

Handbook for Massachusetts Conservators



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I. PREFACE

The court has appointed you as **conservator**, with the power to make all financial and business decisions your loved one is unable to make. Now what?

How do you manage the person's finances? Can you cash in the protected person's CD or other assets and purchase stock instead? Do you have to file taxes for the protected person? What are your reporting requirements to the Court?

Serving as conservator can be difficult, time-consuming, and sometimes stressful. You may benefit from the support of family and friends, and also from various organizations that offer information, education, and support groups. The Alzheimer's Association, for example, offers some funds for respite services to provide caregiver breaks, information on support groups, and many books and pamphlets with helpful information. In addition, senior centers or Councils on Aging often offer complementary sessions with financial planners or attorneys.

We hope this Handbook will help you to understand your new responsibilities as conservator for a person needing protection. While this Handbook is meant primarily for those who serve as conservator of adults, not minor children, the resources outlined in Chapter X will be helpful for conservators of minors as well.

This Handbook is not intended to be a substitute for the professional assistance you may need from an attorney, accountant, social worker, or other professional. It is intended merely to get you started – to provide a useful overview of your responsibilities as well as resources to find the help you need. Thank you for accepting this very important role!

II. RIGHTS OF PROTECTED PERSONS

- A conservatorship may be limited to allow the person under conservatorship to retain as much control over his or her financial affairs as possible. If there are no limitations expressed in the court order, however, the conservator is responsible to marshal and protect the assets and income and to manage *all* aspects of the protected person's financial affairs.
- The duties of a conservator of a person with a developmental disability may be quite different than the duties of a conservator of a person who has lived a long and successful life and is now suffering from age-related incapacity. The former may have few assets, while the latter may have a sizable estate. Nonetheless, it is useful to identify the types of issues involved for the conservatorship of any property.

It is the conservator's duty to use the protected person's property exclusively for the protected person's benefit.

III. YOU'VE BEEN APPOINTED CONSERVATOR – NOW WHAT? POWERS AND DUTIES OF CONSERVATORS

- You've been appointed as Conservator of a family member or friend – now what? It depends on whether your appointment is limited in scope or has no court limitations.
- If the court has imposed a limited conservatorship, you have only the duties and responsibilities outlined in the court order.
- If it is a full conservatorship, you will have all-encompassing duties to marshal and protect the estate of the protected person, whether you are a full or limited conservator. In general, the conservator must:

1. File an Inventory with the Court

- Within 90 days of the appointment date, the conservator must prepare and file with the appointing court a detailed Inventory of the estate subject to conservatorship, together with an oath that the inventory is believed to be complete and accurate as far as information permits. The Inventory form is available on the court website.
- The conservator shall provide a copy of the Inventory to the protected person if the person has attained the age of 14 years, and a copy to any guardian or parent with whom the protected person resides. The Inventory should itemize all assets of the protected person (including cash and financial accounts, personal property, and real estate) and their value on the date of the conservator's appointment. The information that follows will be helpful for determining the assets and values, to be included on the Inventory.

2. **File a Financial Plan with the Court**

- The court may order that the conservator file a Financial Plan with the court. The order of appointment will specify whether this is required and, if so, the due date.
- In the financial plan, the conservator must provide details about the protected person's estate, his or her anticipated needs, the investment plan, etc.
- The court will issue an Order Regarding Conservator's Financial Plan either approving the Financial Plan, approving it with conditions, not approving it, or scheduling a hearing on the matter.
- After the first Financial Plan, the court may order the conservator to file a Financial Plan on an annual basis.

3. **Marshal and Protect the Assets of the Protected Person**

- The conservator must locate the assets and provide his or her appointment (Letters) as conservator to each institution. You will need to contact each institution by phone; have the protected person's date of birth and social security number available. Explain that you have been appointed as Conservator and that you are the only person authorized to access the Protected Person's account and information at this time, and that your appointment needs to be put on record.
- Find out what their procedure is – some institutions will allow the information to be faxed, but some require that a certified copy of the appointment be mailed to them before they will provide you with any information or grant you any authority to access the account. Some general steps that the conservator should take include:
- Secure assets by converting accounts to conservatorship accounts. If there are Direct Deposits going into the protected person's account, DO NOT CLOSE the account yet. Contact the source of the Direct Deposit to have funds either directly deposited into the Conservator account or sent directly to the nursing facility (if appropriate). If the Direct Deposit is anything other Social Security, the bank will be able to give you the name and telephone number of the source.
- Determine the value of each asset as of the date of your appointment as conservator;
- Get a print-out of activity or bank statements from date of your appointment;
- Change address of accounts to redirect future statements and correspondence to you as conservator;
- Cancel all debit and credit cards that have been issued;

