court is likely to maintain this log. Use it to monitor conservatorship activity.
TERMINATING CONSERVATORSHIP			
888	Petition for Termination of Conservatorship	15-14-428, -431, C.R.P.P. 30.1 and 31.1	Note: A separate Schedule of Distribution is no longer required. Advise court promptly of death of protected person. Identify whether assets should be restored to protected person if disability has terminated, distributed to PR or other successors in interest, or if minor is 21.
806	Notice of Hearing to Interested Persons		Set matter for hearing if issues cannot be resolved. (Use JDF 711 if protected person is deceased.)
712	Notice of Non-Appearance Hearing Pursuant to C.R.P.P. 8.8	C.R.P.P. 8.8	Use appropriately if no objections are anticipated. If minor is 21, court may not require hearing.
889	Waiver of Hearing, Waiver of Final Conservator's Report, Waiver of Audit, and Approval of Schedule of Distribution		Consider using waivers to speed along process in uncontested matters. It may be better practice to obtain waiver than rely upon lack of objection under C.R.P.P. 8.8 non-appearance hearing.
853	Notice of Death	15-14-431(1)	Note: Some courts have required a copy of death certificate, though statute does not require it.
885	Conservator's Report	15-14-420, C.R.P.P. 2(3), 31(b), 31.1	Consider filing Motion to Allow as permitted at 15-14-420(1) to settle liabilities.
890	Order Terminating Conservatorship	15-14-431	Transfer remaining assets per order and obtain Receipt and Release.
731	Receipt and Release	15-14-431(5)	File with court to obtain Decree of Final Discharge.
730	Decree of Final Discharge	15-14-431(6)	Furnish copy to surety on bond, if any.
SPECIAL CONSERVATOR (fka Emergency Conservatorship)			
876	Petition for Appointment of ***Special*** Conservator – Adult	15-14-403, -406(6), -412(3)	Use same form as for conservatorship. See above. Insert *SPECIAL* in caption, and highlight emergent facts that justify bypassing notice and due process.
805	Acceptance of Office	15-14-110	File prior to hearing. Attach CBI background report, credit report, and driver's license, passport, or other government-issued ID. *Redact SS# and account #s.*
721	Irrevocable Power of Attorney Designating Clerk of Court as Agent	C.R.P.P. 26	Required if conservator is non-resident.
877	Order Appointing Special Conservator – Adult or Minor	15-14-405(2), -406(6), -412(3)	The authority of the special conservator must be carefully stated. Reasonable notice should be provided when possible, but is not required in emergency.
880	Letters of Conservatorship – Adult	15-14-110	Prepare for court. Anticipate number of certified copies required.

A special conservator may be appointed without notice, after preliminary hearing. C.R.S. § 15-14-406(6). Whenever possible, comply with all notice requirements as in a full conservatorship. Be careful and precise in describing nature of emergency situation that warrants suspending normal due process requirements of notice, hearing, and right to counsel. A special conservator should be very limited in authority. Anticipate time-limited authority and access only to specific assets. Consider need to freeze or secure other assets pending full hearing.

