

APPOINTMENT OF A GUARDIAN OR CONSERVATOR GENERAL INFORMATION ON FILING PETITIONS IN CIRCUIT COURT

The person for whom a guardian or conservator is sought is the **PROTECTED PERSON**

The person requesting the appointment is called the **PETITIONER**

A petition for the appointment of a Guardian or Conservator can be filed in the Circuit Court of this county if:

- The protected person resides in this County, OR
- The protected person has been admitted to a health care or correctional facility in this County;
- If this is not the case, ask for assistance from the Circuit Clerk.

There is a fee of \$110.00 payable to the Circuit Clerk in order to file this petition. As the petitioner, you are also responsible for the payment of any other fees or costs associated with the case; for example, the fees to have court documents served on the various parties in the case or the cost of having court documents and transcripts copied. IF a guardian or conservator is appointed and IF funds are available, these fees and costs may be reimbursed by the protected person's estate.

If you cannot afford to pay the court costs and fees, request an Affidavit of Indigency and Application from the Circuit Clerk to complete. The Clerk will review the financial information in the affidavit and determine whether you qualify for a waiver of all court costs and fees.

You are required to submit other documents to the Court in addition to the Petition for Appointment of a Conservator/Guardian (form attached). Unless the Court has waived the requirement. You must arrange for an examination and completion of an Evaluation Report of Licensed Physician/Psychologist (form attached) prior to filing. This is a report on the condition of the protected person which must be completed by a licensed physician or psychologist and filed with the petition. Refer to the note on Question 16 of the petition to see if you may also be required to file an Affidavit of Physician (form attached) if the protected person will not be able to attend the hearing.

In addition to the Evaluation Report, if the protected person has executed a durable power of attorney, a medical power of attorney or a living will, you must file a copy of each with the Petition as noted in Question 15.

If you are petitioning for the appointment of a conservator, you must file a Statement of Financial Resources (form attached) with the Circuit Clerk prior to the hearing on the petition. This form is not required for the Appointment of a Guardian.

After the petition is properly filed, the Clerk will issue a Notice of Hearing (example attached), setting the date, time, and location of the hearing. As the petitioner, it is your responsibility to make sure the parties in the case are notified of the hearing and served with the correct documents in the appropriate way, as follows:

All Documents
MUST BE NOTARIZED
Prior to Filing

The protected person must be served in person with a copy of the Notice of Hearing, the Petition, and the Evaluation Report by certified mail, return receipt requested, at least 14 DAYS before the date of the hearing. Upon request and payment of a \$30 fee, the Circuit Clerk will arrange to have this done by the Sheriff of Monongalia County, or you can employ a private process server to deliver the documents.

Every individual who is seven years of age or older and every entity whose name and mailing address appears in the petition must be served by sending a copy of the Notice of Hearing and the Petition by certified mail, return receipt requested, at least 14 DAYS before the date of the hearing. The certified mail return receipts showing the date mailed and the green card showing the date received must be filed with the Circuit Clerk on or before the date of the hearing.

The Circuit Court is required by law to appoint an attorney to represent the protected person. As the petitioner, you have the right to retain an attorney of your choice to represent you in this matter, but it is not mandatory. If you feel you need legal advice or assistance to ensure that your interests are adequately represented to the Court, contact an attorney. **STAFF IN THE CIRCUIT CLERK'S OFFICE CANNOT GIVE LEGAL ADVICE.**

Forms Attached

- CG 901 Petition for Appointment of a Conservator/Guardian
- CG 902 Evaluation Report of Licensed Physician/Psychologist
- CG 902A Affidavit of Physician Certifying Protected Person Cannot Attend
- CG 903 Statement of Financial Resources (Conservatorship only)
- CG 904 Notice of Hearing on Petition

If you or any of the parties to this case require a special accommodation to participate in Court due to a disability, please notify the Circuit Clerk's Office.

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

IN RE: _____ Case No.: _____ - G -

AN ALLEGED PROTECTED PERSON Date: _____

PETITION FOR THE APPOINTMENT OF A GUARDIAN/CONSERVATOR

West Virginia Code: § 44A-1-1, et seq.

INSTRUCTIONS TO APPLICANT

- A. All information must be printed or typed and be clearly readable.
 - B. All information requested *MUST* be provided, if known. If unknown, you must state it is unknown.
 - C. Any petition which does not provide the necessary information, or is unreadable, may be dismissed for incompleteness. Please be sure you read and answer all questions.
 - D. In this document, the PROTECTED PERSON is the person for whom a guardian or conservator is sought. The person requesting the appointment is the PETITIONER. (Two or more petitioners may apply to serve as co-guardians or co-conservators. If so, the required information must be completed for all petitioners.)
 - E. Answers to some questions may require more space than provided. If so, attach additional pages as needed and label each response of such page(s) with the number of the applicable question. *[If completing this form on the computer, continuation sheets are provided for you at the end of this form (following the filing notes).]*
 - F. Additional guidelines and instructions are contained on Pages 8 and 9. Please read these instructions carefully since substantial delays may result from failure to perform all the requirements of law.
 - G. **WARNING: If a guardian or conservator is appointed for an individual who is unable to handle their affairs due to mental illness or insanity, the individual will be:**
 - (1) prohibited from possessing and receiving firearms and ammunition, in some cases for his or her entire life,
 - (2) required to immediately surrender ANY firearms owned or in his or her possession,
 - (3) reported to both federal and state database registries used for firearm purchases and permits/licenses to carry concealed weapons, and
 - (4) subject to future criminal charges for possession or receipt of firearms or ammunition.**Conviction in West Virginia can result in a fine up to \$1,000.00 or jail time of up to one year. Federal conviction is a FELONY and can result in fines and jail time up to TEN years. (See, W.Va. Code § 61-7-7 and 18 U.S.C.A. § 924(a)(2))**
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PART I
INFORMATION ABOUT THE PETITIONER

1. PETITIONER'S [your] FULL NAME: _____
2. PETITIONER'S [your] PLACE OF RESIDENCE: _____
3. PETITIONER'S [your] POST OFFICE ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____
- TELEPHONE NUMBER: WORK: _____ HOME: _____
4. WHAT IS YOUR RELATIONSHIP TO THE PROTECTED PERSON: _____

PART II
INFORMATION ABOUT THE PROTECTED PERSON

5. FULL NAME OF PROTECTED PERSON: _____
6. PROTECTED PERSON'S DATE OF BIRTH [MM/DD/YYYY]: _____ / _____ / _____
7. PROTECTED PERSON'S PLACE OF BIRTH [state or country]: _____
8. PROTECTED PERSON'S RESIDENCE ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____
9. PROTECTED PERSON'S CURRENT LOCATION: _____
10. PROTECTED PERSON'S POST OFFICE ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____
11. PROTECTED PERSON'S GENDER [initial one]: _____ male or _____ female
12. PROTECTED PERSON'S RACE [initial one]: _____ American Indian or Alaska Native,
_____ Asian, _____ Black or African American, _____ Hispanic or Latino,
_____ Native Hawaiian or Other Pacific Islander, or _____ White
13. PROTECTED PERSON'S HEIGHT: _____ feet, and _____ inches
14. PROTECTED PERSON'S NATURAL EYE COLOR [initial one]: _____ black, _____ blue,
_____ brown, _____ gray, _____ green, _____ hazel, _____ maroon,
_____ multicolored, or _____ pink

PART III

INFORMATION ABOUT THE PROTECTED PERSON'S RELATIVES

You are required to provide information about the Protected Person's nearest relatives. You must answer each question fully and completely. If additional space is needed, attach additional page(s) as necessary.

