

Unlicensed Fiduciary Training



This program was developed under grant number SJI-11-E-008 from the State Justice Institute. The points of view expressed are those of the faculty and do not necessarily represent the official position or policies of the State Justice Institute

Welcome to Probate Fiduciary Training



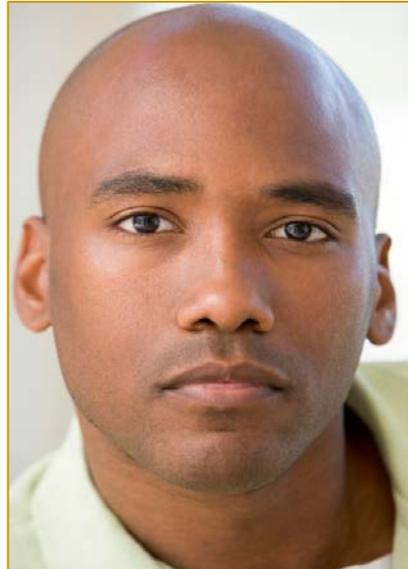
After viewing this program you will be able to :

- Recall the qualifying requirements
- Discuss the differences among the 3 roles
- List the basic responsibilities for each role
- Describe the order of priority for assigning each role

Unlicensed Fiduciary Roles



GUARDIAN



CONSERVATOR



**PERSONAL
REPRESENTATIVE**

As an unlicensed fiduciary you may be appointed in one of 3 roles: Guardian, Conservator or Personal Representative. These roles have similarities, but also distinct differences. This overview is designed to help you determine the responsibilities associated with your appointed role.

Guardianship

What is a Guardian?



GUARDIAN



WARD

A guardian is responsible for making personal decisions for an individual deemed incapacitated by the Superior Court, typically referred to as the “ward.” The guardian of a ward has the same rights and responsibilities as a parent does to an un-emancipated minor, except that the guardian does not have any liability to a third party. In other words, a guardian is not responsible for the debts or actions of their ward that a parent is for their child.

General Responsibilities



GUARDIAN

All medical and personal decisions

- Medical treatment
- Where the ward lives
- Education and training



WARD

The guardian is responsible for making all medical and personal decisions on behalf of the ward. For example, the guardian must consent to medical treatment, determine where the ward will live while maintaining their current standard of living, and ensure that they are receiving the education and training that they would be entitled to and which may increase their quality of life.

Qualify for Appointment



- **Never convicted of a felony**
- **Never removed as a guardian for a wrongdoing**
- **Understands responsibilities of being a guardian**

GUARDIAN

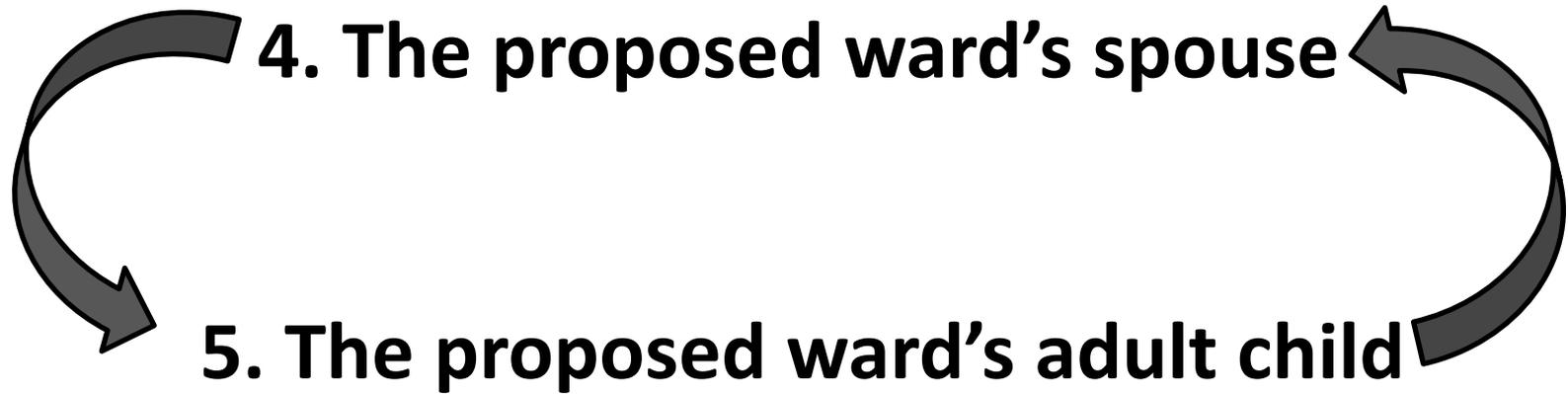
A person must first qualify in order to be considered for appointment as someone's guardian. They must attest (or swear) that they have never been convicted of a felony, never been removed as a guardian for wrongdoing, and that they understand the responsibilities of being a guardian.

