

CONSERVATORSHIP

IN

MICHIGAN

**Acknowledgements:** The State Court Administrative Office (SCAO) formed a work group that was made up of a judge, probate registers, Supreme Court personnel, attorneys, and a guardian. The group spent many hours developing the materials for this manual. SCAO gratefully acknowledges the time, helpful advice, and expertise contributed by this work group.

The work group members for the Conservatorship in Michigan project are:

Cynthia L. Bostwick  
Probate Register  
St. Clair County Probate Court

Michael J. McClory  
Attorney  
Wayne County Probate Court

Robert G. Carbeck  
Probate Register  
Washtenaw County Probate Court

Tobin L. Miller  
Michigan Judicial Institute  
Michigan Supreme Court

Douglas G. Chalgian  
Attorney  
Chalgian & Trip Law Offices, PLLC

Cindy Rude  
Probate Register  
Calhoun County Probate Court

Suzanne M. Darling  
Probate Register  
Kalamazoo County Probate Court

Kay Rushton  
Probate Register  
Genesee County Probate Court

Jackie DeHaan  
Guardian

George M. Strander  
Probate Register  
Ingham County Probate Court

Glen B. Gronseth  
Michigan Supreme Court

Joan C. VonHandorf  
Attorney

Hon. John N. Kirkendall  
Washtenaw County Probate Court

Velma Weston  
Deputy Probate Register  
Kalamazoo County Probate Court

Lisa Kutas  
Michigan Judicial Institute  
Michigan Supreme Court

Catherine Weitzel  
Michigan Judicial Institute  
Michigan Supreme Court

Jean A. Mahjoory  
State Court Administrative Office  
Michigan Supreme Court

## TABLE OF CONTENTS

A.	Is a conservatorship necessary? .....	1
	Conservatorship for adults and minors .....	1
	Alternatives to Conservatorship.....	1
B.	Petitioning the court for conservatorship. ....	2
	General Information.....	2
	Courts cannot give legal advice .....	2
	Fill out all the forms and do not use a pencil .....	2
	Make sure the forms are completely filled out .....	2
	Bring money to pay the filing fee .....	2
	Contact the probate court prior to filing the conservatorship petition .....	3
	Conservatorship Filing Fees .....	3
	Remember the difference between a guardian and a conservator .....	3
	Filing Procedures - Minor Conservatorship.....	3
	Filing Procedures – Adult Conservatorship.....	5
C.	Acceptance of Appointment .....	7
D.	Bond of Fiduciary .....	7
E.	Letters of Conservatorship.....	7
F.	Duties and Responsibilities.....	7
G.	Taking possession of estate assets .....	12
H.	Setting up a restricted account .....	13
I.	Applying for Medicaid or Social Security benefits .....	15
	Social Security Benefits.....	15
	Medicare and Medicaid Health Insurance .....	15
	Veteran’s Benefits.....	16
J.	Record Keeping .....	16
K.	Prudent Investor.....	16
L.	What are allowable expenses of the protected individual’s estate? .....	17
M.	Conflicts of Interest.....	18
N.	Notification Duties.....	19
O.	Inventory .....	19
	What is an Inventory?.....	19
	The Date to Use to Value the Assets .....	19

Identifying and Valuing Assets and Debts on an Inventory .....	20
Debts or Encumbrances .....	20
Real Estate .....	20
Personal Property .....	21
Motor Vehicles, Mobile Homes, and Recreational Vehicles.....	21
Bank, Credit Union and Savings and Loan Accounts.....	22
Investment Accounts.....	22
Retirement Accounts.....	22
Stocks, Bonds and Investments held outside of accounts.....	22
Life Insurance and Annuities.....	22
Personal Belongings.....	23
Collections .....	23
Jointly owned assets.....	23
Requirements for serving the Inventory .....	24
P. Account.....	24
Annual.....	25
Interim.....	25
Final .....	25
Statements of fiduciary and attorney fees.....	25
Proof of Service .....	25
Changing accounting period (not to exceed 12 months) .....	25
Petition to allow account and notice of hearing.....	26
Duty to keep records for review by court or interested persons .....	26
Q. Modification or termination of conservatorship .....	26
R. Where to go for help .....	26
S. Possible court actions for non-compliance .....	27
T. Frequently Asked Questions.....	28
What are the filing fees? .....	28
What is the difference between a guardian and a conservator? .....	29
How are conservators appointed? .....	29
Where to file a petition for the appointment of a conservator? .....	29
What are the duties of a conservator? .....	29
Do I need an attorney? .....	30
How much time should I plan on spending at the court to open a conservatorship? .....	30
How do I get certified copies of court documents? .....	30
When can a conservator be appointed for an adult? .....	30
Who can file to have a conservator appointed for an adult?.....	30
When may an adult conservatorship be terminated? .....	30
Are there alternatives? .....	31
When may a conservator be necessary for a minor?.....	31
When is a conservator for a minor not needed?.....	31
When may a minor conservatorship be terminated?.....	31

## **A. Is a conservatorship necessary?**

### Conservatorship for adults and minors

When a person cannot manage his/her own affairs due to legal incapacity, such as a physical or mental illness or minority, a conservatorship may be established. In a conservatorship, a person is appointed by the court to manage the financial affairs of a person.

A person under the age of 18 in Michigan may need to have a conservatorship established if they have money or property which needs to be managed by an adult. A custodial parent, a guardian, or a financial institution may receive up to \$5,000 annually on behalf of a minor without the establishment of a conservatorship. Any minor who is to receive \$5,000 or more per year would need a conservator. (MCL 700.5102)

### Alternatives to Conservatorship

Sometimes adults must have someone to act for them when they cannot effectively manage their financial affairs. Whether a proceeding in the probate court (a conservatorship) is required depends on the extent and nature of the person's financial interests and whether the individual has taken steps to allow someone they trust to act on their behalf.

Although probate court appointment of a conservator may be required, there are other legally recognized ways to handle the protected individual's affairs. One way to avoid a conservatorship is a durable power of attorney which was executed by the person prior to incapacity. A durable power of attorney is a legal document that names one or more individuals or a bank as attorney(s) in fact to act as agent(s) on behalf of the person who signed it regarding the matters specified in the durable power of attorney. There are different types of durable powers of attorney. For example, the durable power of attorney may be effective upon the signing of the instrument, or it may be effective only upon a stated occurrence, such as incapacity. In either case, when the person becomes unable to handle his or her own affairs, the attorney in fact may do those things specified in the document with the same effect as if they were done by the now incapacitated person. A properly executed durable power of attorney is recognized and accepted as a valid way to carry out the financial affairs of the incapacitated person.

Another way to avoid a conservatorship is to set up a trust. A trust may be set up by the person for his or her own benefit (often called a revocable trust) or by third parties (by gifts made during their lifetime or upon death to an irrevocable trust). The individual's assets are owned by the trust and managed by a trustee for the benefit of the person to be protected.

An additional alternative is the use of joint bank accounts. The other party to a joint bank account (to which social security and other payments may be directly deposited) can use the funds for the protected co-owner without court action. With either a durable power of attorney or a joint bank account, the person gaining control of the protected individual's assets must be someone that can be trusted. There is no oversight of this individual's activities.

Certain government benefits (such as Social Security) may be paid to a third party (a representative payee) who is under an obligation to make sure that the money is used for the

benefit of the person in whose name they are paid. The representative payee is a federal fiduciary and is not required to be appointed by the probate court. If these benefits are the sole source of income for the protected person, the designation of such a representative payee may provide a means of managing the person's affairs without court involvement.

A conservatorship is often for an indefinite period of time and involves the management of various assets for the protected individual. However, a full conservatorship is not always necessary. When only a single transaction requires attention, the probate court may enter a protective order. Before a protective order is entered, the court will conduct the same hearing and make the same findings that are required for a full conservatorship. A protective order may be used to transfer the protected person's property to a privately managed protective trust.

If no alternative is available, a petition for the appointment of a conservator may be filed with the probate court.

## **B. Petitioning the court for conservatorship.**

### General Information

#### Courts cannot give legal advice

Courts are prohibited by law (MCL 700.1211) from providing legal advice and completing forms. This is general information concerning the filing procedures for a minor or an adult conservatorship and may be useful as a guide. However, questions not addressed or answered with this information should be directed to an attorney.

