

Approval of Accountings, Attorney's Fees, Conservator's Fees, and Guardian's Fees

REASON FOR ACCOUNTING:

- ___ Yearly conservator's accounting - ORS 125.475(1)
 - ___ Death of the protected person - ORS 125.475(1)(a)
 - ___ Minor protected person has attained majority - ORS 125.475(1)(a)
 - ___ Adult protected person becomes able to manage the protected person's financial resources
ORS 125.475(1)(a)
 - **All due within 60 days of triggering event**
 - ___ Removal of conservator - ORS 125.475(1)(b)
 - ___ Resignation of conservator - ORS 125.475(1)(b)
 - ___ Termination of the conservator's authority under ORS 125.410(7) - ORS 125.475(1)(b)
 - **All due within 30 days of triggering event**
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NOTICE REQUIREMENTS:

Who must be served: ORS 125.060(1)

- ___ Protected Person, if 14 years old or older – ORS 125.060(2)(a)
- ___ Any person who has filed a request for notice of proceedings - ORS 125.060(5)
- ___ Any fiduciary other than the one making the motion - ORS 125.060(2)(e)
- ___ If the protected person is receiving veteran's benefits, a representative of the Federal
VA office that has responsibility for the payments to the protected person – ORS
125.060(2)(h)
- ___ If the protected person is committed to the legal and physical custody of the
Department of Corrections, the Attorney General and the superintendent, or other
officer in charge of the facility where the protected person is confined – ORS
125.060(2)(k)
- ___ Any other person the court requires - ORS 125.060(2)(m)

Additional notice is to be served in guardianships: ORS 125.060(8)

- ___ Any attorney who represented the protected person at any time during the
protective proceeding - ORS 125.060(8)(a)
- ___ The Long-Term Care Ombudsman If protected person resides in a nursing
home or residential care facility or if there is a motion that seeks authority to

place the protected in such a facility, - ORS 125.060(8)(b)

____ The “system designated in ORS 192.517(1)” if the person resides in a mental health or developmental disability facility, or a motion has been made seeking authority to place the person in such a facility - ORS 125.060(8)(c)
- This is the Oregon Advocacy Center

Manner of Service:

____ The protected person must be personally served for the initial petition only. ORS 125.065(1). Service can be by mail for Accountings.

- Cannot serve the guardian rather than the PP even if the guardian is at the same address as the protected persons. Mail and personal service are to be addressed/delivered to the protected person only.

____ Waived by Court?

- Court can waive service on the protected person if it would not assist the person understanding the proceeding. Motion/Petition should so state, explain the basis, and the order should include language waiving service on the protected person. ORS 125.475(5)

____ Everyone else: mail, or notice can be published if the address of a person entitled to notice cannot be ascertained with reasonable diligence. Notice would need to be published for 3 consecutive weeks. ORS 125.065(2)

- Court may provide for a different method or time of giving notice for good cause shown. ORS 125.065(4)

Notice Requirements:

____ The name, address, and telephone number of the petitioner or the person making the motion - ORS 125.070(1)(a)

____ A copy of the petition or motion - ORS 125.070(1)(b)

____ A statement on where objections may be made or filed and the deadline for making or filing those objections - ORS 125.070(1)(c)

____ If a hearing has been set, the date, time, and place of the hearing - ORS 125.070(1)(d)

____ The notice must allow 15 days from date of mailing or personal service for the filing of objections; or 21 days from service if the proceedings are subject to the Uniform Child Custody Jurisdiction and Enforcement Act. ORS 125.065(3)

____ Proof of mailing must show that required notice was made and to whom it was mailed. ORS 125.065(5)

ACCOUNTING CONTENTS:

____ Period of time covered by the accounting – ORS 125.475(2)(a)

____ The total value of the property with which the conservator is chargeable according to the inventory, or, if there was a prior accounting, the amount of the balance of the prior accounting - ORS 125.475(2)(b)