Priority for Appointment

- 1. Someone currently acting as guardian or conservator**
- 2. An individual nominated by the proposed ward if the court determines the individual has the ability to state who they want to be their guardian.**
- 3. The person nominated in the proposed ward's durable or healthcare power of attorney**
- 4. The proposed ward's spouse**
- 5. The proposed ward's adult child**
- 6. The proposed ward's parent (including an individual who is nominated in the Last Will and Testament of the deceased parent)**
- 7. Any relative who the proposed ward has lived with for at least 6 months prior to appointment**
- 8. The nominee of a person who is caring for or paying benefits to the proposed ward**
- 9. If the proposed ward is a veteran or the spouse of a veteran, the Department of Veterans Affairs**
- 10. A fiduciary who is licensed by the Arizona Supreme Court who is NOT the public fiduciary**
- 11. The public fiduciary**

In addition to determining if an individual is “qualified” to act as a fiduciary, the court may also assign priority to individuals based on a certain set of criteria.

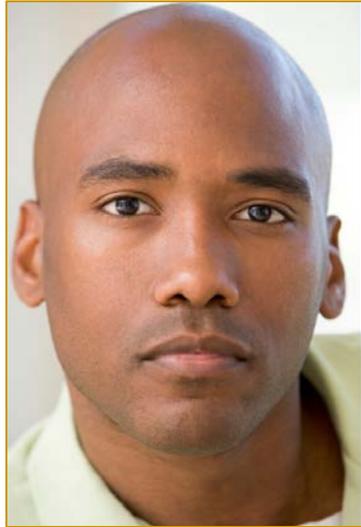
Priority for Appointment



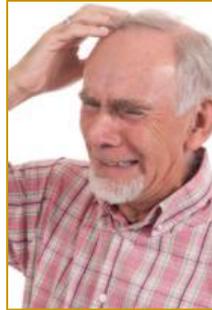
The court has the ability to pass over an individual who has a higher priority if the court believes there is a valid reason to do so. For example, if the court determines that the durable or healthcare power of attorney presented by the proposed ward's spouse is not a valid document, the proposed ward did not have the legal capacity to execute the document, or the spouse used undue influence to get the proposed ward to sign the document, the court may instead appoint the proposed ward's adult child.

Conservatorship

What is a Conservator?



CONSERVATOR



WARD

**Determined to be
incapacitated by
the Superior Court**

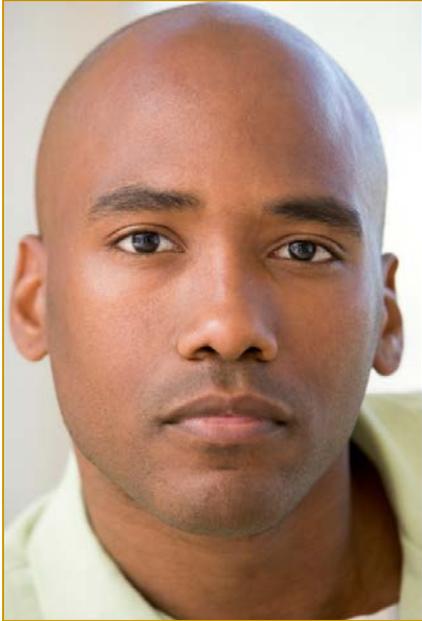


**PROTECTED
PERSON**

**Not incapacitated
but needs assistance**

A conservator is an individual who is responsible for managing the assets – for example, money, brokerage accounts, homes, or businesses - of a “ward” or “protected person.” A ward is an individual who has been determined to be incapacitated by the superior court. A protected person is someone who has not had a guardian appointed and has not been declared incapacitated by the superior court but the court has determined that they need assistance in managing their assets. The court determines that someone needs protection if they have assets that may be wasted or lost because they cannot protect the assets themselves due to a number of reasons including mental illness, mental deficiency or chronic intoxication.