#### Fill out all the forms and do not use a pencil

Forms can be obtained from the probate court, and can also be downloaded from the SCAO's website ([www.courts.michigan.gov/scao](http://www.courts.michigan.gov/scao) - go to "resources" and "court forms"). Fill in the form by either typing the form, or by printing the form by using blue or black ink.

#### Make sure the forms are completely filled out

- Are all of the forms signed?
- Are all the interested persons listed, along with their addresses?
- Consider obtaining a waiver and consent form ([PC 561](#)) from each interested person. Getting these forms may make it easier to start the case.
- If you need help filling out the forms, contact an attorney.

#### Bring money to pay the filing fee

Courts accept cash, check, or money order payable to the county probate court. Some courts allow payment by credit card. A conservatorship petition cannot be filed without the filing fee.

Contact the probate court prior to filing the conservatorship petition

The way a conservatorship petition is processed can vary between different probate courts. Call or e-mail the court before making a trip there to file the petition. This can save a great deal of time and frustration. See the [Directory of Trial Courts](#) for the name, phone number and, if applicable, e-mail and/or website address for each probate court in Michigan. This directory can be accessed on the Supreme Court’s website at [www.courts.michigan.gov/trialcourts/trial.htm](http://www.courts.michigan.gov/trialcourts/trial.htm).

Conservatorship Filing Fees

Conservatorship (Adult or Minor)..... \$150.00  
Certified Letters of Authority..... \$10.00 for the first page and \$1.00 for each additional page (per copy)

Remember the difference between a guardian and a conservator

Generally it can be said that the guardian makes decisions about the person, such as medical or housing decisions, and the conservator makes decisions about the property or the finances of the person. A guardian and a conservator can be the same person or institution or they may be different. For example, a guardian could be a person and a conservator could be a trust company or bank.

Filing Procedures - Minor Conservatorship

Filing Fee                    \$150.00

Forms Used                    [PC 639](#), Petition for Appointment of Conservator and/or Protective Order  
[PC 668](#), Notice on Petition for Conservator or Protective Order  
[PC 571](#), Acceptance of Appointment  
[PC 562](#), Notice of Hearing  
[PC 564](#), Proof of Service  
[PC 577](#), Inventory (Note: Must be filed with the court within 56 days of appointment as conservator.)  
[PC 583](#) or [PC 584](#), Account of Fiduciary (Note: An account form is used after a conservator is appointed and must be filed each year. For information on accountings, see [Account](#).)  
Note: See the instruction sheet which is part of [PC 639](#) which provides step by step directions for filling out the conservatorship petition.  
Note: For additional information, see [PC 667](#), “What You Need to Know Before Filing a Petition to Appoint a Conservator.”

Service                         Notice of the hearing and a copy of the conservatorship petition must be given to all interested persons listed on the petition, as well as the subject of the petition if he/she is at least 14 years old. There are three ways that notice can be provided:

Personal Service. Notice of the hearing and a copy of the conservatorship petition can be personally handed to an individual. This must be done at

least seven (7) days before the hearing date.

Service by Mail. Notice of the hearing and a copy of the conservatorship petition can be served by first class mail at least fourteen (14) days before the hearing date.

Publication is required for persons whose address or whereabouts are unknown. The court's permission is needed before giving notice by publication. The notice must be published at least fourteen (14) days before the hearing date. The legal newspaper fee is paid to the legal newspaper where the petition is filed. For more information on publication, contact the probate court where the petition will be filed. See the [Directory of Trial Courts](#) for the name, phone number, and e-mail and/or website address for each probate court in Michigan.

Proof of Service must be filed with the court at or before the hearing to show that notice and a copy of the conservatorship petition was given to all interested persons and the subject of the petition.

#### Interested Persons

The interested persons need to be listed on the petition, along with their proper addresses. If an interested person is not included or is not properly served, the hearing cannot be held. The interested persons in a petition for appointment of a conservator of a minor are:

1. The individual to be protected if 14 years of age or older;
2. The presumptive heirs of the individual to be protected [presumptive heirs are defined as a) a spouse of the protected individual if the protected individual has a spouse; b) each living child of the protected individual; c) if the protected individual has a child that has predeceased the protected individual, each of the children of that deceased child, and if a child is also deceased and has left children, those children would also receive copies; d) if the protected individual has no spouse or descendants, the parents of the protected individual; 3) if the protected individual has no spouse, no descendants and no parents, the conservator should consult with an attorney or the court to determine who is entitled to notice];
3. If there are no presumptive heirs, or if none of the known presumptive heirs can be located, the attorney general is considered an interested person for notice requirements.
4. If known, a person named as attorney in fact under a durable power of attorney;
5. The nominated conservator; and
6. A governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.

#### Hearing Date

The Petition will be set for hearing by the court. The period of time

between the filing of the petition and the hearing date can vary considerably between probate courts. The Petitioner must attend the hearing or the Petition will be dismissed.

Guardian ad Litem The court may appoint a Guardian ad Litem (GAL) to represent the interests of the minor for whom a conservator is sought. The GAL is not an employee of the court but a person (in some cases, a licensed practicing attorney) appointed by the court.

### Filing Procedures – Adult Conservatorship

Filing Fee \$150.00

Forms Used [PC 639](#), Petition for Appointment of Conservator and/or Protective Order  
[PC 668](#), Notice on Petition for Conservator or Protective Order  
[PC 571](#), Acceptance of Appointment  
[PC 562](#), Notice of Hearing  
[PC 564](#), Proof of Service  
[PC 577](#), Inventory (Note: Must be filed with the court within 56 days of appointment as conservator.)  
[PC 583](#) or [PC 584](#), Account of Fiduciary (Note: An account form is used after a conservator is appointed and must be filed each year. For information on accountings, see [Account](#).)  
Note: The petition must include specific facts about the person’s condition and examples of recent conduct that demonstrate the need for a conservator.  
Note: See the instruction sheet which is part of [PC 639](#) which provides step by step directions for filling out the conservatorship petition.  
Note: For additional information, see [PC 667](#), “What You Need to Know Before Filing a Petition to Appoint a Conservator.”

Service Notice of the hearing and a copy of the conservatorship petition must be given to all interested persons listed on the petition. There are three ways that notice can be provided:

Personal Service. Notice of the hearing and a copy of the conservatorship petition can be given personally (i.e., handed to) an interested person. This must be done at least seven (7) days before the hearing date.

Service by Mail. Notice of the hearing and a copy of the conservatorship petition can be served by first class mail to an interested person. The notice must be mailed at least fourteen (14) days before the hearing date.

Publication is required for persons whose address or whereabouts are unknown. The court’s permission is needed before giving notice by

publication. The notice must be published at least fourteen (14) days before the hearing date. The legal newspaper fee is paid to the legal newspaper where the petition is filed. For more information on publication, contact the probate court where the Petition will be filed. See the [Directory of Trial Courts](#) for the name, phone number and, if applicable, e-mail and/or website address for each probate court in Michigan.

Proof of Service must be filed with the court at or before the hearing to show that notice and a copy of the conservatorship petition was given to all interested persons.

Interested Persons The interested persons need to be listed on the petition, along with their proper address. If an interested person is not included or is not properly served, the hearing cannot be held. The interested persons in a petition for appointment of a conservator of an adult are:

1. The individual to be protected if 14 years of age or older;
2. The presumptive heirs of the individual to be protected [presumptive heirs are defined as a) a spouse of the protected individual if the protected individual has a spouse; b) each living child of the protected individual; c) if the protected individual has a child that has predeceased the protected individual, each of the children of that deceased child, and if a child is also deceased and has left children, those children would also receive copies; d) if the protected individual has no spouse or descendants, the parents of the protected individual; 3) if the protected individual has no spouse, no descendants and no parents, the conservator should consult with an attorney or the court to determine who is entitled to notice];
3. If there are no presumptive heirs, or if none of the known presumptive heirs can be located, the attorney general is considered an interested person for notice requirements.
4. If known, a person named as attorney in fact under a durable power of attorney;
5. The nominated conservator; and
6. A governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending.

Hearing Date The Petition will be set for hearing by the court. The period of time between the filing of the petition and the hearing date can vary considerably between probate courts. The Petitioner must attend the hearing or the Petition will be dismissed.

