GETTING STARTED AS A GUARDIAN OR CONSERVATOR IN ALASKA

ALASKA STATE ASSOCIATION FOR GUARDIANSHIP & ADVOCACY (ASAGA)

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Getting Started As A Guardian and Conservator in Alaska

Disclaimer: This manual is designed to be a guide once court orders are received. Each situation is different so if you have questions on your next steps or authority, don't hesitate to contact us or ask for clarification by the Court.

This is a new product for ASAGA. Please feel free to email us ideas, suggestions, or comments so that we can ensure the manual is as clear and as complete as possible.

Quick Lists

This manual contains information to help you be successful in your guardianship or conservatorship. There is A LOT of information so here are the highlights of tasks that you may need to do once you are appointed. Each area has much more detail and insights. Don't try to read this in one day. Take your time and use throughout the guardianship. It also references other important documents you may need. Questions? Just give us a call or send an email. That's what ASAGA is here for!

| Checklist for Most Appointments | Other Helpful Steps | |
|---|--|--|
| ☐ Read over the court orders | ☐ Apply for benefits or if already receiving, change the deposit location to conservatorship account | |
| ☐ Complete Education Requirement (30 days) | Apply for the PFD or if already applied, change the deposit location to conservatorship account | |
| ☐ File Guardianship Plan (30 days) | \square Apply for or research supportive services | |
| ☐ Give Orders & Letters to relevant individuals/entities | ☐ File a change of address for (mail and all accounts) | |
| ☐ Create a file to keep important documentation | ☐ Arrange for any necessary medical, dental or other physical evaluations | |
| ☐ Open or identify the "Conservatorship" bank account | ☐ Arrange for any necessary mental health or cognitive evaluations | |
| □ Create list of important information (account #s, contact information for doctors, family members, payments and deadlines, etc.) □ Arrange for or change housing | Are you able to converse with the person you are guardian or conservator for? If so, have a discussion with them about how they would like to see the arrangement work. The first step in decision making is to ask the person what they | |
| | want. | |
| File Implementation Report (90 days) | | |
| ☐ File Annual Report (Once a year) | ☐ Do you need to apply for programs for assisted living such as General Relief or Medicaid Waiver? Is a trust needed for either program? | |
| | ☐ Do you need to sign up for a credit monitoring | |
| | service or freeze credit? | |

Education Requirement

All new, non-professional guardians or conservators are required to have at least one hour of education within 30 days of their appointment. You can complete this requirement by one of the following:

- Complete the on-line Guardianship and Conservatorship course on the Alaska Court System Website (see http://courts.alaska.gov/shc/guardian-conservator/index.htm) or contact your local Court or ASAGA for a thumb drive with the training if you have poor internet service.
- Attend a class offered by the Court or ASAGA monthly. ASAGA also offers webinars. If you are
 in a remote location and cannot attend a class, ASAGA can provide information over the phone
 and send you written materials.

While the Court only requires one hour of education to get started as a guardian or conservator, it is a best practice to educate yourself continuously about being a guardian or conservator. Here are a few ideas about continuing your education on guardianship and conservatorship.

- 1. Read over the National Guardianship Association (NGA) Standards of Practice. This provides information on best practices for guardians and conservators. ASAGA can provide them or you can find them at https://www.guardianship.org/education/publications/. Alaska has adopted these standards in our statutes.
- 2. Sign up for a local newsletter from organizations that assist individuals who experience the diagnosis or disability of the person in the guardianship or conservatorship.
- 3. Join a support group or get on the mailing list of organizations that work with individuals who experience the diagnosis or disability of the person in the guardianship or conservatorship. Support groups can be excellent sources of information as they bring together family members who have many of the same experiences as you.
- 4. Learn about the benefit and financial programs used by the person you are guardian or conservator for such as Social Security, Pensions, VA, Public assistance etc.
- 5. Attend a class, workshop or conference presented by ASAGA. Sign up for ASAGA's email distribution and learn when and where these events are happening. ASAGA also holds webinars on various topics and uploads them to www.asaga.info.





First Steps

You've been appointed...now what? Your next steps largely depend on the situation of the person you've been appointed as guardian or conservator for. Here are helpful tips for any new appointment.

