

Conservatorships

What is a Conservatorship?

A conservatorship is a court-supervised protective process for a disabled or incapacitated person adult 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 proposed ward 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. If the judge decides the proposed ward needs the protection and supervision of the court, a conservator is appointed. If the ward needs someone to make personal and health care decisions, a “conservator of the person” is appointed. If there are also assets that require supervision, a “conservator of the estate” is established. The conservator of the person and conservator of the estate can be the same person. The court removes legal authorities from the ward and grants them to the conservator. A bond and annual accountings are required by the conservator of the estate.

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 judge determines not only that the proposed ward is a “disabled person,” but also that a conservatorship 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.

Second Step: The Petition The Guardian ad Litem Investigates

After the petition is filed, the judge immediately appoints a “guardian ad litem” to investigate the facts of the case and information about the alleged disabled person and the proposed conservator and to make a written report to the judge. The guardian ad litem reviews medical and financial records and interviews the proposed conservator, ward, family members, and doctors. The guardian ad litem’s report recommends approval or denial of the conservatorship, recommends the appropriate person(s) to act as conservator, and recommends the limitations to be placed on the authority of the conservator if one is to be appointed.

If the alleged disabled person tells the guardian ad litem that he wants to contest the proceeding, the judge is required to appoint an “attorney ad litem” for him. The guardian ad litem is independent of both sides and does not represent the alleged disabled person. The attorney ad litem represents only the alleged disabled person to fight the appointment of a conservator.

Third Step: Hearing and Appointment

At the hearing, the judge 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. The judge either declares the respondent to be disabled and in need of a conservator of the person, or he dismisses the petition. If there are assets needing management, the judge may appoint as conservator of the estate either the same person named as conservator of the person or some other appropriate person. It is not unusual for the guardian ad litem or the respondent to recommend a person other than the petitioner as conservator.

Tennessee law requires the judge to remove as few of the rights and authority of the ward as possible consistent with the protection of the ward and his property. That rights and authority removed from the ward are given to the conservator, who is required to protect the disabled person and his assets.

Fourth Step: Property Management Plan and Accountings

If the ward has property that needs to be managed, the judge 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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