

# **Nevada Supreme Court**

## **Commission to Study the Administration of Guardianships in Nevada's Courts**



**August 26, 2016, Meeting Materials**

**Justice James W. Hardesty, Chair**

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET  
Director and  
State Court Administrator



JOHN MCCORMICK  
Assistant Court Administrator  
Judicial Programs and Services

RICHARD A. STEFANI  
Deputy Director  
Information Technology

**MEETING NOTICE AND AGENDA**

Name of Organization:

**Supreme Court Commission to Study the Administration of Guardianships  
In Nevada's Courts**

**Date and Time of Meeting:** August 26, 2016, 10:00 a.m. to 4:00 p.m.

**Place of Meeting:**

LAS VEGAS	CARSON CITY	ELKO
Regional Justice Center Nevada Supreme Court 200 Lewis Ave., 17 <sup>th</sup> Floor, Courtroom	Nevada Supreme Court 201 S. Carson Street Law Library, Room 107	Fourth Judicial District 571 Idaho Street Dept. 2

**AGENDA**

- I. Call to Order
  - a. Call of Roll and Determination of Quorum
  - b. Approval of Meeting Summary from June 13, 2016, and June 21, 2016 (\*for possible action)
- II. Updates
  - a. ADKT 507 Opinion (*pages 5-7*)
  - b. Revised Uniform Guardianship and Protective Proceedings Act (*pages 9-11*)
  - c. Status Report – Caseloads
- III. Discussion on Subject Matter Recommendations (\*for possible action)
  - a. Recommendation Relating to Appointment of Registered Agent\* (**Justice Hardesty**) (*pages 13-14*)
  - b. Lockbox Program Recommendation\* (**Justice Hardesty**)
    - i. Does the Commission support legislation to expand the use of the current Lockbox Program to allow for the designation of guardian forms?

Supreme Court Building ♦ 201 South Carson Street, Suite 250 ♦ Carson City, Nevada 89701 ♦ (775) 684-1700 • Fax (775) 684-1723

Regional Justice Center ♦ 200 Lewis Avenue, 17<sup>th</sup> floor ♦ Las Vegas, Nevada 89101

- c. Minor Guardianship Statute\* (Judge Walker, Judge Voy, Judge Porter) (pages 16-29)
- d. Fees\* (Judge Doherty, Justice Hardesty)
  - i. Attorneys\*
    - 1. Compensation of Attorneys in Guardianship Cases (pages 31-42)
    - 2. Reasonable Compensation Draft Statute (pages 43-44)
    - 3. Debra Bookout's memo from August 2015 (pages 46-60)
    - 4. References and Resources (page 61)
  - ii. Guardians\* (Debra Bookout, Justice Hardesty)
    - 1. Chart Guardian Fees (pages 63-72)
      - a. Fee structure to compensate guardians and those they hire (Q 22)
      - b. Process, notice, and findings required for the approval of fees to guardians and others they hire (Q 23)
- e. Bill of Rights Statutes\* (Barbara Buckley) (pages 79-86)
- f. Supportive Decision-Making / Supportive Living Agreements / Power of Attorney\*(Q 9) (Judge Doherty)
  - i. NRC-SDM State Grant Announcement (pages 88-92)
  - ii. National Guardians Association Newsletter (pages 93-101)
  - iii. Does the language included in a Power of Attorney adequately provide for the concept of a Supportive Living Agreement?
- g. Notice Requirements\* (Q 11) (Justice Hardesty) (pages 103-104)
- h. Process and timing for filing and evaluating an inventory and care plan for the protected person\* (Q 24) (Justice Hardesty)
- i. Process, timing, notice and findings the Court must make concerning accountings of the protected person's estate\* (Q 25) (Justice Hardesty)
- j. Management/Administration of the Protected Person's Estate\* (Q 27)
  - i. Proposed NRS Estate Statutes\* (Judge Steel) (pages 106-119)
  - ii. Information Estate Sales Companies and Auction Houses (pages 120-125)
- k. Office of State Public Guardian\* (Q 31)
  - i. Graphs and Schedule (Tim Sutton) (pages 127-131)
  - ii. Auditors (Justice Hardesty)
- l. Private Professional Guardians Licensure [NRS 628B\\*](#) (Kim Spoon, Susan Hoy) (pages 134-135)
- m. Confidential Records\* (Justice Hardesty) (pages 137-155)
- n. Physician's Certificates – Terminology (Justice Hardesty)

IV. Other Business

V. Next Meeting Date

- a. September 16, 2016, 1:30 p.m.
- b. September 26, 2016, 4 p.m. Teleconference

VI. Adjournment

- Action items are noted by (\*for possible action) and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows:, Vicki Elefante (775) 687-9807 - email: [elefante@nvcourts.nv.gov](mailto:elefante@nvcourts.nv.gov)
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030 (4)(a))
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations:** Nevada Supreme Court website: [www.nevadajudiciary.us](http://www.nevadajudiciary.us); Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Regional Justice Center, 200 Lewis Avenue, 17<sup>th</sup> Floor.

Work Session

**TAB 1**  
**ADKT 507**

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION  
OF A COMMISSION TO STUDY THE  
CREATION AND ADMINISTRATION  
OF GUARDIANSHIPS.

ADKT 0507

**FILED**

JUL 22 2016

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*O R D E R*

On June 8, 2015, this court created a commission to study and make appropriate recommendations for statewide policies and procedures concerning the creation and administration of guardianships. During the course of its work, the commission has determined that there is some confusion as to the application of the Rules of Civil Procedure (NRCPC) and the evidence code to guardianship matters. Accordingly, the commission has asked this court to clarify the application of the rules and code to proceedings under NRS Chapter 159 (Guardianships).

NRCPC 1 makes clear that the NRCPC govern procedures in district courts in all suits of a civil nature whether cognizable in law or equity, with exceptions noted in NRCPC 81(a). NRCPC 81(a) provides that the NRCPC govern procedure and practice except unless they are in conflict with procedure and practice provided by statute in special statutory proceedings. Based on NRCPC 81(a), the NRCPC apply in guardianship matters, unless there is a specific statute in Chapter 159 regarding a procedure or practice that conflict with the NRCPC.

As to evidence, NRS 47.020 sets forth the scope of Title 4 of the Nevada Revised Statutes, which deals with evidence and witnesses. Specifically, Title 4 governs "proceedings in the courts of this State and before magistrates," unless the provisions of Title 4 "are relaxed by a

statute or procedural rule applicable to the specific situation.” NRS 47.020(1)(a). There are also exceptions enumerated in NRS 47.020(3), all of which pertain to criminal matters and therefore are not applicable in the context of a guardianship matter. This court concludes that Title 4 of the NRS is applicable in guardianship matters unless there is a specific statute or procedural rule in NRS Chapter 159 that applies.

This order does not preclude a challenge to the procedure or evidence in a guardianship matter based, for example, on a conflicting statute or general concerns about admissibility such as relevance or probative value, but is intended solely to clarify that NRCP and Title 4 of the NRS are generally applicable to guardianship proceedings under NRS Chapter 159.

It is so ORDERED.

Parraguirre, C.J.  
Parraguirre

Hardesty, J.  
Hardesty

Cherry, J.  
Cherry

Gibbons, J.  
Gibbons

Douglas, J.  
Douglas

Saitta, J.  
Saitta

Pickering, J.  
Pickering

cc: All District Court Judges  
Kimberly F. Farmer, Executive Director, State Bar of Nevada  
Administrative Office of the Courts



**TAB 2**  
**UGPAA MEMO**

## MEMO

To: Uniform Law Commissioners  
From: David English and Nina Kohn  
Re: Revision of the Uniform Guardianship and Protective Proceedings Act Prepared for the  
2016 Annual Meeting of Uniform Law Commission  
Date: June 1, 2016

.....

The Drafting Committee is charged with revising selected portions of the Uniform Guardianship and Protective Proceedings Act (UGPAA) in order to implement some of the recommendations of the Third National Guardianship Summit (NGS) and otherwise to update the Act. This memo highlights the overarching concerns guiding the Committee's work.

Protection for persons subject to guardianship or conservatorship, including improved monitoring of appointees. As recent media coverage of exploitation by guardians and conservators suggests, there is significant concern about ensuring the accountability of guardians and conservators. The Committee worked to find a balance between enhancing protections for persons subject to guardianship and conservatorship, and not making the processes overly cumbersome or expensive. One innovation in the revised Act is to allow the court to identify people who will be given notice of certain key changes or suspect actions, and who can therefore serve as an extra set of eyes and ears (Section 310, Section 411). Other revisions include a provision that makes bond a default option for conservators (Section 416) and provisions that clarify relevant factors in setting fees for guardians and conservators (Section 210, Section 317, Section 418).

Better guidance for appointees. The revised Act seeks to provide greater guidance to appointees, many of whom are lay people. Revisions include a clearer decision-making standard (Section 314, Section 419), and clarity as to the role of prior appointees including appointed health care agents or attorneys-in-fact who, absent a court order to the contrary, retain their authority even after a guardianship or conservatorship has been put in place (Section 205, Section 318, Section 414).

Enhanced procedural rights for respondents. One key concern facing the Drafting Committee is that guardianships and conservatorships are over-used and over-broad. The Committee has worked to strike a balance between the need to provide meaningful procedural rights for persons alleged to need a guardian or conservator, and the need not to make the process for appointing a guardian or conservator overly complex or expensive. Key revisions include a narrower exception to the general rule that the respondent must be present at the hearing (Section 308, Section 409), a requirement that explicit findings be made before certain fundamental rights are removed (Section 310), and the elimination of provisions that would have allowed appointment of a guardian for an adult by will or writing without prior judicial approval.

Enhanced procedural rights for persons subject to guardianship and conservatorship. The Drafting Committee has focused attention on the rights of persons subject to guardianship and conservatorship, including their right and ability to seek termination or modification of the appointment, or removal of a guardian. Key revisions related to these concerns include a provision that the court provide the person notice of key rights (Section 310, Section 412), provisions for attorney representation of persons subject to guardianship and conservatorship (Section 321, Section 322, Section 433, Section 434), a limitation on the guardian or conservator's ability to charge fees to oppose the person's efforts to alter the appointment (Section 317, Section 433), and additional triggers for reconsideration of an appointment (Section 321, Section 322, Section 433, Section 434).

Facilitation and encouragement of less restrictive alternatives. A central aim of the Drafting Committee's work has been to facilitate and encourage the use of less restrictive alternatives, including technological and decision-making support and single-issue court orders in lieu of guardianship and conservatorship. To this end, the revised Act provides that neither guardianship nor conservatorship is appropriate where the person's needs could be met with technological assistance or decision-making support (Section 301, Section 401). It also allows for a protective order in lieu of guardianship or conservatorship (Section 118); the 1997 version, by contrast, only provided for such an order in lieu of conservatorship.

Visitation and communication with third parties. In recent years, some family members of persons subject to guardianship have raised concerns that guardians have unreasonably restricted the ability of persons subject to guardianship to receive visitors and communicate with others, and family advocates have encouraged legislative responses to address this concern. The revised Act includes a variety of provisions addressing this concern. These include a limitation on a guardian's ability to curtail communications, visits, or interactions between the person subject to guardianship and third parties (Section 317) and a requirement that the guardian give priority to a residential settings that allow the person to interact with those important to the person (Section 315). Along similar vein, it establishes a default that the adult children and spouse/domestic partner of a protected person are entitled to notice of the protected person's death or a significant change in the protected person's condition (Section 310).

Modernized provisions related to minors subject to guardianship. While the Committee's focus has largely been on adults, the Committee is also concerned with updating provisions related to guardianship for minors. To this end, consistent with modern trends in the law, the revised Act provides for greater involvement of the minor in decisions involving them. The age of involvement for a minor has been lowered from 14 to 12, the decision-making standard for guardians now calls on them to consider the minor's view (Section 207), and an attorney must be appointed for the minor in certain situations (Section 205).

Improved compliance with limited guardianship and conservatorship requirements. The Drafting Committee has recognized that, despite the best efforts of previous Committees, there is a lack of compliance with the 1997 Act's requirement that limited guardianships and conservatorships be used where they would meet the person's needs. In order to facilitate compliance with this direction, the Drafting Committee has crafted a sample petition which makes it easier for a petitioner to seek a limited order, and a sample order which makes it easier for a court to craft a

limited order. In addition, the revised Act requires petitions seeking a full guardianship or conservatorship to do more to justify that approach (Section 302, Section 402).

Updated language. The terms “ward,” “incapacitated person,” and “disabled person” are increasingly seen as demeaning and offensive and were rejected by the NGS. The Committee has worked to find alternatives to this language. After much discussion, the Committee arrived at a decision to use the terms “person subject to guardianship” and “person subject to conservatorship” in lieu of “ward.”

Person-centered planning. A key theme of the NGS recommendations was the need to infuse person-centered planning into guardianship and conservatorship. The Committee has worked to do so. For example, included as part of these revisions is a new requirement for a guardian’s plan (Section 318), and provisions to facilitate court monitoring of compliance with guardian’s and conservator’s plans (e.g., Section 320, Section 425).

Title of Act. The current title of the Act is the source of some confusion. One reason for this is that it does not use the term “Conservatorship” despite the fact that provisions related to Conservatorship constitute roughly one-half of the Act. Another reason is that the term “protective proceedings” is confusing as the term is increasingly associated with protective orders in domestic violence and elder abuse cases, which are not covered in the Act. Additionally, in the previous Act, the term “protective proceeding” was used to cover conservatorships and single transaction orders in lieu of conservatorship. As the revised Act allows for such orders in lieu of guardianship as well, the title is now an even poorer fit for the substance of the Act. The Chair and the Reporter therefore recommend revising the title to the “Uniform Guardianship and Conservatorship Act.”

**TAB 3**  
**RESIDENT AGENT**  
**RECOMMENDATION**

Recommendation relating to the Appointment of Registered Agent by Nonresident  
Guardian of Adult

Whereas, the Secretary of State currently accepts and records appointments of registered agents for business entities created and qualified pursuant to Title 7 of the Nevada Revised Statutes; and

Whereas, the Secretary of State's office currently has the mechanism in place through its public facing web site and Copies Division for the public to search and obtain public information of registered agents of business entities on file in the office; and

Whereas, the Secretary of State has the process and capability to collect and record public information relating to an Appointment of Registered Agent by Nonresident Guardian of an Adult and provide that information through the same registered agent search; and

Whereas, as of 07/01/2015 the Secretary of State currently accepts Appointments of Registered Agents by Nonresident Guardians of Adults with limited information, modified to fit the guardian-ward context, as reflected in the proof of appointment of guardianship; and

Whereas, the Secretary of State does not have the authority to verify the information in the appointment of registered agents, with the exception of the order appointing guardianship, the knowledge of when a nonresident guardianship is terminated, the ability to ensure that the information related to the ward, guardian, or the registered agent is kept current, or that the resignation of an appointed registered agent complies with the court's terms and whether a reassignment is appropriate; from whom a notice to cancel, resign, or reassign an appointment of registered agent should be honored; and

Whereas, it will be the responsibility of the Courts to monitor the information of a registered agent of a nonresident guardian through the Secretary of State's public search services; and

Whereas, changes to registered agent information will be the responsibility of the nonresident guardian or the Courts; and

Whereas, it is the desire to maintain the ministerial nature of this function as it relates to the appointment of registered agents for nonresident guardians of adults; and

Whereas, the Secretary of State has and will continue to cooperate with Court system;

It is hereby recommended that the process of filing an Appointment of Registered Agent for Nonresident Guardian of Adult with the Secretary of State follow the ministerial filing processes currently in place for filing with the Secretary of State; collecting and placing in the public record the information contained in the Appointment of Registered Agent by Nonresident Guardian of an Adult form, and that the responsibility for

oversight and monitoring the validity, accuracy, and status of the nonresident guardians of an adult and their registered agents be the responsibility of the Commission and the Courts.

**TAB 4**  
**MINOR GUARDIANSHIP NRS 159A**  
**DRAFT STATUTE**



## **Guardianship statutes specific to minors – proposed**

### **Chapter 159A**

#### **Applicability of chapter:**

**-In addition to the provisions of Chapter 159, this chapter applies to any guardianship proceeding where the Protected Person is a minor. If any provision of Chapter 159 is found to conflict with a provision in this chapter, the provisions in this chapter shall control.**

**159A.001** (Similar to NRS 159.023) – **“Minor” defined.** “Minor” means any person who is:

1. Less than 18 years of age; or
2. Less than 19 years of age if the guardianship is continued until the person reaches the age of 19 years pursuant to NRS 159A.020.

#### **159A.002** – *Suitability of parent*

*1. A parent of a minor child is unsuitable to care for their child if:*

*(a) They are unable to provide for any or all of the basic needs of their child. Basic needs include:*

- (i) Food*
- (ii) Clothing*
- (iii) Shelter*
- (iv) Medical Needs*
- (v) Basic education; and*

*(b) Due to action, or inaction, they pose a significant safety risk of either physical or emotional danger to their child.*

- 2. When determining whether a parent is unable to provide for the basic needs of their child, the court shall consider any special needs of the child.*

**159A.003** (Similar to NRS 159.044) – **Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed protected minor.**

1. Except as otherwise provided in NRS 127.045, a proposed protected minor, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.
2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:
  - (a) The name and address of the petitioner.
  - (b) The name, date of birth and current address of the proposed protected minor.
  - (c) A copy of one of the following forms of identification of the proposed protected minor which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:
    - (1) A social security number;
    - (2) A birth certificate;
    - (3) A valid driver’s license number;

- (4) A valid identification card number; or
- (5) A valid passport number.

Ê If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.

- (d) The date on which the proposed protected minor will attain the age of majority and:
  - (1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and
  - (2) Whether the petitioner anticipates that the proposed protected minor will need guardianship after attaining the age of majority.
- (e) Whether the proposed protected minor is a resident or nonresident of this State.
- (f) The names and addresses of the relatives of the proposed protected minor who are within the second degree of consanguinity.
- (g) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of [NRS 159.0595](#). If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one protected minor who is not related to the person by blood or marriage.
- (h) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in [NRS 239.0115](#) or as otherwise required to carry out a specific statute, maintained in a confidential manner:
  - (1) A social security number;
  - (2) A valid driver's license number;
  - (3) A valid identification card number; or
  - (4) A valid passport number.
- (i) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which the proposed guardian was convicted and whether the proposed guardian was placed on probation or parole.
- (j) A summary of the reasons why a guardian is needed and *any available* documentation demonstrating the need for a guardianship, *including any custodial orders or other court information regarding the custodial status of the proposed protected minor.*
- (k) Whether the appointment of a general or a special guardian is sought.
- (l) A general description and the probable value of the property of the proposed protected minor and any income to which the proposed protected minor is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian.
- (m) The name and address of any person or care provider having the care, custody or control of the proposed protected minor.
- (n) If the petitioner is not the parent(s) of the proposed protected minor, a declaration explaining the relationship of the petitioner to the proposed protected minor or to the proposed protected minor's parent(s), if any, and the interest, if any, of the petitioner in the appointment.
- (o) If the guardianship is sought as the result of an investigation of a report of abuse or neglect of the proposed protected minor, whether the referral was from a law enforcement agency or a state or county agency.

- (p) Whether the proposed protected minor or the proposed guardian is a party to any pending criminal or civil litigation.
- (q) Whether the guardianship is sought for the purpose of initiating litigation.
- (r) Whether the proposed guardian has filed for or received protection under the federal bankruptcy laws within the immediately preceding 7 years.

**159A.004 – Appointment of Investigator** (NRS 159.046 outlines appointment of investigators)

1. *Upon filing of the petition, or any time thereafter, the court may order that an investigation into the suitability of a proposed guardian(s) to provide for the basic needs of the protected minor: food, clothing, shelter, medical needs, and basic education. The court may order an investigation to locate relatives of the proposed protected minor within the second degree of consanguinity.*
2. *The court may order that any such investigation, pursuant to paragraph 1, be performed by the appropriate State and/or County agency charged with the authority to conduct investigations into the abuse and neglect of children.*

**159A.005** (Similar to NRS 159.048) – **Contents of citation.** The citation issued pursuant to NRS 159.047 must state that:

1. *A guardian may be appointed for the proposed protected minor;*
2. *Proposed protected minor's rights may be affected, as well as the rights of any legal or physical custodian;*
3. *Proposed protected minor has the right to appear at the hearing and to oppose the petition; and*
4. *Proposed protected minor has the right to be represented by an attorney, who may be appointed for the proposed protected minor by the court as a Guardian Ad Litem.*
5. *The court may appoint an attorney and/or Guardian Ad Litem for the proposed protected minor or protected minor at any time during the proceedings pursuant to NRS 159.048.*

**159A.006** (Similar to NRS 159.0483) – **Attorney and/or Guardian Ad Litem for protected minor or proposed protected minor.** A protected minor or proposed protected minor who is the subject of proceedings held pursuant to this chapter may be represented by an attorney *and/or Guardian Ad Litem* at all stages of the proceedings. If the protected minor or proposed protected minor is represented by an attorney *and/or Guardian Ad Litem*, the attorney *and/or Guardian Ad Litem* has the same authority and rights as an attorney representing a party to the proceedings.

**159A.007** (Similar to NRS 159.049) – **Appointment without issuance of citation.** The court may, without issuing a citation, appoint a guardian for the proposed protected minor if the petitioner is a parent who has sole legal and physical custody of the proposed protected minor as evidenced by a valid court order or birth certificate and who is seeking the appointment of a guardian for the minor child of the parent. If the proposed protected minor is 14 years of age or older:

1. The petition must be accompanied by the written consent of the minor to the appointment of the guardian; or
2. The minor must consent to the appointment of the guardian in open court.

**159A.008** (Similar to NRS 159.052) – **Temporary guardian for protected minor who is in need of *immediate medical attention*: petition for appointment; conditions; required notice; extension; limited powers**

1. A petitioner may request that the court appoint a temporary guardian for a protected person who is a minor *in need of immediate medical attention which he/she cannot obtain without the appointment of a temporary guardian*. To support the request, the petitioner must set forth in a petition and present to the court under oath:
  - (a) Documentation which shows that the proposed protected minor needs immediate medical attention and, *without the appointment of a temporary guardian, cannot obtain that immediate medical attention*. Such documentation must include a copy of the birth certificate, or other reliable documentation, verifying the age of the proposed protected minor.
  - (b) Facts which show that:
    - (1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 by telephone or in writing before the filing of the petition;
    - (2) The proposed protected minor would be exposed to an immediate risk of physical harm if the petitioner were to provide notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian; or
    - (3) Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.
2. *The court may appoint a temporary guardian to serve for 10 days if the court:*
  - (a) Finds reasonable cause to believe that the proposed protected minor is in need of *immediate medical attention that he/she cannot obtain without the appointment of a temporary guardian; and*
  - (b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 or that giving notice to those persons is not feasible under the circumstances, or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1.
3. After the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047, including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.
4. If, before the appointment of a temporary guardian, the court determined that advance notice was not feasible or was not required pursuant to subparagraph (2) or (3) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity, and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.
5. Not later than 10 days after the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary

guardianship. Except as otherwise provided in subsection 7, if the court finds by clear and convincing evidence that the proposed protected minor continues to be in need of *immediate medical attention which he/she cannot obtain without the continued appointment of a temporary guardian*, the court may extend the temporary guardianship until a general or special guardian is appointed, pursuant to subsection 8.

6. If the court appoints a temporary guardian or extends the temporary guardianship pursuant to this section, the court shall limit the powers of the temporary guardian to those necessary to respond to the need for immediate medical attention.

7. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of NRS 159.0475 have been satisfied; or

(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being undertaken.

8. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods.

**159A.009** (Similar to NRS 159.052) – **Temporary guardian for protected minor who is *not in need of immediate medical attention*; petition for appointment; conditions; required notice; extension**

1. A petitioner may request that the court appointment a temporary guardian for the person and/or estate of a protected minor *by filing a verified petition*.

*2. The petition shall state facts, which establish good cause for appointment of the temporary guardian. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person and/or estate of the minor. Such petition must include facts, which show that:*

(a) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 by telephone or in writing before the filing of the petition;

(b) The proposed protected minor would be exposed to an immediate risk of physical, emotional, or financial harm if the petitioner were to provide notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian; or

(c) Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.

*3. A petition seeking the temporary appointment of a guardian on an ex parte basis shall be accompanied by an affidavit explaining the emergency that requires a guardian to be appointed before a hearing.*

*4. If the parent(s) of the protected minor have not had care, custody and control of the minor for the 6 months preceding the petition, a presumption shall apply that temporary guardianship of the minor's person is in the best interest of the minor.*

5. After the appointment of a temporary guardian, the petitioner shall attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047, including, without limitation, notice of any hearing to extend the temporary guardianship. If the petitioner fails to make such an effort, the court may terminate the temporary guardianship.

6. If, before the appointment of a temporary guardian, the court determined that advance notice was not feasible or was not required pursuant to paragraph (b) or (c) of subsection 2, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047

without undue delay, but not later than 48 hours after the appointment of the temporary guardian or not later than 48 hours after the petitioner discovers the existence, identity, and location of the persons entitled to notice pursuant to that section. If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

7. Not later than 10 court days after the ex parte appointment of a temporary guardian, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 8, if the court finds by clear and convincing evidence that the proposed protected minor continues to be in need of a temporary guardian, the court may extend the temporary guardianship until a general or special guardian is appointed, pursuant to subsection 9.

8. The court may not extend a temporary guardianship pursuant to subsection 7 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of NRS 159.0475 have been satisfied; or

(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being undertaken.

9. The court may extend the temporary guardianship, for good cause shown, for not more than two successive 60-day periods, unless extraordinary circumstances necessitate a longer period for the temporary guardianship.

*10. If for any reason the appointed guardian cannot perform the duties of a guardian, the court, on a petition filed for temporary guardianship, may appoint a temporary guardian to exercise the powers of guardian until a new permanent guardian is appointed.*

**159A.010 (Similar to NRS 159.061) – Preference for parent of minor; other considerations in determining qualifications and suitability of guardian**

The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor's *person or estate*. The appointment of a parent as guardian for the minor's *person or estate* must not conflict with a valid order for custody of the minor.

1. In determining whether the parents of a minor, or either parent, or any other person who seeks appointment as guardian for the minor is qualified and suitable, the court shall consider, if applicable and without limitation:
  - (a) Which parent has physical custody of the minor;
  - (b) The ability of the parents, parent or other person to provide for the basic needs of the minor, including, without limitation, food, shelter, clothing and medical care;
  - (c) Whether the parents, parent or other person has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of [chapter 453A](#) of NRS;
  - (d) Whether the parents, parent or other person has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the abuse, neglect, exploitation, isolation or abandonment of a child, his or her spouse, his or her parent or any other adult; and
  - (e) Whether the parents, parent or other person has been convicted in this State or any other jurisdiction of a felony, *unless the court determines the parents, parent or other person is suitable to be guardian.*

*(f) Whether the minor has not been in the care, custody, and control of the parent for the 6 months preceding the filing of the petition, in which case a rebuttable presumption arises that the parent is not suitable.*

*(g) Whether a proposed guardian or person seeking guardianship has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child.*

3. Subject to the preference set forth in subsection 1, the court shall appoint as guardian the qualified person who is most suitable and is willing to serve.

*4. In determining whether to appoint a guardian of the person and/or estate of a minor, and who should be appointed, the court must always act within the best interests of the minor child.*

5. In determining which qualified person is most suitable, the court shall, in addition to considering any applicable factors set forth in subsection 2, give consideration, among other factors, to:

(a) Any nomination of a guardian for the minor contained in a will or other written instrument executed by a parent of the minor.

(b) Any request made by the minor, if he or she is 14 years of age or older, for the appointment of a person as guardian for the minor.

(c) The relationship by blood or adoption of the proposed guardian to the minor. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider relatives in the following order of preference:

(1) Parent.

(2) Adult sibling.

(3) Grandparent.

(4) Uncle or aunt.

(d) Any recommendation made by a master of the court or special master pursuant to [NRS 159.0615](#).

(e) Any recommendation made by:

(1) An agency which provides child welfare services, an agency which provides child protective services or a similar agency; or

(2) A guardian ad litem or court appointed special advocate who represents the minor.

(f) Any request for the appointment of any other interested person that the court deems appropriate.

5. As used in this section, "agency which provides child welfare services" has the meaning ascribed to it NRS 432B.030.

**159A.011 (Similar to NRS 159.0755) – Disposition of estate having value not exceeding by more than \$10,000 aggregate amount of unpaid expenses of and claims against estate.** If, at the time of the appointment of the guardian or thereafter, the estate of a protected minor consists of personal property having a value not exceeding by more than \$10,000 the aggregate amount of unpaid expenses of administration of the guardianship estate and claims against the estate, the guardian of the estate, with prior approval of the court by order, may pay those expenses and claims from the estate and deliver all the remaining personal property to such person as the court may designate in the order, to be held, invested or used as ordered by the

court. The recipient of the property so delivered shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered. The guardian shall file in the proceeding proper receipts or other evidence satisfactory to the court showing the delivery, and the guardian is released from his or her trust and the bond of the guardian is exonerated.

**159A.012 (Similar to NRS 159.076) – Summary administration.**

1. The court may grant a summary administration if, at any time, it appears to the court that after payment of all claims and expenses of the guardianship the value of the protected minor's property does not exceed \$10,000.
2. If the court grants a summary administration, the court may:
  - (a) Authorize the guardian of the estate or special guardian who is authorized to manage the protected minor's property to convert the property to cash and sell any of the property, with or without notice, as the court may direct. After the payment of all claims and the expenses of the guardianship, the guardian shall deposit the money in savings accounts or invest the money as provided in [NRS 159.117](#), and hold the investment and all interest, issues, dividends and profits for the benefit of the protected minor. The court may dispense with annual accountings and all other proceedings required by this chapter.
  - (b) Terminate the guardianship of the estate and direct the guardian to deliver the protected minor's property to the custodial parent or parents, guardian or custodian of the minor to hold, invest or use as the court may order.
3. Whether the court grants a summary administration at the time the guardianship is established or at any other time, the guardian shall file an inventory and record of value with the court.
4. If, at any time, the net value of the estate of the protected minor exceeds \$10,000:
  - (a) The guardian shall file an amended inventory and accounting with the court;
  - (b) The guardian shall file annual accountings; and
  - (c) The court may require the guardian to post a bond.

**159A.013 (Similar to NRS 159.079) - General functions of guardian of person; establishment or change of protected minor's residence by guardian.**

1. Except as otherwise ordered by the court, a guardian of the person has the care, custody and control of the person of the protected minor, and has the authority and, subject to subsection 2, shall perform the duties necessary for the proper care, maintenance, education and support of the protected minor, including, without limitation, the following:
  - (a) Supplying the protected minor with food, clothing, shelter and all incidental necessities, including locating an appropriate residence for the protected minor.
  - (b) Authorizing medical, surgical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the protected minor.
  - (c) Seeing that the protected minor is properly trained and educated and that the protected minor has the opportunity to learn a trade, occupation or profession.
2. In the performance of the duties enumerated in subsection 1 by a guardian of the person, due regard must be given to the extent of the estate of the protected minor. A guardian of the person may be required to incur expenses on behalf of the protected minor if the estate of the protected minor is insufficient to reimburse the guardian.



3. A guardian of the person is the protected minor's personal representative for purposes of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any applicable regulations. The guardian of the person has authority to obtain information from any government agency, medical provider, business, creditor or third party who may have information pertaining to the protected minor's health care or health insurance.
4. Except as otherwise provided in subsection 6, a guardian of the person may establish and change the residence of the protected minor at any place within this State without the permission of the court. The guardian shall select the least restrictive appropriate residence which is available and necessary to meet the needs of the protected minor and which is financially feasible.
5. Except as otherwise provided in subsection 6, a guardian of the person shall petition the court for an order authorizing the guardian to change the residence of the protected minor to a location outside of this State. *The guardian must show that the placement outside of this State is in the best interest of the protected minor or that there is no appropriate residence available for the protected minor in this State.* The court shall retain jurisdiction over the guardianship unless the guardian files for termination of the guardianship pursuant to **NRS 159A.020** or the jurisdiction of the guardianship is transferred to the other state. *In any event, the guardian must file a petition for guardianship within the state of the protected minor's residence within 6 months of the relocation.*
6. A guardian of the person must file a petition with the court requesting authorization to move a protected minor to or place a protected minor in a secured residential long-term care facility.
7. This section does not relieve a parent or other person of any duty required by law to provide for the care, support and maintenance of any dependent.
8. *The court may issue a visitation order, in the guardianship order or any order thereafter, awarding visitation between the protected minor and his or her parent(s) and relatives within the fourth degree of consanguinity.*

**159A.014 (Similar to NRS 159.085) – Inventory, supplemental inventory and appraisal of property of protected minor.**

1. Not later than 60 days after the date of the appointment of a general or special guardian of the estate or, if necessary, such further time as the court may allow, the guardian shall make and file in the guardianship proceeding a verified inventory of all of the property of the protected minor which comes to the possession or knowledge of the guardian.
2. A temporary guardian of the estate who is not appointed as the general or special guardian shall file an inventory with the court by not later than the date on which the temporary guardian files a final accounting as required pursuant to **NRS 159A.020**.
3. The guardian shall take and subscribe an oath, which must be endorsed or attached to the inventory, before any person authorized to administer oaths, that the inventory contains a true statement of:
  - (a) All of the estate of the protected minor which has come into the possession of the guardian;
  - (b) All of the money that belongs to the protected minor; and
  - (c) All of the just claims of the protected minor against the guardian.