15. DOES THE PROTECTED PERSON HAVE A SPOUSE AND/OR CHILDREN? ☐ YES ☐ NO
If you have answered "YES," complete the following and then go to PART IV. If you have answered "NO," go to question 16.

SPOUSE'S FULL NAME: _____

SPOUSE'S POST OFFICE ADDRESS: _____

FULL NAME(S) AND POST OFFICE ADDRESSES OF EACH OF PROTECTED PERSON'S CHILDREN:

16. DOES THE PROTECTED PERSON HAVE PARENTS, BROTHERS AND/OR SISTERS? ☐ YES ☐ NO
IMPORTANT NOTE: *Provide the following information ONLY if you have answered "NO" to question 15 above. If you have answered "YES," to this question, complete the information requested below and go to PART IV. If you have answered "NO," go to question 17 below.*

FULL NAME(S) AND POST OFFICE ADDRESSES OF EACH OF PROTECTED PERSON'S PARENTS AND BROTHERS AND SISTERS:

17. ***IMPORTANT NOTE:*** *Provide the following information ONLY if you have answered "NO" to BOTH questions 15 and 16 above.*

LIST THE PROTECTED PERSON'S NEAREST KNOWN RELATIVES, AND THE POST OFFICE ADDRESS(ES) FOR EACH, WHO WOULD BE ENTITLED TO SUCCEED TO THE PROTECTED PERSON'S ESTATE BY INTTESTATE SUCCESSION AS SET FORTH IN *WEST VIRGINIA CODE: §42-1-11, et. seq.:*

PART IV
OTHER REQUIRED INFORMATION

18. LIST ANY INDIVIDUAL AND/OR FACILITY, INCLUDING ANY PERSON ACTING AS A DE FACTO GUARDIAN, DE FACTO CONSERVATOR, MEDICAL POWER OF ATTORNEY, REPRESENTATIVE, OR APPOINTED SURROGATE, THAT IS RESPONSIBLE FOR THE PROTECTED PERSON'S CARE OR CUSTODY.

NAME OF THE INDIVIDUAL OR FACILITY: _____

INDIVIDUAL'S OR FACILITY'S PLACE OF RESIDENCE OR LOCATION: _____

INDIVIDUAL'S OR FACILITY'S POST OFFICE ADDRESS: _____

IMPORTANT NOTE: If you have named any individual and/or facility in this question, you **MUST** provide a detailed listing of the acts performed by any and all such persons and/or facilities on behalf of the protected person on a separate sheet which **MUST** be attached to this petition.

19. HAS ANY PERSON BEEN DESIGNATED AS A SURROGATE DECISION MAKER FOR THE PROTECTED PERSON? *A "surrogate decision maker" is an adult individual or individuals who are reasonably available, are willing to make health care decisions on behalf of an incapacitated person, and are identified as such by the person's attending physician in accordance with West Virginia Code: § 16-30B-3(p).* ☐ YES ☐ NO

If "YES," provide information requested below. If "NO," go to question 20.

NAME(S) OF THE SURROGATE DECISION MAKER(S): _____

SURROGATE(S) PLACE OF RESIDENCE(S): _____

SURROGATE(S) POST OFFICE ADDRESS(ES): _____

20. DOES THE PROTECTED PERSON HAVE A REPRESENTATIVE OR REPRESENTATIVES DULY APPOINTED UNDER A DURABLE POWER OF ATTORNEY, MEDICAL POWER OF ATTORNEY AND/OR A LIVING WILL? ☐ YES ☐ NO

If "YES," complete the information requested below AND attach a copy of any such document with this petition. If "NO," go to question 21.

NAME(S) OF REPRESENTATIVE(S): _____

REPRESENTATIVE(S) PLACE OF RESIDENCE OR LOCATION: _____

REPRESENTATIVE(S) POST OFFICE ADDRESS(ES): _____

21. WILL THE PROTECTED PERSON'S INCAPACITY PREVENT THE PROTECTED PERSON FROM ATTENDING THE HEARING ON THIS PETITION? ☐ YES ☐ NO

If "YES," you must provide the reason(s) in the space below.

REASON(S):

[IMPORTANT NOTE: The Court cannot conduct a hearing on the merits of this petition without the presence of the protected person unless one of the following is submitted to the Court at the beginning of the hearing: (1) a physician's affidavit (GC Form 5), (2) qualified expert testimony or, (3) evidence that the person refuses to appear. SEE: West Virginia Code: § 44A-2-9(c).]

22. WHAT TYPE OF GUARDIANSHIP OR CONSERVATORSHIP IS BEING REQUESTED? *Check all appropriate spaces:* ☐ TEMPORARY GUARDIANSHIP ☐ LIMITED GUARDIANSHIP
☐ GUARDIANSHIP ☐ TEMPORARY CONSERVATORSHIP
☐ LIMITED CONSERVATORSHIP ☐ CONSERVATORSHIP

LIST THE REASON OR REASONS SUPPORTING THE TYPE OR TYPES OF GUARDIANSHIP OR CONSERVATORSHIP REQUESTED:

23. IF A LIMITED **GUARDIANSHIP** IS BEING REQUESTED, INDICATE THE SPECIFIC AREAS OF PROTECTION AND ASSISTANCE TO BE INCLUDED IN THE ORDER OF APPOINTMENT:

24. IF A LIMITED **CONSERVATORSHIP** IS BEING REQUESTED, INDICATE THE SPECIFIC AREAS OF MANAGEMENT AND ASSISTANCE TO BE INCLUDED IN THE ORDER OF APPOINTMENT:

25. NAME OF THE PROPOSED GUARDIAN:

PROPOSED GUARDIAN: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

26. NAME OF THE PROPOSED CONSERVATOR:

PROPOSED CONSERVATOR: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

27. HAS THE PROTECTED PERSON NOMINATED A GUARDIAN OR CONSERVATOR DIFFERENT FROM THE PROPOSED GUARDIAN OR CONSERVATOR? ☐ YES ☐ NO