Conservatorship for Adult

JDF #	Title of Pleading	Statute or Colo. Rules of Probate Procedure	Comment
876	Verified Petition for Appointment of Conservator – Adult	15-14-403, -406(6), -412(3)	Also use for appointment of special conservator and adapt to authorize single transactions.
	Physician's Letter or Professional Evaluation	15-14-401(b)(I), -306, C.R.P.P. 27.1	File as exhibit to petition whenever possible. If not available, subpoena records or file Motion for Evaluation, if necessary.
	Powers of Attorney / Nomination of Conservator	15-14-403(2)(f) and (3)(b), -413	File as exhibit to petition, if applicable.
805	Acceptance of Office	15-14-110	File prior to hearing. Attach CBI background report, credit report, and driver's license, passport, or other government-issued ID. *Redact SS# and account #s.*
721	Irrevocable Power of Attorney Designating Clerk of Court as Agent	C.R.P.P. 26	Required if conservator is non-resident.
807	Notice of Hearing to Respondent (Adult or Minor)	15-14-113, -404(1)	Personal service on respondent 14 days prior to hearing. Respondent may not waive service. 15-14-114.
806	Notice of Hearing to Interested Persons	15-14-113, -404(2)	Service by mail 14 days + 3 for mailing. File all notices prior to hearing.
714	Affidavit Re Due Diligence and Proof of Publication	15-10-401(1)(c), (3)	Use to support Notice of Hearing by Publication if interested person cannot be found.
716	Notice of Hearing by Publication	15-10-401(1)(c), (3)	Publish at least 1 x week for 3 weeks, with last date being at least 14 days prior to hearing.
719	Waiver of Notice	15-14-114	Respondent may not waive service.
809	Order Appointing Court Visitor	15-14-305	Confirm that court will prepare.
810	Court Visitor's Report	15-14-305	Confirm that visitor has filed prior to hearing.
797	Rights of Respondent in Appointment of Guardian/Conservator	15-14-305	Visitor provides this information to respondent.
798	Information for Respondent in Appointment of Conservator	15-14-305	Additional information provided by visitor to respondent in conservatorship proceedings.
877	Order Appointing Special Conservator – Adult or Minor	15-14-405(2), -406(6), -412(3)	The authority of the special conservator must be carefully stated. Reasonable notice should be provided when possible, but is not required in emergency.
878	Order Appointing Conservator – Adult	15-14-409	Prepare for court and carefully specify restrictions if any.
Form Deleted	Bond of Conservator	15-14-415, -416, and -110, C.R.P.P. 29	Bond is required unless waived for good cause. Surety on bond usually has own form that may be filed with the court before letters will issue.
880	Letters of Conservatorship – Adult	15-14-110	Prepare for court. Anticipate number of certified copies required.
800	Acknowledgment of Responsibilities		This is a new form that some courts may use to help ensure that the conservator understands the duties imposed.
812	Notice of Appointment of Guardian and/or Conservator	15-14-409(3)	Due within 30 days of appointment. Mail to respondent. and others listed in petition. Attach order (JDF 878).

882	Conservator's Financial Plan with Inventory and Motion for Approval	15-14-418 and -419, C.R.P.P. 28	Due within 60 days. Consolidates former CPC 20 and 29-FP. Motion to Approve should not be necessary, as court is required to approve, but best practices may suggest setting it for non-appearance hearing.
883	Order Re Conservator's Financial Plan	15-14-418 and -419, C.R.P.P. 28	Prepare for court. Court should review and approve within 30 days unless set sooner for non-appearance.
885	Conservator's Report	15-14-420, C.R.P.P. 2(3), 31(b), 31.1	Due annually. Consider filing Motion to *Allow* as permitted at 15-14-420(1) to settle liabilities.
RESTRICTED ACCOUNTS			**CONSERVATORSHIP (continued)**
866	Order for Deposit of Funds to Restricted Account	15-14-415	Use restricted accounts as alternative to bond.
867	Acknowledgment of Deposit of Funds to Restricted Account	15-14-415	Must be filed with the court to verify compliance with JDF 866.
868	Motion to Withdraw Funds from Restricted Account	15-14-415	May be used with JDF 712, Notice of Non-Appearance Hearing, if reasonable and uncontested.
869	Order Allowing Withdrawal of Funds from Restricted Account	15-14-415	File with JDF 868.
870	Restricted Account Log	15-14-415	Court is likely to maintain this log. Use it to monitor conservatorship activity.
TERMINATING CONSERVATORSHIP			
888	Petition for Termination of Conservatorship	15-14-428, -431, C.R.P.P. 30.1 and 31.1	Note: A separate Schedule of Distribution is no longer required. Advise court promptly of death of protected person. Identify whether assets should be restored to protected person if disability has terminated, or distributed to PR or other successors in interest.
806	Notice of Hearing to Interested Persons		Set matter for hearing if issues cannot be resolved. (Use JDF 711 if protected person is deceased.)
712	Notice of Non-Appearance Hearing Pursuant to C.R.P.P. 8.8	C.R.P.P. 8.8	Use appropriately if no objections are anticipated.
889	Waiver of Hearing, Waiver of Final Conservator's Report, Waiver of Audit, and Approval of Schedule of Distribution		Consider using waivers to speed along process in uncontested matters. It may be better practice to obtain waiver than rely upon lack of objection under C.R.P.P. 8.8 non-appearance hearing.
853	Notice of Death	15-14-431(1)	Note: Some courts have required a copy of death certificate, though statute does not require it.
885	Conservator's Report	15-14-420, C.R.P.P. 2(3), 31(b), 31.1	Consider filing Motion to Allow as permitted at 15-14-420(1) to settle liabilities.
890	Order Terminating Conservatorship	15-14-431	Transfer remaining assets per order and obtain Receipt and Release.
731	Receipt and Release	15-14-431(5)	File with court to obtain Decree of Final Discharge.
730	Decree of Final Discharge	15-14-431(6)	Furnish copy to surety on bond, if any.
SPECIAL CONSERVATOR (fka Emergency Conservatorship)			
876	Petition for Appointment of ***Special*** Conservator – Adult	15-14-403, -406(6), -412(3)	Use same form as for conservatorship. See above. Insert *SPECIAL* in caption, and highlight emergent facts that justify bypassing notice and due process.
805	Acceptance of Office	15-14-110	File prior to hearing. Attach CBI background report, credit report, and driver's license, passport, or other government-issued ID. *Redact SS# and account #s.*

