

**Gila County**

**Public Fiduciary**

**Office**

# **PUBLIC FIDUCIARY STAFF**

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# DEFINITION OF A FIDUCIARY:

- **A Fiduciary** is someone who for a fee serves as a court appointed guardian or conservator for one or more persons who are unrelated to the fiduciary. A fiduciary accepts the responsibility for taking care of the needs or property of another person for the benefit of that person. The fiduciary serves in a role of trust. The person served by the fiduciary places trust in the fiduciary to manage his or her affairs solely for his/her benefit. The element of trust becomes crucial when the person receiving services is frail, vulnerable and incapacitated.
- **The office of the Public Fiduciary** was established by the 1974 legislature to serve as a “fiduciary of last resort” for individuals and decedents’ estate in need of guardianship, or conservatorship or public administration where there is no person or corporation qualified and willing to act in such capacity. Most of the clients of the Public Fiduciary are indigent or have limited assets. This results in the Public Fiduciary’s office having a caseload where there is little or no money involved, the behavior of the parties involved are too difficult, or the circumstances are complex and/or bizarre.

# FIDUCIARY ORGANIZATIONS

- In Arizona there are several types of businesses that fall under the definition of FIDUCIARY
  - Individuals: Those persons serving as licensed fiduciaries of an independent agency or business entity.
  - Business Entities: licensed fiduciaries whose business operation has been filed with the Secretary of State and the Corporation Commission.
  - Government Fiduciaries: Arizona has fifteen county public fiduciary offices, divisions of county government and the Arizona Department of Veteran's Services, a state agency. LAST RESORT OPTION.
  - Non-Profit Fiduciaries: such as ARC (an advocacy group for the disabled), a guardianship program falls under the non-profit umbrella agency.

**The professional fiduciary must be licensed with the Arizona Supreme Court individually and as a business entity, if applicable, prior to accepting court appointments.**

# **FIDUCIARY LICENSURE**

**Licensure is granted by the Supreme Court through testing, and a fingerprint/background check.**

**Public Fiduciaries are appointed by the Board of Supervisors of each county.**

**Cases are appointed to the Fiduciaries by Superior Court Judges.**

**Gila County service specialists and finance specialists must be licensed after completing three years of hands-on training, (or one year of training with a Bachelor Degree) under the direct supervision of the Public Fiduciary.**



## **WHEN IS A REFERRAL APPROPRIATE?**

**A referral is appropriate any time one feels they know of a vulnerable or incapacitated person who is a victim of abuse (physical, sexual, psychological, emotional or financial), or in danger of abandonment, neglect or self-neglect.**

**A.R.S. §46-455 states a person who has been employed to provide care to an incapacitated or vulnerable person and who causes or permits the life or health of the adult to be endangered is guilty of a Class 5 felony.**



# WHO MAY MAKE A REFERRAL?

Referrals come from a number of sources:

- Neighbors
- Friends
- Family members
- Self
- Caregivers
- Adult Protective Services
- Law Enforcement agencies
- Health department and other social service agencies

The Public Fiduciary, as the last resort option, seeks alternative agencies or individuals to serve. Family members always have priority if willing to serve.



# REFERRAL INVESTIGATION

The fiduciary is responsible for gathering information to make a decision as to the need for appointment. An internal investigation is done through thorough contact and assessment of the referred case, and a determination is made whether the potential ward:

- Will suffer a financial loss if their assets are not protected?
- Will benefit by having a fiduciary?
- Is at physical risk?
- Has exhausted all other suitable service providers?

# PETITION FOR APPOINTMENT

Legal orders are drawn up by PF attorney.

A hearing is scheduled with the superior court.

The judge appoints a court investigator, attorney, and physician to visit with the proposed ward.

On the date of the scheduled hearing, a superior court judge reviews all reports, hears any necessary testimony (including that of the proposed ward, if available) and the petition is either approved or denied.



# MENTAL HEALTH GUARDIANSHIP

**Pursuant to A.R.S. 14-5312.01., a guardian can consent to psychiatric and psychological care and administration of psychotropic medications.**

- Care and treatment must take place outside a level one behavioral health facility licensed by the department of health services.

**Pursuant to A.R.S. 39-501 a guardian can consent for inpatient mental health care and treatment, including placement in a level one behavioral health facility.**

- The court gives authority to the guardian to consent for the ward to receive inpatient mental health care and treatment.