Guardian ad Litem The court must, by law, appoint a Guardian ad Litem (GAL) to represent the interests of the alleged protected individual unless the person has their own attorney. It will be the GAL's responsibility to visit the person and make a recommendation as to whether or not a conservator is needed.

### **C. Acceptance of Appointment**

The conservator who has been appointed by the court must file an Acceptance of Appointment, [PC 571](#), to indicate willingness to accept the responsibility.

### **D. Bond of Fiduciary**

A conservator has certain duties and responsibilities. One of the responsibilities is to protect the assets of the protected individual. To make sure the assets are protected, the court may require the purchase of a bond. A bond is normally issued by an insurance company. The insurance company promises to reimburse the conservatorship if the conservator fails to protect the assets or takes the assets without the prior approval of the court.

A bond may be ordered at different times during the proceedings—upon appointment as conservator, at the time of the sale of real estate, or when assets increase or decrease in value. The amount will vary according to the value of the assets of the protected individual and any restrictions the court places on the conservator's ability to sell or transfer the assets. Once the court orders a bond, the conservator contacts an insurance company and purchases a surety bond in the amount ordered by the court. The surety bond is then filed with the court.

### **E. Letters of Conservatorship**

Letters of Conservatorship is the legal document that proves that you have been appointed conservator, and that you have the authority to act on behalf of the protected individual. A certified copy of the Letters of Conservatorship has a raised seal on it and may be purchased from the court after the appointment. The court may limit your authority to act as conservator. Those limitations will be listed on the Letters of Conservatorship.

### **G. Duties and Responsibilities**

The primary duty of a conservator is to preserve the assets of the protected individual. A conservator also has the duty to use the protected individual's money for the support, education, care and benefit of the protected individual and his or her dependents. In addition, a conservator may use the protected individual's money for persons that are legally dependent on him or her and other members of the protected individual's household who are unable to support themselves and who need support. MCL 700.5425.

The following are the powers given by law to a conservator (MCL 700.5423):

- (1) Subject to a limitation provided in section 5427, a conservator has all of the powers conferred in this section and the additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the

powers, responsibilities, and duties of a guardian described in section 5215 until the individual is no longer a minor or marries. The parental rights conferred on a conservator by this section do not preclude a guardian's appointment as provided in part 2.

- (2) Acting reasonably in an effort to accomplish the purpose of the appointment and without court authorization or confirmation, a conservator may do any of the following:
  - (a) Collect, hold, or retain estate property, including land in another state, until judging that disposition of the property should be made. Property may be retained even though it includes property in which the conservator is personally interested.
  - (b) Receive an addition to the estate.
  - (c) Continue or participate in the operation of a business or other enterprise.
  - (d) Acquire an undivided interest in estate property in which the conservator, in a fiduciary capacity, holds an undivided interest.
  - (e) Invest or reinvest estate property. If the conservator exercises the power conferred by this subdivision, the conservator must invest or reinvest the property in accordance with the Michigan prudent investor rule.
  - (f) Deposit estate money in a state or federally insured financial institution including one operated by the conservator.
  - (g) Except as provided in subsection (3), acquire or dispose of estate property, including land in another state, for cash or on credit, at public or private sale, or manage, develop, improve, exchange, partition, change the character of, or abandon estate property.
  - (h) Make an ordinary or extraordinary repair or alteration in a building or other structure, demolish an improvement, or raze an existing or erect a new party wall or building.
  - (i) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of a plat or adjust a boundary; adjust a difference in valuation on exchange or partition by giving or receiving consideration; or dedicate an easement to public use without consideration.
  - (j) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.
  - (k) Enter into a lease or arrangement for exploration and removal of a mineral or other natural resource or enter into a pooling or unitization agreement.
  - (l) Grant an option involving disposition of estate property or take an option for the acquisition of property.

- (m) Vote a security, in person or by general or limited proxy.
- (n) Pay a call, assessment, or another amount chargeable or accruing against or on account of a security.
- (o) Sell or exercise stock subscription or conversion rights.
- (p) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
- (q) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery. However, the conservator is liable for an act of the nominee in connection with the stock so held.
- (r) Insure the estate property against damage or loss or the conservator against liability with respect to third persons.
- (s) Borrow money to be repaid from estate property or otherwise.
- (t) Advance money for the protection of the estate or the protected individual, and for all expense, loss, or liability sustained in the estate's administration or because of the holding or ownership of estate property, for which the conservator has a lien on the estate as against the protected individual for an advance so made.
- (u) Pay or contest a claim; settle a claim by or against the estate or the protected individual by compromise, arbitration, or otherwise; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible.
- (v) Pay a tax, assessment, conservator's compensation, or other expense incurred in the estate's collection, care, administration, and protection.
- (w) Allocate an item of income or expense to either estate income or principal, as provided by law, including creation of a reserve out of income for depreciation, obsolescence, or amortization, or for depletion in a mineral or timber property.
- (x) Pay money distributable to a protected individual or the protected individual's dependent by paying the money to the distributee or by paying the money for the use of the distributee to the distributee's guardian, or if none, to a relative or other person having custody of the distributee.
- (y) Employ a person, including an auditor, investment advisor, or agent, even though the person is associated with the conservator, to advise or assist in the performance of an administrative duty; act upon the person's recommendation without independent investigation; and, instead of acting personally, employ an agent to perform an act of administration, whether or not discretionary.

- (z) Employ an attorney to perform necessary legal services or to advise or assist the conservator in the performance of the conservator's administrative duties. An attorney employed under this subdivision shall receive reasonable compensation for that employment.
  - (aa) Prosecute or defend an action, claim, or proceeding in any jurisdiction for the protection of estate property and of the conservator in the performance of a fiduciary duty.
  - (bb) Execute and deliver an instrument that will accomplish or facilitate the exercise of a power vested in the conservator.
  - (cc) Respond to an environmental concern or hazard affecting property as provided in section 5424.
- (3) A conservator shall not sell or otherwise dispose of the protected individual's real property or interest in real property without approval of the court. The court shall only approve the sale or other disposal of the real property or interest in real property if, after a hearing with notice to interested persons as specified in the Michigan court rules, the court considers evidence of the value of the real property or interest in real property and otherwise determines that the sale or other disposal is in the protected individual's best interest. [Petition For Approval of Sale of Real Estate, [PC 646](#), must be file with the probate court.]

A conservator is to observe the standard of care applicable to a trustee. MCL 700.5416. That standard of care is defined as what a prudent man would do when dealing with the property of another. The conservator is required to follow Michigan's Prudent Investor Rule. All decisions are to be made keeping in mind the best interests of the protected individual.

A conservator needs to consider the following information when deciding whether to use the protected individual's money for the support, education, care, or benefit of the protected individual or a dependent:

1. The total assets available, the probable length of the conservatorship, and the likelihood that the protected individual may be able to be self-sufficient at some time in the future.
2. The accustomed standard of living of the protected individual and/or his/her dependents.
3. Other money or resources used for the protected individual support. MCL 700.5425.

A conservator has broad authority to determine the appropriate level and payment of support, education, care and benefit to the protected person or a dependent. The conservator of a minor is to consider recommendations made by any parent or guardian. MCL 700.5425.

A conservator may pay money to a person, including the protected individual, to reimburse for an expense that might have been made by a conservator or in advance for a service rendered to

the protected individual if it is reasonable to expect the service will be performed and an advance payment is reasonable under the circumstances. MCL 700.5425.

If the estate is sufficient to provide for these distributions, the conservator may make gifts that do not exceed, in total for any year, 20 percent of the estate's annual income to charity and others that the protected person, other than a minor, might have been expected to make. MCL 700.5426.

Self-reliance of the protected individual should be encouraged. This may involve the protected individual being allowed to handle small sums of money. With court authorization, the protected individual may be allowed to handle part of his or her money. MCL 700.5407.

Any sale of assets that appears to be a conflict of interest, such as to the conservator or to anyone personally known by the conservator, may be voided by the court unless the court approves the transaction after notice as directed by the court. MCL 700.5421.

A conservator is responsible for the reasonable compensation for services performed by a visitor, guardian ad litem, attorney, physician, conservator, or special conservator appointed by the court. MCL700.5413. (A visitor is defined as an individual appointed by the court who is trained in law, nursing, or social work, is an officer, employee, or special appointee of the court, and has no personal interest in the proceeding.)