4. Whenever any property of the protected minor not mentioned in the inventory comes to the possession or knowledge of a guardian of the estate, the guardian shall:
  - (a) Make and file in the proceeding a verified supplemental inventory not later than 30 days after the date the property comes to the possession or knowledge of the guardian; or
  - (b) Include the property in the next accounting.
5. The court may order which of the two methods described in subsection 4 the guardian shall follow.
6. The court may order all or any part of the property of the protected minor appraised as provided in [NRS 159.0865](#) and [159.305](#).
7. If the guardian neglects or refuses to file the inventory within the time required pursuant to subsection 1, the court may, for good cause shown and upon such notice as the court deems appropriate:
  - (a) Revoke the letters of guardianship and the guardian shall be liable on the bond for any loss or injury to the estate caused by the neglect of the guardian; or
  - (b) Enter a judgment for any loss or injury to the estate caused by the neglect of the guardian.

**159A.015 (Similar to NRS 159.089) – Possession of and title to property of protected minor; guardian to secure certain documents.**

1. A guardian of the estate shall take possession of:
  - (a) All of the property of substantial value of the protected minor;
  - (b) Rents, income, issues and profits from the property, whether accruing before or after the appointment of the guardian; and
  - (c) The proceeds from the sale, mortgage, lease or other disposition of the property.
2. The guardian may permit the protected minor to have possession and control of the personal property and funds as are appropriate to the needs and capacities of the protected minor.
3. The title to all property to which the protected minor may have a beneficiary interest therein.
4. A guardian shall secure originals, when available, or copies of any:
  - (a) Revocable or irrevocable trust in which the protected minor has a vested interest as a beneficiary; and
  - (b) Writing evidencing a present or future vested interest in any real or intangible property.

**159A.016 (Similar to NRS 159.093) – Collecting obligations due to or *for protected minor*.**

1. A guardian of the estate:
  - (a) Shall demand all debts and other choses in action due to the protected minor; and
  - (b) With prior approval of the court, may sue for and receive all debts and other choses in action due to the protected minor.
2. A guardian of the estate, with prior approval of the court by order, may compound or compromise any debt or other chose in action due to the protected minor and give a release and discharge to the debtor or other obligor.
3. ***A guardian of the person:***
  - (a) ***Shall report to the court the entry of any child support order for the support of the***

*protected minor or the approval of any public assistance for the protected minor, within 30 days of the entry of a child support order or approval for public assistance. A copy of the child support order or document approving public assistance shall be filed with the notice filed with the court.*

*(b) If an order for child support is in effect for the support of the protected minor, upon entry of an order for permanent guardianship, that child support shall be immediately assigned to the guardian for the support of the protected minor.*

*(c) May obtain an order for child support requiring the parent(s) of the protected minor to pay child support to the guardian pursuant to the provisions of NRS [125B.070](#) and [125B.080](#).*

**159A.017** (Similar to NRS 159.125) – **Gifts from estate of protected minor; expenditures for relatives of protected minor.**

A guardian of the estate, with prior approval of the court by order, may, from the estate of the protected minor which is not necessary for the proper care, maintenance, education and support of the protected minor, make reasonable gifts directly, or into a trust, on behalf of the protected minor.

**159A.018** (Similar to NRS 159.185) – **Conditions for removal**

1. The court may remove a guardian if the court determines that:
  - (a) The guardian has become mentally incompetent, unsuitable or otherwise incapable of exercising the authority and performing the duties of a guardian as provided by law;
  - (b) The guardian is no longer qualified to act as a guardian pursuant to section 1 of this act [Chapter 437, Laws of Nevada 2015 and] or NRS 159A.010;
  - (c) The guardian has filed for bankruptcy within the previous 5 years;
  - (d) The guardian of the estate has mismanaged the estate of the protected minor;
  - (e) The guardian has negligently failed to perform any duty as provided by law or by any order of the court and:
    - (1) The negligence resulted in injury to the protected minor or the estate of the protected minor; or
    - (2) There was a substantial likelihood that the negligence would result in injury to the protected minor or the estate of the protected minor;
  - (f) The guardian has intentionally failed to perform any duty as provided by law or by any lawful order of the court, regardless of injury;
  - (g) The best interests of the protected minor will be served by the appointment of another person as guardian; or
  - (h) The guardian is a private professional guardian who is no longer qualified as a private professional guardian pursuant to [NRS 159.0595](#).
2. A guardian may not be removed if the sole reason for removal is the lack of money to pay the compensation and expenses of the guardian.

**159A.019 (Similar to NRS 159.186) – Additional limitation governing removal of guardian of minor; considerations for court in determining best interests of minor; removal of guardian of minor.**

1. Notwithstanding any other provision of law, except as otherwise provided in subsection 3, the court shall not remove the guardian or appoint another person as guardian unless the court finds that removal of the guardian or appointment of another person as guardian is in the best interests of the minor.

2. For the purposes of this section in determining the best interests of the minor, the court shall consider, without limitation:

(a) The ability of the present guardian to provide for the basic needs of the minor, including, without limitation, food, shelter, clothing and medical care;

(b) The safety of the home in which the minor is residing;

(c) The length of time that the minor has been in the care of the present guardian;

(d) The current well-being of the minor, including whether the minor is prospering in the environment being provided by the present guardian;

(e) The emotional bond existing between the present guardian and the minor;

(f) If the person petitioning the court to replace the present guardian was previously removed from the care, custody or guardianship of the minor:

(1) The level of participation before the petition was filed by the petitioner in the welfare of the minor; and

(2) If applicable, whether the petitioner has received instruction in parenting, participated in a program of rehabilitation or undergone counseling for any problem or conduct that the court, in appointing the present guardian, considered as an indication of the previous unfitness of the petitioner; and

(g) The mental and physical health of the present guardian.

3. The court may remove the guardian of a minor or appoint another person as guardian if the guardian files a petition to resign his or her position as guardian.

**159A.020 (Similar to NRS 159.191) – Termination of guardianship of person, estate or person and estate; procedure upon death of protected minor.**

1. A guardianship of the person and/or estate is terminated:

(a) By the death of the protected minor;

(b) Upon the protected minor's change of domicile to a place outside this state and the transfer of jurisdiction to the court having jurisdiction in the new domicile;

(c) Upon order of the court, if the court determines that the guardianship no longer is necessary; or

(1) On the date on which the protected minor reaches 18 years of age; or

(2) On the date on which the protected minor graduates from high school or becomes 19 years of age, whichever occurs sooner, if:

(I) The protected minor will be older than 18 years of age upon graduation from high school; and

(II) The protected minor and the guardian consent to continue the guardianship and the consent is filed with the court at least 14 days before the date on which the protected minor will become 18 years of age.

2. If the guardianship is of the person and estate, the court may order the guardianship terminated as to the person, the estate, or the person and estate.
3. The guardian shall notify the court, all interested parties, the trustee, and the named executor or appointed personal representative of the estate of the protected minor of the death of the protected minor within 30 days after the death.
4. Immediately upon the death of the protected minor **or emancipation of a minor:**
  - (a) The guardian of the estate shall have no authority to act for the protected minor except to wind up the affairs of the guardianship pursuant to [NRS 159.193](#), and to distribute the property of the protected minor as provided in [NRS 159.195](#) and [159.197](#); and
  - (b) No person has standing to file a petition pursuant to [NRS 159.078](#).
  - (c) *A final accounting must be prepared, filed, served and set for hearing as required by [NRS 159.177](#), [159.179](#), and [159.181](#).*
  - (d) *If a protected minor is incompetent, as defined by [NRS 159.019](#), a Petition may be filed to transition the case from a Minor Guardianship to an Adult Guardianship for the protected person. The Petition must comply with all of the requirements of [NRS 159.044](#) and must be noticed and served in accordance with [NRS 159.047](#) and [159.048](#).*

**159A.021 (Similar to [NRS 159.205](#)) – Appointment of short-term guardianship for minor child by parent: When authorized; content of written instrument; term; termination.**

1. Except as otherwise provided in this section or [NRS 127.045](#), a parent, without the approval of a court, may appoint in writing a short-term guardianship for an unmarried minor child if the parent has legal custody of the minor child.
  2. The appointment of a short-term guardianship is effective for a minor who is 14 years of age or older only if the minor provides written consent to the guardianship.
  3. The appointment of a short-term guardian does not affect the rights of the other parent of the minor.
  4. A parent shall not appoint a short-term guardian for a minor child if the minor child has another parent:
    - (a) Whose parental rights have not been terminated;
    - (b) Whose whereabouts are known; and
    - (c) Who is willing and able to make and carry out daily child care decisions concerning the minor,
- È unless the other parent of the minor child provides written consent to the appointment.
5. The written instrument appointing a short-term guardian becomes effective immediately upon execution and must include, without limitation:
    - (a) The date on which the guardian is appointed;
    - (b) The name of the parent who appointed the guardian, the name of the minor child for whom the guardian is appointed and the name of the person who is appointed as the guardian; and
    - (c) The signature of the parent and the guardian in the presence of a notary public acknowledging the appointment of the guardian. The parent and guardian are not required to sign and acknowledge the instrument in the presence of the other.
  6. The short-term guardian appointed pursuant to this section serves as guardian of the minor for 6 months, unless the written instrument appointing the guardian specifies a shorter term or specifies that the guardianship is to terminate upon the happening of an event that occurs sooner than 6 months.

7. Only one written instrument appointing a short-term guardian for the minor child may be effective at any given time.
8. The appointment of a short-term guardian pursuant to this section:
  - (a) May be terminated by an instrument in writing signed by either parent if that parent has not been deprived of the legal custody of the minor.
  - (b) Is terminated by any order of a court of competent jurisdiction that appoints a guardian.

**159A.022 (Similar to NRS 159.215) - Guardian of person of minor child of member of Armed Forces.**

1. A member of the Armed Forces of the United States, a reserve component thereof or the National Guard may, by written instrument and without the approval of a court, appoint any competent adult residing in this State as the guardian of the person of a minor child who is a dependent of that member. The instrument must be:
  - (a) Executed by both parents if living, not divorced and having legal custody of the child, otherwise by the parent having legal custody; and
  - (b) Acknowledged in the same manner as a deed.
- È If both parents do not execute the instrument, the executing parent shall send by certified mail, return receipt requested, to the other parent at his or her last known address, a copy of the instrument and a notice of the provisions of subsection 3.
2. The instrument must contain a provision setting forth the:
  - (a) Branch of the Armed Forces;
  - (b) Unit of current assignment;
  - (c) Current rank or grade; and
  - (d) Social security number or service number,È of the parent who is the member.
3. The appointment of a guardian pursuant to this section:
  - (a) May be terminated by a written instrument signed by either parent of the child if that parent has not been deprived of his or her parental rights to the child; and
  - (b) Is terminated by any order of a court.

**159A.023 – Parental petition for termination**

1. *If a parent of a protected minor petitions the court prior to the protected minor's emancipation for the termination of a guardianship of their child, the parent has the burden of proof to show by clear and convincing evidence that:*
  - (a) *There has been a material change of circumstances since the time the guardianship was created. As part of the change of circumstances, the parent must show that they have restored themselves to suitability as defined by NRS 159A.002, and*
  - (b) *The welfare of the child would be substantially enhanced by the termination of the guardianship and placement of the protected minor with the parent.*
2. *If the parent consented to the guardianship when it was created, the parent is only required to prove that they have restored themselves to suitability.*

**TAB 5**  
**ATTORNEY AND GUARDIAN FEES**

## **Reasonable compensation for attorneys, guardians and personal representatives**

### California

- AB 1363 (2006) on fees charged to wards:

SEC. 22. Section 2410 is added to the Probate Code, to read:

2410. On or before **January 1, 2008**, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers, shall adopt a rule of court that shall require **uniform standards of conduct** for actions that conservators and guardians may take under this chapter on behalf of conservatees and wards to ensure that the estate of conservatees or wards are maintained and conserved as appropriate and to prevent risk of loss or harm to the conservatees or wards. This rule shall include at a minimum **standards for determining the fees that may be charged to conservatees or wards and standards for asset management.**

[http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab\\_1351-1400/ab\\_1363\\_bill\\_20060927\\_chaptered.html](http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_1351-1400/ab_1363_bill_20060927_chaptered.html)

- AB 1339 (2013) - petitioner submits their own proposed fee schedule to court. If approved, does not preclude court from reducing compensation later.

2614.7. If a guardian or conservator of the person or estate, or both, is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions



Code), the guardian or conservator shall file, concurrently with the inventory and appraisal required by Section 2610, a proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the ward or conservatee for services performed as a guardian or conservator. The filing of a proposed hourly fee schedule or another statement of the guardian's or conservator's proposed compensation, as required by this section, shall not preclude a court from later reducing the guardian's, conservator's, or his or her attorney's fees or other compensation.

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140AB1339](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB1339)

### Maryland

- John D. Newell (Annapolis) on attorney's fees for guardianship: \$950 for uncontested petition, \$275/hr for contested petition (~2012)

<http://www.jnewelljdpa.com/Practice%20Areas/Fee%20Schedule.html>

### Oregon

- Stan Butterfield (Willamette Valley) on attorney's fees for guardianship: \$3,500-\$4,500 (~2013)

<https://stanbutterfield.com/2015/12/01/how-much-does-a-guardianship-cost-in-oregon/>

- David C. Streicher (Portland) on attorney's fees for guardianship:

“In Oregon, legal fees are based on the number of hours spent and the lawyer's hourly rate, not a fixed percentage of the estate. (In comparison, California probate lawyers automatically receive a

fee of roughly 2% of the estate, along with additional compensation for extraordinary services.)”

“In general, the fee might be as low as \$2,500 for a simple probate with cooperative executors and beneficiaries.” (2011)

<http://www.oregonwillstrustsprobate.com/2011/10/11/excessive-probate-legal-fees-in-oregon/>

· ORS 125.098 on reasonableness of attorney’s fees:

(2) A court shall consider the following factors in determining whether to award attorney fees under ORS 125.095:

(a) The benefit to the person subject to the protective proceeding by the party’s actions in the proceeding.

(b) The objective reasonableness of the position asserted by the party.

(c) The party’s self-interest in the outcome of the proceeding.

(d) Whether the relief sought by the party was granted in whole or in part, subject to the respondent’s right to contest the proceeding.

(e) The conduct of the party in the transactions or occurrences that gave rise to the need for a protective proceeding, **including any conduct of the party that was reckless, willful, malicious, in bad faith or illegal.**

**(f) The extent to which an award of attorney fees in the proceeding would deter others from asserting good faith positions in similar proceedings.**

**(g) The extent to which an award of attorney fees in the proceeding would deter others from asserting meritless positions in similar proceedings.**

(h) The objective reasonableness of the party and the diligence of the party and the attorney during the proceeding.

(i) The objective reasonableness of the party and the diligence of the party in pursuing

settlement of the dispute.

(j) Any other factor the court may consider appropriate under the circumstances of the proceeding.

(3) A court shall consider the factors specified in subsection (2) of this section in determining the amount of an award of attorney fees under ORS 125.095 (Fees, costs and disbursements payable in protective proceedings). In addition, the court shall consider the following factors in determining the amount of an award of attorney fees:

...(b) The likelihood that the acceptance of the employment on behalf of the party by the attorney would preclude the attorney from other employment, when the likelihood should be apparent or was made apparent to the party.

· ORS 116.173 on compensation for personal representative:

(1) Upon application to the court a personal representative is entitled to receive compensation for services as provided in this section. If there is more than one personal representative acting concurrently, the compensation shall not be increased, but may be divided among them as they agree or as the court may order. The compensation is a commission upon the whole estate, as follows:

(a) Upon the property subject to the jurisdiction of the court, including income and realized gains:

(A) Seven percent of any sum not exceeding \$1,000.

(B) Four percent of all above \$1,000 and not exceeding \$10,000.

(C) Three percent of all above \$10,000 and not exceeding \$50,000.

(D) Two percent of all above \$50,000.

(b) One percent of the property, exclusive of life insurance proceeds, not subject to the jurisdiction of the court but reportable for Oregon inheritance or estate tax or federal estate tax purposes.

(2) In all cases, further compensation as is just and reasonable may be allowed by the court for any extraordinary and unusual services not ordinarily required of a personal representative in the performance of duties as a personal representative.

(3) When a decedent by will has made special provision for the compensation of a personal representative, the personal representative is not entitled to any other compensation for services unless prior to appointment the personal representative signs and files with the clerk of the court a written renunciation of the compensation provided by the will. [Formerly [117.680](#); 2005 c.126 §1; 2011 c.526 §20]

<http://www.oregonlaws.org/ors/116.173>

### Florida

- “Lodestar” rule for determining attorney’s fees (reasonable time \* reasonable rate = fee):

“[T]he law is clearly established that an award of attorney’s fees “must ... contain express findings regarding the number of hours reasonably expended and a reasonable hourly rate for the type of litigation involved.” *Quality Holdings of Fla., Inc. v. Selective Invs., IV, LLC*, 25 So.3d 34, 37 (Fla. 4th DCA 2009) (citations omitted) (emphasis added). **This lodestar method of determining reasonable attorney’s fees**, adopted by our state Supreme Court in *Florida Patient’s Comp. Fund v. Rowe*, 472 So.2d 1145 (Fla.1985), **applies equally to probate matters.**”

[Mitchell v. Mitchell](#), 94 So.3d 706 (Fla. 4th DCA August 15, 2012)

<http://www.flprobatelitigation.com/2013/02/articles/new-probate-cases/compensation-disputes/4th-5th-dca-how-to-draft-attorneys-fees-and-costs-orders-that-wont-get-reversed-on-appeal/>

- Broward County on guardian's compensation (2008):

“The fee payable to nonprofessional guardians in Broward County is currently \$30 per hour. Professional Guardians fees are \$50 per hour for years zero to five as a professional guardian and \$75 per hour for six or more years as a professional guardian.”

[http://apps.17th.flcourts.org/GuardianHandbook\\_July\\_2008.pdf](http://apps.17th.flcourts.org/GuardianHandbook_July_2008.pdf)

- Thorpe v. Myers (2011) on guardian's compensation:

“A guardian cannot expect to be compensated for services rendered outside the scope of his or her appointment.”

<http://flprobatelitigation.default.wp1.lexblog.com/files/2013/08/2D10-29771.pdf>

- Russell R. Winer (St. Petersburg) on compensation for personal representative:

The Code provides for payment of about 3% of the assets to the P.R. for the P.R.'s services, and also provides that the following attorney fees are reasonable:

- (a) \$1500 for estates having a value of \$40,000 or less.
- (b) An additional \$750 for estates having a value of more than \$40,000 and not exceeding \$70,000.
- (c) An additional \$750 for estates having a value of more than \$70,000 and not exceeding \$100,000.
- (d) For estates having a value in excess of \$100,000, at the rate of 3 percent on the next

\$900,000.

<http://www.inherit-florida.com/content.htm#Guardianship>

Arizona

- Fleming & Curti (Tuscon) on attorney's fees for guardianship: \$1500-\$2000 (2012)

<http://issues.flemingandcurti.com/2012/10/21/how-much-does-it-cost-to-get-a-guardian-and-or-conservator-appointed/>

Rhode Island

2007: guardian ad litem fees may not exceed \$400, paid by petitioner if guardian not appointed, by estate if appointed

Texas

- Harris County on reasonable attorney rates (2011):

<b>Years Practicing Probate and Guardianship Law</b>	<b>Court-Approved Rate</b>
0 – 2	Up to \$165/hr
3 – 5	\$165 - \$195/hr
6 – 10	\$195 - \$250/hr
11+	\$250 - \$350/hr

<http://www.harriscountytexas.gov/CmpDocuments/48/Attorney%20Fees/Standards%20for%20Attorney%20Fees.pdf>

- HB 3080 (2009) on guardian's compensation (Section 665, and the rest of the guardianship laws, were later moved in the Code):

SECTION 1. Section 665, Texas Probate Code, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsections (a-1) and (d-1) to read as follows:

(a) The court may authorize compensation for a guardian or a temporary guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. **The court may set the compensation in an amount not exceeding five percent of the ward's gross income.**

(b) The guardian or temporary guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves any annual accounting or final accounting filed by the guardian or temporary guardian under this chapter. A fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate, subject to the award of an additional amount under Subsection (c) of this section following a review under Subsection (c)(1) of this section, is considered reasonable under this subsection if the court finds that the guardian or temporary guardian has taken care of and managed the estate in compliance with the standards of this chapter.

(c) On application of an interested person or on its own motion, the court may:

- (1) review and modify the amount of compensation authorized under Subsection (a) or (b) of this section if the court finds that the amount is unreasonably low when considering the services rendered as guardian or temporary guardian; and

(2) authorize compensation for the guardian or temporary guardian in an estimated amount the court finds reasonable that is to be paid on a quarterly basis before the guardian or temporary guardian files an annual or final accounting if the court finds that delaying the payment of compensation until the guardian or temporary guardian files an accounting would create a hardship for the guardian or temporary guardian.

(d) A finding of unreasonably low compensation may not be established under Subsection (c) of this section solely because the amount of compensation is less than the usual and customary charges of the person or entity serving as guardian or temporary guardian.

[ftp://ftp.legis.state.tx.us/bills/81R/billtext/html/house\\_bills/HB03000\\_HB03099/HB03080S.HTM](ftp://ftp.legis.state.tx.us/bills/81R/billtext/html/house_bills/HB03000_HB03099/HB03080S.HTM)

### Nebraska

- LB 920 (2014) for public guardian compensation:

Sec. 9. Consistent with the purposes and objectives of the Public Guardianship Act and in consultation with the council, the Public Guardian shall:

(4) Develop guidelines for a sliding scale of fees to be charged for public guardianship and public conservatorship services;

<http://nebraskalegislature.gov/FloorDocs/103/PDF/Slip/LB920.pdf>

- Sliding Fee Policy



The Public Guardianship Act requires the Office of Public Guardian to develop guidelines for sliding scale of fees for public guardians/conservators. The Advisory Council and the OPG developed the following sliding fee policy:

All Public Guardian wards shall be evaluated by the OPG to determine fee eligibility.

The Public Guardian shall not petition for fees where financial hardship to the ward would result.

Financial hardship means that the total value of liquid assets of a living ward would fall below \$5,000 or the ward's estate would otherwise be inadequate to provide or obtain care, assistance, education, training, sustenance, housing, treatment or other goods or services vital to the wellbeing of the ward or his dependents, resulting in the risk of harm to the ward or the ward's dependents. Liquid Assets means the portion of a ward's estate comprised of cash, negotiable instruments, or other similar property which is readily convertible to cash and has a readily ascertainable fixed value, including savings accounts, checking accounts, certificates of deposit, money market accounts, bonds, publicly traded stocks, or other negotiable securities, and mutual fund shares.

No fees for guardianship and conservatorship services shall be assessed on estates smaller than \$5,000.

If the ward's estate is \$5,000 or more at any time during the month the Public Guardian is entitled to their fee unless it would create a financial hardship for the ward.

Any time, based on exigent circumstances, the Public Guardian may petition the court for additional fees.

The Public Guardian may waive fees where no substantial guardianship and/or conservatorship services have been provided to the ward.

All wards with liquid assets valued at five thousand dollars (\$5,000) or more on the date that the

Office of Public Guardian is appointed shall be assessed a one-time case opening fee for establishment of the case by the Office of Public Guardian. The rate of the case opening fee shall be:

Opening fee for Guardianship .....\$100.00

Opening fee for Conservatorship .....\$200.00

Opening fee for Guardianship and Conservatorship .....\$300.00

Guardianship and Conservatorship Monthly fee based on Total Value of Liquid Assets shall be:

\$5,000 - \$9,999	\$40.00
\$10,000 - \$14,999	\$45.00
\$15,000 - \$19,999	\$50.00
\$20,000 - \$24,999	\$55.00
\$25,000 - \$29,999	\$60.00
\$30,000 - \$34,999	\$65.00
\$35,000 - \$39,999	\$70.00
\$40,000 - \$44,999	\$75.00
\$45,000 - \$49,999	\$80.00
\$50,000 - \$54,999	\$85.00
\$55,000 - \$59,999	\$90.00
\$60,000 - \$64,999	\$95.00
...\$100,000 and up	...\$135.00

<https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/reports/courts/OPG-2015-Annual-Report.pdf>

Colorado

- CO SB 11-083 - unclear whether or not there is a fee schedule in existence.

IF A GOVERNING INSTRUMENT PROVIDES THAT A FIDUCIARY IS ENTITLED TO RECEIVE COMPENSATION IN ACCORDANCE WITH A PUBLISHED FEE SCHEDULE IN EFFECT AT THE TIME THE SERVICES ARE PERFORMED, **FEES CHARGED IN ACCORDANCE WITH THE PUBLISHED FEE SCHEDULE SHALL BE PRESUMED TO BE REASONABLE**

THE DISCLOSURE STATEMENT SHALL SPECIFICALLY DESCRIBE, AS IS APPLICABLE, THE HOURLY RATES TO BE CHARGED, ANY AMOUNTS TO BE CHARGED **PURSUANT TO A PUBLISHED FEE SCHEDULE**, INCLUDING THE RATES AND BASIS FOR CHARGING FEES FOR ANY EXTRAORDINARY SERVICES, AND ANY OTHER BASES UPON WHICH A FEE CHARGED TO THE ESTATE WILL BE CALCULATED

[http://www.leg.state.co.us/clics/clics2011a/csl.nsf/billcontainers/21A30BE9167C7910872578080080E6DB/\\$FILE/083\\_enr.pdf](http://www.leg.state.co.us/clics/clics2011a/csl.nsf/billcontainers/21A30BE9167C7910872578080080E6DB/$FILE/083_enr.pdf)

**NRS 159.... Compensation of attorney in guardianship cases.**

1. An attorney is entitled to just, reasonable and necessary compensation for the services associated with the commencement and administration of a guardianship. The attorney's compensation cannot be paid from the assets of the ward unless and until the Court allows the payment to occur as set forth herein.
2. When an attorney who intends to seek compensation from the estate of the ward first appears in the proceeding, the attorney must give written notice of the basis of his/her compensation by filing with the court a written agreement between the client and the attorney. This agreement:
  - (a) Must provide a general explanation of the compensation arrangement and how the compensation will be computed;
  - (b) Must include the hourly billing rates of all timekeepers (attorneys, law clerks, para-professionals, etc.);
  - (c) Must be served by the attorney on all persons entitled to notice pursuant to NRS 159.034 and/or NRS 159.047;
  - (d) Is subject to approval by the Court after petition, notice and hearing.
3. A petition requesting compensation must include the following information:
  - (a) A detailed statement as to the nature and extent of services performed;
  - (b) Itemization of each task done, with reference to time spent on each task in an increment to the nearest one-tenth of an hour, with no minimum billing unit in excess of one-tenth of an hour;
  - (c) Whether any billed time, including time spent traveling or waiting, benefited clients of the attorney other than the ward, and if so, how many other clients benefited from that time spent;
  - (d) Any other information considered relevant to a determination of entitlement.Absent approval from all interested persons, supplemental requests for fees cannot be augmented in open court and must be properly noticed in the same manner as the underlying petition.
4. The compensation of an attorney from an estate under guardianship must be determined by the Court to be just, reasonable and necessary.
5. In determining whether compensation is just, reasonable and necessary, the Court **may** consider the following factors, without limitation:
  - (a) The Court-approved, written agreement between the client and attorney setting forth the manner in which compensation is to be calculated;
  - (b) Whether the services advanced, or attempted to advance, the best interests of the ward;
  - (c) The qualities of the attorney: his/her ability, training, education, experience, professional standing and skill;
  - (d) The character of the work to be done: its difficulty, its intricacy, its importance, the time and skill required, the responsibility imposed and the nature of the proceedings;
  - (e) The work actually performed by the attorney: the skill, time, and attention given to the work;
  - (f) The result: whether the attorney was successful and what benefits were derived;
  - (g) The usual and customary fees charged in the relevant professional communities for each task performed, regardless of who actually performed the task. An attorney shall only be awarded an attorney rate for time spent performing services that require an attorney; a paralegal rate for time spent performing paralegal services; a fiduciary rate for time spent

- performing fiduciary services; and shall not be awarded any compensation for time spent performing secretarial or clerical services.
- (h) The appropriate apportionment among multiple clients of any billed time that benefited multiple clients of the attorney;
  - (i) The extent to which the services were provided in a reasonable, efficient and cost-effective manner, including whether there was appropriate and prudent delegation to others;
  - (j) The ability of the ward to pay, including, but not limited to:
    - (1) The value of the estate under guardianship;
    - (2) The nature, extent, and liquidity of the ward's assets;
    - (3) The disposable net income of the ward;
    - (4) The ward's anticipated future needs and income;
    - (5) Any other foreseeable expenses; and
    - (6) Any other factors that are relevant to the duties of the guardian pursuant to NRS 159.078 or 159.083.
  - (k) The efforts made by the attorney to reduce and minimize issues;
  - (l) Any actions by the attorney that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.
6. The Court shall not approve compensation for an attorney for:
- (a) Time spent on billing or accounts receivable activities, including time spent preparing itemized statements of work performed, copying, or distributing statements;
  - (b) Time spent on internal business activities of the attorney, including clerical or secretarial support; or
  - (c) Time reported as a total amount of time spent on multiple tasks, rather than an itemization of the time expended on each task.
7. Any fees paid by a third party must be disclosed to and approved by the Court.
8. In addition to the compensation for ordinary services of an attorney set forth in this section, an attorney shall be entitled to receive compensation for ordinary costs and expenses incurred in the scope of the representation.

## MEMORANDUM

To: Chief Justice James W. Hardesty

From: Debra Bookout

Date: August 3, 2015

Re: Guardianship Fees in other States

---

The following is a sample of other States' statutes governing guardianship fees. I included the statutory language in Nevada for reference. I also included rules and other resources, where available, which provide further guidance to the court's determination as to the reasonableness of a guardian's fees. Most States' statutes require that the fees be "reasonable" or "just and reasonable". Some states allow the determination of what is reasonable to be at the local level by local rule, while others provide for that analysis within the State statute or other State rules. Finally, other States allow for flat fees which vary depending on the value of the estate and still others actually set hourly rates for fees which vary depending on experience.

---

### Nevada NRS 159.183

1. Subject to the discretion and approval of the court and except as otherwise provided in subsection 4, a guardian must be allowed:
  - (a) **Reasonable compensation** for the guardian's services;
  - (b) Necessary and reasonable expenses incurred in exercising the authority and performing the duties of a guardian; and
  - (c) Reasonable expenses incurred in retaining accountants, attorneys, appraisers or other professional services.

2. Reasonable compensation and services **must be based upon similar services performed for persons who are not under a legal disability**. In determining whether compensation is reasonable, the court may consider:
  - (a) The nature of the guardianship;
  - (b) The **type, duration and complexity of the services required**; and
  - (c) Any other relevant factors.

---

**Arizona** § 14-5109. Disclosure of compensation; determining reasonableness and necessity

- A. When a guardian, a conservator, an attorney or a guardian ad litem who intends to seek compensation from the estate of a ward or protected person first appears in the proceeding, that person must give written notice of the basis of the compensation by filing a statement with the court and providing a copy of the statement to all persons entitled to notice pursuant to §§ 14-5309 and 14-5405. **The statement must provide a general explanation of the compensation arrangement and how the compensation will be computed.**

...

