

# Guardianship/Conservatorship Financial Responsibilities

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A Guardian is responsible for the everyday oversight of a Ward's finances. The Guardian has specific financial responsibility under the law. This NebGuide, fifth in a series of seven, discusses legal Guardianship.

## Guardianship Financial Responsibilities

Guardianship includes some financial responsibilities (which are conservatorship responsibilities) on behalf of the Ward. In cases in which the Ward has a large estate or trust, the Court may appoint a conservator to oversee and have sole responsibility for these funds. However, in many cases the everyday oversight of the Ward's funds will be the Guardian's responsibility. The Guardian is not mandated or expected to use his or her own funds for the Ward but the Guardian is mandated to use the Ward's funds for the Ward's support. State law assigns some specific financial responsibilities to the Guardian. There also are some best practices that a Guardian should use to ensure that the Ward's monies are being appropriately handled.

## Legal Requirements

- Apply for private or governmental benefits to which the Ward may be entitled.

- Enter into contract agreements for the Ward, if the Ward does not have a conservator.
- Receive money/tangible property delivered to the Ward and apply the money to the Ward's expenses, if no conservator has been appointed.
- File a report with the court annually or at the court's request. This report should include a discussion of the Ward's condition and his/her estate.
- Bring actions against any individual whose duty is to support the Ward, if the Ward does not have a conservator.
- Submit an application to the Court for approval before collecting fees for Guardian services. If the Ward has a conservator, the law gives the conservator the authority to pay the Guardian reasonable sums for services without court approval.
- Obtain court approval prior to using the Ward's funds for room and board provided by the Guardian's spouse, parent or child.

## Best Practices

- The Guardian should avoid even the appearance of a conflict of interest or impropriety when dealing with the Ward's needs. Impropriety or conflict of interest arises where the Guardian has some personal or agency

interest that might be perceived as self-serving or adverse to the Ward's position or best interest. An example might be a Guardian purchasing a Ward's real or personal property.

- The Guardian must not commingle personal funds with the Ward's funds.
- Based on the Ward's abilities, the Guardian should allow the Ward access to and management of funds for personal needs.
- All accounting of the Ward's funds should contain sufficient information to clearly define all significant transactions during the accounting period. Such reports should be complete, accurate and understandable.
- The Guardian must not borrow funds from the Ward.
- The Guardian should not encourage the Ward to make gifts or bequests that will benefit the Guardian, the Guardian's family or any entity in which the Guardian has an interest.
- The history and traditions of the Ward regarding gift giving should serve as the guide for the Guardian when determining gifts from the Ward.
- If a Guardian is requesting a fee for his/her services, the following factors should be considered in determining the reasonableness of the request:
  - Necessity of the service
  - Time and labor required
  - Degree of difficulty
  - Skill and experience required to carry out the duty
  - Needs of the Ward
  - Fees or expenses charged by the Guardian should be documented through billings maintained by the Guardian. They should include:
    - Time spent on a task
    - Duty performed
    - Expense incurred

- Collateral contacts involved
- The Guardian should only charge for the work directly related to the management of a specific Ward.

In some cases the Ward may receive monetary benefits (SSI, SSDI, Railroad Retirement, Trusts, etc.) that require a representative payee or fiduciary. The Guardian may be named the representative payee or fiduciary in these situations. The Guardian can request that someone else be the payee for the funds but the Guardian retains the responsibility for oversight of these funds to ensure they are being used on behalf of the Ward. However, all of these payers have regulations on receiving, handling and reporting these funds. If the Guardian is the representative payee or fiduciary for any of these funding sources, he/she will need to contact the payer for specific instructions.

If additional guidance is needed to make a financial decision, the Guardian should consult with a professional with expertise in this area.

## References

- National Guardianship Association. (1998). *A Model Code of Ethics for Guardians*. Tucson, AZ: NGA.
- National Guardianship Association. (2003). *Standards of Practice*. Tucson, AZ: NGA.
- Nebraska Department of Health and Human Services, Division of Aging and Disability Services. *Surrogate Decision Making in Nebraska*. Lincoln, NE: NHHS.
- Nebraska Revised Statutes, Article 26, Section 30-26012661.

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