

# PROBATE

## GUARDIANSHIP & CONSERVATORSHIP FOR MINORS



### Protective Proceedings Overview

# Guardianships and Conservatorships for Minors



**Guardianship of Minor**  
C.R.S. 15-14-201 et seq.

**Protection of Property of Protected Person (Conservatorship)**  
C.R.S. 15-14-401 et seq.

Instructions and forms for filing these case types can be found on  
the State of Colorado Judicial Branch website at

[www.courts.state.co.us](http://www.courts.state.co.us)

# What is a Protective Proceeding?

Protective Proceeding: A legal proceeding initiated to appoint a person to protect the person and/or the property of an individual who cannot effectively manage his or her own affairs.

- Guardianships
- Conservatorships



# A Few Important Definitions

**Petition:** “Petition” means a written request to the court for an order after notice (i.e., Petition for Appointment of Guardian for Minor, Petition for Appointment of Conservator for Minor).

**Petitioner:** “Petitioner” is a person who has filed a written request with the court for an order.

*Note:* A petitioner will not represent the respondent in court. Meaning, they cannot act as the respondent’s attorney or speak on the respondent's behalf.

**Respondent:** “Respondent” means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

**Minor:** “Minor” means an un-emancipated individual who has not attained 18 years of age.

# Guardianship

*A guardian may be responsible for the "person" and makes decisions regarding the ward's support, care, education, health and welfare.*

**Guardian:** "Guardian" means an individual at least 21 years of age, resident or nonresident, who qualifies as a guardian of a minor or incapacitated person pursuant to the appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but does not include a guardian ad litem.

**Ward:** "Ward" describes a person for whom a guardian has been appointed.

# Conservatorship

*A conservator is only responsible for the assets of the protected person.*

**Conservator:** “Conservator” means a person at least 21 years of age, resident or nonresident, who is appointed by a court to manage the estate of a protected person. The term includes a “limited conservator”.

**Protected Person:** “Protected person” means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

# Why Would a Guardianship or Conservatorship for a Minor Become Necessary?

## Common scenarios:

### Guardianship

- Parents deceased
  - Testamentary appointment
- Parents consent
  - Military, illness
- Parental rights terminated
- Parents not willing or able to exercise parental rights

### Conservatorship

- Minor has income or assets
  - Beneficiary of an estate
  - Personal injury settlement

# Appointment as Guardian - Minor

## Testamentary Appointment:

By will or other signed writing by a parent for any minor child the parent has or may have in the future.

## Judicial Appointment:

The Court may appoint a guardian if it finds the appointment is in the minor's best interest, and

- (a) The parents consent;
- (b) All parental rights have been terminated;
- (c) The parents are unwilling or unable to exercise their parental rights; or
- (d) Previously appointed guardian has died or become incapacitated and the guardian has not made an appointment of a guardian either by will or written instrument.

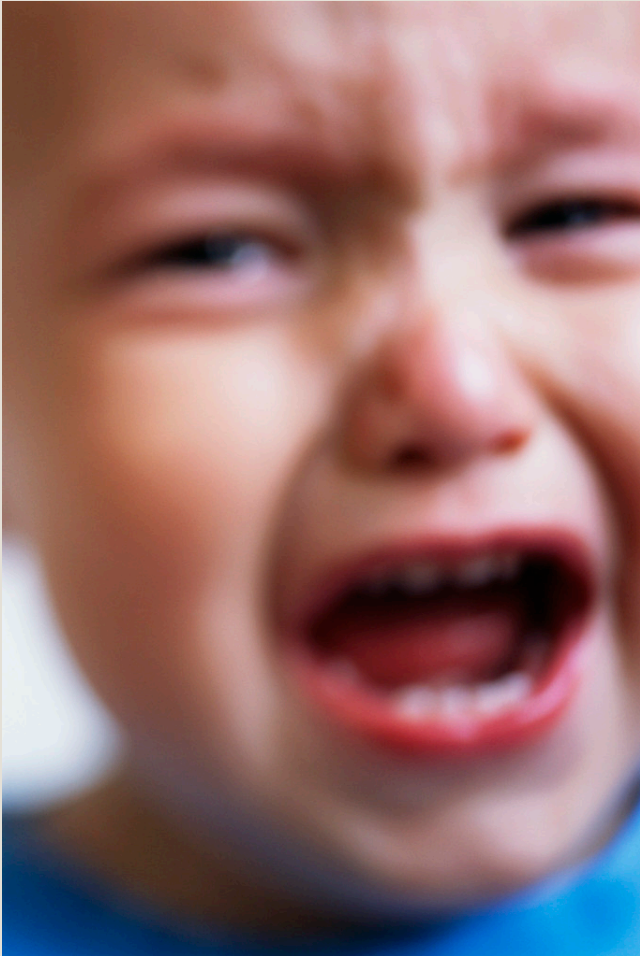


# Temporary Guardian



- A Temporary Guardian may be appointed if necessary if immediate need exists and appointment would be in the best interest of the minor.
- Notice must be given to the parents and minor (if 12).
- Within 5 days after the appointment, the Order of Appointment must be given to all interested persons.
- Temporary Guardianship may last no longer than 6 months.

