THE LEGAL TOOLS TO DEAL WITH INCAPACITY

Wesley D. Fitzwater
Fitzwater Meyer, LLP
Attorney at Law[1]

The National Institute on Aging reports finds that the "prevalence of cognitive impairment is significant" in older Americans, especially with advancing age. Symptoms of memory loss, language disturbance, decline in judgment and reasoning, and personality change increase with age. A national study has determined that ***38 percent*** *(up to 45% in some racial groups) of people age* ***85 and older*** *had some degree of cognitive impairment short of dementia.*[2]

There is a 65% chance that each of us will experience some period of incapacity during our lifetime and a 10% chance of suffering a period of incapacity lasting longer than one year.

A. DEFINING LEGAL CAPACITY

When is a spouse, parent, or loved one no longer able to make decisions for himself or herself?

Legally, the issue is one of **capacity**. Oregon law defines "incapacitated" as:

> "*a condition in which a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirement for the person's physical health or safety or to manage that person's financial resources.*"
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> "*Manage financial resources*," means "*those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.*"

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[1] Fitzwater Meyer LLP is one of Oregon's largest Estate Planning and Elder Law firms, emphasizing estate and tax planning, protective proceedings including guardianship and conservatorship, probate, elder abuse and long term care planning. For more information about these legal topics and specific articles of interest visit the firm's website at www.fitzwatermeyer.com. Wes Fitzwater can be contacted at **503-786-8191** or wfitzwater@fitzwatermeyer.com.

[2] http://www.nia.nih.gov/NewsAndEvents/PressReleases/PR20011112Cognitive.htm

"Incapacitated" persons who are unable to make decisions about their health and safety may require a court-appointed guardian. An inability to manage financial resources may require the appointment of a conservator. In both instances, the rights and the decision-making abilities of the person are substantially reduced.

B. ARE THEY REALLY INCAPACITATED?

A person does not necessarily lack capacity just because he or she is making bad decisions. We all have the right to make bad decisions. One U.S. Supreme Court Justice called it the "*right to folly*." The legal issue, therefore, is not whether a person has made the wrong decision, but the capacity of the person making the decision.

For example, bouncing a few checks is not necessarily evidence of incapacity. On the other hand, overdrafts for the past few months, together with an increased history of unpaid bills, misplaced funds, unexplained gifts, a susceptibility to influence, and related problems may be evidence of an "*inability to manage financial resources*."

Whether a person has the capacity to perform a particular act is examined as of the time of the act. Even if several signs point to mental incompetence, it is possible for a person to have "*lucid intervals*" during which he or she has the required capacity to enter into a contract or sign a Will or Trust.

Unfortunately, many people believe that a medical diagnosis of dementia (such as Alzheimer's Disease) is the same thing as a *legal* finding of incapacity. This is not true. Until a court legally determines that the individual is incapacitated, that person retains the right to make his or her own decisions, including the right to refuse assistance, placement, and medical treatment.

C. WHAT LEGAL TOOLS ARE AVAILABLE?

"The ounce of prevention and the pound of cure"

The legal tools available to deal with incapacity can be simply divided as "planning tools" and "crisis tools."

Planning tools are established by a client when he or she is competent and capable of appointing a **surrogate** or **substitute decision-maker** to assist the client when, and if, the time comes. Having incapacity planning tools in place often saves both time and significant expense – truly the "*ounce of prevention*."

Crisis tools are those legal methods available to make decisions for a person how has become incapacitated and, likely, has no planning tools in place. Crisis tools, most often, involve family members hiring attorneys and a Court appointing a substitute decision-maker. As a result, these tools are complex, expensive and take control away from the person – "*the pound of cure*."

D. LEGAL TOOLS FOR HEALTH CARE DECISIONS

1. THE OREGON ADVANCE DIRECTIVE

If a person becomes sick and unable to make health care decisions, someone else may be required to make those decisions. If he or she does not have the appropriate legal tool in place, it may be necessary for a court to appoint another person (a guardian) to make health care and medical decisions.

The Oregon Advance Directive form allows a person to choose someone to make health care and medical decisions when he or she is unable to make those decisions. A spouse, partner, family member, or friend (called "health care representative") can be designated to act legally to make health care decisions. This document has no effect until the person signing the Advance Directive is incapable of making health care decisions.

