

## Guardianship and Conservatorship

A Guardian is an individual appointed by the court to manage the personal affairs and protect the legal rights of an incapacitated person.

A Conservator is an individual appointed by the court to manage the financial affairs and protect the property of the incapacitated person.

The Guardian and Conservator may be the same person. In order for a Guardian or Conservator to be appointed for an incapacitated person in Virginia, a petition must be filed with the Circuit Court in the city or county in which the incapacitated person lives. Any adult interested in the well-being of the incapacitated person can bring a petition, with the assistance of counsel. Some community organizations have established programs to provide an alternative fiduciary for those who do not have family members who will come forward when a guardian is needed.

The petition, which requires payment of a filing fee, must set forth multiple allegations regarding the person, his or her circumstances, and the nature of the incapacity. The court will then appoint a guardian ad litem to conduct an investigation and file a report with the court before or during the hearing. Fees for the guardian ad litem are payable from the incapacitated person's assets.

Typically, the hearing involves an informal presentation of evidence and testimony, including the medical evaluation report, in order for the court to determine the nature and extent of a person's incapacity. Depending upon the level of incapacity, the Guardian's authority to make decisions on behalf of the incapacitated person may be complete or may be limited to specific decisions. Likewise, a Conservator will be appointed to manage the incapacitated person's funds and property and will be required to file annual accountings with the court to show the proper administration of the incapacitated person's assets and liabilities.

If the judge decides the person is in need of a Guardian and/or Conservator, he or she will enter a decree appointing the petitioner as Guardian and/or Conservator and setting forth the legal duties required of the newly appointed fiduciary. An inventory of the person's resources must be filed within four months and the first annual accounting must be filed within six months by the Conservator, and the Guardian must file an annual status report with the Adult Protective Services unit of the Department of Social Services. The appointed persons may be compensated for services rendered from the estate of the incapacitated

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person, if approved by the court.

If a person has executed a power of attorney for financial matters and an advance medical directive for health care decisions, then there should be no need for a guardian or conservator. Of course, circumstances might still require such an appointment by a court, particularly where the named agent has died, become incapacitated or abuses the authority by converting funds to their personal use.

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