- Find out if the protected person has a **safe deposit box** at the bank and, if so, inventory its contents;
- Find out if the protected person has any **Individual Retirement Accounts**;
- Find out if the protected person has any **life insurance policies**; if so, find out what the face value is, whether there is a cash surrender value, whether periodic payments are required or if it is paid in full, and who the named beneficiary is.
- **Personal property** of the protected person needs to be itemized and, possibly, appraised. There are various appraisers who can provide you with a professional opinion of value, such as jewelry, furniture, artwork, etc. Second-hand shops are often interested in purchasing furniture and other household items, and sometimes offer disposal services as well. Coins, stamps, and autographs should be brought to appraisers with experience in these areas. An appraisal is not necessary in every case, but if the conservator has any doubt about the value of an item he or she should err on the side of caution and get it appraised.
- If the protected person is in a nursing facility, the conservator must gain entrance to his or her residence in order to safeguard any assets. If the protected person will not be returning home, the conservator will be responsible for terminating the lease or other contract, cleaning out the residence, and selling or disposing of items the protected person can not retain at the facility.

4. **Redirect and Control Income of the Protected Person**

- If the protected person receives social security, a pension, annuity payment, or other income, the conservator will need to contact the source by phone, having the protected person's date of birth and social security number available. For each source of income, the conservator must change the address of record so that he or she receives all future payments and/or correspondence.
- For **pensions**, the conservator should request a statement showing the gross benefit and all itemized deductions. This information will be needed for purposes of completing taxes and possible accessing MassHealth or other benefits. The conservator should also inquire as to whether there are any additional benefits the protected person may be entitled to.
- For **annuities**, the conservator should find out what type of annuity it is, whether it has already been annuitized (converted to monthly payments) and, if so, how much the monthly payments are and when they will terminate.

5. **Court Authority Required for Many Transactions**

- The conservator must obtain prior court authority for many transactions, and would do so in most cases by filing a Petition to Expand, Modify or Limit the Powers of the Conservator.

Some of the transactions that the conservator must seek court approval for are enumerated on the form and include the power(s) to:

- create a revocable trust of the property of the estate which may extend beyond the minority of the ward;
- amend, extend, or revoke a trust;
- make gifts, except as otherwise provided in G.L. c. 190B, § 5-424(b);
- convey, release, or disclaim contingent and expectant interest in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;
- exercise or release a power of appointment;
- create a revocable or irrevocable trust of property of the estate, whether the trust does or does not extend beyond the duration of the conservatorship, or to revoke or amend a trust revocable by the protected person;
- exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value;
- exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos;
- make amend or revoke the protected person's will in compliance with G.L. c. 190B § 2-502;
- acquire estate assets, including land in this or another state at public or private sale, and lease, manage, develop, improve, exchange, change the character of, or abandon an estate asset;
- make repairs or alterations in buildings or other structures, demolish any structures, and raze existing or erect new party walls or buildings;
- subdivide, develop, or dedicate land to public use, make or obtain the vacation of plat(s) and adjust boundaries, adjust differences in valuation by giving or receiving consideration(s); and dedicate easements to public use without consideration;
- enter for any purpose into a lease as lessor or lessee or renew for a term within or extending beyond the term of the conservatorship;
- enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or utilization agreement;
- grant an option involving disposition of an estate asset and take an option for the acquisition of any asset.

NOTE that the Petition to Expand, Modify or Limit is **not used to request authority to convey real estate. The conservator would file a Petition for License to Sell in order to convey the protected person's real estate.**

6. File an Annual Account

- The conservator has a duty to prepare and file an account annually.

- The account is comprised of three schedules – A, B, and C. Schedule A will reflect the assets in the protected person’s estate and their value at the beginning of the accounting period, as well as all income received during the period. Schedule B will reflect all expenditures paid during the accounting period. Schedule C will reflect the assets remaining in the protected person’s estate and their value at the end of the accounting period.
- The amount on Schedule C in one year will be the starting amount on Schedule A in the following year.
- The first account must be filed one year after appointment and presented to the court for review and allowance.
- The court may permit several subsequent accounts to be presented together for allowance, however, they must be filed annually.
- A copy of each account must be given in hand or mailed (with proof of mailing) to the protected person.
- The court will monitor the filing of accounts.