- C. Compensation paid from an estate to a guardian, conservator, attorney or guardian ad litem **must be reasonable and necessary**. To determine the reasonableness and necessity of compensation, the court must consider the best interest of the ward or protected person. The following factors may be considered to the extent applicable:
  1. Whether the services provided any benefit or attempted to advance the best interest of the ward or protected person.
  2. The **usual and customary fees charged in the relevant professional community for the services**.
  3. The size and composition of the estate.
  4. The extent that the services were provided in a reasonable, efficient and cost-effective manner.
  5. Whether there was appropriate and prudent delegation to others.
  6. Any other factors bearing on the reasonableness of fees.

- D. The person seeking compensation has the burden of proving the reasonableness and necessity of compensation and expenses sought.

Pursuant to Rule 33(F) of the Arizona Rules of Probate Procedure, the court shall follow the statewide fee guidelines for determining “reasonable compensation” set forth in ACJA (Arizona Code of Judicial Administration) § 3-303. Those fee guidelines apply to all court appointed fiduciaries, specifically guardians.

Compensation shall meet the following requirements, ACJA §3-303(D)(2):

- a. All fee petitions shall comply with Rule 33 of the Arizona Rules of Probate Procedure.
- b. All hourly billing shall be in an increment to the nearest one-tenth of an hour, with no minimum billing unit in excess of one-tenth of an hour. **No “value billing” for services rendered is permitted, rather than the actual time expended.**
- c. **“Block billing” is not permitted.** Block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.
- d. Necessary travel time and waiting time may be billed at 100% of the normal hourly rate, except for time spent on other billable activity; travel time and waiting time are not necessary when the service can be more efficiently rendered by correspondence or electronic communication, for example, telephonic court hearings.
- e. Billable time that benefits multiple clients, including travel and waiting time, shall be appropriately apportioned among each client.
- f. Billable time does not include:
  - (1) Time spent on billing or accounts receivable activities, including time spent preparing itemized statements of work performed, copying, or distributing statements; however, time spent drafting the additional documents that are required by court order, rule, or statute, including any related hearing, is billable time. The court shall determine the reasonable compensation, if any, in its sole discretion, concerning any contested litigation over fees or costs; and



- (2) Internal business activities of the Professional, including clerical or secretarial support to the Professional.
- g. The **hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed**, regardless of whom actually performed the work, but clerical and secretarial activities are not separately billable from the Professional. The Professional shall abide by the following requirements:
- (1) An attorney may only bill an attorney rate when performing services that require an attorney; a paralegal rate when performing paralegal services; a fiduciary rate when performing fiduciary services; and shall not charge when performing secretarial or clerical services, for example and
  - (2) A fiduciary may only bill a fiduciary rate when performing services that require the skill level of the fiduciary; a companion rate when performing companion services; a bookkeeper rate when performing bookkeeping and bill-paying services for a client; and shall not charge when performing secretarial or clerical services, for example. ...

The court shall further consider the following factors in determining what constitutes reasonable compensation, pursuant to ACJA § 3-303(D)(3):

- a. The **usual and customary fees or market rates charged in the relevant professional community for such services**. Pursuant to Rule 10.1, Arizona Rules of Probate Procedure, market rates for goods and services are a proper and ongoing consideration for the court in Title 14 proceedings.

...

- c. Common fiduciary services rendered in a routine guardianship or conservatorship engagement. The fiduciary shall provide a reasonable explanation for exceeding these services. The **common fiduciary services** are:
  - (1) Routine bookkeeping, such as disbursements, bank reconciliation, data entry of income and expenditures, and mail processing: four (4) hours per month, at a commensurate rate for such services;
  - (2) Routine shopping: six (6) hours per month if the ward is at home, and two (2) hours per month if the ward is in a facility, at a commensurate rate for such services;

- (3) One routine personal visit per month by the fiduciary to the ward or protected person;
  - (4) Preparation of conservator's account and budget: five (5) hours per year;
  - (5) Preparation of annual guardianship report: two (2) hours per year; and
  - (6) Marshalling of assets and preparation of initial inventory: eighty (80) hours.
- d. Not more than one attorney may bill for attending hearings, depositions, and other court proceedings on behalf of a client, nor bill for staff to attend, absent good cause;
  - e. Each fiduciary and guardian ad litem shall not bill for more than one person to attend hearings, depositions, and other court proceedings on behalf of an Estate, absent good cause. This provision does not preclude an attorney, who represents a fiduciary or guardian ad litem, from submitting a separate bill.
  - f. The total amount of all annual expenditures, including reasonable professional fees, may not deplete the Estate during the anticipated lifespan of the ward or protected person, until and unless the conservator has disclosed that the conservatorship has an alternative objective, such as planned transition to public assistance or asset recovery, as set forth in the disclosure required by Rule 30.3 of the Arizona Rules of Probate Procedure.
  - g. The request for compensation in comparison to the previously disclosed basis for fees, any prior estimate by the Professional, and any court order;
  - h. The expertise, training, education, experience, and skill of the Professional in Title 14 proceedings;
  - i. Whether an appointment in a particular matter precluded other employment;
  - j. The **character of the work to be done**, including difficulty, intricacy, importance, necessity, time, skill or license required, or responsibility undertaken;
  - k. The conditions or circumstances of the work, including emergency matters requiring urgent attention, services provided outside regular business hours, potential danger (for example: hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;

- l. The **work actually performed, including the time actually expended, and the attention and skill-level required for each task**, including whether a different person could have rendered better, faster, or less expensive service;
- m. The result, specifically whether benefits were derived from the efforts, and whether probable benefits exceeded costs;
- n. Whether the Professional timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court an opportunity to modify its order in furtherance of the best interest of the Estate;
- o. The **fees customarily charged and time customarily expended for performing like services** in the community;
- p. The degree of financial or professional risk and responsibility assumed; and
- q. The fidelity and loyalty displayed by the Professional, including whether the Professional put the best interest of the Estate before the economic interest of the professional

---

**Washington § 11.92.180.**

Compensation and expenses of guardian or limited guardian--Attorney's fees—  
Department of social and health services clients paying part of costs—Rules

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem **just and reasonable**. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian. ... In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. ...

According to the Washington Certified Professional Guardian Manual 2007, the factors applied in determining reasonable compensation for guardians are found in the Rules of Professional Conduct that govern the reasonableness of attorneys' fees. RPC 1.5(a) (1)-(8) provides:

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
  - (1) the **time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform** the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the **fee customarily charged in the locality for similar legal services**;
  - (4) amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
  - (8) whether the fee is fixed or contingent; and

---

**Colorado** § 15-10-602. Recovery Of Reasonable Compensation And Costs.

- (1) A fiduciary and his or her lawyer are entitled to **reasonable compensation** for services rendered on behalf of an estate.

. . .
- (4) A person's entitlement to compensation or costs shall not limit or remove a court's inherent authority, discretion, and responsibility to determine the reasonableness of compensation and costs when appropriate.

. . .

- (7) (a) Except as otherwise provided in part 5 of this article or in this part 6, a nonfiduciary or his or her lawyer is not entitled to receive compensation from an estate.

...

(c) In determining a reasonable amount of compensation or costs, the court may take into account, in addition to the factors set forth in **section 15-10-603(3)**:

- (I) The value of a benefit to the estate, respondent, ward, or protected person;
- (II) The number of parties involved in addressing the issue;
- (III) The efforts made by the lawyer or person not appointed by the court to reduce and minimize issues; and
- (IV) Any actions by the lawyer or person not appointed by the court that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.

#### §15-10-603. Factors In Determining Reasonableness Of Compensation And Costs

- (3) The court shall consider all of the factors described in this subsection (3) in determining the reasonableness of any compensation or cost. The court may determine the weight to be given to each factor and to any other factor the court considers relevant in reaching its decision:
- (a) The **time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform** the service properly;
  - (b) The likelihood, if apparent to the fiduciary, that the acceptance of the particular employment will preclude the person employed from other employment;
  - (c) (I) The **compensation customarily charged in the community for similar services** with due consideration and allowance for the complexity or uniqueness of any administrative or litigated issues, the need for and local availability of specialized knowledge or expertise, and the need for

and advisability of retaining outside fiduciaries or lawyers to avoid potential conflicts of interest;

(II) As used in this subsection (3), unless the context otherwise requires, "community" means the general geographical area in which the estate is being administered or in which the respondent, ward, or protected person resides.

- (d) The nature and size of the estate, the liquidity or illiquidity of the estate, and the results and benefits obtained during the administration of the estate;
- (e) Whether and to what extent any litigation has taken place and the results of such litigation;
- (f) The life expectancy and needs of the respondent, ward, protected person, devisee, beneficiary, or principal;
- (g) The time limitations imposed on or by the fiduciary or by the circumstances of the administration of the estate;
- (h) The adequacy of any detailed billing statements upon which the compensation is based;
- (i) Whether the fiduciary has charged variable **rates that reflect comparable payment standards in the community for like services**;
- (j) The **expertise, special skills, reputation, and ability of the person performing the services** and, in the case of a fiduciary, whether and to what extent the fiduciary has had any prior experience in administering estates similar to those for which compensation is sought;
- (k) The terms of a governing instrument;
- (l) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and whether the course of action taken was reasonable and appropriate under the circumstances existing at the time the service was performed; and

- (m) The various courses of action available to a fiduciary or an individual seeking compensation for a particular service or alleged benefit and the cost-effectiveness of the action taken under the circumstances existing at the time the service was performed.

---

**California** § 2623. Compensation And Expenses Of Guardian Or Conservator

- (a) Except as provided in subdivision (b) of this section, the guardian or conservator shall be allowed all of the following:
  - (1) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the **court determines is just and reasonable**).
  - (2) Such compensation for services rendered by the guardian or conservator as the **court determines is just and reasonable**. . . .

§ 2640. Petition by guardian or conservator of estate

- (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:
  - (1) The guardian or conservator of the estate for services rendered to that time.
  - (2) The guardian or conservator of the person for services rendered to that time.
  - . . .
- (c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is **just and reasonable** to the

guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

California Rules of Court, Rule 7.756. Compensation of conservators and guardians

(a) **Standards for determining just and reasonable compensation**

The court may consider the following nonexclusive factors in determining just and reasonable compensation for a conservator from the estate of the conservatee or a guardian from the estate of the ward:

- (1) The size and nature of the conservatee's or ward's estate;
- (2) The benefit to the conservatee or ward, or his or her estate, of the conservator's or guardian's services;
- (3) The necessity for the services performed;
- (4) The conservatee's or ward's anticipated future needs and income;
- (5) The **time spent** by the conservator or guardian in the performance of services;
- (6) **Whether the services performed were routine or required more than ordinary skill** or judgment;
- (7) **Any unusual skill, expertise, or experience brought to the performance** of services;



- (8) The conservator's or guardian's estimate of the value of the services performed; and
- (9) The **compensation customarily allowed by the court in the community** where the court is located for the management of conservatorships or guardianships of similar size and complexity.

**(b) No single factor determinative**

No single factor listed in (a) should be the exclusive basis for the court's determination of just and reasonable compensation.

**(c) No inflexible maximum or minimum compensation or maximum approved hourly rate**

This rule is not authority for a court to set an inflexible maximum or minimum compensation or a maximum approved hourly rate for compensation.

---

**Ohio Sup R 73. Guardian's compensation**

**(A) Setting of compensation**

Guardian's compensation shall be set by local rule.

**(B) Itemization of expenses**

A guardian shall itemize all expenses relative to the guardianship of the ward and shall not charge fees or costs in excess of those approved by the probate division of a court of common pleas.

Montgomery County, Ohio, Court of Common Pleas, Probate Division, Superintendence Rule 73.1, provides for Guardian's Compensation as follows:

**(A) The compensation that may be taken by guardians as a credit in their accountings, without application and order first obtained, must be less than or equal to that provided by the following schedule:**

- (1) 5% of income from intangible investments and deposits and all installment receipts, such as Social Security or Veteran's Benefits.

- (2) 10% of gross rentals from real estate actually managed by the guardian (5% if proceeds of a net lease).
- (3) \$2.50 per thousand dollars of intangible personal property investments and deposits for each year of the accounting period.
- (4) 1% of distribution of personal property corpus at conclusion of the guardianship.

Medina County, Ohio, Court of Common Pleas, Probate Division, Local Rule 73.1 Guardian's compensation

(A) Guardian's compensation for services as guardian of the estate in non-indigent guardianships shall be computed annually upon application and entry and shall be supported by calculations and documentation. The following fee schedule shall apply unless extraordinary fees are requested. Extraordinary fee applications shall be set for hearing unless hearing is waived by the Court.

- (1) Income/Expenditure Fee. Excluding income from rental real estate, four percent (4%) of the first \$10,000 of income received, plus three percent (3%) of the balance in excess of \$10,000, and four percent (4%) of the first \$10,000 of expenditures except expenditures pertaining to rental real estate, plus three percent (3%) of the balance in excess of such \$10,000. If the guardian manages rental real estate, a fee amounting to ten percent (10%) of gross rental real estate income may be allowed. If the guardian receives net income from rental real estate actively managed by others, then the guardian shall treat such net income as ordinary income. No fee shall be allowed to the guardian on expenditures pertaining to rental real estate. As used in this rule, "income" shall mean the sum of income as defined in [Section 1340.03 O.R.C.](#), plus pension benefits, plus net gains from the sale of principal. Assets held by the ward at the date of appointment are deemed to be principal and not income.
- (2) Principal Fee. \$3.00 per thousand for first \$200,000 of fair market value, and \$2.00 per thousand on the balance of the corpus, unless otherwise ordered.
- (3) Principal Distribution Fee. \$3.00 per thousand for the first \$200,000 of fair market value of corpus distributed upon the termination of the

guardianship, and \$2.00 per thousand on the balance of the corpus distributed upon the termination of the guardianship, unless otherwise ordered.

Medina County, Ohio, Court of Common Pleas, Probate Division, Local Rule 73.2, Guardian's compensation in **indigent guardianships** provides:

In guardianship case where the ward has been declared indigent by the court, compensation for the attorneys appointed as guardians shall be computed as follows: Fifty dollars (\$50.00) per hour compensation for in-court services rendered by the attorney/guardian; Forty dollars (\$40.00) per hour compensation for out-of-court services rendered by the attorney/guardian.

Attorney/guardians shall receive a maximum of Five Hundred Dollars (\$500.00) in compensation in such cases in the first one-year period computed from the date of appointment to the date of the application for fees and a maximum of Three Hundred Dollars (\$300.00) each year thereafter, unless extraordinary fees have been separately applied for and approved by the court.

---

**Texas** § 1155.002. Compensation for Certain Guardians of the Person

- (a) The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The **court may set the compensation in an amount not to exceed five percent of the ward's gross income.**
- (b) If the ward's estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.

§ 1155.003. Compensation for Guardian of the Estate

- (a) The guardian of an estate is entitled to **reasonable** compensation on application to the court at the time the court approves an annual or final accounting filed by the guardian under this title.

- (b) A **fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate**, subject to the award of an additional amount under [Section 1155.006\(a\)](#) following a review under [Section 1155.006\(a\)\(1\)](#), is considered reasonable under this section if the court finds that the guardian has taken care of and managed the estate in compliance with the standards of this title.

---

**Florida § 744.108.** Guardian and attorney fees and expenses

- (1) A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a **reasonable fee for services** rendered and reimbursement for costs incurred on behalf of the ward.
- (2) When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider the following criteria:
- (a) The **time and labor** required;
  - (b) The **novelty and difficulty of the questions involved and the skill required to perform** the services properly;
  - (c) The likelihood that the acceptance of the particular employment will preclude other employment of the person;
  - (d) The **fee customarily charged in the locality for similar services**;
  - (e) The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
  - (f) The results obtained;
  - (g) The time limits imposed by the circumstances;
  - (h) The nature and length of the relationship with the incapacitated person; and
  - (i) The experience, reputation, diligence, and ability of the person performing the service. ...

The Joint Circuit Workgroup on Guardian Fees 2004, a collaboration between the Sixth and Thirteenth Judicial Circuits, proposed an Experience Based Fee and other Rules to address inequities in fees.

The Workgroup proposed the following experienced based fees:

1. Professional guardians with 0-5 years are entitled to bill at a rate of \$40.00 per hour.
2. Professional guardians with 6-9 years of experience are entitled to bill at a rate of \$55.00 per hour.
3. Professional guardians with 10 or more years of experienced are entitled to bill at a rate of \$70.00 per hour.

The Workgroup also proposed other rules designed to address inequities in fees. For example, it recommended that fees for bill paying should not exceed two billable hours per month; that guardians be required to list actual mileage for travel so that the court is able to assess whether the time charged was reasonable; that for shopping a two standard "per month" fee cap be imposed at the rate of 2.5 hours each month for a ward in a home and 1.0 hour per month for a ward in a facility; fees for copying/faxing/filing should be capped at 1.0 hour per month. The Workgroup's proposals went into effect in January 2005.

The Probate Division of the 17<sup>th</sup> Judicial Circuit for Broward County, Florida, Handbook for Guardians 2012 provides:

The fee payable to nonprofessional guardians is Broward County is currently \$30 per hour. Professional Guardians fees are generally \$60 per hour for years zero to five as a professional guardian and generally \$85 per hour for five or more years as a professional guardian. ...

## ATTORNEY FEES

### REFERENCES AND RESOURCES

- **Center for Elders and the Courts – A Project of the National Center for State Courts**
  - **Monitoring Fees and Services Link:**
    - <http://www.eldersandcourts.org/Guardianship/Guardianship-Monitoring/Fees-and-Services.aspx>
- **National Guardianship Association Standards of Practice**
  - [Standard 22 – Guardianship Service Fees](#)
- **National Probate Standards**
  - [Standard 3.1.4 Attorneys' and Fiduciaries' Compensation](#) (see pages 36-38)
- **Arizona Code of Judicial Administration Chapter 3**
  - [Code of Judicial Administration – Chapter 3. Probate Court – Section 3-303 Professional Services: Statewide Fee Guidelines and Competitive Bids.](#)
- **Texas Standards for Court Approval of Attorney Fees**
  - [Texas Standards for Court Approval of Attorney Fee Petitions](#)
- **Utah Fee limits in the Bar's Pro Bono and Modest Means Program**
  - <https://www.utcourts.gov/howto/family/gc/signature/index.html#fee>
- **Florida Resources**
  - <http://www.jud6.org/GeneralPublic/GuardianshipForms/GuardianFeePointers6thJud.pdf>
  - <http://www.fljud13.org/Portals/0/Forms/pdfs/ejc/fee%20packet-guidelines.pdf>
  - <http://www.theledger.com/article/20130203/NEWS/130209876>
- **Ohio Attorney Fees for Guardianship/Trust/Adoption Cuyahoga County, Ohio**
  - <http://probate.cuyahogacounty.us/localrule.aspx#Rule%2071.3>
- **Nevada Revised Statute**
  - NRS [159.0485 \(3\)](#) compensation for attorneys
  - [NRS 159.105](#) claims arising from contracts of guardian and claims for attorney's fees
- **Recommendations from Mr. John Smith from the April 22, 2016, meeting presentation** (Included in April 22, 2016, meeting materials on pages 20-27)



GshipCommissPresen  
t042216.pdf

- **Recommendations from Mr. Hank Cavallera.** (Sent via email to Commissioners on 4/20/16)



Letter.pdf



ProposedAmend.pdf

# **GUARDIAN FEES**

State	Pertinent Language	Statute
<b>Alabama</b>	1. a guardian has the same duties, powers, and responsibilities as a guardian for a minor as described in Section 26-2A-78(b), (c), and (d). 2. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by order of the court.	1. Ala.Code § 26-2A-108 2. Ala. Code § 26-2A-78 (d)
<b>Alaska</b>	1. the guardian has the powers and duties of a conservator under this chapter; however, the guardian may not apply the ward's money or property for the services as guardian or for room and board that the guardian or the guardian's spouse, parent, or child has furnished the ward unless, before payment, the court finds that the ward is financially able to pay and that the charge is reasonable. 2. A guardian of a ward, for whom a conservator has also been appointed, shall have the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator.	1. Alaska Stat. Ann. § 13.26.150 (c)(6) 2. Alaska Stat. Ann. § 13.26.150 (d)
<b>Arizona</b>	1. If not otherwise compensated for services rendered a...guardian who is appointed pursuant to this article...is entitled to reasonable compensation from the estate of the ward if the petition is granted, or from the petitioner if the petition is denied. 2. If compensation by the ward or the petitioner is not feasible the court shall determine and pay reasonable compensation for services rendered by a...guardian appointed in a guardianship proceeding. 3. Any guardian of a ward for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances.	1. Ariz. Rev. Stat. Ann. § 14-5314 (A) 2. Ariz. Rev. Stat. Ann. § 14-5314 (F) 3. Ariz. Rev. Stat. Ann. § 14-5312 (B)
<b>Arkansas</b>	A guardian shall be allowed such compensation for his or her services as guardian as the court shall deem just and reasonable.	Ark. Code Ann. § 28-65-108 (a)
<b>California</b>	Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.	Cal. Prob. Code § 2623 (2)



<p><b>Connecticut</b></p>	<p>Compensation payable to the conservator or guardian of any person who is supported wholly or in part by the state in any humane institution, or who is receiving benefits under any of the state's programs of public assistance, shall be based upon services rendered and shall not exceed five per cent of the gross income to the estate during the period covered by any account. The conservator or guardian shall be entitled to compensation of not less than fifty dollars for any accounting period continuing for at least a year. If extraordinary services are rendered by any conservator or guardian, the Court of Probate, upon petition and hearing, may authorize reasonable additional compensation. A copy of the petition and notice of hearing shall be lodged in the office of the Commissioner of Administrative Services in Hartford at least ten days before the hearing. No commission or compensation shall be allowed on any moneys or other assets received from a prior guardian or conservator nor upon any amount received from liquidation of loans or other investments.</p>	<p>Conn. Gen. Stat. Ann. § 45a-594 (a)</p>
<p><b>Delaware</b></p>	<p>1. A guardian of the person of a person with a disability for whom a guardian of the property also has been appointed shall control the custody and care of the person with a disability and is entitled to receive reasonable compensation for the guardian's services and for room and board furnished to the person with a disability as approved by the Court.                  2. All persons who serve as guardian of the property of a person with a disability shall be entitled to reasonable compensation for their services.</p>	<p>1. Del. Code Ann. tit. 12, § 3922 (c )                  2. Del. Code Ann. tit. 12, § 3927 (b)</p>
<p><b>Florida</b></p>	<p>1. A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the ward.                  2. When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider the following criteria: time/labor, novelty/difficult of problem &amp; skill required to perform service, likelihood that acceptance of particular employment will preclude other employment, fee customarily charged in the locality for similar services, nature/value of incapacitated person's property &amp; amount of income earned by estate &amp; responsibilities/potential liabilities assumed by person, results obtained, time limits imposed by circumstances, nature/length of relationship with incapacitated person, and experience/reputation/diligence/ability of person performing service.</p>	<p>Fla. Stat. Ann. § 744.108 (1), (2)(a)-(i)</p>

<p><b>Georgia</b></p>	<p>1. At the time of the appointment of the guardian or at any time thereafter, any of the following powers may be specifically granted by the court to the guardian upon such notice, if any, as the court shall determine...</p> <p>2. To receive reasonable compensation from the estate of the ward for services rendered to the ward</p>	<p>1. Ga. Code Ann. § 29-4-23 (b)                  2. Ga. Code Ann. § 29-4-23 (b)(6)</p>
<p><b>Hawaii</b></p>	<p>If not otherwise compensated for services rendered, a guardian...is entitled to reasonable compensation from the estate...Compensation may be paid and expenses reimbursed without court order. If the court or the family court determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount shall be repaid to the estate.</p>	<p>Haw. Rev. Stat. Ann. § 560:5-417</p>
<p><b>Idaho</b></p>	<p>If not otherwise compensated for services rendered or expenses incurred, any...guardian...appointed in a protective proceeding is entitled to reasonable compensation from the estate for services rendered and expenses incurred in such status, including for services rendered and expenses incurred prior to the actual appointment of said guardian or temporary guardian which were reasonably related to the proceedings</p>	<p>Idaho Code Ann. § 15-5-314 (1)</p>
<p><b>Illinois</b></p>	<p>The guardian of the person may petition the court for an order directing the guardian of the estate to pay an amount periodically for the provision of the services specified by the court order.</p>	<p>755 Ill. Comp. Stat. Ann. 5/11a-17 (a).</p>
<p><b>Indiana</b></p>	<p>If not otherwise compensated for services rendered, any guardian, attorney, physician, or other person whose services are provided in good faith and are beneficial to the protected person or the protected person's property is entitled to reasonable compensation and reimbursement for reasonable expenditures made on behalf of the protected person. These amounts may be paid from the property of the protected person as ordered by the court.</p>	<p>Ind. Code Ann. § 29-3-4-4</p>

<p><b>Iowa</b></p>	<p>1. The court shall allow and fix from time to time the compensation for fiduciaries, other than personal representatives, and their attorneys for such services as they shall render as shown by an itemized claim or report made and filed setting forth what such services consist of during the period of time they continue to act in such capacities.                  2. Fiduciary--includes personal representative, executor, administrator, guardian, conservator, and the trustee of any trust described in section 633.10.</p>	<p>1. Iowa Code Ann. § 633.200                  2. Iowa Code Ann. § 633.3 (14)</p>
<p><b>Kansas</b></p>	<p>Nothing in this section shall prohibit a guardian or conservator from collecting a reasonable fee, as approved by the court, for carrying out the duties and responsibilities as guardian or conservator.</p>	<p>Kan. Stat. Ann. § 59-3068 (b)(3)</p>
<p><b>Kentucky</b></p>	<p>...guardians...are entitled to reasonable compensation for services rendered and to reimbursement for reasonable and necessary expenses incurred in the exercise of their assigned guardianship or conservatorship duties and powers. Such compensation and reimbursement shall be paid from the financial resources of the ward and shall not exceed:</p> <p style="text-align: right;">A</p> <p>commission of not more than six percent (6%) of the income collected by the fiduciary, payable at the time the income is collected; and either, but not both, of the following, as elected by the fiduciary:</p> <p>An annual commission of three-tenths of one percent (0.3%) of the fair market value of the real and personal property in the care of the fiduciary; or</p> <p>An annual commission of not more than six percent (6%) of the fair market value of the principal distributed by the fiduciary, payable at the time the principal is distributed.</p>	<p>Ky. Rev. Stat. Ann. § 387.760 (2)(a), (2)(b)(1-2)</p>

<p><b>Louisiana</b></p>	<p>Compensation payable to tutors or curators shall be based upon services rendered and they shall receive a minimum compensation of thirty-five dollars from the amount of monies received during the period covered by the account; provided however that if such monies received are more than three hundred and fifty dollars but less than five hundred dollars, the compensation of tutors and curators shall be ten per cent of the monies received in any one year; and provided also that if such monies are more than five hundred dollars, then the compensation shall be five per cent of the monies received in any one year, but not less than fifty dollars. In the event of extraordinary service rendered by such tutor or curator, the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the veterans administration in the manner provided in the case of hearing on a fiduciary's account or other pleading. No commission or compensation shall be allowed on the monies or other assets received from a prior tutor or curator, nor upon the amount received from liquidation of loans, or other investments.</p>	<p>La. Stat. Ann. § 29:362</p>
<p><b>Maine</b></p>	<p>Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances</p>	<p>Me. Rev. Stat. tit. 18-A, § 5-312</p>
<p><b>Maryland</b></p>	<p>1. Except in unusual circumstances...the guardian is entitled to the same compensation and reimbursement for actual and necessary expenses as the trustee of a trust. No petition or hearing is required to entitle the guardian to compensation and expenses. Upon the petition of any interested person and upon a finding by the court that unusual circumstances exist, the court may increase or decrease compensation.                  2. If the guardian is appointed as the guardian of a disabled person who is a recipient of long-term care services and supports under the Maryland Medical Assistance Program and whose income is subject to § 15-122.3 of the Health-General Article, the guardian is not entitled to receive more than \$50 per month in compensation unless the court makes a finding that unusual circumstances exist.                  3. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:</p>	<p>1. MD EST &amp; TRST § 13-218 (a)                  2. MD EST &amp; TRST § 13-218 (b)                  3. Md. Code Ann., Est. &amp; Trusts § 14.5-709 (a)(1-2)</p>

	<p>Expenses that were properly incurred in the administration of the trust; and                  To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.</p>	
<p><b>Massachusetts</b></p>	<p>If not otherwise compensated for services rendered, any...guardian...appointed in a protective proceeding and any attorney whose services resulted in a protective order or in an order that was beneficial to a protected person's estate is entitled to reasonable compensation from the estate. Compensation may be paid and expenses reimbursed without court order, but, if the court later determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount shall be repaid to the estate on such terms as the court may order, including, but not limited to, costs, interest and attorney fees. The court may order that such compensation be paid by any party or parties as it shall determine.</p>	<p>Mass. Gen. Laws Ann. ch. 190B, § 5-413</p>
<p><b>Michigan</b></p>	<p>the guardian of an individual for whom a conservator also is appointed controls the ward's custody and care and is entitled to receive reasonable amounts for those services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances.</p>	<p>Mich. Comp. Laws Ann. § 700.5315 (1)</p>

<p><b>Minnesota</b></p>	<p>1. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for expenditures made on behalf of the ward, in a manner consistent with section 524.5-502.</p> <p>2. When the court determines that a guardian or conservator has rendered necessary services or has incurred necessary expenses for the benefit of the ward or protected person, the court may order reimbursement or compensation to be paid from the estate of the protected person or from the county having jurisdiction over the guardianship or protective proceeding if the ward or protected person is indigent. The court may not deny an award of fees solely because the ward or protected person is a recipient of medical assistance. In determining compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the Board of County Commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or protected person. If these services are provided by a public or private agency, the county may contract on a fee-for-service basis with that agency.</p>	<p>1. Minn. Stat. Ann. § 524.5-315 (a)                  2. Minn. Stat. Ann. § 524.5-502 (c)</p>
<p><b>Mississippi</b></p>	<p>In the final account the court or chancellor in vacation shall make an allowance to the guardian for his services not to exceed five percent (5%) on the value of the estate which shall be equitably prorated where the guardianship has been administered by two (2) or more guardians, except as hereinafter provided. In the event of extraordinary services rendered by such guardian the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the bureau in the manner provided by Section 35-5-17. In annual or partial accounts the court or chancellor may allow a guardian a reasonable commission for his services based upon the amount of disbursements, or, in proper cases where the amount based on disbursements would be inadequate, on the amount received or invested, or the total value of the estate as in other cases of guardianship, but not to exceed the maximum hereinabove provided for, except that in any event the court or chancellor in vacation, in its discretion may allow a minimum commission of One Hundred Dollars (\$100.00) per annum. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond. The guardian's attorney may be allowed from the estate of the ward a reasonable attorney's fee for legal services to the estate or to the ward, if the court be of the</p>	<p>Miss. Code. Ann. § 35-5-23</p>

	opinion that the services were proper and rendered in good faith, the amount of the fee to be in the discretion of the court.	
<b>Missouri</b>	A guardian or conservator shall be allowed such compensation for his services as guardian or conservator, as the court shall deem just and reasonable. Additional compensation may be allowed for his necessary services as attorney and for other necessary services not required of a guardian or conservator. Compensation may also be allowed for necessary expenses in the administration of his trust, including reasonable attorney fees if the employment of an attorney for the particular purpose is necessary. In all cases, compensation of the guardian or conservator and his expenses including attorney fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time before final settlement the guardian or conservator or his attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or conservator and for attorney fees for services already performed. If the court finds that the guardian or conservator has failed to discharge his duties as such in any respect, it may deny him any compensation whatsoever or may reduce the compensation which would otherwise be allowed. The court may consider ties of blood, marriage or adoption, in making allowances of compensation to guardians and conservators.	Mo. Ann. Stat. § 475.265
<b>Montana</b>	The full guardian or limited guardian is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances.	Mont. Code Ann. § 72-5-321 (4)
<b>Nebraska</b>	Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances.	Neb. Rev. Stat. Ann. § 30-2628 (b)

