Additional Materials

Current Issues In Adult Guardianships

Jeffrey P. Kilgore, Judge
Washington Probate Division

March 23, 2018

195 Vt. 21
Supreme Court of Vermont.

CITIFINANCIAL, INC.
v.
Judith BALCH, Special Administratrix of the Estate of Theodore Ballard.

No. 12–118.
|
Oct. 4, 2013.

Synopsis
Background: Mortgagee filed foreclosure complaint against mortgagor, a ward under a voluntary **guardianship**. Mortgagor moved for summary judgment. The Superior Court, Rutland Unit, Civil Division, Mary Miles Teachout, J., granted mortgagor summary judgment. Mortgagee appealed.

Holdings: The Supreme Court, **Robinson**, J., held that:

[1] guardian's signature as a cosigner on promissory note was sufficient evidence that she approved voluntary ward's entering into the contract;

[2] mortgage deed, which was unilaterally executed by ward, was ineffective; and

[3] failure of guardian to obtain court approval of promissory note co-signed by ward did not render the note ineffective.

Affirmed in part, reversed in part, and remanded.

Skoglund, J., filed dissenting opinion, in which Burgess, J., joined.

West Headnotes (7)

[1] Appeal and Error
⇦ Extent of Review Dependent on Nature of Decision Appealed from

Supreme Court reviewing a summary judgment applies the same standard as the trial court.

Cases that cite this headnote

[2] Guardian and Ward
⇦ Bills and notes

Guardian's signature as a cosigner on promissory note secured by mortgage deed was sufficient evidence that she approved voluntary ward's entering into the contract when he co-signed the document, as required by terms of the voluntary **guardianship**, even though guardian did not expressly indicate that she was signing as ward's guardian or that she approved ward's action; factfinder could easily infer that guardians's signature reflected her assent to the loan irrespective of question of the "capacity" in which she signed the document. 14 V.S.A. § 3069.

Cases that cite this headnote

[3] Guardian and Ward
⇦ Mortgage

In absence of license from probate court, mortgage deed that was unilaterally executed by ward under voluntary **guardianship** was ineffective; having essentially ceded power to approve encumbrance of real property to his guardian, ward could not then act unilaterally, and statute governing guardian's power to approve encumbrance of a ward's real property was subject to licensing requirements set forth in **guardianship** statute's real estate licensing provisions. 14 V.S.A. §§ 2881, 3069(c)(5).

Cases that cite this headnote

[4] Guardian and Ward
⇦ Mortgage

The law governing mortgages by guardians does not limit its application to involuntary **guardianship** cases; instead, it applies to any fiduciary who seeks to mortgage his or her ward's property.

Cases that cite this headnote

[5] **Guardian and Ward**
⇦ Mortgage

If the power to mortgage a ward's estate has been given to a guardian, it must be plainly and unequivocally conferred, and it is limited to the purpose expressed in the governing statute, and must be exercised in the exact manner prescribed therein.

Cases that cite this headnote

[6] **Guardian and Ward**
⇦ Bills and notes

Failure of guardian to obtain court approval of promissory note co-signed by ward under voluntary **guardianship** did not render the note ineffective, even though the mortgage deed and promissory note secured by that deed were executed as part of the same overall transaction, and **guardianship** statute required court approval of the mortgage; **guardianship** order, which was consistent with statute delineating potential powers of a guardian, specifically authorized guardian to approve any contract, except for necessities, which ward might wish to make, and although probate statutes prevented guardian, without court approval, from pledging ward's real property as security for a promissory note, they did nothing to limit guardian's authority to approve ward's unsecured borrowing of money.

Cases that cite this headnote

[7] **Statutes**
⇦ Technical terms, terms of art, and legal terms

When the Legislature uses legal terms of art, courts presume that the Legislature intended the terms to have their well-established legal meanings.

Cases that cite this headnote

Attorneys and Law Firms

****416** Andrew H. Montroll and Amber L. Doucette of Bendett and McHugh, P.C., Burlington, for Plaintiff–Appellant.

Judith Balch, Pro Se, Castleton, Defendant–Appellee.

Present: REIBER, C.J., DOOLEY, SKOGLUND, BURGESS and **ROBINSON**, JJ.

Opinion

ROBINSON, J.

***23** ¶ 1. Plaintiff CitiFinancial, Inc. appeals from the superior court's order granting summary judgment to defendant, the Estate of Theodore Ballard, on its foreclosure complaint. CitiFinancial argues that Ballard, who was under a voluntary **guardianship**, was bound by a mortgage deed and promissory note that he and his guardian co-signed, and that the trial court erred in concluding otherwise. We affirm in part and reverse and remand in part.

I.

¶ 2. We begin with an overview of the **guardianship** process. Vermont law has provided for voluntary **guardianships** since 1912. ***24** Initially, such **guardianships** were available for those individuals over eighteen who deemed themselves "unfitted by reason of infirmity, age or other mental or physical disability, for the prudent management of [their] affairs." 14 V.S.A. § 2671 (1974). Prior to 1979, the law did not list the potential powers that a guardian could possess. Instead, all guardians in all types of adult **guardianships** had the same powers: "the possession and management" of their ward's estates, as well as "the care and custody" of the ward. *Id.* § 2692 (1974); see also *id.* § 2799 (providing that guardian could: "receive, sue for and recover, debts and demands due" to ward; "maintain and defend actions or suits," "settle accounts, demands, claims and actions at law or in equity by or against his ward").

****417** ¶ 3. Under this statutory scheme, guardians in all types of adult **guardianships** were required to give notice that their ward's future contracts and transfers of real or personal property would be held void. *Id.* § 2690.

Guardians were also required, as they are today, to obtain a license from the probate court to sell or mortgage the ward's real estate, see *id.* §§ 2201, 2881–2891, but not to sell the ward's personal property. *Id.* § 2798.

¶ 4. The Legislature made numerous changes to the **guardianship** laws in 1979, essentially adopting the approach in place today. Section 2671 made voluntary **guardianships** available for any individual, eighteen years or older, who "desires assistance with the management of his or her affairs." 1979, No. 76, § 3; see also 14 V.S.A. § 2671(a) (2012) (same). As part of this overhaul of the **guardianship** statutes, the Legislature delineated specific powers that a guardian could possess in 14 V.S.A. § 3069. In voluntary **guardianship** cases, petitioners themselves specify which powers they wish the guardian to exercise from the list found in § 3069, while courts in involuntary **guardianship** cases choose which powers from § 3069 are appropriate and necessary. See 1979, No. 76, § 15; see also 14 V.S.A. §§ 2671(b)(2), 3069.

¶ 5. At the time of the **guardianship** petition in this case, § 3069 identified the following **guardianship** powers: the power to: (1) exercise general supervision over the ward; (2) approve or withhold approval of any contract, except for necessaries, which the ward wishes to make; (3) approve or withhold approval of the ward's request to sell or in any way encumber his personal or real property; (4) exercise general supervision over the income and resources of the ward; (5) consent to surgery or other medical ***25** procedures subject to statutory or constitutional limitations; and (6) receive, sue for, and recover debts and demands due to the ward; maintain and defend actions or suits for the recovery or protection of the ward's person or property; settle accounts, demands, claims and actions at law or in equity by or against the ward, and compromise, release and discharge the same on such terms as he deems just and beneficial to the ward. 1979, No. 76, § 15. These are essentially the same powers identified in the current statute. See 14 V.S.A. § 3069(c)(1)-(6).

¶ 6. As indicated above, in involuntary **guardianship** cases, the court could appoint a "limited guardian," who could exercise only specified powers, or a "total guardian," who could exercise all of the powers of **guardianship**. 1979, No. 76, § 15; see also 14 V.S.A. § 3069(d)(1) (stating, under current law, that when guardian has been granted some but not all **guardianship** powers, **guardianship** is identified as a "limited **guardianship**" and guardian identified as a "limited guardian"). The law specifically provided that persons for whom a limited guardian was appointed retained all legal and civil rights except those that had been specifically granted to the limited guardian by the probate court. *Id.*; see also 14 V.S.A. § 3069(d)(2) (stating that, under current law, a person under limited **guardianship** retains all powers identified in § 3069(c) except those that have been specifically granted to limited guardian).

¶ 7. As of 1979, only guardians of spendthrifts were required to provide notice that their ward's "[c]ontracts, gifts, sales or transfers of real or personal estate made" after the guardian's appointment would be considered void. See 1979, No. 76, § 18. This was presumably done in recognition that, in all cases other than spendthrift **guardianships**, a ward might retain certain rights, such as the right to contract or convey real property. Compare 1979, No. 76, § 19 (guardians of spendthrifts shall ****418** have the possession and management of the estates of their wards), with *id.* § 15 (delineating powers of guardian and recognizing that in limited **guardianships**, ward retains "all legal and civil rights except those which have been specifically granted to the limited guardian by the court").

¶ 8. As stated above, guardians must obtain a license from the probate court to mortgage or sell a ward's real property. See 14 V.S.A. § 3069(c)(5) (stating that guardian's power to approve or withhold approval of sale or encumbrance of real property of person under **guardianship** is subject to the real estate licensing ***26** provisions set forth in 14 V.S.A. §§ 2881–2891 [1]); *Id.* §§ 2201–2202 (setting forth requirements for mortgage or lease of ward's property). No license is required to sell a ward's personal property unless the proceeds of such sale are to be invested in real estate. *Id.* § 2798 (stating that guardian may sell ward's personal estate when necessary or for the ward's interest, and may use funds to pay necessary expenses of ward's maintenance and education); *id.* § 2803 (stating that on motion of guardian or other specified individuals, and following notice and hearing, probate division may authorize or require guardian to sell and transfer stock or other personal estate of ward, collect demands and invest in real estate the proceeds and moneys in guardian's hands if court deems it beneficial to ward); see also *In re Estate of Collette,* 122 Vt. 231, 235, 167 A.2d 361, 363 (1961) ("A guardian is not required to obtain a license to sell from the probate court before selling personal estate of his ward unless the proceeds of such sale are to be invested in real estate.").

¶ 9. This approach appears consistent with the general rule in other states. See, e.g., H.D.W., *Power of Guardian to Sell Ward's Property without Order of Court,* 108 A.L.R. 936, 937, 944 (1937) ("By the great weight of authority, a guardian, unless restrained from doing so by statute, has the power to sell his ward's personal property without an order of court.... It is a general rule that ***27** a guardian has no authority to sell real estate of his ward without an order of court, in the absence of a statute expressly or by implication conferring the power or authority otherwise conferred upon him, as by will.").

