

CONSERVATORSHIP:

WHAT IS A CONSERVATORSHIP?

A person who is appointed by the court to manage the property of a minor or incapacitated person.

WHO IS AN INCAPACITATED PERSON?

A person who is unable to manage property and business affairs because of:

- a. mental illness
- b. mental deficiency
- c. physical illness
- d. infirmities accompanying advance age
- e. chronic use of drugs
- f. chronic intoxication
- g. confinement
- h. detention by foreign power
- i. disappearance

WHO CAN SERVE AS A CONSERVATOR?

A family member or any interested person with the priorities as follows:

- a. conservator appointed in another jurisdiction
- b. person selected by incapacitated person
- c. person designated by incapacitated person's power of attorney
- d. spouse
- e. adult child
- f. parent
- g. relative with whom ward has lived last six months
- h. nominee of person caring for incapacitated person
- i. general guardian or sheriff

WHEN CAN A CONSERVATOR BE APPOINTED?

A conservator may be appointed when an incapacitated person:

1. Is unable to manage property and business affairs;
2. Has property that will be wasted without proper management;
3. Funds are needed to support the incapacitated person or one entitled to support from the incapacitated person.

WHAT ARE THE POWERS AND DUTIES OF A CONSERVATOR?

Without court authorization, the conservator may:

- a. invest and reinvest funds
- b. retain assets
- c. receive additions
- d. acquire undivided interest

- e. deposit funds in financial institutions
- f. acquire property
- g. dispose of personal property
- h. make repairs to building
- i. enter leases up to 5 years
- j. enter mineral leases
- k. grant options up to one year
- l. vote securities
- m. pay assessments
- n. sell or exercise stock options
- o. deposit stocks and bonds
- p. consent to reorganization, merger of a business
- q. insure assets
- r. borrow to protect estate
- s. settle claims
- t. pay reasonable annual compensation to conservator
- u. pay taxes and expenses
- v. allocate expenses to income
- w. pay sum for benefit of protected person or his family
- x. employ attorneys, auditors
- y. prosecute or defend claims
- z. execute and deliver appropriate instruments
- aa. hold securities

(court may limit powers of conservator)

With prior court authorization, the conservator may:

- a. continue or participate in operating business
- b. demolish improvements
- c. dispose of real estate
- d. subdivide, dedicate land
- e. lease greater than 5 years
- f. grant an option more than one year
- g. take an option to acquire property

AM I REQUIRED TO HAVE A LAWYER?

The legal complexity of guardianship and conservatorship normally necessitates having an attorney since the Probate Judge cannot advise you of the law or provide you with forms.

WHAT IS THE DIFFERENCE BETWEEN A CONSERVATOR AND A GUARDIAN?

The guardian looks after the person and their welfare while a conservator looks after their estate.

WHAT ARE THE STEPS FOLLOWED IN APPOINTING A GUARDIAN OR CONSERVATOR FOR AN ADULT?

1. Petition filed
2. Appointment of a guardian ad litem
3. Examination by physician
4. Appointment of court's representative (if applicable)

5. Hearing
6. Jury at hearing if demanded
7. Bond for conservator
8. Order granting petition
9. Inventory of property for conservator
10. Letters of guardianship and/or conservatorship

IS A BOND REQUIRED?

Yes, a bond is required for conservatorship unless, the bond requirement was waived in a will or Power of Attorney.

IS AN INVENTORY REQUIRED?

Each conservator must complete an inventory of the estate immediately and file it with the court within 90 days after appointment.

ARE ACCOUNTINGS REQUIRED?

Yes, a conservator must give an accounting to the court. The Cullman County Probate Court Orders Accountings Annually. An accounting is also required upon the resignation or removal of the conservator.

THIS INFORMATION, WHICH IS BASED ON ALABAMA LAW, IS ONLY TO INFORM AND NOT TO ADVISE. NO PERSON SHOULD EVER APPLY OR INTERPRET ANY LAW WITHOUT THE AID OF A LAWYER WHO ANALYZES THE FACTS, BECAUSE THE FACTS MAY CHANGE THE APPLICATION OF THE LAW.

TAMMY BROWN
Judge of Probate
Cullman County