A conservator has the obligation to prepare and file federal, state, and local income tax returns for the protected individual. The fee charged to prepare the returns and any taxes due may be paid out of the protected individual's assets.

If a bond is set, the conservator is required to pay the bond premiums. This may be paid out of the protected individual's assets.

A conservator should set up a checking account to pay the bills of the protected individual. A conservator needs to keep records of all expenses paid by the conservator for the protected individual in case any of the payments are questioned by the interested persons, the court, or the guardian ad litem. A conservator may pay claims against the protected individual arising before or during the conservatorship upon the presentation of the claim which may be mailed to the conservator, or a Statement and Proof of Claim, [PC 579](#), may be sent to the probate court and a copy delivered to the conservator. If the conservator determines that the claim is valid, the claim may be paid by the conservator. A claim is considered allowed if the conservator does not disallow the claim by a written statement, Notice of Disallowance of Claim, [PC 580](#), mailed to the claimant within 63 days after the presentation of the claim. MCL 700.5429.

If it appears that the assets in the conservatorship will be exhausted before all claims can be paid, the conservator shall distribute the money for payment of claims in the following order:

1. Costs and administration of the conservatorship. (This could include fiduciary fees, attorney fees, guardian ad litem fees, and filing fees.)
2. Claims of the federal or state government. (This could include any taxes owed by the protected individual.)

3. Claims incurred by the conservator for the care, maintenance, and education that were previously provided to the protected individual or the protected individual's dependents. (This could include nursing home expenses, medical expenses, clothing, food, or educational expenses for the protected individual's dependents.)
4. Claims arising before the conservatorship.
5. Any other claim. MCL 700.5429.

#### **G. Taking possession of estate assets**

A conservator should gather and secure all assets of a protected individual as soon as appointed by the probate court. It is often important that a conservator move quickly to make sure individuals that may be exploiting the protected individual are not able to access the protected individual's assets, or that the protected individual does not remove assets that could be wasted. Upon the conservator's appointment, the court has made the determination that the protected individual is unable to manage his or her affairs, so the conservator must be prepared to begin securing all assets immediately.

A conservator should locate all bank accounts and transfer the accounts into the name of the conservatorship. Reviewing old bank statements of the protected individual will assist the conservator in locating any bank accounts in the name of the protected individual. All accounts should be transferred to accounts entitled, "John Doe, Conservator of Mary Jones, a Protected Individual." This language should be used on all assets that the protected individual owns when transferred to the care of the conservator, including stocks, bonds, annuities or other securities.

A conservator should locate all statements from brokerage accounts to determine what securities may be in the name of the protected individual. Often a brokerage firm may provide a copy of a recent statement detailing all of these securities.

Often the protected individual will have a safe deposit box that will contain important information that may be helpful for the conservator in locating all of the assets of the protected individual.

The conservator will need to locate any and all real estate in the name of the protected individual. The conservator will often need to determine whether to leave any real estate vacant, rent the property or allow individuals to live in the home in lieu of the property remaining vacant, until the protected individual returns or the property is sold. Sometimes this involves removing individuals from the real estate which may require legal assistance if the individuals refuse to leave the premises.

The conservator may need to decide what to do with the contents of a house if the protected individual is moved out of the house and into another location. Sometimes this can be a difficult and daunting task. It may be difficult to inventory all of the personal property of a person collected over their lifetime. An important factor that should always be considered in making a determination as to whether to store or sell personal property, is whether the protected individual may recover and return to the home and want his or her personal possessions, or whether it is unlikely the protected individual will ever be able to return home.

When securing the personal property of the protected individual who has lived in a home for many years, it is important to thoroughly search the house for cash and other valuable items or documents that may be hidden in objects considered of little or no value. Cash has been located in walls, bottles, behind dressers, in attics, and other places.

The conservator will need to determine what vehicles the protected individual may own and whether the protected individual will be allowed to continue driving. It is often a very difficult decision to take away a protected individual's vehicle. The Secretary of State may be helpful in making this determination without the fault being placed on the family member who may be trying to maintain a positive relationship with the protected individual.

A conservator will need to determine what income the protected individual receives and may be entitled to. This may include social security benefits, veteran's benefits, tax refunds, land contract payments, interest, dividends, Medicare payments, and rent and/or lease payments. Any income will need to be directed into accounts under the control of the conservator.

A conservator should locate any life insurance policies and determine what cash surrender value may be available if needed by the protected individual.

A conservator should determine whether any pre paid funeral arrangements exist.

#### **H. Setting up a restricted account**

Most probate courts require that the money in a minor conservatorship be placed into a restricted account. The Order Appointing Conservator, [PC 640](#), and the Letters of Conservatorship, [PC 645](#), will have language similar to the following example:

IT IS FURTHER ORDERED that all funds are to be deposited by the fiduciary in interest-bearing savings account(s) (not checking account) or certificates(s) of deposit with a licensed banking institution or savings and loan association upon condition of no withdrawals, transfer or redemption, except upon the written order of the \_\_\_\_\_ County Probate Court; which restrictions shall include all interest or dividends accrued, payable or accumulated, and wherein all passbooks, certificates of deposit or other documents evidencing the existence of this account shall be clearly imprinted thereon: **“No withdrawals, transfers or redemption without written order of the \_\_\_\_\_ County Probate Court.”**

IT IS FURTHER ORDERED that, subject to the same restrictions and obligations of the foregoing, funds may be deposited in a brokerage house account protected by S.I.P.C. if an authorized officer of the firm, in writing, accepts the restrictions and obligations and signs the verification of deposit.

IT IS FURTHER ORDERED that the fiduciary shall file with this court a Verification of Funds on Deposit, and acknowledgement of this restriction on the account within five (5) days from this date or within five (5) days after funds are received.

IT IS FURTHER ORDERED that the conservator shall file with this court a Verification of Funds on Deposit, each and every year, on or before the anniversary date of this appointment.

IT IS FURTHER ORDERED that, on termination of the protected person's minority, the conservator shall file, with this court, a Final Account, which shall be served on the protected person before he/she receipts for the balance on hand.

IT IS FURTHER ORDERED that the assets are not available for food, clothing, shelter, or medical care covered by Medicaid.

The court may require the attorney for the conservator to sign an Agreement in Regard to Use of Verification of Funds on Deposit with the following sample language:

I, the undersigned, being the attorney for the conservator of the above-mentioned estate, agree that in consideration of the court allowing the use of a nominal bond or acceptance of appointment rather than a corporate surety bond, I, or someone from the firm on my behalf, will do the following:

1. Accompany the conservator to the bank or other financial institution to see that the funds are deposited in a conservatorship account.
2. See that the Verification of Deposit is properly filled out and executed by the financial institution and conservator.
3. See that the properly executed Verification of Deposit is delivered or mailed to the court:

\_\_\_\_\_ by \_\_\_\_\_  
Date

\_\_\_\_\_ Within five (5) days after funds are received by the conservator.

Date: \_\_\_\_\_  
Signature of Attorney

Failure to timely file the verification of deposit will result in the suspension of the fiduciary.

If a restricted account is ordered by the court, as soon as the funds are received by the conservator, they should be placed into a restricted account entitled: Mary Doe, Conservator of John Doe, Minor.

The court may require the conservator to file Annual Accounts, [PC 583](#) or [PC 584](#), and/or a Verification of Funds on Deposit. If annual accounts are required to be filed, the court may also require that a hearing be scheduled yearly or as determined by the probate judge. If a hearing is scheduled to allow (approve) the account, interested persons are to receive notice of the hearing

unless a Waiver/Consent, [PC 561](#), is on file for each interested person, specifically waiving their right to notice of the hearing to allow the account and consenting to the allowance of the account by the court.

## **I. Applying for Medicaid or Social Security Benefits**

### Introduction

In managing a protected individual's affairs, a conservator may need to apply for government benefits for the protected individual. A conservator should always consider whether any such benefits would be available to their protected individual, and should pursue eligibility for benefits where eligibility is possible and where the benefit would provide a needed benefit to the protected individual and/or help protect the protected individual's other assets. These government benefits may include benefits that are available through the Social Security Administration, benefits available through the Veterans Administration, and health insurance benefits such as Medicare and Medicaid.