¶ 10. Under Vermont law, a license to sell a part or all of the lands of a ward or the interest of such wards in real estate, vested or contingent, will be granted only ****419** if the court finds that: (1) the ward's personal estate is insufficient to pay the expenses of maintaining the ward and his or her family, or of educating a minor ward as his or her circumstances require; (2) the ward's personal estate is insufficient to pay his or her debts contracted before or after the appointment of his or her guardian; or (3) it appears to the court conducive to the ward's interest to sell the real estate, or an interest vested or contingent therein, and put the proceeds at interest or invest it in stocks or in real estate. 14 V.S.A. § 2881. Procedural requirements for granting such a license include notice and a hearing, at which the guardian must produce proof of the value of the estate to be sold, the interest of the ward therein, and of the necessity of sale; the guardian may also be required to post a bond. *Id.* § 2882(1)-(3).[2]

¶ 11. Cross-referenced in the provision governing the sale of real estate is 14 V.S.A. § 2201, which governs the execution of mortgages and leases by guardians and other fiduciaries such as executors, administrators, and trustees. The law provides that, "[i]f on motion and after notice and hearing it appears to be for the benefit of the estate," the probate court "may authorize a fiduciary to mortgage any of the real estate or to mortgage, pledge or assign any of the personalty of the estate" for certain specified purposes. *Id.* These purposes include the following: "to prevent a sacrifice of the estate; to make repairs and improvements upon the estate; to pay debts, legacies or charges of administration; to pay an existing mortgage, lien or tax on the estate, or to support a ward." *Id.*

¶ 12. In his or her motion, the guardian must describe "the property to be mortgaged, pledged or assigned, the amount of ***28** money necessary to be raised, the nature and amount of the obligation to be secured and the purpose for which the money or security is required." *Id.* § 2202. If the request is approved, the probate court will:

> fix the amount for which the mortgage, pledge or assignment may be given, the terms thereof and the rate of interest which may be paid thereon, and the court may order the whole or any part of the money secured by the mortgage to be paid from time to time out of the income of the property mortgaged.

Id. As these regulations reflect, "[t]he legislative power has, with great care, guarded the rights of wards in their real estate." *Doty,* 55 Vt. at 283; see also *Burnell v. Malony,* 36 Vt. 636, 638 (1864) (observing that regulations governing the issuance of licenses to sell reflect the "jealous care" with which the rights of wards are guarded).

¶ 13. Notwithstanding the changes made in 1979, or perhaps because of them, Title 14 is confusing in many respects and it contains provisions that are potentially contradictory. The 1979 amendments and additions to the law governing **guardianships** do not appear to have addressed all statutes pertaining to the powers and duties of guardians. Older statutes that remain compete with the more recent amendments. The result is a hodgepodge. For example, 14 V.S.A. § 2798 remains essentially as it was in 1797, and provides that a guardian may sell a ward's personal estate when necessary or for the ward's interest, and use funds to pay necessary ****420** expenses of the ward's maintenance and education. This statute now seems to be encompassed by 14 V.S.A. § 3069(c)(3), which gives a guardian the power to "liquidate personal property for the benefit of the person under **guardianship**."

¶ 14. In a similar vein, 14 V.S.A. § 2801, which is essentially unchanged since 1839, allows a guardian to discharge a mortgage when the proper sum is paid to the guardian, release any claim of his ward as mortgagee, and "give the consent of his ward to the sale of real estate when such consent is required by law." This would appear to be a power that a person under a voluntary **guardianship** might want to give a guardian, but then again, the person might not; if a person seeking voluntary **guardianship** does not request that the guardian have such power, and the court does not incorporate the power into an order, this

provision would seem a usurpation of the ward's retained rights.

*29 ¶ 15. We note, moreover, that the provision governing licenses to mortgage a ward's real estate, while cross-referenced in the "**guardianship**" chapter of Title 14, is contained in a different chapter of Title 14. This could lead to it being overlooked, as it was by the court and the parties in this case. Additionally, in describing the powers of a guardian, 14 V.S.A. § 3069(c)(5) provides that a guardian's power to approve or withhold approval of sale or "encumbrance" of real property of a person under **guardianship** is subject to the real estate licensing provisions set forth in 14 V.S.A. §§ 2881–2891. The reference to an "encumbrance" is somewhat confusing in that an encumbrance of property involving a mortgage is presumably covered by 14 V.S.A. § 2201 rather than § 2881. While there is some overlap in the court findings necessary to warrant a mortgage and a sale, they are not the same. Compare *id.* § 2201 (mortgage may be authorized "to prevent a sacrifice of the estate; to make repairs and improvements upon the estate; to pay debts, legacies or charges of administration; to pay an existing mortgage, lien or tax on the estate, or to support a ward"), with *id.* § 2881 (sale of land or interest in land may be authorized when: ward's personal estate is "insufficient to pay expenses of maintaining the ward and his or her family, or of educating a minor ward as his or her circumstances require"; when ward's personal estate is "insufficient to pay his or her debts contracted before or after the appointment of his or her guardian"; or "when it appears to the court conducive to the interest of the ward to sell the real estate, or an interest vested or contingent therein, and put the proceeds at interest or invest it in stocks or in real estate"). While these issues do not affect the resolution of this case, they do highlight the need for legislative clarification of the laws governing **guardianships**.

II.

¶ 16. With this background in mind, we turn to the facts of this case. Ballard filed a petition for a voluntary **guardianship** in May 2005. Ballard was seventy-one years old at the time and apparently could not read. In June 2005, following a hearing, the Fair Haven Probate Court appointed Ballard's niece, Leala Bell, as Ballard's guardian. Bell was granted powers of **guardianship** that included the power to approve or withhold approval of any contract, except for necessaries, which the ward wished to make, *30 and the power to approve or withhold approval of the ward's request to sell or in any way encumber his personal or real property.

¶ 17. On June 30, 2008, in the context of a refinance of the mortgage on Ballard's property, Ballard and Bell executed a promissory note in CitiFinancial's favor for **421 $102,670.28, with interest accruing at 12.16%.[3] Bell signed the promissory note as a "borrower"; she did not expressly indicate that she was signing as Ballard's guardian or that her signature indicated only her "approval" of Ballard's action. The loan was secured by a mortgage on Ballard's real property. The mortgage deed granted and conveyed Ballard's property to CitiFinancial, including the power to sell the property. Ballard signed the mortgage deed but Bell did not. There was no showing that the probate court licensed the mortgage.

¶ 18. Not long thereafter, CitiFinancial sought to foreclose on the property. In August 2009, Bell requested that her role as guardian be terminated. Following a hearing, the probate court terminated her appointment and appointed Judith Balch and Lisa Kemp as co-guardians. In October 2009, following the dismissal of a prior complaint due to inadequate service, CitiFinancial sued Ballard.[4] This complaint was also dismissed after CitiFinancial failed to comply with a court order to correct several errors in its motion for summary judgment. In June 2010, CitiFinancial filed the instant foreclosure complaint against Ballard.[5] CitiFinancial alleged that Ballard had failed to make the payments called for under the note and mortgage, and thereby breached these agreements.

*31 ¶ 19. Ballard moved for summary judgment, arguing in relevant part that he lacked the legal capacity to execute a mortgage deed and promissory note while he was under **guardianship**. Ballard also asserted that no license had been granted with respect to any mortgage on his property. Ballard argued that a Motion for License to Sell Real Estate, which required a hearing before the probate court, served to protect the ward's interest, and in this case, it did not appear that the loan funds had been used for the ward's benefit. CitiFinancial opposed the motion, arguing that Ballard failed to show that he lacked the ability to contract or that he did not agree to the promissory note and mortgage.

¶ 20. In a February 2012 decision and order, the court granted summary judgment to Ballard. It found that the guardian here had total powers over Ballard's affairs with no powers reserved for the ward. Because the probate court did not approve the note and mortgage and Ballard was under a valid **guardianship** at the time they were executed, they were not enforceable against Ballard or his estate. While the guardian might be liable to CitiFinancial, the court explained, Ballard's estate was not, nor was its real estate subject to CitiFinancial's mortgage. Neither the court nor any of the parties referred to 14 V.S.A. § 2201, which specifically addresses the mortgage of a ward's **422 property. Instead, the court relied on 14 V.S.A. § 2881, which addresses the sale of a ward's land or of the ward's interest in land. CitiFinancial appealed from the court's order.

[1] ¶ 21. We review a grant of summary judgment using the same standard as the trial court. *Richart v. Jackson,* 171 Vt. 94, 97, 758 A.2d 319, 321 (2000). Summary judgment is appropriate when, taking all allegations made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *Id.*; V.R.C.P. 56(a).

[2] ¶ 22. CitiFinancial argues that the promissory note and mortgage deed are valid and enforceable against Ballard. According to CitiFinancial, after his guardian was appointed, Ballard could continue to execute contracts or encumber his own property as long as he had his guardian's approval. CitiFinancial asserts that Bell's signature as a co-borrower on the promissory note and settlement statement evidence her "approval" of Ballard's execution of the promissory note, and that Bell approved of Ballard's execution of the mortgage deed because the execution of the promissory note and the mortgage deed, along with the other closing documents, were all part of the same transaction.

*32 ¶ 23. As to the statute governing the sale of a ward's real estate, 14 V.S.A. § 2887, CitiFinancial maintains that a license to sell was not required because this was "simply a contract to borrow and repay certain funds" and because Ballard's property was not actually sold. Even if this statute applied to the granting of mortgages, CitiFinancial asserts that it is limited to those situations where it is the guardian who seeks to sell the property. According to CitiFinancial, this law does not restrict a ward from selling his or her own property. CitiFinancial does not discuss the law governing licenses to mortgage a ward's property, 14 V.S.A. § 2201.

A.

¶ 24. First we consider whether the ward was required to obtain his guardian's approval of the note and mortgage and, if so, whether Bell's signature on the note as a cosigner sufficiently evidenced such approval. CitiFinancial appears to concede that, pursuant to the terms of the **guardianship** here, the ward was required to obtain his guardian's approval to execute the promissory note and the mortgage deed. Obviously, the ward could have retained the power to enter into contracts (other than for necessaries, which he did retain) or the power to sell or encumber his real property. Instead, he specifically requested that his ability to exercise these powers be subject to approval of his guardian, and the probate court issued an order to this effect. Given that the guardian has both the power to approve and to "withhold approval" of the ward's proposed transactions, the ward cannot act independently in these matters. If the ward could continue to act unilaterally, the guardian would be unable to fulfill his or her statutory obligation to manage the ward's estate "frugally and without waste and in a manner most beneficial to the ward," 14 V.S.A. § 2797, and the probate division's supervisory function would be impeded. A competent ward who wishes to retain the power to convey the ward's property unilaterally can do so under the **guardianship** laws. But once the ward has conveyed this power to the guardian, he or she must modify the terms of the **guardianship** in order to recover that right.

¶ 25. There is no dispute that Bell signed the promissory note below Ballard on a line bearing the preprinted designation **423 "Borrower," with no reference to her status as Ballard's guardian. *33 The question is whether, on the basis of this fact, the court could conclude that Bell approved his entering into this contract. A factfinder could easily infer that Bell's signature reflected her assent to the loan. It is hard to imagine any other plausible inference. The question of the "capacity" in which she signed the document may very well be critical to an assessment of Bell's own personal liability on the note, but is not determinative of the question of whether she approved his entering into the contract.[6] The **guardianship** order in this case and the underlying

statute required Bell's approval of Ballard's execution of the contract; they do not prescribe any particular requirements for documenting that approval, and do not require her to cosign agreements executed by Ballard with her approval, let alone to cosign in a particular "capacity." 14 V.S.A. § 3069. The statute simply requires her approval.