<p><b>Nevada</b></p>	<p>1. Subject to the discretion and approval of the court and except as otherwise provided in subsection 4, a guardian must be allowed: Reasonable compensation for the guardian's services; Necessary and reasonable expenses incurred in exercising the authority and performing the duties of a guardian; and Reasonable expenses incurred in retaining accountants, attorneys, appraisers or other professional services.</p> <p>2. Reasonable compensation and services must be based upon similar services performed for persons who are not under a legal disability. In determining whether compensation is reasonable, the court may consider: The nature of the guardianship; The type, duration and complexity of the services required; and Any other relevant factors.</p> <p>3. In the absence of an order of the court pursuant to this chapter shifting the responsibility of the payment of compensation and expenses, the payment of compensation and expenses must be paid from the estate of the ward. In evaluating the ability of a ward to pay such compensation and expenses, the court may consider: The nature, extent and liquidity of the ward's assets; The disposable net income of the ward; Any foreseeable expenses; and Any other factors that are relevant to the duties of the guardian pursuant to NRS 159.079 or 159.083.</p> <p>4. A private professional guardian is not allowed compensation or expenses for services incurred by the private professional guardian as a result of a petition to have him or her removed as guardian if the court removes the private professional guardian pursuant to the provisions of paragraph (b), (d), (e), (f) or (h) of subsection 1 of NRS 159.185.</p>	<p>Nev. Rev. Stat. Ann. § 159.183</p>
<p><b>New Hampshire</b></p>	<p>Every guardian shall be allowed a reasonable compensation for all proper expenses and services in the discharge of the guardianship. Administrative expenses approved by the court, including but not limited to guardianship fees, legal fees, and appraisal costs shall be paid out of the estate of the ward as a priority over other debts and obligations of the ward to the extent that funds are available and the needs of the ward are being met. The balance of the account due to the guardian shall be a lien upon all of the estate of the ward, real and personal, not disposed of. After a person ceases to be guardian, he or she may maintain an action for the recovery of said money owed for expenses and services.</p>	<p>N.H. Rev. Stat. Ann. § 464-A:23</p>



<b>New Jersey</b>	If another person has been appointed guardian of the ward's estate, the guardian of the ward's person is entitled to receive reasonable sums reimbursement and fees for his services and for room and board furnished to the ward, provided the same has been agreed upon between him the guardian of the person and the guardian of the estate; and provided, further, that the amounts agreed upon are reasonable under the circumstances	N.J. Stat. Ann. § 3B:12-41
<b>New Mexico</b>	A guardian of an incapacitated person for whom a conservator also has been appointed shall control the care and custody of the incapacitated person and is entitled to receive reasonable sums for services and for room and board furnished to the incapacitated person.	N.M. Stat. Ann. § 45-5-312
<b>New York</b>	<p>1. The court shall establish, and may from time to time modify, a plan for the reasonable compensation of the guardian or guardians. The plan for compensation of such guardian must take into account the specific authority of the guardian or guardians to provide for the personal needs and/or property management for the incapacitated person, and the services provided to the incapacitated person by such guardian.</p> <p>2. If the court finds that the guardian has failed to discharge his or her duties satisfactorily in any respect, the court may deny or reduce the compensation which would otherwise be allowed.</p>	<p>1. N.Y. Mental Hyg. Law § 81.28 (a)</p> <p>2. N.Y. Mental Hyg. Law § 81.28 (b)</p>
<b>North Carolina</b>	A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his duties as guardian of the ward's person.	N.C. Gen. Stat. Ann. § 35A-1241
<b>North Dakota</b>	The guardian is entitled to receive reasonable sums for services and for room and board furnished to the ward as approved by the court or as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances.	N.D. Cent. Code Ann. § 30.1-28-12 (10)

<p><b>Ohio</b></p>	<p>Compensation payable to guardians shall be based upon services rendered and shall not exceed five per cent of the amount of moneys received during the period covered by the account required by section 5905.11 of the Revised Code. In the event of extraordinary services by any guardian, the probate court, upon petition and hearing thereon, may authorize reasonable additional compensation. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans' administration in the manner provided in the case of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments.</p>	<p>Ohio Rev. Code Ann. § 5905.13</p>
<p><b>Oklahoma</b></p>	<p>1. Every guardian must be allowed the amount of his reasonable expenses in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable.                  2. To the extent that the services of a guardian or limited guardian of the property are for the collection of income of the ward, compensation for such services shall not exceed seven and one-half percent (7 ½ %) of the income so collected. For the purposes of this section, "income" means funds received by and accounted for by the guardian or limited guardian on behalf of the ward, other than from the sale of property of the ward, plus the net proceeds from the sale of property of the ward in excess of the value of such property as last determined in the guardianship proceeding.                  3. All compensation and reimbursements pursuant to this section shall be approved by the court prior to payment.</p>	<p>1. Okla. Stat. Ann. tit. 30, § 4-401 (A)                  2. Okla. Stat. Ann. tit. 30, § 4-401 (B)                  3. Okla. Stat. Ann. tit. 30, § 4-401 (C)</p>
<p><b>Oregon</b></p>	<p>Varies by County.</p>	
<p><b>Pennsylvania</b></p>		
<p><b>Rhode Island</b></p>	<p>Probate courts are authorized to allow in the settlement of the accounts of any limited guardian or guardian such reasonable sums as the limited guardian or guardian shall have paid for the suitable support of his or her ward and the ward's family, and also a reasonable compensation to the limited guardian or guardian for his or her services. It is permissible for a limited guardian or guardian to decline compensation, and shall not be grounds for removal of the limited guardian or guardian</p>	<p>33 R.I. Gen. Laws Ann. § 33-15-27</p>

<b>South Carolina</b>	Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances.	S.C. Code Ann. § 62-5-312 (b)
<b>South Dakota</b>	Any guardian, conservator, attorney for any guardian or conservator and the attorney for the minor or person alleged to need protection, and any other individuals appointed by the court in connection with a guardianship or conservatorship proceeding, are entitled to reasonable compensation from the estate, including reimbursement for costs advanced	S.D. Codified Laws § 29A-5-116
<b>Tennessee</b>	The fiduciary may receive reasonable compensation for services rendered. The court shall set the actual compensation to be paid, taking into account: The complexity of the property of the minor or person with a disability; The amount of time the fiduciary spent in performing fiduciary duties; Whether the fiduciary had to take time away from the fiduciary's normal occupation; Whether the services provided the minor or person with a disability are those the fiduciary should normally have provided had there been no need for a fiduciary; and, Such other matters as the court deems appropriate.	Tenn. Code Ann. § 34-1-112 (a)(1-5)
<b>Texas</b>	<p>1. Person: The court may authorize compensation for a guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The court may set the compensation in an amount not to exceed five percent of the ward's gross income. If the ward's estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.</p> <p>2. Estate: The guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves an annual or final accounting filed by the guardian under this title. A fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate, subject to the award of an additional amount under Section 1155.006(a) following a review under Section 1155.006(a)(1), is considered reasonable under this section if the court finds that the guardian has taken care of and managed the estate in compliance with the standards of this title.</p>	<p>1. Tex. Est. Code Ann. § 1155.002 (a-b)</p> <p>2. Tex. Est. Code Ann. § 1155.003 (a-b)</p> <p>3. Tex. Est. Code Ann. § 1155.004 (1-2)</p>

	3. In determining whether to authorize compensation for a guardian under this subchapter, the court shall consider: the ward's monthly income from all sources; and, whether the ward receives medical assistance under the state Medicaid program.	
<b>Utah</b>	Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances.	Utah Code Ann. § 75-5-312 (5)
<b>Vermont</b>	Before making a dividend, the court may allow to the guardian, out of the estate of the ward, a reasonable sum for his expenses in the management and settlement of the property for expenses in taking care of the person and family of the ward during the settlement, and for wearing apparel of the ward and his family.	Vt. Stat. Ann. tit. 14, § 2847
<b>Virginia</b>	In stating and settling the account, the commissioner of accounts shall allow the fiduciary any reasonable expenses incurred by him and, except in cases in which it is otherwise provided, a reasonable compensation in the form of a commission on receipts or otherwise. Unless otherwise provided by the court, any guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) or Chapter 21 (§ 64.2-2100 et seq.) shall also be allowed reasonable compensation for his services.	Va. Code Ann. § 64.2-1208 (A)
<b>Washington</b>	A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at county or state expense. Additional compensation may be allowed for other administrative costs, including services of an attorney and for other services not provided by the guardian or limited guardian...In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed. Where the incapacitated person is a	Wash. Rev. Code Ann. § 11.92.180

	department of social and health services client residing in a nursing facility or in a residential or home setting and is required by the department of social and health services to contribute a portion of their income towards the cost of residential or supportive services then the department shall be entitled to notice of proceedings as described in RCW 11.92.150. The amount of guardianship fees and additional compensation for administrative costs shall not exceed the amount allowed by the department of social and health services by rule.	
<b>Washington D.C.</b>	As approved by order of the court, any case reviewer, visitor, attorney, examiner, conservator, special conservator, guardian ad litem, or guardian is entitled to compensation for services rendered either in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement. Any guardian or conservator is entitled to reimbursement for room, board, and clothing personally provided to the ward from the estate of the ward, but only as approved by order of the court. Compensation shall be paid from the estate of the ward or person or, if the estate of the ward or person will be depleted by payouts made under this subsection, from a fund established by the District.	D.C. Code Ann. § 21-2060 (a)
<b>West Virginia</b>	Any guardian or conservator, whether full, temporary, or limited, is entitled to reasonable compensation as allowed by the court from the estate, including reimbursement for costs advanced. The frequency and amount of all compensation must be approved by the court.	W. Va. Code Ann. § 44A-1-13 (a)
<b>Wisconsin</b>	A guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses as follows: 1. Compensation: Subject to court's approval, as determined under par. (b), a guardian shall receive reasonable compensation for the guardian's services. The court shall use the following factors in decided whether compensation for guardian is just and reasonable: The reasonableness of the services rendered; The fair market value of the services rendered; Any conflict of interest of the guardian; The availability of another to provide the services; The value and nature of the ward's assets and income, including the sources of the ward's income; Whether the ward's basic needs are being met; The hourly or other rate proposed by the guardian for the services. The amount of compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances. The	1. Wis. Stat. Ann. § 54.72 (1) 2. Wis. Stat. Ann. § 54.72 (2) 3. Wis. Stat. Ann. § 54.72 (3)

	<p>court may establish the amount or basis for computing the guardian's compensation at the time of the guardian's initial appointment.</p> <p>2. Reimbursement of expenses: The guardian shall be reimbursed for the amount of the guardian's reasonable expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers.</p> <p>3. Court Approval Required: A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.</p>	
<p><b>Wyoming</b></p>	<p>The fees of the guardian shall be: Reasonable and appropriate; Set and approved by the court. The fees of the guardian shall not be approved by the court unless all reports required of the guardian are current.</p>	<p>Wyo. Stat. Ann. § 3-2-111 (a-b)</p>

**TAB 6**  
**BILL OF RIGHTS STATUTES**

7/6/16 Version

RIGHTS OF A PERSON FACING OR UNDER GUARDIANSHIP THAT SHOULD BE  
ADDED TO STATUTE:

1. Visits/Communications

- a. Except as otherwise provided in paragraph (c), a proposed protected person or protected person has the right to receive communications and visits from any visitor of his or her choosing. The proposed protected person or protected person may also refuse communications and visits.
- b. Except as otherwise provided in paragraph (c), if the proposed protected person or protected person is unable to express consent to interact with other persons due to a mental, emotional, or physical condition, then consent may be presumed based on the person's prior relationship with such other persons unless the proposed protected person or protected person has previously documented his or her wishes not to interact with the person seeking access to him or her.
- c. A guardian may limit, supervise, or restrict communication or visits, but only to the extent necessary to protect the proposed protected person or protected person from harm. If restrictions are made, the guardian must advise the proposed protected person or protected person, his or her attorney or representative, and visitor of the restriction and the reason for it. If the proposed protected person or protected person or their attorney, or any interested party objects, the court shall schedule a hearing on the restriction.

2. Moves – Remove move provisions NRS 159.079(4) and create a new statute as follows:

- a. Every protected person has the right to have his or her preferences followed, if possible, and the right to age in their own surroundings, if possible, and if not, in the least restrictive environment suitable to their unique needs and abilities
- b. Except as otherwise provided in paragraph (e), a proposed protected person shall not be moved until a Guardian is appointed.
- c. Except as otherwise provided in paragraph (e), when a guardian or proposed guardian wishes to admit a protected person to a nursing home or change the residential placement of the person from a private home to a boarding home, residential care home, assisted living residence, group home, or other similar facility, the guardian must first file a motion for permission to do so and must show that the proposed move is in the best interest of the protected person and that a compelling reason is necessary for the relocation.
- d. Except as otherwise provided in paragraph (e), for any other change of residence sought be a guardian, the guardian must propose to move the protected person only if it is in the best interest of the protected person and with notice to all parties with an opportunity for the party or interested person to object to the proposed move. If no objection is received within ten days of the notice, the protected person may be moved without court permission.
- e. If the health or safety of the proposed protected person or protected person is at risk of imminent harm, or if the proposed protected person or protected person has been hospitalized and is unable to return to his or her home, the guardian may take any



temporary action needed without court permission. Whenever possible, the guardian shall make only a temporary move until court permission is sought. In all instances, notice should be given to the proposed protected person or protected person, his or her attorney, and all interested parties. As soon as it practicable, the guardian shall file a motion with the court for permission to continue the placement.

3. Remedies:

- a. If a guardian violates the rights contained in this chapter, a court may take appropriate actions, including, but not limited to:
  - i. Issuance of an Order that certain actions be taken or discontinued;
  - ii. A disallowance of any fees payable to the guardian surrounding said action;
  - iii. An order after notice and hearing compensating the person under the guardianship for any injury or death or loss of money or property caused by the action or caused by failing to take the appropriate action;
  - iv. Removal of the guardian;
  - v. Such other action as may be fit and proper under the circumstances.
- b. For any action deemed deliberately harmful, fraudulent, or committed with malice, the court may also impose:
  - i. Twice the actual damages incurred by the person;
  - ii. Attorney's fees and costs.

4. Initial Plan

- a. Upon the filing of a guardianship action, the proposed guardian shall also file a proposed preliminary care plan and budget. The plan shall include:
  - i. The place and kind of residential setting or facility best suited for the needs of the proposed protected person and the proposed place of residence;
  - ii. The plan for medical, mental, or personal care services for the welfare of the proposed protected person to the extent known;
  - iii. The provision of social and personal services for the welfare of the proposed protected person to the extent known;
  - iv. The generalized financial plan of care for the proposed protected person with proposed income and expenses, including what assets can be used to pay for the costs of care.
- b. Unless the proposed protected person has been found to be totally incapacitated, the initial guardianship plan must contain an attestation that the guardian has consulted with the proposed protected person and, to the extent reasonable, has honored the proposed protected person's wishes consistent with the rights retained by the proposed protected person under the plan. To the maximum extent reasonable, the plan must be in accordance with the wishes of the proposed protected person.
- c. The guardianship plan may not restrict the physical liberty of the proposed protected person more than reasonably necessary to protect the proposed protected person or others from serious physical injury, illness, or disease and to provide the proposed protected person with medical care and mental health treatment for the proposed protected person's physical and mental health.

- d. An initial guardianship plan continues in effect until it is amended or replaced by the approval of a guardianship plan, until the restoration of capacity or death of the proposed protected person or protected person.
5. Accountings – NRS 159.179
    - a. If the proposed protected person or protected person has assets, the report must include a beginning balance and ending balance.
    - b. All reports must be served on proposed protected person or protected person and his or her attorney.
    - c. All expenses must be itemized; receipts for amounts over \$250 must be filed, unless waived by the court.
    - d. A protected person or his or her attorney is entitled to receive copies of any accountings relating to any trusts created by or for the benefit of the protected person. A protected person may submit any trust to the jurisdiction of the court if the protected person or the spouse, or both, are the grantors and sole beneficiaries of the income of the trust or if the trust was created at the direction of or with the consent of the court.
  6. Hearing of Account – NRS 159.181
    - a. Any interested person may appear at the hearing and object to the account or file written objections to the account prior to the hearing.
    - b. If there are no objections to the account or if the court overrules any objections, the court may enter an order allowing and confirming the account.
    - c. If objections are filed, the court may hear argument on the objection and issue a ruling. If the court determines that an evidentiary hearing is warranted, the judge may have witnesses sworn and provide testimony.
  7. Appointment of Attorney, duties - NRS 159.0455 should be revised as follows:
    - a. On or after the date of the filing of a petition to appoint a guardian, a court must appoint an attorney to represent the proposed protected person or protected person if that person does not already have counsel. In counties where legal aid is available to represent the proposed protected person or protected persons and funding has been provided, legal aid services shall provide counsel. Counsel shall receive a copy of the petition upon appointment and copies of all other documents upon filing with the court. Counsel shall consult with the proposed protected person or protected person prior to any hearing, and to the maximum extent possible, explain to the proposed protected person or protected person the meaning of the proceedings and of all relevant documents. Counsel shall be entitled to receive any and all documents pertaining to the proposed protected person or protected person. Counsel for the proposed protected person or protected person shall follow a client directed model of representation to the greatest extent possible as outlined by the Nevada Rules of Professional Conduct or other court rule.
  8. Appointment of Volunteer Guardian ad Litem, Court Visitor, or Attorney Guardian ad Litem
    - a. If a court approved program for volunteers exists in the judicial district, a court may appoint a person to represent the proposed protected person or protected person as a guardian ad litem or as a court visitor if the court believes that the proposed protected

person or protected person could benefit from said appointment. If established, all volunteers in such programs must attend and complete appropriate training as determined by national or state sources or approved by the Nevada Supreme Court or the court in that judicial district.

- b. The guardian ad litem or court visitor is an officer of the court and not a party to the case and is not an attorney except as provided in subsection (c). His or her duty is not to offer legal advice but to advocate for the best interest of the person in a manner that will enable the court to determine what action will be the least restrictive and best for the proposed protected person or protected person. A GAL is not always appointed in guardianship proceedings and is only utilized when the court has reason to believe such services would be beneficial in determining the best interest of the proposed protected person or protected person.
- c. If a court believes that an attorney representing the proposed protected person or protected person is insufficient to provide information needed by the court to make a determination, if no volunteer guardian ad litem or court visitor program exists and/or can provide a volunteer, or in extraordinary instances where an attorney ad litem may assist the court, the court may appoint an attorney guardian ad litem. This attorney will not represent the proposed protected person or protected person, but will act as an officer of the court to advocate for the proposed protected person or protected person's best interest and to provide information to the court as outlined by appropriate Court rule.

8. Qualifications of Non Attorney Guardian ad Litem or Court Visitor

To qualify for appointment as a guardian ad litem, a guardian ad litem must:

- a. Not be related to the proposed protected person or protected person;
- b. Not receive compensation for their service;
- c. Not have any felony conviction;
- d. Have specialized training or skill in the following:
  - i. The dynamics of the elderly, aging, and exploitation;
  - ii. Factors to consider in determining the best interests of a person
  - iii. Skills in mediation and negotiation;
  - iv. Federal, state and local laws affecting people in guardianship actions;
  - v. Cultural, ethnic and gender-specific issues;
  - vi. Standards for guardians ad litem;
  - vii. Confidentiality issues; and
  - viii. Such other topics as the court deems appropriate.

9. Advising a Proposed protected person or protected person of their Legal Rights: NRS 159.0535

This statute needs to be amended to remove the physician from obligations to advise the proposed protected person or protected person that they have a right to an attorney. The court or attorney for the proposed protected person or protected person should advise the proposed protected person or protected person of this.

## Proposed New Court Rules

1. Add new court rule outlining the duties of an attorney for a proposed protected person or protected person:
  - a. When representing proposed protected persons or protected persons as an attorney, attorneys shall follow a client directed model of representation to the greatest extent possible.
  - b. When the client does not have the capacity to direct the attorney, the attorney shall follow the client's wishes to the greatest extent possible. If the client is completely unable to direct an attorney, the attorney shall act as a client advocate for the proposed protected person or protected person. The attorney shall not substitute counsel's own judgment for that of the proposed protected person or protected person on the subject of what may be in the best interest of the proposed protected person or protected person. Counsel's role shall be distinct from that of a volunteer guardian ad litem. At a minimum, counsel shall endeavor to ensure that:
    - i. the wishes of the Proposed protected person or protected person, including those contained in estate planning documents, are presented to the court;
    - ii. there is no less restrictive alternative to guardianship or to the matter before the court;
    - iii. proper due process procedure is followed;
    - iv. no substantial rights of the proposed protected person or protected person are waived, except with the proposed protected person or protected person's consent and the court's approval;
    - v. the petitioner proves allegations in the petition by clear and convincing evidence in an initial proceeding, and applicable legal standards are met in subsequent proceedings;
    - vi. the proposed guardian is a qualified person to serve or to continue to serve, consistent with [the statute](#);
    - vii. if a guardian is appointed, the initial order or any subsequent order is least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision;
    - viii. ensure any bill of rights or statutory rights given to the clients are followed and enforced; and
    - ix. Review inventories, billings, and financial records to ensure that the estate of the proposed protected person or protected person is not unnecessarily charged.
2. Add new court rule outlining the duties of an attorney guardian ad litem for a proposed protected person or protected person:
  - a. When representing proposed protected persons or protected persons as an attorney guardian ad litem, the role of the attorney guardian ad litem is to help determine the best interests of the individual, not to advocate for a position chosen by a client, as would a lawyer.
  - b. The attorney appointed to be the guardian ad litem shall:

- i. Meet with the proposed protected person or protected person as often as is necessary to determine that the person is safe and to ascertain the best interests of the person;
- ii. Ascertain the wishes of the proposed protected person or protected person;
- iii. Thoroughly research and ascertain the relevant facts of each case for which the guardian ad litem is appointed, and ensure that the court receives an independent, objective account of those facts;
- iv. Explain to the person the role of the guardian ad litem and, when appropriate, the nature and purpose of each proceeding in the case;
- v. Participate in the development and negotiation of any plans for and orders regarding the person, and monitor the implementation of those plans and orders to determine whether services are being provided in an appropriate and timely manner;
- vi. Appear at all proceedings regarding the attorney;
- vii. Inform the court of the desires of the person, but exercise independent judgment regarding the best interests of the child;
- viii. Present recommendations to the court and provide reasons in support of those recommendations;
- ix. Request the court to enter orders that are clear, specific and, when appropriate, include periods for compliance;
- x. Review the progress of each case for which the guardian ad litem is appointed, and advocate for the expedient completion of the case; and
- xi. Perform such other duties as the court orders.

## **BILL OF RIGHTS**

Bill of Rights: When a person is appointed a guardian, he or she does not lose all their rights or the right to take part in important decisions affecting his or her property and way of life. Here are some of your rights:

1. You have the right to be treated with respect and dignity.
2. You should be granted the greatest degree of freedom possible consistent with the reasons for the guardianship.
3. You have the right to have due consideration be given of your current and previously stated personal desires, medical treatment preferences, religious beliefs and other preferences and opinion, and to have your wishes considered.
4. You have the right to be treated fairly by your guardian.
5. You have the right to participate in the development of a plan for your care, including management of your assets, your personal property, where you will live, and how you will live.
6. You have the right to remain as independent as possible, including having your preference as to place and standard of living honored, either as you expressed or demonstrated prior to the determination of incapacity or as you currently express, as long as the request is reasonable under the circumstances.
7. You have the right to receive timely, effective, and appropriate health care and medical treatment that does not violate your rights.
8. You have the right to receive calls and personal mail and to have visitors, unless the guardian and the court determine that the visitors or messages will cause you harm.
9. You have the right to personal privacy and confidentiality in personal matters, subject to state and federal law.
10. You have the right to ask questions and to express concerns and complaints about your guardian and/or his or her actions, either in writing or orally.
11. You have the right in a court hearing to have family, interested parties, or medical providers speak or raise concerns, either orally or in writing, to the court about issues of concern to you, including conflicts with the guardian.
12. You have the right to ask the court to review the guardian's management if disputes cannot be resolved.

13. You have the right to an attorney before the guardianship is imposed and at any time during the guardianship to ask the court for relief.
14. You have the right to ask the court to end the guardianship.
15. You have the right to receive a copy of all documents filed in the guardianship action.
16. You have the right to have all services provided by a guardian at a reasonable rate of compensation and to have a court review requests for payment to avoid excessive or unnecessary fees or redundant or double billing.
17. You have the right to receive regular detailed financial accounting reports, including reports on any investments or trusts that are held for your benefit, as well as any expenditures and fees charged to the estate.

Nothing in this document abrogates other remedies existing in law. All of these rights can be addressed in the guardianship action or are enforceable through a private right of action.

**TAB 7**  
**SUPPORTIVE DECISION-MAKING**



## **National Resource Center for Supported Decision-Making State Grant Program Announcement and Guidelines**

### **Program Overview and Objectives**

The National Resource Center for Supported Decision-Making (NRC-SDM) is pleased to announce its State Grant Program. The Program will award grants for state-based projects that:

- (1) Adopt an innovative approach to increase knowledge of and access to Supported Decision-Making by older adults and people with intellectual and developmental disabilities (I/DD) across the life course;
- (2) Collect and disseminate information to document the positive impacts of Supported Decision-Making in their state and, at least annually, issue a report documenting success stories, challenges and, any system changes that have been made to increase the understanding and use of Supported Decision-Making.

Over the past two decades, research has demonstrated a direct relationship between the self-determination of older adults and people with I/DD and their overall quality of life. The evidence shows that those who exercise greater self-determination are better problem-solvers, more independent, more likely to be employed at higher-paying jobs and less likely to be abused (Khemka, Hickson, & Reynolds, 2005; Wehmeyer, Kelchner, & Reynolds, 1996; Wehmeyer & Schwartz, 1998). One method designed to increase and maximize self-determination is Supported Decision-Making – which focuses on providing people with the help they need and want to understand the situations and choices they face, so they may make their own decisions consistent with their goals, wishes and desires. (Quality Trust for Individuals with Disabilities, 2014; Blanck, 2014).

Funded by a grant from the Administration for Community Living (ACL), NRC-SDM documents and disseminates successful Supported Decision-Making practices; conducts research to fill data and information gaps; develops training materials and provides technical assistance to ACL networks on Supported Decision-Making issues, including youth transition; develops strategy that measures and demonstrates the impact of Supported Decision-Making on the lives of people with I/DD and older Americans; and designs and commences implementation of this State Grant Program. The intent of these projects is to collaborate with aging and disability communities, networks, researchers, professionals, and providers to examine and reform policy and practice as needed to make Supported Decision-Making an alternative to guardianship and increase self-determination.

Up to 6 (six) projects may be funded through this application process. The purpose of the small grants is to stimulate innovative Supported Decision-Making practices that can be replicated around the country. Each project funded by this program will become a part of NRC-SDM's Community of Practice and receive logistical, organizational, technical, and other necessary and appropriate support from the NRC-SDM. The resources, research, best practices, and tools that are developed from these projects will be incorporated into NRC-SDM.

## General Eligibility Guidelines

This Program will fund initiatives that meet Program objectives and criteria, are innovative and collaborative, and demonstrate knowledge of Supported Decision-Making and existing guardianship and other laws affecting older adults and people with I/DD in their states. Grantees who receive funding under the State Grant Program will be responsible for creating a unique Supported Decision-Making innovation tailored to the distinct characteristics and needs of their states' aging and disability networks and populations. We encourage partnerships among diverse stakeholders including older adults, people with disabilities, family members, advocates, professionals, and providers.

New applicants and former grantees of the State Grant Program are eligible for 12-month grants of up to \$4,000.

Each project funded will have one principal grantee (the applicant, in most cases) plus designated partners. The principal grantee will receive the grant funds, manage the project, prepare and submit reports, and serve as the contact with the NRC-SDM. Program funds may not be used to replace lost staff or funding; to fund maintenance of effort or obligations under other grants; to acquire computers or other technology; to fund advocacy beyond that permitted by I.R.S. Code §501(c) or other applicable law; or in violation of other requirements.

**The following organizations are eligible to serve as either the principal grantee or a project partner:** Organizations providing services and supports to older adults and people with I/DD including private and publicly-funded entities providing advocacy, education, and rights protection, and other entities whose goal is to protect and increase awareness of the rights of older adults and people with I/DD.

## Application Guidelines

### Available Funding

This Program will provide 12-month grants of up to a maximum of \$4,000. Larger budgets using matching funds are encouraged, but not required.

## Award Period

Projects will be funded for one year – December 1, 2016, through November 30, 2017. At the discretion of the NRC-SDM, projects may be renewed for additional one-year grants. Priority will be given to projects designed to continue beyond the grant period.

## Application Instructions

Our interest focuses on new initiatives and effective, innovative partnerships that meet overall program objectives and demonstrate the ability to identify and implement changes in policy and practice to increase the use of Supported Decision-Making in the applicant's state. Successful applicants will:

- (1) Have active involvement by older adults and people with I/DD;
- (2) Document commitment from relevant stakeholders in the public and private sector, at a minimum, including the state's DD network and the state's Aging network;
- (3) Describe the current status of their state's law, policy, and practice regarding Supported Decision-Making;
- (4) Describe their objectives to identify, develop, implement, and report on changes to policy and practice that increase the use of Supported Decision-Making across the life course for older adults and people with I/DD; and
- (5) Commit to not use federal funds through the State Grant Program to lobby federal, state, or local officials or their staff to receive additional funding or influence legislation, and comply with all other applicable requirements.
- (6) Commit to meet monthly and participate in quarterly virtual meetings of the NRC-SDM's Community of Practice.

To be considered, each application **must** include:

- **Part A – Application Narrative.** Identify the applicant and partners and describe their knowledge of and experience using Supported Decision-Making and their experience creating systems-change increasing the self-determination of older adults and people with I/DD. Describe the current use of Supported Decision-Making in your state and how your innovative project will increase the awareness and use of Supported Decision-Making by older adults and people with I/DD through the life course and help surmount any obstacles. Describe how the project will include the active involvement of older adults and people with I/DD.

- **Part B – Work Plan and Outcomes.** Describe key tasks, timeframe for tasks, anticipated measurable outcomes, and activities to be conducted by each partner.
- **Part C – Budget.** State the total project budget for the one year period from December 1, 2016 – November 30, 2017. Grantee or partner cash or in-kind contribution is not required, but encouraged. If the project will use cash or in-kind contribution by applicant or partners, the application must include the dollar amount of the match in appropriate budget category. Identify the time commitment to the project of key personnel and the total cost of that time commitment. *Note:* This program does not fund computer or other technology purchases.
- **Letters of Commitment.** The application must include a letter of commitment from each partner. The letter must describe the specific tasks that the partner will be responsible for, how collaborative tasks will be staffed and conducted, and the funds to be contributed by the partner. Letters must be submitted as part of application packet.

## Application and Decision Due Dates

Applications, excepting Letters of Commitment, must be no longer than 10 pages.

Applications must be submitted on or before September 15, 2016 to:  
[MWhitlatch@DCQualityTrust.Org](mailto:MWhitlatch@DCQualityTrust.Org) with “State Grant Program” in the subject line.  
Application receipt will be confirmed by e-mail.

Applicants will be informed if their project was selected for funding by October 31, 2016.

## Review Process and Selection Criteria

The NRC-SDM’s Advisory Board, in consultation with ACL, will review proposals and select projects to be funded by October 31, 2016.

Projects will be selected based on the following criteria:

- (1) Does the project meet overall program objectives?
- (2) Does applicant demonstrate understanding of Supported Decision-Making as an alternative to guardianship and a way to increase and maximize self-determination?
- (3) Does the applicant describe the need for the project in its state, how the need was determined, and how it will be met?
- (4) Do the applicant and partners have the experience necessary to implement the project?

- (5) Is the project collaborative and does it directly involve older adults and people with I/DD? Are partner roles adequately defined and confirmed?
- (6) Are anticipated outcomes and outcome measurements appropriate to the project?
- (7) Can the proposed outcomes be replicated in other parts of the country?
- (8) Are staffing, budget, and timeframe consistent and appropriate?
- (9) Will project activities continue beyond the project period and be replicable?
- (10) Is the project innovative in concept, delivery, or impact on the community it will serve?
- (11) Other criteria determined by the NRC-SDM and ACL, including, as appropriate, geographic diversity.

### **Deliverables:**

1. Grantees are required to participate in a bi-monthly conference call with ACL, Quality Trust, and other grantees to discuss successes, challenges, and lessons learned. Grantees may be asked to lead a call on a particular issue that is occurring in their state.
2. Grantees are required, on a quarterly basis, to submit up to five bullet points on successes, challenges, and lessons learned (no more than 100 words total) to Quality Trust.
3. Grantees are required to submit a report no later than November 30, 2017. The report will briefly restate the project's goals, anticipated outcomes, and plans for achieving them, and describe any modifications to the plan and the impact of those modifications. The report will describe the progress made towards achieving anticipated outcomes, lessons learned, plans for continuation, and suggestions for replication. Grantees must include a final budget report and one copy of all products produced under grant. Products must include attribution to the NRC-SDM and the ACL.