The health care representative will be authorized to make most necessary health care decisions. This can include the authority to withdraw life support procedures, such as respirators or artificial nutrition and hydration. The Advance Directive is a statement to the family and the doctor regarding life support. This is an opportunity to direct that if death is imminent because of a terminal disease or injury, a person does or does not want artificial life support procedures used to postpone the natural moment of death.

The Advance Directive replaces the Directive to Physicians and the Health Care Power of Attorney. In 1993, Oregon combined the two different documents into one document, the Advance Directive. The Durable Power of Attorney for Health Care expired automatically after seven years, unless the person was unable to make health care decisions at the end of the seven-year period. Therefore, we strongly recommend that people update their planning by using the Advance Directive form.

The Advance Directive form has two main parts, which correspond to the documents used prior to 1993. Under Part B of the Advance Directive, a health care representative may be appointed to make health care decisions in the event of temporary or permanent incapacity. An alternate health care representative may also be appointed. Health care representative(s) must act in accordance with the desires of the person appointing them, to the extent those desires are known.

Part C of the Advance Directive gives an opportunity to give instructions to the health care representative and physician about tube feeding or life support.

The law governing Advance Directives allows the person signing it to make additional instructions beyond what is set out in the form itself. Some people give specific instructions about matters such as hospice care, pain control, visitors, and home death.

Copies of the Oregon Advance Directive form are available for free download
on our website at http://www.fitzwatermeyer.com/clientresources/4_3.pdf.

2. DECLARATION FOR MENTAL HEALTH TREATMENT

Another document utilized in Oregon is the Declaration for Mental Health Treatment. This document allows someone, in advance, to select a representative to make mental health treatment decisions, and/or to give specific directions regarding future mental health treatment. The Advance Directive does not cover mental health treatment.

3. POLST

The Physicians Order For Life-Sustaining Treatment is an order signed by the doctor at the direction of the ill individual, or his or her health care representative or guardian. The POLST is a tool to *implement* the ill individual's desires regarding life-sustaining measures.

4. GUARDIANSHIP

A guardian is a person named by the court who has the authority and duty to make personal and health care decisions for a minor (under 18 years) or adult incapacitated person (the "protected person"). A guardian may determine where the protected person will reside and what medical care he or she will receive. The court may appoint a guardian either with unlimited authority, or only for specific actions.

A guardian generally does not make financial decisions. The court may appoint a conservator to manage the finances of the protected person.

Common Terms Used In A Guardianship Proceeding. Oregon law divides the functions of a court-appointed surrogate decision-maker into guardianship of a minor or protected person and conservatorship to manage a minor's or protected person's estate. However, it is common for a person to need both a guardian and a conservator.

Guardian: The person appointed by the court to make personal, medical, health care, and placement decisions for a minor (under 18 years) or an adult incapacitated person.

Conservator: (see below) The person appointed by the court to manage the finances of a person who is unable to do so for reasons such as minority, mental illness, physical disability, or chronic intoxication.

Fiduciary: A person appointed by the court to act as a guardian, conservator, temporary guardian, temporary conservator, or a combination or limitation of each.

Professional Fiduciary: A person paid to act as a fiduciary for three or more minors or protected persons at a time, who are not related to the fiduciary.

Respondent: A person for whom a guardianship and/or conservatorship is proposed.

Protected Person: A person (formerly respondent) for whom a guardian and/or conservator has been appointed.

Court Visitor: A neutral, trained individual who is assigned by the court to interview the people involved in the guardianship proceeding and report back to the court.

How Is A Guardian Appointed? The petitioner, usually with the assistance of an attorney, begins the guardianship appointment process by filing a petition with the court. The petition must contain specific facts supporting allegations of incapacity.

A copy of the petition must be personally served on the respondent, together with information about the right to object to the petition, the right to request a hearing, and the right to retain an attorney. The petitioner must also notify the respondent's spouse, parents, adult children, cohabitant, trustee, health care representative, and attorney for the respondent, if any.

If anyone files an objection to the petition, the judge will hold a hearing. At the hearing, the judge will decide whether a legal basis exists for appointing a guardian, and if so, who will serve as guardian. Few objections are actually filed.

If no one files an objection, 15 days after service, the petitioner's attorney can submit an order for the judge to sign, which order appoints a guardian for the respondent (protected person).

What If It Is An Emergency? Oregon law allows the appointment of a temporary guardian in an emergency situation, which is defined as "an immediate and serious danger to life or health or danger to the estate." It requires "clear and convincing" evidence of that emergency, and two days' advance notice of application to the court, except where the emergency necessitates an immediate appointment. The duration of a temporary guardianship is 30 days, with a possible 30-day extension. During this 30-day temporary appointment period, the guardian can petition the court for permanent appointment.