IV. TERMINATION OF CONSERVATORSHIP

- A conservatorship is terminated on the death of the protected person, but the conservator has an ongoing duty to file a Final Account with the court and to turn over any estate property to the personal representative appointed for the estate of the decedent.
- A conservatorship may also be terminated upon Petition to the Court if the protected person no longer meets the standard for establishing the conservatorship or, in other words, his or her capacity to manage the estate is restored.
- The Petition must be filed along with a Medical Certificate for Termination of the Conservatorship which supports the protected person’s ability to receive and evaluate information or make or communicate decisions and that protection is no longer necessary.
- If the protected person moves out of state, the conservator should consult with an attorney to ensure that the proper protections are put in place in the new jurisdiction and to terminate the Massachusetts conservatorship.

V. DEFINITIONS

GUARDIAN

- A guardian may be appointed for protection *of the person only*.
- Persons under guardianship are called “*incapacitated persons*.”
- A guardian may be appointed for an incapacitated person “who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.”

CONSERVATOR

- A conservator may be appointed **to protect property and business affairs** of a person in need of protection.
- Persons under conservatorship are called “*protected persons*.”
- A conservator may be appointed for a person to be protected if “the person is unable to manage property and business affairs effectively because of a clinically diagnosed impairment in the ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate technological assistance, or because the individual is detained or otherwise unable to return to the United States, and the person has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, and welfare of the person or those entitled to the person’s support and that protection is necessary or desirable to obtain or provide money.”

FULL/PLEINARY GUARDIANSHIP

- A full/plenary guardianship generally removes from an incapacitated person ***all personal decision-making responsibility and authority***.
- Under the current law, clinicians and the Court must now consider whether an incapacitated person’s legal rights can be preserved in specific areas and whether the guardianship can be limited or tailored accordingly.

FULL/PLEINARY CONSERVATORSHIP

- A full/plenary conservatorship generally removes from a person to be protected **all control over his or her assets**.
- Under the current law, the Court must now consider if a protected person’s rights can be preserved in specific areas and whether the conservatorship can be limited or tailored accordingly.

LIMITED GUARDIANSHIP

- The concept of limited guardianship allows the Court to address specific areas of incapacity and tailor guardianship decrees to meet an individual's unique circumstances.
- Individuals may be competent for one purpose and not competent for another.
- Orders curtailing or removing an individual's liberty should be made only to the extent absolutely necessary to protect the individual from harm.

The guardian must be aware of the scope of the guardianship to fulfill his or her responsibilities while respecting the incapacitated person's rights.

LIMITED CONSERVATORSHIP

- Similarly, the concept of conservatorship includes both limited and unlimited conservatorships.
- A conservator should be appointed only when necessary, and then with only those powers that are necessary to address the individual's actual limitations. For example, if appropriate, a conservatorship may be limited or apply only to investments or real estate and leave to the incapacitated person the ability to receive pension income and pay for daily or monthly expenses.

The conservator must be aware of the scope of the conservatorship to fulfill his or her responsibilities while respecting the protected person's rights.

PROTECTIVE ORDERS

- In some cases, the Court may determine that a conservatorship is not necessary at all, but that a narrowly tailored protective order will suffice to protect an individual's assets/property.
- For example, the Court, without appointing a conservator, may authorize, direct or ratify any contract, trust, or other transaction relating to the protected person's property and business affairs if the court determines that the transaction is in the best interests of the protected person.

TEMPORARY GUARDIANSHIP

- While a petition for the appointment of a guardian is pending, if an incapacitated person

has no guardian, and the Court finds that *an emergency exists that will likely result in immediate and substantial harm to the health, safety or welfare of the person alleged to be incapacitated*, and no other person appears to have authority to act in the circumstances, on appropriate motion, the Court may appoint a temporary guardian who may exercise only those specific powers granted in the Order.

- The appointment may be for a period of up to 90 days except upon a finding of extraordinary circumstances set forth in its Order, the Court may order an appointment for a longer period to a date certain.
- The Court may for good cause shown extend the appointment for additional 90-day periods.

The temporary guardian must be aware of the scope of his or her authority under the temporary appointment to fulfill his or her responsibilities to the incapacitated person while respecting the incapacitated person's rights and abilities.