NOMINATED GUARDIAN: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

NOMINATED CONSERVATOR: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

28. PROVIDE THE NAME(S) AND ADDRESS(ES) OF ANY GUARDIAN OR CONSERVATOR CURRENTLY ACTING ON BEHALF OF THE PROTECTED PERSON IN WEST VIRGINIA OR ELSEWHERE:

ACTING GUARDIAN: _____

POST OFFICE ADDRESS: _____

ACTING CONSERVATOR: _____

POST OFFICE ADDRESS: _____

29. HAS ANY INDIVIDUAL PROPOSED, NOMINATED OR ACTING GUARDIAN OR CONSERVATOR, WHOSE NAME IS LISTED IN ANY OF THE ANSWERS TO QUESTIONS 25 THROUGH 28, EVER BEEN CONVICTED OF A CRIMINAL OFFENSE OTHER THAN A TRAFFIC OFFENSE? *[check one]*
☐ YES ☐ NO *If the answer to this question is "YES," list the name of each such individual AND provide the CRIMINAL HISTORY of that individual:*

I, the Petitioner named in the foregoing *Petition for the Appointment of a Guardian/Conservator* hereby respectfully request that the Circuit Court set this matter for hearing and, following such hearing, appoint a guardian and/or conservator for the protected person named herein as requested and petitioned.

Given under my hand this _____ day of _____ *[month]*, _____ *[year]*.

Signature of Petitioner

Signature of Petitioner's Counsel

Bar ID: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

ALL PETITIONERS MUST NOTE THE FOLLOWING MATTERS ABOUT FILING THIS PETITION:

1. This petition must be filed in the Office of the Clerk of the Circuit Court of the County in West Virginia where the Protected Person resides, ***OR*** the County where the Protected Person has been admitted to a health care or correctional facility ***OR***, in the case of a missing person (a person who is absent from his or her usual place of residence in West Virginia and whose whereabouts are unknown for a period of six months or more), the petition must be filed in the County in which the missing person last resided. If this is not the case, ask for assistance from the Circuit Court Clerk.
2. You are required to pay a filing fee of \$110.00 to the Clerk of the Circuit Court upon filing of this petition. As the Petitioner, you are responsible for the payment of this fee and any other fees required for service of process, court costs, and for copies of court documents and transcripts. Once a guardian or conservator has been appointed, such fees may be reimbursed by the Protected Person's estate, but only if an appointment is made and only if funds are available for reimbursement. ***West Virginia Code: §§ 44A-2-1(c) and 59-1-1, et. seq.,*** provide that if you are pecuniarily unable to advance these fees, you will not be required to pay the fees and costs. Ask the Court Clerk for assistance if you are unable to advance these fees and costs.
3. You are required to submit additional documents with this petition. Unless the Court, for good cause shown, has waived it, you ***MUST*** file an ***EVALUATION REPORT***, GC Form 4, which is a required evaluation and report on the condition of the Protected Person which must be completed by a licensed psychologist or physician. If you do not have this report, you may obtain a blank form from the Circuit Court Clerk. It is your responsibility to arrange for an examination and completion of this form prior to filing. You may also be required to file a ***PHYSICIAN'S AFFIDAVIT***. See the note to Question 21. If the Protected Person has executed a durable power of attorney, a medical power of attorney or a living will, you must attach copies of these documents to this petition as directed by Question 20.
4. Upon proper and complete filing of the Petition, the Court will issue a ***NOTICE OF HEARING*** that establishes the date, time and location of the hearing on the Petition. It is the ***PETITIONER'S*** responsibility to insure that the following parties are served with a copy of court documents as follows:
 - (a) The Protected Person must be served by ***Personal Service of Process*** not later than fourteen (14) days prior to the date of the hearing. The documents which must be served upon the Protected Person are:
 1. The Notice of Hearing, and
 2. This Petition, and
 3. The Evaluation report.Upon request and payment of the appropriate fee, the Court Clerk can arrange to have this accomplished by the County Sheriff. As an alternative, you may employ a private process server to effect service, provided that service is made as required by law.
 - (b) You must also serve every individual who has reached the age of seven (7) years or older, and every entity whose names and post office addresses appear in the Petition. The documents required to be served upon these individuals/entities are:
 1. The Notice of Hearing, and
 2. This Petition.This service is made by sending each Notice and Petition by certified mail, return receipt requested, ***at least*** fourteen (14) days before the hearing. ***You are further required to submit the certified mail return receipts to the Court Clerk for filing on or before the hearing date.*** It is your responsibility to obtain proper service and file the required documentation with the Circuit Clerk ***BEFORE*** the hearing.

IMPORTANT NOTE: *A failure by the Petitioner to properly serve the Protected Person and/or other individuals as required by law will likely result in delay of the hearing or, possibly, dismissal of the petition. Make sure ALL parties are served as required. The Protected Person cannot waive this requirement. If you have questions, consult an attorney for advice.*

5. Under *West Virginia Code*: § 44A-2-7, the Circuit Court is required to appoint an attorney to represent the Protected Person. You have the right to retain an attorney of your choosing to represent you in this matter, which is not mandatory, but is mentioned merely to insure that you understand that you have the right to be represented by an attorney at this hearing.
6. If you are seeking the appointment of a conservator, you **MUST** file a "Statement of Financial Resources" with the Court any time ***prior to the hearing***. The Circuit Clerk has a blank form which you may obtain for completion before the hearing.
7. A person who is appointed as a guardian or conservator will be required to complete mandatory education within thirty days of a finding that he or she should be appointed as a guardian or conservator and must file an affidavit indicating that such education has been completed. If you are unsure about any matter contained in these instructions, you may ask the Circuit Clerk for assistance. However, the Court and Clerk are prohibited from providing legal advice. ***If you need legal advice, you should contact an attorney.***

CONTINUATION SHEET(S)

Use the following sheet(s) to enter information that would not fit in the space(s) provided above. Remember to label each response with the number of the applicable question, as outlined in instruction E (located on page 1 of this form).

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

EVALUATION REPORT OF LICENSED PHYSICIAN/PSYCHOLOGIST

INSTRUCTIONS FOR COMPLETION OF REPORT

- A. This form is a required submission under *West Virginia Code*: § 44A-2-3 in a case seeking the court appointment of a guardian and/or conservator for an alleged "protected person" and must be completed by a licensed physician or psychologist. Since the law requires that this report address certain matters contained in the Petition seeking such appointment, it will be necessary for you to have a true copy of the completed Petition before you complete this form. Please insure that the Petitioner has provided you with a copy of the Petition intended to be filed.
- B. All information provided in this report must be printed or typed and be clearly readable.
- C. All information requested *MUST* be provided, if known. If unknown, you must state it is unknown.
- D. Please be sure you read and answer all questions carefully and in as much detail as possible.
- E. Answers to some questions may require more space than provided. If so, attach additional pages as needed and label each response on such page(s) with the number of the applicable question.

