

# **CONSERVATORSHIPS FOR LEGALLY INCAPACITATED INDIVIDUALS**

PLEASE READ BEFORE PROCEEDING.

This information is the only information court personnel can give you about this procedure. This information is not intended to be legal advice, but a brief explanation of the basic procedure that is required.

Probate court personnel cannot give legal advice about your particular situation or complete your forms for you. You are not required to have an attorney; however, the court cannot act as your attorney. If you do not understand these instructions or the process, you will need to obtain other assistance.

## **THE COURT MAY APPOINT A CONSERVATOR OR ISSUE A PROTECTIVE ORDER:**

- When an adult is unable to manage affairs and property effectively for reasons such as mental illness, mental incompetence, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance and
  - He/she has property which will be wasted or dissipated, or;
  - Funds are needed for support, care and welfare of the respondent or his/her dependents.
- The adult is mentally competent, but due to age or physical infirmity is unable to manage his/her property and affairs effectively. (In this circumstance the petition may be filed by the person in need of the conservatorship)

## **WHAT IS NEEDED TO BE FILED**

- Alternatives to Conservatorship ([PC 667](#))
- Petition for Appointment of a Conservator ([PC 639](#))
- Petition for Appointment of Guardian Ad Litem/Attorney/Lawyer Guardian Ad Litem ([PC 641](#))
- Durable Power of Attorney and/or Patient Advocate (in applicable)
- Report of Physician ([PC 630](#))

## **ALTERNATIVES TO CONSERVATORSHIP**

Before filing the Petition for Appointment of Conservator and/or Protective Order the petitioner must receive and review the alternatives to conservatorship. These alternatives are available on the form [\(PC 667\)](#). The petitioner must sign the form and submit it to the court when filing the Petition for Appointment of Conservator and/or Protective Order. An attorney for the petitioner may either submit the form signed by the petitioner or a proof of service on the petitioner regarding the [\(PC 667\)](#) form.

## **FILING THE PETITION**

The process starts when someone interested in the welfare of a person who is thought to be in need of a conservator files a Petition for the Appointment of a Conservator and/or Protective Order [\(PC 639\)](#). The petition, when completed properly, signed and dated, is filed with the Probate Court in the county where the respondent resides at the time of filing. If the respondent resides outside the state but owns property to be protected in this state, the petition can be filed in the county where the property is located that needs protecting. The petition must contain specific facts and an example explaining why the petitioner believes the respondent is incapacitated and needs a conservator.

After the petition is filed, a hearing is scheduled before the Probate Judge. The hearing normally takes place 4-8 weeks later. The Court will serve all persons who are, by law and Supreme Court Rule, entitled to notice of this proceeding. The petitioner must arrange for the respondent to be present at the hearing, if at all possible. The Guardian Ad Litem may waive the respondent's appearance at the hearing providing that the respondent is not in objection to the Petition for Appointment of Conservator. At the hearing, the petitioner must present testimony and evidence of the need for a conservator.

## **DURABLE POWER OF ATTORNEY AND/OR PATIENT ADVOCATE**

A copy of any durable power of attorney or patient advocate for the respondent must be filed with the Petition for Appointment of Conservator of Incapacitated Individual.

## **REPORT OF PHYSICIAN**

A Report of Physician [\(PC 630\)](#) must also be filed if the petition states that protection is necessary because of mental illness or mental incompetence; physical illness or physical disability; or chronic use of drugs or chronic intoxication.

## **ATTORNEY FOR PETITIONER**

The law regarding conservatorship is quite complicated and the Probate Court and court personnel cannot give you legal advice or act as your attorney. Therefore, it is recommended that the petitioner seek the help of an attorney. This information packet and the forms indicated are provided to help you understand the procedure involved. It is not a complete statement of the law in this area and it is not intended to teach you the law. If you have legal questions, you will need to speak with an attorney.

## **RESPONDENT'S RIGHTS**

### **GUARDIAN AD LITEM/ATTORNEY FOR THE RESPONDENT**

You should be aware that the respondent may contest the petition and is entitled to be present at the hearing. He/she also has the following rights:

- To be represented by an attorney
- To see and hear all evidence
- To examine witnesses and to a trial by jury.

The law also requires the court to appoint a Guardian Ad Litem for the respondent if he/she does not have his/her own attorney. The Guardian Ad Litem is appointed to investigate the matter, to make recommendations to the court, and to represent the best interests of the respondent. He/she may even disagree with the petitioner's request for conservatorship. If the respondent objects to the Petition for Appointment of Conservator and/or Protective Order, an attorney will be appointed for the respondent.

