

Conservatorship

What Is A Conservatorship, and How Is It Different From A Guardianship?

A conservatorship is the legal process by which a court appoints someone to make financial and/or medical decisions. The court will only grant a conservatorship for a person the court declares disabled. The person appointed to make these decisions is the “conservator,” and the disabled person is the “ward”.

In Tennessee, a guardianship is essentially the same but can only be used for someone seventeen (17) years old or younger. Conservatorships are for adults ages eighteen (18) and older. Other states may use these terms differently.

What Is an Emergency Conservatorship?

A court can grant an emergency conservatorship if it finds there is a chance of immediate harm to the health, safety, or welfare of the ward. A hearing must occur within five (5) days to determine whether the emergency conservatorship should continue. If the court decides the emergency conservatorship should continue, it cannot last longer than sixty (60) days. The court can remove the emergency conservator at any time. The court will not rule on the issue of how disabled a person may be in an emergency conservatorship. A full conservatorship will be necessary for this determination and a more permanent appointment.

What Is a Uniform Veterans’ Guardianship?

If a ward receives any benefits from the Veterans’ Administration, the Uniform Veterans’ Guardianship requires that the Administration of Veterans’ Affairs be represented in any legal proceedings that concern appointing or removing a conservator.

What Personal Rights Are Affected by a Conservatorship?

A court must decide which rights to remove from a ward and place with the conservator based on the “least restrictive alternatives” standard. The court will also separate rights considered for removal into “functional” and “decision making” categories. The court may only remove the rights necessary to accomplish the purpose of the conservatorship. This means the court will look at a ward’s ability to make and communicate decisions about their care and property separately from the ability to handle basic daily activities. Decision-making about daily activities might be something like choosing to clean the floor even though once they are down the ward cannot get up.

Who Can Be a Conservator?

Courts may appoint anyone to serve as a conservator, but the court will consider people in this order:

1. A person who the ward chose in writing to be responsible for making decisions before becoming incapacitated or disabled, usually in a Power of Attorney, but not always;
2. The spouse of a ward;
3. An adult child of the ward;
4. The next closest relative of the ward;
5. A district public guardian, which is a state-run program whose employees can serve as agents or as conservators; or
6. Any other person who is willing, able, and deemed appropriate by the court.

The court may appoint co-conservators and standby conservators. If the appointed conservator comes from #6 of the above listing, the court must provide reasons why it was unable to appoint a conservator from #1-5 on the above listing.

What are a Conservator’s Duties to The Ward and to the Court?

Conservators must act in the best interests of the ward, file a property management plan and give an inventory and accounting of how any money or property is used, act in the way the ward would act if they could act for themselves, and follow the court’s orders. Courts will remove a conservator for abuse, mismanagement,

neglect, or failure to act.

What is the Process Of Getting a Conservatorship?

The person who believes another needs a conservator must file a petition with the court in the county where the ward lives. The petition must include a report by a doctor, psychologist, or senior psychological examiner that explains the proposed ward's medical condition. A "Guardian ad Litem" will be appointed to investigate and recommend whether a conservatorship is necessary. The court may also appoint an "Attorney ad Litem" to represent the ward if the court decides this is necessary to protect the ward's rights or if the ward objects to the conservatorship.

The court will have the final say in determining whether a ward needs a conservator, who should be the conservator, and what limitations should be placed on the conservator.

If I am a Relative of the Ward and the Conservator will not let me see or talk to them, what can I do?

The court may choose to give the conservator the right to limit the ward's communication and visitation with individuals, but if the court did not expressly give that right to the conservator, then the ward keeps that right. If a ward is unable to express consent to communication, then consent will be presumed based on the relative's history with the ward. If a conservator prevents communication between a relative and the ward, the relative can petition the court for the right to communicate, visit, and interact with the ward. The losing party could be responsible for court costs and attorney fees.

Can the Ward or Anyone Else End or Change a Conservatorship?

Yes. Any interested party may petition the court overseeing the conservatorship for changes but must do so formally. A ward can appeal the court's decision to grant a conservatorship, ask to end the conservatorship or ask the court for a different conservator. If the ward wants the change, they can ask orally in the courtroom, through an informal letter to the court, or through a simple phone call to the court clerk.

Anyone can challenge the conservatorship by filing an objection with the court if it is in the ward's best interest or if the conservator has violated court-appointed duties. A conservator may ask the court in writing to appoint a different conservator, but the court is not required to approve this request. If the court approves, the conservator must give a final accounting of the ward's money and property.

How can I Transfer a Conservatorship Between Counties?

To transfer a conservatorship to a new county, the conservator must file a brief statement of the reasons for transfer, an accounting of all transactions, proof that the ward is moving, a request for transfer, and, if applicable, that a new conservator or other fiduciary has already been appointed in that county. The original court must find that either the conservator and ward are both moving to the new county, or the ward is moving to a new county and a new conservator has been appointed in that county. The original court must also find that the transfer is in the ward's best interest.

How can I Transfer a Conservatorship Between States?

To transfer a conservatorship to a different state, the conservator must petition the court for a transfer. The court will allow the transfer once the other state court agrees it is a good idea. To transfer an out-of-state conservatorship to Tennessee, the conservator must give notice to the home state's court of the intent to register in Tennessee and then register the conservatorship in any appropriate Tennessee court as a foreign judgment with certified copies of the order and letters of office.

What Happens if the Ward Dies?

The conservator must notify the court of the ward's death. The court will end the conservatorship. If the conservator has responsibility over the ward's property, they have 120 days to file a final accounting with the court that shows whether there are any remaining funds. The court must approve the final distributions after giving anyone with objections to the final distributions 30 days to make those objections. The court will let the conservator finish all the final transactions. If the conservatorship is ending for any other reason, the process is the same.

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