¶ 26. Ballard's argument relies on the notion that Bell participated in the transaction with CitiFinancial, subjected herself to personal liability as a cosigner of the note, signed the settlement statement as well as the promissory note, but did not actually approve Ballard's signing of the note. This narrative is not compelled by the undisputed facts; in fact, it is hard to square with the record.

B.

[3] ¶ 27. We next consider whether the absence of a license from the probate court affects the validity of the note and mortgage. The law plainly requires probate court approval for the issuance of a mortgage deed. See 14 V.S.A. §§ 2201–2202. A guardian must seek such approval by motion, *id.* § 2202, and the court must find that the mortgage will satisfy one of the specifically enumerated statutory purposes. It is undisputed that the guardian failed to comply with this statute here. The mortgage deed is therefore ineffective. See, e.g., *Slafter v. Savage,* 89 Vt. 352, 355, 95 A. 790, 791 (1915) ("A guardian can only dispose of the real estate of his ward by proceeding in accordance with statutory provisions ....").

¶ 28. We reject CitiFinancial's suggestion that the licensing requirements do not apply when a ward subject to a *voluntary* *34 **guardianship**, as opposed to the guardian, seeks to sell property. This makes no sense in cases where, as here, the ward has essentially ceded the power to approve a sale or encumbrance of real property to a guardian. Having done so, the ward cannot then act unilaterally. CitiFinancial cites no case where a court has found that a ward in a voluntary **guardianship** can continue to convey or encumber property unilaterally once the ward has assigned such power to a guardian. In fact, there is authority to the contrary. In *Bryan v. Century National Bank,* 498 So.2d 868 (Fla.1986), the Florida Supreme Court concluded that where a competent ward had surrendered control of her property to a voluntary guardian, the ward could no longer unilaterally transfer that property. In reaching its conclusion, the court recognized the significant difference between voluntary and involuntary **guardianships**—the former available only to competent individuals. In recognition of this difference, it found that the law allowed wards in voluntary **guardianships** to determine what property would be subject to a guardian's control. The property so included was subject to court protection and **424 court supervision, and the ward, although mentally competent, could no longer freely deal with such property. *Id.* at 871. The court emphasized that wards were free at the outset to exclude certain property from the guardian's oversight, and they remained free at any time to modify or terminate the **guardianship** and dispose of their property as they saw fit. As it explained, the **guardianship** was for the ward's convenience, and the guardian's control over such property continued only so long as the ward desired. *Id.* at 871–72.

¶ 29. An Ohio court reached an analogous conclusion in *In re Tillman,* 137 N.E.2d 172 (Ohio Prob.Ct.1956), although the probate laws at issue differ somewhat from Vermont law. In that case, the court held that a mentally competent individual who agreed to a **guardianship** did not retain dominion over her property and could not direct the expenditures of her own money and the disposition of her own property. The court found that, other than the appointment process, its probate laws made no distinction between a **guardianship** for a mentally incompetent person and a person rendered incompetent by reason of physical disability or infirmity. *Id.* at 174. Given this, the court found that it would be "highly improper" for the court to create such a distinction "by judicial fiat." *Id.*

¶ 30. The court in *Tillman* found that when the ward consented to the **guardianship**, "she waived her constitutional rights to *35 control the disposition of her own property and consented to having her property administered by a guardian who was subject to the rules of law and the supervision of the probate court." *Id.* at 175. It emphasized that the ward did not have to so consent, and at any time during the **guardianship**, she could have requested its termination. The court concluded that to allow the ward to act unilaterally would make the guardian "an agent of [the] ward, rather than an officer of the Court, and to substitute the judgment of the ward for the judgment of a court of law." *Id.* It rejected the notion that the "services of a court of law" could "be enlisted for rubber stamp purposes." *Id.*

¶ 31. CitiFinancial cites no case law in support of its position and we find none. We similarly find nothing in our statutes to support CitiFinancial's position. While our statutes emphasize cooperation between guardian and ward in all types of **guardianships**, our Legislature has not defined a different set of powers and duties for guardians in voluntary **guardianships** as opposed to involuntary **guardianships**. The primary difference between the **guardianships** is the method by which the guardian is appointed and the competent ward's ability to choose which powers the guardian will exercise. See, e.g., *Bryan,* 498 So.2d at 874 (Boyd, J., dissenting) ("The difference between voluntary and involuntary **guardianships** is not in the responsibilities or duties of the guardian once appointed, but rather in the process of the appointment of the guardian."); see also *In re **Guardianship** of Anderson,* 247 Iowa 1292, 78 N.W.2d 788, 791 (Iowa 1956) (finding no basic difference under Iowa law between powers and duties of voluntary and involuntary guardians).

¶ 32. Nor does the plain language of the relevant licensing statutes distinguish between guardians in voluntary or involuntary **guardianships**. Instead, the statutes refer generally to "guardians" or "fiduciaries," which include guardians. See 14 V.S.A. §§ 2201, 2881. As stated above, guardians in both types of **guardianships** derive their powers from the same statute. See *id.* § 3069; *id.* § 2671(b)(2) (person seeking voluntary **guardianship** shall specify which of the powers of the guardian as ****425** set forth in § 3069 he or she requests to be exercised by the guardian). In fact, 14 V.S.A. § 3069(c)(5) now explicitly states that a guardian's power to approve or withhold approval of the sale or encumbrance of a ward's real property is subject to the licensing requirements ***36** set forth in 14 V.S.A. §§ 2881–2891, although this has long been required under our law. See, e.g., *Doty,* 55 Vt. at 283.

[4] **[5]** ¶ 33. The law governing mortgages by guardians similarly does not limit its application to involuntary **guardianship** cases. Instead, it applies to any fiduciary who seeks to mortgage his or her ward's property. See *Wright v. Atwood,* 33 Idaho 455, 195 P. 625, 627 (1921) ("The courts quite generally agree that in the absence of [a] statute authorizing such proceedings a guardian has no power to mortgage the ward's real estate."). As the *Wright* court observed, "If the power to mortgage [a] ward's estate has been given to a guardian, it must be plainly and unequivocally conferred, and it is limited to the purpose expressed in the statute, and must be exercised in the exact manner prescribed therein." *Id.* The language of our statutes is plain and their purpose is clear. We must enforce the statutes as written. *Rochon v. State,* 2004 VT 77, ¶ 8, 177 Vt. 144, 862 A.2d 801; see also *Brennan v. Town of Colchester,* 169 Vt. 175, 177, 730 A.2d 601, 603 (1999) ("We will not read an implied condition into a statute unless it is necessary in order to make the statute effective." (emphasis omitted) (quotation omitted)). For these reasons, we conclude that the mortgage deed executed by Ballard is ineffective.

[6] ¶ 34. We reach a different conclusion with respect to the promissory note. Although the mortgage deed purportedly executed by Ballard and the promissory note secured by that deed were executed as part of the same overall transaction, the two documents created distinct legal obligations. The promissory note purportedly gave rise to Ballard's personal liability for repayment of the loan. The mortgage purportedly provided security to CitiFinancial and a means for collecting at least part of the note against the property in the event of a default. *Pomfret Farms Ltd. P'ship v. Pomfret Assocs.,* 174 Vt. 280, 283, 811 A.2d 655, 658 (2002) ("The mortgage and the note are distinct, however, and, while the mortgage does not impose any personal liability on the defendant, a personal obligation is imposed on the underlying note."); *LaFarr v. Scribner,* 150 Vt. 159, 161, 549 A.2d 651, 652 (1988) ("Neither the mortgage nor the judgment impose any personal liability on defendants. The only personal obligation of defendants is on the underlying note.").

¶ 35. The authority specifically granted to Bell by the **guardianship** order included the power to exercise general supervision ***37** over Ballard; to approve or withhold approval of any contract, except for necessities, which Ballard may wish to make; and to exercise general supervision over Ballard's income and resources. This grant of authority was consistent with the governing statute delineating the potential powers of a guardian, 14 V.S.A. § 3069, subject to the guardian's overarching responsibility to manage the ward's affairs "in a manner most beneficial to the ward," *id.* § 2797.

¶ 36. In contrast to Bell's authority to approve the mortgage, her power within the bounds of her fiduciary obligations to approve contracts that Ballard wished to make was not specifically constrained by any statute

requiring court approval. Accordingly, if she "approved" the promissory note signed by Ballard, his execution of that note would have been entirely consistent with the constraints of his **guardianship** **426 and the note would not be unenforceable on the same basis as the mortgage.

¶ 37. The fact that this particular note was executed at the same time as a mortgage does not change this analysis. If, with Bell's approval, Ballard had executed an unsecured promissory note to CitiFinancial, nobody would try to argue that the statutes requiring the probate court to approve the sale or mortgage of a ward's property would have applied to that note. The probate statutes prevent a guardian, without court approval, from pledging the ward's real property as security for such a note, but do nothing to limit the guardian's authority to approve the ward's unsecured borrowing of money. The invalidity of the mortgage does not, in itself, establish the invalidity of the underlying note because the effectiveness of the note, in contrast to the mortgage, is not conditioned on judicial approval.

[7] ¶ 38. The dissent is right that the statute does give the probate court the authority to restrict the terms of the underlying note as a condition of its approval of a mortgage. 14 V.S.A. §§ 2201–2202. The court may withhold approval of a mortgage deed if the guardian fails to conform the underlying note to the court's requirements. But it does not follow that the statute requires probate court approval of a promissory note in its own right, rather than as a condition to the approval of a mortgage deed. The Legislature could reasonably conclude—and apparently has concluded—that guardians are free to borrow money on a ward's behalf when doing so is in the ward's best interests, *38 but that probate court intervention in the transaction is a precondition to use of the ward's assets to secure the debt. The dissent's construction of the word "mortgage" to mean a mortgage deed as well as any promissory note purportedly secured by a mortgage, even if the purported mortgage is invalid, combines two distinct legal concepts, relying on an admittedly "loose" definition of mortgage. *Post,* ¶ 46. When the Legislature uses legal terms of art, we presume that the Legislature intended the terms to have their well-established legal meanings. See *Morissette v. United States,* 342 U.S. 246, 263, 72 S.Ct. 240, 96 L.Ed. 288 (1952).

¶ 39. For these reasons, we conclude that the trial court erred in analyzing the note and mortgage as if they were one and the same, both subject to the requirement of probate court approval. We therefore reverse the award of summary judgment to Ballard on CitiFinancial's claim on the promissory note and remand to the trial court for further proceedings on this claim. [7]

III.