# PUBLIC FIDUCIARY STATS

<b>Globe</b>	<b>39</b>	<b>Queen Creek</b>	<b>1</b>
<b>Payson</b>	<b>11</b>	<b>Scottsdale</b>	<b>3</b>
<b>Tucson</b>	<b>1</b>	<b>Peoria</b>	<b>1</b>
<b>Apache Junction</b>	<b>2</b>	<b>Phoenix</b>	<b>9</b>
<b>Flagstaff</b>	<b>1</b>	<b>Mesa</b>	<b>7</b>
<b>Casa Grande</b>	<b>2</b>	<b>Sedona</b>	<b>1</b>
<b>Glendale</b>	<b>1</b>	<b>Mammoth</b>	<b>1</b>
<b>Guardian Only</b>	<b>57</b>		
<b>Guard/Conserv</b>	<b>10</b>		
<b>Conservatorships</b>	<b>9</b>		
<b>Pending</b>	<b>2</b>		
<b>Decedent Estates</b>	<b>4</b>		
<b>Courtesy Visits</b>	<b>3</b>		
<b>Guardian ad Litem</b>	<b>0</b>		
<b>Title 14+</b>	<b>9</b>		

**85 active cases**



## **PUBLIC FIDUCIARY STATS CONT...**

**2014 –**

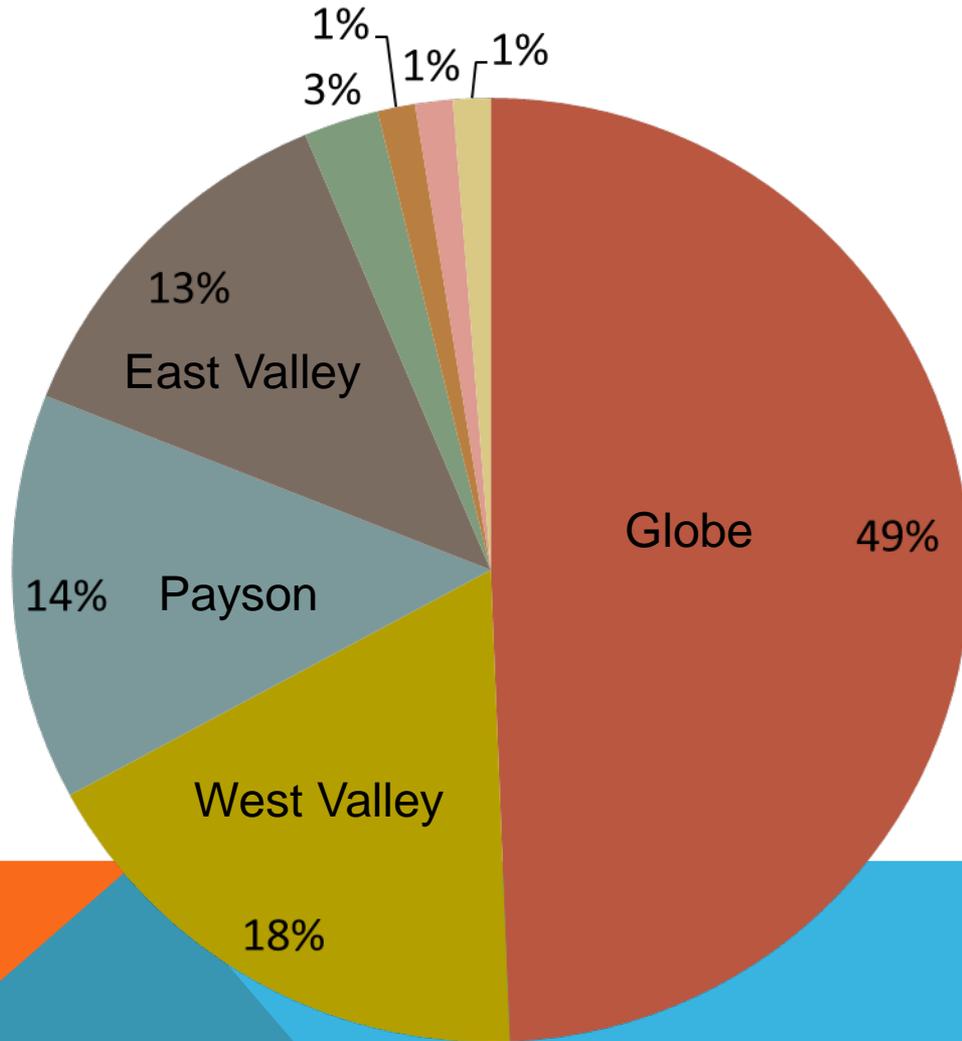
**32 Referrals: 13 denied, 9 Appointments,  
7 Deceased, 5 Released**