____ All money and property received during the period covered by the accounting.
- ORS 125.475(2)(c)

- ___ All disbursements made during the period covered by the accounting.
 - ORS 125.475(2)(d)
- ___ The amount of the bond posted by the conservator during the period covered by the accounting - ORS 125.475(2)(e)
- ___ List of assets on hand at the end of the accounting – no statutory cite, and though required by UTCR 9.160(2), the UTCR format is **not** mandatory in Marion county. ORS 125.475(2)(f)
“other information as the court requires to disclose the condition of the estate” - can be used if a statutory authority is needed: you have to have assets on hand at the of accounting to track them from year to year.
- ___ Most recent bank statements for all accounts; and balance must match those reported in the accounting – UTCR 9.160(2) - the rule requires the filing of bank statements unless filing of vouchers is waived, but Marion county has traditionally waived the filing of vouchers in general, but requires bank statements confirming balances. Traditionally, though, Marion county does not require confirming bank statements from Oregon Dep’t of Veteran’s Affairs or bank and trust companies (Pioneer Trust, West coast Trust, etc) that are acting as fiduciaries. If a confirmation of the reported balances is needed, then use ORS 125. 475(2)(f)
- ___ Vouchers – trust companies do not have to file, routinely waived. ORS 125.475(3)
If waived, conservator shall:
 - Maintain the vouchers for a period of not less of one year following the date on which the order approving the final accounting is entered.
 - Permit interested parties to view the vouchers.
 - Including in each annual and the final accounting a statement that the vouchers are not filed with the accounting but are maintained by the conservator and may be inspected and copied as provided.
- ___ Verification that assets listed on inventory or last accounting still exist.
 - use asset tracking form
 - ___ Explanation of why assets are no longer in existence, if applicable
 - ___ Explanation of any reductions in value of the assets if such reductions are not obvious, if applicable.
- ___ Verification that ending balances shown on the accounting for each account match statements, except when statements are not allowed.
- ___ Verification that all transfer track – if money is transferred from checking to savings, make sure that the money is shown to have been put into savings.
- ___ Review all disbursements. Note and comment on the following **red flags**:
 - ___ **Gifts**
 - Any gifts: Over \$250 to one person or a total over \$1,000 in one year requires prior court approval. ORS 125.435
 - ALL gifts require disclosure, UTCR 9.170(1) – charitable and religious contributions are treated as gifts
 - ___ **Unexplained disbursements** – one or more, nominal amounts- (describe)
 - ___ **Unexplained disbursements** – more than 2, and/or substantial amounts (describe)
 - Anything that you cannot tell what it is for

___ **Cash**

- How much is going out in cash?
- Is there an explanation of where it is going?
- If the cash is going to the protected person, does information in the file (like the visitor's report) – support that the protected person would be able to manage these amounts of cash? Is the pp ambulatory and doing things in the community?

___ **Any fees going to the fiduciary without court approval** unless the fiduciary is a trust company of the Veteran's department. ORS 125.095(3)

___ Verification of court order approving any and all fees to a fiduciary

___ Fiduciary reimbursement? A fiduciary can reimburse themselves expenses without the court's approval, but the amounts need to be reasonable and it needs to be obvious what the reimbursement is for. Need proper description and itemization. A conservator cannot reimburse themselves for attorney's fees paid personally by the conservator unless the attorney's fees are approved.

___ **Any fees going to an attorney for the fiduciary without court approval** ORS 125.095(3)

___ Verification of existing court order or any attorney's fees payments

___ Cost reimbursement is alright if it is reasonable and explained

___ **Questionable investments** – prudent investment standard applies – ORS 125.445(5), *ORS 128.194 – 128.212 – all repealed in 2005*

___ **Conflicts of Interest & description:** loans to a conservator, conservator's family members being paid to provide services

___ **For minor conservatorship:** if the child lives with parents, conservatorship funds should not be used to pay the parents responsibility to support the child. If there are payments for orthodontia, piano lessons, etc, need to determine why the parents are unable to provide these.

___ **Narrative** describing any transactions with self, family, friends, or friends of the family fiduciary must provide. Includes payments for services, rent, or other expenses or gifts for these people – UTCR 9.170

___ Check to make sure the fiduciary has not done any of the following without court approval:

___ Sold the protected person's residence – ORS 125.430

___ Conveyed or released contingent or expectant interests of the protected person in property – ORS 125.440(1)

___ Created a trust - ORS 125.440(2)

___ Exercised rights of a protected person to elect options and change beneficiaries under insurance and annual annuity policies and to surrender policies for their cash value ORS 125.440(3)

___ Disclaimed right of protected person in inheritance or inter vivos transfer – ORS 125.440(4)

___ Authorized annuity or life care contracts - ORS 125.440(5)

___ Does bond need adjustment? The bond should = assets + one year's anticipated income, minus value of restricted assets - ORS 125.410(1)

Attorney's Fees:

___ Affidavit required to support amount requested – UTCR 9.090

Guardian & Conservator Fees:

___ Need affidavit

- Prior court approval not required for trust companies and VA - ORS 125.095(3)
- Guardian cannot be paid for room and board provide by guardian to guardian's family without prior court order – ORS 125.320(2)

Factors relating to reasonableness of fees:

- For non-professional fiduciaries, hourly rate usually should not exceed \$15.00; unless there is documentation that the fiduciary normally earns the requested amount and missed time from work
- Family members should not be paid for “family” v. “fiduciary” work. This s a bit of a gray area, though.
 - Family: taking mom to church, lunch, etc.
 - Fiduciary: paying bills, attending care conference, etc.

Please make comments here about any red flags or questions. Attach additional sheets if necessary.