- 1. **Read your orders**. Make sure you understand the authority you have and don't have.
- 2. Create a file. Include everything that might be helpful as guardian or conservator which will be useful when you have interviews for benefits, sign the person up for a new service or complete your annual report. It will also be helpful if you become unavailable to continue as the guardian or conservator and someone else has to take over in an emergency situation.

This file might contain





- 3. Make contact with all family members, providers, benefits agencies and others associated with the individual to notify them of your appointment and authority. See a draft of a sample letter you might use. Appendix B.
- 4. Open or identify the bank account that you will use to manage the individuals' finances. The money of the person in the guardianship/conservatorship cannot be mixed with the guardian's or conservator's money without court permission. The bank account(s) should be easily identifiable as the account used only for the person in the guardian or conservatorship.
- Complete your mandatory education requirement within 30 days of the hearing that appoints you as guardian or conservator.

Court Orders and Letters

Bank statements from conservatorship account

Receipts from expenses

Plan of care for provider organization

List of medications

List of medical and mental health providers and contact information

Latest medical and mental health evaluations

Social Security, Medicaid or other benefit programs

Social history of person's preferences, lifestyle and needs

Notebook for writing down important events or dates.

- 6. Complete and file the **Guardianship Plan** due within **30 days** of receiving the appointment order. ASAGA can send you a sample plan or you can find them on the Court website. If you are **conservator only**, there is no plan to be filed.
- 7. Complete and file your **Implementation and Inventory Report** due within **90 days** of receiving the appointment order.

Need help with any of the forms? ASAGA can help.

Other Steps

1. Do you need to apply for benefits? Start the applications right away for individuals who are just turning 18 or who need to apply for disability benefits due to an injury.

Did you know? If the person you are guardian and conservator for and they receive Social Security benefits, you will need to take the extra step in becoming the representative payee. This is a Social Security term. Fill out form SSA-11. In addition, if the person has benefits from the Veterans Association, you'll need to speak to the VA about becoming the fiduciary. Social Security and the VA are federal programs and have their own terminology.

- 2. Does the person already have benefits or other income sources? You may need to open an account and then change the account where the funds are deposited to the conservatorship account. Other accounts, such as annuities, retirement, etc. might just list you as the authorized agent on that account.
- 3. Do you need to apply for the Permanent Fund Dividend or if someone already applied, change the deposit location to the conservatorship account?
- 4. Do you need to get the person enrolled in support services? Aging and Disability Resource Centers (ADRCs) or the 211 number can help you find the right resource for the person you are guardian for. See Appendix D for ADRC contact information.
- 5. Do you need to complete a change of address with the Post Office so the person in the guardianship's mail will be sent to you so you can figure out what bills they may have or other responsibilities?
- 6. Make arrangements for medical services such as establishing a new physician, dental appointments, vision or hearing, mental health or other evaluations?
- 7. Does the individual need housing or a change in where he/she is living?
- 8. Are you concerned with the individual opening credit? As a conservator, you can sign up for a program that monitors credit. You can also go online and freeze credit.
- 9. If you have a unique situation, you may also gather information on first steps from your Court Visitor based on their investigation or you can contact ASAGA to brainstorm.

Person-Centered Planning

There is a lot of legal language that you'll read in your orders. The most important part of the order to understand is what is called "person-centered planning" which means that the guardian must support the choices of the individual you are assisting to the extent possible.

"A guardian shall diligently and in good faith carry out the specific duties and powers assigned by the court. In carrying out duties and powers, the guardian shall encourage the ward to participate to the maximum extent of the ward's capacity in all decisions that affect the ward, to act on the ward's own behalf in all matters in which the ward is able, and to develop or regain, to the maximum extent possible, the capacity to meet the essential requirements for physical health or safety, to protect the ward's rights, and to manage the ward's financial resources." (AS. 13.26.316)

Some individuals will be able to participate in making decisions more than others. Making even simple decisions such as what to eat, what to wear or what to do for an activity can make a huge difference to an individual's quality of life. An individual's preference may change, so personcentered planning is not a one-time event, but ongoing and should be regularly assessed.

Another way to approach this is to understand how the Court expects decisions to be made. First and foremost, if the individual can make their own decision in a specific area or participate in the decision-making process, as guardian or conservator you would support their decision. It may not align with your ideals or values, but remember, this is their life and their plan, not yours. Think of it as "person directed" planning and decision making. Many individuals will need assistance, but can still direct a number of aspects of their lives.