**2015 – (8 Months)**

**15 Referrals (so far): 5 denied, 9 Appointments,  
4 Deceased, 2 Pending Release**



# Client Location Chart



- Globe
- West Valley
- Payson
- East Valley
- Casa Grande
- Tucson
- Sedona
- Mammoth

# EXPENSES OF GUARDIANSHIP AND CONSERVATORSHIP

- Filing fees charged by the Clerk of the Court.
  - Fees charged by the petitioner's (PF's) attorney.
  - Fees charged by the proposed ward's attorney.
  - Medical examination costs (physicians report).
  - Court investigator costs.
  - Bond premiums (private fiduciary only).
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# **PUBLIC FIDUCIARY FEES**

**Proposed by the Public Fiduciary and are approved by the Gila County Board of Supervisors.**

**Approved by the superior court presiding judge.**

**Approved annually by a superior court judge on each case.**

**Fees are collected only when a wards necessities have been met.**



# **PUBLIC FIDUCIARY FEE SCHEDULE**

All guardianship, conservatorship, and decedent's estate fees charged by the Gila County Public Fiduciary's Office are subject to the review and approval of the Superior Court following notice of the requested fees and the hearing date being given to relatives and other interested parties, as required by the law. Anticipating approval by the Court, the Public Fiduciary may charge the fees and deduct them from the ward's account on a monthly basis, realizing that in some instances some or all of the fees charged may be denied by the Court. When fees are taken in advance of receiving Court approval of the fees, there should be demonstrated good cause to support each action, such as the need to minimize an estate's or ward's tax liability in a given year or to "spend down" a ward's account or estate to qualify for governmental benefits, or to simply charge the ward's estate appropriate monthly charges as they occur. In such instances, if the fee taken is not subsequently approved by the Court in whole or in part, the portion not approved will be reimbursed to the ward's account or estate.



Fees are calculated according to the following schedule: (In order to provide a service that meets the needs of our primarily indigent wards, the Gila County Public Fiduciary fees are calculated at the unlicensed hourly rate of \$11.76, while some services provided would warrant a much higher licensed fiduciary hourly rate.)

### Guardianship and/or Conservatorship Matters

Referral, Investigation, Set-up Fees

Flat Rate/\$240.00

It takes over 22 hours of Public Fiduciary staff time for case staffing; make initial visit; locate the birth certificate and other identification; research heirs; locate and transfer bank accounts; set up internal client files (personal and financial files); locate, photograph and secure property; establish and implement spending plan; research health records and vital statistic records; coordinate with state and local benefits providers; complete required forms for the providers; locate a suitable private care provider, perform background check and collect necessary identification and insurance records; arrange for payment; research and establish irrevocable burial. Additional time is needed for seeking attorney related support for preparing court papers and documents, and making the court appearance for the appointment.

**Guardianship and/or Conservatorship Fee Per Month**

**Flat Rate/\$60.00**

**Includes the following:**

**Case Management of at least 8 hours per month, including case staffing; monthly visits, including travel time and mileage; postage and office supplies; file maintenance and retention according to Supreme Court guidelines; facsimiles and telephone calls; application/renewal of benefits; complete mandatory payee reports; reviews of billings; bill payment; organization of tax records and meeting with tax professionals; reconciliation of bank accounts; monitoring of insurance claims; attendance of appointments and meetings for all services including physician's appointments; monitoring and storage of inventory items, and sale of personal property.**

**Annual Accounting Fee**

**Flat Rate/\$160.00**

**Final Accounting Fee**

**Flat Rate/\$200.00**

**Includes the following:**

**Accounting and Annual Report preparation (and response if required) which takes up to 10 hours of time for case staffing; legal document preparation, request for and review of physician's reports; review pleadings and notarization; fee collection and record keeping; filing with Court (including travel time and mileage); copying and mailing to interested parties; calendaring and inner office filing; consultation with legal professionals; Court appearance if necessary.**



## Decedents' Estate (Personal Representative)

### Referral, Investigation, and Set-up Fees

Flat Rate/\$250.00

It takes over 22 hours of Public Fiduciary staff time for case staffing; order the death certificate; locate other required identification; locate and notify heirs; locate and transfer bank accounts; set up internal client files; arrange for cremation or burial of the remains; determine the indigent status of the decedent and of his/her survivors; locate and secure property; preparation of affidavit for collection of property by heirs; distribution/donation of residual estate. Additional time is needed for attorney related support for preparing court papers and documents and making the court appearance for the appointment.