¶ 40. We recognize that the statutes as currently written lead to potential hardship for both parties in a transaction like this. In the simple act of refinancing a mortgage with a competent mortgagor who, unbeknownst to CitiFinancial, was subject to a voluntary **guardianship**, the **427 bank potentially lost the security associated with a very substantial loan. On the other hand, the estate of a ward subject to the protection of a **guardianship** is now subject to a very substantial debt incurred, or at least increased, during the voluntary **guardianship**.

¶ 41. The former consequence results from the absence of any statute or rule requiring publication notice to protect creditors like CitiFinancial in this case. In the context of spendthrift trusts only, the Legislature has required guardians to put potential creditors on notice by publication that contracts made by the ward *39 will be held void. 14 V.S.A. § 2690. Although the probate court has the discretion to require such notice in other situations, see Vermont Rules of Probate Procedure 80.1, no statute or rule requires publication notices in all cases in which a ward subject to a voluntary **guardianship** cedes the power to independently enter into contracts without the guardian's approval.

¶ 42. The latter consequence flows from the Legislature's limitation of the judicial oversight requirement to the execution of a mortgage deed in a case like this. If the Legislature intends to prohibit guardians from approving the execution of promissory notes in cases like this, as the dissent suggests, it can amend the statutes to so provide.

Affirmed in part, and reversed and remanded in part for additional proceedings consistent with this opinion.

SKOGLUND, J., dissenting.

¶ 43. The majority errs in concluding that the probate court need only approve a "mortgage deed" but not the note that gives life to that deed. The law plainly requires court approval for the entire transaction. I would affirm the trial court's order granting summary judgment to the ward's estate. I therefore dissent.

¶ 44. As the majority recognizes, any guardian who wishes to mortgage her ward's property must file a motion with the probate court. The probate court can authorize a mortgage only if it benefits the estate and serves one of five enumerated purposes. 14 V.S.A. § 2201. In its decree, the probate court "*shall* fix the amount for which the mortgage ... may be given, the terms thereof and the rate of interest which may be paid thereon." *Id.* § 2202 (emphasis added). This language can only refer to a promissory note that accompanies a mortgage deed. The use of the word "shall" means that this is a mandatory, not a discretionary, requirement. See, e.g., *State v. Rafuse,* 168 Vt. 631, 632, 726 A.2d 18, 19 (1998) (mem.) ("Statutes generally use 'shall' as imperative or mandatory language. In its ordinary significance, it is a word of command, and it is inconsistent with a concept of discretion." (citation omitted)).

¶ 45. The majority simply ignores this language. It construes the word "mortgage" to mean a "mortgage deed," *ante,* ¶ 27, but it does not explain how the probate court can set the amount, terms, and interest rate of a deed. The majority emphasizes the different legal obligations associated with a note and a mortgage, ***40** but it does not explain why a difference in legal effect obviates the plain language of the statute cited above. The majority eliminates this requirement from the statute, an approach we must reject. We "presume that language is inserted in a statute advisedly," and we "do not construe the statute in a way that renders a significant part of it pure surplusage." *Trombley v. Bellows Falls Union High Sch.,* 160 Vt. 101, 104, 624 A.2d 857, 860 (1993) (quotation omitted).

¶ 46. Applying well-established principles of statutory construction, it is evident ****428** that the Legislature intended the word "mortgage" to include the loan that accompanies the conveyance of a mortgage deed. See *In re Margaret Susan P.,* 169 Vt. 252, 262, 733 A.2d 38, 46 (1999) (stating that, in interpreting a statute, Court must consider it "as a whole, looking to the reason and spirit of the law and its consequences and effects to reach a fair and rational result"). This interpretation recognizes the interrelated nature of these two instruments. See, e.g., *Island Pond Nat'l Bank v. Lacroix,* 104 Vt. 282, 294, 158 A. 684, 690 (1932) (explaining that when a mortgage is used to secure payment of a debt, "the debt is the principal thing, and the mortgage is an incident of it which accompanies and follows the debt wherever that may be assigned"); *Huntington v. McCarty,* 174 Vt. 69, 71, 807 A.2d 950, 952 (2002) (when note and mortgage are made at same time, and in relation to same subject, they are to be construed together as if they were parts of same instrument). It gives meaning to all of the statutory language. See, e.g., *State v. Ben–Mont Corp.,* 163 Vt. 53, 57, 652 A.2d 1004, 1007 (1994) ("Our interpretation must ... if possible, give meaning and effect to all the statutory language."). It carries out the purpose of the statute. And it is consistent with a dictionary definition of the term "mortgage." See Black's Law Dictionary 1031 (8th ed.2004) (defining "mortgage" to include "a deed or contract ... specifying the terms" of a conveyance of title to property that is given as security for payment of debt, and also, "[l]oosely, the loan on which such a transaction is based"). Indeed, it applies the meaning of the term "mortgage" used in common parlance. When people talk about paying their "mortgage," they are referring to the loan that gave rise to a mortgage deed, not the mortgage deed itself.

¶ 47. The whole point of taking out a mortgage is to borrow money for the ward's benefit. Thus, in filing a motion to mortgage ***41** real estate, a guardian must describe "the amount of money necessary to be raised, the nature and amount of the obligation to be secured and the purpose for which the money or security is required." 14 V.S.A. § 2202. The probate division may authorize a mortgage only "to prevent a sacrifice of the estate; to make repairs and improvements upon the estate; to pay debts, legacies or charges of administration; to pay an existing mortgage, lien or tax on the estate, or to support a ward." 14 V.S.A. § 2201. Mindful of these requirements, and the information provided by the guardian, the probate court will assess what action is necessary to meet the ward's needs and determine, as directed by statute, the amount of any mortgage loan, its terms, and an appropriate rate of interest. This approach reflects the Legislature's careful decision to "guard [ ] the rights of wards in their real estate." *Doty v. Hubbard,* 55 Vt. 278, 283 (1882).

¶ 48. The majority reasons that, because no one would suggest that the licensing law applied to an unsecured promissory note, the law must not apply to promissory notes generally. *Ante,* ¶ 36. This case is not about a guardian's general authority to execute promissory notes on behalf of a ward, however. Instead, this case involves a very specific type of borrowing—the borrowing of money using the ward's real estate as security. The Legislature has clearly limited a guardian's ability to engage in such transactions. Whatever general authority guardians have to borrow money for their wards, it is a basic principle of statutory construction that "[a] more specific statutory provision will prevail according to its terms over a more general statutory provision." *Rafuse,* 168 Vt. at 632, 726 A.2d at 19.

¶ 49. In short, we need not wait for the Legislature to amend the laws to prohibit ****429** guardians from unilaterally executing "mortgage loans" on behalf of their wards. The Legislature has already spoken and expressly prohibited such transactions. It has given the probate court, not the guardian or the lender, the power to determine how much money may be borrowed against the ward's estate and at what rate. The law was not followed here.

¶ 50. I would affirm the trial court's decision. I am authorized to state that Justice BURGESS joins this dissent.

All Citations

195 Vt. 21, 86 A.3d 415, 2013 VT 86

Footnotes

1 The statute was amended in 2008 to specifically provide that the guardian's power to approve or withhold approval of the sale or encumbrance of a ward's real property is subject to the real estate licensing provisions, see 2007, No. 186 (Adj.Sess.), § 1, but it is evident that obtaining a license to sell or encumber has been a longstanding requirement. See, e.g., *Doty v. Hubbard,* 55 Vt. 278, 283 (1882) ("No guardian in this State, except by express authority from the Probate Court, can convey lands owned by his ward, lands held by his ward in trust, or consummate an agreement made by his ward, by conveying land that the ward is under contract binding in law or equity to convey."). Indeed, a license to sell a ward's property has been required since 1787, and the law concerning licenses for mortgages and leases of a ward's real property has been in effect since 1909. See "An Act Providing for, and Ordering, Transient, Idle, Impotent and Poor Persons," R. 1787, pp. 111, 114 (requiring selectmen or other person to obtain license and authorization from General Assembly to sell house or real property of "idiot, distracted, or impotent person" for the use, relief, and benefit of that person, and stating that "no Selectmen shall sell the land of such idle, mismanaging, or poor person, without the order of the General Assembly"); see also 1908, No. 73, § 1 (original legislation concerning license to mortgage or lease ward's property, which is essentially the same as current statutory language, with the exception that court may now approve guardian's request to mortgage or pledge or assign ward's personalty for purpose of supporting the ward).

2 If the court finds that the statutory requirements are satisfied, it may order a sale of the ward's lands or the ward's interest in such land as it deems necessary. *Id.* § 2882(4). A copy of the order of sale is recorded in the land records. *Id.* § 2882(6). The guardian must also make a report concerning the sale, which he or she must file with the probate division. *Id.* § 2885.

3 The "settlement statement" provided by CitiFinancial indicates that only $3,224.15 of this amount was disbursed to the borrower, while $96,776.62 was disbursed to others. This latter amount includes $26,942.96 disbursed to CitiFinancial, $2,601.51 to the Town of Hubbardton, and $67,232.15 to an unidentified account.

4 While not discussed by the trial court, we note that, according to another statute entitled "ward not to be sued," which is drawn from an 1839 statute, "[a] writ or execution shall not be issued against a ward for a debt while he or she is under **guardianship**"; although "actions commenced against a person before the appointment of his guardian may be prosecuted to final judgment." 14 V.S.A. § 2850.

5 Ballard died while this suit was pending, and in October 2011 Judith Balch, as the special administrator of Ballard's estate, was substituted as defendant. For convenience sake, we refer to defendant as Ballard or "him."

6 As guardian, Bell is subject to judicial oversight of her actions, 14 V.S.A. § 3062(b), and is accountable by bond to the court to account for the property of the guardian's estate. 14 V.S.A. §§ 2751, 2754.

7 Finally, CitiFinancial appears to raise an equitable claim in its brief that it did not include in its complaint. It asserts that it relied on Ballard's and Bell's acts and representations that Ballard had the authority to encumber the property, and therefore, Ballard must be liable. CitiFinancial provides no legal authority in support of this argument nor does it identify

the exact nature of its claim. While it asserted in its opposition to summary judgment that it "relied" on Ballard's and Bell's acts and representations, it did not tie these assertions to any particular equitable claim and, as indicated, it raised no equitable claim in its complaint. Putting aside the issue of inadequate briefing, CitiFinancial, having failed to properly raise an equitable claim below, cannot raise such a claim here.

End of Document

VERMONT ADVANCE DIRECTIVE FOR HEALTH CARE

Prepared by the Vermont Ethics Network, July 2011

EXPLANATION & INSTRUCTIONS

You have the right to:

1. Name someone else to make health care decisions for you when or if you are unable to make them yourself.
2. Give instructions about what types of health care you want or do not want.

It is important to talk with those people closest to you and with your health care providers about your goals, wishes and preferences for treatment.

You may use this form in its entirety or you may use any part of it. For example, if you only want to choose an agent in Part One, you may fill out just that section and then go to Part Five to sign in the presence of appropriate witnesses.