I, _____, a licensed [*check category*] _____ physician
_____ psychologist, in the State of _____, license number _____,
hereby certify that I have examined and/or evaluated the condition of [*insert name of alleged Protected Person here*]
_____, and that the examination(s) or assessment(s) performed
which form the basis of this report were conducted on the following date(s): _____
_____, and hereby submit this report and evaluation with the
following findings:

- 1. *West Virginia Code*: § 44A-1-4(13) defines a "protected person" as an adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to:
 - (a) receive and evaluate information effectively, OR
 - (b) respond to people, events and environments to such an extent that the individual lacks the capacity to *either*:
 - (i) meet the essential requirements for his or her health, care, safety, habitation, or therapeutic needs without the assistance or protection of a guardian, OR
 - (ii) manage property or financial affairs or provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

This same section also provides that even if the Court determines that the person displays poor judgment, this finding alone is not sufficient evidence to determine that the person is a "protected person" as defined above.

CONSIDERING THIS DEFINITION, IN MY OPINION, I FIND THE ALLEGED PROTECTED PERSON [initial appropriate finding]:

_____ IS NOT INCAPACITATED [If you have initialed this finding, go to Question 2]

_____ LACKS CAPACITY [If you have initialed this finding, complete Questions 1a and, 1b below]

1a. DESCRIBE THE NATURE, TYPE AND EXTENT OF THE PERSON'S INCAPACITY:

1b. THE PERSON'S SPECIFIC COGNITIVE AND FUNCTIONAL LIMITATIONS ARE:

2. MY EVALUATION OF THE PERSON'S MENTAL AND PHYSICAL CONDITION IS AS FOLLOWS [Where appropriate, include an evaluation of the Person's educational condition, adaptive behavior and social skills]:

3. IS THE PERSON UNABLE TO HANDLE HIS OR HER OWN AFFAIRS DUE TO MENTAL ILLNESS OR INSANITY? [*initial appropriate response*] _____ YES _____ NO

If "Yes", what is the mental illness or insanity diagnosis?

If the person is unable to handle his or her own affairs due to mental illness or insanity, please provide the following:

3a. The gender of the Respondent is [*initial one*] _____ male or _____ female.

3b. The race of the Respondent is believed to be [*initial one*] _____ White, _____ Black or African American, _____ Hispanic or Latino, _____ Asian, _____ American Indian or Alaska Native, or _____ Native Hawaiian or Other Pacific Islander, or _____ unknown.

3c. The height of the Respondent is _____ feet, and _____ inches.

3d. The natural eye color of the Respondent is _____ brown, _____ blue, _____ green, _____ hazel, or _____ other.

4. IF THE PETITION CONTAINS A REQUEST FOR A GUARDIAN, TEMPORARY GUARDIAN AND/OR, LIMITED GUARDIAN, DESCRIBE THE SERVICES, IF ANY, CURRENTLY BEING PROVIDED FOR THE PERSON'S HEALTH, CARE, SAFETY, HABILITATION OR THERAPEUTIC NEEDS. INCLUDE A RECOMMENDATION AS TO THE MOST SUITABLE LIVING ARRANGEMENT AND, WHERE APPROPRIATE, THE MOST SUITABLE TREATMENT OR HABILITATION PLAN AND THE REASON'S FOR SUCH RECOMMENDATION(S):

5. IT IS MY OPINION THAT THE APPOINTMENT OF *[initial appropriate office]*

_____ A GUARDIAN

_____ A CONSERVATOR

_____ A GUARDIAN AND A CONSERVATOR

IS NECESSARY FOR THIS PERSON.

6. THE TYPE AND SCOPE OF GUARDIANSHIP AND/OR CONSERVATORSHIP NEEDED, AND THE REASONS THEREFOR, ARE AS FOLLOWS:

7. IF THE PETITION STATES THAT THE PERSON'S INCAPACITY WILL PREVENT THE PERSON'S ATTENDANCE AT THE HEARING *[SEE: Petition for Appointment of Guardian/Conservator, Page 4, Question 16]*, IT IS MY OPINION THAT SUCH ATTENDANCE AT THE HEARING *[initial appropriate finding]*:

_____ **WOULD** BE DETRIMENTAL TO THE PERSON'S HEALTH, CARE AND/OR SAFETY.

_____ **WOULD NOT** BE DETRIMENTAL TO THE PERSON'S HEALTH, CARE AND/OR SAFETY.

[IMPORTANT NOTE: If a protected person is unable to appear at the hearing, the law requires that one of the following be submitted to the Court at the beginning of the hearing: (1) a physician's affidavit (*GC Form 5*), (2) qualified expert testimony, or (3) evidence that the person refuses to appear. **SEE:** *West Virginia Code: § 44A 2-9(c)*. This Evaluation Report is **NOT** the required physician's affidavit. The affidavit is a separate form which may only be completed by a physician.]

8. IF IT APPEARS THE PERSON WILL ATTEND THE HEARING, IS THE PERSON ON ANY MEDICATION(S) THAT MAY AFFECT THE PERSON'S ACTIONS, Demeanor, AND PARTICIPATION AT THE HEARING?

_____ YES _____ NO *[If "YES," describe the medication and the affect(s) such medication(s) may have]*

I, the undersigned evaluating physician/psychologist named on page 1 of this Report, do hereby certify that the foregoing report is complete and accurate to the best of my information and belief. I further certify that other individuals [*initial appropriate category*] _____ DID _____ DID NOT perform, supervise or review the assessment(s) or examination(s) upon which this Report is based, or otherwise made substantial contributions toward this Report's preparation. [*If you initialed "DID," see note below and secure signatures of all such individuals on page 5.*]

Given under my hand this _____ day of _____ [month], _____ [year].

EVALUATING PHYSICIAN/PSYCHOLOGIST

[West Virginia Code: § 44A-2-3(7) also requires the signatures of "... any other individuals who performed, supervised or reviewed the assessments or examinations upon which the report is based. ..." or of any other person who made substantial contributions towards the report's preparation.]

We, the undersigned individuals, hereby certify that each individual signatory executing this Report below performed, supervised and/or reviewed the assessment(s) and/or examination(s) upon which the foregoing report is based, or made a substantial contribution toward the preparation of this Report, and that by signing below, each individual further certifies that to the best of his or her information and belief, the information contained in the foregoing report is complete and accurate.