Which types of government benefits a protected individual may be able to receive will depend on several factors, including the age, health and financial status of the protected individual.

### Social Security Benefits

Social Security benefits can be obtained through the Social Security Administration office in the community or region where the protected individual resides. There are several types of Social Security benefits that a protected individual may apply for, including Social Security Retirement Income (available beginning at age 62 to U.S. citizens who have paid Social Security taxes during lives), Social Security Disability Income (available to U.S. citizens who have paid Social Security taxes during lives, who are under age 62, and who are disabled), and Supplemental Security Income (available to people who are disabled, and who either have not paid Social Security taxes, or who receive Social Security Retirement or Disability benefits that are below a certain minimum amount). Children of deceased or disabled individuals may also be able to obtain income benefits through the Social Security Administration.

### Medicare and Medicaid Health Insurance

Medicare and Medicaid are two different health insurance programs with differing eligibility requirements. A protected individual may be eligible for either or both of these programs.

A protected individual age 65 or older, and younger protected individuals who are disabled, may be eligible for Medicare health insurance benefits. Medicare health insurance benefits can be applied for through the Social Security Administration.

A protected individual who is age 65 or older, blind or disabled, and who also meets strict financial eligibility requirements, may be eligible for Medicaid health insurance through the State of Michigan Department of Human Services. Medicaid benefits may be particularly important for a protected individual with high medical costs or who needs to be in a nursing home. Every county has an office of the Department of Human Services, and a conservator

interested in obtaining Medicaid assistance should begin by contacting the Department of Human Services in the county where the protected individual resides.

### Veteran's Benefits

For protected individuals who served in the armed forces, or who are married to or are the widows or widowers of veterans, additional health insurance and pension benefits may be available through the United States Department of Veteran's Affairs (also known as the Veteran's Administration). Every county has a Veteran's Service Officer who works for the Department of Veteran's Affairs and who is trained to help veterans identify benefits they or their family members are entitled to receive.

### **J. Record Keeping**

One of the most difficult tasks a conservator must perform is keeping good records of how the funds of the protected individual are used. If a conservator does not keep good records, the conservator will not be able to balance the account at the end of the year. If a conservator cannot balance an account, the court can remove the conservator and possibly appoint a professional conservator who must be paid from the funds of the protected individual.

The conservator must keep a record of all income and expenses of the protected individual. The simplest way to keep good records is to write all transactions in a check register, fully and legibly describing all income such as social security payments and expenses such as nursing home costs. Also, the conservator must keep copies of all bank statements, canceled checks, and receipts. The checking account must be balanced every month. If a bank does not provide copies of canceled checks, the conservator should find a bank that will. If a conservator does not write a check for an expense, the conservator should get a receipt. In general, a conservator should never use cash to pay for an expense of the protected individual. If paying with cash is unavoidable, be sure to obtain adequate documentation to verify the payment was made, including who the payment was made to, the amount of the payment, and the service or product obtained with the payment. If the payment is a cash allowance given to the protected individual, have the protected individual sign a dated receipt.

A more complicated way to keep good records is to use a computer program, such as Quicken. Although using a computer program may be more difficult initially, the annual account is much easier to complete as the information is readily available.

### **K. Prudent Investor**

If the protected individual's assets and income are sufficient to pay existing debts and to provide for the protected individual's current needs, a conservator may invest or reinvest any excess assets or income. When investing, a conservator must exercise reasonable care, skill, and caution, balancing the risk and return of all investments. In many cases, this will require the conservator to diversify the investments – for example, investing in a mix of stocks, bonds, and mutual funds. The conservator must focus on the purpose of the conservatorship and the protected individual's future needs. A conservator may hire an investment counselor or financial planner to assist him or her; however, reasonable care, skill, and caution must be used in selecting the counselor or planner and in reviewing the counselor's or planner's investment

advice and decisions. Hiring an investment advisor does not relieve the conservator of the duty to oversee the investments.

#### **L. What are allowable expenses of the protected individual's estate?**

A conservator has broad authority to determine the appropriate level and payment of support, education, care, and benefit to the protected person or a dependent. The conservator of a minor is to consider recommendations made by any parent or guardian. MCL 700.5425.

A conservator may pay money to a person, including the protected individual, to reimburse for an expense that might have been made by a conservator or in advance for a service performed for the protected individual if it is reasonable to expect the service will be performed and an advance payment is reasonable under the circumstances. MCL 700.5425.

If the estate is sufficient to provide for these distributions, the conservator may make gifts that do not exceed, in total for any year, 20 percent of the estate's annual income to charity and others that the protected person, other than a minor, might have been expected to make. MCL 700.5426.

Self-reliance of the protected individual should be encouraged. This may involve the protected individual being allowed to handle small sums of money. With court authorization, the protected individual may be allowed to handle part of his or her money. MCL 700.5407.

A conservator is responsible for the reasonable compensation for services performed by a visitor, guardian ad litem, attorney, physician, conservator, or special conservator appointed by the court. MCL 700.5413. (A visitor is defined as an individual appointed by the court who is trained in law, nursing, or social work, is an officer, employee, or special appointee of the court, and has no personal interest in the proceeding.)

A conservator has the obligation to prepare and file federal, state, and local income tax returns for the protected individual. The fee charged to prepare the returns and any taxes due may be paid out of the protected individual's assets.

If a bond is set, the conservator is required to pay the bond premiums. This may also be paid out of the protected individual's assets.

A conservator should set up a checking account to pay the bills of the protected individual. A conservator needs to keep records of all expenses paid the conservator for the protected individual in case any of the payments are questioned by the interested persons, the court, or the guardian ad litem. A conservator may pay claims against the protected individual arising before or during the conservatorship upon the presentation of the claim which may be mailed to the conservator, or a Statement and Proof of Claim, [PC 579](#), may be sent to the probate court and a copy delivered to the conservator. If the conservator determines that the claim is valid, the claim may be paid by the conservator. A claim is considered allowed if the conservator does not disallow the claim by a written statement, Notice of Disallowance of Claim, [PC 580](#), mailed to the claimant within 63 days after the presentation of the claim. MCL 700.5429.

If it appears that the assets in the conservatorship will be exhausted before all claims can be paid, the conservator shall distribute the money for payment of claims in the following order:

1. Costs and administration of the conservatorship. (This could include fiduciary fees, attorney fees, guardian ad litem fees, and filing fees.)
2. Claims of the federal or state government. (This could include any taxes owed by the protected individual.)
3. Claims incurred by the conservator for the care, maintenance, and education that were previously provided to the protected individual or the protected individual's dependents. (This could include nursing home expenses, medical expenses, clothing, food, or educational expenses for the protected individual's dependents.)
4. Claims arising before the conservatorship.
5. Any other claim. MCL 700.5429.

Sometimes a conservator must consider spending down the protected individual's funds to purchase exempt assets so that the individual will qualify for government entitlements.

A minor's funds may not be used to discharge a parent(s) obligation to support the child. A minor's money may not normally be used for the payment of family expenses even though the minor might benefit from the food, utilities, shelter or clothing. Parents have an obligation to supply basic food, shelter, clothing, education, and medical care for their children. Most probate courts will require the minor's funds be placed into a restricted account. Probate judges are very conservative when approving expenses that parents have an obligation to provide for their children. If funds are needed, a Petition and Order, [PC 586](#), must be filed with the probate court to request an order allowing money to be withdrawn from the restricted account. Examples of withdrawals that may be approved include requests for money to purchase or pay for computers, dental/orthodontic treatment, or medical treatment not covered by insurance or Medicaid.

A conservator may not make gifts on behalf of a minor. This authority is allowable if the protected individual is an adult but is strictly prohibited when the protected individual is a minor. MCL 700.5426.

#### **M. Conflicts of Interest**

A conservator must manage and invest the protected individual's assets *only* to benefit the protected individual, not the conservator. A conservator must not personally profit from the purchase, sale, or transfer of the protected individual's property. A conservator must not do any of the following without prior court approval:

- Deposit the protected individual's money in an account containing the conservator's money;
- Loan the protected individual's money to the conservator or another individual;
- Sell anything to or buy anything from the protected individual;
- Charge the protected individual or pay the protected individual rent or room and board; or
- Invest the protected individual's money in any enterprise in which the conservator or his or her family has a financial interest.

