

**CHANCERY (PROBATE) COURT FOR SUMNER COUNTY, TENNESSEE
AT GALLATIN**

**HANDBOOK FOR
CONSERVATORSHIP/GUARDIANSHIP**

MARK T. SMITH, CLERK AND MASTER
Revised: February 16, 2017

IN THE CHANCERY (PROBATE) COURT FOR SUMNER COUNTY TENNESSEE
AT GALLATIN

"SO NOW YOU ARE A GUARDIAN OR CONSERVATOR"

INFORMATION FOR GUARDIANS AND CONSERVATORS:

To help you perform your guardianship or conservatorship duties properly, described below are the general duties and obligations of a guardian or conservator. This document is not intended to be an exhaustive list of possible requirements or situations that you might encounter. Please consult your attorney for details.

1. Liability: If you fail to meet your obligations as a guardian or conservator, under the law, you may be personally liable. If in doubt, consult your attorney.

2. Evidence of Appointment: Your appointment as a conservator or guardian becomes effective upon the entry of an order appointing you, and the administration of the statutory oath in addition to the posting of any required bond. **The only effective evidence of your appointment are letters of guardianship or conservatorship duly issued by the Clerk and Master.** (See T. C. A. §34-1-109. The order of appointment is not enough.)

3. Locate, Collect, and Protect All Assets. Locate all bank and brokerage accounts. Be prepared to provide a certified copy of Letters of Conservatorship or Guardianship. Identify income which may include retirement benefits, Social Security benefits, rental income, income tax refunds, etc. Identify expenditures that must be paid such as house payments, rent, home maintenance, cost of care, medications, bond and insurance premiums, utilities, taxes, etc. If real estate exists, it may be wise to record your Letters of Conservatorship in the Register's Office in the county where the property is located. Notify the post office, creditors, utility companies, etc., if you want mail sent to your address. Verify coverage for health, property, auto, and life insurance. Confirm that premium payments are current. Obtain coverage if policies have lapsed.

4. Separate Funds: Checking accounts, saving accounts, and certificates of deposit should be in your name as guardian or conservator for the ward (the person for whom you are guardian or conservator). All of the ward's funds must be kept separate and apart from your own. **Do not deposit the Ward's money into your own account. If you are an attorney, do not deposit your Ward's money into your trust account.** Financial institutions that do not

require you to present **Letters of Conservatorship** or **Letters of Guardianship** instead of or in addition to the Order of Appointment, do not understand Tennessee Fiduciary law. Be careful. If you are guardian or conservator for more than one ward, be sure to keep separate accounts for each ward. (See T.C.A. Sec. 34-1-104 and 109.)

5. Inventory: Within sixty (60) days after your appointment as conservator or guardian, unless specifically waived by the Judge, you must file a sworn inventory containing a list of the property of the minor or disabled person, together with the approximate fair market value of each property and a list of the source, amount, and frequency of each item of income, pension, social security benefits, or other revenue. If the required information was included in the petition but not separately stated as an inventory, the inventory shall repeat the information provided in the petition and add any later discovered property or income sources. Forms for completing the inventory are provided by the Clerk and Master's Office in this Handbook. (See T. C. A. § 34-1-110)

6. Investments: A management plan must be included in the petition and be approved by the Court. A conservator or guardian is limited in its investments to the investments permitted by law. Consult your attorney. All funds held by a fiduciary shall be invested within forty-five (45) days of receipt of the funds unless otherwise allowed by the Court. The proposed guardian or ward must present an outline of the proposed management plan for the ward's property prior to appointment. If the proposed property management plan cannot be presented at the appointment hearing, the conservator or guardian shall submit the proposed property management plan to the Court for approval before any property is invested. Consult your attorney. Court permission must be obtained before changing the nature of the conservator's or guardian's investments. This does not mean if the change in the investment is of the same type such as changing from one certificate of deposit to another but changing the type of investment such as from a certificate of deposit to a savings bond. You must take possession of all of your ward's assets and determine which should be retained and which should be disposed of. The ward's funds should be invested to earn income, but may be invested only according to law. Losses from unauthorized or imprudent investments may render you personally liable. (See T. C. A. § 34-1-115 and 35-3-111)

7. Deviation from property management plan: Except in certain enumerated circumstances, you may not sell, trade, lease, mortgage, transfer, or discard your ward's property without Court approval, even though the ward is your child or other relative. (See T.C.A. §34-1-116).

