



101 W. Broad St., Suite #101  
Richmond, Virginia 23220  
804-648-1012 or 800-868-1012  
Fax: 804-649-8794

229 North Sycamore Street  
Petersburg, Virginia 23803  
804-862-1100 or 800-868-1012  
Fax: 804-861-4311

103 E Water St, Suite 201/202  
Charlottesville, Virginia 22902  
434-296-8851 or 800-390-9983  
Fax: 434-296-5731

## **Guardianship and Conservatorship**

### **What is an adult Guardianship or Conservatorship?**

An adult guardianship or conservatorship is created when a Virginia Circuit Court determines that a person is unable to manage his or her own personal or financial affairs and appoints a guardian and/or conservator for that person. A guardian is the person appointed to handle the personal affairs of the incapacitated person. A conservator handles the financial affairs of the incapacitated person. A respondent is the incapacitated person. One person can be appointed to be both the guardian and the conservator.

### **How do I get a Guardian or Conservator appointed?**

If you need to have a guardian or conservator appointed for someone unable to handle their own affairs you must follow these steps:

- You must file a petition with a Virginia Circuit Court alleging that there is an incapacitated Virginia resident in need of a guardian or conservator
- The petition must be filed in the Circuit Court for the city or county in which the respondent lives or where he or she lived immediately prior to moving to a nursing home, assisted living facility or other institution.
- After the petition is filed, a hearing will be scheduled for the court to hear evidence as to why a guardianship and/or conservatorship is necessary. You should attend this hearing.

### **How does the law protect the Respondent?**

The respondent has the right to:

- Be given a copy of the petition that has been filed, notified of the hearing, and advised of his or her legal rights. This information must also be sent to the respondent's spouse, adult children, parents, and adult siblings, or at least three other known relatives if none of these relatives are known.
- To be present at the hearing, a jury trial, and to subpoena and cross-examine witnesses.

- To hire a lawyer to represent him or her and if the respondent cannot afford to pay a lawyer, the respondent may ask the court to appoint a lawyer for him or her to be paid as part of the costs of the proceeding.

- The court must appoint a guardian *ad litem*. This is an attorney who represents the interests of the respondent. The guardian *ad litem* must visit the respondent, advise the respondent of his or her rights, and investigate the facts stated in the petition. The guardian *ad litem* must file a report and come to the hearing to advise the court whether or not the respondent needs a guardian or conservator, and what powers the guardian or conservator should have.

- A report evaluating the medical condition of the respondent must be filed with the court.

### **When will a Court appoint a Guardian or Conservator?**

The court will appoint a guardian or conservator if the respondent **cannot** either:

- Meet the essential requirements for his or her health, care, and safety without the assistance or protection of a guardian, or

- Manage property or financial affairs or provide for his or her support without the assistance or protection of a conservator.

A finding that a person displays poor judgment, alone, is not enough to show that the person is incapacitated and needs a guardian or conservator.

### **What are the Guardian's duties?**

A guardian or conservator is not liable for the acts of the incapacitated person, unless the guardian or conservator is personally negligent. Guardians and conservators are not required to spend their own funds to care for the incapacitated person. The guardian must:

- Visit the incapacitated person as often as necessary to know of his or her capabilities, limitations, and needs.

- Encourage the incapacitated person to participate in decisions.

- File annual reports with the local Department of Social Services regarding the incapacitated person's medical condition, living arrangements, and the guardian's recommendations.

### **What are the Conservator's duties?**

The conservator must:

- Take care of and preserve the assets and income of the incapacitated person.

- File annual accountings with the Commissioner of Accounts showing all money and property received and disbursed on behalf of the incapacitated person.

### **What are the alternatives to a Guardianship or Conservatorship?**

Guardianship and conservatorship always should be looked upon as the last resort. The legal process can be a difficult and costly experience for the individual and his or her family. Both the lawyer representing the petitioner and the guardian *ad litem* must be paid. This will cost several thousand dollars. Here are some alternatives to having a guardian or conservator appointed:

- Having a **durable power of attorney**. The incapacitated person must have planned ahead and signed the power of attorney while he or she was able to understand what he or she was doing.

- An **advance medical directive** allows you to appoint someone to make medical decisions for you if you ever become unable to make those decisions for yourself. Even if you have not signed an advance medical directive, Virginia law gives your spouse, or your children, or other relatives authority to make medical decisions for you.

- If an adult needs help managing his or her income and paying his or her bills, you can try to get a **representative payee**. There are voluntary bill payer programs, where a trained volunteer helps. If the only income is Social Security or Supplemental Security Income (SSI), a friend or relative could apply to Social Security Administration to be appointed as his representative payee. Some other government benefits also have representative payee programs.

- A court will not appoint a guardian and/or conservator for a person who has appointed an agent under a durable power of attorney or advance medical directive or who already has a representative payee, unless the court determines that the agent is not acting in the best interests of the incapacitated person or there is a need for decision-making outside the scope of the agent.