## Purchase/Sale of Real Property

Flat Rate/\$150.00

It takes over 15 hours of Public Fiduciary staff time for case staffing; seek Court approval if necessary; conferencing with Real Estate Agency professionals regarding research and comparisons; appraisals; inspections; review of offers; set-up sales contracts; process and sign documents; conferencing with Mortgage Company professionals regarding processing and signature on documents; review and sign ESCROW paperwork; transfer titles; recorded documents; sending and receiving faxes; travel and mileage; notifications to government aid agencies.



## Funeral Fee

Flat Rate/\$150.00

It takes over 15 hours of Public Fiduciary staff time for case staffing; research and set-up of financial account/and conference with mortuary professionals and family; notification of death to family, friends, providers, physicians, government agencies; obituary; funeral arrangements/attendance or preparation of indigent burial application and demand; preparation of documents and payment for services.

## Annual Attorney Fee

Flat Rate/\$115.00

It takes over 1 hour of professional attorney time for preparation of annual documents; consultation with fiduciary professionals; collect and review physician's report, guardianship report and fiduciary fee records; obtain all signatures and notarizations; preparation of mailings; file documents with Court; Court appearance if necessary, receive signed orders and minute entries and copy to fiduciary, calendaring and documentation, maintain and store files according to state statutes and Supreme Court guidelines. This fee also encompasses the time spent monitoring, discussing, and implementing changes that occur in legislation that equally affects each client represented by the Public Fiduciary.



# RIGHTS LOST UPON A COURT FINDING OF INCAPACITY

- Right to vote.
  - Right to Drive.
  - Right to decide where to live.
  - Right to decide how to spend or invest money.
  - Right to take or refuse to take medications.
  - To write a will or change an existing will.
  - Choose social and sexual contacts and relationships.
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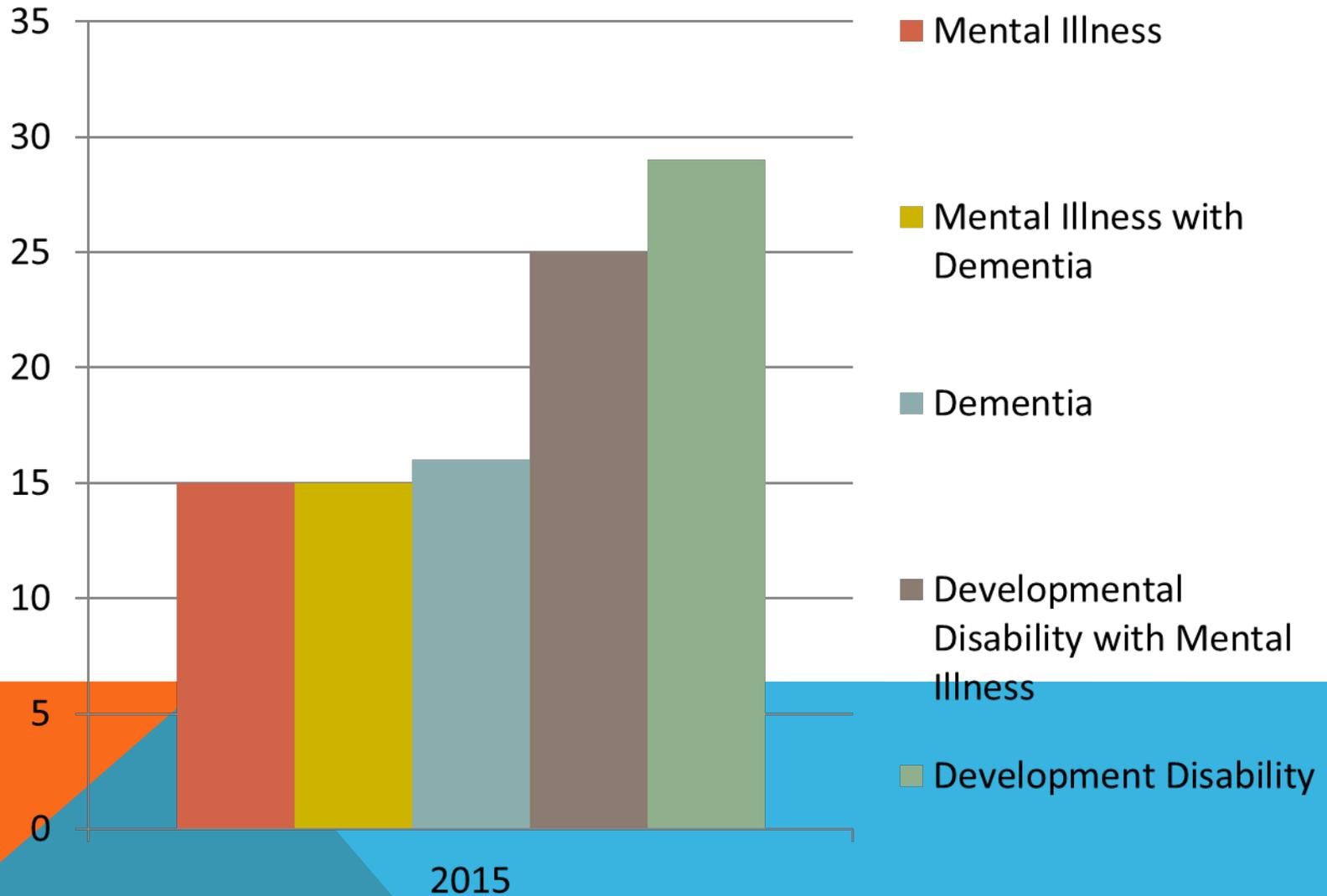
# ASSIGNMENT OF CASES

