



## GUARDIANSHIP & CONSERVATORSHIP

A guardianship and conservatorship is a legal arrangement in which a court appoints an individual to make decisions and manage the affairs of another person (the ward) who is unable to do so for themselves due to incapacity. A **Guardianship** is of the person, meaning that the guardian authority to make decisions regarding the personal and healthcare matters of the ward. This can include decisions about medical treatment, living arrangements, education, and overall welfare. A **Conservator** is of the estate, meaning the conservator is responsible for managing the ward's financial affairs. This can include handling the ward's assets, paying bills, investing money, and protecting property.

### Process

The guardianship process in Virginia is designed to protect the rights and well-being of the incapacitated individual while ensuring that any loss of autonomy is no greater than necessary. Virginia law requires that the court consider less restrictive alternatives before appointing a guardian or conservator. This could include powers of attorney, trusts, or supported decision-making arrangements. The guardianship process involves intricate legal procedures and the interpretation of statutes and case law. I

In Virginia, the process begins when an interested party (such as a family member or friend) files a petition with the circuit court in the county or city where the alleged incapacitated person (AIP) resides or is located. The petition should outline the alleged incapacity and why a guardian is necessary. The court will appoint guardian ad litem (GAL), an attorney responsible for representing the best interests of the AIP. The GAL will meet with the AIP, investigate the circumstances, and make a recommendation to the court regarding guardianship.

The court will require a detailed report from a licensed physician or psychologist evaluating the AIP's mental and physical condition. This report must address the AIP's ability to make informed decisions and manage their affairs. Additionally, proper notice to interested parties must be made at least 10 days prior to the scheduled hearing. Additionally, the AIP must be personally served with notice of the petition and the hearing.

At the hearing the court will hear evidence concerning the AIP's alleged incapacity. The AIP is entitled to be present, represented by an attorney, and to present evidence. If the court finds by clear and convincing evidence that the AIP is incapacitated and unable to care for their personal affairs or financial matters, it may appoint a guardian and/or conservator. If the court decides to appoint a guardian or conservator, it will choose someone it deems suitable. This could be a family member, friend, or a professional guardian. The court will issue an order defining the scope of the guardian's or conservator's powers and duties.

### Filing Requirements

There are a number of filing requirements imposed by the court to ensure proper management, which include:

- **Inventory:** Within four months of appointment, a conservator must file an inventory with the local Commissioner of Accounts. The inventory should list all of the ward's assets and property, including real estate, bank accounts, personal property, and any other financial resources.
- **Annual Reports:** Guardians are required to file an annual report on the condition of the ward with the local Department of Social Services. This report includes information about the ward's health, living situation, and any major changes in their condition or circumstances.
- **Annual Accountings:** Conservators must file an annual accounting with the Commissioner of Accounts. This accounting details all income received, and expenditures made on behalf of the ward over the past year. It must include supporting documentation, such as receipts and bank statements, to justify the financial transactions.

## Court Oversight

The court is required to impose periodic review hearings, which may only be waived with specific findings. The purpose is to determine whether the guardian or conservator is fulfilling his or her duties and whether continuation of the guardianship or conservatorship is necessary and, if so, whether the scope of such guardianship or conservatorship warrants modification.

Additionally, some transactions may require court approval. While conservators have broad authority to handle financial matters, there are certain actions for which they must seek court approval. These typically involve significant transactions or decisions that could have a major impact on the ward's estate such as:

- **Sale of Real Estate:** Selling or transferring real estate owned by the ward often requires court approval. The court will want to ensure that the sale is necessary and in the best interests of the ward.
- **Major Investments:** Making significant investments or changes to the investment strategy of the ward's assets may require court approval, especially if these actions involve a high level of risk.
- **Gifting:** Conservators generally cannot make substantial gifts from the ward's assets without court approval, as this could deplete the estate in a way that's not in the ward's best interests.
- **Estate Planning Changes:** If the conservator wants to make changes to the ward's estate plan, such as revising a will or altering beneficiary designations, court approval is usually required.
- **Business Transactions:** If the ward owns a business, significant business transactions, such as selling the business or making large investments, will likely need court approval.
- **Compensation:** Conservators can be compensated for their services, but the amount and frequency of compensation may need to be approved by the court, especially if it's not already specified in the court order.
- **Settlement of Claims:** If the ward has claims against another party, such as a lawsuit, settling these claims will typically require court approval.
- **Major Contracts:** Entering into major contracts on behalf of the ward, such as long-term service agreements, may require court approval.
- **Change of Residence:** Moving the ward to a new residence, especially if it involves selling the current residence or moving to a different state, may require court approval.

## Breach of Duties

Guardians and conservators hold positions of trust and are required to act in the best interests of their wards. A breach can result in significant consequences, both legally and financially. The court can remove a guardian or conservator who is found to be acting improperly or against the interests of the ward.

If the breach of duty results in a financial loss for the ward, the guardian or conservator can be held personally liable to repay or restore the lost assets. If a surety bond was posted, the bond could be used to reimburse the ward's estate. Additionally, the court may impose sanctions on the guardian or conservator, which could include fines or orders to take specific actions to rectify the breach. In cases where the breach involves theft, fraud, or other criminal actions, the guardian or conservator could face criminal charges.

It's important to note that not every mistake or error in judgment by a guardian or conservator will constitute a breach of duty. Courts often consider the complexity of the situation and intentions.

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