

## MANAGING YOUR FINANCES THROUGH CONSERVATORSHIP

11/2008, reviewed & updated 12/2014

### **I. What Is Conservatorship?**

If you feel that managing your finances has become increasingly difficult or burdensome because of disability or other reason, you may want to consider asking a court to appoint a conservator on your behalf to manage your finances. Conservatorship is a court-supervised system under which you voluntarily agree to allow another individual of your choosing to manage your estate. In a court proceeding, a judge will determine whether the individual you have chosen to be your conservator is suitable, and if so, appoint the individual to manage your finances. The court may not select someone who you have not nominated to be your conservator; it may only accept or reject your nomination.

After appointment, the conservator must file an initial inventory of all your assets with the court. The court will also require the conservator to file an annual accounting in which he or she reports your income and expenditures to the court. As a protective measure, the court may require the conservator to post a bond to protect you against theft or mismanagement. The bonding agency will insure you against losses caused by the conservator.

### **II. What Are Some Of The Reasons People Seek A Conservatorship?**

A conservatorship provides an individual with assistance in managing finances while retaining his or her rights. Additionally, a conservatorship has built-in legal protections in that the conservator is accountable to and monitored by the court. This means less risk of a conservator abusing his or her authority and stealing assets because he or she is directly and legally accountable.

### **III. What Is The Difference Between Conservatorship And Guardianship?**

In a conservatorship proceeding, a judge will not find you incompetent. There is no need for you to be evaluated by a physician or psychologist because your competency is not at issue. A conservatorship is very different from a guardianship under which you may lose fundamental rights such as the right to vote, marry, contract, or obtain a driver's license or other state license. Certain situations require a guardianship and certain situations a conservatorship. Generally, they should not be considered as alternatives from which an individual picks one or the other.



Important distinctions between guardianship and conservatorship include:

- Guardianship proceedings can be contentious. Family relationships may become strained due to the difficulty of determining whether you need guardianship or deciding who should be your guardian. Conservatorship proceedings are voluntary on the part of the individual – the family's wishes are not relevant in these decisions, so there is no contention in that respect.
- Guardianship proceedings can be costly, especially if the guardianship becomes contested. Conservatorships do cost money but not nearly as much as a contested guardianship proceeding.
- Under a conservatorship, you alone choose a financial decision-maker. Under a guardianship, the court will consider an individual's choice of guardian, but the best interests of that individual may over-ride his or her choice. The court will also consider the opinions of family; information from health professionals, caregivers and others; recommendations from attorneys and a guardian ad litem. These factors are not considered in a conservatorship proceeding.
- At any time, you may apply to the court to terminate the conservatorship. The court must grant this request or start the proceedings to determine incompetence and appoint a guardian.

#### **IV. What Are The Disadvantages Of Seeking A Conservator To Manage Your Assets, And What Are The Alternatives If You Do Not Want A Conservator?**

Cost is a barrier for some individuals to obtain a conservator. You must pay necessary court and attorney's fees to establish a conservatorship. Your conservator also may receive court approval to charge you for his or her financial management services. Additionally, you relinquish practically all control over managing your finances to the conservator. This can be a serious disadvantage for those who want to retain some control. For example, conservatorship is likely not appropriate for someone who only wants a little help paying bills during the few months he or she is abroad or recovering from surgery.

There are less expensive and perhaps more appropriate alternatives to obtain assistance in managing your assets and property. These options include:

- **Executing a Power of Attorney for Finances.** The widespread use of Power of Attorney for Finances has largely replaced the need for conservatorship proceedings. In the Power of Attorney for Finances document, an individual names a person as agent to manage his or her finances. The agent is usually a family member or close friend who is chosen because the principal (the person executing the document) trusts the chosen agent to act responsibly. An agent is a fiduciary and has a fiduciary duty. This means that the agent must act in accordance with the requirements of the power of attorney document and not convert the principal's assets for his or her own use or for the use of others. A Power of Attorney for Finances document generally becomes effective either 1) upon a determination of the principal's incapacity or 2) immediately.



