

FARMINGTON-BURLINGTON PROBATE COURT

EVELYN DALY, JUDGE  
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MEMORANDUM

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With your recent appointment, you have now begun a legally binding relationship with the Court. We will continue try to assist you as you work to meet your responsibilities. The Court always suggests that you create and maintain a file exclusively for the matter at hand. You will be receiving memorandums from the Court and the Court will be expecting reports from you on a regular basis so that it is important that you keep complete records.

Under Connecticut General Statutes §45a-177, and §45a-655, the probate court is required to periodically review each guardianship/conservatorship and require an annual accounting of all guardianship/conservatorship funds. Please file a PC-441 Periodic Accounting form each year that covers the previous year's activities.

Furthermore, approximately every three (3) years the Court must host a formal hearing on the status of the guardianship/conservatorship and each of the annual accountings.

The Court thanks you for accepting this position of fiduciary responsibility. If we can assist you, please phone the Court at the number given above.

Evelyn M. Daly, Judge  
Evan C. Brunetti, Esq., Chief Clerk  
Helen Ruwet Bunnell, Clerk  
Lynn Kapitan, Asst. Clerk  
Beth Burns, Asst. Clerk

**Please read the booklet and these instructions thoroughly before asking the Court staff for assistance.** This material will probably answer your questions, and the staff, although anxious to assist you, must also process applications and motions filed by others who are waiting for a court hearing. If you **do** need assistance at any point, please inform a staff member, and someone will certainly attempt to help you. Thank you for your cooperation, and we hope that this material will be of assistance in guiding you through this legal process.

**II. Commonly asked questions regarding Conservatorships of the Person**

The conservator of the person is actually an agent of the Court itself, and, as such, he or she is responsible to the Court for the well-being of the conserved person. (After a conservator has been appointed, the "respondent" is referred to as "the conserved person.") There are certain things that the conservator may **not** do. For example, the conservator cannot commit the conserved person to a mental health facility, execute or revoke a will for the conserved person, agree to a donation of one of the conserved person's bodily organs, or arrange for sterilization of the conserved person without Court approval. There are other powers that the

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conservator may exercise **only with prior Court approval**, such as changing the conserved person's residence, terminating the conserved person's tenancy or lease, placing the conserved person in an institution for long-term care, selling or disposing of the conserved person's household furnishings, selling or mortgaging the conserved person's real estate, making gifts to **anyone**, authorizing the administration of medications or psychiatric procedures for someone who is mentally ill, using the assets of the conserved person for anyone but the conserved person, and making loans or payments to the conservator. When in doubt, the conservator is well advised to consult with an attorney or the Court **before** taking action. It is often troublesome or impossible to correct an improper action, once taken, and the conservator may be disciplined or sanctioned by the Court for doing so.

**A. Change of Residence/Placement in a Long-Term Care Facility/Termination of Tenancy or Lease/Sale or Disposal of Household Furnishings:** The conserved person should not be moved outside of Connecticut without the Court's prior permission. The conservator IS REQUIRED to seek the Court's approval to change the conserved person's residence in Connecticut, place the conserved person in a long-term care facility (see item "C" below), terminate the conserved person's tenancy or lease, or sell or dispose of the conserved person's household furnishings. The conservator should always notify the Court of any change of address for himself/herself, the conserved person, or any other interested party.

**NOTE 1):** There are a number of other instances in which the conservator must obtain Court approval to act. Please see *Guidelines for Conservators*" for complete information.

**B. Medical Decision-making:** The conservator may be granted the authority to make medical decisions of a non-psychiatric nature without the Court's specific permission, including those related to "do not resuscitate" orders and end-of-life decisions. However, any advance directives of the conserved person must be considered, and, if they conflict with the proposed action of the conservator, the dispute **must** be submitted to the Court for resolution.

**NOTE:** If the conserved person has designated a health care representative the conservator shall be bound by health care decisions properly made by him or her, unless there is a court order to the contrary, except under circumstances involving convicted persons and acquittees under C.G.S §§17a-566, 587, and 588 and when a conservator has been appointed under C.G.S. §§17a-543 and 17a-543a.