Priority for Appointment



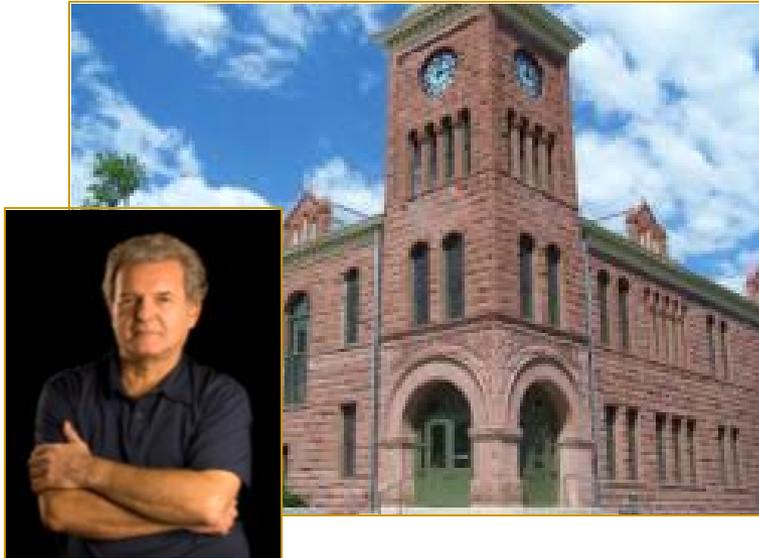
- **Never convicted of a felony**
- **Never removed as a conservator for a wrongdoing**
- **Understands responsibilities of being a conservator**

CONSERVATOR

Just as when being appointed a guardian, an individual who wants to be appointed as conservator must first show the court that they are qualified. They must prove they have never been convicted of a felony, never been removed as conservator due to wrongdoing, and understand the role of a conservator. Once the court has determined that an individual is qualified, the court may also assign priority to the individual based on given criteria.

Priority for Appointment

- 1. A conservator who has been appointed in ANOTHER jurisdiction where the protected person resides.**

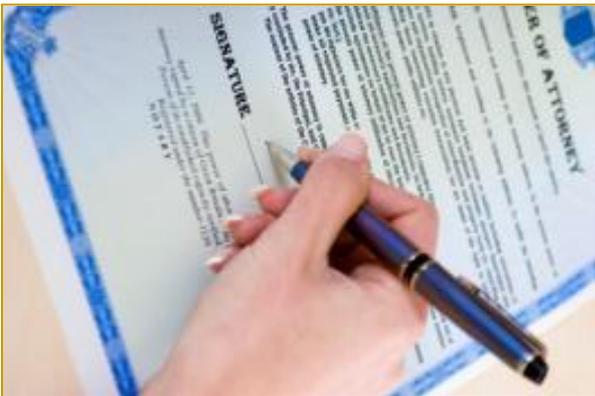


A first level priority may be assigned to a conservator who has been appointed in ANOTHER jurisdiction where the protected person resides. This is different than the guardianship priority statute as it distinguishes between someone who has already been appointed in any jurisdiction, including the one where the petition may currently be pending, and one appointed in another jurisdiction, such as another county or state.

Priority for Appointment



2. Nominated by protected person



3. Nominated in protected person's power of attorney

A second level priority is assigned to someone nominated by the proposed person in need of protection if the court determines that the individual has the mental capacity to make the nomination. A third level priority is an individual nominated in the proposed protected person's durable power of attorney.

