

Guardianships and Conservatorships

WHAT IS A CONSERVATOR? 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:

- mental illness
- mental deficiency
- physical illness
- infirmities accompanying advanced age
- chronic use of drugs
- detention by foreign power

disappearance WHO CAN SERVE AS A CONSERVATOR? A family member or any interested person with the priorities as follows:

- conservator appointed in another jurisdiction
- person selected by incapacitated person
- person designated by incapacitated person's power of attorney
- spouse
- adult child
- parent
- relative with whom ward has lived last six months
- nominee of person caring for incapacitated person
- general guardian or sheriff

WHEN CAN A CONSERVATOR BE APPOINTED? A conservator may be appointed when an incapacitated person:

- is unable to manage property and business affairs; and
- (a) has property that will be wasted without proper management
- (b) 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:
 - invest and reinvest funds
 - retain assets
 - receive additions
 - acquire undivided interest
 - deposit funds in financial institutions
 - acquire property
 - dispose of personal property
 - make repairs to building
 - enter leases up to 5 years
 - enter mineral leases
 - rent options up to one year
 - vote securities
 - pay assessments
 - sell or exercise stock options
 - deposit stocks and bonds
 - consent to reorganization, merger of a business
 - insure assets
 - borrow to protect estate
 - settle claims
 - pay reasonable annual compensation to conservator
 - pay taxes and expenses
 - allocate expenses to income
 - pay sum for benefit of protected person
 - employ attorneys, auditors
 - prosecute or defend claims
 - execute and deliver appropriate instruments
 - hold securities (Court may limit powers of conservator)
- with prior court authorization the conservator may:
 - continue or participate in operating business
 - demolish improvements
 - dispose of real estate
 - subdivide, dedicate land
 - leases greater than 5 years
 - grant an option more than one year

AM I REQUIRED TO HAVE A LAWYER? The legal complexity of guardianships and conservatorships 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 GUARDIAN AND A CONSERVATOR?** 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?**

- petition filed
 - appointment of a guardian ad litem
 - examination by physician
 - appointment of court's representative
 - hearing
 - jury at hearing if demanded
 - bond for conservator
 - order granting petition
 - inventory of property for conservator
 - letters of guardianship and/or conservatorship
- IS A BOND REQUIRED?** Yes, a bond is required for conservatorships 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 at least every three years. The court may order an accounting more frequently. An accounting is also required upon the resignation or removal of the conservator. **WHAT IS A GUARDIAN?** The parent of a minor or someone who has been appointed by the court to be responsible for the personal care of an individual. **WHAT IS A WARD?** Legal name for a person for whom a guardian has been appointed. **WHO CAN BE A GUARDIAN FOR AN ADULT?** Any qualified person may be appointed. However, the law establishes the following priorities:

- person named in a durable power of attorney
 - spouse or spouse's nominee
 - adult child
 - parent or parent's nominee
 - relative with whom person has lived the prior 6 months
 - nominee of person
- WHO CAN BE GUARDIAN FOR A CHILD?** The court may appoint any person who will be in the best interest of the minor. However, if the minor is 14 years old or older, the minor's nominee must be appointed unless the appointment is contrary to the minor's best interest. Also, a parental nominee has priority. **CAN A PARENT APPOINT A GUARDIAN?** Yes, in a parent may appoint a guardian for a minor child or for an unmarried incapacitated child. **CAN A SPOUSE APPOINT A GUARDIAN?** Yes, in a Will a person may appoint a guardian for his or her incapacitated spouse. **WHAT ARE THE POWERS OF A GUARDIAN?**
- must assume responsibilities of a parent regarding support, care and education
 - must become personally acquainted with ward
 - must take reasonable care of ward's personal effects
 - must apply available money for current needs or health, support, education and maintenance
 - must conserve excess money
 - must report the condition of the ward to the court
 - may receive limited funds for support of ward
 - may take custody of ward and establish a home
 - may compel payment of support
 - may consent to medical care
 - may consent to marriage or adoption
 - may delegate certain responsibilities to the ward for the decision making (Court may limit powers of guardianship)
- WHEN DOES A GUARDIANSHIP END?**
- upon death of ward
 - upon resignation of the guardian
 - upon adoption of the minor
 - upon marriage of the minor
 - upon minor becoming an adult
 - when ward's incapacity is terminated
- ** This information, which is based on Alabama law, is 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.