You are free to use another form so long as it is properly witnessed. More detailed forms providing greater options and information regarding mental health care preference can be found on the VEN website at www.vtethicsnetwork.org.

Part ONE of this form allows you to name a person as your **"agent"** to make health care decisions for you if you become unable or unwilling to make your own decisions. You may also name alternate agents. You should choose someone you trust, who will be comfortable making what might be hard decisions on your behalf. They should be guided by your values in making choices for you **and agree** to act as your agent. You may fill out the Advance Directive form stating your medical preferences *even if you do not identify an agent*. Medical providers will follow your directions in the Advance Directive without an agent to their best ability, but having a person designated as your agent to make decisions for you will help medical providers and those who care for you make the best decisions in situations that may not have been detailed in your Advance Directive. According to Vermont law, next-of-kin will not automatially make decisions on your behalf if you are unable to do so. That is why it is best to appoint someone of your choosing in advance.

Part TWO of this form lets you state **Treatment Goals & Wishes.** Choices are provided for you to express your wishes about having, not having, or stopping treatment under certain circumstances. Space is also provided for you to write out any additional or specific wishes based on your values, health condition or beliefs.

Part THREE of this form lets you express your wishes about **Limitations of Treatment**. These treatments include CPR, breathing machines, feeding tubes, and antibiotics. There is space for you to write any additional wishes. NOTE: If you DO NOT want CPR, a breathing machine, a feeding tube, or antibiotics, please discuss this with your doctor, who can complete a **DNR/COLST order** (Do Not Resuscitate/ Clinician Order for Life Sustaining Treatment) to ensure that you do not receive treatments you do not want, especially in an emergency. Emergency Medical Personnel are required to provide you with life-saving

treatment unless they have a signed DNR/COLST order specifying some limitation of treatment. If there is no DNR/COLST order the emergency medical team will perform CPR as they will not have time to consult an Advance Directive, your family, agent, or physician.

Part FOUR of this form allows you to express your wishes related to **organ/tissue donation & preferences for funeral, burial and disposition** of your remains.

Part FIVE is for **signatures**. You must sign and date the form in the presence of two adult witnesses. The following persons may not be witnesses: your agent and alternate agents; your spouse or partner; parents; siblings; reciprocal beneficiary; children or grandchildren.

You should give copies of the completed form to your agent and alternate agent(s), to your physician, your family and to any health care facility where you reside or at which you are likely to receive care. Please note who has a copy of your Advance Directive so it may be updated if your preferences change.

You are also encouraged to send a copy of your Advance Directive to the Vermont Advance Directive Registry with the Registration Agreement Form found at the end of this document.

You have the right to revoke all or part of this Advance Directive for Health Care or replace this form at any time. If you do revoke it, all old copies should be destroyed. If you make changes and have sent a copy of your original document to the Vermont Advance Directive Registry, be sure to send them a new copy or a notification of change form with information needed to update your Advance Directive there.

VERMONT ETHICS NETWORK

Taking Steps

Planning for Critical Health Care Decisions

Vermont Advance Directive for Health Care included

A Publication of the Vermont Ethics Network

You may wish to read the booklet *Taking Steps* to help you think about and discuss different choices and situations with your agent(s) or loved ones.

Copies of *Taking Steps* can be purchased from:

Vermont Ethics Network
61 Elm Street
Montpelier, VT 05602.
Tel: (802) 828-2909
Fax: (802) 828-2646

www.vtethicsnetwork.org

For information about the Vermont Advance Directive Registry visit:

VEN website: www.vtethicsnetwork.org

or

Registry website at the Vermont Department of Health: www.healthvermont.gov/vadr

VERMONT ADVANCE DIRECTIVE FOR HEALTH CARE

YOUR NAME _____ DATE OF BIRTH _____ DATE _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

PART ONE: YOUR HEALTH CARE AGENT

Your health care agent can make health care decisions for you when you are unable or unwilling to make decisions for yourself. You should pick someone that you trust, who understands your wishes and *agrees* to act as your agent.

I appoint this person to be my health care AGENT:

NAME _____

ADDRESS _____

HOME PHONE _____ WORK PHONE _____

CELL PHONE _____ EMAIL _____

(If you appoint co-agents, list them above or on a separate sheet of paper)

If this agent is unavailable, unwilling or unable to act as my agent, I appoint this person as my **alternate agent**:

NAME _____

ADDRESS: _____

HOME PHONE _____ WORK PHONE _____

CELL PHONE _____ EMAIL _____

Others who can be consulted about medical decisions on my behalf include:

Primary care provider(s):

NAME _____ PHONE _____

ADDRESS _____

NAME _____ PHONE _____

ADDRESS _____

(PART ONE CONTINUED NEXT PAGE)

NAME _____ DOB _____ DATE _____

Those who should *NOT* be consulted include:

I want my Advance Directive to start:

- ○ When I cannot make my own decisions ○ Now
- ○ When this happens: _____

PART TWO: HEALTH CARE GOALS AND SPIRITUAL WISHES

My overall health care goals include:

- ○ I want to have my life sustained as long as possible by any medical means.
- ○ I want treatment to sustain my life only if I will:
  - ☐ be able to communicate with friends and family.
  - ☐ be able to care for myself.
  - ☐ live without incapacitating pain.
  - ☐ be conscious and aware of my surroundings.
- ○ I only want treatment directed toward my comfort.

Additional Goals, Wishes, or Beliefs I wish to express include:

People to notify if I have a life-threatening illness:

If I am dying it is important for me to be (check choice):

- ○ At home
- ○ In the hospital
- ○ Other: _____
- ○ No preference

My Spiritual Care Wishes include:

My Religion/Faith: _____

PLACE OF WORSHIP _____ PHONE _____

ADDRESS _____

The following items or music or readings would be a comfort to me:

NAME _____ DOB _____ DATE _____

PART THREE: LIMITATIONS OF TREATMENT

You can decide what kind of treatment you want or do not want at the end of your life. These wishes can apply to all situations or to situations that you specify. Regardless of the treatment limitations stated you have the right to adequate management for pain and other symptoms (nausea, fatigue, shortness of breath) related to your illness. Unless treatment limitations are stated, the medical teams are required and expected to do everything possible to save your life.

1. If my heart stops: (choose one)

○ I DO want CPR done to try to restart my heart.

○ I DON'T want CPR done to try to restart my heart.

CPR means cardio (heart)-pulmonary (lung) resuscitation, including vigorous compressions of the chest, use of electrical stimulation, medications to support or restore heart function, and rescue breaths (forcing air into your lungs).

---

2. If I am unable to breathe on my own: (choose one)

○ I DO want a breathing machine without any time limit.

○ I want to have a breathing machine for a short time to see if I will survive or get better.

○ I DO NOT want a breathing machine for ANY length of time.

"Breathing machine" refers to a device that mechanically moves air into and out of your lungs such as a ventilator.

---

3. If I am unable to swallow enough food or water to stay alive: (choose one)

○ I DO want a feeding tube without any time limits

○ I want to have a feeding tube for a short time to see if I will survive or get better.

○ I DO NOT want a feeding tube for any length of time.

NOTE: If you are being treated in another state your agent may not automatically have the authority to withhold or withdraw a feeding tube. If you wish to have your agent decide about feeding tubes please check the box below.

☐ I authorize my agent to make decisions about feeding tubes.

---

4. If I am terminally ill or so ill that I am unlikely to get better: (choose one)

○ I DO want antibiotics or other medication to fight infection.

○ I DON'T want antibiotics or other medication to fight infection.

If you have stated you DO NOT want CPR, a breathing machine, a feeding tube, or antibiotics under any circumstances, please discuss this with your doctor who can complete a DNR/COLST form to ensure you don't receive treatments you don't want, particularly in an emergency situation. A DNR/COLST order will be honored outside of the hospital setting.

(PART THREE CONTINUED NEXT PAGE)

NAME _____ DOB _____ DATE _____

Additional Limitations of Treatment I wish to include:

PART FOUR: ORGAN/TISSUE DONATION & BURIAL/DISPOSITION OF REMAINS

My wishes for organ & tissue donation (check your choice(s)):

☐ I consent to donate the following organs & tissues:
- ☐ Any needed organs
- ☐ Any needed tissue (skin, bone, cornea)
- ☐ I do not wish to donate the following organs and tissues: _____
- ☐ I do not want to donate any organs or tissues
- ☐ I want my health care agent to decide

☐ I wish to donate my body to research or educational program(s). *(Note: you will have to make your own arrangements with a medical school or other program in advance.)*

My Directions for Burial/Disposition of My Remains after I Die (please check & complete):

☐ I have a Pre-Need Contract for Funeral Arrangements:

NAME _____ PHONE _____

ADDRESS _____

I want the following individuals to decide about my burial or disposition of my remains (check choices):

☐ Agent
☐ Alternate Agent
☐ Family:

NAME _____ PHONE _____

ADDRESS _____

☐ Other:

NAME _____ PHONE _____

ADDRESS _____

Specific Wishes: Check your choice(s).

☐ I want a Wake/Viewing
☐ I prefer a Burial – If possible at the following location: (cemetery, address, phone number)

_____

☐ I prefer Cremation – With my ashes kept or scattered as follows:

_____

(PART FOUR CONTINUED NEXT PAGE)

NAME _____ DOB _____ DATE _____

☐ I want a Funeral Ceremony with a burial or cremation to follow
☐ I prefer only a Graveside Ceremony
☐ I prefer only a Memorial Ceremony with burial or cremation preceding
☐ Other Details: (such as music, readings, Officiant)

PART FIVE: SIGNED DECLARATION OF WISHES

You must sign this before TWO adult witnesses. The following people may **not** sign as witnesses: your agent(s), spouse, reciprocal beneficiary, parents, siblings, children or grandchildren.

I declare that this document reflects my health care wishes and that I am signing this Advance Directive of my own free will.

SIGNED _____ DATE _____

I affirm that the signer appeared to understand the nature of this advance directive and to be free from duress or undue influence at the time this was signed. *(Please sign and print)*

FIRST WITNESS (PRINT NAME)_____

SIGNATURE _____ DATE _____

ADDRESS _____

SECOND WITNESS (PRINT NAME)_____

SIGNATURE _____ DATE _____

ADDRESS _____

If the person signing this document is a current patient or resident in a hospital, nursing home or residential care home, an additional person (designated hospital explainer, long-term care ombudsman, member of the clergy, Vermont attorney, or person designated by the probate court) needs to confirm below that he or she has explained the nature and effect of the Advance Directive and that the patient or resident appears to understand this.