The report will be used, in part, to determine whether to renew the project for another year.

### **Questions?**

Contact Morgan Whitlatch, Project Director, at 202-459-4004 or [MWhitlatch@DCQualityTrust.Org](mailto:MWhitlatch@DCQualityTrust.Org).

# The National Guardian

NEWS FROM THE NATIONAL GUARDIANSHIP ASSOCIATION

August 2016

## President's Message

By Jane Gildersleeve



Dear Members,

There is no data out there to determine how many professional and family guardians there are in the United States, and that lack of data is an issue impacting guardianship. We read stories of unethical, and often criminal, guardians and we become

frustrated. Without the data, it's hard for NGA to fight back and explain that these stories are the exception. We need your help.

Of course, most guardians do a good job. They become certified, uphold NGA's Standards of Practice, and insure the rights of people under guardianship. But, as is the case with any profession, there are a few who make headlines. They abuse people under guardianship, commit fraud, and do the things that put ethical guardians on the defensive. Guardianship systems are not perfect and, despite heightened awareness of the prevalence of aging issues, we have not been able as a country to find the funds for education and services.

The NGA board recently approved a set of [ethical principles](#) as related to the Standards of Practice, and it has made me think about all the ethical guardians I know.

I know a family guardian who left her job so that she

could be with her mother who very much wanted to stay in her home. The entire family made sacrifices so that this guardian could drive her mother to the senior center and shopping. Because she lived in the same neighborhood as her mother, they could prepare family meals together. As a family guardian myself, I could go on with pages of fine examples of selfless behavior.

I know many professional guardians who use their own money to take the people they serve to restaurants, and who find other unique ways to improve the quality of life of the individuals in their care.

I spoke recently to a professional guardian who spent hours with a young woman each month, making sure that the young woman's money was being utilized, to the extent possible, on the choices and preferences of that individual. My friend did not charge fees for this effort.

There are hundreds of stories like this within NGA's membership, but guardians aren't people who like to brag about their deeds. It's time to share the stories though; if NGA has an archive of positive guardianship stories, it can actively combat the perceptions that occur when negative stories are spread. **Share your stories, not to "toot your own horn," but to help your fellow professionals.**

At NGA's January board meeting, the Center for Guardianship Certification (CGC) reported that there are currently 1,448 National Certified Guardians

(NCG) and 64 National Master Guardians (NMG); less than 5% of their certificants have received a report of an impropriety.

We have so many extraordinary guardians and your stories will work to correct what may be wrong and will help to exemplify good guardianship. When the media contacts NGA with a negative story, we should have hundreds of examples of good guardianship available to share.

I sincerely hope that we can gather data to demonstrate the large number of ethical guardians working throughout the country. Send stories of good guardianship to [communications@guardianship.org](mailto:communications@guardianship.org).

National Conference on Guardianship  
Charleston, SC  
Oct. 29 - Nov. 1, 2016

Complete details, including the schedule, fees, and registration, are available [online](#)

[www.guardianship.org](http://www.guardianship.org)



93 of 155  
NATIONAL GUARDIANSHIP ASSOCIATION



NATIONAL GUARDIANSHIP ASSOCIATION

## 2016 Board of Directors

### President

Jane Gildersleeve  
Provincetown, MA  
508-487-3760 or 973-479-4564  
janeegildersleeve@gmail.com

### Secretary-Treasurer

Carleton Coleman  
Columbus, GA  
706-260-8724  
cfcoleman@dhr.state.ga.us

### President-Elect

Wanda Bevington, NCG, MS, LSW  
Cincinnati, OH  
513-821-5500  
wjb2157@gmail.com

Charles Perez Golbert, Esq.  
Chicago, IL  
312-603-0800  
charles.golbert@cookcountyil.gov

Robert McLeod  
Minneapolis, MN  
612-977-8216  
rmcleod@briggs.com

Scott Greenberg  
Palm Beach Gardens, FL  
561-630-1620  
scott.greenberg@comforcare.com

Paul Seideman  
Boise, ID  
208-866-4303  
paul@trescoofidaho.com

Terry Hammond, Esq., NCG  
El Paso, TX  
915-534-7000  
terry@hammondlaw.net

Dr. Orit Simhoni  
Silver Spring, MD  
510-303-3995  
o.simhoni@yahoo.com

Mike Handy  
Frankfort, KY  
915-534-7000  
michael.handy@ky.gov

Dan Smerken, NCG  
Olympia, WA  
360-570-3357  
eldercare@smerken.com

Sally Hurme  
Alexandria, VA  
202-288-5558  
sallyhurme@gmail.com

Helen Ferraro Zaffram, Esq.  
Buffalo, NY  
716-853-3087  
hzaffram@lsed.org

Gale Kirk, NCG  
Richfield, NC  
704-279-8975  
galekirk@yahoo.com

**CGC Liason:**  
Clifford Walker, NMG  
Austin, TX  
903-312-4595  
Cwalker117nmg@gmail.com

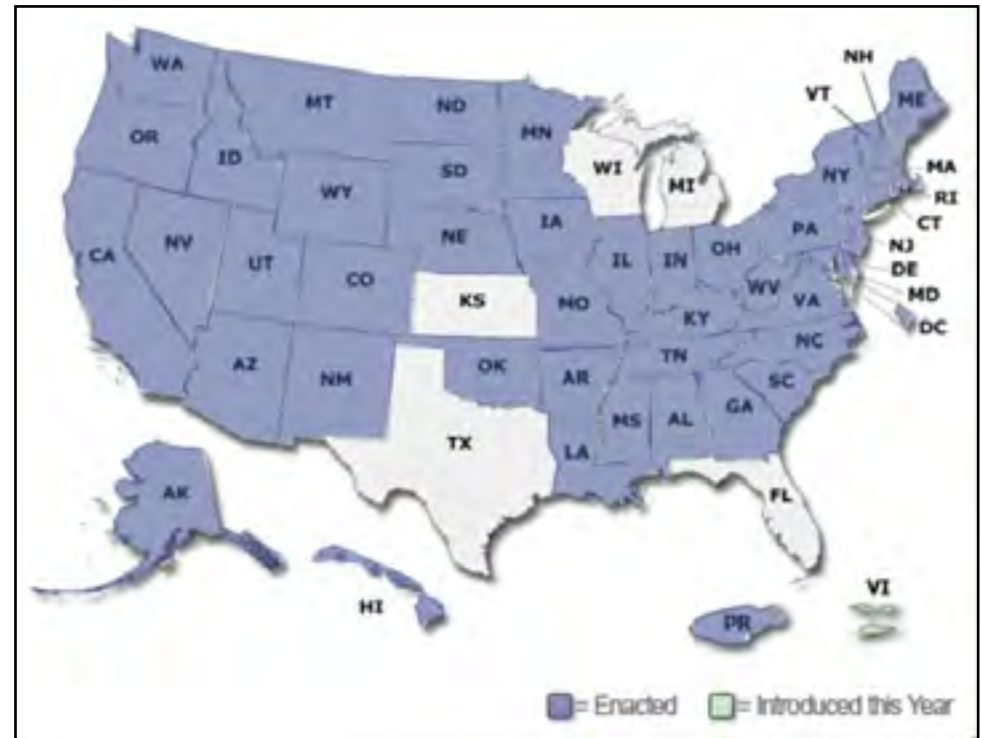
Lucille Lyon  
Santa Ana, CA  
714-567-7373  
lucille1000@gmail.com

## 2016 UAGPPJA Activity

June saw some exciting activity regarding the Uniform Adult Guardianship Protective Proceedings and Jurisdiction Act (UAGPPJA). On June 2, Louisiana's governor, John Bel Edwards, signed into law Senate Bill 94, and became the 44<sup>th</sup> state to enact UAGPPJA. Later that same month, North Carolina's governor Pat McCrory signed the act, making it the 45<sup>th</sup> state.

Louisiana and North Carolina join Georgia, which passed the act earlier this year. The act has been introduced in the U.S. Virgin Islands.

The updated map appears below.



# Conference Schedule at a Glance

(Conference intensives require separate registration.)

## Saturday, October 29

7:00 am – 5:00 pm Registration area open  
8:00 am – 11:30 am Conference intensive:  
**Identifying Skilled, Ethical Investment Advisors & Monitoring the Prudence of Their Investment Practices**  
8:30 am – 4:00 pm Conference intensive:  
**Legal Review**  
11:30 am – 12:30 pm Lunch on your own  
12:30 pm – 4:00 pm Conference intensive:  
**Guardianship Litigation**  
3:30 pm – 5:30 pm State Affiliates meeting  
5:30 pm – 6:30 pm Welcome reception with live shag dancing entertainment

## Sunday, October 30

7:00 am – 5:00 pm Registration area open  
7:30 am – 8:15 am New member breakfast  
8:15 am – 8:30 am Welcome/opening remarks  
8:30 am – 10:00 am **Changes Coming to the Uniform Guardianship Act**  
10:00 am – 10:30 am Break with exhibitors  
10:30 am – 11:45 am Concurrent breakout sessions:  
1) *Lessons Learned from the Life and Death of a Loved One: What Amelia's Passing Taught Me*  
2) *Enhancing Communication with People Living with Alzheimer's Disease and Dementia*  
3) *The Plan of Care: Increasing Client Satisfaction, Reducing Liability, and Managing Expectations*  
11:45 am – 1:15 pm Annual meeting luncheon  
1:30 pm – 2:45 pm Concurrent breakout sessions:  
1) *Financial Elder Abuse and Fraud: Awareness and Prevention*  
2) *NGA Standards: Ethical Business Practices*  
3) *Tax-Wise Planning: Funding Special Needs Trusts with IRAs*

2:45 pm – 3:15 pm  
3:15 pm – 4:30 pm

Break with exhibitors  
Concurrent breakout sessions:  
1) *Analyzing Guardianship: A Look at Model Programs for Data Tracking Around the Country*  
2) *Legal Liability Issues for Guardians*  
3) *Volunteer Guardianship: The Keys to Successfully Develop, Recruit, and Retain Dedicated Volunteers*  
5:30 pm – 7:00 pm Reception with exhibitors and live auction  
7:00 pm Dinner on your own

## Monday, October 31

7:00 am – 5:00 pm  
8:15 am – 9:30 am  
9:30 am – 9:45 am  
9:45 am – 11:00 am

Registration area open  
**The Ten Commandments of an Ethical Guardianship Practice**  
Break with exhibitors  
Concurrent breakout sessions:  
1) *Wish You Were Here: Reflections on the 4th World Congress*  
2) *Capacity and Undue Influence: Where the Two Collide*  
3) *Providing Access to Care for the Legally Incapacitated*  
Break with exhibitors  
Concurrent breakout sessions:  
1) *Nuts and Bolts of Guardianship*  
2) *Using SNTs to Protect Benefits*  
3) *Fraud in Guardianships*

11:00 am – 11:15 am  
11:15 am – 12:30 pm  
12:30 pm – 1:45 pm  
1:45 pm – 3:00 pm

Networking luncheon and dessert with exhibitors  
Concurrent breakout sessions:  
1) *Advocating for Proper Professional Staff in Home Care Services*  
2) *The Worst Investment Mistakes that Guardians Make: How to Spot Them and How to Avoid Them*  
3) *The Changing Climate of Professional Guardianship*

3:00 pm – 3:15 pm  
3:15 pm – 4:15 pm

Break  
Concurrent breakout sessions:  
1) *The Power of Music: Integrating Technology into Person-Centered Care*  
2) *South Carolina Vulnerable Adult Guardian ad Litem Volunteer Program*  
3) *Behaviors Related to Brain Injury*

4:15 pm – 4:30 pm  
4:30 pm – 5:30 pm

Break  
Concurrent breakout sessions:  
1) *Building Blocks of Guardianship: Building up Your Clients, Your Teams, and Your Business*  
2) *Working Together to Promote Self-Determination*  
3) *Empowering Caregivers Through Structured Dementia Education: Dementia Dialogues*  
Open evening with dine-around and transportation downtown

5:30 pm

## Tuesday, November 1

7:00 am – 11:30 am  
8:15 am – 9:45 am  
9:45 am – 10:00 am  
10:00 am – 11:30 am  
11:30 am

Registration area open  
**Combating the Crime of the 21st Century: Elder Financial Abuse and Security**  
Break  
**Managing the Message: How to Plan for Better Media Outcomes**  
Conference concludes

## Dates to Remember

- September 16** Last day for early bird discount
- September 27** Deadline for discounted rooms at overflow hotels
- October 14** Last day for advanced registration

Register online at [www.guardianship.org](http://www.guardianship.org)



## Nominations Now Being Accepted for CGC's 2016 Awards

The Center for Guardianship Certification (CGC) is currently accepting nominations for 2016 awards. **Nominations must be received no later than August 29.** CGC's annual awards program recognizes CGC National Certified Guardians and CGC National Master Guardians who, through exemplary work and commitment, promote the standard of excellence in guardianship.

The **National Certified Guardian Excellence Award** recognizes an outstanding National Certified Guardian who demonstrates exemplary commitment to NGA Standards of Practice and Model Code of Ethics in client services, as well as displays a significant contribution to both the guardianship community and their community-at-large. [Click here](#) for award criteria and nomination instructions.

The **National Master Guardian Star Achievement Award** recognizes an outstanding National Master Guardian who demonstrates knowledge of advanced guardianship concepts and ethics, and displays a significant contribution to both the guardianship community and their community-at-large. [Click here](#) for award criteria and nomination instructions.

The **Fred Kretz Cornerstone Award** recognizes an individual that has made significant contributions to CGC and promotes guardianship certification, concepts, and ethics. [Click here](#) for award criteria and nomination instructions.

Nominations and questions should be emailed to [communications@guardianshipcert.org](mailto:communications@guardianshipcert.org). Nominations may also be faxed to 717-238-9985 or mailed to the Center for Guardianship Certification (CGC), P.O. Box 5704, Harrisburg, PA 17110.



### Put Your Mind at Ease with the Right Care for Your Clients.

We care for your clients with the same commitment and compassion you do. You can rest assured that you're doing the right thing when you choose The Right Care.

- **Right People**® – We provide comprehensive care staff screening, selection & training
- **Right Services**® – We have extensive care options ranging from companionship to skilled care, along with flexible scheduling
- **Right Approach**® – We conduct continuous supervision of care by a committed care staff
- **Right Mission**® – Our mission is "To Improve the Quality of Life For Those we Serve."

Download our "Adult Caregiving Guide"  
and to find a Right at Home near you, visit  
[www.rightathome.net/NGA](http://www.rightathome.net/NGA)  
or call 866.896.3341



The Right Care. Right at Home®  
96 of 155

# Fingerprints, Police Clearance, and Clairvoyance: One Guardian's Saga

By Orit Simhoni, PhD, OTR/L

In light of the growing support for guardianship reform, it is not surprising to find that many states now require an investigation into an appointed guardian's character and qualifications, including criminal and credit background checks.<sup>1</sup> Some guardian candidates may be required to provide a sworn statement to the court attesting to their fitness to serve prior to their appointment.

So when I was appointed to serve as a guardian in Washington, DC, I was not surprised that I was required to file: (1) a Statement of Criminal History, within 14 days; (2) a criminal history check conducted by the Metropolitan Police Department (MPD), within 60 days; and (3) the results of an Federal Bureau of Investigation ("FBI") fingerprint check within 180 days of my Acceptance & Consent to Jurisdiction.

Preparing to comply with the court's order as soon as possible, I scheduled time to complete, notarize, and file my Statement of Criminal History. Thirty days later, with a hard copy of the Instructions for the MPD Criminal History Check in hand, I took the Metrorail to the DC MPD arrest and criminal history section. Four hours and \$7.00 later, I was pleased to arrive at the Superior Court probate division clerk's window, to file my official police document with police clearance. The document was accepted and docketed by the Clerk of the Court.

Having no criminal record, I assumed that I would have no problem complying with the mandatory requirement for the FBI fingerprint check. Rec-

ognizing the 180-day clock was ticking, with my driver's license and credit card at the ready, I headed to a local business that offers express fingerprinting services. Once my application was completed, the technician proceeded to use the ink and paper method to record my fingerprints on a standard fingerprinting card FD-258.<sup>2</sup> Once a complete set of fingerprints was recorded on the card, the technician shook his head. Suspecting that my recorded fingerprints would be "inadequate for accurate identification purposes," he suggested that we complete a second set. Fifteen minutes and \$30.00 later, I prepared my two sets of fingerprints and \$18.00 payment for mailing to the FBI; and filed the technician's receipt in my tickler file for follow-up.

Having no notification from the FBI after two months, I did my own "investigation." I found out that the current processing time is 12-14 weeks. And the FBI does not accept requests to expedite a response. I was advised to go to an "FBI-approved channeler." A *Channeler!*? I soon learned the difference between a channeler (a psychic, clairvoyant, or one who conveys thoughts from the spirit world), and an FBI-approved channeler – a private business that has contracted with the FBI to submit your request on your behalf.<sup>3</sup>

Confident that I was now on the right path, I drove to one of the approved channeling agencies in Washington, DC. Here, fingerprints are captured and submitted electronically to the FBI. The response time is less than 24 hours and, compared to the ink and paper method, the electronic im-

pressions are less likely to be rejected due to erroneous images or non-discernible patterns. Thirty minutes and \$39.95 later, the high-tech fingerprints were submitted to the FBI.

Just three hours later, I received a text message from the channeling agency: the FBI rejected my fingerprints: the quality of characteristics was too low to be used. The next day, I returned for a re-take. After paying an additional \$10.00 fee, I once again went through the "live scan" routine – and once again, the set was rejected.

While considering a psychic consult, I opted to re-search this problem on the FBI's website. I found the following: "An individual, by the nature of their work or age, may have very thin or worn ridges in the pattern area." Although scanning is better than the traditional method, many of us will face rejection: secretaries who handle a lot of paper, seniors with decreased skin elasticity, and health-care workers who frequently wash and sanitize their hands, may have prints which are difficult to capture.

As a "seasoned" therapist, I have routinely washed my hands as required to avoid the spread of infection. In recent years, I have used hand sanitizer. While some medical records are now electronic, I have spent decades handling the paper versions. Apparently, I meet the criteria for FBI rejection!

Fortunately, after four more attempts, I found a



# Supported Decision-Making: Rethinking Capacity and the Need for a Guardian

By Robert D. Fleischner, Esq.

Center for Public Representation, Northampton, Massachusetts

Traditional guardianships are pervasive in the lives of people with intellectual and developmental disabilities (I/DD). Although reliable national data are sorely lacking, the National Core Indicators (NCI), a survey of 39 states, indicates that in 2013-2014, more than 50% of adults with I/DD who received state funded services were under a plenary or, much less frequently, limited guardianship. <http://www.nationalcoreindicators.org/charts/>. NCI's data show that there is no significant difference between the percentage of people with plenary guardians who have "mild" I/DD (41%), and those with "profound" I/DD (45%). There is evidence that the use of guardianship is increasing, partially due to an aging population. Therefore, to prevent unnecessary guardianships – and the loss of liberty and autonomy that attend them – there must be increased access to and knowledge of workable alternatives.

Attitudes about and approaches to guardianship are beginning to change – some even dramatically. For example, at a Massachusetts guardianship conference earlier this year, an organizer described one alternative, supported decision-making, as "a tsunami," poised to wash away traditional concepts of capacity and guardianship. He was right. Supported decision-making, which is based on explicit concepts in the United Nations Convention on the Rights of People with Disabilities (CRPD),

has broad support among people with disabilities and their advocates. The CRPD asserts that all people have "legal capacity" and that with support from others who can understand and interpret "will and preferences," a person whose disability impacts her decision-making, nevertheless, can make her own decisions. That decision-making paradigm is being tested and implemented around the world.

The United States started later than some other countries in establishing supported decision-making as an alternative to substituted decision-making models like guardianships or conservatorships. But there have recently been encouraging and significant administrative, legislative, and case developments here. For example, several pioneers, including, Disability Rights Maine, a Hunter College and Disability Rights New York partnership, the ACLU's Disabilities Rights Program, and a clinic at the University of Texas Law School, are in various stages of developing supported decision-making projects. The Center for Public Representation (CPR) and Nonotuck Resource Associates have been successfully operating a project in Massachusetts for almost two years. <http://www.supporteddecisions.org/>. The federal government, through HHS's Agency for Community Living, has funded a National Resource Center to provide information about supported decision-making and research to study its impact. <http://www.supporteddecisionmaking.org>.

[org](http://www.supporteddecisionmaking.org). These pilot projects and the attendant research will inform the future of supported decision-making in this country.

A few reported court decisions have recognized that supported decision-making arrangements render guardianship unnecessary. For example, in 1999, in an opinion pre-dating the CRPD, the Pennsylvania Supreme Court held that a woman who had a "circle of support" to assist her in making decisions did not need a guardian, even though she was incapacitated. *In re Peery*, 727 A.2d 539 (Penn. Sup. Ct. 1999). New York Surrogate Judge Kristin Booth Glenn relied on the constitution, state law and the CRPD in her instructive opinion in *Guardianship of Dameris L.*, 38 Misc. 3d 570 (Surr. Ct., N.Y. Cnty., N.Y. 2012) finding that guardianship was unnecessary because Dameris L. could make her own decisions with assistance of a "support network." These and several unreported decisions described on the CPR and National Resource Center websites clearly indicate that judges are willing to consider supported decision-making arrangements as an alternative to guardianship.

Perhaps the most important indications of the growing acceptance of supported decision-making are legislative initiatives. An innovative 2015 Texas statute requires petitioners to show by clear and convincing evidence that alterna-

## Supported Decision-Making, Continued

tives, including supported decision-making, are insufficient before a guardianship may be imposed. Tex. Est. Code §§ 1002.0015 & 1357.001. The law defines supported decision-making as

A process of supporting and accommodating an adult with a disability to enable the adult to make life decisions related to where the adult wants to live, the services, supports and medical care the adult wants to receive, whom the adult wants to live with and where the adult want to work, without impeding the self-determination of the adult.

*Id.* § 1357.002(3). It includes a standard form for establishing a supported decision-making agreement and, importantly, indemnifies third parties who rely in good faith on an agreement. *Id.* § 1357.101. The District Columbia City Council is actively considering supported decision-making legislation and drafting is underway elsewhere, including Massachusetts. While *Peery*, *Demaris L.*, and other cases demonstrate that targeted statutory authority is not necessary for a supported decision-making agreement to be executed and implemented, clear legal authority is probably an advantage.

Supported decision-making is increasingly becoming well-known and utilized. Individuals with disabilities, their advocates, their families and their guardians should be familiar with the theories and practice of this exciting alternative to guardianship.

## Fingerprints and Clairvoyance, Continued

new channeling agency with a superior scanner and an experienced technician. After using a technique called “milking the finger” to raise the fingerprint ridges prior to printing, my fifth submission was accepted by the FBI. I requested expedited reporting and the following day, I received an electronic version of the U.S. Department of Justice FBI Criminal Justice Information Service Division Report, which “...revealed no prior arrest data at the FBI.”

Absent a criminal record, I do admit to difficulty explaining the additional \$300.00 in expenses to my accountant.

The reader may wonder what happened to the original ink and paper submission to the FBI. After four months, I did receive a letter from the FBI, rejecting the submission. Enclosed was another FD- 258 card, readily available to use for the next time!

<sup>1</sup> See Hurme, Sally. (2015) Criminal and Credit Background Checks for Guardians. [http://www.americanbar.org/groups/law\\_aging/resources/guardianship\\_law\\_practice.html](http://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice.html)

<sup>2</sup> For a complete discussion of the process, see [https://www.fbi.gov/about-us/cjis/fingerprints\\_biometrics/recording-legible-fingerprints](https://www.fbi.gov/about-us/cjis/fingerprints_biometrics/recording-legible-fingerprints)

<sup>3</sup> For more information, see <https://www.fbi.gov/about-us/cjis/identity-history-summary-checks>

## Follow NGA's New LinkedIn Company Page

When NGA first ventured into the world of social media, LinkedIn groups offered the only option for NGA to have a LinkedIn presence. Now that company pages exist, and NGA's listserv offers the opportunity for member-to-member feedback, NGA's group page is no longer necessary and it has been disbanded.

Please follow NGA at its new [company page](#) to receive important news and updates about guardianship, and to place the NGA logo on your own LinkedIn profile.

Members, make sure you're receiving listserv messages to make the most of your membership (due to anti-spam laws, you must opt in). [Learn more](#) about how to sign up for listserv messages.



*Support Conference Scholarships  
With an Auction Donation*

Donated items, ranging from handmade jewelry to fabulous vacations, are auctioned to raise money for NGA to fund worthy projects that are outside of the regular budget. The annual conference scholarships for family and public guardians come from the auction proceeds.

Even if you can't attend, you are invited to be part of the auction. Information is available [here](#).



# FLORIDA INSTITUTE FOR NEUROLOGIC REHABILITATION, INC.

## *Inpatient Brain Injury Rehabilitation Programs*

- Intensive Rehabilitation
- Neurobehavioral
- Vocational Rehabilitation
- Forensic Evaluation
- Community Integration
- Supported Living
- Pediatric Rehabilitation
- Accredited School

*A specialized approach to  
Neurologic Rehabilitation*

**Toll Free: 800-697-5390**

**PO Box 1348, 1962 Vandolah Road, Wauchula, FL 33873**

## Welcome New Members!

May 24, 2016 – July 29, 2016

Leesa Arthur	Lake George, NY
Tara Bailey, NCG	West Melbourne, FL
Brett Baker	Lincoln, NE
Brenda Baker, RN	Lubbock, TX
Patricia Bave, Esq.	New Rochelle, NY
Colleen Ceh Becvar	St. Charles, IL
Kristen Cleland	Cameron Park, CA
Richard Cowdrey	Lowell, MA
Carol DeSepio	Los Angeles, CA
Coya Eubank-Kirby	Redmond, WA
Leanne Feather	Marietta, PA
Carmen Federico	Temple City, CA
Janet Franklin	Tumwater, WA
Norma Gates	Richmond, VA
Carolyn Goetz	Castle Rock, CO
Andrew Harker	Palm Springs, CA
Sara Hartley	Columbus, OH
Nancy Heiser	New York, NY
Gregory Honegger, CPA	Bakersfield, CA
Annette Jones	Tucson, AZ
Wendy Kaminski	Forest Grove, OR
Melanie Kleiner	Calmar, IA
Morgan Libbey, NCG	Vero Beach, FL
Victoria Lloyd	South Strafford, VT
Lynn McGee	Washington, DC
Michael O'Connor, NCG	San Carlos, CA
Jessica Ott	West Auis, WI
Lydia Pedrego	Phoenix, AZ
Catherine Robbins, NMG	Phoenix, AZ
Kathleen Robson	Alpena, MI
Olen Rodriguez	Santa Clarita, CA
Raquel Romanick, JD	New York, NY
Eileen Rooney	Freeport, NY
Lauren Spiglanin	Rancho Palos Verdes, CA
Leanne Wagoner	Minden, NV
Lisa Wawrzonek, MS, CMC	Anchorage, AK
Sandra Wyrick	Phoenix, AZ
Amber Zabel	Vancouver, WA

## Try EMS Software:

*Proven, Secure, All-Inclusive, Customizable, Mobile,  
and, best of all, FREE for 30 days! \**

### Finally!

Software designed  
specifically for  
the work you do!



Call 866-615-9344

Case Mgmt, Financial  
Mgmt, Contact Mgmt,  
Time Mgmt, & Reporting  
in a single application.



**SEM**  
APPLICATIONS, INC.

*Software Designed For You*

\*Go to [www.semapplications.com](http://www.semapplications.com) to launch your free trial.  
Click on the "Click here to begin Demo" link to begin or email  
[tryems@semapplications.com](mailto:tryems@semapplications.com) for detailed instructions.

# **TAB 8**

## **NOTICE REQUIREMENTS**

### Notice in Guardianship Proceedings

- NRS 159.034, NRS 159.115 and NRS 159.134 require notice of hearings of petition, sale of real estate, accountings or other significant transactions and, NRS 159.047 requires citation notice to be served on all proposed wards 14 and over. **Reality:** Service may not always take place on proposed wards who are not considered competent to understand or appreciate contents of petition. **Judge Doherty's Recommendation:** Consider strengthening statute to require service of notice of hearings, accountings and citation on proposed ward *without exception*. There is a general consensus in the North that Citation Notice and Hearing on Petition should be served on proposed subject of guardianship regardless of that person's condition or placement.
- Neither NRS 159.034 nor 159.047 require service of the *Petition for Guardianship* on the proposed ward. NRS 159.115 does not require service of *annual accountings* on persons subject to guardianship (this statute does require notice of the "particulars" of the petition be given to person and those in second degree of consanguinity). **Judge Doherty's Recommendation:** The statutes should be amended to require service, absent waiver by the court, of notice *and* annual accountings on the proposed or actual person subject to guardianship prior to hearing unless waived by the court. Washoe Bench/Bar concurs the statute does not currently require copy of Guardianship petition be attached to Citation.
- NRS 159.081 requires annual reports of the person be filed with the Court and served on the attorney for the person subject to guardianship. **Problem:** No other notice requirements are specified. **Recommendation:** Notice of such report should be served on the person subject to guardianship in all circumstances. **Further Discussion:** The Commission must address the public policy question of expanding notice to include all persons within second degree of consanguinity and other formally recognized interested persons.
- NRS 159.085 requires the filing of an inventory by the guardians of the estate within 60 days of appointment. **Problem:** There is no notice requirement associated with the filing of the inventory. **Judge Doherty Recommendation:** Require notice of filing and copy of inventory be served on person subject to guardianship and his/her attorney and GAL. **Further Discussion:** Whether notice of filing inventory should be sent to all persons within second degree of consanguinity and other formally recognized interested persons and, whether actual inventory should be sent to such persons.
- NRS 159.095 requires guardians to appear and represent all persons subject to guardianship *in all actions*. Guardians are not identified or noticed in criminal actions in which persons subject to guardianship are subjects of criminal actions. **Judge Doherty's Recommendation:** Guardians, if known, should be notified of pending criminal actions against persons subject to guardianship. **Further Discussion:** Does NRS 159.095 implicitly exclude criminal actions from "all actions".
- NRS 159.152 requires a confirmation hearing before the court, before a guardian may sell a security of the person subject to guardianship. There are no notice requirements for such hearing. **Judge Doherty's Recommendation:** Require notice of hearing consistent with the provisions of NRS 159.134.



- NRS 159.1535 sets forth publication requirements for notice of sale of the person subject to guardianship's personal property. **Judge Doherty's Recommendation:** The provisions of notice to the person subject to guardianship and those within the second degree of consanguinity at NRS 159.134 should apply.

**TAB 9**  
**MANAGEMENT/ADMINISTRATION**  
**PROTECTED PERSON'S ESTATE**

## Guardianship Sales Statutes in Logical Order

### Real Property

#### General

**NRS 159.136 Order requiring guardian to sell real property of estate.** If the guardian neglects or refuses to sell any real property of the estate when it is necessary or in the best interests of the ward, an interested person may petition the court for an order requiring the guardian to sell the property. The court shall set the petition for a hearing, and the petitioner shall serve notice on the guardian at least 10 days before the hearing.

(Added to NRS by 2003, 1759)

#### (After) Authorization

**NRS 159.171 Executing and recording legal documents.**

1. A guardian of the estate shall record a certified copy of any court order authorizing the sale, mortgage, lease, surrender or conveyance of real property in the office of the county recorder of the county in which any portion of the land is located.

2. To carry out effectively any transaction affecting the ward's property as authorized by this chapter, the court may authorize the guardian to execute any promissory note, mortgage, deed of trust, deed, lease, security agreement or other legal document or instrument which is reasonably necessary to carry out such transaction.

(Added to NRS by 1969, 430)

**NRS 159.1385 Contract for sale of real property of ward authorized; limitation on commission; liability of guardian and estate.**

1. A guardian may enter into a written contract, [upon obtaining approval of the court for authorization to place the property on the market](#), with any bona fide agent, broker or multiple agents or brokers to secure a purchaser for any real property of the estate. Such a contract may grant an exclusive right to sell the property to the agent, broker or multiple agents or brokers.

2. The guardian shall provide for the payment of a commission upon the sale of the real property which:

(a) Must be paid from the proceeds of the sale;

(b) Must be fixed in an amount not to exceed:

(1) Ten percent for unimproved real property; or

(2) Seven percent for ~~improved~~ real property [with any type of improvement](#); and

(c) Must be authorized by the court by confirmation of the sale.