**C. Report on Placement:** Legislation passed in 2007 revised the requirements for placing conserved persons in long-term care facilities. Before placing the conserved person in such a facility, the conservator must file a report (form PC-371A) with the probate court that appointed him as conservator. There is an exception that allows the placement to be made before the report is filed; however, even in that circumstance, the report must be filed within five days of placement. Please see *Guidelines for Conservators* for more information.

**D. Annual Report:** The Conservator is obliged to report at least annually to the Court on the condition of the conserved person. The Conservator's Report, form PC-371, should be used for that purpose. In addition, the Court must review the file after the first year and at least every three years and hold a hearing, if requested, to determine whether or not the conservatorship should be continued, modified, or terminated.

**E. Termination of Conservatorship:** See *Guidelines for Conservators* .

**F. Court Visitor Program:** Area Agencies on Aging administer this program for conserved persons who are generally over the age of 55 (although there are some variances in age requirements from agency to agency). A Court Visitor is a trained volunteer who serves as a liaison between the conserved person and the conservator. The Visitor acts as an additional set of eyes and ears for a conservator who may not have sufficient time to attend to all the needs of the conserved person alone. This often happens in the case of a conservator who lives far away from the conserved person or an attorney appointed as conservator because there are no family members available to serve. The Visitor reports only to the conservator, not to the Court, and it is the conservator, not the Court, who decides whether or not to utilize such a Visitor. If the petitioner (or any one else) believes that the conserved person might benefit from the services of a Court Visitor, he or she should inform the Court of this need at the hearing. If the conservator consents, the Court will then make a referral to the Area Agency on Aging, and it will work out the appropriate details. Anyone interested may call the Agency directly and ask for the director of the Court Visitor Program.

### III. Commonly asked questions concerning the Conservatorship of the Estate

The *Guidelines for Conservators* booklet contains a great deal of information on the role of a conservator of the estate, who **may** also serve as the conservator of the person. The duties of financial management of an incapable person's estate are very similar to those of a decedent's estate; i.e., the conservator holds a fiduciary relationship with the conserved person and the Court for which he is held accountable by the Court.

**A. Probate Bond:** By law, the conservator of the estate must file a corporate surety probate bond with the Court, which is a legal contract with an insurance company to guarantee the performance of the conservator, up to the amount of the bond. The insurance company charges the conservator an annual premium, which is paid by the conserved person's estate. (The amount of the premium depends on the size of the bond.) As an alternative to a higher probate bond, the Court may suggest the restriction of some or all of the conserved person's liquid assets by the bank or agent holding them. Restricted assets cannot be used without the Court's prior permission. Ask the judge for more information about this alternative device when you are in Court, since it may save the estate a substantial amount of money.

**B. Inventory of Assets:** The conservator of the estate must file a written Inventory (form PC-440) with the Court within two months of the date of appointment. It should contain a list of anything of value owned by the conserved person. It need not include items of sentimental value, but those items should be safeguarded. Assets commonly listed are:

1. Cash and bank accounts. Specify bank by name and account number, with the balance as of the date of appointment. Include trustee and payable-on-death accounts. Joint accounts should be scrutinized to determine what portion of the account belongs to the conserved person. That is often a legal question. If you are not sure, you should consult with an attorney or seek the Court's guidance.
2. Debts owed the conserved person.
3. Stocks, bonds and securities. List number and value per share.
4. Real estate. Set out the legal description of the property, which may be obtained from a copy of the deed. The present fair market value should be shown, with the amount of any outstanding mortgage deducted from that. If the property is owned jointly, a copy of the deed should be included. Normally, the percentage interest shown on the deed will be considered to belong to the conserved person, although there may be exceptions to that general rule.
5. Art objects, cars, and other valuable personal property.
6. Claims against other people.
7. Life insurance or annuities with present cash value.
8. The right to receive social security or pension payments. (Do **not** put an amount on the Inventory. Just indicate that the conserved person receives them.)
9. Any other assets owned by or in trust for the conserved person.

