

Guardianship and Conservatorship Program Rules Regulations

409 Financial Management

409.1 A guardian or conservator may only exercise authority over the property and finances of an individual as allowed by statute or ordered by the court.

409.12 The guardian and conservator shall assure competent management of the property, ~~and income-~~ finances and estate of the ~~estate~~individual. In the discharge of this duty, the guardian and conservator shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence and avoid any self-interest. The management of the estate, property and finances shall be documented by means of accurate and complete records of all transactions.

409.12.1 The guardian and conservator shall meet with the ~~incapacitated person~~ individual and gather information from family, friends and other collateral sources, as soon as practicable after appointment, to determine the current wishes of the ~~incapacitated person-~~ individual and to obtain historical information about the ~~incapacitated person's-~~ individual's prior management of financial affairs.

409.12.2 The guardian and conservator shall, subject to court direction, allow the ~~incapacitated person-~~ individual to manage funds to his or her ability when appropriate.

409.2.3 A conservator that has special skills or expertise, or is named conservator in reliance on the conservator's representation of special skills or expertise, has a duty to use the special skills or expertise in carrying out the duties as conservator.

RCW 11.130.505 (8)

409.23 The guardian and conservator shall know and obey the law related to managing an individual's ~~incapacitated person's~~ estate, property and finances. Such knowledge shall include statutes relating to the investment of assets, restrictions imposed on investing and expenditures by RCW ~~11.88 and 11.92~~ 11.130, and laws relating to employment, income, and taxes. The guardian and conservator shall hire competent professionals as appropriate and financially feasible to assure compliance with all statutes and regulations relating to the management of funds.

409.4 A guardian shall conserve any funds and other property of the individual not expended for the individual's current needs for support, care, education, health and welfare for the individual's future needs, but if any conservator has been appointed for the individual, pay the funds and other property at least quarterly to the conservator to be conserved for the individual's future needs.

RCW 11.130.325 (3) (b) (c)

409.3-6 The guardian and conservator shall maintain all bonding, blocking, and insurance requirements as may be required by the court.

409.47 The guardian and conservator shall manage the estate, property and finances of the individual with the primary goal of providing for the needs of the ~~incapacitated person~~ individual.

409.58- In certain cases, the guardian or conservator shall consider the needs of the ~~incapacitated person's individual's~~ dependents for support, ~~or maintenance, care, education, health, or welfare.~~ provided appropriate authority for such support is obtained in advance. The wishes of the ~~incapacitated person individual~~ as well as past behavior can be considered, bearing in mind both foreseeable financial requirements of the ~~incapacitated person individual~~ and the advantages and disadvantages to the ~~incapacitated person individual~~ of such support or maintenance.

409.6-9 When the available estate, property and finances of the ~~incapacitated person individual are~~ sufficient, the guardian and conservator may petition the court for authority to make such gifts as are consistent with the wishes or past behavior of the ~~incapacitated person individual~~, bearing in mind both foreseeable requirements of the ~~incapacitated person individual~~ and the advantages and disadvantages to the ~~incapacitated person individual~~ of such gifts, including tax consequences. If appropriate with decision making standards, the conservator may petition the court to structure the finances of the individual to establish eligibility for a public benefit including by making gifts consistent with the individual's preferences, values, and prior directions, if the conservator's action does not jeopardize the individual's welfare and otherwise is consistent with the conservator's duties.

RCW 11.130.435 (o)

409.710-~~The guardian and conservator shall~~ should apply for all public and insurance benefits for which the ~~incapacitated person~~ individual is eligible, taking into account the net benefit to the individual's finances and estate and taking into account the preferences of the individual. When implementing necessary changes in the ~~incapacity person's~~ individual's lifestyle, the guardian and conservator shall seek to minimize the stress of any transition.