# Emergency Guardian



- If the court finds that following the procedures regarding notice, etc. will likely result in substantial harm to a minor's health or safety and no other person appears to have authority to act in the circumstances.
- No more than 60 days.
- Notice must be given within 48 hours to all interested persons .
- Hearing on the appropriateness of the appointment should be held within 5 days.

# Appointment as Conservator – Minor

Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order in relation to the estate and affairs of a minor, if the court determines that:

- The minor owns money or property requiring management or protection that cannot otherwise be provided
- The minor has or may have business affairs that may be put at risk or prevented because of the minor's age
- The minor needs money for support and education and protection is necessary or desirable to obtain or provide money

The court must find that the appointment of a conservator or other protective order is in the best interest of the minor.

# Special Conservator

- The court may appoint a Special Conservator to assist in the accomplishment of any protective arrangement or single transaction.
- Special Conservator: while a petition to establish a conservatorship is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent.
- A Special Conservatorship expires at the court's direction, usually right after the transaction has been completed.

# Who Can Petition the Court?

- Guardianship for Minor: the minor or a person interested in the welfare of a minor.
- Conservatorship for Minor: the minor; an individual interested in the estate, affairs, or welfare of the minor including a parent, guardian, or custodian; or a person who would be adversely affected by lack of effective management of the property and business affairs of the person to be protected.

# Venue - §15-14-108

## Where to File Your Case

### **Guardianship:**

Minor - in the county in which the minor resides or is present at the time the proceeding is commenced.

### **Conservatorship:**

Adult and Minor – in the county in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in Colorado, in any county of this state in which property of the respondent is located.

# What Happens After the Petition is Filed?

There is no statutory authority to appoint a Court Visitor in a guardianship or conservatorship action for minors.

However, the court may appoint an attorney for the minor, as well as appoint a guardian ad litem to represent the minor's best interests.

# GAL and Court Appointed Attorney

What are the differences between a Guardian ad Litem (GAL) and a court appointed attorney?

*A court appointed attorney advocates on behalf of the party for whom he or she was appointed (i.e. attorney to represent the respondent).*

*A GAL is appointed to identify and advocate on behalf of interests that would otherwise be inadequately represented. A GAL is appointed to represent the best interests of a respondent (i.e. attorney to represent the best interests of the respondent).*



# Setting the Matter for Hearing

Notice must be given in compliance with Colorado Rules of Probate Procedure at least fourteen days prior to the hearing.

A person may waive notice, however, the respondent, ward or protected person may not waive notice.

## Notice of Hearing to Respondent (JDF 807)

If the minor is 12 years of age or older, she/he must be personally served a copy of the petition and notice of hearing.

## Notice of Hearing to Interested Persons (JDF 806)

All other interested parties must be given a copy of the petition and notice of hearing.

## Who are the interested persons?

Anyone listed in the Petition. Usually the parents, anyone who provided care or had physical custody of the minor for the previous 60 days, any person nominated by the minor (if 12 years of age or older), any current guardian and/or conservator for the minor.

# The Life of a Protective Proceeding



# Life of a Protective Proceeding

- Petitioner files a case.
- Hearing is scheduled. Notice of hearing must be served on the respondent. Notice of hearing will be provided to all interested parties.
- Hearing is held for appointment of guardian and/or conservator, sometimes referred to as the “Fiduciary”.
- Once appointment is made, the guardian and/or conservator will be required to file an Acknowledgement of Responsibilities (JDF 800). This must be done before Letters of Appointment will be issued.
- Upon the appointment of a guardian and/or a conservator, the case will then be monitored by the court until the case is terminated.

# Life of a Protective Proceeding

- A court monitors a case by requiring the guardian and/or conservator to file annual reports with the court. The conservator is also required to file an initial report. This is required by state law. Although the law does not require the guardian to file an initial report, the court may order the guardian to do so. It is recommended that you review these reports as soon as possible. This will help ensure you are aware of the required information needed to complete the reports.
- A Guardian's Manual is available on-line as a guide.

# Life of a Protective Proceeding

- For conservatorship cases, a conservator will explain how they spent and collected the financial affairs of the protected person. *You need to be aware your case may be considered for audit.*
- A conservator should establish a bookkeeping system that records all deposits and expenses paid on behalf of the protected party.
- A Conservator's Manual is available on-line as a guide.
- The above manuals as well as list of resources can be found on the Colorado Judicial Branch website.

# HELPFUL TIPS

Be sure to thoroughly read the instructions that apply to the type of case you will be filing with the court.

Guardianship and/or conservatorship for a minor.

For details regarding personal service, also known as process of service, and quick guide flow charts for guardianship and conservatorship, please refer to the Colorado Judicial Branch website at

[www.courts.state.co.us](http://www.courts.state.co.us).

# HELPFUL TIPS

Should you have any questions after reading the instructions and becoming familiar with the court forms and processes, be sure to contact the court in the county in which you plan on filing the petition. All court phone numbers and locations are also located on the Colorado Judicial Branch website.

# Conclusion

Should you choose to represent yourself, you are subject to the same rules and procedures as an attorney. Therefore, should you need help you should seek the legal advice of an attorney.