**C. Estate Management:** The most important beginning of any conservatorship case is the transfer of all liquid assets from the conserved person's individual name to that of his or her estate. It should be named "The Estate of \_\_\_\_\_, an incapable," and the conservator of the estate **alone** should be the authorized signatory. Unless specific Court approval is obtained, such accounts should **never** be in the name of the conservator or jointly between the conserved person and the conservator.

**Complete records of all transactions involving the conserved person should be scrupulously maintained throughout the conservatorship proceedings**, since they will be needed to file the necessary accountings with the Court. (Accounts must be filed at least every three years or more frequently, as the Court directs.) The conservator should maintain a separate estate checking account into which all income is distributed and from which all expenses are paid. The Court may examine any of those records if the need arises.

The conservator of the estate must manage and protect all of the conserved person's assets, making sure that they are appropriately insured and properly invested. Investments in securities must be very carefully scrutinized, since conservators are not permitted to speculate and must meet the investment standards of a "prudent investor."

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The conservator may also have the duty and authority to pay all legitimate bills and defend against unjust claims. It is possible for the conservator to seek the Court's direction in paying any family obligations of the conserved person, including those due his spouse and/or minor children.

**D. Real Property:** If the conserved person owns real estate anywhere within the State of Connecticut, the conservator must file a **Notice for Land Records/App't of Conservator (PC-350)** in every town in which real property is located. Great care must be taken to protect unoccupied property, and the conserved person's insurance agent should be contacted **immediately** to assure proper coverage. If the property must be sold or mortgaged, an application (PC-400) will have to be filed with the Court and a hearing held.

**E. Gift-giving:** As stated before, gifts may not be made to **anyone** without prior Court approval. This is particularly important if the conserved person may apply for Title 19 coverage for convalescent or other care.

**F. Medicaid (Title 19):** As the conserved person's funds are exhausted, it may be necessary to apply for State assistance under Medicaid. **This is an extremely technical legal procedure, and the greatest care possible must be exercised in applying for such coverage. When in doubt, a qualified professional should be consulted BEFORE any major transactions are contemplated.** At present, the Department of Social Services (DSS) will require the conservator to disclose **all** transfers of assets within 36 months of the application date (or 60 months if the transfers are made through a living trust), and any improper transfers may disallow coverage for a period of time. Before the conserved person's assets are depleted, the conservator of the estate should seriously consider the purchase of a pre-paid funeral contract (DSS permits \$5400 as of 2007) and a special needs account of up to \$1600, as well as any medically required or helpful apparatus. Present DSS Regulations permit the purchase of clothing, a television, radio, motorized wheel chair, and other equipment that may benefit the conservator individually.

#### **IV. The Role of the Probate Court**

It is the principal function of the Court to appoint and then supervise the activities of the conservator. Although the Court may give procedural advice to the petitioner and formal advice to the conservator (in open court), it may not take sides with contesting parties and may not consult with them privately. The Court will attempt to resolve disputes among the parties as expeditiously as possible.

**A. Fees paid to conservators:** By law, conservators are entitled to be paid reasonable compensation for their services, but there is no specific table of payment provided. Each case is decided on its own merits, and the Court will consider the expertise of the conservator, the time and effort involved, the results achieved, the benefits to the conservator and several other factors provided by law. If the conserved person is receiving State assistance, there are severe restrictions on the payment of compensation (generally not more than 5% of the conserved person's annual income), unless the Court finds that the conservator has provided extraordinary services. **It is to the conservator's advantage to maintain precise records of tasks completed and the time expended.**

**B. Confidentiality:** Generally, the conservator should keep all financial and medical information concerning the conserved confidential, disclosing only what is required by the Court and the law. For its part, the Court must keep confidential all medical information involved in the case, although it may be disclosed to the actual parties.