Who Can Or Should Serve As Guardian? The proposed guardian must be "suitable" (not defined in the statute) and "willing to serve," and must inform the court if he or she has filed for bankruptcy or been convicted of a felony or a Class A misdemeanor. The proposed guardian must state whether he/she is currently providing services to the respondent. People who cannot serve are: an incompetent person; a minor; a suspended or disbarred lawyer; a state court judge; or an owner, administrator, or employee of a nursing home, adult foster home, residential care facility, or assisted living facility in which the protected person is living.

In most cases, a spouse, adult child, other relative, or partner is appointed to serve as guardian. If none of the aforementioned are available or are not suitable to serve, the court may look to other options.

A professional fiduciary is also a good choice to serve as guardian. Professional fiduciaries receive referrals from a variety of sources to act as guardians for people who have the funds to pay for their services. Professional fiduciaries can provide the "neutral party" often needed in cases involving difficult family dynamics.

What Are The Duties Of A Guardian?

1. **Take Custody of the Protected Person.** The guardian must control the minor's or protected person's activities, determine where he or she will live, and provide for his or her safety.

2. **Make Health Care Decisions for the Protected Person.** The guardian must always seek to carry out the minor's or protected person's known wishes.

3. **Take Reasonable Care of the Minor's/Protected Person's Personal Effects**. This duty does not apply to the guardian if a conservator has been appointed.

4. **Receive Money and Personal Property for the Minor/Protected Person, and Apply That to His or Her Support, Care, and Education**. This duty lies primarily with the conservator. However, the guardian must inform the conservator about the minor's or protected person's ongoing needs for support, daily care, past debts, current expenses, and current and future medical needs, and keep track of what funds are necessary for these expenses.

5. **Make Advance Funeral and Burial Arrangements and Control Disposition of the Remains of the Minor/Protected Person in the Event of Death.**

6. **Responsibilities to the Court.** Each year, the guardian must file a report detailing the mental and physical condition of the minor or protected person, where he or she resides, what kind of services the minor or protected person receives, etc. The guardian must also give the court advance written notice any time the minor or protected person moves to a new residential care facility or mental health treatment facility.

The Advance Directive Or A Polst Form? The guardian needs to find out if the protected person has an Advance Directive for health care, and/or a POLST form completed by a physician. The guardian should then consult with an attorney regarding how to interpret and follow these documents. In some cases, the health care representative appointed by the Advance Directive may have priority over the guardian for certain health care decisions.

What Are The Costs Involved? Expenses associated with a guardianship include the court's filing fee, fees for serving documents on the proposed minor or protected person, the court visitor's fee, and attorney fees. Other costs sometimes necessary to establish the guardianship include medical evaluations, psychological testing, and/or functional assessments. Often these expenses can be reimbursed from the minor's or protected person's funds after the court appoints a guardian.

Attorney fees must be approved by the court before those fees are paid. The range of attorney fees can vary greatly depending on the case. The attorney for the guardian submits a detailed description of all attorney and staff time to the court. The court reviews the attorney's documents and gives the guardian (or conservator) permission to pay his or her attorney.

D. LEGAL TOOLS FOR FINANCIAL DECISIONS

1. POWER OF ATTORNEY FOR FINANCES

A "Power of Attorney" usually refers to a Durable Power of Attorney for Finances. This is a legal document in which you delegate to another (your "agent" or "attorney-in-fact") the authority to deal with your finances and assets. Usually a Power of Attorney becomes effective when you sign it, although you may indicate that it is not to be used unless you ask your agent to use it, or unless you become incapacitated.

The Power of Attorney document describes the powers you are giving to your agent, and your agent does not have any authority to act on your behalf outside the scope of such powers. Sometimes a Power of Attorney only allows the agent to deal with a specific matter, such as the sale of a particular piece of real estate. This is known as a "Limited Power of Attorney." In contrast, a "General Power of Attorney" gives your agent very broad authority to deal with your assets and finances.