8. Maintain Records: Complete and accurate records must be kept of all money or other assets received and disbursed by you as guardian or conservator. A running list of receipts and expenses may be helpful. You may wish to establish a manual checkbook or a spreadsheet on EXCEL, Quicken or similar financial software that reflects all income and expenditures with the estate. (See T. C. A. §34-1-111)

9. First Accounting: The first accounting must be filed within 30 days of the six (6) month anniversary of the date of entry of the order of appointment. This does NOT apply to Veterans' Guardians. (See T.C.A. § 34-1-111)

10. Annual Accounting: Each year you will also be required to file an accounting showing in detail all receipts and expenditures during the preceding year. (The first annual accounting will cover the first six months in addition to the second six months of the accounting year.) Each item must be explained, and accountings must be accompanied by verifications of banks or depositories confirming the assets on hand. **Failure to timely file accountings could result in removal of a guardian or conservator.** The accounting must be provided within sixty (60) days after each anniversary date of your appointment or any other end of an accounting period selected by the fiduciary not to exceed twelve (12) months. For VA cases, the accounting must be provided on the anniversary date of your appointment. See the Clerk and Master's Accounting Checklists for both Non-VA and VA cases in this Handbook for detailed accounting requirements. The VA as well as the Clerk and Master's office requires original or certified copies of bank statements with either copies of canceled checks or bank statements that provide the check number, date paid, and to whom the check cleared. Certified copies of bank account printouts will suffice in place of originals. (See T. C. A. § 34-1-111 and § 34-5-111).

11. Death of Ward: In the event the ward dies or you or the ward move from one address to another, you have a duty to **notify the Court in writing of such death or new address, as soon as possible.** (See T. C. A. § 34-3-108).

12. Bond: Bond premiums may be paid out of the estate and must be obtained and filed with the Court before Letters of Conservatorship or Guardianship are issued. You may reduce the costs by placing excess funds in restricted accounts in a financial institution subject to withdrawal only on Court order, or at the Court's discretion. Any agreement with a financial institution regarding a restricted account must be submitted in writing to the Court. Proof of bond must be filed with the Clerk and Master annually. (See T. C. A. § 34-1-108). Bonds are subject to increase or decrease after each year's accounting or at anytime upon order of this Court. If after thirty (30) days from the signing of the

Order Appointing, a bond is not posted or Letters have not been issued, the Conservator will be required to appear before the Clerk and Master within fifteen (15) days.

13. Waiving of Formal Accountings: In certain cases when assets will not be needed, or when there are no assets for the ward's support, the Court may order that no formal accountings will be required, or that only a copy of the Social Security Administration Representative Payee Report or an Annual Status Report be filed until the guardianship or conservatorship is terminated. Consult your attorney. (See T. C. A. § 34-1-111).

14. Ward's Care: If you are a guardian or conservator for an incompetent person, a most important duty will be to place your ward where he or she will receive care and treatment appropriate to his or her condition, and in the least restrictive environment. A Court order may be required. (See T. C. A. § 34-1-127).

15. Attorney Fees: You may use the ward's funds to pay for your attorney's services, in regard to the guardianship/conservatorship, after obtaining court approval. If your public ward has only very limited funds and/or receives public assistance (welfare), you may qualify for free legal aid.

16. Conservator compensation: You may receive reasonable compensation for your services as a guardian or conservator. If you are an attorney, do not charge your ward attorney rates for non-legal work. You may charge only what a non-attorney assistant may charge. However, the Court shall set the actual compensation to be paid and no compensation shall be paid without prior court approval. (See T. C. A. §34-1-112).

17. Payments by the conservator or guardian: The conservator or guardian is entitled to pay from the property of the minor or disabled person the costs of any required medical examination, bond premium, court costs, taxes or governmental charges for which the minor or disabled person is obligated and such other expenses as the Court determines are necessary for the fiduciary. The fiduciary may also be entitled to pay other expenses from the property of the ward, but shall not do so without prior Court approval. Such fees may include attorney's fee, guardian ad litem fee, fees for income tax preparation and court accountings or investment management fees. (See T. C. A. §34-1-113).

18. Continuation of Service: Once a guardian or conservator has been appointed, he or she serves until relieved by order of the Court. Death or the reaching of the majority by the ward does automatically terminate the guardianship or conservatorship, but death or reaching the age of majority does not automatically terminate your responsibilities or jurisdiction of the Court until a final accounting has been approved and an Order has been entered closing the case and relieving the Conservator and Surety if there is a bond. Consult your attorney. (See T. C. A. §34-2-108 and §34-3-108).

19. Transferring the Guardianship/Conservatorship from or to this jurisdiction (court). There has been a recent change in the statutes governing transfers of cases from or to out-of-state jurisdictions. In-state transfers remain the same.

- a. A Tennessee Guardianship/Conservatorship established in a court of record in Tennessee is valid in any county in Tennessee; however, unless transferred when the ward moves, the reporting will be to the Court that established the Guardianship/Conservatorship. If you wish to transfer the case to another county in Tennessee see T.C.A. Sec. 34-1-117.
- b. A Guardianship/Conservatorship established in Tennessee and transferred to another state or established in another state and transferred to Tennessee is now governed by the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act codified in T.C.A. Sec. 34-8-101, et seq. There are two methods which can be used. (1) The Conservatorship/Guardianship can be transferred by following the procedure described in T.C.A. Sec. 34-8-301 and 302, or (2) it can be registered by following the procedure described at T.C.A. Sec. 34-8-401 and 402.

20. Discharge of Conservator: The disabled person or any interested person may petition the court at any time for termination or modification of the conservatorship. If made by the disabled person, it may be communicated by any means including oral communication or informal letter. The Court may require a medical or psychological evaluation prior to a hearing on such a petition. (T.C.A. Sec. 34-3-108).