## **O. Notification Duties**

In addition to all of the general responsibilities that the conservator has toward the protected individual, the conservator also has the duty to provide notification to the probate court of certain information.

1. The conservator must keep the probate court and all interested persons informed in writing within fourteen (14) days of any change in the address of the person subject to the conservatorship. MCL 700.5215.
2. The conservator must keep the probate court and all interested persons informed in writing within seven (7) days of any change of the conservator's address. Keeping this information current with the probate court is important because any notice sent by the probate court to the last known address of the conservator is treated as a valid notice to the Conservator. MCR 5.205.
3. If an individual who is subject to a conservatorship dies, the conservator must give written notification to the probate court within fourteen (14) days of the individual's date of death. If accounts are required to be filed with the probate court, a final account must be filed within fifty-six (56) days of the date of death. MCR 5.409 (F).

## **O. Inventory**

### What is an Inventory?

An inventory is a list of things owned by the protected individual, along with the estimated value of each of those items. The inventory is prepared by the conservator so that the protected individual, the court, and other interested persons are aware of what assets the conservator is responsible for managing.

A conservator is required to file an inventory within 56 days after they are appointed.

A conservator's inventory must identify all of the assets that are subject to the conservatorship. An inventory would identify all types of assets, including such things as houses, bank accounts, cars, and personal belongings. Unless the court specifically limits the conservator's authority to only some of the protected individual's assets, the conservator's inventory must list all of the assets in which the protected individual has an ownership interest. For each item the conservator must indicate the estimated value of the asset.

### The Date to Use to Value the Assets

The values that the conservator lists on the inventory are the values for the assets as of the date the conservator was appointed. So, for instance, if at the time the conservator was appointed, the protected individual had a bank account with a balance of \$200.00, but the balance of the account was only \$100.00 when the conservator filed the inventory, the conservator would report a value of \$200.00 for that bank account.

## Identifying and Valuing Assets and Debts on an Inventory

Preparing an inventory which accurately identifies the protected individual's assets and placing a value on those assets can be tricky. The process will depend on the type of asset the protected individual owns. Whether a debt is reported will depend on the type of debt the protected individual has, and whether the debt is considered an encumbrance.

### Debts or Encumbrances

Most debts are not reported on the inventory. However, if an asset is encumbered, the value of that asset will reflect the existence of that obligation (or lien). An asset is encumbered if there is a debt associated with the asset, and the asset could not be sold without first paying off that debt. For instance, the value of a house that has a mortgage on it is reported as the value of the house minus the outstanding principal balance of the mortgage. Similarly, a car which was purchased with a car loan that has not been paid off, and where the name of the bank or other creditor appears as a secured party on the title to the car, is an encumbered asset. Accordingly the value of the car listed on the inventory would be the value of the car minus the outstanding balance of the car loan. In each case it would be correct to identify the asset on the inventory, and indicate with a notation that the value of the asset has been reduced by the amount of an encumbrance, and to identify the nature of the encumbrance.

For example:

Personal Property and Real Estate	Estate's Interest
House at 777 West Main St., Jonesville, Michigan; reduced by an outstanding mortgage balance owed to American Bank in the amount of \$100,000. The legal description of this property is: Lot 6 of the Smith Subdivision, as recorded in Plat 8, City of Jonesville, Hill County, Michigan. The value attributed to this property is based on an appraisal prepared by Appraisals of Michigan Inc., 555 Main St., Jackville, Michigan 11227.	\$75,000
2002 Buick Century, reduced by outstanding balance of car loan through Michigan Credit Union in the amount of \$6,000.	\$5,500

Notice that unsecured debt is not reported on an inventory. So, for instance, if a protected individual owes money on a credit card, the amount of that debt does not appear on the inventory, even if the credit card was used to buy assets that are identified on the inventory.

### Real Estate

Real estate means land and structures (such as houses and barns) that are attached to the land. In preparing the inventory, a conservator needs to identify all real estate owned by the protected individual, and identify its value. Each separate parcel of land should be identified and valued separately on the inventory.

To complete an inventory that includes real estate, the conservator will need to obtain a copy of the most recent deed and/or other records that contain the legal description of the real estate and the names of the owners. If the property has other owners, the conservator will need to identify the portion (%) belonging to the protected individual along with the corresponding value of that portion.

In some cases, the conservator can use property tax statements (twice the state equalized value) to value the real estate for inventory purposes. However, the conservator may choose to have real estate appraised to establish its value. When reporting the value of real estate it is good practice to indicate on the inventory the basis for the figure provided (such as stating “twice the SEV” or “appraised”). If the property is appraised, the conservator must include the name and address of the appraiser, and may choose to provide each interested person with a copy of the appraisal along with the inventory.

As discussed above, the value of real estate that is subject to a mortgage is reduced by the outstanding principal balance owing on the real estate. When reporting the value of encumbered real estate, the conservator should indicate on the inventory that the value listed is the value of the real estate reduced by the balance owing on a mortgage.

When valuing real estate, confusion can arise regarding mobile homes. Generally, mobile homes are not real estate and are reported as a separate item on the inventory, even where the protected individual owns a mobile home that is sitting on land that the protected individual owns. This is because the mobile home has its own title, and can be sold and moved to another piece of land. However, if a mobile home has become permanently affixed to the land, and the value of the mobile home is included in the property tax assessment and/or appraisal of the real estate that is used on the inventory, the mobile home is not listed as a separate asset but is treated as part of the real estate.

### Personal Property

Assets owned by the protected individual that are not real property are personal property. The value of personal property may be obtained through various means, including, in some cases involving personal property of moderate value, a good faith estimate by the conservator. If the value of personal property used is taken from an appraisal, the conservator must include the name and address of the appraiser on the inventory, and may choose to provide each interested person with a copy of the appraisal along with the inventory.

### Motor Vehicles, Mobile Homes, and Recreational Vehicles

Motor vehicles (such as cars, trucks, tractors and motorized equipment), boats, recreational vehicles, and mobile homes must be identified and valued. Each of these assets should have a certificate of title which identifies the model and age of the asset. With this information, as well as knowing the condition of the asset, a conservator should be able to obtain an estimated value of the assets from a dealer or from an internet website which provides such information. The conservator should use the “fair market value” of the asset rather than the “trade-in” or “wholesale” value.

### Bank, Credit Union and Savings and Loan Accounts

Cash accounts with a bank, credit union, or savings and loan are the easiest assets to value. The conservator should be able to obtain a statement from the institution where the funds are on deposit indicating the balance in the account as of the date of the conservator's appointment. A conservator should identify each account separately on the inventory.

### Investment Accounts

If the protected individual has an account with an investment company, the conservator will need to obtain a statement for each account, indicating the value on hand in the account as of the date of the conservator's appointment. It is usually not necessary for the conservator to list the assets held inside the account as separate assets. If the protected individual has investment accounts with more than one brokerage company, the conservator must list each such account separately on the inventory.

### Retirement Accounts

Many protected individuals will have accounts that represent retirement funds. These are funds on which income taxes have not been paid. These accounts may be referred to as I.R.A. (individual retirement accounts), 401k, or 457 accounts. Like bank accounts and investment accounts, values for these assets can normally be obtained for the appropriate date from the institution that holds the account.

Notice that if an investment account includes both retirement accounts as well as other (non-retirement) investments, it is normally not necessary to separately identify the retirement accounts. They can be reported as being part of the investment account.

### Stocks, Bonds and Investments held outside of accounts

A protected individual may own stocks, bonds, and other investments that are not part of an investment account. In such circumstances, the conservator will have physical possession of the stock certificate or bond. These assets must be identified on the inventory and valued as of the date of appointment. The value of these assets can usually be obtained on the internet or from a broker. For bonds, the value listed is the fair market value and not the face value of the bond. The value of United States Savings Bonds can be obtained on the internet or at most banks and credit unions.

### Life Insurance and Annuities

Life insurance and annuities owned by the protected individual must be listed as assets if they have a "cash surrender value." Some types of insurance, such as term life insurance policies and death benefits that are provided as a retirement benefit by employers or former employers of the protected individual, do not have a cash surrender value and, therefore, do not need to be identified on the inventory. Similarly, annuities that have a cash surrender value need to be listed on the inventory; whereas annuities that have been irrevocably converted into a series of payments and cannot be cashed are not listed as assets on an inventory.