_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE
_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE
_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE
_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE
_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____ CASE NUMBER _____ - G - _____
AN ALLEGED PROTECTED PERSON

AFFIDAVIT OF PHYSICIAN

[West Virginia Code: § 44A-2-9(c)]

STATE OF _____,
COUNTY OF _____, to-wit:

This day, personally appeared before me the undersigned physician who, having been first duly sworn, says, represents and certifies as follows:

I, _____, a licensed physician in the State of _____, hereby certify that I have examined and/or evaluated the condition of [insert name of alleged protected person here] _____, and that in my expert opinion, this individual cannot attend the hearing addressing whether a guardian or conservator should be appointed for this individual for the following reasons [check applicable reasons and provide supporting facts in spaces provided and attach additional pages, if necessary]:

_____ The presence of the individual is not possible due to a physical inability. The basis for this opinion is as follows: _____

_____ Requiring the presence of the individual would significantly impair the individual's health.

Explain : _____

_____ Other Reason(s): _____

Given under my hand this _____ day of _____ [month], _____ [year].

SIGNATURE OF PHYSICIAN

The foregoing affidavit was taken, subscribed and sworn to before me by the said _____, in my said County and State on this, the _____ day of _____ [month], _____ [year].

Given under my hand and **NOTARIAL SEAL**
[AFFIX NOTARIAL SEAL]

NOTARY PUBLIC

My Commission Expires: _____

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____, AN ALLEGED PROTECTED PERSON

DATE FILED: _____ CASE NUMBER _____ - G - _____

STATEMENT OF FINANCIAL RESOURCES

[West Virginia Code: § 44A-2-4]

The Petitioner, in any case where the appointment of a *conservator* is requested, is required to submit a reasonably detailed statement of the financial resources of the alleged Protected Person. ***This form does not need to be completed or filed if the only relief requested is for the appointment of a guardian.*** This form must be completed in its entirety and filed with the Clerk of the Circuit Court *prior to the hearing* to be held on the petition to appoint a conservator. The Petitioner should make a reasonable investigation into the Protected Person's real and personal assets and income, no matter where those assets may be located, and report the findings in this Statement. *Attach additional pages as necessary.*

1. ALLEGED PROTECTED PERSON'S SOCIAL SECURITY NUMBER _____ - _____ - _____

2. TO THE EXTENT KNOWN, WHAT IS THE FAIR MARKET VALUE OF THE PROTECTED PERSON'S REAL ESTATE OR REAL PROPERTY? *[check whether each parcel of real estate is improved or unimproved and give a brief description of the land (size) and improvements (if any), the location of the parcel (state, county, district), and the fair market value of the parcel]*

PARCEL 1: Improved? _____ Yes _____ No. Description: _____

Location: _____ VALUE \$ _____

PARCEL 2: Improved? _____ Yes _____ No. Description: _____

Location: _____ VALUE \$ _____

[Describe any additional parcels on a separate sheet using the format above, then add the values of all parcels and enter the total in the space below.]

COMBINED VALUE OF ALL REAL ESTATE VALUE \$ _____

3. TO THE EXTENT KNOWN, WHAT IS THE APPROXIMATE VALUE OF ALL THE PROTECTED PERSON'S PERSONAL PROPERTY? [*Personal property includes cash on hand or in bank (or other) accounts, stocks, bonds, furniture, automobiles, jewelry, debts due from others (notes/accounts receivable) and other assets not considered to be real estate. List each item or classification of personal property*]

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

[*Describe any additional personal property on a separate sheet using the format above, then add the values of all the listed items and enter the total in the space below.*]

COMBINED VALUE OF ALL ITEMS OF PERSONAL PROPERTY VALUE \$ _____

4. TO THE EXTENT KNOWN, WHAT IS THE ANTICIPATED ANNUAL GROSS INCOME OR OTHER RECEIPTS OF THE PROTECTED PERSON? [*List each source of income and the anticipated annual amount of income from that source*]

SOURCE: _____ ANNUAL INCOME: \$ _____

SOURCE: _____ ANNUAL INCOME: \$ _____

SOURCE: _____ ANNUAL INCOME: \$ _____

[*List any additional sources of annual income on a separate sheet using the format above, then add the income from all sources and enter the total in the space below.*]

TOTAL ANNUAL INCOME FROM ALL SOURCES: \$ _____

5. SUMMARY OF ASSETS & ANNUAL INCOME

COMBINED VALUE OF ALL REAL ESTATE (Question 2 total) \$ _____
COMBINED VALUE OF ALL ITEMS OF PERSONAL PROPERTY (Question 3 total) + \$ _____
TOTAL ALL ASSETS (Real Property + Personal Property) \$ _____
TOTAL ANNUAL INCOME FROM ALL SOURCES \$ _____

I, _____, the Petitioner in the foregoing matter, hereby certify that I have conducted a reasonable investigation into the assets and income of the alleged protected person named in this Statement, that the foregoing Statement of Financial Resources is true, complete and correct to the best of my knowledge, information and belief, that I have included within the foregoing Statement, and any and all attachments thereto, all items of real property, personal property and all sources of income of the alleged protected person which are known, or have been disclosed, to me.

Given under my hand this _____ day of _____ [month], _____ [year].

PETITIONER'S SIGNATURE

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____, A PROTECTED PERSON

DATE FILED: _____ CASE NUMBER _____ - G - _____

**PETITION FOR REMOVAL OF
GUARDIAN/CONSERVATOR**

[West Virginia Code: § 44A-4-4]

NOW COMES the Petitioner _____

[name of person filing Petition] in the above captioned cause, and respectfully petitions this Honorable

Court to remove *[insert name of guardian/conservator]* _____

who is a *[check applicable office]* _____ guardian _____ conservator for

_____, a protected person. Petitioner alleges the

following ground(s) for removal: *[initial all that apply; at least one of these grounds must be initialed]*

The guardian/conservator...

_____(1) Is acting under an order entered pursuant to material misrepresentation or mistake, whether fraudulent or innocent;

_____(2) Has an incapacity or illness, including substance abuse, which affects his or her fitness to perform or is adjudged to be a protected person in this or in any other jurisdiction;

_____(3) Is convicted of a crime which reflects upon his or her fitness to perform;

_____(4) Wastes or mismanages the estate, unreasonably withholds distributions or makes distributions in a negligent or reckless manner or otherwise abuses powers or fails to discharge duties;

_____(5) Neglects the care and custody of the protected person or legal dependents;

_____(6) Has an interest adverse to the faithful performance of duties such that there is a substantial risk that the guardian or conservator will fail to properly perform those duties;

_____(7) Fails to file reports or accountings when required, or fails to comply with any court order;

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____, A PROTECTED PERSON

DATE FILED: _____ CASE NUMBER _____ - G - _____

**PETITION FOR PERMISSION TO RESIGN
AS GUARDIAN/CONSERVATOR**

[West Virginia Code: § 44A-4-3]

NOW COMES the Petitioner in the above captioned cause, _____,
who is a *[check applicable office]* _____ guardian _____ conservator for _____
_____, a protected person, and hereby respectfully petitions the Court for permission to
resign such office(s). The facts, circumstances and reasons in support of this petition are as follows *[insert reason or
reasons for resignation]*: _____

_____. *[Attach additional pages, if necessary.]*

Respectfully presented this _____ day of _____ *[month]*, _____ *[year]*..