3. Upon confirmation of the sale by the court, the contract for the sale becomes binding and enforceable against the estate.

4. A guardian may not be held personally liable and the estate is not liable for the payment of any commission set forth in a contract entered into with an agent or broker pursuant to this section until the sale is confirmed by the court, and then is liable only for the amount set forth in the contract.

**Commented [DG1]:** Does that mean utilities or a house? Isn't the rule really 7% for residential and 10% for commercial or raw land. Maybe this can be stated in another manner.

**Commented [DS2]:** To clarify the nature of improvement

(Added to NRS by 2003, 1760)

## Notice of Sale

### **NRS 159.1425 Notice of sale of real property of ward: When required; manner of providing; waiver; content.**

1. Except as otherwise provided in this section and except for a sale pursuant to NRS 159.123 or 159.142, a guardian may sell the real property of a ward only after, court grants authority for the sale to NRS 159.113 and 127, and notice of the sale is published in:

(a) A newspaper that is published in the county in which the property, or some portion of the property, is located; ~~or~~

(b) If a newspaper is not published in that county:

(1) In a newspaper of general circulation in the county; or

(2) In such other newspaper as the court orders; ~~or and~~

(c) The guardian, working with a realtor, may additionally publish the notice of sale in the Multiple Listing Service (MLS).

2. Except as otherwise provided in this section and except for a sale of real property pursuant to NRS 159.123 or 159.142:

~~— (a) The notice of a public auction for the sale of real property must be published not less than three times before the date of the sale, over a period of 14 days and 7 days apart.~~

~~— (b) The notice of a private sale must be published not less than three times before the date on or after which offers the sale may will be accepted made, over a period of 14 days and 7 days apart.~~

3. For good cause shown, the court may order fewer publications and shorten the time of notice, but must not shorten the time of notice to less than 8 days.

4. The court may waive the requirement of publication pursuant to this section if:

(a) The guardian is the sole devisee or heir of the estate; or

(b) All devisees or heirs of the estate consent to the waiver in writing.

5. Publication for the sale of real property is not required pursuant to this section if the property to be sold is reasonably believed to have a net value of \$10,000 or less. In lieu of publication, the guardian shall post notice of the sale in three of the most public places in the county in which the property, or some portion of the property, is located for at least 14 days before:

~~(a) The date of the sale at public auction; or~~

~~(b) T~~ the date on or after which an offers will be accepted for a private sale.

6. Any notice published or posted pursuant to this section must include, without limitation:

~~— (a) For a public auction:~~

~~— (1) A description of the real property which reasonably identifies the property to be sold; and~~

~~— (2) The date, time and location of the auction.~~

~~— (b) For a private sale:~~

~~(1) (a) A description of the real property which reasonably identifies the property to be sold; and~~

~~(2) (b) The date, time and location, on or after that an offers will be accepted.~~

(Added to NRS by 2003, 1761; A 2009, 1661)

Commented [DS3]: Suggest removal as it has ceased to be common practice)

Commented [DS4]: Ceased to be common practice

~~—NRS 159.1435—Public auction for sale of real property: Where held; postponement.~~

~~1. Except for a sale pursuant to NRS 159.123 or 159.142, a public auction for the sale of real property must be held:~~

~~(a) In the county in which the property is located or, if the real property is located in two or more counties, in either county;~~

~~(b) Between the hours of 9 a.m. and 5 p.m.; and~~

~~(c) On the date specified in the notice, unless the sale is postponed.~~

~~2. If, on or before the date and time set for the public auction, the guardian determines that the auction should be postponed:~~

~~(a) The auction may be postponed for not more than 3 months after the date first set for the auction; and~~

~~(b) Notice of the postponement must be given by a public declaration at the place first set for the sale on the date and time that was set for the sale.~~

~~—(Added to NRS by 2003, 1762; A 2009, 1662)~~

Commented [DS5]: Ceased to be common practice

**NRS 159.144 Sale of real property of guardianship estate ~~at private sale~~: Requirements for establishing date; manner of making offers.**

1. Except for the sale of real property pursuant to NRS 159.123 or 159.142, a sale of real property of a guardianship estate ~~at a private sale~~:

(a) Must not occur before the date stated in the notice.

(b) Except as otherwise provided in this paragraph, must not occur sooner than 14 days after the date of the first publication or posting of the notice. For good cause shown, the court may shorten the time in which the sale may occur to not sooner than 8 days after the date of the first publication or posting of the notice. If the court so orders, the notice of the sale and the sale may be made to correspond with the court order.

(c) Must occur not later than 1 year after the date stated in the notice.

2. The offers made in a ~~private~~ sale:

(a) Must be in writing; and

(b) May be delivered to the place designated in the notice or to the guardian at any time:

~~(1) After the date of the first publication or posting of the notice; and~~

~~(2) Before the date on which the sale is to occur.~~

(Added to NRS by 2003, 1762; A 2009, 1662)

## Appraisal

**NRS 159.1455 Confirmation by court of sale of real property of guardianship estate at private sale.**

1. Except as otherwise provided in subsection 2, the court shall not confirm a sale of real property of a guardianship estate ~~at a private sale~~ unless:

(a) The court is satisfied that the amount offered represents the fair market value of the property to be sold; and

(b) Except for a sale of real property pursuant to NRS 159.123, the real property has been appraised within 1 year before the date of the sale. If the real property has not been appraised within this period, a new appraisal must be conducted pursuant to NRS 159.086 and 159.0865 at any time before the sale or confirmation by the court of the sale.

2. The court may waive the requirement of an appraisal and allow the guardian to rely on the assessed value of the real property for purposes of taxation in obtaining confirmation by the court of the sale.

3. The court may waive the requirement for appraisal pursuant to this section if:

- (a) The guardian is the sole devisee or heir of the estate; or
- (b) All devisees or heirs of the estate consent to the waiver in writing.

(Added to NRS by 2003, 1762; A 2009, 1662)

**Commented [DG6]:** As related to 3 a and b- We think this is problematic for Medicaid and other creditors, what if the price is way low. Not a BFP issue. We do not like this. Keep in mind the Ward is not dead! We suggest just leave it discretionary. This could be a Pandora's box.

## Sale

**NRS 159.1375 Sale of real property of ward to holder of mortgage or lien on such property.** At a sale of real property that is subject to a mortgage or lien, the holder of the mortgage or lien may become the purchaser. The receipt for the amount owed to the holder from the proceeds of the sale is a payment pro tanto.

(Added to NRS by 2003, 1760)

**Commented [DG7]:** Sorry our Latin stinks, can we use English here?

**NRS 159.138 Sale of equity of estate in real property of ward that is subject to mortgage or lien and of property that is subject to mortgage or lien.**

1. In the manner required by this chapter for the sale of like property, a guardian may sell:

- (a) The equity of the estate in any real property that is subject to a mortgage or lien; and
- (b) The property that is subject to the mortgage or lien.

2. If a claim has been filed upon the debt secured by the mortgage or lien, the court shall not confirm the sale unless the holder of the claim files a signed and acknowledged document which releases the estate from all liability upon the claim.

(Added to NRS by 2003, 1760)

## Confirmation

**NRS 159.134 Selling real property of ward.**

1. All sales of real property of a ward must be:

~~(a) Reported to the court; and~~  
~~(b) C~~ confirmed by the court before the sale can close and before title to the real property passes to the purchaser, pursuant to NRS 159.146.

2. ~~The report and a petition for~~ The petition for confirmation of the sale must be filed with the court not later than 30 days after the date of each sale. The date of the sale shall be the date the contract for the sale was signed.

3. The court shall set the date of the confirmation hearing and give notice of the hearing in the manner required pursuant to NRS 159.115 or as the court may order.

4. An interested person may file written objections to the confirmation of the sale, prior to the confirmation hearing. If such objections are filed, the court shall conduct a hearing regarding those objections during which the interested person may offer witnesses in support of the objections. The Court may entertain oral objections on the date of the hearing if appropriate in its discretion.

**Commented [DS8]:** So the guardians don't sell it and then tell the court

**Commented [DG9]:** I have always thought the term should be "proposed sale" or "contract of sale" (as used in 159.1415) since it needs to be confirmed but I understand that is the nomenclature.....

**Commented [DG10]:** Should it include the 3 day right to rescind. I suggest that the days do not start until the right to rescind has expired.

5. Before the court confirms a sale, the court must find that notice of the sale was given in the manner required pursuant to NRS 159.1425, 159.1435 and 159.144, unless the sale was exempt from notice pursuant to NRS 159.123.

(Added to NRS by 1979, 788; A 2003, 1794; 2009, 1660)

**NRS 159.1415 Presentation of offer to purchase real property to court for confirmation; division of commission for sale of such property.**

1. When a ~~n offer to~~ **contract of sale to** purchase real property of a guardianship estate is presented to the court for confirmation:

(a) Other persons may submit higher bids ~~to the~~ **in open court**; and

(b) The court may confirm the highest bid.

(c) **Except for real property as described in NRS 159.146 (10).**

2. Upon confirmation of a sale of real property by the court, the commission for the sale must be divided between the listing agent or broker and the agent or broker who secured the purchaser to whom the sale was confirmed, if any, in accordance with the contract with the listing agent or broker.

(Added to NRS by 2003, 1760)

**NRS 159.146 Hearing to confirm sale of real property: Considerations; conditions for confirmation; actions of court if sale is not confirmed; continuance; successive bids if court does not accept offer or bid.**

1. At the hearing to confirm the sale of real property, the court shall:

(a) Consider whether the sale is necessary or in the best interest of the estate of the ward; and

(b) Examine the return on the investment and the evidence submitted in relation to the sale.

2. The court shall confirm the sale and order conveyances to be executed if it appears to the court that:

(a) Good reason existed for the sale;

(b) The sale was conducted in a legal and fair manner;

(c) The amount of the offer ~~or bid~~ is not disproportionate to the value of the property; and

(d) It is unlikely that ~~an offer or~~ a bid would be made which exceeds the original offer ~~or bid~~:

(1) By at least 5 percent if the offer ~~or bid~~ is less than \$100,000; or

(2) By at least \$5,000 if the offer ~~or bid~~ is \$100,000 or more.

3. The court shall not confirm the sale if the conditions in this section are not satisfied.

4. If the court does not confirm the sale, the court:

(a) May order a new sale; **or**

(b) May conduct a public auction in open court, ~~or~~

~~(c) May accept a written offer or bid from a responsible person and confirm the sale to the person if the written offer complies with the laws of this state and exceeds the original bid:~~

~~(1) By at least 5 percent if the bid is less than \$100,000; or~~

~~(2) By at least \$5,000 if the bid is \$100,000 or more.~~

5. If the court ~~does not confirm the sale and~~ orders a new sale:

(a) Notice must be given in the manner set forth in NRS 159.1425; and

(b) The sale must be conducted in all other respects as though no previous sale has taken place.

Commented [DS11]: Fixes the problem with short sale up-bids in court.

6. If a higher ~~offer or~~ bid is received by the court during the hearing to confirm the sale, the court may continue the hearing rather than accept the ~~offer or~~ bid as set forth in paragraph (e) of subsection 4 if the court determines that the person who made the original offer ~~being confirmed or bid~~ was not notified of the hearing and that the person who made the original offer ~~being confirmed or bid~~ may wish to increase his or her ~~bid~~ price. This subsection does not grant a right to a person to have a continuance granted and may not be used as a ground to set aside an order confirming a sale.

~~7. Except as otherwise provided in this subsection, if a higher offer or bid is received by the court during the hearing to confirm the sale and the court does not accept that offer or bid, each successive bid must be for not less than:~~

~~(a) An additional \$5,000, if the original offer is for \$100,000 or more; or~~

~~(b) An additional \$250 if the original offer is less than \$100,000.~~

~~È Upon the request of the guardian during the hearing to confirm the sale, the court may set other incremental bid amounts.~~

7. Except as otherwise provided in subsection 8-10 below, the auction in court shall only change the name of the buyer and the price of the sale. The order confirming the sale shall act as sufficient addendum to the original contract to allow the sale to close.

8. The title company may be changed by mutual agreement by both the estate and the buyer, in writing.

9. The close of escrow date shall be at least ten judicial days from the date that the notice of entry of order confirming the sale is filed with the Clerk of the Court, unless the contract specifies a date further into the future. The parties to the sale may extend the close of escrow date, upon mutual agreement of both the estate and the buyer, in writing.

10. Where the estate owes more than the value of the property and the estate has made an agreement with the lienholder or lienholders to accept the sale price and waive any deficiency between the sale price and the amount owed to the lienholder (s), the sale shall be confirmed without the potential for bidding in court. All other portions of the confirmation of sale shall be adhered to. The valuation of the bank shall be deemed sufficient to meet the appraisal requirement for the sale. The date of the sale shall be the date of the bank approval for this type of sale.

(Added to NRS by 2003, 1762; A 2013, 921)

**NRS 159.142 Sale of interest of ward in real property owned jointly with one or more persons.**

1. If a ward owns real property jointly with one or more other persons, the interest owned by the ward may be sold after the court grants authority to place the property for sale to one or more joint owners of the property only if:

(a) All joint owners of the property have been noticed of the authority to place the property for sale;

(b) The guardian files a petition with the court to confirm the sale pursuant to NRS 159.134; and

~~(c)~~ (c) The court confirms the sale.

2. The court shall confirm the sale only if:

Commented [DS12]: Section is restrictive on finding a better price when you must use fixed upbid increments.



(a) The net amount of the proceeds from the sale to the estate of the ward is not less than 90 percent of the fair market value of the portion of the property to be sold; and

(b) Upon confirmation, the estate of the ward will be released from all liability for any mortgage or lien on the property.

(Added to NRS by 2003, 1761)

### **After Confirmation**

**NRS 159.1365 Application of money from sale of real property of ward that is subject to mortgage or other lien.** If real property of the estate of a ward is sold that is subject to a mortgage or other lien which is a valid claim against the estate, the money from the sale must be applied in the following order:

1. To pay the necessary expenses of the sale.
2. To satisfy the mortgage or other lien, including, without limitation, payment of interest and any other lawful costs and charges. If the mortgagee or other lienholder cannot be found, the money from the sale may be paid as ordered by the court and the mortgage or other lien shall be deemed to be satisfied.
3. To the estate of the ward, unless the court orders otherwise.

(Added to NRS by 2003, 1760)

**NRS 159.1465 Conveyance of real property of guardianship estate to purchaser upon confirmation of sale by court.**

1. If the court confirms a sale of real property of a guardianship estate, the guardian shall execute a conveyance of the property to the purchaser.

2. The conveyance must include a reference to the court order confirming the sale, and a certified copy of the court order must be recorded in the office of the recorder of the county in which the property, or any portion of the property, is located.

3. A conveyance conveys all the right, title and interest of the ward in the property on the date of the sale, and if, before the date of the sale, by operation of law or otherwise, the ward has acquired any right, title or interest in the property other than or in addition to that of the ward at the time of the sale, that right, title or interest also passes by the conveyance.

(Added to NRS by 2003, 1763)

**NRS 159.1475 Sale of real property made upon credit.**

1. If a sale of real property is made upon credit, the guardian shall take:

(a) The note or notes of the purchaser for the unpaid portion of the sale; and

(b) A mortgage on the property to secure the payment of the notes.

2. The mortgage may contain a provision for release of any part of the property if the court approves the provision.

(Added to NRS by 2003, 1763)

**NRS 159.148 Neglect or refusal of purchaser of real property to comply with terms of sale.**

1. After confirmation of the sale of real property, if the purchaser neglects or refuses to comply with the terms of the sale, the court may set aside the order of confirmation and order the property to be resold:

- (a) On motion of the guardian; and
  - (b) After notice is given to the purchaser.
2. If the amount realized on the resale of the property is insufficient to cover the bid and the expenses of the previous sale, the original purchaser is liable to the estate of the ward for the deficiency.

(Added to NRS by 2003, 1763)

**NRS 159.1495 Fraudulent sale of real property of ward by guardian.** A guardian who fraudulently sells any real property of a ward in a manner inconsistent with the provisions of this chapter is liable for double the value of the property sold, as liquidated damages, to be recovered in an action by or on behalf of the ward.

(Added to NRS by 2003, 1764)

**NRS 159.1505 Periods of limitation for actions to recover or set aside sale of real property.** The periods of limitation prescribed in NRS 11.260 apply to all actions:

- 1. For the recovery of real property sold by a guardian in accordance with the provisions of this chapter; and
- 2. To set aside a sale of real property.

(Added to NRS by 2003, 1764)

## Personal Property

### Sale Without Notice

**NRS 159.1515 Sale of personal property of ward by guardian without notice.**

1. A guardian may sell perishable property and other personal property of the ward **prior to filing the inventory pursuant to NRS 159.085**, without notice, and title to the property passes ~~without confirmation by the court~~ if the property:

- (a) Will depreciate in value if not disposed of promptly; or
- (b) Will incur loss or expense by being kept.

2. The guardian is responsible for the actual value of the personal property, **in section 1 above, unless the guardian makes a report to the court, which includes a showing that good cause existed for the sale to be made and that it was not sold for a price disproportionate to the value of the property** ~~obtains confirmation by the court of the sale~~, within 90 days of the conclusion of the sale.

(Added to NRS by 2003, 1764)

### Notice of Sale

**NRS 159.1535 Notice of sale of personal property of ward: When required; manner of providing content.**

1. Except as otherwise provided in NRS 159.1515 and 159.152, a guardian may sell the personal property of the ward only after notice of the sale is published in:

(a) A newspaper that is published in the county in which the property, or some portion of the property, is located; or

- (b) If a newspaper is not published in that county:
- (1) In a newspaper of general circulation in the county; or
  - (2) In such other newspaper as the court orders.

2. Except as otherwise provided in this section:

~~(a) The notice of a public sale must be published not less than three times before the date of the sale, over a period of 14 days and 7 days apart.~~

~~(b) The notice of a private sale must be published not less than three times before the date on which offers will be accepted, over a period of 14 days and 7 days apart.~~

3. For good cause shown, the court may order fewer publications and shorten the time of notice, but must not shorten the time of notice to less than 8 days.

4. The notice must include, without limitation:

~~(a) For a public sale:~~

~~(1) A description of the personal property to be sold; and~~

~~(2) The date, time and location of the sale.~~

(b) For a private sale:

(1) A description of the personal property to be sold; and

(2) The date, time and location that offers will be ~~accepted~~ received.

(c) For a sale on an appropriate auction website on the Internet:

(1) A description of the personal property to be sold;

(2) The date the personal property will be listed; and

(3) The Internet address of the website on which the sale will be posted.

(Added to NRS by 2003, 1764; A 2009, 1663)

Commented [DS13]: Not practiced

Commented [DS14]: Not practiced

## Sale

### **NRS 159.154 Place and manner of sale of personal property of ward. Report of Sale to the Court.**

1. The guardian may sell the personal property of a ward ~~by public sale~~ at:

(a) The residence of the ward; or

(b) Any other location designated by the guardian.

2. The guardian may sell the personal property ~~by public sale~~ only if the property is made available for inspection at the time of the sale or photographs of the personal property are posted on an appropriate auction website on the Internet.

3. Personal property may be sold ~~at a public or private sale~~ for cash or upon credit.

(Added to NRS by 2003, 1765; A 2009, 1663)

4. No sale or disposition of any personal property of the ward may be commenced, except as otherwise provided in NRS 159.1515, until 30 days after the filing and mailing of the inventory. The inventory shall be sent by regular mail to those specified in NRS 159.034 and an Affidavit of Mailing confirming the same shall be filed with the Court.

5. The guardian is responsible for the actual value of the personal property, in this section, unless the guardian makes a report to the court, which includes a showing that good cause

existed for the sale to be made and that it was not sold for a price disproportionate to the value of the property, within 90 days of the conclusion of the sale.

6. The family members and interested persons shall be offered the first right of refusal to acquire the personal property of the ward from the estate sale at fair market value.

**Commented [DG15]:** How does this work in practicality, do you use the FROR before the sale, if so switch 6 to 5? We suggest selling at appraised value or they can go to the sale and buy there, as the price may be lower, or higher..... Pay your money or take your chances.....

## Other

**NRS 159.152 Sale of security of ward by guardian.** A guardian may sell any security of the ward if:

1. The guardian petitions the court for confirmation of the sale;
2. The clerk sets the date of the hearing;
3. The guardian gives notice in the manner required pursuant to NRS 159.034 unless, for good cause shown, the court shortens the period within which notice must be given or dispenses with notice; and
4. The court confirms the sale.  
(Added to NRS by 2003, 1764)

**NRS 159.156 Sale of interest in partnership, interest in personal property pledged to ward and choses in action of estate of ward.** The following interests of the estate of the ward may be sold in the same manner as other personal property:

1. An interest in a partnership;
2. An interest in personal property that has been pledged to the ward; and
3. Choses in action.

(Added to NRS by 2003, 1765)

## Lease of Property

**NRS 159.157 Lease of property of ward.** A guardian of the estate may lease any real property of the ward or any interest in real property:

1. Without securing prior court approval, where the tenancy is from month to month or for a term not to exceed 1 year and the reasonable fixed rental for the property or the ward's proportionate interest in such rental does not exceed \$250 per month.
2. With prior approval of the court by order, for such period of time as may be authorized by the court, not exceeding any time limitation prescribed by law, and upon such terms and conditions as the court may approve. Such lease may extend beyond the period of minority of a minor ward.

(Added to NRS by 1969, 428)

**NRS 159.159 Contract with broker to secure lessee.** The court may authorize the guardian to enter into a written contract with one or more licensed real estate brokers to secure a lessee of the ward's property, which contract may provide for the payment of a commission, not exceeding 5 percent of the fixed rental for the first 2 years, to be paid out of the proceeds of any such lease.

(Added to NRS by 1969, 428)

**NRS 159.161 Petition for approval of lease: Content; conditions for approval.**

1. Petitions to secure court approval of any lease:

(a) Must include the parcel number assigned to the property to be leased and the physical address of the property, if any; and

(b) Must set forth the proposed fixed rental, the duration of the lease and a brief description of the duties of the proposed lessor and lessee.

2. Upon the hearing of a petition pursuant to subsection 1, if the court is satisfied that the lease is for the best interests of the ward and the estate of the ward, the court shall enter an order authorizing the guardian to enter into the lease.

(Added to NRS by 1969, 428; A 2003, 1794)

**NRS 159.163 Agreement for rental or bailment of personal property.** A guardian of the estate, with prior approval of the court by order, may enter into agreements providing for the rental or bailment of the ward's personal property. All proceedings to obtain such a court order shall be the same as required for the lease of real property.

(Added to NRS by 1969, 428)

**NRS 159.165 Lease of mining claim or mineral rights; option to purchase.**

1. If the property to be leased consists of mining claims, an interest in the mining claims, property worked as a mine or lands containing oil, gas, steam, gravel or any minerals, the court may authorize the guardian to enter into a lease which provides for payment by the lessee of a royalty, in money or in kind, in lieu of a fixed rental. The court may also authorize the guardian to enter into a lease which provides for a pooling agreement or authorizes the lessee to enter into pooling or other cooperative agreements with lessees, operators or owners of other lands and minerals for the purpose of bringing about the cooperative development and operation of any mine, oil field or other unit of which the ward's property is a part.

2. If the proposed lease contains an option to purchase, and the property to be sold under the option consists of mining claims, property worked as a mine, or interests in oil, gas, steam, gravel or any mineral, which has a speculative or undefined market value, the court may authorize the guardian to enter into such a lease and sales agreement or give an option to purchase without requiring the property to be sold at public auction or by private sale in the manner required by this chapter for sales of other real property.

3. If the petition filed pursuant to this section requests authority to enter into a lease with an option to purchase, in addition to the notice required by NRS 159.034, the guardian shall publish a copy of the notice at least twice, the first publication to be at least 10 days prior to the date set for the hearing and the second publication to be not earlier than 7 days after the date of the first publication. The notice must be published in:

(a) A newspaper that is published in the county where the property is located; or

(b) If no newspaper is published in the county where the property is located, a newspaper of general circulation in that county which is designated by the court.

(Added to NRS by 1969, 429; A 2003, 1794)

## **Agreement to Sell or Give Option to Purchase Mining Claim**

**NRS 159.1653 Petition to enter into agreement; setting date of hearing; notice.**

1. To enter into an agreement to sell or to give an option to purchase a mining claim or real property worked as a mine which belongs to the estate of the ward, the guardian or an interested person shall file a petition with the court that:

- (a) Describes the property or claim;
  - (b) States the terms and general conditions of the agreement;
  - (c) Shows any advantage that may accrue to the estate of the ward from entering into the agreement; and
  - (d) Requests confirmation by the court of the agreement.
2. The court shall set the date of the hearing on the petition.
  3. The petitioner shall give notice in the manner provided in NRS 159.034.  
(Added to NRS by 2003, 1765)

**NRS 159.1657 Hearing on petition; court order; recording of court order.**

1. At the time appointed and if the court finds that due notice of the hearing concerning an agreement has been given, the court shall hear a petition filed pursuant to NRS 159.1653 and any objection to the petition that is filed or presented.
2. After the hearing, if the court is satisfied that the agreement will be to the advantage of the estate of the ward, the court:
  - (a) Shall order the guardian to enter into the agreement; and
  - (b) May prescribe in the order the terms and conditions of the agreement.
3. A certified copy of the court order must be recorded in the office of the county recorder of each county in which the property affected by the agreement, or any portion of the property, is located.  
(Added to NRS by 2003, 1765)

**NRS 159.166 Bond and actions required upon court order to enter into agreement.**

1. If the court orders the guardian to enter into the agreement pursuant to NRS 159.1657, the court shall order the guardian to provide an additional bond and specify the amount of the bond in the court order.
2. The guardian is not entitled to receive any of the proceeds from the agreement until the guardian provides the bond and the court approves the bond.
3. When the court order is entered, the guardian shall execute, acknowledge and deliver an agreement which:
  - (a) Contains the conditions specified in the court order;
  - (b) States that the agreement or option is approved by court order; and
  - (c) Provides the date of the court order.  
(Added to NRS by 2003, 1765)

**NRS 159.1663 Neglect or refusal of purchaser of mining claim or of option holder to comply with terms of agreement.**

1. If the purchaser or option holder neglects or refuses to comply with the terms of the agreement approved by the court pursuant to NRS 159.1657, the guardian may petition the court to cancel the agreement. The court shall cancel the agreement after notice is given to the purchaser or option holder.
2. The cancellation of an agreement pursuant to this section does not affect any liability created by the agreement.  
(Added to NRS by 2003, 1766)

**NRS 159.1667 Petition for confirmation of proceedings concerning agreement: When required; notice; hearing.**

1. If the purchaser or option holder complies with the terms of an agreement approved by the court pursuant to NRS 159.1657 and has made all payments according to the terms of the agreement, the guardian shall:

- (a) Make a return to the court of the proceedings; and
- (b) Petition the court for confirmation of the proceedings.

2. Notice must be given to the purchaser or option holder regarding the petition for confirmation.

3. The court:

- (a) Shall hold a hearing regarding the petition for confirmation; and
- (b) May order or deny confirmation of the proceedings and execution of the conveyances in the same manner and with the same effect as when the court orders or denies a confirmation of a sale of real property.

(Added to NRS by 2003, 1766)

### **Miscellaneous Provisions**

#### **NRS 159.167 Special sale of property of ward or surrender of interest therein.**

1. A guardian of the estate, with prior approval of the court, may accept an offer for the purchase of the interest or estate of the ward, in real or personal property or both real and personal property, where it appears from the petition and the court determines that:

(a) The interest or estate of the ward in such property is an interest in a partnership, joint venture or closely held corporation, in which the offeror or offerors own the remaining interests in the partnership, joint venture or closely held corporation, or are offering to purchase such remaining interests.

(b) The interest or estate of the ward in such property is an undivided interest in property in which the offeror or offerors own the remaining interests in such property or are offering to purchase such remaining interests.

(c) The interest or estate of the ward to be sold or granted is an easement in or creates a servitude upon the ward's property.

2. A guardian of the estate, with prior approval of the court, may accept an offer to surrender the interest or estate of the ward in real or personal property or both real and personal property, where it appears from the petition and the court determines that:

(a) The interest or estate of the ward is contingent or dubious.

(b) The interest or estate of the ward in such property is a servitude upon the property of another.

(Added to NRS by 1969, 429)

#### **NRS 159.169 Advice, instructions and approval of acts of guardian.**

1. A guardian of the estate may petition the court for advice and instructions in any matter concerning:

- (a) The administration of the ward's estate;
- (b) The priority of paying claims;
- (c) The propriety of making any proposed disbursement of funds;
- (d) Elections for or on behalf of the ward to take under the will of a deceased spouse;
- (e) Exercising for or on behalf of the ward;

- (1) Any options or other rights under any policy of insurance or annuity; and
- (2) The right to take under a will, trust or other devise;
- (f) The propriety of exercising any right exercisable by owners of property; and
- (g) Matters of a similar nature.

2. Any act done by a guardian of the estate after securing court approval or instructions with reference to the matters set forth in subsection 1 is binding upon the ward or those claiming through the ward, and the guardian is not personally liable for performing any such act.

3. If any interested person may be adversely affected by the proposed act of the guardian, the court shall direct the issuance of a citation to that interested person, to be served upon the person at least 20 days before the hearing on the petition. The citation must be served in the same manner that summons is served in a civil action and must direct the interested person to appear and show cause why the proposed act of the guardian should not be authorized or approved. All interested persons so served are bound by the order of the court which is final and conclusive, subject to any right of appeal.

(Added to NRS by 1969, 430; A 1979, 591; 2003, 1795)

**NRS 159.173 Transfer of property of ward not ademption.** If a guardian of the estate sells or transfers any real or personal property that is specifically devised or bequeathed by the ward or which is held by the ward as a joint tenancy, designated as being held by the ward in trust for another person or held by the ward as a revocable trust and the ward was competent to make a will or create the interest at the time the will or interest was created, but was not competent to make a will or create the interest at the time of the sale or transfer and never executed a valid later will or changed the manner in which the ward held the interest, the devisee, beneficiary or legatee may elect to take the proceeds of the sale or other transfer of the interest, specific devise or bequest.

(Added to NRS by 1969, 430; A 2003, 1796)

**NRS 159.175 Exchange or partition of property of ward.**

1. A guardian of the estate, with prior approval of the court by order, where it appears from the petition and the court determines that the best interests of the ward are served by such action, may:

(a) Accept an offer to exchange all or any interest of the ward in real or personal property or both real and personal property for real or personal property or both real and personal property of another, and pay or receive any cash or other consideration to equalize the values on such exchange; or

(b) Effect a voluntary partition of real or personal property or both real and personal property in which the ward owns an undivided interest.

2. Upon hearing the petition, the court shall inquire into the value of the property to be exchanged or partitioned, the rental or income therefrom, and the use for which the property is best suited.

(Added to NRS by 1969, 430)



## Estate Sale Companies and Auction Houses

Several of us in the business of Estate Sales and Auctions have noticed competitors operating unethically.

There are a handful of Estate Sales and Auction Companies that meet and discuss what we believe the standards should be, and identify among ourselves those that are conducting business that we feel is hurting others, mostly seniors. Instead of offering a service to clients, they have turned this into a business for their own personal gain.

When Governor Sandoval was first sworn in, I wrote to him and explained that Auction Companies from Minnesota down to Texas and everything east, all have an Auction Division and Commission, similar to our Real Estate Division and Commission. Nevada has no oversight whatsoever. I offered to sit on a newly formed commission for free to help put standards in place, and then supervise and monitor the conduct of Auction houses. That offer is open. Auction houses and Estate Sales Companies have no oversight. This makes your job of knowing who you are dealing with even more important.

I think all of you remember when Guy Deiro handled the Estate Sale and Auction of Claudine Williams. Here is a reminder: <http://www.reviewjournal.com/jane-ann-morrison/you-win-some-and-lose-some-trying-help-readers>. There is more to that story, including a real estate sale in the Las Vegas Country Club that was well under what the market would bring.

Guys bond was not valid, and they could not collect anything from him.

This leads me to explain what people in the business of sending items to Auction, or hiring Estate Sales Companies, or Personal Property Appraisers should look for and/or consider:

1. Dan Watson was the predominant Auctioneer in Las Vegas for many years. Dan is a true professional and handled practically every account in Las Vegas for many years. I personally trust Dan more than most everyone else. It is common knowledge that Dan sold Las Vegas Auction to a gentleman, who then sold it to Warren Jeffs' polygamist from Colorado City. People in the industry were discussing that this his group left in the middle of the night with \$750,000.00 to \$900,000.00 of cash, and merchandise. The middle man scrambled to cover some clients like the Public Administrator, so he would not lose those accounts, but a lot of people got hurt. Dan Watson took Las Vegas Auction back, and renamed it Nellis Auction, and after he straightened the business out, sold it again to the group that has it now.