**Caution:**

- Some agents under Power of Attorney for Finances steal the principal's money, despite the principal's careful planning and considered choice of agent. The lack of court oversight makes theft by an agent more common. Therefore, it is a good idea for the principal to specifically require the agent to provide an accounting periodically to another family member or friend as a safeguard. This oversight requirement may be easily added as part of the document upon execution as additional language you write in (if using the state form) or your attorney may draft the provision.
  - Consider carefully before deciding whether to make your financial power of attorney document effective immediately or only upon your incapacity. There are pros and cons of each choice. For example, a pro of an immediately effective financial power of attorney means you can have someone help you pay your bills now, and financial institutions will have no problem accepting the validity of the document because you are available to verify that your agent does indeed have authority under the document. The con of an immediately effective financial power of attorney is that it also may be abused immediately, so you need to carefully watch your finances to ensure your agent is acting appropriately and legally. The pro of a financial power of attorney that is effective upon your incapacity is that abuse is less prevalent because the agent has not had access to your funds the entire time prior to your incapacity. The con is that the agent may need to jump through a few more hoops to establish the validity of the financial power of attorney with financial institutions before he or she may exercise his or her authority.
  - Choosing an agent you trust is the most important preventative measure against power of attorney theft. Before choosing your agent, you may want to look him or her up on CCAP, the Consolidated Court Automation Program available at <http://wcca.wicourts.gov/>. CCAP allows you to access the public records of Wisconsin citizens, both criminal and civil. Look up your agent to determine if he or she has any criminal or civil offenses involving honesty or money management and take that into consideration when choosing your agent. You may also wish to perform a basic search of the person on the web to review things that may have occurred outside of WI.
- **Establishing a Revocable Living Trust.** A trust is a written agreement that allows a person you choose, called a trustee, to manage your property. You may place all or some of your money in the trust, and add to it at any point in time. You decide what authority to give the trustee through specific property management provisions in your trust. You will also name one or more beneficiaries who will receive the residual trust funds after your death. You may avoid the need for appointment of a guardian of the estate or a conservator through a revocable living trust. However, if you become incapacitated and do not have all your money in the trust, you will need a Power of Attorney for Finances document that allows the agent to place your assets into the trust. Thus, many individuals who have a trust also execute a Power of Attorney for Finances.

**Caution:**

- Trusts are complicated documents in that they affect an individual's overall estate plan. It is advisable to contact an experienced elder law attorney to assist in drafting the terms of the trust to your personal situation and to avoid any serious and costly mistakes.
  - Ensure the trustee is someone you trust and someone who can competently manage and administer the trust. The trustee needs to take his or her fiduciary duty seriously and must be able to make complicated financial decisions.
- **Creating Power of Attorney Bank Accounts.** You may wish to create a power of attorney bank account giving another person complete access to funds you place in the account. That person acts as your agent, and can use the funds only on your behalf. The agent is not considered an owner, nor will the agent inherit the money left in the account upon your death. However, if you want the agent to inherit, you may add a "POD" (payable-on-death) feature. This is a much safer option than a joint checking account because the agent has a fiduciary duty and therefore may not squander your assets and leave you with no legal remedy to recover them as he or she could under a joint checking account.

**Caution:**

- The concept is the same as executing a Power of Attorney for Finances document except that your agent may access only funds in the specific account your choose. A Power of Attorney for Finances document is broader and gives the agent more authority over more of your assets and property. A power of attorney bank account is a good option for someone who only needs help paying bills or managing smaller financial decisions. The other accounts, larger assets and property remain protected because the agent is not authorized to touch them.
- **Representative Payee.** You may voluntarily choose to allow another person to be your representative payee if you are, for medical reasons, unable to manage you Social Security, Railroad Retirement or Veteran's Benefit funds. If you have limited assets and only this type of income, a representative payee may be sufficient for all your money management concerns, even if you become incompetent.

**Caution:**

- Sit down with your representative payee to discuss in depth how your income will be managed. For example, how are you going to obtain your monthly allowance of spending money from your representative payee? If the representative payee sends you a check, is it going to be difficult for you to get to the bank to cash it? Direct deposit into a checking account might be easier and more convenient for you, and it will not be a significant

hardship on the representative payee to change to this method of giving you the monthly allowance. Consider these issues and discuss the practicality of your situation with your representative payee.

## **V. When Is Conservatorship Right For Me?**

Even though there are planning options available that are less expensive and more flexible than a conservatorship, you may want the protection offered under court appointment and supervision under a conservatorship. Many individuals have concerns about appointing a family member as agent without the accountability provided by the court system or posting a bond.

A person also may seek conservatorship if there has been a history of distrust and disagreement amongst family members, especially about financial matters. In a common scenario, siblings in a family disagree about the way a parent is choosing to spend his or her money. If the relationships are seriously strained, one adult child may file for guardianship despite the parent having chosen another adult child as agent under a Power of Attorney for Finances document, thereby possibly nullifying the parent's choice of a financial decision-maker. In this situation, the individual may avoid having a guardianship imposed by choosing a court-appointed conservator.

Conservatorship is not likely a good option for you if you wish to continue making many of your financial decisions. For example, a conservatee may make gifts of his or her income and assets only subject to approval by the conservator. Also, the conservatorship law is not clear as to what extent you retain authority to make financial decisions. Therefore, if you wish to continue to make some of your own financial decisions without obtaining the conservator's approval, a conservatorship is likely not the best option for you.