NAME _____ DATE _____

TITLE / POSITION _____ PHONE _____

ADDRESS _____

NAME _____ DOB _____ DATE _____

The following have a copy of my Advance Directive (please check):

☐ Vermont Advance Directive Registry Date registered: _____

☐ Health care agent

☐ Alternate health care agent

☐ Doctor/Provider(s): _____

☐ Hospital(s): _____

☐ Family Member(s): Please list:

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

☐ Other:

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

VERMONT
DEPARTMENT OF HEALTH

INSTRUCTIONS FOR CLINICIANS COMPLETING VERMONT DNR/COLST FORM

(DO NOT RESUSCITATE ORDER/CLINICIAN ORDERS FOR LIFE SUSTAINING TREATMENT)

Completing DNR/COLST

- The DNR/COLST form must be completed and signed by a health care clinician based on patient preferences and medical indications. A clinician is defined as a medical doctor, osteopathic physician, advance practice registered nurse or physician assistant. 18 V.S.A. § 9701(5). Verbal orders are acceptable with follow-up signature by the clinician in accordance with facility/community policy.
- Photocopies and Faxes of signed COLST forms are legal and valid; use of original is encouraged.

Special requirements for completing the DNR section of COLST (18 V.S.A. §§9708, 9709)

- A DNR order may be written on the basis of either informed consent or futility. Complete section A-2 for informed consent; Section A-3 for futility.
- An order based on informed consent must include the name of the patient, agent, guardian, or other individual giving informed consent. Beginning January 2018 the name of the patient, agent, guardian, or surrogate.
- An order based on futility must include a certification by the clinician and a second clinician that resuscitation would not prevent the imminent death of the patient, should the patient experience cardiopulmonary arrest.
- If patient is in a health care facility, the clinician must certify that the requirements of the facility's DNR protocol as required by 18 V.S.A. § 9709 have been met
- The clinician shall authorize the issuance of a DNR identification to the patient
- Clinician must certify that clinician has consulted or made an attempt to consult with the patient, and the patient's agent or guardian.

Using DNR Order - Section A CPR/DNR - 18 V.S.A. § 9708(i) and (l)

- A DNR Order (Section A of the DNR/COLST form) only precludes efforts to resuscitate in the event of cardiopulmonary arrest and does not affect other therapeutic interventions that may be appropriate for the patient. (Sections B through H of the COLST Form address other interventions.)
- Health care professionals, health care facilities, and residential care facilities must honor a DNR order or a DNR Identification unless the professional or facility believes in good faith, after consultation with the patient, agent or guardian, where possible and appropriate
    - that the patient wishes to have the DNR Order revoked, or
    - that the patient with the DNR identification or order is not the individual for whom the DNR order was issued.

  Documentation of basis for belief in medical record is required.

Using COLST (Sections B through H)

- Any section of COLST not completed indicates that the COLST order does not address that topic. It may be addressed in a patient's advance directive, or in other parts of the medical record.
- Oral fluids and nutrition must always be offered if medically feasible.
- When comfort cannot be achieved in the current setting, the person, including someone with "comfort measures only", may be transferred to a setting able to provide comfort.
- Treatment of dehydration is a measure that may prolong life. For a patient who desires IV fluids the order should indicate "Limited Interventions" or Full Treatment."
- A patient with or without capacity, or another person authorized to provide consent, may revoke the COLST order at any time and request alternative treatment. Exceptions may apply. See, 18 V.S.A. § 9707(h) or 18 V.S.A. § 9707(g).
- Photocopies and faxes of signed DNR/COLST forms are legal and valid; use of original is encouraged.

Reviewing DNR/COLST

This form should be reviewed periodically and a new form completed if necessary when:

1. The patient is transferred from one care setting or care level to another, or
2. There is a substantial change in the patient's health status, or
3. The patient's treatment preferences change, or
4. At least annually, but more frequently in residential or inpatient settings.

Voiding DNR/COLST

To void this form or a part of it, draw a line through each page or section to be voided and write "VOID" in large letters.

Patient Name / D.O.B._____/_____

DNR/COLST

CLINICIAN ORDERS for DNR/CPR and OTHER LIFE SUSTAINING TREATMENT

FIRST follow these orders, **THEN** contact **Clinician.**

Patient Last Name

Patient First/Middle Initial

Date of Birth

(If patient/resident has no pulse and/or no respirations)

A

DO NOT RESUSCITATE (DNR)

☐ **DNR/Do Not Attempt Resuscitation (Allow Natural Death)**

CARDIOPULMONARY RESUSCITATION (CPR)

☐ **CPR/Attempt Resuscitation**

For patient who is breathing and/or has a pulse, GO TO SECTION B – G, PAGE 2 FOR OTHER INSTRUCTIONS. CLINICIANS MUST COMPLETE SECTIONS A-1 THROUGH A-5

A-1 Basis for DNR Order
Informed Consent - Complete Section A-2
Futility - Complete Section A-3

A-2 Informed Consent

Informed Consent for this DO NOT RESUSCITATE (DNR) Order has been obtained from:

_____ _____
Name of Person Giving Informed Consent (Can be Patient) Relationship to Patient (Write "self" if Patient)

_____
Signature (If Available)

A-3 Futility (required if no consent)

☐ I have determined that resuscitation would not prevent the imminent death of this patient should the patient experience cardiopulmonary arrest. Another clinician has also so determined:

_____ _____
Name of Other Clinician Making this Determination (Print here) Signature of Other Clinician

Dated:_____

A-4 Facility DNR Protocol (required if applicable)

This patient is ☐ is not ☐ in a health care facility or a residential care facility.

Name of Facility:_____

If this patient is in a health care facility or a residential care facility, the requirements of the facility's DNR protocol have been met._____ (Initial here if protocol requirements have been met.)

A-5 DNR Identification (optional)

I have authorized issuance of a DNR Identification (ID) to this patient. Form of ID:_____

Certification and signature for DNR

A-6 Clinician Certifications and Signature for CPR/DNR (required)

I have consulted, or made an effort to consult with the patient and the patient's agent or guardian.

Patient's Agent or Guardian_____ Address or Phone_____

I certify that I am the clinician for the above patient, and I certify that the above statements are true.

_____ _____
Signature of Clinician Printed Name of Clinician

Dated:_____

GIVE COPY TO PATIENT AND REPRESENTATIVE
SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED

Patient Name / D.O.B._____/_____

HIPAA PERMITS DISCLOSURE OF COLST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

ORDERS FOR OTHER LIFE-SUSTAINING TREATMENT
(If patient/resident is breathing and/or has pulse)

B **INTUBATION AND MECHANICAL VENTILATION INSTRUCTIONS:**

If patient has DNR order and has progressive or impending pulmonary failure without acute cardiopulmonary arrest:

☐ Do Not Intubate/Multi-Lumen Airway (DNI)

☐ Trial Period of Intubation/Multi-Lumen Airway and ventilation

☐ Intubation/Multi-Lumen Airway and long-term mechanical ventilation if needed

C **TRANSFER TO HOSPITAL**

☐ Do not transfer unless comfort care needs cannot be met in current location or if severe symptoms cannot be otherwise controlled

☐ Transfer

D **ANTIBIOTICS**

☐ No antibiotics. Use other measures to relieve symptoms

☐ Determine use or limitation of antibiotics when infection occurs, with comfort as goal

☐ Use antibiotics

E **ARTIFICIALLY ADMINISTERED NUTRITION:** Offer food and liquids by mouth if feasible.

Feeding tube

☐ No feeding tube

☐ Trial period of feeding tube (Goal:_____)

☐ Long-term feeding tube

Parenteral nutrition or hydration (e.g. IV fluids or Total Parenteral Nutrition)

☐ No parenteral nutrition or hydration

☐ Trial period of parenteral nutrition or hydration (Goal:_____)

☐ Long term parenteral nutrition or hydration

F **MEDICAL INTERVENTIONS:**

☐ **COMFORT MEASURES ONLY** Use medication by any route, positioning, wound care and other measures to to relieve pain and suffering. Use oxygen, oral suction and manual treatment of airway obstruction as needed for comfort. Offer food and fluids by mouth, if feasible.

☐ **LIMITED ADDITIONAL INTERVENTIONS** Includes care described above. Use medical treatments and IV fluids as indicated. *Avoid intensive care if possible.*

☐ **FULL TREATMENT** Includes care described above. Use defibrillation and intensive care as indicated.

G **Other Instructions** :

GIVE COPY TO PATIENT AND REPRESENTATIVE
SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED

Patient Name / D.O.B._____/_____

HIPAA PERMITS DISCLOSURE OF COLST TO OTHER HEALTH CARE PROFESSIONALS AS NECESSARY

H **Informed Consent and Clinician Signature for COLST Order (Sections B through G)**

Informed Consent for this COLST Order has been obtained from:

Name of Person Giving Informed Consent (Patient if competent)

Relationship to Patient (Write "self" if Patient)

Signature

Clinician Signature for COLST

Signature of Clinician

Printed Name of Clinician

Dated:_____

Print Clinician Name	Clinician Signature (mandatory)	Phone Number
Person providing consent's signature (if available)		Date

Other Contact Information (Optional)

Name of Guardian, Agent or other Contact Person	Relationship	Phone Number

Name of Health Care Professional Preparing Form	Preparer Title/Facility	Phone Number	Date Prepared

Review Date	Reviewer	Location of Review	Review Outcome
			☐ No Change ☐ New form completed ☐ Form Voided
			☐ No Change ☐ New form completed ☐ Form Voided
			☐ No Change ☐ New form completed ☐ Form Voided

SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED

Washington County Opportunities for Lawyers

to serve the community,
to increase familiarity with the courts and case types,
to use or gain new knowledge and experience,
to earn CLE credit and fulfill professional pro bono obligations,
to help court staff and judges provide quality justice, and
to enrich personal and professional development.

Each of the following pages describes a separate opportunity as well as general information and a person to contact for more information.

The judges and court staff of the Criminal, Family, Probate, and Civil Divisions welcome you to work with us in any of these roles, and would be happy to provide more information.