Priority for Appointment

4. The proposed protected person's spouse
5. The proposed protected person's adult child
6. The parent of the proposed protected person or an individual nominated in the Last Will and Testament of the deceased parent
7. Any relative who the proposed protected person has lived with for the six months prior to the petition.
8. Someone nominated by an individual proving care to or paying benefits for the proposed protected person.
9. If the proposed protected person is a veteran or the spouse of a veteran, than the Department of Veterans Affairs
10. A fiduciary who is licensed by the Arizona Supreme Court who is **NOT** the public fiduciary
11. The public fiduciary

Additional levels of priority are assigned based on a certain set of criteria. However, as in a guardianship proceeding, the court has the ability to pass over an individual who has a higher priority if the court believes there is a valid reason to do so.

General Responsibilities



- **Manage assets of protected person**
- **Ensure money and assets are used only for benefit of protected person**
- **Invested properly and appropriately**

The conservator has the responsibility to manage the assets of the protected person as a prudent man would. In other words, the conservator must ensure that the money and assets of the protected person are used only for the benefit of the protected person. The conservator must ensure that the assets of the protected person are invested properly and appropriately to maintain the protected person's current living circumstances.

Endorsement



- **Same authority as personal representative**
- **Must wait 40 days from date of death to petition court**
- **Individuals with an interest in estate may nominate another individual they believe is more appropriate**

Finally, an individual who has been appointed as the conservator may petition the court to allow their letters of conservatorship to be “endorsed.” This means that the court grants the same authority to the conservator that a personal representative has and that they may administer the estate of the decedent in accordance with the Last Will and Testament of the decedent, or by the laws of the State of Arizona. A conservator must wait 40 days from the date of death of the decedent before they apply to have their letters of conservatorship endorsed. There are a number of provisions to allow individuals with an interest in the estate to nominate an individual they believe is more appropriate to act.

Personal Representative

What is a Personal Representative?



**PERSONAL
REPRESENTATIVE**



DECEDENT

A personal representative (also known as an executor or administrator in other states) is a person responsible for handling the assets of a deceased, the decedent, individual.

Priority for Appointment

- 1. The person nominated in the Last Will and Testament**
- 2. The surviving spouse who is also a devisee (Devisee is a person named in the Will to receive property of the decedent)**
- 3. Other devisees of the Will**
- 4. The surviving spouse**
- 5. Other heirs of the decedent (An heir is someone who is authorized to receive the property of a decedent by law such as children, grandchildren, siblings, etc. Just because someone is an “heir at law” does not mean they are the devisee of a Will.)**
- 6. If the decedent was a veteran or the spouse of a veteran, the Department of Veteran’s Affairs**
- 7. Any creditor if a probate has not been initiated 45 days after the death of the decedent**
- 8. The public fiduciary**

The court may assign priority to the individual appointed as personal representative based on a certain set of criteria.

Testate v. Intestate

Testate



Personal representative administers estate assets in accordance with Last Will and Testament

Intestate



“Intestate Succession”

Outlines who receives the property of the decedent

Testate administration means the decedent left a valid Last Will and Testament and the personal representative shall administer the assets of the estate in accordance with the provisions of the Last Will and Testament. An intestate estate is one in which an individual dies without leaving a valid Last Will and Testament and their assets pass according to what is referred to as “intestate succession.” This is a provision in the law that outlines who is to receive the property of the decedent; typically, the spouse, children, grandchildren, parents, siblings, nieces/nephews, cousins, or other relatives.

General Responsibilities



PERSONAL REPRESENTATIVE

- **Distributing property of decedent**
 - Last Will and Testament
 - Laws of the State of Arizona if no Will
- **Protect property of decedent for benefit of beneficiaries**

The personal representative is responsible for distributing the property of the decedent based on either the terms of the Last Will and Testament or the laws of the State of Arizona if the decedent died without a Will. The personal representative must protect the property of the decedent for the benefit of the beneficiaries.

Thank you



Thank you for viewing this training video. The welfare of the ward and/or protected person is of utmost importance to the court.

For more information about Probate please visit the Judicial Branch website devoted to Probate at www.azcourts.gov/probate

Certificate of Completion

By virtue of accessing this on-line program and printing and submitting this certificate for the training module

Unlicensed Fiduciary Overview

The user attests to viewing the program in its entirety.

Printed Name

Date

Signature



Arizona State Supreme Court