

# Information About Being A Conservator

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## WHO NEEDS A CONSERVATOR?

A conservator protects an adults who is disabled.

This pamphlet is about "Conservators" for adults who are disabled. There are different rules for "guardian" of children.

## WHAT IS A DISABILITY?

A "disability" may be mental or physical. It is a condition that makes it hard for an adult to do something without help.

## DO ALL DISABLED ADULTS NEED A CONSERVATOR?

No. Conservators are only used when a disabled adult needs help with legal issues.

"Legal issues" include things like :

- Managing money
- Entering to contracts
- Buying or selling property
- Getting or refusing medical treatment

## HOW DOES A PERSON GET A CONSERVATOR? A COURT MUST DECIDE.

**Step 1:** Someone files court papers saying

- The disabled adult needs a Conservator
- Who the conservator should be.
- How much money the disabled adult gets.
- What expenses the disabled adult gets.
- What expenses the disabled adult has.
- What property the disabled adults owns and what it is worth.
- How the disabled adult's property should be managed.

**Step 2:** The disabled adult must get a copy of the court papers and notice of when the court will have a hearing.

**Step 3:** In most cases, the court will appoint a lawyer to be the disabled adult's "Guardian ad litem." That lawyer will talk to the disabled adult and to the adult's doctor. The lawyer will make a report to the court about whether the adult needs a Conservator.

**Step 4:** If the court decides that the disabled adult needs a Conservator, the court will issue an order. This order will name the Conservator. It will also say what the Conservator can do for the disabled adult.

## HOW DOES THE COURT DECIDE IF SOMEONE NEEDS A CONSERVATOR?

The court looks at all the facts, but one of the most important things is the opinion of the disabled adult's doctor.

## WHAT IF THE DISABLED ADULT WILL NOT SEE A DOCTOR?

The court can order that the disabled adult be taken to a doctor.

## DOES THE DISABLED ADULT HAVE A RIGHT TO A LAWYER?

The court may appoint an "Attorney at litem" to represent the disabled adult. The Attorney ad litem is required to try to convince the court not to appoint a Conservator. In most cases, an Attorney ad litem is only appointed if the disabled adult or the Guardian ad litem requests it.

## WHO SHOULD BE THE CONSERVATOR?

If more than one person wants to be the Conservator, the court must decide who will do the best job for the disabled adult. The court prefers to appoint people in this order:

1. A person the disabled adult named in a written document
2. Spouse
3. Child
4. Other close relative

## WHAT DOES THE CONSERVATOR DO?

The court will decide what the Conservator can do. Usually, the court puts the Conservator in charge of the disabled adult's "person" and/or "property."

**Conservator over the person:** The Conservator decides where the disabled adult will live and will probably decide if the disabled adult should receive (or refuse) medical treatment.

**Conservator over property:** The Conservator handles the disabled adult's financial affairs. The Conservator must use the disabled adult's money to care for the disabled adult.

The court often orders that the Conservator do things like buy or sell property or sign contracts for the disabled adult. Usually, the Conservator needs a special court order to do anything with the disabled adult's property (except for vehicles and property worth less than \$1,000). The court may also require the Conservator to tell the court how the Conservator plans to invest the disabled adult's money

## HOW MUCH DOES IT COST TO GET A CONSERVATOR?

The amount is hard to estimate. There are several costs that could be involved:

- The person who asks the court to name a Conservator, called the Petitioner, will probably hire a lawyer to prepare the court papers.

- Filing fees: There is a fee to file papers in court.
- Other court fees: The court will charge fees for other things, such as filing a motion.
- The lawyer who is appointed the disabled adult's "Guardian ad litem" will charge a fee.
- The Attorney ad litem will have a fee, if one is appointed. The court might require the Conservator to have a "bond", which is like an insurance policy. The bonding company will charge a fee to cover any financial losses that the disabled adult suffers if the Conservator does something wrong.
- The Conservator might file reports with the court. If the Conservator has to hire someone (like an accountant) to prepare these reports, that person will probably charge a fee.

## **IS THERE A WAY TO REDUCE THESE FEES?**

Some fees (such as court costs) cannot be reduced. It may be possible to reduce other fees:

- The Petitioner's lawyer: If the Pro Bono Project of Legal Aid of East Tennessee accepts the case, the lawyer will not charge a fee.
- Bond: The Court may decide not to require a bond if the disabled adult does not have much property (usually less than \$10,000) or if a bank has control over the property.
- Guardian ad litem and Attorney ad litem: The court may decide not to require a Guardian ad litem or an attorney ad litem if it is clear that the disabled adult does not need one.
- Service Fees: The court may decide not to require the Conservator to file some of the reports that are usually filed. If so, the Conservator could save the expense of hiring people to help prepare the reports.

## WHO PAYS THESE FEES?

If the court decides that the disabled adult does not need a Conservator, the person who filed the court papers must pay these fees. If the court decides that the disabled adult does need a Conservator, the court may order that the Conservator pay the fees out of the disabled adult's income (but the disabled adult's income cannot be used if the fees would reduce the disabled adult's income below the amount that the disabled adult would receive in SSI benefits).

A Conservator may get paid out of the disabled adult's income. However, the court must decide if the Conservator is paid and how much. The court will consider things like how much time the Conservator spends on handling the disabled adult's affairs and whether the Conservator would have done the same work for the disabled adult for free if a Conservatorship had not been ordered.

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This pamphlet is intended for general information only. The circumstances of every case are different and need to be dealt with on a case-by-case basis. This is not a substitute for the advice of a lawyer. Also, the law may change and may be different from county to county.