For an individual who has a very limited ability to participate in the decision-making process, you may use **substituted decision making.** This means you will make a decision that the person would have made on their own if he/she could make that decision, using the person's prior history. You'll consider their previous decisions, lifestyle choices, past comments, values and even perspectives from others who knew him or her such as family members, friends, church members, or providers. Also, remember to protect the individual's privacy. You may need to gather information to make a decision but be careful how much information you share as the individual has the right to privacy.

For individuals who cannot direct decisions in any way, you would use the decision-making practice of **best interest**. This means you will make a decision that is in the person's best interests, considering all information and weighing the outcomes or consequences. You will also want to ensure that the decision does not restrict the individual more than necessary. Believe it or not but there are a variety of ways to provide the individual with autonomy and independence without the guardian always being the director of the show! Technology has been wonderful to help individuals live, work and play more independently.

Other things to consider include:

- What are the individual's preferences regarding activities, food and even topics of conversation?
- What is important to the individual?
- What makes the individual happy, sad, mad, frustrated and how does he/she cope?
- How does the individual like to spend their time and with whom?
- What are the individual's strengths and struggles?
- What are the individual's family, work, cultural, and spiritual background?

Did you know? In 2018, the Governor signed new legislation for an alternative to guardianship. Supported Decision Making Agreements (SDMA) were signed into law after months of hard work led by the Governor's Council on Disabilities and Special Education. If you have been appointed as a guardian or conservator, it is likely this alternative was considered but did you know that you can use a SDMA within a guardianship? SDMA's can be helpful tools to guide you in decision making for another individual. A guardianship could also change overtime for a less restrictive alternative. For more information, see the http://dhss.alaska.gov/gcdse/Pages/projects/SD SDMA website at

MA/default.aspx

While we often have good intentions and we want to protect the individual in the guardianship, we have to remember that the individual has the right to make decisions when possible or participate in the decision-making process.



You will report specific information about the individual's financial situation every year. You need to be more careful with the person's funds than you are your own. Your position is one of trust and transparency. Here are some helpful hints to keep track of the income and expenses:

- ➤ A guardian or conservator may not co-mingle funds with the protected individual without court permission. Many benefit programs have the same requirement.
- ➤ You may not borrow money or loan money without court permission. You may not use the individual's money for your benefit or the benefit of others. If this scenario arises, contact the Court. There are scenarios the court will allow.
- Establish a budget for the individual once you know their full income and expenses.
- > Use a bank that will allow you to categorize expenses. Many banks have an online feature after a purchase to add a category which will help you track expenses. Take a look at the annual report you'll be doing to see what categories you may need to track. Keep all bank statements.
- > Start a spreadsheet using Excel or other computer program such as Quicken, QuickBooks etc
- Use an app to track expenses.
- ➤ Good old fashion pen and paper work too. Keep all receipts in a file or envelope.
- ➤ If you are awarded a "room and board authorization" for payment to you for the person's rent and food if he/she lives in your home, take that money out of the account each month so the Court can see the transaction in the bank statements. Do not pay for things in cash unless you keep every receipt. A number of unexplained ATM withdrawals from the conservatorship account will raise red flags.
- ➤ Keep receipts if paying in cash.
- > ASAGA has another booklet about Managing Someone Else's Money for review

Did you know? If the person you are guardian for resides in your home, you are entitled to receive payment for rent and food that the Court calls "Room and Board." You must first get written authorization from the court in your order. You cannot charge more than this amount without a court order. If you need to add or change the room and board amount (rent and food), you can request that the court review the amount by filing a Petition for Review. The Court will decide based on what the person might pay in a supported living setting or base the amount on the income, expenses and number of people who reside in the home. The definition of room and board is rent and food.

How does the Court monitor?

Each year, you must file an annual report. If you are a partial or full guardian, you'll fill out and file the Guardianship Annual Report, <u>PG-210</u>, that includes a financial section if you are also the conservator. If you are only a conservator, you will fill out and file the Conservator's Annual Report, <u>PG-225</u>. Here are some helpful tips to correctly fill out these reports:

- keep track of what you do all year, and
- figure out the best way to organize the information during the year so that when it is time to fill out the report, you have everything you need. The Court reviews the annual report each year and will send a letter either approving it or a deficiency notice if there are questions or missing information.
- This is why we suggest the file to keep all things related to your order.