Those in the business of hiring Companies to liquidate personal property or obtaining an appraisal should know who they are dealing with, and not just think they are still conducting business with the original person they dealt with in the past. Companies have been sold, and the new owners may not always do business the same way. Dan is no longer involved with Nellis Auction, and Pam from Las Vegas Estate Sales sold her assets and name to someone else. Do you know who you are dealing with?

2. Every time that you hire a Company for an Estate Sale or Auction, you should ask for their current business license, insurance and bonds. You should have their insurance carrier name you and the homeowner or Estate as additionally insured. When the Estate went to collect on Guy Deiro's bond, they learned the hard way the bond was expired. You should have this information current every time you use a company. I keep my documents scanned in my computer, and email it on demand. My clients such as Wells Fargo Trust Department want to see it every time.
3. You should ask for the credentials of each person you hire. A resume of qualifications should be in every file, along with the insurance, bonds, etc. Some Estate Sales Companies are new to the business, and are not researching the prices of items, and shorting the Estate a lot of money due to their lack of knowledge. Companies should have some experience or knowledge in the resale of used property. How long have they been in a resale/liquidation business of used items? What is their education and experience? What did they do before they opened up an Estate Sales business, or bought the Estate Sales Franchise? What is their method for pricing items? A face to face meeting with the owner is a great idea. A good company owner does all their work and often is in sweats or jeans because they are going to get on the floor of the kitchen and pull out pots and pans to put on a table. You want the worker, not the owner absentee who hires people to do all the work.
4. You should know who the staff and team are that will be working on the personal property. Sometimes, in both Estate Sales and Auction houses, people are hired "off the street", and they do not have any skills associated with handling personal property, and should not be trusted in a home where credit cards, ID, jewelry, cash and guns can be found. In an Estate Sale, it is not a good idea to have strangers in a home when the Company is sorting through the house because we often find valuables. Some Companies have these people handling the pricing. They have zero experience or knowledge in pricing or researching. I have gone to my competitors and bought art that was undervalued, and when I questioned the Estate Sales Company, they could not tell me who it was when it was clearly marked. Same at Auction. You should know who is pricing your items and what their background and method for pricing is.
5. Inventory. At the end of the Estate Sale, you should always get a full inventory list. You should ask up front to see an example. Some Estate Sales Companies are merely handing money over to the seller/estate/etc. and not accounting for what was sold, or for how much. An inventory of items sold should be mandatory. One of the Estate Sales Companies April Parks used did not provide an inventory, and they were giving items away before and after the sale. There was no accounting.
6. The biggest problem the legitimate Estate Sales Companies are observing, is at the end of the Estate Sale, some Estate Sales Companies take the unsold merchandise as their personal property, and they either warehouse it, or take it directly to their next sale, and sell it for their own personal gain. What we are seeing is the Estate Sales Company and Auction Houses purposely over pricing items, the items are not selling, and then the Companies take it at the end of the sale and sell it for the realistic price and pocket the money.

Some Estate Sales Companies have antique stalls or thrift stores and take the merchandise to their business. This is not only unethical, but having the primary business feeding from the secondary, is a

conflict of interest. You should always have the company disclose in writing what conflicts of interest the Estate Sales Companies have.

One Estate Sales Company is a jewelry dealer. They do not have a retail store. The Estate Sales they work provides the retail exposure. They prefer to take sales where there is no client, or relative within 100 miles of the sale. Oddly enough, this company takes cases upon cases of jewelry to the Estate Sale, and clears out a room where the jewelry is set up. The company stays next to the jewelry, while one other employee watches the rest of the home. They do not price anything in the home. The buyers have to pick the items up, walk it over to the company owner who sizes you up and throws out a price, based on whether they like you, or how you look. People that have used this company tell the rest of us how they got taken advantage of and "ripped off". But they have no one to file a complaint with.

There are some Estate Sales Companies that have "Pickers Sales". You dig through the closets, garage, and cupboards, and when you find a jewel, you take it to the owner of the Estate Sales Company, and they will price it for you. If you found something great, they grab it out of your hands, and tell you it is not for sale. You can imagine the jewelry, coin, guns that are discovered by the buyers in a dangerous sale like this.

You need to insist that 90% of all items in the home are priced individually, and you should you should attend a sale of your Estate Sales Company or Auction Company to see what is going on. The company mentioned in the above paragraph has a file with The City of Las Vegas Business License, but continues to operate this way. They are also known to take merchandise at the end of the Estate Sale and warehouse it. This company always has a tremendous amount of merchandise left at the end of the sale that they pick through and take what they want as their own merchandise.

7. We all promise an empty home at the end of the Estate Sale, but how we do that is the difference. You should discuss how you want this handled up front. My recommendation is that all small items with little value, such as coffee mugs, linens, etc. go to a 501 © 3 charity *with a thrift store*, such as Las Vegas Rescue Mission, Heaven Can Wait, or Salvation Army.

The larger items can be sent to Auction, bought out by an Auction house or dealer, or sold on the last day of the Estate Sale for the best price offered (which is my preference). Nothing should leave the house without documentation. I advise my clients to handle this themselves by setting up the charity to pick up the items after the Estate Sale, or call the Auction House themselves. Once they know the threats, they usually do take this on themselves.

8. One Estate Sales Company gets rid of the small items or a couch with a small stain on it in advance of the sale. They believe the house looks more appealing. They are throwing money away. Very little should be thrown away before the sale.

It should be mandatory that open containers of food are thrown out, as some Companies sell open containers of spices, pasta, etc. This, in my opinion, is a huge liability. Expired or open containers of food and expired or open containers of over the counter drugs should be disposed of in advance. That is real trash. A couch with a stain on it can still sell for \$100.00 - \$250.00, so the image of the

Estate Sales Company should not be put before the client. If it can sell, it needs to sell. I believe that as much as one fifth of my Estate Sales income comes from items \$5.00 an under. Do not throw away anything until the sale is over, then donate anything that can be salvaged, and throw away real trash.

9. Some Estate Sales Companies charge a fee up front. A nominal fee up to \$500.00 is acceptable depending on the amount of work that needs to be done. Anything more cannot be justified. If you pay a company \$1,000.00 up front, what motivation do they have to sell the items? They made their money.

10. What licenses does the Company you select possess? If one dealer is trying to sell jewelry from the Estate Sale, do they have a second hand merchandise license? If they are pricing high end art or antiques, are they a certified appraiser? If the sale is in the city, they have to have a license to conduct the Estate Sale in the City, and the same with County, North Las Vegas, Henderson, Boulder City, and Pahrump. They all have to have a Tax ID Number, and a State Business License. What are the credentials of the Auctioneer? Do they own the auction house, or do they work the Auction house? Are they licensed as an auctioneer? Who is calling the auction and what is their experience? Who goes out on house calls? Meet them. Those that are not property licensed are not professional companies, and should not be trusted with business.

11. One Auction Company is having issues with being able to handle the thousands and thousands of pieces that go through their Auction houses. We have seen items sent to Auction and the Estate being paid, and pieces from that home show up later at a subsequent Auction. We assume those pieces sold later go into the pocket of the Auction Company. We are told this is not on purpose, it is because the Auction House has unqualified people running it. They cannot keep track of the items. The inventory taken from the home should match with the inventory of sold items at the end of the auction. If something was unsold, what was it? Where did it go? How much was it worth? Can you put it back in the auction?

12. One Estate Sales Company sells to dealers prior to the sale. This is a complete disservice to the Client. The merchandise has to be sold in an open and transparent sale. Dealers have to triple to 10 times their money. By selling to a dealer in advance, you have shorted your client. The end user could have come to that sale and paid the 3-10 times more that the dealer will sell it for right here in Las Vegas. Dealers like this one in this situation have made me offers to partner with them on exclusive pieces and share in the profit. If the Estate Sales Company reduces the price of the piece, and uses their commission to further reduce the price of the item, the dealer can take it, sell it at a retail price, and share the money with the Estate Sales Company. This is happening.

13. The average Estate Sales Company and Auction House attempts to sell everything from the Estate Sale or Auction. Some will take to their antique stall after the Estate Sale in Las Vegas. It is not intelligent to think that a \$65,000.00 Chiparus, or a \$40,000.00 oil painting will sell in a sale advertised to 5,000 people through EstateSales.net, or to 1,000 or less people at an Auction, or in some small little antique mall, in Las Vegas. These items are often sold for very little, or the real buyer is the Estate Sales Company or the Auction House (shell buyers), and they themselves take it to auction in Los Angeles and profit from the piece. Ask your Estate Sales Company what other methods they use to sell the items from the home, i.e. eBay, Heritage Auctions or Bonham Auctions in Los

Angeles, or even Abell Auctions in Los Angeles. High end items should be sent to the largest Auction houses outside of Las Vegas. Christies and Sotheby's are the two largest Auction houses, but they are in New York, only take the finest, and have too many costs and fees. Heritage Auctions is the third largest, and Bonhams (formerly Butterfield and Butterfield) is the fourth largest in the nation. Heritage and Bonhams are in Los Angeles and very convenient to do business with. They are very easy to deal with. It would not be a bad idea to have a disinterested third party, someone like Dan Watson, give an opinion of value of every home before it goes to auction or to an Estate Sales Company to identify items of value. Or, set the standards higher and do not allow for mistakes and theft.

14. Some Estate Sales Companies and Auction houses are selling items of real value for nothing. It is because they do not know what they have, or they are not researching or using their experts to assist them, or they are selling to themselves. I have seen Estate Sales Companies who have stalls in Antique malls open the Estate Sale beforehand to the other renters of the antique mall and rip off the entire estate of everything before the sale was open to the public. Remember dealers have to resell the merchandise for a higher amount to make a profit. They undersold the contents to their friends. These companies are using Estate Sales to feed their primary business.

15. If the Estate Sales Company offers to have the home cleaned, they should provide you with the insurance of the company doing the cleaning. You do not want people working in the home without a business license and insurance. I find this nothing more than a way to confuse the client and overlook that they emptied the house and took the merchandise. Estate Sales Companies are not licensed to clean houses.

16. One sale was in a mansion in an exclusive gated community in Summerlin. The housekeeper somehow was in charge. A company no longer operating in Las Vegas took the Estate, and some the contents of the mansion were sold for pennies on the dollar, until someone stopped the sale. If one were truly representing the best interest of the client, then the objective would be to maximize the sale, and send most of the merchandise to Los Angeles through several forums. The sale was a disaster because Las Vegas was not the right market for the high end Middle Eastern antiques, rugs and decorator items. Several of the Auction Companies and Estate Sales Companies do take their personal items they buy to Los Angeles for top dollar. They are not doing this for their clients.

17. The biggest problem I see when dealing in an Estate is the house keeper, the realtor, the handyman, the nurse, the neighbor that just wants to help, and the on-site security in places like Sun City. I find them cleaning out the house before I am called in. Seniors are being victimized from everyone.

18. I think you should look at every house individually, and look at what the merchandise is, and what is the best way to sell it. I break my high end Estate Sales into four sections. High end art and antiques that qualify to be sold through Heritage or Bonhams. eBay (usually Lalique and Baccarat), specialty items that specific people pay top dollar for (a downtown casino owner wants oil paintings from specific artist, or a Dr. in Florida who has the largest collect of Dali's). Then, the Estate Sale of the house hold contents. Not all sales should be sold to one group of buyers which are followers of

Estate Sales or Auctions in Las Vegas. Las Vegas is a small market, but we are next to one of the largest markets in the country.

19. I have walked in after Realtors or liquidators or Auction Companies offered to buy contents of the home from the senior being moved into a nursing home for a fraction of what I could sell it for. In my last sale, the Realtor offered \$4,000.00 for items I sold for \$17,000.00. Everyone is looking to take advantage of the senior.

20. Some Estates should take months to liquidate. Selling off a 6,600 square foot home in Rancho Bel Air or Rancho Circle that is full of art, antiques and high end pots, pans, linens, and furniture in a few hours at auction, or in two days at the average Estate Sale, is a disservice to the client. Instead of making \$130,000.00, the Estate Sales Company or Auction Company may make \$12,000.00. Each sale has to be evaluated on an individual basis.

I hope that I have made you realize that that not all Estate Sales Companies, or Auction Houses are created equal, and with no oversight the doors are wide open for the elder community to be taken advantage of. If you left it to us to self-police, we could remove the bad apples. But we have no way to report these people either. It is very hard to get someone from the licensing agencies to respond and react. The City of Las Vegas being the best to deal with, but still not stopping the behavior.

People in the community are aware of these business practices, and the industry as a whole is starting to look bad. Companies from California will come in to work a sale without any licensing, sales tax ID, and come in to town and conduct a sale and leave, without anyone stopping them. I got together with a few Estate Sales Companies, and we agreed that you need to be aware of these things. There are some really bad companies hurting seniors and estates. We would like to see our industry held to the highest of standards, and when you hire anyone to help you, we would like to know that you hired the best company for the job who adheres to the highest of standards and ethics.

This is just an over view of what goes on in the industry. If any of you have specific questions, or want more information, please do not hesitate to contact me. I can make myself available should any of you want more information. I can also get three other Estate Sales Companies to join me in a round table if needed.

I apologize for writing such a long document. It is important to me to explain all of this.

Thank you very much for your time and consideration.

Sincerely,

Susan Russell  
President, Premiere Auctions and Estate Sales  
Auctioneer, Estate Sales Company, Certified Personal Property Appraiser  
(702-588-3800  
Susan@PremiereAMG.com

**TAB 10**

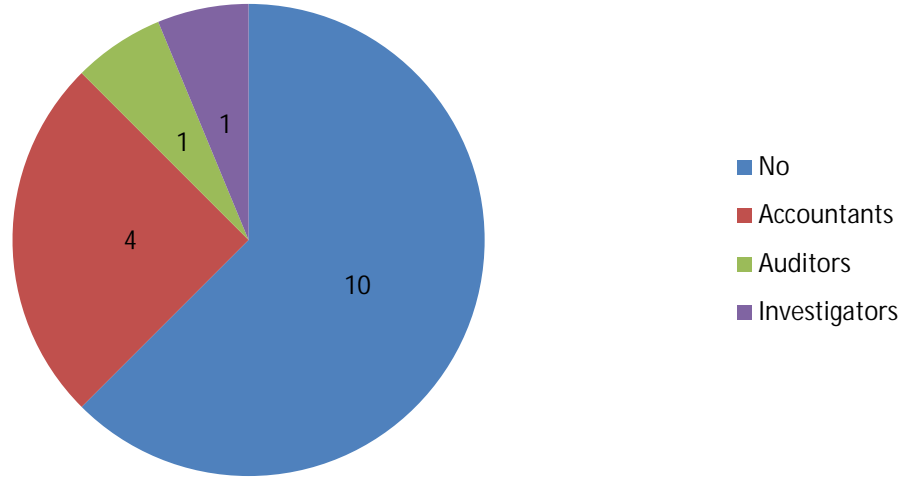
**OFFICE OF STATE PUBLIC GUARDIAN**

**GRAPHS AND SCHEDULE**

**AUDITORS**

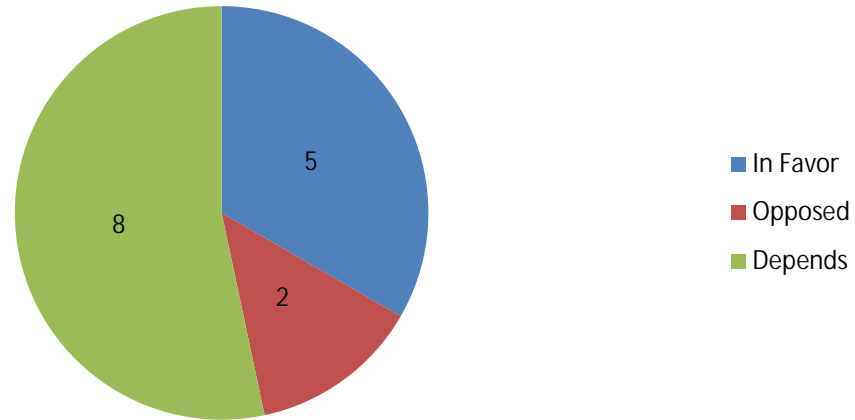
## 2016 RURAL PUBLIC GUARDIAN SURVEY

Question 1 - Do you employ or contract with any accountants, auditors, or investigators?





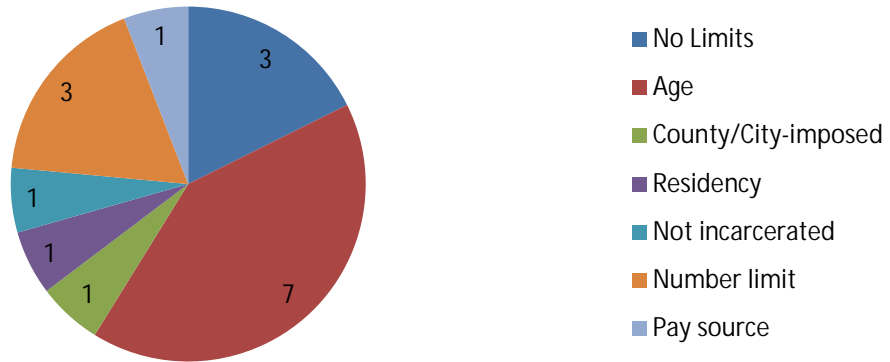
## Question 2 - Would you be in favor of or opposed to the formation of an Office of State Public Guardian?



### Concerns/Questions

- Duplication of efforts
- How will it be funded?
- Loss of personal connection
- Not enough info
- Logistics

### Question 3 - What eligibility requirements or restrictions do you have in place that limit your ability to file for guardianship of proposed wards?



**Nevada Public Guardians Facts**

**August 2015**

<i>County provided:</i>	<i>Office Space</i>	<i>Storage Space</i>	<i>Phone</i>	<i>Cell Phone</i>	<i>Copier</i>	<i>Fax</i>	<i>Computers</i>	<i>Vehicle</i>
<b>Churchill</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Clark</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Carson City</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>
<b>Douglas</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>
<b>Elko</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Esmeralda</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Eureka</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Humboldt</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>
<b>Lander</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>
<b>Lincoln</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>
<b>Lyon</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Mineral</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>
<b>Nye</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Pershing</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>Storey</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
<b>Washoe</b>	<b>Y</b>	<b>N</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>
<b>White Pine</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>

**Nevada Public Guardians Facts**

**August 2015**

County	# PG Staff	# PG Staff	# Wards (active cases)	# Wards on Medicaid	Budget	Under another county office's budget	fees recieved in 2014
<b>Churchill</b>	<b>Shannon Ernst</b>	<b>2</b>	<b>13</b>	<b>11</b>	<b>9,960.*</b>	<b>Human Services</b>	<b>4,200.</b>
<b>Clark</b>	<b>Kathleen Buchanan</b>	<b>21</b>	<b>399</b>	<b>282</b>	<b>2,400,000.</b>	<b>No</b>	<b>524,000.</b>
<b>Carson City - Storey</b>	<b>Deborah Marzoline</b>	<b>3</b>	<b>68</b>	<b>58</b>	<b>—</b>	<b>No</b>	<b>104,000.</b>
<b>Douglas</b>	<b>Claudette Springmeyer</b>	<b>2</b>	<b>38</b>	<b>27</b>	<b>82,100.</b>	<b>No</b>	<b>8,560.</b>
<b>Elko</b>	<b>Kathleen Jones</b>	<b>1.5</b>	<b>25</b>	<b>24</b>	<b>0</b>	<b>Human Services</b>	<b>6,000.</b>
<b>Esmeralda</b>	<b>Danielle Johnson</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>District Attorney</b>	<b>0</b>
<b>Eureka</b>	<b>Pernecia Johnson</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>Clerk/Treasurer</b>	<b>0</b>
<b>Humboldt</b>	<b>Michael McDonald</b>	<b>1.5</b>	<b>7</b>	<b>7</b>	<b>0</b>	<b>District Attorney</b>	<b>0</b>
<b>Lander</b>	<b>Theodore Herrera</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>District Attorney</b>	<b>0</b>
<b>Lincoln</b>	<b>Daniel Hooge</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>5,000.*</b>	<b>District Attorney</b>	<b>0</b>
<b>Lyon</b>	<b>Sherry Stone</b>	<b>1</b>	<b>24</b>	<b>22</b>	<b>128,330.</b>	<b>No</b>	<b>6,158.</b>
<b>Mineral</b>	<b>Michael C. James</b>	<b>2</b>	<b>13</b>	<b>13</b>	<b>110,000.</b>	<b>No</b>	<b>0</b>
<b>Nye</b>	<b>Pamela Webster</b>	<b>2</b>	<b>12</b>	<b>9</b>	<b>1,000.</b>	<b>Human Services</b>	<b>430.</b>
<b>Pershing</b>	<b>Bryce Shields</b>	<b>1.5</b>	<b>20+</b>	<b>20+</b>	<b>0</b>	<b>District Attorney</b>	<b>0</b>
<b>Storey</b>	<b>Deborah Marzoline</b>	<b>2.5</b>	<b>3</b>	<b>3</b>	<b>20,000.</b>	<b>No</b>	<b>0</b>
<b>Washoe</b>	<b>Susan DeBoer</b>	<b>15</b>	<b>188</b>	<b>148</b>	<b>1,716,769.</b>	<b>No</b>	<b>182,731.49</b>
<b>White Pine</b>	<b>Michael Wheable</b>	<b>1.5</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>District Attorney</b>	<b>0</b>

*\*does not include staffing expenses*

Scenario 1 –Exclude Clark and Washoe County – 2 auditor positions

<b>Description</b>	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>Total</b>	<b>Funding Source</b>	<b>Notes</b>
Add 2 Auditor positions (one Auditor II – Lead and one Auditor I)	-	227,599	208,623	436,223	Gen Fund	Excluding Clark and Washoe Counties
Add one IT position, grade 37	-	93,351	88,205	181,556	Gen Fund	Add an IT position to support the Guardianship system. Start-up costs (furniture, equipment) included in FY 18
Guardianship Software	-	50,466	-	50,466	Gen Fund	Purchase necessary systems to implement a guardianship system for the Judiciary. 4 servers. No ongoing maintenance.

**TAB 11**  
**PRIVATE PROFESSIONAL GUARDIANS**

**Areas within AB 325 that should be reevaluated or reconsidered by the legislature that the Commission should discuss:**

- 1) The Fidelity bonding requirement needs to be clarified. It is not clear just who is to be bonded within the business. (AB 325 , Sec. 33, #2)
- 2) Licensure of a single individual along with licensing the business-if the business is being licensed, why not just mandate that a certified guardian must be part of the day to day business for the business to be licensed, not also license the individual. (AB 325, Sec. 51, #2c and #3)
- 3) Language clarification of “guardian” vs. “certified guardian” when used in AB 325, Sec. 51, #2c which states “have a guardian who has a license issued pursuant to sections 2 to 50....”. The term “guardian” in definitions under AB 325, section 15, #1a states that the term “Guardian” is defined as stated in NRS 159.017. That section states that “Guardian” means any person appointed as s guardian of the person, of the estate or both. But under Sec. 51, 2c of AB 325, the “guardian” is not appointed, the entity is appointed. Although the FID brought this forward to the LCB, they did not change the language from “guardian” to “certified guardian” which would have clarified the discrepancy. In the hearings, the FID commissioner stated that this is not an issue and the term “guardian” is not a concern so we should be fine. Just not sure that will always be the case.
- 4) Allow pooled account for those guardianship accounts that cannot or should not be named on the account with individual accountings. AB 325, Sec. 37, #1 states that ”a licensee shall maintain a separate guardianship account for each ward. This is not always feasible and the Court should be able to have the flexibility to order funds to be kept in a pooled account if that is for the best interest of the ward.
- 5) Summary Administration is to apply to Private Prof. Guardians and remove AB 325, Sec 36, #5.
- 6) Clarification of licensed/certified guardian to be on premise every day as interpreted by FID. (AB 325, Sec. 51, #2c) who has stated several times that this means the licensed or certified guardian must be on premises at all times.

**What steps could be taken to attract ethical, responsible, private professional guardians in support of this system as a profession:**

Attracting ethical, responsible private professional guardians means for those of us that are practicing to continue to set the bar and standards above average. Private professional guardian businesses need to be sure to create a culture within the businesses that does not tolerate activities or practices that do not meet our national standards and model code of ethics. That as individuals practicing, we become leaders to mentor one another for the betterment of our clients and that we hold each other accountable. That being stated, to reach actual steps to attract the type of private professional guardians into practice within Nevada will be extremely difficult until many issues are resolved. The following are problem areas to be addressed:

- 1) The perception encouraged by certain individuals, groups, and publications that the private professional guardian industry as a whole is corrupt has to change. While there has been a few individuals who have tainted the industry by wrongful practices in the 25 years the industry has been viable, it is a very small percentage of the past and present practicing private guardians. There needs to be acknowledgement within the communities served that the private professional guardians provide a valuable service to a very vulnerable population and that those services are respected and appreciated.
- 2) The uncertainty of the licensure end result needs to be resolved. Time will take care of this, but until then, it is pretty certain that no business would want to open under the present circumstances. It is unclear as to how much the fees will cost still in regards to the licensure in the future as there has already been hints of fees increases. There are also the unknown costs of the required examinations (audits). Along with the uncertainty of the costs for licensure, the unknown in regards to upcoming legislation is also a concern to anyone thinking of starting a business. It is difficult to begin a process when the rules are still in flux.
- 3) Fees for service should not to be capped or limited but should be decided upon in regards to the reasonableness of the guardianship case itself. There can be structure to assist in defining reasonableness, but by limiting the ability of a private business to survive financially will only keep private professional guardianship businesses from starting in the first place.
- 4) Private professional guardians should be dealt with as the professionals that they are. They should not be micromanaged in how they provide services, but need to be able to work in a fluid manner in order to deal with the many changes and challenges each guardianship case presents.
- 5) Private professional guardians should be seen as an important part of the community that serves a vulnerable population by other agencies and entities that do the same. Agencies should be willing to collaborate with private professional guardianship business for the good of the client. This includes the public guardians' offices and Elder Protective Services.
- 6) Those parties who were found guilty of betraying the trust of the wards they served were very well trained and came out of the public guardian system before they went private. It is difficult to know how to gage the honesty of any private professional guardian as individuals in all factions of business can fall prey to addictions and criminal acts. A review of how other states handle training of their private guardians might be enlightening. There can be classes taught through our community colleges but it is uncertain if there would be enough interest state wide to entice the colleges to offer such a course(s). Internships with licensed private guardianship businesses might be the best way to train a potential private guardian.
- 7) Consideration should be made to AB325 that encompass not only private professional individuals acting as guardians but those serving as trustees & probate administrators as a profession (not related to those they are serving). The license should be a fiduciary license not just a "guardian" license.



**TAB 12**  
**CONFIDENTIAL DOCUMENTS**

State	Confidential Records – Guardianship	Reference
<p><b>Arizona</b></p>	<p style="text-align: center;">Rule 7. Confidential Documents and Information  <a href="#"><u>Currentness</u></a></p> <p>A. Definitions.</p> <ol style="list-style-type: none"> <li>1. For purposes of this rule, “<b>confidential document</b>” means the following:                             <ol style="list-style-type: none"> <li>a. the probate information form filed pursuant to Rule 6 of these rules;</li> <li>b. medical reports and records obtained and filed with the court in connection with proceedings pursuant to A.R.S. §§ 14-5303, -5310, -5401.01, or -5407, or A.R.S. § 36-3206, or in connection with the requirements of A.R. S. § 14-5312.01 and -5312.02;</li> <li>c. Budgets filed pursuant to Rules 30.2 and 30.3 of these rules.</li> <li>d. inventories and appraisements filed pursuant to A.R.S. § 14-5418(A);</li> <li>e. accountings filed pursuant to A.R.S. Title 14;</li> <li>f. a credit report; or</li> <li>g. any other document ordered by the court to be filed or maintained as a confidential document pursuant to this rule.</li> </ol> </li> <li>2. For purpose of this rule “<b>confidential information</b>” means the following:                             <ol style="list-style-type: none"> <li>a. a social security number of a living person;</li> <li>b. any account number for a financial account, unless limited to the last four digits only; or</li> <li>c. any other information determined by the court to be confidential.</li> </ol> </li> <li>3. For purposes of this rule, “<b>financial account</b>” includes credit card account, debit card account, bank account, brokerage account, insurance policy, and annuity contract.</li> <li>4. For purposes of this rule, “<b>redact</b>” means to edit or obscure text in a document to prevent it from being viewed. Redaction must be accomplished in a manner that prevents the reader from identifying the redacted information either physically or electronically.</li> </ol> <p>B. The clerk of court shall comply with court rules and the Arizona Code of Judicial Administration for the security of electronically filed or transmitted <b>confidential documents and information and the maintenance of confidential documents and information.</b></p> <p>C. A <b>confidential document</b> shall not be maintained as part of the public record of a probate case.</p> <ol style="list-style-type: none"> <li>1. In counties in which the clerk of court maintains an authorized electronic court record, the probate information form shall be processed in a manner consistent with the processing of confidential documents in other case types.</li> </ol>	<p><a href="#"><u>Rule 7 Confidential Documents and Information</u></a></p> <p><a href="#"><u>Rule 6 Probate Information Form</u></a> – An information form filed pursuant to this rule shall be maintained as a confidential document as provided in Rule 7.</p>

	<p>2. A party who <b>files a confidential paper document</b> under this rule shall, when filing the document with the Clerk's Office, place the original document in an envelope that bears the case name and number, the name of the document being filed, the name of the party filing the document, and the phrase "<b>Confidential Document.</b>" A separate envelope shall be used for each confidential document.</p> <p>D. Other than confidential documents and arrest warrants, documents filed with the court shall not contain confidential information.</p> <p>E. Upon motion by any party or upon the court's own motion, the court may order that</p> <ol style="list-style-type: none"><li>1. a document be filed as a <b>confidential document</b>, regardless of whether the document has already been filed with the court;</li><li>2. <b>confidential information</b> contained in a non-confidential document be redacted, regardless of whether the document has already been filed with the court. The redaction shall be performed by the originator of the document in instances where the document has yet to be filed.</li></ol> <p>F. A party who files a motion seeking to have a <b>document or information declared confidential</b> shall</p> <ol style="list-style-type: none"><li>1. provide the title of the document containing the confidential information or requested to be filed as confidential; and</li><li>2. include the approximate date the document was filed; and</li><li>3. state why the information in question should be redacted or the document should be filed as a <b>confidential document</b>.</li></ol> <p>G. The clerk of the court shall disclose <b>confidential documents</b>, except for the probate information form described in <b>Rule 6, and confidential information only to the following persons:</b></p> <ol style="list-style-type: none"><li>1. an attorney or guardian ad litem appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;</li><li>2. a party to the probate case in which the document has been filed and such party's attorney, guardian ad litem, or other legal representative;</li><li>3. a person appointed as a court investigator, medical professional, psychologist, registered nurse, or accountant for the probate case in which the document has been filed;</li><li>4. judicial officers, court administrative staff, and other court personnel whose official duties necessitate access to confidential information for processing and managing probate cases;</li><li>5. any person authorized by the court, upon a showing of good cause, to view or obtain a copy of such document or information; and</li><li>6. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a licensed fiduciary, pursuant to the Arizona Code of</li></ol>	
--	--	--

	<p>Judicial Administration § 7-201.</p> <p>H. The <b>clerk of court shall disclose the probate information form described in Rule 6 only to the following persons:</b></p> <ol style="list-style-type: none"><li>1. an attorney or guardian ad litem appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;</li><li>2. a person appointed as a court investigator for the probate case in which the document has been filed;</li><li>3. judicial officers, court administrative staff, and other court personnel whose official duties necessitate access to confidential information for processing and managing probate cases;</li><li>4. any person authorized by the court, upon a showing of good cause, to view or obtain a copy of such document or information; and</li><li>5. staff from the Administrative Office of the Courts for the purpose of conducting a compliance audit of a fiduciary or an investigation into alleged misconduct by a licensed fiduciary, pursuant to the Arizona Code of Judicial Administration § 7-201.</li></ol> <p>I. Nothing in this rule shall prevent a confidential document from being used as an exhibit at any hearing in the probate case in which such document was filed.</p> <p>Credits Added Sept. 16, 2008, effective Jan. 1, 2009. Amended Sept. 3, 2009, effective Jan. 1, 2010; Sept. 2, 2010, effective Jan. 1, 2011; Dec. 13, 2011, effective Feb. 1, 2012. 17B A. R. S. Rules Probate Proc., Rule 7, AZ ST PROB Rule 7 Current with amendments received through 07/01/16</p> <p>Comment Generally, court records are presumed to be open to any member of the public for inspection or copying during regular office hours at the office having custody of the records. In view of the possible countervailing interests of confidentiality, privacy, or the best interests of the state or parties, however, <b>public access to some court records may be restricted. See Ariz. R. Sup. Ct. 123(c)(1). The purposes of this rule are to preserve any medical professional-patient privilege and confidentiality and to protect vulnerable adults from identity theft and financial exploitation.</b> Thus, the rule identifies documents that are to be considered <b>confidential</b> and not kept as part of the court file, and it provides a mechanism for filing such confidential documents. The rule is based, in part, upon former Rule 129, Rules of the Supreme Court, <b>which dealt with confidentiality of medical records in guardianship and conservatorship cases, and Rule 123(c)(3), Rules of</b></p>	
--	---	--

	<p><b>the Supreme Court, which deals with confidentiality of personal financial information. Unredacted versions of the probate information form or a financial statement from a brokerage house are confidential.</b> If a party redacts account numbers or social security numbers from a confidential form, the form then may be made available for public viewing. Although these documents and information may be confidential, the fiduciary must observe and abide by all requirements imposed by statute, law, controlling document, or court order requiring provision of the documents and information to any interested party. Arizona Code of Judicial Administration § 1-506(E)(4) prohibits the court from accepting confidential or sealed documents by electronic filing. As technology and case management systems advance, court rules and the Code of Judicial Administration will address electronic filing security issues. <b>For purposes of section A(1)(c), the inventory itself should be treated as confidential; however, any cover sheet should not be treated as confidential.</b> Thus, only the inventory, including any appraisals or financial documents, should be filed as confidential. For purposes of <b>section A(1)(d), the accounting itself should be treated as confidential; the petition requesting approval of the accounting, however, should not be treated as confidential. Thus, only the accounting, including any schedules and supporting financial documents, should be filed as confidential.</b> The petition requesting approval of the accounting, including the <b>fiduciary's and attorney's fee statements required by Rule 33 of these rules, should be separately filed and are not confidential documents.</b> For purposes of <b>section G(2) of this rule, a legal representative of a party, such as a guardian or conservator or like fiduciary of a party, or the agent under a valid power of attorney may request release of confidential documents on behalf of the party; the mere existence of a fiduciary, however, should not prevent even an incapacitated party from making a request in his or her own name.</b></p> <p><b>Although the inventory itself is a confidential document, see Rule 7(A)(1)(c), the inventory and appraisal cover sheet is not a confidential document. Similarly, the accounting is a confidential document, see Rule 7(A)(1)(d), while the petition requesting approval and any fee statements are not confidential documents.</b></p> <p><b>Pursuant to Rule 7(A), fee statements are not confidential documents or information.</b></p>	
<p><b>California</b></p>	<p>Confidential Guardianship Status Report</p>	<p><a href="http://www.courts.ca.gov/documents/gc251.pdf">http://www.courts.ca.gov/documents/gc251.pdf</a></p>
<p><b>Florida</b></p>	<p><a href="#">733.604 (1)</a> Estate Inventories and Accountings</p>	<p><a href="#">§733.604 (1)</a></p>
	<p>Guardianship reports, orders appointing court monitors and orders relating to findings of no probable cause</p>	<p><a href="#">§744.1076</a>, <a href="#">744.3701</a></p>

in guardianship cases.