## Personal Belongings

Almost every protected individual is going to have personal belongings. In some situations, this could be only the protected individual's clothing, toiletries, and a small amount of furniture. In other situations, the protected individual may have valuable pieces of jewelry, antiques, guns, tools, and art. In all cases, the conservator needs to identify the protected individual's personal belongings and offer a realistic estimate of what the property is worth. In circumstances where the personal belongings of the protected individual have little value, it may be sufficient for the conservator to lump all of the assets together and include personal belongings as an inventory item and offer a best guess estimate of what all such belongings taken together would be worth if sold at a garage sale. In other cases, in order to accurately detail the nature of the protected individual's assets, it may be necessary to include several lines on the inventory on which different types of personal belongings are identified and valued separately. Where a protected individual has personal belongings with significant value, the conservator may choose to have some of those assets appraised in order to determine their value.

## Collections

Valuable collections should be identified and valued separately on the inventory. Collections of little value can be included as part of the broader category of personal belongings.

## Jointly owned assets

Assets may belong to more than one person. Generally, the protected individual's interest should be identified to the extent of his or her ownership interest (1/2, 1/3, etc.). Therefore, if the protected individual owns a house jointly with his or her spouse, the inventory would state that the protected individual owns a 50% interest in the real estate, and 50% of the value that house would be reported on the inventory as the value of the protected individual's interest.

For example, using the house owned jointly between a husband and wife, where one of them is the protected individual, assuming the house has a value of \$100,000:

Personal Property and Real Estate	Estate's Interest
50% interest in house located at 777 West Main St., Jonesville, Michigan. The value attributed to this property is based on an appraisal prepared by Appraisals of Michigan Inc., 555 Main St., Jackville, Michigan 11227. The legal description of this property is: Lot 6 of the Smith Subdivision, as recorded in Plat 8, City of Jonesville, Hill County, Michigan.	\$50,000

Often, assets (especially bank accounts) may be titled to indicate more than one owner but the funds in the account really belong to just one of the named individuals. The other name(s) may have been placed on the account for a reason such as allowing them to help pay bills. It is important that a conservator determine the reason for such joint arrangements, and determine whether the joint ownership arrangement reflects a true shared ownership, or whether it served some other purpose. The conservator should report on the inventory the protected individual's actual ownership interest in the account, even where that interest may be more or less than what the protected individual would own as reflected by the number of persons listed as owners.

For example, if a protected individual had \$10,000 in a bank account on which he had placed the names of two of his children as joint owners, but everyone agrees that all of the funds in the account came from the protected individual, and that the names of the children were added as a convenience to help the protected individual with paying bills, the account would be identified as an asset, and the entire value of the account (\$10,000) would be listed.

### Requirements for serving the Inventory

At the same time that the conservator files the inventory with the court (which can be done by mailing the original to the court), copies of the inventory must be given or sent to all of the interested persons. It is the conservator's responsibility to make sure all interested persons receive copies of the inventory and the proof of service is filed with the court demonstrating to the court that this obligation was met.

The interested persons are:

1. The protected individual, if the protected individual is 14 years-old or older;
2. A creditor of the protected individual who has filed a claim with the court and whose claim has not been paid or otherwise discharged;
3. The presumptive heirs of the protected individual who would be:
  - a. A spouse of the protected individual if the protected individual has a spouse;
  - b. Each of the living children of the protected individual;
  - c. If a protected individual had a child who has predeceased the protected individual, each of the children of that deceased child; and if a child of a deceased child is also deceased and has left children, those children would also receive copies;
  - d. If the protected individual has no spouse or descendants, the parents of the protected individual;
  - e. If the protected individual has no spouse, no descendants and no parents, the conservator should consult with an attorney or the court to determine who is entitled to notice.

If interested persons have previously notified the court that they are represented by attorneys with respect to the conservatorship, the inventory should be sent to those interested persons' attorneys and not to the interested persons directly.

### **Q. Account**

MCR 5.310(C)(2) and MCR 5.409(C)(D) (E) and (F) govern accounts in a conservatorship. The form to use for the account is either [PC 583](#), Account of Fiduciary, Short Form, or [PC 584](#), Account of Fiduciary, Long Form. You should use the long form if you dispose of assets during the accounting period.

## Annual

Unless the court orders otherwise, an accounting of what has occurred in the conservatorship estate is due every year. The accounting period begins on the date the Letters of Conservatorship (Letters) are issued and ends one year later. The account is to be filed with the court no later than 56 days after the end of the accounting period.

## Interim

The court may order that the conservator file an accounting at a time that is different than the regular reporting period. This is called an interim account. The court may request the interim account because of various reasons such as complaints from interested persons. An interim account is due at the time ordered by the court.

## Final

A final account is due when a conservator's authority ends. If the conservatorship ends because of death of the individual under conservatorship, the conservator is to give notice of the death to the court within 14 days, and the final account is due within 56 days. If the conservatorship ends because the court suspends the powers of the conservator or the court appoints another conservator, the account is due within the time stated in the court order or within 56 days, whichever time is shorter.

## Statements of fiduciary and attorney fees

If attorney fees or conservatorship or guardianship fees are requested or listed as an expense on an account that is filed with the court, an itemized list of the requested or paid fees must be attached. The fiduciary must list the services performed along with the fees charged for performing those services.

## Proof of Service

A Proof of Service, [PC 564](#), is to be filed with the court showing that the conservator served a copy of the account on all of the interested persons. The proof of service is to be filed with the court by the time the account is due, or if the account is set for a hearing, by the date of the hearing. The proof of service must include a description of the papers served, the date of service, the method of service, and who received service.

Since Michigan law places the responsibility on the interested persons to review the annual accounts and to make any objections to the court, it is important that the proof of service is accurate and filed when due with the court. Failure to file the proof of service with an account could result in a notice of deficiency and further action by the court.

## Changing accounting period (not to exceed 12 months)

If the conservator or guardian would like to change the date the account is due to correspond with the end of the month, or for another reason, notice must be filed with the court that the accounting period will change. The change in the accounting period cannot

result in an account that covers a period of more than 12 months. Therefore, a change in the accounting period to correspond with the end of the month will need to be a month prior to the issuance of the Letters rather than the end of the month in which the Letters were issued.

#### Petition to allow account and notice of hearing

A conservator may petition to have an account allowed. Allowed is the word used when the court approves the account. This requires the court to hold a hearing on the account. Notice of the hearing must be sent to all interested persons, allowing them the opportunity to object. If the interested persons are willing, they can file a Waiver/Consent, [PC 561](#), indicating they waive notice of the hearing and consent to the allowance of the account. The advantage of having an account heard and allowed is that interested persons cannot later object to something on the allowed account unless they can show fraudulent activity.

#### Duty to keep records for review by court or interested persons

A conservator should keep records of all activities of the conservatorship. All receipts should be kept along with any other documentation regarding the spending of conservatorship money or change in any asset. All bank accounts should be retained, as well as all papers regarding the sale or purchase of an asset. These receipts and documents must be made available for examination by any interested person who requests to see them or as required by the court.

#### **Q. Modification or termination of conservatorship**

The protected individual, the conservator, or another interested person can petition to modify or end the conservatorship. A petition to modify the conservatorship may involve a change in the powers of the conservator, such as filing an annual account versus using a restricted account. A petition to modify the conservatorship may also involve removing the current conservator and replacing the conservator with another person. A petition to terminate a conservatorship could be filed for the reason that the protected individual can now handle his/her own finances, the protected individual has moved out of state, or a minor has reached the age of 18. Before a conservator can be discharged, the conservator must file and obtain court approval of a final account and give proof to the court that the assets have been properly transferred.

#### **R. Where to go for help**

Conservatorship proceedings are legal proceedings and they can be complicated. While there is no requirement that a party be represented by an attorney in a conservatorship case, most people find attorneys to be very helpful. A good starting point for basic questions is a pamphlet published by the Michigan State Court Administrative Office called “What You Need to Know Before Filing a Petition to Appoint a Conservator,” [PC 667](#).