Most standard forms of General Powers of Attorney do not include optional provisions, such as the right to make gifts on your behalf, that in certain appropriate situations might be very useful. For instance, if spouses gave each other a Power of Attorney that included provisions allowing assets to be transferred into just one of the spouse's names, and one spouse becomes ill and needs Medicaid to assist with his or her long-term care expenses, the healthier spouse could use the Power of Attorney to transfer assets into the healthier spouse's name alone. This would help to preserve assets for the healthy spouse, while allowing the ill spouse to more easily plan for Medicaid. Or, if an individual has a taxable estate and has been making annual $11,000 gifts in order to reduce the potential for estate taxes upon his or her death, the individual's agent could continue to make such annual gifts on his or her behalf if such gifting power were specifically granted in the Power of Attorney. In these examples, having appropriate language in your Power of Attorney could potentially save you thousands of dollars. We can help you decide which optional provisions should be included in your Power of Attorney.

In Oregon, a Power of Attorney for Finances is "durable" unless specifically stated otherwise in the document. This means that the Power of Attorney remains valid even if you become incompetent. However, a Power of Attorney is only valid during your lifetime. When you die, the Power of Attorney dies with you.

2. BANK - POWER OF ATTORNEY

Most local banks allow your client to appoint an attorney-in-fact for a bank account or group of accounts at that bank or branch. Contact the bank to obtain their forms for this purpose.

3. BANK - JOINT ACCOUNTS

A bank officer may recommend that your client put an account in joint names or ownership with a family member or friend. This will allow the joint owner to have access to the account should your client become incapacitated.

Joint ownership also makes the account available to the joint owner and his/her creditors. Upon your client's death, the account becomes the sole property of the surviving joint owner (despite the terms of a Will or Trust).

4. REPRESENTATIVE PAYEE

When a person becomes unable to manage his/her resources, several public programs (such as Social Security) provide for a **representative payee** or **fiduciary** to receive benefits on behalf of the beneficiary.

5. REVOCABLE LIVING TRUST

A Revocable Living Trust is an estate planning document that allows your assets to be managed and distributed in the manner you desire, both during your lifetime and upon death. It is referred to as a "living" trust because it is established during lifetime and, in most cases, goes into effect immediately. It is a "revocable" trust because you are free to revoke or amend the trust at any time as your circumstances change.

The Revocable Living Trust is an excellent way to plan for decision-making if you become incapacitated. The trust appoints a decision-maker (successor trustee) to step in when, and if, you are unable to manage your own financial affairs. The trust document can incorporate specific instructions about how funds will be used if you become incapacitated.

How Does A Revocable Living Trust Work While I Am Able To Manage My Finances? A Revocable Living Trust is created during your lifetime, and your assets are placed in the Trust while you are alive. You can name yourself as trustee of the Trust. This means that you can manage your own income and assets much the same as you have always done, and file individual tax returns like before. You can revoke or amend the Trust at any time, and the terms of the Trust are set entirely by you.

If you want help in managing your estate now, even though you still have mental capacity, the trust document allows you to name a trustee or co-trustee to handle the Trust. Further, you have an opportunity to appoint someone to serve as your trustee or co-trustee and then see if he or she handles things responsibly and according to your wishes. If you are dissatisfied with the way your trustee or co-trustee handles your Trust, you can take over as trustee yourself, name a new trustee, modify the powers you have given to the trustee, or revoke the Trust altogether.

What Happens If I Become Incapacitated? In the Revocable Living Trust, you can specify under what circumstances a successor trustee takes over management of the Trust. This is usually when the person who created the Trust becomes incapacitated. You can spell out in the Trust how incapacity must be established. Typically, a determination of incapacity requires one or two letters from a physician. Once incapacity is established, the successor trustee, who has been named by you in the Trust, can take over management of the assets.

A Revocable Living Trust avoids the need for a court order establishing a conservatorship if at some time in the future you become unable to manage your own financial affairs, either temporarily or permanently. While naming an agent in a Power of Attorney for Finances can often accomplish this, Powers of Attorney are not as reliably recognized by financial institutions.

How Do I Know My Trustee Will Pay For My Highest Quality Of Life And Support My Values?
The Revocable Living Trust is flexible and can be tailored to your specific needs, desires, and financial resources. This includes the ability to make provisions for care and comfort. Specific instructions about care and comfort are particularly important when the successor trustee is an institution (bank or trust company), or when a family member is very busy or geographically remote. Examples of personal issues that can be included in your trust document are:

- specifying that you prefer to be cared for at home (even if the cost of such care would be significantly greater than the cost of nursing or other long-term care);
- authorizing the trustee to provide additional services and care monitoring if you become hospitalized or require placement in a long-term care facility; and
- the continuance of contributions to your Church or charitable organizations.