GUARDIAN/CONSERVATOR'S SIGNATURE

[NOTE: *This form must be completed and filed with the Circuit Court having jurisdiction of the Protected Person or the case at least sixty (60) days prior to the effective date of the resignation.]*

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____, AN ALLEGED PROTECTED PERSON

DATE FILED: _____ CASE NUMBER _____ - G - _____

STATEMENT OF FINANCIAL RESOURCES

[West Virginia Code: § 44A-2-4]

The Petitioner, in any case where the appointment of a *conservator* is requested, is required to submit a reasonably detailed statement of the financial resources of the alleged Protected Person. ***This form does not need to be completed or filed if the only relief requested is for the appointment of a guardian.*** This form must be completed in its entirety and filed with the Clerk of the Circuit Court *prior to the hearing* to be held on the petition to appoint a conservator. The Petitioner should make a reasonable investigation into the Protected Person's real and personal assets and income, no matter where those assets may be located, and report the findings in this Statement. *Attach additional pages as necessary.*

1. ALLEGED PROTECTED PERSON'S SOCIAL SECURITY NUMBER _____ - _____ - _____

2. TO THE EXTENT KNOWN, WHAT IS THE FAIR MARKET VALUE OF THE PROTECTED PERSON'S REAL ESTATE OR REAL PROPERTY? *[check whether each parcel of real estate is improved or unimproved and give a brief description of the land (size) and improvements (if any), the location of the parcel (state, county, district), and the fair market value of the parcel]*

PARCEL 1: Improved? _____ Yes _____ No. Description: _____

Location: _____ VALUE \$ _____

PARCEL 2: Improved? _____ Yes _____ No. Description: _____

Location: _____ VALUE \$ _____

[Describe any additional parcels on a separate sheet using the format above, then add the values of all parcels and enter the total in the space below.]

COMBINED VALUE OF ALL REAL ESTATE

VALUE \$ _____

3. TO THE EXTENT KNOWN, WHAT IS THE APPROXIMATE VALUE OF ALL THE PROTECTED PERSON'S PERSONAL PROPERTY? [*Personal property includes cash on hand or in bank (or other) accounts, stocks, bonds, furniture, automobiles, jewelry, debts due from others (notes/accounts receivable) and other assets not considered to be real estate. List each item or classification of personal property*]

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

[Describe any additional personal property on a separate sheet using the format above, then add the values of all the listed items and enter the total in the space below.]

COMBINED VALUE OF ALL ITEMS OF PERSONAL PROPERTY **VALUE \$** _____

4. TO THE EXTENT KNOWN, WHAT IS THE ANTICIPATED ANNUAL GROSS INCOME OR OTHER RECEIPTS OF THE PROTECTED PERSON? [List each source of income and the anticipated annual amount of income from that source]

SOURCE: _____ ANNUAL INCOME: \$ _____

SOURCE: _____ ANNUAL INCOME: \$ _____

SOURCE: _____ ANNUAL INCOME: \$ _____

[List any additional sources of annual income on a separate sheet using the format above, then add the income from all sources and enter the total in the space below.]

TOTAL ANNUAL INCOME FROM ALL SOURCES: \$ _____

5. SUMMARY OF ASSETS & ANNUAL INCOME

COMBINED VALUE OF ALL REAL ESTATE (Question 2 total) \$ _____
COMBINED VALUE OF ALL ITEMS OF PERSONAL PROPERTY (Question 3 total) + \$ _____
TOTAL ALL ASSETS (Real Property + Personal Property) \$ _____

TOTAL ANNUAL INCOME FROM ALL SOURCES \$ _____

I, _____, the Petitioner in the foregoing matter, hereby certify that I have conducted a reasonable investigation into the assets and income of the alleged protected person named in this Statement, that the foregoing Statement of Financial Resources is true, complete and correct to the best of my knowledge, information and belief, that I have included within the foregoing Statement, and any and all attachments thereto, all items of real property, personal property and all sources of income of the alleged protected person which are known, or have been disclosed, to me.

Given under my hand this _____ day of _____ [month], _____ [year].

PETITIONER'S SIGNATURE

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____, A PROTECTED PERSON

DATE FILED: _____ CASE NUMBER _____ - G - _____

**PETITION FOR PERMISSION TO SELL OR MORTGAGE
REAL ESTATE OF A PROTECTED PERSON**

[West Virginia Code: § 44A-3-5]

NOW COMES the Petitioner in the above captioned cause, _____,
who is the conservator for _____, a protected person,
and hereby respectfully petitions the Court for permission to *[initial appropriate item]* ____ sell ____ mortgage
the following real estate owned by the protected person:

Address of real estate: _____

____ *[Initial]* ATTACHED IS A COPY OF THE DEED FOR SAID REAL ESTATE.

If applicable, the proposed mortgagor for said real estate is *[list name, company/bank name, and address]*:

The facts, circumstances and reasons in support of this petition are as follows *[insert reason or reasons for sale
or mortgage]*: _____

_____. *[Attach additional pages, if necessary.]*

Respectfully presented this _____ day of _____, _____.

CONSERVATOR'S SIGNATURE

[current address of conservator]

[current phone number of conservator]

[NOTE:]

This form must be completed and filed with the Circuit Court having jurisdiction of the Protected Person or the case by the Conservator(s). The Conservator(s) must personally serve the Protected Person and serve by certified mail all persons entitled to notice of the original petition at least 30 days prior to a hearing on this matter.