Vermont Superior Court
Washington Unit
Hon. Mary Miles Teachout, Presiding Judge
August 30, 2017

Revised 8/30/2017

Table of Contents

Washington County Opportunities for Lawyers

Table of Contents

Role	Acting Judge, Criminal Division
Description	Conduct arraignments and handle other miscellaneous matters in the absence of the Presiding Judge.
Credentials	Lawyer with criminal experience.
$ or CLE?	Lawyers receive a per diem of $75.00.
Time	On an occasional, as-needed basis; often for partial days.
Place	Courtroom and chambers on the first-floor in Barre Courthouse.
Training	Mentoring from judges and experienced acting judges.
Other	All acting judge work is done subject to the Code of Judicial Conduct.
Laws/Rules	4 VSA § 22(b); Title 13; Vermont Rules of Criminal Procedure
Contact	Tammy Tyda, COM of the Family Division 479-4205, Tammy.Tyda@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	Guardian ad litem for Minors in the Criminal Division
Description	Meet with minors who are charged with crimes in adult court, and make sure they and their lawyers are communicating effectively. Assist and support through the criminal process. Assist children who have been victims of certain crimes through the court process.
Credentials	Lawyer with at least some criminal experience
$ or CLE?	Volunteer only; reimbursement is available for travel expenses
Time	Each case usually entails a few meetings with the minor and his or her lawyer and attending court hearings. There is no commitment to do it more often than you have time for; even 1-2 times per year would be helpful.
Place	First contact is usually at court and attendance at court hearings is required; other contacts with the minor and his or her attorney can be outside of court.
Training	No formal training is available.
Other	A GAL can be extremely helpful to a minor going through the adult criminal process.
Laws/Rules	Title 13; V.R.Cr.P. 44.1
Contact	Tammy Tyda, COM of the Criminal Division 479-4205, Tammy.Tyda@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	Ad hoc counsel, Criminal Division
Description	Represent defendants when other attorneys have conflicts, often at arraignments
Credentials	Lawyer with criminal experience.
$ or CLE?	Lawyers receive $50.00 per hour when assigned to a case and reimbursement for mileage and out-of-pocket expenses.
Time	On an occasional, as-needed basis; often if called and available on short notice.
Place	Courtroom on the first-floor in Barre Courthouse.
Training	None.
Other	Willingness to do this is appreciated by court staff.
Laws/Rules	Title 13; Vermont Rules of Criminal Procedure
Contact	Tammy Tyda, COM of the Family Division 479-4205, Tammy.Tyda@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	Acting Magistrate in Family Division
Description	Conduct hearings and make decisions concerning: child support in domestic and juvenile cases; establishment of parentage, temporary parental rights and responsibilities and parent-child contact; temporary spousal support; and enforcement actions.
Credentials	Lawyer with 5 years of domestic experience and fluency using the child support guidelines.
$ or CLE?	Lawyers receive between $37.50 and $75.00, depending on the length of the day, on a per diem basis, plus mileage
Time	Full days on either Mondays or Tuesdays on an occasional, as-needed basis.
Place	Courtroom and chambers on the second-floor in Barre Courthouse.
Training	Mentoring from experienced appointed and acting magistrates.
Other	All magistrate work is done subject to the Code of Judicial Conduct.
Laws/Rules	4 VSA § 22(b)(2), 461(b) and (e); Title 15; V.R.F.P. Rules 4.1, 4.3, & 8
Contact	Tammy Tyda, COM of the Family Division 479-4205, Tammy.Tyda@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	**Attorneys for children in divorce, parentage, and relief from abuse cases**
Description	Meet with children whose parents are litigating custody and parent-child contact issues, investigate facts relating to allegations concerning the well-being of children (e.g., abuse by step-parent); represent the children's interest in court; represent children who need to testify in court.
Credentials	Lawyer with some background or interest in children's well-being
$ or CLE?	Limited hourly rate with maximum fee determined at beginning of assignment.
Time	Active involvement involves meeting children, sometimes communicating with Guardian ad litem, and attending court hearings. Involvement can be long-term or short-term, depending on the case. You can express preferences for children of particular age ranges (babies, teenagers). There is no commitment to do it more often than you have time for; even 1-2 times per year would be helpful.
Place	Court hearings are at court; some meetings may take place in the community.
Training	Mentoring from experienced attorneys for children.
Other	
Laws/Rules	Title 15, Chapters 11 and 21; 15 V.S.A. § 594; V.R.F.P. Rule 7
Contact	Tammy Tyda, COM of the Family Division 479-4205, Tammy.Tyda@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	**Guardian ad litem for children in divorce, parentage cases**
Description	Meet with children whose parents are litigating custody and parent-child contact issues and provide information about their best interests to the parents, lawyers, and the court; assist children and children's lawyers when children need to testify in court.
Credentials	Lawyer not necessary; interest in helping children in stressful circumstances
$ or CLE?	Volunteer only; reimbursement for travel expenses is available
Time	Active involvement involves meeting children and their parents outside of court, and attending court hearings. Involvement can be long-term or short-term, depending on the case. You can express preferences for children of particular age ranges (babies, teenagers). There is no commitment to do it more often than you have time for; even 1-2 times per year would be helpful.
Place	Meetings take place in the community and court hearings are at court.
Training	Mentoring from experienced GALs; supervision from court personnel.
Other	
Laws/Rules	Title 15, Chapters 11 and 21; V.R.F.P. Rule 7
Contact	Tammy Tyda, COM of the Family Division 479-4205, Tammy.Tyda@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	**Free Legal Clinic, Family Division**
Description	Meet with litigants at the periodic legal clinic for pro se parties in domestic cases to provide them with general guidance and information.
Credentials	Lawyer with experience in domestic cases.
$ or CLE?	Lawyers receive 1 CLE credit for 3 events (pro se education and legal clinic can be combined).
Time	The clinic is held once a month, usually on a Friday afternoon from 12:30 on and lasts as long as it takes for litigants who have signed up. A lawyer may volunteer for as many or few sessions as desired.
Place	Barre Courthouse.
Training	Mentoring from lawyers with prior experience.
Other	Lawyers who provide clinic assistance do not take on either full or limited representation of individual persons who come to the clinic. The obligation is limited to the specific hours of attendance at the clinic.
Laws/Rules	Title 15; Vermont Rules of Family Proceedings
Contact	Tammy Tyda, COM of the Family Division 479-4205, Tammy.Tyda@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	**Teach Pro Se Education Course, Family Division**
Description	Teach the introductory course that unrepresented parties in domestic cases take to become familiar with the court process.
Credentials	Lawyer with experience in domestic cases.
$ or CLE?	Lawyers receive 1 CLE credit for 3 events (pro se education and legal clinic can be combined).
Time	The class is held once a month starting at 9:00 am and lasts about 1 ½ hours. A lawyer may volunteer for as many or few sessions as desired.
Place	Barre Courthouse.
Training	Mentoring from lawyers with prior experience.
Other	This course can help to significantly reduce the anxiety level of pro se litigants by giving them understanding and reasonable expectations about the process, and can help some litigants decide whether or not they should have a lawyer represent them. It also gives lawyers an opportunity to present themselves in a helpful role to the community at large and demonstrate the value of lawyers' services.
Laws/Rules	Title 15; Vermont Rules of Family Proceedings
Contact	Tammy Tyda, COM of the Family Division 479-4205, Tammy.Tyda@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	**Counsel in Contempt hearings (e.g. child support contempt), Family Division**
Description	Represent parties in court at hearings where there is a possibility of jail time.
Credentials	Lawyer with experience in domestic cases and knowledge of child support.
$ or CLE?	Lawyers are eligible for payment at a rate of $60 per hour through the Washington County Legal Assistance Program if the client meets financial qualification standards.
Time	On an occasional basis, when contacted by court staff for particular hearings.
Place	Family courtrooms in Barre Courthouse.
Training	Mentoring from lawyers with prior experience.
Other	Persons facing possible jail for contempt of court are entitled to legal representation. The most common situation is for nonpayment of child support. The role often involves meeting with the person shortly before the scheduled hearing and helping him or her develop plans for addressing the problem in a manner that hopefully avoids jail time and gets them on track with family responsibilities. The involvement begins with a consultation just prior to the hearing and ends once the hearing is done.
Laws/Rules	Title 15; Vermont Rules of Family Proceedings
Contact	Tammy Tyda, COM of the Family Division 479-4205, Tammy.Tyda@vermont.gov

Washington County Opportunities for Lawyers

Probate Division

Guardians Ad Litem

Table of Contents

Role

(A) Guardian ad litem for minor children acts as an independent parental advisor and advocate whose goal shall be to safeguard the ward's best interest and rights. V.R.F.P. 6(e)(1).

(B) Guardian ad litem for adults shall act as an independent advisor and advocate whose goal shall be to safeguard the respondent's best interest and legal rights. When the respondent can effectively communicate his or her wishes with respect to any aspect of the proceedings, the guardian ad litem's advocacy shall be consistent with the expressed wishes of the respondent, and the guardian ad litem shall state no fact nor disclose any opinion in regard to that aspect of the proceeding except with the express consent of the respondent. V.R.F.P. 6.1(e)(1).

Description

(A) GAL minor children. The guardian ad litem shall meet with the ward, the ward's attorney, and others who may be necessary for an understanding of the issues in the proceeding. The guardian ad litem shall be familiar with all pertinent pleadings, reports, and other documents. The guardian ad litem shall discuss with the ward the ward's attorney all options which may be presented to the court, and shall assist the attorney in advising the ward regarding those options. V.R.F.P. 6(e)(2).

(B) GAL adults. The guardian ad litem shall meet with the respondent, the respondent's attorney, and others who may be necessary for an understanding of the issues in the proceeding. Adult guardianships often deal with end of life care, do not resuscitate/do not intubate orders, hospice care, Clinician Orders for Life-sustaining Treatment (COLST) orders. The guardian ad litem must be prepared to discuss these matters with the respondent, the respondent's attorney, and others.

$ or CLE?

Volunteer only.

Time

Each meeting with a person having an interest in the minor may take 30 – 60 minutes. Follow up or additional questioning may be beneficial. Most minor guardianship custody hearings last approximately 3-4 hours. Some custody hearings may require substantially more time. Adult guardianship hearings general take under two hours. Once the hearing is complete, additional involvement may be required; however, your involvement beyond the initial appointment hearing is voluntary. We have had may GAL's that stay with minor

	children until they reach the age majority. GAL's have stayed with adult respondents for many, many years.
Place	Court hearings take place at the county court building in Montpelier. Other hearings or meetings can take place where it is convenient for the adult respondent.
Training	Generally, the judge in the Probate Division in Montpelier provides individualized training.
Other	An interest in the welfare of children and adults, especially those adults requiring additional assistance throughout their life or at end of life. Bar admission is not required.
Laws/Rules	14 V.S.A Chapter 111; 14 V.S.A. §3075, end of life issues, V.R.F.P. 6, 6.1.
Contact	Cookie Walbridge of the Probate Division 828-2091.

Washington County Opportunities for Lawyers

Probate Division

Financial Guardians and Estate Fiduciaries

Table of Contents

Role	**Financial guardians and estate fiduciaries.**
Description	Serve as financial guardian in minor and adult guardianships. Act as administrator in estate matters. Financial guardians file an inventory and account for income and expenses of the minor guardianship. The Inventory is due within 30 days of appointment and the accounting is filed annually. Similar duties and time periods for estate fiduciaries.
$ or CLE?	Volunteer or paid depending upon assets. Paying cases can be lucrative, but they are rare.
Time	May require significant time commitment. Involves talking with banks, parties, keeping a check book or spreadsheet, submitting annual accountings, attending court hearings, filing for licenses to sell, lease or mortgage as required. There may be litigation against errant parties.
Place	Court hearings take place at the county court building in Montpelier. Other meetings can take place where it is convenient.
Training	Some probate accounting experience is helpful. Willingness to learn may be substituted. The judge in the Probate Division in Montpelier will provide some training.
Other	An interest in seeing things done right, attention to detail is paramount. Bar admission is not required but could be helpful.
Laws/Rules	14 V.S.A. Parts 3 and 4 §§901-2203, estates, Chapter 111, guardianships. Specifically, application of 14 V.S.A. §1205 for estate fiduciaries. For financial guardians Citifinancial v. Balch, 195 Vt. 21 (2013) is a "must read."
Contact	Janice Brown, Register (estate fiduciaries) and Cookie Walbridge (financial guardians) of the Probate Division 828-2091.

