

# **The Handbook for Guardians and Conservators**

a practical guide to New Mexico  
law

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Life insurance policies, individual retirement accounts, certificates of deposit, and many other assets allow the owner to name a **payable on death (POD)** or **transfer on death (TOD)** beneficiary to receive what is left of the asset after the conservatee dies. Although POD and TOD beneficiaries have no rights to an asset until after the conservatee dies, it is important to know who the POD and TOD beneficiaries are so that one can preserve the conservatee's estate plan to the extent possible. A Transfer on Death Deed may be needed. A more detailed discussion on Transfer on Death Deeds is in the next section (Real Estate).

If the conservatee is married, you must find out whether property is **community property** that belongs to both spouses or the **separate property** of one spouse or the other. (See footnote 6 on page 30 above.) The title of an asset does not necessarily tell you whether it is community or separate. For example, an individual retirement account that contains monies earned during the spouses' marriage is community property even though it is only in the name of one of the spouses. If property is community property and you are not the spouse of the conservatee, you and the spouse will have to work together to manage the property since neither of you will have total control over the community property. It may be necessary in some situations to divide out the community property if there is too much disagreement on how assets are to be managed and spent.

## ⑤ Take Control of the Conservatee's Assets

After identifying the conservatee's assets, it is very important that you take control of them. As conservator, you are now responsible for making sure that the conservatee's assets are safe. Unless you take control of the assets, you will not be able to make sure of their safety.

## Real Estate

The words **real estate** generally refer to land and the buildings on it. Title to real estate, including the conservatee's home, can be left in the conservatee's name, but title companies frequently require that the property be re-titled into the conservatorship estate if it is to be sold. As a general rule, it is best to re-title any property owned by the conservatee into the conservatorship estate with a new deed. Have an attorney assist you with this to ensure the deed is prepared correctly. Make sure that you **record** a certified copy of your Letters of Conservatorship in every county in which the conservatee owns real estate. Record the Letters in the county clerk's office in the county where each property is located. That way, anyone who may want to buy the real estate from the conservatee or lend money to the conservatee secured by a mortgage on the real