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____, A PROTECTED PERSON

DATE FILED: _____ CASE NUMBER _____ - G - _____

INVENTORY OF CONSERVATOR

[*West Virginia Code: § 44A-3-8*]

INSTRUCTIONS FOR COMPLETION OF INVENTORY

- A. This form is a required submission under *West Virginia Code: § 44A-3-8* and must be filed within sixty (60) days of the appointment of a conservator. The law requires that the inventory include, with reasonable detail, a listing of each item in the estate of the Protected Person, each item's approximate fair market value and the type and amount of any lien or encumbrance against such item. The conservator must include all items which come into the conservator's possession *and* all items the conservator *knows* are part of the Protected Person's estate. This includes any items that the conservator believes are valueless and intends to abandon. The inventory, and any subsequent amended inventories, must be filed with the Circuit Court Clerk.
- B. If the conservator discovers or comes into possession of any real or personal property of the Protected Person after the filing of this inventory, the conservator is required to file either an amended inventory including the property *or* the conservator must list such property, its value and any encumbrances against such property, in the next accounting required to be filed by the conservator under *West Virginia Code: § 44A-3-9*.
- C. Not later than fourteen (14) days following presentation of this inventory with the Circuit Court Clerk, the conservator must mail a copy of the inventory to each individual and entity receiving notice of the hearing on the petition to appoint the conservator. If the matter has been referred to a fiduciary commissioner or other person by the Court to review conservator accountings, the conservator shall also file a copy of this inventory, and any amended inventory, with such fiduciary commissioner or other person referred to by the Court.
- D. If you need additional space to list assets, attach additional pages as needed and identify the schedule supplemental for each item appearing on any attached page(s). Be sure you include the value of any such asset to the total value in the particular schedule.

PLEASE TURN TO THE NEXT PAGE TO BEGIN INVENTORY.

Name of Protected Person: _____ Court Case Number _____-G-_____

Name of Conservator: _____ Date of Appointment: _____

This report is an **[check any applicable category]**:

_____ initial inventory _____ amended inventory

Date of this inventory: _____ If this is an amended inventory, date of initial inventory: _____

SCHEDULE A: Describe any real estate, or any interest in any real estate. Provide a complete legal description of each parcel owned and the percentage of interest owned in each parcel.	ASSESSED VALUE	FAIR MARKET VALUE
TOTAL (enter total here and in Schedule H, Line 1)		

SCHEDULE B: List items of tangible personal property of every kind in as much detail as is reasonable.	FAIR MARKET VALUE
TOTAL (enter total here and in Schedule H, Line 2)	

SCHEDULE C: List bonds and securities of every kind	FAIR MARKET VALUE
TOTAL (enter total here and in Schedule H, Line 3)	

SCHEDULE D: Corporate Stock of every kind				
NAME OF COMPANY	CLOSELY HELD	NUMBER OF SHARES	MARKET VALUE PER SHARE	TOTAL MARKET VALUE
TOTAL (enter total here and in Schedule H, Line 4)				

SCHEDULE E: Money, bank accounts, certificates of deposit, notes, accounts receivable.	FAIR MARKET VALUE
TOTAL (enter total here and in Schedule H, Line 5)	

SCHEDULE F: List any other assets not mentioned above.	FAIR MARKET VALUE
TOTAL (enter total here and in Schedule H, Line 6)	

SCHEDULE G: Liens and Encumbrances. Provide a complete list of any and all liens and encumbrances against any of the property listed in this inventory.		
NAME AND ADDRESS OF HOLDER OR BENEFICIAL OWNER OF LIEN OR ENCUMBRANCE	ITEM OF PROPERTY AGAINST WHICH THE LIEN OR ENCUMBRANCE EXISTS	BALANCE OF LIEN OR ENCUMBRANCE
TOTAL LIENS AND ENCUMBRANCES (enter total here and in Schedule H, Line 8)		

STATE OF _____

COUNTY OF _____, to-wit:

I, _____, the conservator named in this inventory, do hereby certify that the information provided in this **INVENTORY OF CONSERVATOR**, including any additional pages annexed hereto, is true, correct and complete to the best of my knowledge, information and belief. I further certify that I have conducted a diligent effort to ascertain the real and personal property of the estate of the above named Protected Person and that I have made answers to each of the questions and schedules of this inventory as required by law and believe the answers contained herein to be correct and that the foregoing is a complete and true inventory of **ALL** of the real and personal property of the Protected Person.

Given under my hand this _____ day of _____ [month], _____ [year].

CONSERVATOR'S SIGNATURE

The foregoing was taken, sworn and subscribed to before me this _____ day of _____ [month], _____ [year].

[AFFIX NOTARIAL SEAL]

NOTARY PUBLIC

My Commission Expires: _____.

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____, A PROTECTED PERSON

DATE FILED: _____ CASE NUMBER _____ - G - _____

**PETITION FOR TERMINATION, REVOCATION OR MODIFICATION
OF GUARDIANSHIP/CONSERVATORSHIP**

[West Virginia Code: § 44A-4-6]

NOW COMES the Petitioner *[name of person filing Petition]* _____
in the above captioned cause, and respectfully petitions this Court to *[check the statement below which reflects what you
want the Court to do]*:

- _____ terminate or revoke the appointment of the guardian and/or conservator *[Note: To remove a specific
individual serving as a guardian or conservator, but maintain the guardianship/conservatorship, use
CG Form 21 pursuant to West Virginia Code Section 44A-4-4.]*
- _____ modify the type of appointment of the guardian and/or conservator, or modify the areas of protection,
management or assistance previously granted

of *[insert name of the Protected Person]* _____. The grounds
alleged for the termination, revocation or modification are *[initial all grounds that apply; you must initial at least one
applicable ground below]*:

- _____ (1) The protected person is no longer in need of the assistance or protection of a guardian or conservator;
- _____ (2) The extent of protection, management or assistance previously granted is either excessive or insufficient
considering the current need;
- _____ (3) The protected person's understanding or capacity to manage the estate and financial affairs or to provide
for his or her health, care or safety has so changed as to warrant such action;
- _____ (4) No suitable guardian or conservator can be secured who is willing to exercise the assigned duties; and/or
- _____ (5) It is otherwise in the best interest of the protected person.

. [Attach additional pages, if necessary.

PETITIONER'S SIGNATURE

Relationship of Petitioner to the Protected Person: _____



WEST VIRGINIA

GUARDIAN AND CONSERVATOR

HANDBOOK

A Guide For

Court-Appointed Guardians and Conservators

This handbook may be copied and distributed

TABLE OF CONTENTS

PREFACE	3
INTRODUCTION.....	3
CHAPTER 1	4
UNDERSTANDING GUARDIANSHIP AND CONSERVATORSHIP	4
PROTECTED PERSON	4
GUARDIAN.....	4
CONSERVATOR.....	4
WHO IS QUALIFIED TO SERVE AS A GUARDIAN OR CONSERVATOR?.....	6
COMPENSATION.....	6
CHAPTER 2.....	7
THE PROCEDURE FOR APPOINTING GUARDIANS AND CONSERVATORS	7
FILING A PETITION	7
WHO MAY FILE A PETITION?.....	7
CHAPTER 3.....	8
DUTIES OF A GUARDIAN	8
MANDATORY TRAINING.....	8
THE ORDER OF APPOINTMENT	8
CARING FOR A PROTECTED PERSON.....	8
GUARDIANS REPORTING REQUIREMENTS	9
LIABILITY / REMOVAL.....	10
CHANGING OR ENDING YOUR DUTIES AS GUARDIAN	10
CHAPTER 4.....	11
DUTIES OF A CONSERVATOR.....	11
MANDATORY TRAINING.....	11
THE ORDER OF APPOINTMENT AND POSTING OF BOND.....	11
CONSERVATOR'S INVENTORY	12
DISTRIBUTIVE POWERS AND DUTIES	12
MANAGEMENT POWERS AND DUTIES	13
CONSERVATOR'S ACCOUNTING REQUIREMENTS	14
WAIVER OF ACCOUNTINGS	15
CONFLICTS OF INTEREST / LIABILITY	15
REMOVAL	16
CHANGING OR ENDING YOU DUTIES AS CONSERVATOR.....	16
CHAPTER 5	18