Upon appointment, the Public Fiduciary assigns the ward to a case manager.

This is based on:

- location of ward
- age of ward
- gender
- level of difficulty

# Client Diagnosis Graph



# DECISION MAKING

- **General Principles**

The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.



## DECISION MAKING, CONT.

### Substituted Judgment -

In using *substituted judgment* the fiduciary attempts to learn as much as possible about the lifestyle, behaviors, preferences, and decisions made by the client prior to his/her incapacity. Taking these factors into consideration, the fiduciary makes a decision that would, as closely as possible, reflect what the client would have decided if the client were capable of making the decision.



# DECISION MAKING, CONT.

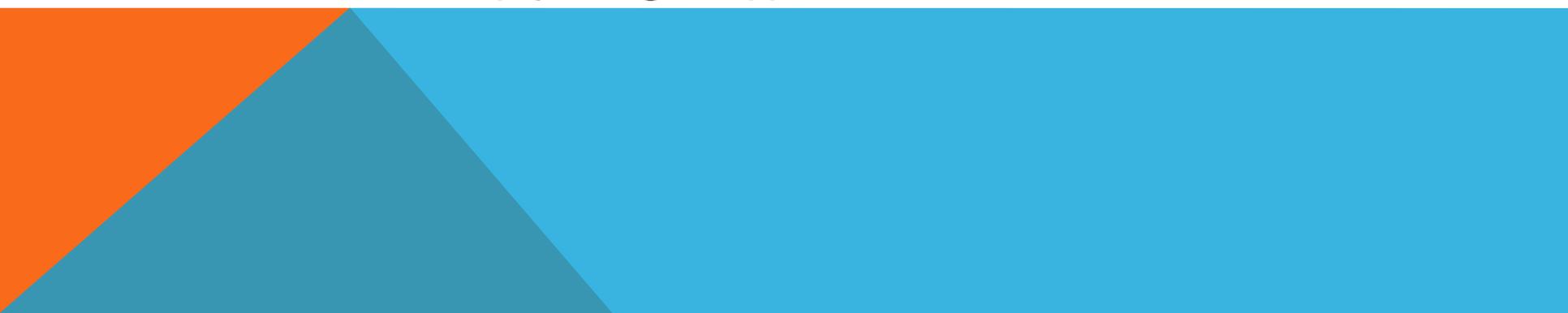
## Best Interest

- In determining the best interest of a ward, the decision maker shall use informed judgment and shall not consent until the following information has been gathered and taken into consideration:
    - The ward's health and well-being.
    - The impact the decision will have on the ward.
    - The reason for and nature of the proposed action.
    - The benefit and necessity of the decision.
    - Possible risks and consequences of the action.
    - Advice and information from all available services.
    - Evaluation or recommendations made by other professionals.
    - A review of the question by an ethics committee.
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# REFERRAL TO COUNTY ATTORNEY FOR FRAUD