To locate an attorney to answer conservatorship questions:

1. Contact the local bar association. Bar associations are organized throughout Michigan by county or by city and can be found in the telephone book or on the internet. Most bar associations provide some form of referral service to connect individuals with an attorney who specializes in handling conservatorship cases.
2. The Michigan Supreme Court's web page, [www.courts.michigan.gov](http://www.courts.michigan.gov), provides links to several lawyer locator services including the American Bar Association at [www.abanet.org/legalservices/lris/directory](http://www.abanet.org/legalservices/lris/directory), Attorney Find at [www.attorneyfind.com](http://www.attorneyfind.com), and Martindale Hubbell at [www.martindale.com](http://www.martindale.com).
3. Contact the local probate court to see if they distribute a list of the attorneys who regularly accept court appointments to handle conservatorship cases.

To get information about a conservatorship so you can represent yourself:

1. Contact the local probate court about the availability of training programs for conservators.
2. A website for answers to frequently asked conservatorship questions is <http://comnet.org/detroitdernet/private/answers/legal/guardian.htm>. This site also addresses the differences between a guardianship and a conservatorship.
3. A section of the webpage for the Michigan Supreme Court compiles all of the forms that are used in conservatorship proceedings. These forms may be filled in on line and printed or printed blank to be completed by hand or with a typewriter. The forms cannot be filled in on line and saved. This link is:  
<http://www.courts.michigan.gov/scao/courtforms/probate/gpindex.htm#guard>.
4. Many probate courts operate websites with useful information. The following are links to a few of them:

<http://www.co.oakland.mi.us/probate/faq/conservatorship.html>  
[http://www.ioniacounty.org/Probate/Probate\\_whatwedo.asp#pcj](http://www.ioniacounty.org/Probate/Probate_whatwedo.asp#pcj)  
<http://www.wcpc.us/services/minorgc.HTM>  
<http://courts.co.calhoun.mi.us/probate.htm>

#### **S. Possible court actions for non-compliance**

Court rules which govern actions for fiduciaries that are delinquent in performing their duties are MCR 5.203 and MCR 5.144. Based on the court rules, the action which may be taken by a probate court whenever a conservator is delinquent is as follows:

1. Notice of Deficiency -- sent to fiduciary, attorney, and surety.
  - A. The court may set a conference to correct the deficiency.

- If the conference is held, a Memorandum of Conference to Correct Deficiency (PC 601) must be given to those present at the conference and mailed to the fiduciary if the fiduciary is not present.
    - The court may allow up to 28 days from the date of the conference to correct the deficiency.
  - B. If no conference is set, the court may allow 28 days for the fiduciary to correct the deficiency.
- 2. The court may grant a 28 day extension for good cause. Most courts require a written request stating the reasons the extension is requested.
- 3. Suspension of Fiduciary -- if a fiduciary fails to correct a deficiency within the time allowed:
  - The notice of suspension is sent to the fiduciary, attorney, surety, and interested persons.
  - The court may appoint a special fiduciary to investigate, report to the court, or take any other action requested by the court, up to and including filing a petition to have someone else appointed as conservator.
- 4. Administrative Closing -- The court may administratively close a file if no action is taken by the fiduciary or any other interested person within 28 days of the suspension of the fiduciary. (This is not recommended by SCAO without investigation to insure that the protected individual's assets are intact and protected.)

**T. Frequently Asked Questions**

What are the filing fees?

Conservatorship (Adult or Minor).....	\$150.00
Letters of Authority.....	\$10.00 for the first page and \$1.00 for additional pages (per copy)
Annual Account.....	\$20.00
Petitions to terminate or modify conservatorship.....	\$20.00

### What is the difference between a guardian and a conservator?

The guardian makes decisions about the person, such as medical or housing decisions, and the conservator makes decisions about the property or the finances of the person. A guardian and a conservator can be the same person or institution or they may be different. For example, a guardian could be a person and a conservator could be a trust company or bank.

### How are conservators appointed?

A conservator may be appointed by a probate judge after a petition is filed in the probate court. The petition may be filed by anyone interested in the well being of the adult or minor.

When the petition is filed, a hearing will be scheduled. In addition, the court will appoint a *guardian ad litem* to investigate the situation and make a recommendation to the court prior to the hearing.

On the date of the hearing, the petitioner and anyone else who wants to take part in the hearing goes before the judge and explains the need for a conservator. The judge will decide whether to appoint a conservator.

The person who is appointed must file an Acceptance of Appointment, [PC 571](#), and may also be required to file a bond to protect the assets. After filing the Acceptance of Appointment (and bond, if required), Letters of Authority (Letters) will be issued to the conservator. The Letters give the conservator the right to perform certain duties. If the court restricts the authority of the conservator, the restrictions will be listed on the Letters.

### Where to file a petition for the appointment of a conservator?

In the probate court for the county where the minor or adult resides (even if they had a guardian appointed for them in another place).

If the individual that needs protection does not live in Michigan, in the probate court for the county where their property is located.

### What are the duties of a conservator?

1. Within 56 days of being appointed, the conservator must file an Inventory. The Inventory is a listing of all assets of the protected individual. Assets may consist of real estate, stocks, bonds, certificates of deposit, savings and checking accounts, personal belongings, and everything in which the protected individual has an interest.
2. It is the duty of the conservator to care for and preserve all of the assets of the protected individual and to be present at any legal proceeding. In a conservatorship case for a minor the assets of the minor should not be used or spent by the conservator. If the conservator feels that some extraordinary need exists to justify a withdrawal of funds from the minor's account, the conservator may file a petition to withdraw funds with the probate court, and schedule it for a hearing.

3. The conservator must keep careful records of all of the protected individual's income and disbursements/expenses. The conservator must keep the protected individual's assets separate from his or her own assets and never borrow or loan assets of the protected individual.
4. It is the duty of the conservator to file an Annual Account each year within 56 days after the anniversary date of the conservator's appointment. A copy of the account must be given to the adult or minor and the interested persons listed on the conservatorship petition.

#### Do I need an attorney?

Please seek advice from an attorney if you have additional questions.

#### How much time should I plan on spending at the court to open a conservatorship?

This depends on the probate court where the conservatorship petition is filed. Contact the court where the petition will be filed for more information. See the [Directory of Trial Courts](#) for the name, phone number and, if applicable, e-mail and/or website address for each probate court in Michigan.

#### How do I get certified copies of court documents?

Check with the probate court handling the conservatorship. See the [Directory of Trial Courts](#) for contact information.

#### When can a conservator be appointed for an adult?

A conservator may also be appointed if the person is unable to manage his or her property or finances effectively.

#### Who can file to have a conservator appointed for an adult?

Any person interested in the protection of the adult's assets, including someone who would be adversely affected by the lack of proper management of the adult's property or finances.

#### When may an adult conservatorship be terminated?

Anyone, including the protected individual, may file a petition to terminate the conservatorship or to have a different conservator appointed. With the court's permission, the conservator may resign. When the protected individual is no longer incapacitated or dies, the court should be notified immediately, so that the conservatorship can be ended and the court's case closed. Before the conservator can be discharged, a final account must be filed and approved by the court, and the court will need to be satisfied that the protected individual or his or her estate has received whatever assets remain.

Are there alternatives?

For questions about what services or procedures may be available that might make a conservatorship unnecessary, call the Commission on Aging [(517) 373-8230], Department of Mental Health [(517) 335-4076], and/or Department of Human Services [(517) 373-2035].

When may a conservator be necessary for a minor?

When a minor owns property or needs representation in a legal action, the minor may need a conservator.

Who can file to have a conservator appointed for a minor?

A minor who is at least 14 years old or any person interested in the protection of the minor's assets, including someone who would be adversely affected by the lack of proper management of the minor's property or finances.

When is a conservator for a minor not needed?

When a minor is entitled to receive money or personal property that does not exceed \$5,000 per year, the money or property may be given to (1) the minor, if he/she is married; (2) the person who resides with and has the care and custody of the minor; (3) the minor's guardian; or (4) a state or federally insured financial institution holding a savings account in the minor's sole name with notice of the deposit to the minor.

When may a minor conservatorship be terminated?

Anyone, including the minor who is at least 14 years of age, may file a petition to modify the conservatorship or to have a different conservator appointed. With the court's permission, the conservator may resign. When the minor reaches 18 years of age or dies, the court should be notified so that the conservatorship can be ended and the court's case closed. Before the conservator can be discharged, a final account must be filed and approved by the court, and the court needs to be satisfied that the minor (now adult) or his or her estate has received whatever assets remain.