721	Irrevocable Power of Attorney Designating Clerk of Court as Agent	C.R.P.P. 26	Required if conservator is non-resident.
877	Order Appointing Special Conservator – Adult or Minor	15-14-405(2), -406(6), -412(3)	The authority of the special conservator must be carefully stated. Reasonable notice should be provided when possible, but is not required in emergency.
880	Letters of Conservatorship – Adult	15-14-110	Prepare for court. Anticipate number of certified copies required.
A special conservator may be appointed without notice, after preliminary hearing. C.R.S. § 15-14-406(6). Whenever possible, comply with all notice requirements as in a full conservatorship. Be careful and precise in describing nature of emergency situation that warrants suspending normal due process requirements of notice, hearing, and right to counsel. A special conservator should be very limited in authority. Anticipate time-limited authority and access only to specific assets. Consider need to freeze or secure other assets pending full hearing.			

EXHIBIT 19C • GUARDIANSHIP AND CONSERVATORSHIP FORMS INDEX

All forms listed below are included on the CD that accompanies this book.

GUARDIANSHIP AND CONSERVATORSHIP FORMS INDEX

√	JDF Form No.	Description
		FORMS REGARDING NOTICE
	710	Notice to Set Hearing
	711	Notice of Hearing
	712	Notice of Non-Appearance Hearing Pursuant to C.R.P.P. 8.8
	717	Certificate of Service
	718	Personal Service Affidavit
	719	Waiver of Notice *[Respondent may not waive service of initial Petition]*
	806	Notice of Hearing to Interested Persons
	807	Notice of Hearing to Respondent
	812	Notice of Appointment of Guardian and/or Conservator and Notice of Right to Request Termination or Modification
	844	Notice of Appointment of Emergency Guardian and Notice of Right to Hearing
		GENERAL AND RELATED FORMS
	721	Irrevocable Power of Attorney Designating Clerk of Court as Agent for Service of Process
	725	Notice of Change Regarding Contact Information
	730	Decree of Final Discharge
	731	Receipt and Release
	740	Request for Minor Correction
	751	Delegation of Power of Attorney by Parent or Guardian
	752	Notice of Change of Address – Ward or Protected Person
	797	Rights of Respondent in Appointment of Guardian/Conservator
	798	Information for Respondent in Appointment of Conservator
	799	Information for Respondent in Appointment of Guardian
	800	Acknowledgment of Responsibilities by Conservator/Guardian
	805	Acceptance of Office
	810	Court Visitor's Report
	853	Notice of Death
		TRANSFER OF GUARDIANSHIP/CONSERVATORSHIP
	781	Provisional Letters
	783	Petition Requesting Colorado to Accept Guardianship/Conservatorship from Sending State