**744.1076 Court orders appointing court monitors and emergency court monitors; reports of court monitors; orders finding no probable cause; public records exemptions.—**

(1)(a) The order of any court appointing a court monitor pursuant to s. 744.107 or an emergency court monitor pursuant to s. 744.1075 is exempt from s. 24(a), Art. I of the State Constitution.

(b) **The reports of an appointed court monitor or emergency court monitor relating to the medical condition, financial affairs, or mental health of the ward are confidential and exempt from s. 24(a), Art. I of the State Constitution.** Such reports may be subject to inspection as determined by the court or upon a showing of good cause.

(c) The public records exemptions provided in this subsection expire if a court makes a finding of probable cause, except that **information otherwise made confidential or exempt shall retain its confidential or exempt status.**

(2) **Court orders finding no probable cause pursuant to s. 744.107 or s. 744.1075 are confidential and exempt from s. 24(a), Art. I of the State Constitution; however, such orders may be subject to inspection as determined by the court or upon a showing of good cause.**

**History.**—s. 1, ch. 2006-129; s. 161, ch. 2008-4; s. 1, ch. 2011-204.

**744.3701 Confidentiality.—**

(1) Unless otherwise ordered by the court, upon a showing of good cause, an initial, annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, the guardian ad litem with regard to the settlement of the claim, the ward if he or she is at least 14 years of age and has not been determined to be totally incapacitated, the ward's attorney, the minor if he or she is at least 14 years of age, or the attorney representing the minor with regard to the minor's claim, or as otherwise provided by this chapter.

(2) The court may direct disclosure and recording of parts of an initial, annual, or final report or amendment thereto, or a court record relating to the settlement of a claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, in connection with a real property transaction or for such other purpose as the court allows.

(3) A court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt

	<p>from the provisions of s. <u>119.07(1)</u> and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.</p> <p><b>History.</b>—s. 39, ch. 90-271; s. 1091, ch. 97-102; s. 1, ch. 2015-84.</p>	
<b>Michigan</b>	<p>A <b>report of a physician or mental health professional shall not be made part of the public record</b> of the proceedings. A report is available to the court or to an appellate court to which the proceedings may be appealed. Court response to inquiries: “The accompanying report is nonpublic pursuant to statute.”</p> <p>The report is to be available only to the alleged incapacitated individual, the petitioner, their attorneys, and to other individuals as the court directs</p>	<p>Guardianship for Legally Incapacitated Individual: Report to accompany initial petition.</p> <p>(<a href="#">MCL 700.5304[1]</a>)                  Duration: From receipt of the report.</p>
	<p>The Social History Form for minor guardianship is confidential, and is not to be released, except on order of the court, to the parties or the attorneys for the parties.</p> <p>Court response to inquiries: “The social history is nonpublic pursuant to court rule.”</p>	<p>GUARDIANSHIP OF MINOR: Social History Form PC 670. (<a href="#">MCR 5.404[A][4]</a>) Duration: From receipt or the Social History.</p>
<b>Minnesota</b>	<p>Confidential Petition and Affidavit for Proceeding In Forma Pauperis</p> <p>Conservatorship Account Confidential Information Form</p>	<p><a href="http://mncourts.gov/GetForms.aspx?c=21&amp;f=403">http://mncourts.gov/GetForms.aspx?c=21&amp;f=403</a></p> <p><a href="http://mncourts.gov/GetForms.aspx?c=21&amp;f=405">http://mncourts.gov/GetForms.aspx?c=21&amp;f=405</a></p>

<p>Nevada</p>	<p><a href="#">NRS 159.044</a> <b>Petition for appointment of guardian: Who may submit; content; needs assessment required for proposed adult ward.</b></p> <p>1. Except as otherwise provided in <a href="#">NRS 127.045</a>, a proposed ward, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.</p> <p>2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:</p> <ul style="list-style-type: none"><li>(a) The name and address of the petitioner.</li><li>(b) The name, date of birth and current address of the proposed ward.</li><li>(c) A copy of one of the following forms of identification of the proposed ward which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in <a href="#">NRS 239.0115</a> or as otherwise required to carry out a specific statute, <b>maintained in a confidential manner</b>:<ul style="list-style-type: none"><li>(1) A social security number;</li><li>(2) A taxpayer identification number;</li><li>(3) A valid driver's license number;</li><li>(4) A valid identification card number; or</li><li>(5) A valid passport number.</li></ul></li></ul> <p><input type="checkbox"/> If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.</p> <ul style="list-style-type: none"><li>(d) If the proposed ward is a minor, the date on which the proposed ward will attain the age of majority and:<ul style="list-style-type: none"><li>(1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and</li><li>(2) Whether the petitioner anticipates that the proposed ward will need guardianship after attaining the age of majority.</li></ul></li><li>(e) Whether the proposed ward is a resident or nonresident of this State.</li><li>(f) The names and addresses of the spouse of the proposed ward and the relatives of the proposed ward who are within the second degree of consanguinity.</li><li>(g) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of <a href="#">NRS 159.0595</a>. If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one ward who is not related to the person by blood or marriage.</li><li>(h) A copy of one of the following forms of identification of the proposed guardian which must be placed</li></ul>	<p><a href="#">NRS 159.044</a>, <a href="#">NRS 159.0893</a></p> <p><a href="#">NRS 603A.040</a></p> <p><a href="#">Nevada Electronic Filing and Conversion Rules</a></p> <p><a href="#">Part VII. Rules Governing Sealing and Redacting Court Records</a></p> <p><a href="#">Policy for Handling Filed, Lodged, and Presumptively Confidential Documents</a></p>
---------------	--	---



in the records relating to the guardianship proceeding and, except as otherwise provided in [NRS 239.0115](#) or as otherwise required to carry out a specific statute, maintained in a confidential manner:

- (1) A social security number;
- (2) A taxpayer identification number;
- (3) A valid driver's license number;
- (4) A valid identification card number; or
- (5) A valid passport number.

[NRS 159.0893](#) **Access to account or other assets of ward.**

1. A guardian shall present a copy of the court order appointing the guardian and letters of guardianship to a bank or other financial institution that holds any account or other assets of the ward before the guardian may access the account or other assets.

2. The bank or other financial institution shall accept the copy of the court order appointing the guardian and letters of guardianship as proof of guardianship and allow the guardian access to the account or other assets of the ward, subject to any limitations set forth in the court order.

3. **Unless the bank or other financial institution is a party to the guardianship proceeding, the bank or other financial institution is not entitled to a copy of any:**

**(a) Competency evaluation of the ward or any other confidential information concerning the medical condition or the placement of the ward; or**

**(b) Inventory or accounting of the estate of the ward.**

(Added to NRS by [2013, 904](#))

[NRS 603A.040](#) **"Personal information" defined.**

1. "Personal information" means a natural person's first name or first initial and last name in combination with any one or more of the following data elements, when the name and data elements are not encrypted:

- (a) Social security number.
- (b) Driver's license number, driver authorization card number or identification card number.
- (c) Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.
- (d) A medical identification number or a health insurance identification number.
- (e) A user name, unique identifier or electronic mail address in combination with a password, access code or security question and answer that would permit access to an online account.

2. The term does not include the last four digits of a social security number, the last four digits of a

driver's license number, the last four digits of a driver authorization card number or the last four digits of an identification card number or publicly available information that is lawfully made available to the general public from federal, state or local governmental records.

### **Nevada Electronic Filing and Conversion Rules**

#### [Rule 14. Access to electronic documents; confidential information.](#)

(b) *Confidential records.* The confidentiality of electronic records is the same as for paper records. A court's electronic filing system must permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record shall release the information to any other person unless provided by law.

(c) *Identification of confidential documents.* The filing party must identify documents made confidential by statute, court rule, or court order. The electronic filing system shall make the document available only to registered users and only as provided by law.

(d) *Protection of personal information.* A document containing personal information as defined by [NRS 603A.040](#) shall be so designated by the party filing the document. If a paper is designated as containing personal information, only registered users for the case may access the paper electronically. The document will remain available for public inspection at the courthouse unless otherwise sealed by the court or held confidential by law. The clerk is not required to review each paper for personal information or for the redaction of personal information.

(e) *Temporary sealing of documents.* For information not made confidential by statute, court rule, or court order, users may electronically submit documents under temporary seal pending court approval of the user's motion to seal.

[Amended; effective August 31, 2011.]

#### [Part VII. Rules Governing Sealing and Redacting Court Records](#)

#### [Policy for Handling Filed, Lodged, and Presumptively Confidential Documents](#)

<p><b>New Jersey</b></p>	<p><b>e) Records of Guardianship Proceedings</b></p> <p>Guardianship records and reports maintained by the Surrogate and by the Chancery Division, Probate Part, except the guardianship index, of which only the following information shall be available to an attorney-at-law of this state or to a title examiner seeking access to such records in connection with transactions affecting property of the ward:</p> <ul style="list-style-type: none"> <li>(1) minor's or incapacitated person's name,</li> <li>(2) name of the municipality where the minor or incapacitated person resided when the guardianship was created,</li> <li>(3) name of the guardian,</li> <li>(4) docket number,</li> <li>(5) date of the judgment appointing the guardian, and</li> <li>(6) date of the guardian's qualification.</li> </ul> <p>Further, an attorney-at-law or a title examiner requiring access to the guardianship index in connection with a transaction affecting the property of the ward may inspect and copy the following guardianship file documents: the guardianship judgment, the Letters of Guardianship, and any subsequent order dealing with the powers or limitations of the guardian, provided any financial information contained in these documents, including information on the amount of the bond, is redacted prior to the documents being made available for review or copying.</p> <p>All guardianship records and reports, however, are available to the incapacitated person and the minor upon reaching majority; the incapacitated person's spouse, civil union partner, or domestic partner; the minor's or incapacitated person's parents and siblings; any adult children of the incapacitated person; the guardian appointed in the action; and any attorneys appearing in the guardianship action on behalf of these persons.</p> <p>Appointed New Jersey Judiciary Guardianship Monitoring Program volunteers shall have access to guardianship records and reports in those guardianship matters to which they are assigned. Any other individual or entity seeking records must make a showing of a special interest in the matter to the Assignment Judge or the Assignment Judge's designee.</p>	<p><a href="#">Rule 1:38 Public Access to Court Records and Administrative Records</a></p>
<p><b>New</b></p>	<p>The existence of a guardianship case or the fact that a guardianship hearing is on the docket is not</p>	<p><a href="#">Rules of the Circuit</a></p>

<p><b>Hampshire</b></p>	<p>confidential. However, guardianship hearings shall be closed to the public, except for persons other than the parties, their counsel, witnesses, and agency representatives whom the Court may, in its discretion, admit. Records, reports, and evidence shall be confidential to the extent that they contain information relating to the person history and circumstances of the minor and the minor's family. If any person other than a party wishes to review a case file, a motion must be filed and submitted to the Court for consideration.</p>	<p><a href="#">Court of the State of New Hampshire -- Family Division Section 5 -- Guardianship of Minors Rule 5.8</a></p>
<p><b>Oklahoma</b></p>	<p>Confidential info filed or submitted to the court under the Oklahoma Guardianship or Conservatorship Act shall not constitute a public record and shall be sealed by the court. Access to confidential info shall be strictly controlled. The fact of the existence of a guardianship or conservatorship shall not be considered confidential.</p>	<p><a href="#">30 O.S. § 1 - 122</a></p>
<p><b>Oregon</b></p>	<p>Order Regarding Confidential Information Disclosed by Department of Human Services or The Oregon Health Authority. Guardianship matter.</p> <p>Letters of Guardianship <a href="#">§419B.367</a></p> <p><b>(3)</b>The report required under subsection (2) of this section must:</p> <ul style="list-style-type: none"> <li><b>(a)</b>Contain a summary sheet that:             <ul style="list-style-type: none"> <li><b>(A)</b>Identifies the written report and includes the date of submission and the name of the submitting person; <b>and</b></li> <li><b>(B)</b>Is maintained as part of the record of the case under ORS <a href="#">419A.255 (Maintenance)</a> (1);</li> </ul> </li> <li><b>(b)</b>Be maintained in the supplemental <b>confidential file</b> under ORS <a href="#">419A.255 (Maintenance)</a> (2); <b>and</b></li> <li><b>(c)</b>Contain an affidavit attesting to the accuracy of the report or contain a declaration under penalty of perjury immediately above the signature line of the guardian as follows: I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.</li> </ul> <p><a href="#">125.012</a> <b>Petition for protective order; disclosure of information; confidentiality; inspection; visitor report.</b> (1) As used in this section:</p> <ul style="list-style-type: none"> <li>(a) "Party" means:             <ul style="list-style-type: none"> <li>(A) A person who is the subject of a petition for a protective order.</li> <li>(B) A person who has petitioned for appointment, or who has been appointed, as a fiduciary for a</li> </ul> </li> </ul>	<p><a href="#">Form 9.410.1</a></p> <p><a href="#">Department of Human Services Seniors and People with Disabilities Division Oregon Administrative Rules – Chapter 411, Division 26</a></p> <p><a href="#">§419B.367</a></p> <p><a href="#">ORS 125.012</a></p>

<p>protected person under this chapter.</p> <p>(C) A person, not otherwise a party under this paragraph, who has filed objections as allowed under this chapter.</p> <p>(D) A visitor appointed by the court in a proceeding under this chapter.</p> <p>(E) Any other person who has filed a petition or motion in a proceeding under this chapter.</p> <p>(b) "Protected health information" has the meaning given that term in ORS 192.556.</p> <p>(c) "Protective services" has the meaning given that term in ORS 410.040.</p> <p>(2) The Department of Human Services or the Oregon Health Authority, for the purpose of providing protective services, may petition for a protective order under this chapter. When the department or authority, or a petitioning attorney with whom the department or authority has contracted, petitions for a protective order under this section, the department or authority shall disclose to the court or to the petitioning attorney only a minimum amount of information about the person who is the subject of the petition, including protected health, mental health, financial, substantiated abuse and legal information, as is reasonably necessary to prevent or lessen a serious and imminent threat to the health or safety of the person who is the subject of the petition or protective order.</p> <p>(3) When a petition for a protective order is filed under this chapter by a person other than the Department of Human Services, the Oregon Health Authority or an attorney with whom the department or authority has contracted, or when a protective order has already been entered, the department or authority may disclose to a court protected health, mental health, financial, substantiated abuse and legal information about the person who is the subject of the petition or protective order, or about a person who has petitioned for appointment, or who has been appointed, as a fiduciary for a protected person under this chapter. The department or authority may disclose such information without authorization from the person or fiduciary if the disclosure is made in good faith and with the belief that the disclosure is the minimum amount of information about the person or fiduciary as is reasonably necessary to prevent or lessen a serious and imminent threat to the health or safety of the person who is the subject of the petition or protective order.</p> <p>(4)(a) All confidential and protected health, mental health, financial, substantiated abuse and legal information disclosed by the Department of Human Services, the Oregon Health Authority or an attorney with whom the department or authority has contracted under this section must remain confidential.</p> <p>(b) Information disclosed under this section must be identified and marked by the entity or person making the disclosure as confidential and protected information that is subject to the requirements of this subsection.</p> <p>(c) Information disclosed under this section is subject to inspection only by the parties to the proceedings and their attorneys as provided in subsection (5) of this section. Information disclosed under this section is</p>	
--	--

not subject to inspection by members of the public except pursuant to a court order entered after a showing of good cause. Good cause under this paragraph includes the need for inspection of the information by an attorney considering representation of the person who is the subject of the petition or protective order, or of a person who has petitioned for appointment, or who has been appointed, as a fiduciary for a protected person under this chapter.

(d) Notwithstanding ORS 125.155 (4), to the extent that the report of a visitor appointed by the court under ORS 125.150 contains information that is subject to the requirements of this subsection, the report in its entirety shall be considered subject to the requirements of this subsection and may be disclosed only as provided in paragraph (c) of this subsection.

(5) The court may enter an order allowing inspection of information subject to disclosure under this section upon the filing of a written request for inspection and the payment of any fees or costs charged to copy the information.

(6) Nothing in this section is intended to limit the application of ORS 125.050 to the use of information disclosed under this section in proceedings under this chapter.

(7) Information may be disclosed under this section only for the purpose of providing protective services. [2009 c.512 §2; 2011 c.229 §1]

**125.120 Protected person special advocate; appointment; duties; immunity; access to records and information; qualifications, standards and procedures.**

(4) Subject to any law relating to confidentiality and as specified in the court's order appointing the protected person special advocate, the special advocate may inspect and copy records and information related to the health, mental health, finances, education and welfare of the protected person as is necessary to perform the duties, responsibilities and functions of the special advocate. Records and information inspected and copied by the special advocate under this subsection may be disclosed only for the purpose of performing the duties, responsibilities and functions specified in the court's order appointing the special advocate.

**125.150 Appointment of visitors.**

(4) Subject to any law relating to confidentiality, the visitor may interview any physician or psychologist who has examined the respondent or protected person, or each petitioner under ORS 109.329, the person or officer of the institution having the care, custody or control of the respondent or protected person, or each petitioner under ORS 109.329, and any other person who may have relevant information.

	<p><b><u>125.685</u> Deputy public guardian and conservator; volunteer requirements and responsibilities.</b></p> <p>(3) Volunteers:</p> <p>(a) May not conduct the needs assessments required under ORS 125.683;</p> <p>(b) May not engage in conduct that constitutes the unlicensed practice of law;</p> <p>(c) Shall be under the supervision and control of the Oregon Public Guardian and Conservator or of a deputy public guardian and conservator;</p> <p>(d) <b>Shall be instructed in confidentiality and shall maintain the confidentiality of clients and of written information and materials relating to clients;</b></p>	
<p><b>Utah</b></p>	<p>In some cases, there will be a mixture of public and private records. Anyone can see that a case has been filed, and anyone can view the docket of the case to see a list of things that have happened. Access to the records themselves, however, will depend on whether the document is public or private. Examples of cases in which there will be a mixture of public and private records include:</p> <ul style="list-style-type: none"> <li>• Conservatorships</li> <li>• Guardianships</li> <li>• Divorce</li> <li>• Child Custody and Support</li> <li>• Protective Orders</li> <li>• Stalking Injunctions</li> </ul> <p>In these kinds of cases, the petitions and other pleadings are private records, but the orders of the court are public records.</p>	<p><a href="#">Rule 4-202.02</a></p> <p><a href="#">Rule 2-202.03 Records Access.</a></p> <p><a href="https://www.utcourts.gov/howto/filing/non-public/">https://www.utcourts.gov/howto/filing/non-public/</a></p>
<p><b>Washington</b></p>	<p>Sealed Confidential Guardianship Document Cover Sheet</p> <p>GR 22                  ACCESS TO FAMILY LAW AND GUARDIANSHIP COURT RECORDS</p> <p>(a) Purpose and Scope of this Rule. This <b>rule governs access to family law and guardianship court records</b>, whether the records are maintained in paper or electronic form. The policy of the courts is to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy, will not permit access to records or information defined by law or court rule as confidential, sealed, exempted from disclosure, or otherwise restricted from public access, and will not be</p>	<p><a href="#">WPF GDN 03.0200</a></p> <p><a href="#">GR 22 Access to Family Law and Guardianship Court Records</a></p>

unduly burdensome to the ongoing business of the courts.

(b) Definition and Construction of Terms.

(1) "Court record" is defined in GR 31 (c)(4).

(2) "Family law case or guardianship case" means any case filed under Chapters 11.88, 11.92, 26.09, 26.10, 26.12, 26.18, 26.21, 26.23, 26.26, 26.27, 26.50, 26.52, 73.36 and 74.34 RCW.

(3) "Personal Health Care Record" means any record or correspondence that contains health information that: (1) relates to the past, present, or future physical or mental health condition of an individual including past, present, or future payments for health care; or (2) involves genetic parentage testing.

(4) "Personal Privacy" is unreasonably invaded only if disclosure of information about the person or the family (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

(5) "Public access" means unrestricted access to view or copy a requested court record.

(6) "Restricted personal identifiers" means a party's social security number, a party's driver's license number, a party's telephone number, financial account numbers, social security number of a minor child and date of birth of a minor child.

#### COMMENT

A party is not required to provide a residence address. Petitioners or counsel to a family law case will provide a service or contact address in accordance with CR 4.1 that will be publicly available and all parties and counsel should provide a contact address if otherwise required. Pattern forms shall be modified, as necessary, to reflect the intent of this rule.

(7) "Retirement plan order" means a supplemental order entered for the sole purpose of implementing a property division that is already set forth in a separate order or decree in a family law case. A retirement plan order may not grant substantive relief other than what is set forth in a separate order. Examples of retirement plan orders are orders that implement a division of retirement, pension, insurance, military, or similar benefits as already defined in a decree of dissolution of marriage.

(8) "Sealed financial source documents" means income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, checks or the equivalent, check registers, loan application documents, retirement plan orders, as well as other financial information sealed by court order.

#### **(c) Access to Family Law or Guardianship Court Records.**

(1) General Policy. Except as provided in RCW 26.26.610(2) and subsections (c)(2) and (c)(3) below, all court records shall be open to the public for inspection and copying upon request. The Clerk of the court may assess fees, as may be authorized by law, for the production of such records.



(2) Restricted Access. The Confidential Information Form, Sealed Financial Source Documents, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 26.09.440, Sealed Personal Health Care Record, Retirement Plan Order, Confidential Reports as defined in (e)(2)(B), copies of any unredacted Judicial Information System (JIS) database information considered by the court for parenting plan approval as set forth in (f) of this rule, and any Personal Information Sheet necessary for Judicial Information System purposes shall only be accessible as provided in sections (h) and (i) herein.

(3) Excluded Records. This section (c) does not apply to court records that are sealed as provided in GR 15, or to which access is otherwise restricted by law.

(d) Restricted Personal Identifiers Not Required - Except. Parties to a family law case or the protected person in a guardianship case shall not be required to provide restricted personal identifiers in any document filed with the court or required to be provided upon filing a family law or guardianship case, except:

(1) "Sealed financial source documents" filed in accordance with (g)(1).

(2) The following forms: Confidential Information Form, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 26.09.440, Vital Statistics Form, Law Enforcement Information Form, Foreign Protection Order Information Form, and any Personal Information Sheet necessary for Judicial Information System purposes.

(3) Court requested documents that contain restricted personal identifiers, which may be submitted by a party as financial source documents under the provisions of section (g) of this rule.

#### COMMENT

Court records not meeting the definition of "Sealed Financial Source Documents", "Personal Health Care Records", Retirement Plan Orders, Confidential Reports or court records that otherwise meet the definition but have not been submitted in accordance with (g)(1) are not automatically sealed. Section (3) provides authority for the court to seal court records containing restricted personal identifiers upon motion of a party, or on the court's own motion during a hearing or trial.

(e) Filing of Reports in Family Law and Guardianship cases - Cover Sheet.

(1) This section applies to documents that are intended as reports to the court in Family law and Guardianship cases including, but not limited to, the following:

(A) Parenting evaluations;

(B) Domestic Violence Assessment Reports created by Family Court Services or a qualified expert appointed by the court;

(C) Risk Assessment Reports created by Family Court Services or a qualified expert;

	<p>(D) CPS Summary Reports created by Family Court Services or supplied directly by Children's Protective Services;</p> <p>(E) Sexual abuse evaluations; and</p> <p>(F) Reports of a guardian ad litem or Court Appointed Special Advocate.</p> <p>(2) Reports shall be filed as two separate documents, one public and one sealed.</p> <p>(A) Public Document. The public portion of any report shall include a simple listing of:</p> <ul style="list-style-type: none"><li>(i) Materials or information reviewed;</li><li>(ii) Individuals contacted;</li><li>(iii) Tests conducted or reviewed; and</li><li>(iv) Conclusions and recommendations.</li></ul> <p>(B) Sealed Document. The sealed portion of the report shall be filed with a coversheet designated: "Sealed Confidential Report." The material filed with this coversheet shall include:</p> <ul style="list-style-type: none"><li>(i) Detailed descriptions of material or information gathered or reviewed;</li><li>(ii) Detailed descriptions of all statements reviewed or taken;</li><li>(iii) Detailed descriptions of tests conducted or reviewed; and</li><li>(iv) Any analysis to support the conclusions and recommendations.</li></ul> <p>(3) The sealed portion may not be placed in the court file or used as an attachment or exhibit to any other document except under seal.</p> <p>(f) Information Obtained from JIS Databases with Regard to Approval of a Parenting Plan.</p> <p>When a judicial officer proposes to consider information from a JIS database relevant to the placement of a child in a parenting plan, the judicial officer shall either orally disclose on the record or disclose the relevant information in written form to each party present at the hearing, and, on timely request, provide any party an opportunity to be heard regarding that information. The judicial officer has discretion not to disclose information that he or she does not propose to consider. The judicial officer may restrict secondary dissemination of written unredacted JIS database information not available to the public.</p> <p>(g) Sealing Financial Source Documents, Personal Health Care Records, and Sealed Confidential Reports in Family Law and Guardianship cases - Cover Sheet.</p> <p>(1) Financial source documents, personal health care records, confidential reports as defined in (e)(2)(B) of this rule, and copies of unredacted JIS database records considered by the court for parenting plan approval as set forth in (f) of this rule, shall be submitted to the clerk under a cover sheet designated "SEALED FINANCIAL SOURCE DOCUMENTS", "SEALED PERSONAL HEALTH CARE RECORDS", "SEALED CONFIDENTIAL REPORT" or "JUDICIAL INFORMATION SYSTEM DATABASE RECORDS" for filing in the court record of family law or guardianship cases.</p>	
--	--	--

(2) All financial source documents, personal health care records, confidential reports, or judicial information system database records so submitted shall be automatically sealed by the clerk. The cover sheet or a copy thereof shall remain part of the public court file.

(3) The court may order that any financial source documents containing restricted personal identifiers, personal health care records, any report containing information described in (e)(2)(B), or copies of unredacted JIS database records considered by the court for parenting plan approval as described in (f) be sealed, if they have not previously automatically been sealed pursuant to this rule.

(4) These coversheets may not be used for any documents except as provided in this rule. Sanctions may be imposed upon any party or attorney who violates this rule.

COMMENT

See comment to (d)(3) above.

(h) Access by Courts, Agencies, and Parties to Restricted Documents.

(1) Unless otherwise provided by statute or court order, the following persons shall have access to all records in family law or guardianship cases:

(A) Judges, commissioners, other court personnel, the Commission on Judicial Conduct, and the Certified Professional Guardian Board may access and use restricted court records only for the purpose of conducting official business of the court, Commission, or Board.

(B) Any state administrative agency of any state that administers programs under Title IV-A, IV-D, IV-E, or XIX of the federal Social Security Act.

(2) Except as otherwise provided by statute or court order, the following persons shall have access to all documents filed in a family law or guardianship case, except the Personal Information Sheet, Vital Statistics Form, Confidential Information Form, Domestic Violence Information Form, Law Enforcement Information Form, and Foreign Protection Order Form.

(A) Parties of record as to their case.

(B) Attorneys as to cases where they are attorneys of record.

(C) Court appointed Title 11 guardians ad litem as to cases where they are actively involved.

(i) Access to Court Records Restricted Under This Rule.

(1) The parties may stipulate in writing to allow public access to any court records otherwise restricted under section (c)(2) above.

(2) Any person may file a motion, supported by an affidavit showing good cause, for access to any court record otherwise restricted under section (c)(2) above, or to be granted access to such court records with specified information deleted. Written notice of the motion shall be provided to all parties in the manner

	<p>required by the Superior Court Civil Rules. If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful, or if the motion requests access to redacted JIS database records.</p> <p>(A) The court shall allow access to court records restricted under this rule, or relevant portions of court records restricted under this rule, if the court finds that the public interests in granting access or the personal interest of the person seeking access outweigh the privacy and safety interests of the parties or dependent children.</p> <p>(B) Upon receipt of a motion requesting access, the court may provide access to JIS database records described in (f) after the court has reviewed the JIS database records and redacted pursuant to GR 15 (c), any data which is confidential or restricted by statute or court rule.</p> <p>(C) If the court grants access to restricted court records, the court may enter such orders necessary to balance the personal privacy and safety interests of the parties or dependent children with the public interest or the personal interest of the party seeking access, consistent with this rule.</p>	
<p><b>National Guardianship Standard 11</b></p>	<p><a href="#"><u>NGA Standard 11 - Confidentiality</u></a></p> <p>I. The guardian shall keep the affairs of the person under guardianship confidential.</p> <p>II. The guardian shall respect the person's privacy and dignity, especially when the disclosure of information is necessary.</p> <p>III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.</p> <p>IV. The guardian may disclose or assist the person in communicating sensitive information to the person's family and friends, as defined by the person, unless it will substantially harm the person.</p> <p>V. The guardian may refuse to disclose sensitive information about the person where disclosure would be detrimental to the well-being of the person or would subject the person's estate to undue risk. Such a refusal to disclose information must be reported to the court.</p>	