

Duties of the Conservator

What are the Conservator's Responsibilities?

A conservator is a fiduciary, which means that the conservator is held to a high standard of trust known as “fiduciary responsibility”. The conservator must always act in the best interests of the ward (The “ward” is the person that a court has determined is in need of a conservator). If family members or certain other interested parties think the conservator is not acting in good faith or performing duties with due care and diligence, they can bring a legal action against the conservator. A court can also penalize a conservator for failure to perform required duties. Failure to uphold that high level of trust can result in serious consequences ranging from removal as conservator to financial liability for damages or unauthorized expenses. The duties of the conservator will vary depending upon the court's order appointing a conservator, and whether the appointment is for “conservator of the estate” or “conservator of the person,” or both. Sometimes, there are separate conservators of the estate and of the person. For example, a bank may be appointed conservator of the estate if there are significant assets and an individual may be appointed conservator of the person.

What are the responsibilities of the Conservator of the Person?

Protection of the Ward: Often the conservator's most important responsibility is to see that the ward is living in a safe environment. This responsibility can be difficult as choices may be limited for various reasons. For example, this could mean hiring care-givers to watch the ward to make sure the ward doesn't harm himself/herself whether by malnourishment or accident. It may mean taking the ward out of the home and placing him/her in another safe place, such as an assisted living facility or nursing home.

Health Care: Unless the conservatorship order reserves medical authority to the ward who has mental capacity or there is already another health care agent for the

ward (see below), the conservator is responsible for seeing that all the health care needs of the ward are met, including both medical and psychiatric. If the ward has previously executed a living will or otherwise made known his/her wishes in the event of a terminal illness, the conservator is bound to follow those wishes. The conservator would ordinarily request instructions from the court before removing life support, for example, unless there was a living will to follow.

If the ward had made an appointment of a health care agent through a durable power of attorney for health care or other document, that agency is not cancelled by the conservatorship, and the previous health care agent is still in charge of medical matters.

Act in the Ward's Best Interests: This is a high standard of fiduciary responsibility. The conservator must act in the ward's best interests at all times. As a fiduciary, the conservator cannot use his/her position for his/her own benefit.

What are the responsibilities of the Conservator of the Estate?

In general, the conservator of the estate has a fiduciary duty to act in the ward's best interests, a high standard of care and responsibility. Conflicts of interest or taking actions that help another person at the expense of the ward are generally prohibited. The conservator of the estate's job is to handle all the financial affairs of the ward and pay all the ward's bills carefully and properly, including making appropriate arrangement for payment of medical bills and nursing home care. If the ward has substantial assets, the conservator of the estate is obligated to invest them safely and prudently, hiring financial advisors, accountants, and attorneys, if appropriate, to carry out those duties. The expenses of those advisors must be included in the budget and management plan approved by the court. The conservator has the following statutory responsibilities under Tennessee law:

Inventory of Assets: The conservator of the estate is required to take control of the assets of the ward and to file with the court an inventory of those assets. All bank and investment accounts will be transferred into the conservator's name for the benefit of the ward.

Management Plan: The conservator of the estate is required to develop a budget and a property management plan for use of the assets of the ward for the coming year. Only prudent investments and expenditures outlined in the plan and subsequently approved by the judge will be permitted. The conservator will be personally liable for any unauthorized expenditures of the ward's assets.

Annual Accounting: The conservator must submit a sworn accounting within thirty days after the six-month anniversary of the conservator's date of appointment by the court and annually thereafter. The accounting includes both a statement concerning a disabled ward's physical and mental condition, which demonstrates whether the need for a conservatorship remains, and a financial accounting. The requirement to file an annual statement concerning the ward's physical and mental status cannot be excused. The financial accounting may be excused in the court's discretion if the court makes a finding based on evidence that waiver of the accounting is appropriate and in the ward's best interests and one of the following exists: (a) the conservator holds no property of the ward and receives only periodic payments, such as social security, and the entire periodic payment is applied to the needs of the ward; or (b) the cost of the accounting would exceed 25% of the property held by the fiduciary on the ward's behalf. If not waived, the conservator of the estate must deliver to the probate court clerk a highly detailed accounting of the income and expenditures for the ward at the end of each year. Financial accounting requires copies of all checks, bank statements and the supporting information about income and expenses must be delivered to the clerk for careful review. Any revisions to the management plan are thereafter submitted to the judge for approval.

Closing the Estate: Upon the death of the ward, the conservator is responsible for seeing to the burial of the ward, in conjunction with appropriate family members, and thereafter must prepare a final accounting for the court before he/she may be discharged from his/her responsibilities.

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