	784	Provisional Order to Accept Guardianship/Conservatorship in Colorado From Sending State
	785	Final Order Accepting Guardianship/Conservatorship in Colorado From Sending State
	787	Petition to Transfer Guardianship/Conservatorship from Colorado to Receiving State
	788	Provisional Order Re Petition to Transfer From Colorado to Receiving State
	789	Final Order Confirming Transfer to Receiving State and Terminating Guardianship/Conservatorship
REGISTRATION OF FOREIGN PROTECTIVE ORDERS (CONSERVATORSHIPS) AND GUARDIANSHIPS		
	891	Registration and Recognition of Protective Orders from Other States and Sworn Statement — Conservatorship for Adult
	892	Certificate of Registration and Recognition of Protective Orders from Other States — Conservatorship for Adult
	893	Registration and Recognition of Guardianship Orders from Other States and Sworn Statement — Guardianship for Adult
	894	Certificate of Registration and Recognition of Guardianship Orders from Other States — Guardianship for Adult
GUARDIANSHIP FOR MINORS		
	821	Affidavit of Acceptance of Appointment by Written Instrument as Guardian for Minor
	822	Petition for Confirmation of Appointment of Guardian
	824	Petition for Appointment of Guardian for Minor
	825	Consent of Parent
	826	Consent or Nomination of Minor
	827	Order Appointing Guardian for Minor
	828	Order Appointing Temporary Guardian for Minor
	829	Order Appointing Emergency Guardian for Minor
	830	Letters of Guardianship – Minor
	834	Guardian's Report – Minor
	835	Petition for Termination of Guardianship – Minor
	836	Order for Termination of Guardianship – Minor
GUARDIANSHIP FOR ADULTS		
	841	Petition for Appointment of Guardian for Adult
	843	Order Appointing Emergency Guardian for Adult
	844	Notice of Appointment of Emergency Guardian and Notice of Right to Hearing
	846	Order Appointing Temporary Substitute Guardian for Adult
	848	Order Appointing Guardian for Adult

	849	Letters of Guardianship – Adult
	850	Guardian's Report – Adult
	852	Petition for Termination of Guardianship – Adult
	853	Notice of Death
	854	Order for Termination of Guardianship – Adult
	855	Petition for Modification of Guardianship – Adult or Minor
	856	Order for Modification of Guardianship
	857	Petition for Appointment of Co-Guardian or Successor Guardian
	858	Order Appointing Co-Guardian or Successor Guardian

CONSERVATORSHIP FOR MINOR		
	861	Petition for Appointment of Conservator – Minor
	862	Order Appointing Conservator for Minor
	863	Letters of Conservatorship – Minor
	866	Order for Deposit of Funds to Restricted Account
	867	Acknowledgment of Deposit of Funds to Restricted Account
	868	Motion to Withdraw Funds from Restricted Account
	869	Order Allowing Withdrawal of Funds from Restricted Account
	870	Restricted Account Log
	871	Check Register
	888	Petition for Termination of Conservatorship
	889	Waiver of Hearing, Waiver of Final Conservator's Report, Waiver of Audit, and Approval of Schedule of Distribution
	890	Order Terminating Conservatorship
CONSERVATORSHIP FOR ADULT		
	876	Petition for Appointment of Conservator for Adult *[Use also for appointment of Special Conservator and Single Transactions]*
	877	Order Appointing Special Conservator – Adult or Minor
	878	Order Appointing Conservator for Adult
	879	Petition for Appointment of Co-Conservator or Successor Conservator
	880	Letters of Conservatorship – Adult
	882	Conservator's Financial Plan with Inventory and Motion for Approval
	883	Order Regarding Conservator's Financial Plan

	884	Order Appointing Co-Conservator or Successor Conservator
	885	Conservator's Report *[Interim / Final]*
	853	Notice of Death
	888	Petition for Termination of Conservatorship
	889	Waiver of Hearing, Waiver of Accountings, Waiver of Final Conservator's Report, and Approval of Schedule of Distribution
	890	Order Terminating Conservatorship
	730	Decree of Final Discharge
	731	Receipt and Release