

What is a Conservator?

Last month's article in Senior Living explained Guardianship. Generally, if a person's assets and income are nominal, a Guardian can handle their day-to-day, uncomplicated financial affairs. Beyond that situation a Probate Court is likely to require the appointment of a Conservator. A Conservator is a person, agency or organization (e.g. a bank) appointed by a probate court after a court hearing, and given power and responsibility to handle some or all of an individual's **assets and financial affairs**. Once appointed, a Conservator takes title to the person's assets, subject to any limitations of the Conservatorship and the authority of the probate court, and manages them for the benefit of the person, who is referred to as the protected individual. A Conservator is considered to be a fiduciary, that is, a person who is acting in a position of trust.

Who Can be a Conservator

Under Michigan law, the following persons can be appointed as Conservator:

A Guardian of property;

An individual or corporation nominated by the protected individual if he or she is at least 14 years of age and of sufficient mental capacity to make an intelligent choice, including a nomination made in a Durable Power of Attorney;

The protected individual's spouse;

The adult child of the protected individual;

A parent of the protected individual or a person nominated by the will of a deceased parent;

A relative of the protected individual with whom he or she has resided for more than 6 months before a petition is filed;

A person nominated by the protected person who is caring for or paying benefits to the protected person;

Any person that the Court determines would be suitable, willing and acting in the best interest of the protected individual.

What are the differences between a Conservator and a Guardian?

A guardian is a person who is appointed by a Probate Court to have broad duties with respect to the care and custody of a legally incapacitated individual. For instance, a guardian may have responsibility to determine where an individual lives, to ensure personal needs are met, to authorize medical treatment and to arrange for social services. A Guardian's authority is broadly over the "person" of the legally incapacitated individual. A guardian may have responsibility for an individual's finances if a Conservator is not appointed, but only if nominal income and no large assets are involved.

A Conservator handles the financial affairs and does not have power to consent to medical treatment, to choose where an individual lives, or to control day to day activities.

An individual may have both a Guardian and a Conservator, which may be the same person or two separate people.

How is a Conservator appointed?

The first step in the appointment of a Conservator is the filing of a petition in the probate court in the county where the individual lives. The petition may be filed by the individual himself or herself, by a person interested in the person's welfare, or by a creditor.

The petition requesting the court to appoint a conservator can be prepared on a form which is the same form that is used for seeking a Probate Court Protective Order. This form is available from the probate court at no cost. [Form title: PC639 Petition for Appointment of Conservator or Protective Order]

The court filing fee is \$150.00. The fee is paid to the probate court by the person filing the petition. If a Conservatorship is established, the petitioner can seek reimbursement from the individual's estate.

The Court may require that a Conservator furnish a bond to protect against carelessness or misdeeds. There is a cost for such bonds which are available from insurance agents.

Before receiving Letters of Authority, which is a court order naming the Conservator and providing authority for the Conservator to act, the Conservator must file a statement of acceptance of the duties of the office.

Most legal proceedings require the assistance of an attorney. It is possible that a petition for a Conservatorship can be filed by an individual without an attorney if the matter is straightforward and uncontested.

What is the role of the court in Conservatorship proceedings?

The court process has three goals: 1) to ensure that the appointment of a Conservator is really necessary; 2) establish the Conservator's powers to reflect the demonstrated needs of the individual to encourage self-reliance; 3) appoint a person to serve as Conservator who is willing and able to handle the task.

What record keeping is required?

To serve effectively as a Conservator sometimes requires a burden of paperwork and a Conservator should begin immediately upon appointment to make a list of the property owned by the protected individual. The list should be detailed, with a description of each item sufficient to easily identify it. This list will be of assistance in preparing the inventory, an itemization and valuation of the protected individual's assets, required to be filed with the court within 56 days following the appointment.

The Conservator should set up a log to record the date, amount and source of all income received by the individual, such as earnings, pension, interest, dividends, tax rebates, and health insurance reimbursement; a similarly, all expenses should be logged. Since the Court requires a Conservator to file an annual account, it is necessary that careful recordkeeping be maintained.

What are the powers of a Conservator?

A conservator has most powers over property and finances that the individual owns, except the ability to make a will. For example, Conservators have the power to:

- a) collect money due the individual

- b) use income and assets to pay for present needs
- c) pay just debts of the individual
- d) invest assets to pay for possible future needs
- e) engage in estate planning through gifts and trusts

Does a Conservator need court authority to sell real estate?

Yes. A conservator cannot sell real estate or an interest in real estate without first petitioning the court for authority. At a hearing after notice to interested persons, the court must consider evidence of the value of the property and otherwise determine the sale to be in the individual's best interest.

Can the Conservator be reimbursed for out-of-pocket expenses?

Yes. The following are examples of expenses for which a Conservator may be reimbursed without Court approval:

- a) Court filing fees
- b) Xerox copies of court papers and financial records
- c) Postage
- d) Long distance telephone calls
- e) Automobile mileage related to conservatorship duties.

May a Conservator be compensated for services performed?

Yes. A Conservator is entitled to "reasonable compensation" from the estate. If you are unsure about what is reasonable, you should check with the office of the Probate Court.

What are the Conservator's obligations to report to the court?

A Conservator must file an account annually, although the court can request an account at any time.

An account shows money and property received during the year as Conservator, and expenses and any other disbursements. An

account also shows the value of the estate at the beginning of the period, and a list of assets remaining at the end of the account period.

Can a Conservator be held personally liable?

In general a Conservator is not personally liable for any debts of the protected individual. The Conservator's liability extends only to the assets over which the Conservator has control.

You can be sued for the contracts signed as a Conservator, but if you made it clear that you were signing as Conservator, your personal funds will not be at stake.

You can also be sued if you breach your fiduciary responsibility. If a judgment is entered against you in a lawsuit, and you have a bond, the bond company will pay part or all of the judgment. The bond company may then sue you to recover the money it has paid out. You may be required to hire an attorney and pay attorney fees.

Are there any alternatives to a Conservator?

An alternative to a Conservatorship is a Durable Power of Attorney. An individual considering a Durable Power of Attorney should discuss the matter with an attorney. A person who has a Conservator is not likely to be fully competent; a person must be fully competent to sign a Durable Power of Attorney.

If you have further questions concerning Conservatorship or other legal matters, and are a Michigan resident, 60 years of age or older, you can call the Legal Hotline for Michigan Seniors at 1-800-347-5297 weekdays between 9:00 AM and 5:00 PM to set an appointment to have an attorney call you.

