

Conservatorships

What is a Conservatorship?

A conservatorship is a court-supervised protective process for a disabled or incapacitated person and his property. (Guardianship is the term used for protection of juveniles in Tennessee.) After the filing of a petition by an interested person, the alleged disabled person (who is the defendant in the conservatorship proceeding) and close relatives are notified of a hearing, and the judge appoints an attorney, called a *guardian ad litem* to investigate and make its recommendation in a written report delivered to the court. The defendant alleged disabled person has the right to an attorney to oppose the petition. If the judge decides, after investigation and a hearing, that the alleged disabled person needs the protection and supervision of the court, a conservator is appointed. The court removes certain of the disabled person's legal rights and grants them to the conservator. The disabled person becomes a ward of the court, and subject to the court's jurisdiction and protection.

How is a Conservatorship Established?

First Step: The Petition

The first step is for the "petitioner" to file a petition for the protection of an incapacitated or "disabled" person. In Shelby County, Tennessee, the petition is normally filed in the Probate Court. Under Tennessee law, a conservatorship may not be established unless the court determines not only that the proposed ward is a "disabled person," but also that appointing a conservator is the "least restrictive alternative" needed to protect the disabled person for health or financial reasons. A "disabled person" under Tennessee statute is an adult who is "in need of full or partial supervision, protection and assistance by reason of mental illness, physical illness or injury, developmental disability or other mental or physical incapacity." A physician's report stating that a conservator is required for the welfare of the disabled person must be filed with the court.

If the disabled person is already adequately protected by someone the disabled person has previously appointed under financial and health care durable powers of attorney, no conservatorship may be needed. Sometimes, however, a conservatorship is necessary because the existing agent under a durable power of attorney is abusing his or her authority. The petitioner is usually, but not always, the person proposed as the conservator in the petition.

Sometimes the alleged disabled person does not need or want the court to intervene for a conservator. A conservatorship is a serious undertaking—the court is being asked to remove legal rights from the alleged disabled person and give them to someone else. It can be a humiliating and unnecessary process for someone who does not need the court's intervention. Tennessee law requires the court to appoint an "*attorney ad litem*" at the request of the alleged disabled person. The *attorney ad litem*'s job is to defend the alleged disabled person's rights, and to oppose having those rights removed, either because no assistance is needed or because there are other less-restrictive alternatives that are more appropriate for the disabled person's protection.

Second Step: The Guardian ad Litem Investigates

After the petition is filed, a hearing is set and the court appoints another lawyer, called the *guardian ad litem*, to investigate the facts of the case. The *guardian ad litem* reviews medical and financial records and interviews the proposed conservator, the alleged disabled person, family members, and other persons as appropriate. The *guardian ad litem* then files a report with the court a few days before the hearing, recommending approval or denial of the conservatorship, recommending the appropriate person(s) to act as conservator of the person and/or estate, and recommending the limitations to be placed on the authority of the conservator. Copies of the report are delivered to the petitioner and the defendant/alleged disabled person, and the *attorney ad litem*, if one has been appointed.

Third Step: Hearing and Appointment

At the hearing, the court hears the evidence and decides whether the alleged disabled person actually needs the protection sought by the petitioner. Witnesses for and against the appointment may testify. The written report of the guardian ad litem and the professional opinion of the physician carry great weight in helping the judge make his decision, but testimony can be important in close cases. If the petition is opposed by the defendant/alleged disabled person, the attorney-ad-litem also presents witnesses and evidence against the petition.

The court either declares the defendant to be disabled and in need of a conservator of the person and/or his estate, or dismisses the petition. The court may order a limited conservatorship if the disabled person needs only limited assistance. The court will appoint a conservator of the estate to manage any assets. The conservator of the person may be appointed to be conservator of the estate or the court may appoint another appropriate person. Sometimes, the court orders a conservatorship to be established but appoints someone other than the petitioner as conservator. It is not unusual for either the petitioner or the guardian ad litem to recommend someone other than the petitioner as conservator.

Fourth Step: Property Management Plan and Accountings

If the disabled person has property that needs to be managed, the court requires the conservator of the estate to take an inventory of the property and submit a property management plan, which the judge must approve before the conservator has ongoing authority to manage the property. Thereafter, the conservator must maintain good records of all receipts and disbursements, and must file a detailed accounting annually.

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