Washington County Opportunities for Lawyers

Probate Division

Attorney, Adult Guardianships

Table of Contents

Role	**Attorney representing adult respondents where another adult petitions for guardianship or an amendment to the guardianship.**
Description	Meet with the respondent, petitioner, may need to request Guardian Ad Litem. *See* 14 V.S.A §3066. Necessary to protect rights of respondent. May also represent respondents in end-of-life care requests.
$ or CLE?	If you've taken the Low Bono guardianship class, you can receive some payment for your services; otherwise, pro bono.
Time	Each meeting with an adult having an interest may take 30 – 60 minutes. Follow up or additional questioning may be beneficial. Review of evaluation is essential. May be necessary to talk with evaluator. Trial preparation depends upon number of witnesses. Most hearings last approximately 1-2 hours. Involvement beyond the guardianship hearing is voluntary. If there are post hearing issues affecting the respondent, the court will generally look to the prior attorney first for future representation.
Place	Court hearings take place at the county court building in Montpelier. Other meetings can take place where it is convenient. Please meet with client prior to the day of the hearing.
Training	Must be admitted to the bar. Prior trial experience will be helpful but not required.
Other	An interest in the welfare of adults is required.
Laws/Rules	14 V.S.A, Subchapter 12 of Chapter 111, 14 V.S.A. §3075 for end of life care requests, VRFP 6.1
Contact	Cookie Walbridge of the Probate Division 828-2091.

Washington County Opportunities for Lawyers

Probate Division

Attorney, Minor Guardianships

Table of Contents

Role	**Attorney representing minor child(ren) in court hearings where there is a dispute over custody of the minor, between a parent and non-parent, often between a parent and a grandparent; sometimes between grandparents.**
Description	Meet with the minor, the minor's parents, the person requesting custody, potential witnesses who may have a view on which party be more appropriate custodian for the minor.
$ or CLE?	Limited funds are allocated to each county annually. Based on available funds, attorneys may receive $50 per hour up to a maximum of $750.
Time	Each meeting with an adult having an interest in the minor may take 30 – 60 minutes. Follow up or additional questioning may be beneficial. Trial preparation depends upon number of witnesses. Most contested custody hearings last approximately 3-4 hours. Some over multiple days. Post hearing briefing may be required. Once the hearing is complete and a decision is rendered, required involvement ends. Involvement beyond the hearing is voluntary. If there are post hearing issues affecting the minor, the court will generally look to the prior attorney first for future representation.
Place	Court hearings take place at the county court building in Montpelier. Other meetings can take place where it is convenient.
Training	Must be admitted to the bar. Prior trial experience will be helpful but not required.
Other	An interest in the welfare of children is required.
Laws/Rules	14 V.S.A. §§2621-2634; V.R.F.P. 6.
Contact	Cookie Walbridge of the Probate Division 828-2091.

Washington County Opportunities for Lawyers

Table of Contents

Role	**Acting Judge, Small Claims Court in Civil Division**
Description	Conduct small claims court hearings and make decisions
Credentials	Lawyer with broad civil experience. Requires approval of Chief Superior Court Judge Brian Grearson.
$ or CLE?	No compensation. Maximum of 3 hours of CLE credit every two years.
Time	On an occasional, as-needed basis.
Place	Courtroom and chambers in the County Courthouse in Montpelier.
Training	Mentoring from judges and experienced acting small claims judges.
Other	The jurisdiction of the small claims court is money judgments only, up to $5,000. All acting judge work is done subject to the Code of Judicial Conduct. Appeals from small claims judgments are taken to the Presiding Judge of the Civil Division on an appellate standard.
Laws/Rules	4 VSA § 22(b); Title 12, Chapter 187; Vermont Rules of Small Claims Procedure
Contact	Donna Waters, COM of the Civil Division 828-7417, Donna.Waters@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	**Attorney for low income litigants in Civil Division**
Description	There are two different programs under which attorneys can provide representation to litigants in civil matters, particularly those facing the loss of their home or residence. In both programs, the attorney usually enters a limited appearance for a single hearing or event (e.g., rent escrow hearing, foreclosure mediation, collections status conference) and is allowed to withdraw from representation at the conclusion of the specific event. (a) Washington County Legal Assistance Project: Attorneys represent defendants in landlord/tenant, collections, or foreclosure cases. Litigants are screened by Vermont Legal Aid for income eligibility. (b) Pro bono evictions clinic program: Attorneys provide limited representation at rent escrow hearings in eviction cases on specific pro bono clinic days. This program will be starting later in 2017.
Credentials	Lawyer with experience or interest in the subject matter.
$ or CLE?	(a) Participating lawyers receive a reduced fee of $60 per hour. (b) 3 hours of CLE credit for the training program; otherwise volunteer.
Time	(a) On an occasional, as-needed basis. (b) On prescheduled specific clinic dates.
Place	All hearings are in the County Courthouse in Montpelier.
Training	(a) Training videos are available for landlord/tenant and collection cases in the VBA Digital Library. (b) Vermont Legal Aid will provide a 3-hour training on a Friday in November.
Other	(a) This project has been in place for several years in Rutland and other counties. The funds for attorneys come from Vermont Bar Foundation grants. (b)This project has been in place in Chittenden County for 2 ½ years and expanded to Rutland County last year. It is grant funded by Legal Aid.
Laws/Rules	Evictions: Title 12, Chapter 169; Title 9, Chapter 137 Foreclosure & Foreclosure Mediation: Title 12, Chapters 172 &163, VRCP 80.1 Collections: Title 12, VRCP 9.1
Contact	(a) Mary Ashcroft at VBA, mashcroft@vtbar.org (b) Margaret Frye at Vermont Legal Aid, mfrye@lawlinevt.org

Revised 8/30/2017

Washington County Opportunities for Lawyers

Table of Contents

Role	**Miscellaneous appointments in Civil Division cases**
Description	There are several roles for which attorneys are needed on occasion, such as: **Commissioner for partition of real estate case** **Attorney for military defendant re stay, default, or foreclosure** **Attorney (or GAL) for incompetent party** **Attorney for prisoner** (Prisoner's Rights Office disqualified)
Credentials	Lawyer with experience in the particular subject matter.
$ or CLE?	Attorneys' fees are billable to client for most cases, except for prisoners.
Time	On a very occasional, as-needed basis.
Place	All hearings are in the County Courthouse in Montpelier.
Training	Lawyers are encouraged to contact others who have done similar prior work.
Other	The roles described above occur occasionally. The court would like to know what attorneys are interested and willing to be contacted for appointment when the need arises in each of these types of cases. For most such assignments, the lawyer is entitled to bill for services.
Laws/Rules	Partition: Title 12, Chapter 179 Servicemembers Civil Relief Act: 50 U.S.C. § 3901-4043 Incompetent party: V.R.C.P. Rule 17 (b) Prisoners: V.R.C.P. Rule 75 Habeas: 12 V.S.A. § 3952; V.R.C.P. 80.4 Post Conviction Relief: 13 V.S.A. § 7131
Contact	Donna Waters, COM of the Civil Division 828-7417, Donna.Waters@vermont.gov

Washington County Opportunities for Lawyers

Table of Contents

Role	(a) **Mediator in Civil Cases** (b) **Foreclosure Mediator**
Description	(a) Conduct pretrial mediation in civil cases such as tort and contract disputes (b) Conduct statutory foreclosure mediation for homeowners seeking to avoid foreclosure
Credentials	(a) Mediation training and experience as approved by Court Administrator, and general civil litigation experience (b) Specific foreclosure mediation training provided by Vermont Bar Association, and knowledge and experience in real estate and foreclosure practice
$ or CLE?	(a) Fees billable to parties. (b) Fees billable to plaintiffs.
Time	For specific cases as requested by parties or appointed by the court.
Place	Places arranged by agreement with the participants, usually attorney offices.
Training	(a) None is provided; the attorney is expected to have acquired own training. (b) Specific foreclosure mediation training is required and provided by VBA
Other	These are two very different forms of mediation, with different contexts and purposes and governed by different rules. For each type, qualified mediators can be placed on lists in each county in which they are willing to serve. (a) For Rule 16.3 mediation, the COM of the county will provide the list to those seeking to agree on a mediator, or will appoint if the parties do not agree and ask for the court to appoint a mediator. (b) For foreclosure mediation, the process for selection of a mediator takes place initially through the VBA.
Laws/Rules	(a) V.R.C. P. Rule 16.3; Administrative Order No. 39 (b) 12 V.S.A. §§ 4631-4637
Contact	Donna Waters, COM of the Civil Division 828-7417, Donna.Waters@vermont.gov Foreclosure Mediation: Tami Baldwin at Vermont Bar Association tbaldwin@vtbar.org; 802-223-2020

Revised 8/30/2017

Washington County Opportunities for Lawyers

Table of Contents

Role	(a) **Guardian ad litem for mental health patients, or** (b) **Guardian ad litem for persons with disabilities in guardianship cases**
Description	(a) Meet with patients at Vermont Psychiatric Care Hospital in relation to court hearings on applications for involuntary mental health treatment and/or medication. Their lawyers are having trouble communicating with them. The role is to see if you can help with client/lawyer communication, and to make sure they are being adequately represented. (b) Meet with adults with developmental disabilities and assist them at hearings in which the state seeks appointment of a public guardian
Credentials	Lawyer not necessary; interest in helping mental health patients and/or persons with disabilities and their attorneys and the court
$ or CLE?	Volunteer only
Time	(a) Each mental health case usually entails meeting once with the patient at VPCH (30 +/- minutes), and then attending a hearing within a week or two (90 minutes). (b) Each guardianship case usually entails meeting with the person and their lawyer in the community, and attending a hearing (90 minutes). For both kinds of cases, after the hearing, there is no ongoing involvement. There is no commitment to do it more often than you have time for; even 1-2 times per year would be helpful.
Place	(a) Both meetings with patients and court hearings are at VPCH in Berlin (b) Meetings are in the community and hearings are at the Montpelier courthouse
Training	Court staff, prior GALS, attorneys for the Departments of Mental Health/DAIL (petitioners) and Vermont Legal Aid (respondents) can provide mentoring.
Other	Although it is the Family Division that has jurisdiction over mental health hearings and public guardianship hearings, in Washington County these cases are managed out of the Civil Division at 65 State Street in Montpelier, and the Civil Division judge holds the hearings.
Laws/Rules	(a) Mental health: Title 18, Chapter 181; V.R.F.P. 6.1 (b) Developmental disabilities: Title 18, Chapter 215; V.R.F.P. 6.1
Contact	Donna Waters, COM of the Civil Division 828-7417, Donna.Waters@vermont.gov