
Guidepost for the Aging Network

Tips for those who provide care to the elderly

Catching the Crooked Conservator

Media reports abound with stories of financial abuse of conservators. What can be done about it?

Duties of a Conservator

A conservator gathers, invests and applies funds of the Protected Person. The Protected Person is the beneficiary. The conservator only holds legal title subject to these duties. If a conservator violates his or her duty by taking assets of the Protected Person for their own benefit, then the conservator has stolen the assets. The conservator may be ordered to pay the funds back (surcharged) or be held in contempt for not doing so.

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The Role of the Courts

The Honorable Jean Stewart reported at a CBA estate planning retreat in June that State Courts have a duty to monitor conservatorships. Unfortunately, since the Courts do not have the funding needed to do the job, the Courts will not be able to provide fully this "watch dog" function unless they can hire the personnel to do so. Funding for this purpose is still not in sight.

Bonds and Restricted Accounts

The Court can require a bond to be posted. A bond is a financial guarantee that funds stolen by a Conservator will be paid back to replace the stolen assets. The cost of the bond is paid from the estate.

Bond may be avoided by restricting assets from being sold, pledged or distributed without a Court order. Placing such a restriction on the sale of a home is a "standard operating procedure" in most conservatorships.

Credit Bureau and Criminal Records Checks

Since January 1, 2001, the law requires a petitioner to provide a credit bureau report and a report from the Colorado Bureau of Investigation. Any bankruptcy proceedings would be revealed in the report.

Under oath, the petitioner discloses (1) the entry of a felony or misdemeanor against the petitioner, (2) civil protective or restraining orders issued against the petitioner, (3) civil judgments entered against the petitioner and (4) cases in which the petitioner has been relieved ("fired") from court-appointed responsibilities.

The law does not require automatic disqualification of the petitioner if any derogatory history exists. The Court keeps its discretion to determine if the person is fit for office. Recently, a remorseful client told us about some old domestic violence incidents that occurred ten years ago. The Court took into account that he had not had any further incidents and found him fit to act as conservator.

Previously, no systematic inquiry was made into the background of the petitioner. In contested cases these issues would be brought forth. In uncontested cases, however, an untrustworthy individual could have been appointed.

Conclusion

Several legal steps can be taken to prevent the loss of estate funds. While the Courts are required to monitor conservatorships by following up on delinquent accountings and their accuracy, without funding the Court's role is illusory. Posting of bond could be used more frequently as well as restrictions on the use of funds. Finally, the requirement of providing a credit report and criminal records check helps to weed out the most unscrupulous applicants.

In an upcoming newsletter I will discuss a new law, effective July 1, that provides additional tools for preventing misuse of funds by a conservator, a trustee, etc.