How Does The Revocable Living Trust Work At My Death? Your successor trustee will have the authority to take over management of the Trust and follow your instructions as spelled out in the Trust. Assets that are owned by the Trust will avoid probate entirely, which, in turn, can avoid significant costs and delays at your death. People with real property in more than one state can avoid multiple probates with the use of a Trust.

Another advantage of a Trust is that your financial affairs are kept completely private. A Trust eliminates the need for a court proceeding, and other than tax returns, there is no public record.

Who Should Be My Successor Trustee? Your successor trustee should be someone who is trustworthy, responsible with investments, good with paperwork, and preferably a good communicator. This can be an adult child, other relative, friend, or professional fiduciary.

What Are The Disadvantages Of A Revocable Living Trust? A Revocable Living Trust is not necessary in every case. It typically costs $800 to $1,200 more for a Trust package than a comparable Will package. It may not be necessary to incur this additional cost for people who are younger, healthy, and do not have a large estate. However, some people in these

circumstances still choose a Trust because they want to make things easier for their families in the event of an untimely death.

There is more paperwork involved in finalizing a Revocable Living Trust than a Will because title to most of the assets is transferred into the Trust. Some people find this cumbersome and confusing.

In short, a Revocable Living Trust, while often very helpful and cost-effective, is not always necessary. An experienced attorney can help you decide if it meets your individual needs.

6. CONSERVATORSHIP

A conservator is a person appointed by the court with the authority and duty to manage the financial affairs of a person needing protection, such as a minor (under 18 years) or an incapacitated adult (the "protected person").

A conservator may be appointed for an adult if a judge determines that the individual lacks the capacity to manage his/her financial resources. The conservator can be an individual (i.e.family member or trusted friend), bank, trust company, or professional fiduciary. The conservator is empowered to take possession of the protected person's assets and income, and provides for payment of the protected person's expenses.

The conservator becomes the sole financial decision-maker for the protected person. The protected person loses all control of his or her property and assets, except for a few limited powers in certain situations. Sometimes a protected person may be competent to make a Will, or change beneficiaries of life insurance and annuity policies. The conservator may also give the protected person access to a limited amount of funds for personal use.

When Is A Conservatorship Required? A conservator is necessary when an individual lacks the capacity to manage his or her financial resources. Oregon law defines "financially incapable" in ORS 125.005 as:

"a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance.

'Manage financial resources' means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income."

The court evaluates information from doctors, psychologists, public social workers, private case managers, family, and friends to assist in determining whether the person is "financially incapable."

How Is A Conservator Appointed? The procedure for the establishment of a conservatorship is similar to that of guardianship. In fact, the two powers are often requested at the same time. Unlike guardianship, the appointment of a conservator does not require an investigation by a court visitor. The appointment of a conservator does, however, require that the conservator be bonded.

IMPORTANT NOTE: The authority of a guardian (where a conservator has not been appointed) is primarily for health and personal decisions. Some limited financial powers exist. However, generally speaking, a guardian cannot handle financial matters in excess of $10,000. Therefore, a guardian, **who has not been appointed as a conservator**, does not have the authority to handle real property transactions for the protected person.

The petitioner (typically the proposed conservator), usually with the assistance of an attorney, begins the conservatorship appointment process by filing a petition with the court. The petition must contain specific facts supporting allegations of incapacity.

A copy of the petition must be personally served on the respondent, along with information about the right to object, the right to request a hearing, and the right to retain an attorney. The petitioner must also notify the respondent's spouse, parents, adult children, cohabitant, trustee, health care representative, or attorney of the respondent, if any.

If anyone files an objection to the petition, the judge will hold a hearing. At the hearing, the judge will decide whether a legal basis exists for appointing a conservator, and if so, who the most appropriate person is to serve as conservator. Few objections are actually filed.

If no one files an objection, 15 days after service, the petitioner's attorney can submit an order for the judge to sign, which order appoints a conservator for the respondent (minor or protected person).

What If It Is An Emergency? Normally, the procedure for the appointment of a permanent conservator takes approximately 20-30 days to complete. A temporary or emergency conservator can be appointed immediately, within two to three days, if the court determines that an emergency exists and that the assets and property of the protected person are at risk. This procedure is often used to stop and prevent financial abuse to the protected person's estate.