Every three years, the Court will appoint a Court Visitor. The Court Visitor should contact you and the individual you are a guardian for to determine how the guardianship or conservatorship is going. They will also review the last three years of reports. The Court Visitor will recommend if any changes need to happen or if the court appointment should remain the same.

Tips for Annual Report

- Know the dates that you are reporting on.
 They should be in your orders but if not, contact the Court to verify.
- Use the same dates each year.
- Fill in all the questions. Do not list n/a unless it truly is not applicable.
- The questions should help you to think whether the guardianship or conservatorship is still needed, or whether a less restrictive option would be better. Are changes needed? How does the individual and guardian make decisions?
- For financial questions, you must be accurate. Do not estimate or make up the numbers.
- Keep documentation.
- Do not loan yourself or others any of the person's money, without a plan approved by the court. You are allowed to spend money only for the individual.
- Attach bank statements, receipts or anything that will prove the accounting you provided.



What if I need to make a change?

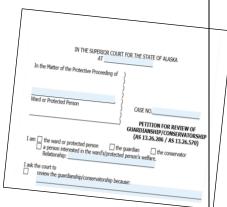
If you need or want to make any changes to the court order, file the Petition for Review of Guardianship/Conservatorship, <u>PG-190</u>. There are many reasons that the person in the guardianship, the guardian or conservator, or any interested party can ask the court for a review, including:

- Add or remove a co-guardian
- Change a room and board (rent and food) charge
- Add or reduce the guardian's or conservator's authority
- Concerns about the guardian or conservator
- Moving out of state transferring the guardianship or conservatorship to the new location (Use PG 753)
- End a guardianship or conservatorship
- Any other requested changes

When does my responsibility end?

There are 3 ways that a guardian's or conservator's responsibilities end and each involves filing something with the Court.

- 1. The person in the guardianship or conservatorship regains capacity to make some or all of their decisions. You must promote any resource that might help the person regain their rights if possible. If the person no longer needs a full guardian or conservator, file Petition for Review of Guardianship/Conservatorship, <u>PG-190</u>, providing evidence to the Court as to why the person no longer needs a guardian or conservator. The individual or any interested person also can petition the court directly.
- 2. The guardian or the conservator cannot or does not want to continue to be in that role. To change the guardian or conservator, file a Petition for Review of



Guardianship/Conservatorship, <u>PG-190</u> explaining your changed situation. If the person still needs a guardian or conservator, the Court can investigate who can take over.

3. The person in the guardianship or conservatorship passes away. File the Final Guardian/Conservatorship Report PG 215 and attach a copy of the death certificate. The Final Report will be from the end of your last annual report to the dates of their passing. This should be filed within 90 days of the person's passing. A guardianship and conservatorship ends when the person passes away and if there are assets, a guardian will need to either work with the executor or probate the estate which is a separate situation. Alaska Legal Services has a training on their website on probating an estate that might be helpful. See Ending a Guardianship under ASAGA's Educational Resources.

APPENDIX'S

Appendix A – Alaska Statutes

Appendix B – Face Sheet

Appendix C – Sample Notification Letter

Appendix D – ADRC Locations for Finding

Services

Appendix A – General Duties of a Guardia

ASAGA has these statutes in Spanish, Korean and Tagalog if needed on our website

AS. 13.26.316

- (a) A guardian shall diligently and in good faith carry out the specific duties and powers assigned by the court. In carrying out duties and powers, the guardian shall encourage the ward to participate to the maximum extent of the ward's capacity in all decisions that affect the ward, to act on the ward's own behalf in all matters in which the ward is able, and to develop or regain, to the maximum extent possible, the capacity to meet the essential requirements for physical health or safety, to protect the ward's rights, and to manage the ward's financial resources.
- (b) A partial guardian of an incapacitated person has only the powers and duties respecting the ward enumerated in the court order.
- (c) A full guardian of an incapacitated person has the same powers and duties respecting the ward that a parent has respecting an unemancipated minor child except that the guardian is not liable for the care and maintenance of the ward and is not liable, solely by reason of the guardianship, to a person who is harmed by acts of the ward. Except as modified by order of the court, a full guardian's powers and duties include, but are not limited to, the following:
- (1) the guardian is entitled to custody of the person of the ward and shall assure that the ward has a place of abode in the least restrictive setting consistent with the essential requirements for the ward's physical health and safety;
- (2) the guardian shall assure the care, comfort, and maintenance of the ward;
- (3) the guardian shall assure that the ward receives the services necessary to meet the essential requirements for the ward's physical health and safety and to develop or regain, to the maximum extent possible, the capacity to meet the ward's needs for physical health and safety;
- (4) the guardian shall assure through the initiation of court action and other means that the ward enjoys all personal, civil, and human rights to which the ward is entitled;