In some cases, an appointment made to the public fiduciary is due to an act of abuse or financial exploitation upon a vulnerable person. If there is evidence of abuse, unnecessary transfer of property or unexplained expenditures, the assistance of the county attorney for investigation and possible legal action will be sought.

# CASE MANAGEMENT DUTIES

- Applications for services (food stamps, long term care, Medicare D, Section 8 assistance, utility assistance).
  - Social Security/income change
  - Mailing address change
  - Secure all assets and transfer titles to public fiduciary
  - Closure of bank accounts/deposit into PF account
  - Prepare client budget
  - Inventory/picture inventory (appraisals if necessary)
  - Care plan
  - Advance directives (end of life decisions)
  - Notify recorder's office of appointment
  - Attend medical and psychological appointments
- 

# **INVENTORY AND APPRAISEMENT**

**Within 90 days after appointment, a conservator shall prepare and file with the court an inventory of the estate owned by the protected person on the date of the conservator's appointment, recording pictorially and indicating the fair market value.**



# ANNUAL GUARDIANSHIP REPORT

Every year, on or before the appointment date, the fiduciary shall submit a guardianship report to the superior court advising the court of the following:

- Clients residence, caregiver name and contact info.
  - Name of case manager
  - Number of visitations in the past year by PF office
  - Client's daily activities or employment
  - Medical information/current condition/and name and contact information of physicians.
  - Major changes
  - Why a continuation of guardianship is necessary
  - All governmental services received
- 

# ANNUAL ACCOUNTING

Every year, on or before the appointment date, the fiduciary shall submit an itemized accounting to the superior court for approval which must include:

- all income received
- all expenditures with explanation of expense
- any real property and its value
- investments (CD's, burials, money market accounts)
- any fees sought by the fiduciary for services provided

# **PETITION TO APPOINT PERSONAL REPRESENTATIVE**

**Upon the death of a ward, the fiduciary shall notify the court within 10 days of the wards passing.**

**If after 40 days from the death of the ward no one has come forward to request to be appointed personal representative of the estate, the fiduciary shall petition the court to be appointed.**

**If a qualified person is appointed as personal representative, the fiduciary shall enter a claim against the estate for services rendered and turn all assets over to the personal representative.**



# FINAL ACCOUNTING

When activities of estate administration are concluded, a final account is filed.

The Final Accounting includes the Petition to Propose Distribution:

- Creditor Claims
- Inventory Items
- Fees
- Burial expenses

After the Final Accounting is approved and all assets distributed, the fiduciary files:

Petition for Final Discharge:

A petition asking the judge to approve the final distribution and release the fiduciary from any further responsibility to the estate.

# INDIGENT BURIALS

The Public Fiduciary is charged with the review and approval of all indigent burial requests, and investigation into the legitimacy of each claim.

## Eligibility considerations:

- Did the deceased pass away in Gila County?
- Is there any family, friend, or organization able to assume responsibility?
- Was the referred party on Government assistance, such as; AHCCCS?
- Is there any savings or property?
- Is the referred party a veteran?
- Does the individual meet the federal poverty guidelines?

Indigent burial was originally intended for the burial of unclaimed, or unidentifiable persons whom for lack of any other option will be placed in a specific section of a cemetery. However, most applications are for individuals who have not maintained familial contacts and no family member is willing or able to pay the expense of burial.

## INDIGENT BURIALS CONT....

- Currently, Gila County allows \$410.00 for a non-veteran burial and \$560.00 for a veteran.
- Gila County does not authorize cremation, but does allow family to authorize cremation to reduce the burden on the funeral home.
- In 2014, Gila County received 8 applications and authorized indigent burials for 6 individuals.

The cost of one burial was recovered by affidavit (A.R.S. § 36-831, G) through a bank account.

- In 2015, Gila County has received 12 applications and authorized burials for 10 individuals.

**Thank you for the opportunity to make this presentation.**

**Do you have any questions?**

