

GUARDIANSHIP AND CONSERVATORSHIP

We receive a number of questions about Guardians and Conservators. Here are some of the most common questions we get, together with the answers.

WHAT IS A GUARDIAN OR CONSERVATOR?

A guardian is an individual appointed by the court to care for the well-being of another. A conservator is the person who is given the power to make all financial decisions for another. Both are a “fiduciary” which means they act for another in that person’s best interest.

WHO CAN BE MADE GUARDIAN AND/OR CONSERVATOR?

For a person to be made the legal guardian or conservator of a person there must be both a hearing and an Order by the Circuit Court of such appointment.

IS COURT SUPERVISION REQUIRED?

The Court will always supervise any actions taken by the guardian and conservator, with more emphasis being placed on the conservator. The Court requires that a “Commissioner of Accounts” oversee all payments made and property accepted by the conservator.

PLEASE SEE THE TOP RULES FOR CONSERVATORS WITH THIS SHEET.

WHAT CAN THE GUARDIAN/CONSERVATOR DO?

The powers and responsibilities of both the guardian and/or conservator are listed in the Order granting such appointment. The Circuit Court is careful to grant only such powers as are necessary to each individual case and so one should always refer to that Order. This is especially important when dealing with real estate as the conservator is rarely given the power to sell or mortgage a piece of real estate unless it is approved by the court. If you have any questions about your responsibilities or powers as guardian or conservator please consult an attorney.

HOW DO I SIGN?

This is one of the most important points. Every time something is signed in a fiduciary capacity, that capacity must be disclosed or else the guardian/conservator could be held personally responsible for the cost.

Generally, a document is signed as follows: (Where *Bill Smith* is appointed guardian/conservator for *John Doe*):

JOHN DOE

By: ***Bill Smith***

His Guardian/Conservator

In this example, Bill Smith has signed HIS name; John Doe’s name is typed or printed.

HOW LONG IS IT VALID?

Any order that which appoints either a guardian or conservator will be good until the individual in question dies, is restored to competency, or the Circuit Court enters an order revoking the power.

WHO NEEDS TO SEE IT?

The Guardian must provide any medical and social service provider with a copy and access to a certified copy of the Order upon request. The Conservator must also provide the same to any financial institution and any individual who may hold or possess any funds or property of the individual.

LIMITATIONS & GOVERNING LAW

These comments are based on the laws of the Commonwealth of Virginia. Other states may be different. If you have any other questions about how or when to use a power of attorney, please call and we will gladly answer your questions.

TOP RULES FOR CONSERVATORS:

You have been appointed as a Conservator (which is a type of fiduciary) by the Circuit Court and been given a thick instruction package which you must read carefully. Below are some important rules you need to follow as you fulfill your duties; these aren't the only rules but are very important ones. As a conservator there are special rules on investing and spending the money you hold, and you should consult an experienced attorney for those.

1. **KEEP MONEY SEPARATE** – DO NOT deposit any *fiduciary* money in your personal account. DO NOT put *personal* money in the fiduciary account. NEVER use fiduciary money to pay **your** personal bills – Criminal penalties could happen if you do. *Open a special account at a bank for all fiduciary funds.* New accounts must be opened as their name, “care of” you.
2. **GET RECEIPTS OR PROOF OF PAYMENT AND KEEP ALL BANK RECORDS** – You must file an “Accounting” (a detailed statement of everything that you got and paid) with the Commissioner of Accounts assigned you by the Clerk. You have to prove that someone actually received the money you say you paid. If you give someone cash or personal property, you have to prove to the Commissioner that they got it AND what it was worth; thus a receipt is necessary. Also, if you purchase or make any payments by check you must retain the check image (or cancelled checks) that the bank provides you.
3. **CAREFULLY DETAIL ALL MONEY** that comes in or goes out. For EACH item, you need to write down **WHEN – WHO – WHAT/WHY – HOW MUCH**. Example: If you get a \$20.00 check from an insurance company, you need the **WHEN** (date you got it), **WHO** (name of insurance company) **WHAT/WHY** (payment on medical treatment or refund on premium) and **HOW MUCH** (the exact amount of the check). If you can, photocopy all checks before depositing them in the bank.
4. **KEEP RECORDS** – Get a medium sized spiral notebook for a diary. In it write everything you do in handling the estate – who you talk to, what was said, what was done. For money, the checkbook register **MUST** be accurate. (Hint: Put money transactions in **BOTH** the notebook **AND** the checkbook register). Or, if you have access to a computer, you may want to use this as a tool for keeping track of all receipts and expenses. Our office uses Quicken™ on a daily basis and we recommend it; there are other programs that do as good a job.
5. **TAKE CARE OF TAXES**. You are responsible for making sure all tax returns are filed and taxes paid on time. If you're not sure what to do, get an accountant to help you.
6. **DON'T PAY BILLS AND DEBTS TOO QUICKLY**. If there's not enough money in the estate, you can be personally responsible if you overpaid creditors. There are laws that say who is entitled to what payment when, and if you think there may not be enough money to pay everything, consult an attorney.
7. **ASK QUESTIONS**. There are strict and detailed rules for handling someone else's money; few people have experience doing it. Find a lawyer experienced in this area and use him/her as a resource. Asking a stupid question is a lot cheaper than making a stupid mistake.
8. **KEEP ON TIME AND USE THE PROPER FORMS**. Your inventory (list of property of the incapacitated person) is due at the Commissioner's office in 4 months; your first statement of account (receipts and expenses) is due in 6 months. You will have to pay a penalty from your personal money if it's late. There are special forms and report formats the Court requires you to follow; use them.
9. **PLAN**. There are things you can do that will help the incapacitated person in the future, or help his/her estate. One such thing is planning and paying for the funeral and burial expenses in advance. If you do this, make sure that the plan complies with Medicaid regulations so the incapacitated person can qualify for assistance if needed.
10. **DISCLOSE (TELL) YOUR STATUS**. You are acting **FOR** the incapacitated person. Make sure everyone you deal with for them knows that, and that all bills and contracts are in the ward's name, not yours. If you don't do it right, you may have to pay personally for the expenses of the incapacitated person.