- (5) the guardian may give consents or approvals necessary to enable the ward to receive medical or other professional care, counsel, treatment, or services except as otherwise limited by (e) of this section;
- (6) the guardian has the powers and duties of a conservator under this chapter; however, the guardian may not apply the ward's money or property for the services as guardian or for room and board that the guardian or the guardian's spouse, parent, or child has furnished the ward unless, before payment, the court finds that the ward is financially able to pay and that the charge is reasonable; notice of a request for payment approval shall be provided to at least one relative of the ward if possible; the guardian shall exercise care to conserve any excess money or property for the ward's needs;
- (7) if a conservator of the estate of the ward has also been appointed, the guardian shall pay all of the ward's estate received by the guardian to the conservator for management as provided in AS 13.26.401 13.26.575.
- (d) A guardian of a ward, for whom a conservator has also been appointed, shall have the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator. The guardian may request the conservator to expend the ward's estate for the ward's care and maintenance.

(e) A guardian may not

- (1) place the ward in a facility or institution for the mentally ill other than through a formal commitment proceeding under AS 47.30 in which the ward has a separate guardian ad litem;
- (2) consent on behalf of the ward to an abortion, sterilization, psychosurgery, or removal of bodily organs except when necessary to preserve the life or prevent serious impairment of the physical health of the ward;

- (3) consent on behalf of the ward to the withholding of lifesaving medical procedures; however, a guardian is not required to oppose the cessation or withholding of lifesaving medical procedures when those procedures will serve only to prolong the dying process and offer no reasonable expectation of effecting a temporary or permanent cure of or relief from the illness or condition being treated unless the ward has clearly stated that lifesaving medical procedures not be withheld; a guardian is not civilly liable for acts or omissions under this paragraph unless the act or omission constitutes gross negligence or reckless or intentional misconduct;
- (4) consent on behalf of the ward to the performance of an experimental medical procedure or to participation in a medical experiment not intended to preserve the life or prevent serious impairment of the physical health of the ward;
- (5) consent on behalf of the ward to termination of the ward's parental rights;
- (6) prohibit the ward from registering to vote or from casting a ballot at public election;
- (7) prohibit the ward from applying for and obtaining a driver's license;
- (8) prohibit the marriage or divorce of the ward.

While not in the guardianship statute, there are a few other things a guardian or conservator cannot do. Should the individual become involved with the Department of Corrections for a criminal matter, a guardian's authority may be limited. Also, a guardian or conservator cannot change or create an estate will for the individual. The individual may be able to create or change a will depending on their testamentary capacity which would be determined by an attorney.

Guardians may find a few things difficult to do especially if the person is ambulatory such as making a person attend a medical appointment or staying in the chosen housing setting.

| should there be areas the individual is not cooperating, make sure to document and it may be |
|--|
| a reason to file a Petition for Review PG 190 for court clarification or a change in the orders. |
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<u>Appendix B – Sample Face Sheet</u>

Individual Information

| Name: | Case # |
|---------------------|--------------------|
| | Orders Signed: |
| Implementation Due: | Annual Report Due: |
| DOB: | Address: |
| Birthplace: | |
| Marital Status: | |
| Education: | |
| Primary Occupation: | |
| Diagnosis: | Medical Providers: |
| | |
| | |
| | Hospital Choice: |
| Allergies: | Insurance: |
| | |
| Code Status: | Medicare # |
| | Medicaid # |
| | |
| Contacts: | Contacts: |
| | |
| | |

Appendix C Sample Letter to Notify of Orders

Date

Dr. Jane Doe 123 Alaska Street Fairbanks, AK 99701

RE: Guardianship Orders

Dear Dr. Doe:

Please see the attached Findings and Orders for Guardianship by the Superior Court of Fairbanks. I have been appointed as the full guardian for my daughter, Bunny Rabbit. This is a copy of my orders for your file. Please make sure that you have my contact information on file as well. It is:

Peter Rabbit 45 Carrot Road Fairbanks, AK 99701 907-456-0000 phone Prabbit@yahoo.com

Please send all correspondence for Bunny to me at this address. Thank you for your consideration.