## **VI. What Are The Procedures For Filing For Conservatorship?**

To begin the process for conservatorship, you must file a petition. A filing fee must be paid at the time the conservator files the inventory of your assets and income. This fee is \$20.00 if your current estate's value is less than \$50,000, or 0.2% of your gross estate if your estate is larger than \$50,000.

After filing the petition, the court will set a time and place for the hearing and determine who should receive notice of the hearing. At the hearing, the judge will ask you questions about why you desire a conservator. The court will then determine if the person you have nominated is suitable. If the court is satisfied that 1) you truly desire a conservator and 2) you have chosen a suitable conservator, it will appoint your chosen conservator to manage your finances. The court will issue Letters of Conservatorship to the nominated person.

Most individuals seeking conservatorship should retain an attorney to assist them with these procedures.



## **VII. Are There Special Forms To Use In The Conservatorship Proceeding?**

Yes. Wisconsin has forms that must be used for the conservatorship proceeding. These forms include the following: Petition for Appointment of Conservator; Order for Hearing Petition for Appointment of Conservator; Order on Petition for Appointment of Conservator; Letters of Conservatorship; and Consent to Serve as Conservator. All of these forms can be found on the forms section of the Wisconsin Circuit Court's website at <http://www.wicourts.gov/forms1/circuit.htm>. You can also request assistance in locating these forms from your county's Clerk of Court whose office is located in the county courthouse. You may wish to call the Clerk to locate the forms or request that the Clerk mail the forms to you.

## **VIII. What Are The Responsibilities Of A Conservator?**

Although the process is different, the powers and duties of a conservator are the same as the powers and duties of a guardian of the estate. These general duties are set forth in Chapter 54 of the Wisconsin Statutes. Some of a conservator's duties include:

- Filing an initial inventory of all your assets with the court within six months of appointment.
- Filing an annual accounting to report your income and expenditures to the court.
- Posting a bond when required by the court.
- Using your property and income for you, your spouse and dependent family members' suitable education, maintenance, and support.
- Collecting your income and paying your debts.
- Hiring professionals such as lawyers and Certified Public Accountants, when necessary.
- Applying for public benefits such as Supplemental Security Income or Medical Assistance.
- Obtaining court permission to sell your real estate.
- Petitioning the court to place assets in an already established revocable living trust.
- Filing your tax returns and paying any taxes you owe out of your income, assets, or estate.

A conservator may not:

- Loan any of your funds to him or herself unless you wish to loan him or her money and the court approves the distribution.
- Purchase your property without following specific statutory guidelines and obtaining your approval.
- Use any of your money or property for his or her personal needs unless you want him or her to and you or your conservator obtain court approval.
- Make gifts of your money or property. However, you may still make gifts, subject to the conservator's approval.

A conservator has a legal fiduciary duty to protect and preserve your resources. Generally, the conservator must exercise care and “due diligence.” This means the conservator exercises sound judgment and manages your financial matters as carefully and prudently as he or she would his or her own affairs.

## **IX. Can A Conservator Make Health Care Decisions?**

No. In Wisconsin, only an agent under a Power of Attorney for Health Care or a guardian of a person can make health care decisions on behalf of an incompetent or incapacitated person. Thus, it is important that in addition to financial planning through conservatorship, a Power of Attorney for Finances document, a living trust, or other means, you complete a Power of Attorney for Health Care document. This way, you avoid the need for a guardian of the person to be appointed.

Free power of attorney forms are available on the Department of Health Services website at <http://dhs.wisconsin.gov/> on the right side bar under “Favorite Searches.” You can find more information on advanced directives, conservatorships and guardianships at the Greater Wisconsin Agency on Aging Resources Guardianship Support Center web page. Go to [www.gwaar.org](http://www.gwaar.org); click on “For Seniors and Families” or “For Professionals” then on “Legal Services/Elder Benefit Specialists.” There you will also find “Do-It-Yourself” packets for health care and financial decision-making.

## **X. When Is A Conservatorship Terminated?**

You may apply to the court at any time to terminate your conservatorship. The court will set a hearing date and require that 10 days’ notice by mail be given to your conservator, your guardian, if any, and your presumptive heirs. The court must remove your conservator and order your property restored to you unless it is clearly shown that you are incompetent. If the court determines, after a hearing, that you are incompetent, the court may: 1) order the conservatorship continued; 2) appoint a successor conservator of your choosing if the court finds that the successor conservator is suitable; or 3) direct that guardianship proceedings be commenced. The conservator must provide a final accounting to the court before being dismissed.

A conservator’s authority ceases upon your death.

## **XI. Who Can I Call With Questions?**

If you have general questions or need more information, call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email [guardian@gwaar.org](mailto:guardian@gwaar.org).



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