THE PETITIONER WILL BE REQUIRED TO PAY THE FEES OF THE COURT-APPOINTED GUARDIAN AD LITEM/ATTORNEY FOR THE RESPONDENT AT THE COURT-APPOINTED RATE OF \$35.00 PER HOUR.

## **SERVICE**

The following people must be served with a copy of the Petition for Appointment of Conservator and/or Protective Order ([PC 639](#)) and Notice of Hearing ([PC 562](#)). The notice of hearing tells the interested persons where and when the hearing will take place.

1. **The respondent must be served personally at least seven days before the hearing, regardless of the respondent's physical or mental capacity.** He/she must also be served a copy of the Notice of Petition for Conservator or Protective Order ([PC 668](#)). This means physically handing them the papers or at least touching them with the papers if they are completely incapacitated.
2. The respondent's spouse and children; or if no children are living, his/her parents must be served. These persons can be served by mail at least 14 days before the hearing.
3. If the respondent has no living spouse, children, or parents, the heirs/next of kin must be served by mail at least 14 days before the hearing.
4. In addition to the persons mentioned above, any person who has care and custody of the respondent and any guardian or attorney in fact under a Durable Power of Attorney or Patient Advocate for the respondent must be served by mail at least 14 days before the hearing.
5. The nominated conservator, if he/she is not the petitioner, must be served by mail at least 14 days before the hearing.
6. In special circumstances other persons are also entitled to notice. For example, the Veterans Administration must be served notice if the respondent is eligible for Veterans benefits; the Attorney General must be served notice if there are no heirs of the respondent; the Social Security Department must be served if the respondent is receiving social security benefits; and any person who has filed a Request for Notice with the court must also be served notice.

## **PUBLICATION**

If the address of an interested party is unknown, the petitioner must file a Declaration of Intent to Give Notice by Publication ([PC 617](#)) and publish (at your expense) a Publication of Notice of Hearing ([PC 563](#)) in an Eaton County approved newspaper.

- The County Journal
- The Charlotte Shopping Guide
- The Delta Waverly Community News
- The Grand Ledge Independent
- The Eaton Rapids Community News
- The flashes
- The Lansing State Journal

NOTICE MUST BE PUBLISHED AT LEAST 14 DAYS BEFORE THE HEARING. The Petitioner must pay the newspaper for this publication in order for the notice to be published in the paper. The newspaper should send us verification of publication; however, it is your responsibility to make sure we receive the verification of publication.

## **THE HEARING**

The proposed conservator must sign an Acceptance of Appointment form ([PC 571](#)) at the time of the hearing.

At the hearing the judge will either grant or deny the petition. If the petition is granted the order is signed, the court will then issue the Letters of Conservatorship.

## **CERTIFIED COPIES**

Certified copies of the Letters of Authority may be obtained after the hearing at \$1.00 per page plus a \$10.00 certification fee.

File/Mail to: EATON COUNTY PROBATE COURT  
1045 INDEPENDENCE BLVD  
CHARLOTTE, MI 48813

## **RESPONSIBILITIES AND AUTHORITY OF THE CONSERVATOR:**

The conservator has tremendous authority and responsibility. The conservator is accountable to the protected person, the other heirs and to the court for everything he/she does. The conservator should seek legal advice in this regard to ensure that he/she is properly performing the duties required by law.

The conservator must file:

- An Inventory ([PC 674](#)) within 56 days after being appointed
- An Account of Fiduciary ([PC 584](#)) with a financial statement, and Petition to Allow ([PC 585a](#)) each year. There is a \$20.00 filing fee due when filing the account.

The court cannot advise the conservator about exercising his/her authority or about whether or not to take any specific action after appointment.

The Court cannot assist with filling out the INVENTORY or ACCOUNTINGS.

FAILURE TO FILE THE INVENTORY or ANNUAL ACCOUNTS can result in the SUSPENSION OF THE CONSERVATOR'S AUTHORITY.

## **GUARDIANS**

A separate petition and procedure is necessary to have a guardian appointed. Such a petition can be filed along with the petition for conservatorship and both can be scheduled for hearing together. An information packet regarding guardianship is also available.

When filing petitions to have both a guardian and a conservator appointed, the filing fee is \$300.00 (\$150.00 for the Petition for Guardianship, \$150.00 for the Petition for Conservatorship/Protective Order.)