21. DO NOT STEAL – WE WILL PROSECUTE!

Some Highlight of the Revisions to Tennessee's Conservatorship
And Guardianship Law

Presented by: Mark T. Smith, Clerk and Master

February 16, 2017

(General Practice Tip: Attorneys will have to be more precise when petitioning the Court for the appointment of a fiduciary.)

1. T.C.A. § 34-1-104 (a). Letters of Conservatorship must recite the specific powers to be exercised by the conservator and the specific powers retained by the person with a disability; or have the order attached with the same information.
2. T.C.A. §34-1-106 (b). Notice must be given to the "respondent, including any known residential provider, or with whom the respondent is living" in addition to next of kin.
3. T.C.A. § 34-1-107(a)(1). Big Change. The Court is allowed and encouraged to appoint a Guardian Ad Litem (GAL) in almost all cases including ones where the respondent is represented by counsel.
4. T.C.A. § 3-1-107(d)(1). The GAL owes a duty to the Court to investigate and make recommendations. He/she is not an advocate for the respondent or any other party.
5. T.C.A. § 34-1-107(d)(2)(D). The GAL reports and recommends whether a fiduciary should be appointed and whether the proposed fiduciary is appropriate.
6. T.C.A. § 34-1-107 (d)(3). The GAL must interview the respondent in person, review the sworn medical statements to verify that they contain a detailed description of the physical or mental conditions and how they may impair the respondent's ability to function normally.
7. T.C.A § 34-1-107 (d)(4). Big Change. The GAL shall investigate the nature and extent of the respondent's property and the financial capabilities and integrity of the proposed fiduciary. The GAL is given broad powers to do this including checking credit reports, experience in managing assets, and plans for management of assets. The GAL shall inquire into whether the proposed fiduciary has borrowed funds or received any financial assistance from the respondent.

8. T.C.A. § 34-1-108 (c)(1). The GAL shall serve the respondent.
9. T.C.A. § 34-1-111(a). Big Change. The first accounting is due after the six (6) month anniversary of appointment. Another will be still be due sixty 60 days after the 12 month anniversary date of appointment.
10. T.C.A. § 34-1-111(b). This section used to say that the court could extend the time for filing an accounting for good cause. It has been eliminated and now states that it shall be filed within sixty (60) days of the anniversary date of the appointment as conservator. No leeway here.
11. T.C.A. § 34-1-111(h). The annual report regarding the mental or physical condition of the ward cannot be waived.
12. T.C.A. § 34-1-111(i). Clarifies that a fiduciary who does not have authority over the ward's property does not have to submit financial accountings.
13. T.C.A. § 34-1-114. Watch out! In most circumstances the respondent can be charged for the costs of the litigation, but in most cases now the Court has been given the express authority to charge the petitioner or any other party at the Court's discretion.
14. T.C.A. § 34-1-129. Reiterates the necessity of the specific powers removed from the minor or person with a disability. It also makes it clear that the bond shall be posted before Letters of Conservatorship/Guardianship can be issued. The Letters can have attached the Order specifying the powers removed, and that unless all powers are removed the Clerk shall mark them "Limited." Theoretically, this could include most letters. (It could be in conflict with 34-1-104(a)(1), which says that "specific powers retained" shall be included in the letters.)
15. T.C.A. § 34-1-132. This is new. This outlines a new emergency procedure. In certain cases, the Court may appoint a certain limited kinds of persons as a conservator on an emergency basis for a period not to exceed sixty (60) days. An Attorney Ad Litem must be appointed also. Reasonable notice must be given unless there is a sworn petition that the respondent will be substantially harmed. It appointed without notice, notice must be given within 48 hours. A hearing must be held within five (5) days. The appointment of a fiduciary under this statute with or without notice is not a determination of the respondent's incapacity. The temporary may be removed by the Court at any time. A GAL may be appointed. Any report that the Court wants must be submitted. All other rules regarding the respondent's property apply. The time periods are mandatory not directory.
16. T.C.A. § 34-3-104(10). This is a new. The petition for a GAL, Attorney Ad Litem, or conservator may include a request that they have specific experience or expertise in matters faced by the respondent.

17. T.C.A. § 34-3-106. Includes new enumerated rights of the respondent on the notice of service including the right to appeal the final decision with the assistance of an Attorney Ad Litem or adversary counsel, having an Attorney Ad Litem appointed to advocate the interests of the respondent, and to request a protective order to seal the respondent's health and financial information.
18. T.C.A § 34-3-107.Enumerates the powers removed from the respondent and those to be vested in the conservator. Check for yourself.
19. T.C.A. § 34-3-108(c). The ward can ask for the conservatorship to be ended in almost any way, even without writing. In that circumstance there must be a hearing, but the Court can order a physical or medical examination before the hearing.
20. T.C.A. § 34-3-108(e). This section is amended to clean up the very awkward method previously mandated regarding the Preliminary Final Accounting. You can now file the Preliminary Final Accounting with the receipts from the estate of the ward. This was done separately in the past. The new statute is MUCH better in this regard.

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