Oregon law allows the appointment of a temporary conservator in an emergency situation. Examples of situations requiring a temporary conservator include irreparable financial abuse, or where emergency access to funds is necessary to pay for medical treatment. Appointment of a temporary conservator can also be used to freeze or limit access to bank accounts and investments while an investigation into elder abuse is being conducted. Temporary conservatorships are less common than temporary guardianships, but the process is similar.

Who Can Or Should Serve As Conservator? The proposed conservator must be "suitable" (not defined in the statute) and "willing to serve," and inform the court if he/she has filed for bankruptcy or been convicted of a crime. The proposed conservator must state whether he/she is currently providing services to the respondent. People who cannot serve are: an incompetent

person; a minor; a suspended or disbarred lawyer; a state court judge; or an owner, administrator, or employee of a nursing home, adult foster home, residential care facility, or assisted living facility in which the protected person is living.

In most cases, a spouse, adult child, other relative, or partner is appointed to serve as conservator. If none of the aforementioned are available or are not suitable to serve, the court may look to other options. Banks and trust companies are often good choices to act as conservators in larger estates. The Veteran's Administration (VA) serves as conservator for some disabled veterans.

A professional fiduciary is also a good choice to serve as conservator. Professional fiduciaries receive referrals from a variety of sources to act as conservators for people who have the funds to pay for their services. Professional fiduciaries can provide the "neutral party" often needed in cases involving difficult family dynamics.

What Are The Duties Of A Conservator?

1. **Take Possession of All Property and Income of the Protected Person.** This includes such tasks as reviewing all of the person's available records, giving the court a complete list of assets, and continuously reviewing all mail.

2. **Place All Funds Into Conservatorship Accounts**. The conservator must change all accounts to reflect that they are held in a conservatorship, but must also continue to use the protected person's Social Security number on the accounts. The conservator must provide copies of the front and back of all cancelled checks to the attorney for later filing with the court.

3. **Make Prudent Investments With the Conservatorship Assets**. The conservator must evaluate the protected person's assets and projected needs, and then structure the investment portfolio appropriately. The conservator's duty is to the protected person first and foremost – ahead of protecting someone's inheritance.

4. **Receive Money and Personal Property for the Protected Person**, and apply that to his or her support, care, and education. The conservator must verify the status of Social Security and/or pension income, past and present income taxes, real property income and expenses (including rent, property taxes, and homeowner's insurance), medical care expenses, divorce obligations, spousal support, and ongoing care needs.

5. **Responsibilities to the Court**. Within 90 days of becoming appointed, the conservator must file a formal inventory of the protected person's assets. Each year the conservator must give the court an accounting of all income and expenses. The conservator must furnish copies of bank statements and all cancelled checks documenting the year's transactions. The conservator must close the conservatorship if the protected person dies, or if the assets, other than a primary residence, drop to the level of $10,000 or lower.

6. **Power of Attorney.** The conservator needs to find out if the protected person has signed a Power of Attorney. Oregon law gives the conservator authority over any prior "attorney-in-fact," including the power to revoke all or part of a Power of Attorney.

7. **Protected Person's Estate Plan**. Oregon law requires conservators and the court to "take into account" the protected person's estate plan when making decisions to invest, distribute, and/or utilize the protected person's funds for his or her support. This means the conservator needs to pay attention to any Will or Revocable Trust, AND any "contract, transfer or joint ownership arrangement" established by the protected person. However, any duty to preserve an existing estate plan remains secondary to the conservator's duty to provide for the care and support of the protected person.

The conservator should consult with an attorney regarding how to interpret and follow these requirements.

What Are The Costs Involved? Expenses associated with a conservatorship include the court's filing fee, fees for serving documents upon the proposed protected person, the court visitor's fee, the fiduciary bond, and attorney fees. Other costs sometimes necessary to establish the conservatorship include medical evaluations, psychological testing, and/or functional assessments. Often these expenses will be reimbursed from the protected person's funds after the court appoints a conservator.

Once the conservatorship has been established, the court may approve payment for the conservator's time and out-of-pocket expenses. Currently, the court is approving fees for a family member's services as conservator in the range of $25-$45 per hour. Fees for professional conservators can range from $50-$85 per hour. Banks and trust companies customarily charge fees based upon a percentage of the total estate under management.

Attorney fees must be approved by the court before they can be paid. The range of attorney fees can vary greatly depending on the case. The attorney for the conservator submits a detailed description of all attorney and staff time to the court. The court reviews the attorney's documents and gives the conservator permission to pay the attorney.

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