TEMPORARY CONSERVATORSHIP

- While a petition for the appointment of a conservator is pending, if a person to be protected has no conservator, and the Court finds that an immediate and/or urgent situation exists that will likely result in substantial harm to the property, income or entitlements of the person to be protected or those entitled to the person's support, and no other person appears to have authority to act in the circumstances, on appropriate motion, the Court may appoint a temporary conservator who may exercise only those specific powers granted in the Order.
- The appointment may be for a period of 90 days except upon a finding of extraordinary circumstances set forth in its Order, the Court may order an appointment for a longer period to a date certain.
- The Court may for good cause shown extend the appointment for additional 90-day periods.

The temporary conservator must be aware of the scope of his or her authority under the temporary appointment to fulfill his or her responsibilities to the incapacitated person while respecting the protected person's rights and abilities.

SUBSTITUTED JUDGMENT

- When the Court finds that a person is incapacitated as a result of the individual's

minority, mental illness, mental retardation, or inability to make or communicate an informed decision due to physical incapacity or illness, *the role of the court is to substitute itself as nearly as possible for the incapacitated person and to act on the same motives and considerations as would the incapacitated person.*

- The court's role as substitute decision-maker is *subjective* in nature; the goal is to determine with as much accuracy as possible the wants and needs of the individual involved.

The Court must answer the question - what would the incapacitated person decide if he or she was able to make the decision?

VI. RESOURCES FOR GUARDIANS AND CONSERVATORS

Following is a comprehensive list of information and resources to assist guardians and conservators in fulfilling their duties.

National Guardianship Association
(See Standards of Practice and Code of Ethics)
www.guardianship.org

Massachusetts Probate and Family Court
<http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/>
Massachusetts Guardianship Association
www.massguardianshipassociation.org

Entitlements

www.Massresource.com
Commonwealth of Massachusetts
www.800ageinfo.com
Administration on Aging
www.aoa.gov

Diseases:

Amyotrophic Lateral Sclerosis (ALS) – Lou Gehrig's Disease
www.also.org
Huntington's Disease
www.hdsa.org
www.ninds.nih.gov
Multiple Sclerosis
www.nationalmssociety.org
www.ninds.nih.gov/disorders/multiple_sclerosis
Muscular Dystrophy
www.mdausa.org

Massachusetts Commission for the Deaf and Hard of Hearing
www.mass.gov/mcdhh

Parkinson's Disease

The American Parkinson's Disease Association,
www.apdaparkinson.org

APDA, Massachusetts Chapter
www.apdama.org

Stroke:

American Stroke Association
www.strokeassociation.org

National Institute of Neurological Disorders and Stroke:
www.ninds.nih.gov

National Stroke Association
www.stroke.org

National Heart, Lung and Blood Health Information Center:
www.nhlbi.gov

Diabetes:

National Diabetes Information Clearinghouse
www.niddk.nih.gov

Geriatric Mental Health and Disease:

Geriatric Mental Health Foundation
www.gmhfonline.org

Massachusetts Chapter of the Alliance for the Mentally Ill
www.namimass.org

Dementias:

Alzheimer's Disease:

www.alzheimer's.org

www.alzfdn.org

www.alz.org

Binswager's Disease

Multi-infarct Dementia

Wernicke-Korsakoff Syndrome

www.nimds.nih.gov

Lewy Body Dementia

www.lewybodydementia.org

Pick's Disease

The Association for Frontotemporal Dementia
www.ftd-picks.org

Developmental Disabilities:

Association for Retarded Citizens (ARC)
www.thearc.org

Massachusetts ARC
www.arcmass.org

The ARC of Greater Boston

www.gbarc.org

Massachusetts Assistive Technologies Partnership

www.matp.org

New England INDEX Information on Disabilities Exchange

www.disabilityinfo.org

Rehabilitation Research and Training Center on Aging with Developmental Disabilities

www.nic.edu

Caregiving and Support Information:

American Association for Retired Persons (AARP)

www.aarp.org

Grandparents Caring for Grandchildren

www.aarp.org/grandparents

Professional Resources

Elder & Disability Attorneys

Massachusetts Chapter of the National Academy of Elder Law Attorneys

www.manaela.org

Geriatric Care Managers

National Association of Professional Geriatric Care Managers

www.caremanager.org

Geriatric Care Managers of New England

www.gcmnewengland.org