

**Managing Other People's Money:
*I'm Legally Responsible: Now What!***

Guardian & Conservator

**OSHER Life Long Learning Institute | Connie Bourne, Esq.
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Seminar Goals

This information is for educational purposes only and does not constitute legal or other professional advice, nor does it contain all the duties of a trustee. It is recommended that you seek advice and services from legal, financial, tax and other estate planning professionals regarding your personal estate and long-term care planning needs.

**Connie Bourne, Esq.
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Fiduciary

Legal Duty

Legal requirements - any set of Common Law, Federal, State, or local regulations or requirements which apply to the activities of a fiduciary

Duty of Loyalty & Care

Act solely in the best interest of their clients, not derive any direct or indirect profit from their position, unless the client consents, and must avoid potential conflicts of interest.

Perform their functions with a high level of competence and thoroughness, in accordance with industry standards

Substitute Decision Making

When acting on another individual's behalf, here are several factors that must be taken into consideration. The first step is to determine if any preferences of the individual are known. If so, the substitute decision maker should consider the following:

- the individual's expressed preferences;
- the individual's religious, cultural or personal beliefs;
- the individual's behavior and attitude toward a particular subject or event;
- the individual's expressed concerns about the effects of the decision on family and friends.

Guardian

- **Appointed by the court to be in charge of a person's person or property**
- **Lack of capacity to make personal and property decisions**
- **Examination is required. Termination and restoration of rights rare**
- **Guardians and conservators are appointed to protect a person who is incapacitated - - someone who cannot make decisions without assistance**
- **Only a Circuit Court judge can decide that a person is incapacitated and appoint**
- **A guardian and/or a conservator to act for the person**
- **Usually a guardian will make personal and health care decisions but may be responsible for other personal decisions, such as whether the person may have visitors or will attend a social gathering**
- **The appointment of a Guardian or a conservator removes a person's right to make decisions for himself and should be considered only as a last resort**
- **This option should be used only when there are no less restrictive alternatives that will protect the interest of the incapacitated person**

Types of Guardianship

Full Guardianship

- Full guardianship should be used only as a last resort, i.e. when there are no less restrictive methods that will provide the needed protection.
- A guardian is required to report annually to the local department of social services about the care provided to the incapacitated adult.

Limited Guardianship

- A limited guardianship is used when decisional help is needed for specific tasks but not for all tasks. For example, an incapacitated adult may be able to take care of his own daily needs but is unable to make health care decisions.
- A limited guardian has the same responsibility to report annually to the local department of social services about the care provided to the incapacitated adult.

Choosing a Guardian

- Rank the qualities you would find most important in choosing a person to serve as guardian. Put a “1” next to the most important quality, and so on.

___ Level of Personal Responsibility of the Potential Guardians

___ Religious or Moral Values (List your religious faith): _____

___ Discipline Style

___ Age

___ Location

___ Other Personality Traits

(List): _____

- Now that you’ve ranked the qualities most important to you, are there people (including couples) who fit these quality traits, who would be willing to serve as guardians? List them in order of your preference.

Conservator

- **If you are unable to manage your own affairs, a conservator is appointed by the court**
- **Given authority to make financial decisions and handle your financial affairs**
- **The conservator is required to make periodic reports to the court and petition the court for additional authority**
- **A conservator may be paid for services as well as attorney fees**
- **The court will often require your conservator to purchase a "surety bond" which is a type of insurance policy, to protect the estate. Costs and expenses are paid by your estate**
- **A conservator is responsible for managing a person's financial and property**
- **affairs. Like the authority of a guardian, the authority of a conservator may also**
- **be limited depending on the situation of the incapacitated person**

Types of Conservatorship

Full Conservator

- A conservator appointed without limitations has the authority to make all financial decisions for the person. This includes paying bills, investing money and selling property.
- A conservator is required to post surety on a bond with the court and report to the court about all income received and funds expended. Reports to the court are made through an officer of the court called the Commissioner of Accounts.

Limited Conservator

- A limited conservator is used where decisional assistance is needed only for
- specific financial matters. For example, a person is able to take care of daily
- needs but is unable to pay bills and fill out tax returns.
- The judge will appoint a conservator to pay bills and fill out tax returns leaving the incapacitated person free to make all other financial decisions.

Court Appointments

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Ten Top Tips for Fiduciaries

- **Gather all documents**
- **Keep records**
- **Handling money**
 - **Keep money separate**
 - **Checkbook**
 - **Keep bank statements**
- **Get receipts**
- **Verify bills and pay debts prudently**
- **When in doubt, ask**
- **Keep track of time deadlines**
- **Don't re-create the wheel**
- **Ask for help**
- **Take a deep breath**