Sincerely, Peter Rabitt

You can change this letter to send to the individual's teacher, care coordinator, service provider, native corporation, or benefit program. Please note that with Social Security, you will need to become the person's representative payee and cannot simply mail your orders to them. The same goes for the VA; you need to contact the VA and become the VA fiduciary.

APPENDIX D - From the Senior & Disability Website For assistance, call the site nearest you or 1-877-6AK-ADRC (1-877-625-2372) toll-free.

Regional Office locations:

BBNA (Bristol Bay Native Association)

Box 310, Dillingham, AK 99576

Phone: 907-842-5257 | Toll free: 1-800-478-5257

Fax: 907-842-5932

website: https://www.bbna.com/our-programs/social-service-programs/

- Bristol BayDillingham
- Bethel
- Kusilvak
- Nome
- Northwest Arctic

ILC (Independent Living Center)

- Kenai Peninsula website: http://peninsulailc.org/
 - Homer

3953 Bartlett P.O. Box 2474 Homer, AK 99603

Phone: 907-235-7911| Fax: 907-235-6236

Central Peninsula

47255 Princeton Ave. Suite 8 Soldotna, Alaska 99669

Phone: 907-262-6333 | Fax: 907-260-4495

Seward

201 Third Ave., Suite 102 P.O. Box 3523 Seward, AK 99664

907-224-8711 | Fax: 907-224-7793

• Valdez- Cordova

Homer

3953 Bartlett P.O. Box 2474 Homer, AK 99603

Phone: 907-235-7911| Fax: 907-235-6236

Kodiak

Kodiak

211 Mission Rd. #206 & #208

Kodiak AK 99615 Phone: 907-486-0491 Fax # 907-486-0409

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SAIL

• All Southeast Alaska

Haines

24 Fort Seward Drive Haines, AK 99827

Mailing address: P.O. Box 183

Haines, AK 99827

Phone: 907-766-3297 | Fax: 907-766-2753

Email: haines@sailinc.org

Juneau

3225 Hospital Drive, Suite 300

Juneau, AK 99801

Toll free: 1-800-478- SAIL(7245) | Fax: 907-568-4980 | TTY: 907-523-5285

Afterhours/Weekend contact Interpreter requests: 907-321-4085

Ketchikan

Independent Living Specialist 602 Dock Street, Suite 107

Ketchikan, AK 99901

Toll free: 1-888-452- SAIL(7245) | Local: 907-225-4735 | Fax: 907-247-

4735

Sitka

514 Lake Street, Suite C

Sitka, AK 99835

Toll free: 1-888-500-7245 | local: 907-747-6859 | Fax: 907-747-6783

Email: sitka@sailinc.org

Municipality of Anchorage

Anchorage

• Agency: Municipality of Anchorage

825 L Street, Suite 203 Anchorage, Alaska 99501

Phone: 907-343-7770 | Fax: 907-343-6320

Website: www.muni.org/adrc

LINKS

Mat-Su Valley

LINKS Mat-Su Parent Resource Center 777 N Crusey Ave Suite 101 Wasilla, AK 99654

Phone- 907-373-3632 Website: <u>www.linksprc.org</u>

Northstar Council on Aging

1424 Moore Street Fairbanks, AK 99701 Phone: 907-452-1735 Fax: 907-451-9974

website: https://fairbanksseniorcenter.org

Fairbanks North STARSoutheast Fairbanks

Denali

Yukon-KoyukukNorth Slope

We hope this Getting Started Manual provided some helpful information regarding your guardian or conservatorship. If you have additional questions or feedback on this manual, please do not hesitate to contact us. ASAGA has much more information on our website at www.asaga.info. Check out Helpful Links to a variety of organizations that might be of use.



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