

**Claudia M. Burton**  
Circuit Court Judge



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**CIRCUIT COURT OF OREGON**  
**THIRD JUDICIAL DISTRICT**  
**MARION COUNTY COURTHOUSE**  
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### Policy Regarding Corporate Fiduciaries

This policy is intended to apply to professional fiduciaries who wish to be appointed in a corporate name. This policy amends the court's previous policy statement on this topic, which was made on August 20, 2013.

- 1) The professional disclosure must comply with ORS 125.240(1)(L), which requires the disclosure of "The name, address and telephone number of the individual who is to act as primary decision maker for the protected person and the name of the person with whom the protected person will have personal contact if that person is not the person who will act as primary decision maker for the protected person." Note that the statute requires disclosure of "the individual" and "the person". Disclosures which state that any one of a number of different people will perform these functions do not comply with the statute.
- 2) ORS 125.240(1)(a) requires proof that a professional fiduciary, "or an individual responsible for making decisions for clients or for managing client assets for the professional fiduciary" is certified. The statute specifies the certifying organization and the level of certification required. It is the court's policy that the individual identified as the primary decision maker for the protected person pursuant to ORS 125.240(L) must meet the certification requirements of ORS 125.240(1)(a).
- 3) For any corporate fiduciary appointed as guardian, and for any corporate fiduciary appointed as conservator when that corporate fiduciary is not a trust company as defined in ORS 706.008(37)(a) or does not have a certificate of authority to transact trust business under ORS Chapter 709, the judgment appointing the fiduciary will include the following language:

"The appointment of [Corporate Fiduciary] is made in reliance on the representation by [Corporate Fiduciary] that [Primary Decision

Maker] will personally act as the primary decision maker for the protected person. In the absence of emergency circumstances making such notification impossible, [Corporate Fiduciary] shall notify the court and all interested persons not less than 90 days in advance of a proposed change of the person acting as primary decision maker. In emergency circumstances where advance notice is not possible, [Corporate Fiduciary] shall notify the court and all interested persons not less than 3 business days after [Primary Decision Maker] ceases to act as the primary decision maker for the protected person. Upon such notice and without prior hearing, the court may remove [Corporate Fiduciary] as guardian/conservator or take such other action as the court deems appropriate for the welfare of the protected person. Failure by [Corporate Fiduciary] to comply with these notice requirements will result in the immediate removal of [Corporate Fiduciary] as guardian/conservator.”

- 4) The court may enter a supplemental judgment to similar effect in any case in which a corporate fiduciary has previously been appointed.
- 5) Corporate fiduciaries that are not trust companies as defined in ORS 706.008(37)(a) or do not have a certificate of authority to transact trust business under ORS Chapter 709 have not been reviewed for financial stability and creditworthiness by the state in the same manner as trust companies that meet those criteria. Furthermore, the use of the corporate entity potentially may defeat the fiduciary’s personal liability to the protected person in the event of malfeasance. Therefore, it will be court’s policy to strictly enforce the bonding requirements of ORS 125.410 for such fiduciaries and not to waive or reduce bond pursuant to ORS 125.410(2) for such corporate fiduciaries.