409.8-11 Except when inconsistent with the conservator's duties under RCW 11.130.505 (1) through (4) addressing fiduciary duties, self-determination and the individual's retained decision making, the substituted judgment standard, and the best interest standard, a conservator shall invest and manage the conservatorship estate as a prudent investor. ~~The guardian- conservator shall exercise prudence in investment,~~ shall periodically review the ~~incapacitated person's~~ individual's situation and assets, and make recommendations regarding appropriate investments. ~~In the exercise of prudence~~ ¶The guardian- conservator shall invest and manage the conservatorship estate as a prudent investor by considering:

~~409.8.1 Not allow assets to sit idle except for good reasons.~~

~~409.8.2 Consider the tax consequences of decisions.~~

~~409.8.3 Consider the incapacitated person's long term ability to sustain costs of arrangements made by the guardian.~~

~~409.8.4 Consider the incapacitated person's ability to gain the benefits of specific decisions.~~

~~409.8.5 Consider the costs incurred in managing investments, including the costs of the guardian, those specialists hired by the guardian, and the costs of the investment vehicles.~~

~~409.8.6 Consider the incapacitated person's historical investment pattern and tolerance for risk, lifestyle needs, care and medical needs, estate considerations, tax consequences, and life expectancy.~~

409.11.1 The circumstances of the individual subject to conservatorship and the conservatorship estate;

409.11.2 General economic conditions;

409.11.3 The possible effect of inflation or deflation;

409.11.4 The expected tax consequences of an investment decision or strategy;

409.11.5 The role of each investment or course of action in relation to the conservatorship estate as a whole;

409.11.6 The expected total return from income and appreciation of capital;

409.11.7 The need for liquidity, regularity of income, and preservation or appreciation of capital; and

409.11.8 The special relationship or value, if any, of specific property to the individual.

RCW 11.130.505 (5)

409.13 A conservator shall make a reasonable effort to verify facts relevant to the investment and management of the conservatorship estate.

RCW 11.130.505 (7)

409.14 In investing, selecting specific property for distribution, and invoking a power of revocation or withdrawal for the use or benefit of the individual, a conservator shall consider any estate plan of the individual known or reasonably ascertainable to the conservator.

RCW 11.130.505 (9)

409.15 A conservator shall keep records of the administration of the conservatorship estate and make them available for examination on reasonable request of the individual subject to conservatorship, a guardian for the individual, or any other person the conservator or the court determines.

RCW 11.130.515 (3)

409.~~9~~16 A guardian and conservator shall not commingle the funds of an ~~incapacitated person~~individual with funds of the guardian and conservator or the funds of staff. A guardian and conservator may consolidate client accounts, using appropriate accounting software and procedures, including pro-rata assignment of interest earned and fees paid and accurate individual accounting for each client's funds, provided the guardian and conservator has received specific authority from the court to do so. Each payment from a consolidated account shall be from funds held in the account on behalf of the individual for whom the payment is made.

409.~~10-17~~ The guardian and conservator shall not borrow from an ~~incapacitated person~~ individual. A guardian- and conservator shall not lend funds at interest to an ~~incapacitated person~~ individual.

409.~~11-18~~ The responsibility to protect and preserve the ~~guardianship~~ estate, property and finances of an individual rests with the guardian and/or conservator appointed by the court and in accordance with the authority granted by the court to the guardian or conservator respectively. When the guardian or conservator is an agency, this responsibility is that of the agency and the guardian and/or conservators identified with the Certified Professional Guardianship and Conservatorship Board as the responsible guardian and/or conservators for the agency. While it may be appropriate and necessary to retain and reasonably rely upon the services of knowledgeable individuals or entities to assist in the performance of duties, it is the responsibility of the guardian and/or conservator to provide appropriate oversight and review, in order to ~~preserve the guardianship estate~~ discharge the guardian and/or conservator's duties.

409.~~12-19~~ At the death of the ~~incapacitated person~~individual, the ~~guardian- conservator~~ shall comply with RCW ~~11.88.150~~ 11.130.550 and RCW 11.130.570.

RCW 11.130.550

RCW 11.130.570

409.~~13-20~~ The ~~guardian conservator~~ shall obtain if necessary and insurance coverage, as appropriate and feasible, for guardianship property maintain insurance on the insurable real and personal property of the individual, unless the conservatorship estate lacks sufficient funds to pay for insurance or the court finds: (a) The property lacks sufficient equity; or (b) Insuring the property would unreasonably dissipate the conservatorship estate or otherwise not be in the best interest of the individual. A guardian shall obtain and maintain insurance only to the extent the guardian has been granted authority over property of the individual, there are sufficient funds and it's in the best interests of the individual.

RCW 11.130.505 (10)