

Guardianships and Conservatorships

Issue Date 08/30/2016

A. Background and Introduction

There are circumstances in which a court may appoint one or more individuals to be responsible for another through guardianship or conservatorship because the individual lacks capacity to manage his or her own personal and/or financial affairs. When a guardian or conservator has been appointed with authority to manage the financial affairs of an individual, PBGC will recognize the guardian's authority as provided by the court.

This internal guidance clarifies the rules that PBGC will apply regarding its acceptance and recognition of an appointment of a conservator or guardian for purposes of managing an individual's PBGC benefits. In this internal guidance, the term guardian will be used to refer to a guardian or conservator unless the context clearly indicates otherwise.

Previously PBGC's rules for guardianships and conservatorship were included in Internal Guidance Power of Attorney, which was revised in 2016 to describe rules solely pertaining to powers of attorney. In the first edition of this internal guidance, PBGC provided that it would:

- Review both the court's order appointing a conservator or guardian and any letters of guardianship or conservatorship issued by the court;
- Determine the powers granted by the court to the guardian or conservator based on the content of the court issued documents;
- Convey its determination whether it will accept and recognize a guardian or conservator in writing; and
- Require an affidavit from a guardian or conservator when necessary to affirm there are no other guardians or conservators appointed for the ward.

In this second edition, PBGC clarifies that it will complete its review and make a determination with respect to a guardianship or conservatorship based on adequate court documents in the form of orders, letters or other filings.

B. Scope and Effective Date

This internal guidance statement applies to guardianship or conservatorship documentation submitted to the agency for participants, beneficiaries, and alternate payees in PBGC-trusteed plans (PBGC customers).

This internal guidance is effective upon issuance.

C. Definitions

For purposes of this internal guidance, the following definitions apply:

1. **Conservator** – An individual or entity named by a court to assume responsibility to act for a ward (with authority generally limited to the ward's estate and financial affairs). Generally, a conservator is named when the court determines that the ward lacks the capacity to make financial and/or personal decisions on his own. The court may designate multiple conservators. In some jurisdictions, courts may appoint guardians in lieu of conservators or appoint both.
2. **Guardian** – An individual or entity named by a court to assume responsibility to act for a ward. The court may designate multiple guardians. Generally, a guardian is named when the court determines that the ward lacks the capacity to make financial and/or personal decisions on his own. In some jurisdictions, courts may appoint conservators in lieu of guardians or appoint both.
3. **Independent Authority** – A guardian with independent authority may exercise authority singly even when there are multiple guardians appointed.
4. **Joint Authority** – A guardian with joint authority must act together with the other guardian(s) appointed to exercise authority.
5. **Ward** – An individual for whom a court places under the responsibility of one or more other persons. A ward is usually under the protection of a legal conservator or guardian.

D. General Rule

1. **Requirements for Guardianships.** PBGC will recognize an appointed guardian after it receives adequate court documentation that provides the following:
 - a. Ward's name.
 - b. Guardian(s) name. When a guardian is an entity (ex. Guardian Services of Ippity County), PBGC will seek, in writing from the entity, the names of one or more individuals of the entity who may interact with PBGC on behalf of the entity for the ward.
 - c. Effective date of appointment and expiration date, if any.
2. **Powers granted to the guardian.** PBGC will recognize a guardian's authority to act with respect to the ward's PBGC benefits based on the type of guardianship and authority granted by the court, see Section F.
 - a. **Guardian of the estate.** A guardian of the estate is appointed by the court to handle the financial affairs or estate (property) of the ward, and will generally have authority to act with respect to the ward's PBGC benefits, although the court may specify limits to the guardian of the estate's authority.
 - b. **Guardian of the person.** A guardian of the person has authority to handle personal matters for a ward, including health care, living situation and other day-to-day matters, but generally not financial matters. However, in some jurisdictions a guardian of the person may automatically be granted some limited estate authority under certain circumstances such as when a ward has a small estate (ex. less than \$25,000) and no guardian of the estate has been appointed. Sometimes, a court will expressly grant property powers to a guardian of the person. In these situations, PBGC may require a

guardian of the person to provide an affidavit acknowledging that no guardian of the estate has been appointed and confirming that the guardian of the person has limited estate authority under applicable state law because a guardian or conservator of the estate was not appointed by the court.

3. Recognition of Guardianship

- a. After PBGC has completed its review and analysis of the guardianship documentation provided, it will respond in writing whether the guardian(s) will be recognized by PBGC. If PBGC will recognize the guardian(s), PBGC will confirm the name of the guardian(s) and the permitted authorities (see Section F). If there are multiple guardians named, PBGC will confirm whether the court provided independent or joint authority.

E. Duration of Guardianships

1. Unless otherwise provided by the court, a guardian's appointment ends at the earlier of the following: death of the ward, termination by the court (i.e., when the court determines that the ward has regained capacity) or upon the court's approval of a guardian's resignation.
2. Emergency or temporary guardianships may be ordered by a court. PBGC may wait for a permanent guardian to be appointed before completing its review unless the temporary guardian is immediately seeking to act on behalf of the ward.

F. Authorities

1. **Authorities Permitted for Guardian(s).** PBGC will routinely permit a guardian with full financial or "estate" authority to perform all of the following actions (referred to as authorities), unless limited by the court:
 - a. Apply for PBGC benefits.
 - b. Designate a beneficiary, including the selection of an optional form of benefits naming a contingent annuitant.
 - c. Change a beneficiary previously selected by the ward.
 - d. Request/receive information from PBGC pertaining to ward.
 - e. Request PBGC forms.
 - f. Respond to PBGC's requests for information or documents.
 - g. Change the address or bank account information for PBGC payments. (The ward's name must be on the bank account.)
 - h. Represent the ward before the PBGC Appeals Board.
 - i. Change federal income tax withholding.
 - j. Direct payment of a ward's payment into an account bearing the ward's name.
 - k. Delegate all or a portion of the guardian's authority to another person to act on behalf of the ward to the extent permitted by the court order. This authority requires that the guardianship has not terminated. A delegation of authority is void if a guardianship has

terminated. If the documentation from the court is silent, request guidance by emailing PSDGGuidance@pbgc.gov to determine whether the guardian has delegation authority.

- I. Waive benefits, including:
 - i. Spousal consent to the waiver of a qualified joint-and-survivor annuity; and
 - ii. Selection of an optional form of benefits that results in a reduced payment to the ward.
- m. Request the ward's payment be paid directly to a third party including direction to send checks to a third party or deposit payments directly into an account that does not have the ward's name on it. (Direction to make payments to a third party must follow the rules in section D.4 of PBGC Internal Guidance Assignment and Alienation of Benefits.)
2. **Authority retained by a Ward.** Typically the appointment of a guardian or conservator is made when a ward is determined by a court to be incapacitated and not able to act for herself or himself. However, in a guardianship a ward may retain some decision-making authority and PBGC will determine such authority based on the language of the court documents.

G. Miscellaneous

1. **Concurrently effective DPOA.** When a guardian is appointed by the court for an individual with an existing Durable Power of Attorney (DPOA) (executed by the ward while competent and prior to the appointment of a guardian), the court may specifically address whether the DPOA is terminated by the court. If the DPOA is not terminated by the court, the court (or applicable state law) may provide that it remains in effect and/or may provide that the guardian, acting for the ward, has the discretion to retain or terminate the DPOA or delegate various estate powers to another individual.
2. A PBGC staff member who questions a guardianship for any reason including the authenticity of submitted document or scope of authority of the guardian(s), should contact PPD for additional guidance.