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CONSERVATORSHIP FACT SHEET

In Minnesota, a conservatorship proceeding is a legal process by which the court appoints a person (the conservator) to manage an incapacitated person's (the protected person's) financial affairs. A conservatorship is different from a guardianship in that a guardianship proceeding is a legal process by which the court appoints a person to make decisions about an incapacitated person's medical care, personal care and residence. A conservator must be able to obtain a bond (be financially stable) and must pass a criminal background check. Conservatorship laws vary from state to state.

When is a conservator needed?

A conservator of the estate is needed if a person has a medical or mental condition that interferes with financial decision-making and the person has money or real property, that s/he cannot appropriately manage. A conservatorship is appropriate only when there is no other less restrictive way to assist that person. For example, a person who is getting only Social Security or SSI benefits does not have to have a conservator of the estate because the Social Security Administration can appoint a representative payee for someone who cannot manage those funds. Another less restrictive alternative, if appropriate, is for the person to execute a power of attorney to appoint someone to handle finances.

What powers does a conservator have?

The conservator of the estate has only those powers that the court orders, which should be limited to what is necessary to provide for the demonstrated needs of the protected person. There are some actions a conservator cannot take without express court approval. The powers and duties of the conservator of the estate may be very broad and enable the conservator to manage all of the protected person's financial affairs.

What duties does a conservator have?

The duties of a conservator include paying reasonable charges for the support, maintenance, and education of the protected person. These payments must be made from the protected person's estate. The conservator has no duty to make those payments out of his or her own money. The conservator does have the duty to seek government benefits or services for the protected person to meet those needs.

When will the conservatorship terminate?

A conservatorship terminates by Court order upon the death of the protected person or upon restoration to capacity of the protected person.

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Common questions.

- *Can I be both the guardian of a person and conservator of the estate for that same person?* Yes, a person can be both the guardian of the person and conservator of that person's estate.
- *What is meant by "less restrictive"?* Less restrictive alternatives must be considered and ultimately ruled out prior to pursuing conservatorship to ensure there is no other way to provide for financial management for the person with questionable capacity. Less restrictive alternatives to conservatorship include: (1) asking trustworthy family or close friends to help ensure bills are paid, checks are deposited, etc.; (2) using banking tools such as automatic payment of regular bills, direct deposit of income checks, and joint accounts to enable a trusted person to pay bills; (3) appointing a representative payee to manage governmental income benefits; (4) executing a power of attorney; and (5) creating a trust.
- *What protections are there for the protected person's estate under a conservatorship?* A conservator must be bonded and pass a criminal background check. Conservators are under the court's supervision. After appointment, a conservator is required to file with the court an inventory of the protected person's assets. Every year thereafter, the conservator files an accounting to the court which lists all of money that has come into the estate and all the money that has been paid out of the estate. Verifications of assets and expenditures are also filed. The court audits the accountings. Periodically the conservator appears in front of the court to review the accounting. The accountings are public information and can be reviewed by any concerned person. Concerns regarding the actions of a conservator can be addressed to the probate court that appointed the conservator or by filing a complaint of abuse or neglect of a vulnerable adult with the county's adult protection unit. In the event of mismanagement or theft, a claim can be made against the conservator's bond (if any).
- *Who may petition to end/change the conservatorship?* The protected person, or any person interested in the protected person's welfare, may petition the court to restore the person to capacity or terminate the conservatorship if it is in the best interest of the protected person. Likewise, an interested party or the protected person may petition the court to change conservators or change the powers of the conservator.

CONTACT OUR OFFICE AT 612-676-6300 FOR LEGAL REPRESENTATION REGARDING CONSERVATORSHIP MATTERS

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