

Upcoming changes to Arizona guardianship/conservatorship laws

In Arizona there is legislation effective January 1, 2012 that significantly revamps the state's guardianship/conservatorship process. A guardian is a person appointed by the court who is given care and control over another person's medical and personal affairs due to that person's incapacity. A conservator is a person appointed by the court who is given care and control over another person's finances due to their inability to manage their finances or their susceptibility to exploitation. Often the persons appointed to these fiduciary roles are family members; however, where a family member is not available, not appropriate, the finances are complicated, or the family cannot agree on whom should be appointed, licensed fiduciaries perform this service. Often a guardianship and conservatorship are sought in the same proceeding, and both involve ongoing court supervision.

Changes foreseen for guardianships/conservatorships in Arizona in 2012 include: (1) new detailed annual accounting requirements; (2) creation of an annual budget and where any significant variances occur (other than medical) prior court approval for the expense may be required; (3) mandatory training of fiduciaries; (4) mandatory recording of a fiduciary's Letters of Authority; (5) submission of good faith estimates for anticipated fiduciary and legal expenses and/or cost-benefit analyses presented to the court before pursuing legal claims the protected person may have.

These changes were made to address potential abuse of the legal process and to encourage increased court scrutiny and oversight of protected persons' finances. A living trust, however, can be used to avoid the cost of a court-supervised conservatorship while providing similar protection. A trust is an arrangement under which one person, called a trustee, holds legal title to property for another person, called a beneficiary. You can be the trustee of your own living trust, keeping full control over all property held in trust. A living trust is formed while you have mental capacity, so it is a reflection of your wishes, not the wishes of a third party. A living trust generally ensures the privacy many people seek in their personal and financial affairs. It is also an excellent mechanism for holding real estate in more than one state.