QUESTIONS AND ANSWERS	18
County Senior Centers:	20
Area Agencies on Aging:	21
Appalachian Research and Defense Fund Inc.	22
Legal Aid Society of Charleston.....	22
North Central Legal Aid	22
West Virginia Legal Services Plan, Inc.	22
For Lawyer Referrals:	22
Social Security Administrative Offices:	23

PREFACE

Back to TOC

Some adults are or become unable to conduct their personal affairs or manage their finances because of mental or physical impairment. In cases such as these, the state traditionally steps in to appoint a guardian to protect those individuals who, for various reasons, are unable to make decisions for themselves. Unfortunately, there have been occasions when persons who needed protection were given insufficient time and attention in court proceedings and were subjected to the loss of personal freedoms and basic rights.

In the past several years in a number of states across the nation, there have been substantial reforms in the legal procedures by which guardianships are established. So too in West Virginia, where a law was enacted by the West Virginia Legislature in 1994, entitled the West Virginia Guardianship and Conservatorship Act, Chapter 44A of the West Virginia Code. This law represents a change in focus and a whole new approach to guardianship and conservatorship. It considers the abilities and best interest of a protected person while specifying the duties and responsibilities of a guardian and conservator.

The West Virginia Guardian and Conservator Handbook is designed to provide guidance to an individual who is appointed by the court to serve as a guardian or conservator, or both. The information contained in the Handbook is presented as general information and should not be considered legal advice. To resolve specific issues or problems, a guardian or conservator should seek advice from an attorney.

We invite you to share the West Virginia Guardian and Conservator Handbook with others and to make copies as needed.

INTRODUCTION

As a result of a legal proceeding in which a person's rights must be carefully considered, a circuit court may appoint a guardian or conservator for an individual found by the court to be a "protected person". This means that the court has determined that an adult individual, 18 years of age or older, is unable to care for his or her basic health, care and safety needs without the assistance or protection of a **guardian**; or is unable to manage his or her financial affairs without the assistance or protection of a **conservator**.

One of the first obligations of a guardian or conservator is to receive educational training in order to understand the responsibilities of assisting and caring for a protected person. The West Virginia Guardian and Conservator Handbook is designed to meet this requirement for educational training. The Handbook begins with an overview of the legal process, including an explanation of the terms and procedures used by the courts in establishing guardianship and conservatorship. The following chapters provide a step-by-step approach to understanding the duties and responsibilities of a guardian or conservator.

CHAPTER 1

Back to TOC

UNDERSTANDING GUARDIANSHIP AND CONSERVATORSHIP

The following terms and definitions are used throughout the West Virginia law concerning guardians and conservators. These terms are also used frequently in this Handbook.

PROTECTED PERSON

The protected person is the person for whom a guardian or conservator is appointed. A protected person is an adult, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity:

- ◇ to meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or
- ◇ to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

GUARDIAN

A guardian is a person appointed by the court who is responsible for the personal affairs of a protected person. The practical responsibilities of a guardian may include deciding where the protected person will live, how meals and daily care will be provided, how transportation will be arranged and how health care decisions will be made.

A person may be appointed as a limited guardian and have only those responsibilities for the personal affairs that are specified in the order of appointment. This occurs when the court determines that a protected person needs a guardian for specified purposes, but is also capable of addressing some of the essential requirements for his or her health, care, safety etc. A limited guardian may also be appointed as substitute decision-maker in certain circumstances.

Sometimes the court will appoint a temporary guardian if it finds that an immediate need exists. The temporary guardian has only those powers and duties specifically set forth in the order of appointment, and the appointment lasts only a limited time, usually 45 days.

CONSERVATOR

A conservator is a person appointed by the court who is responsible for managing the estate and financial affairs of a protected person. The practical responsibilities of a conservator may include controlling the protected person=s assets, paying bills and managing property.

A person may be appointed as a limited conservator and have only those responsibilities of managing the estate and financial affairs that are specified in the order of appointment. This can occur when the protected person's property or financial affairs are so limited that there are only a few purposes for which a conservator is needed.

The court can also appoint a temporary conservator if it finds that an immediate need exists. Like the temporary guardian, the temporary conservator has only those powers and duties specifically set forth in the order of appointment and only for a limited time.

WHO IS QUALIFIED TO SERVE AS A GUARDIAN OR CONSERVATOR?

Any adult may be appointed to serve as a guardian or a conservator, or both, upon determination by the court. The court determines if an individual is capable of providing an active and suitable program of guardianship or conservatorship for the protected person, and requires that the individual is not employed or affiliated with any entity which is providing substantial services or financial assistance to the protected person. In the event that a family member, friend or other qualified individual is not available to be appointed by the court, the law provides for other agencies or entities that the court can designate to assume the responsibility. These alternatives include the Office of Adult Protective Services, certain non-profit corporations licensed by the state.

It is important for any guardian or conservator to consider the protected person's maximum self-reliance and independence. A protected person is entitled to have his or her needs met in the least restrictive manner possible. In appointing an individual to serve as a guardian or conservator, the court will consider these factors, as well as the suitability of the proposed guardian or conservator and the limitations of the protected person. The court will select an individual or entity qualified to act in the best interest of the protected person, and will consider such factors as: geographic location, family or other relationship, ability to carry out duties, commitment to promoting the protected person(s) welfare, any potential conflicts of interest, and recommendation of relatives.

COMPENSATION

Any guardian or conservator is entitled to reasonable compensation as allowed by the court from the estate, including reimbursement for costs advanced. The frequency and amount of all compensation must be approved by the court.

CHAPTER 2

Back to TOC

THE PROCEDURE FOR APPOINTING GUARDIANS AND CONSERVATORS

FILING A PETITION

In order for a guardian or conservator to be appointed, a petition must be filed in the circuit court in the county where the alleged protected person lives. If the alleged protected person has been admitted to a health care or correctional facility, the petition may be filed in the county in which the facility is located.

The petition must be filed with the clerk of the circuit court, along with a filing fee of **\$90.00**. The person who files the petition is responsible for paying filing fees, fees for service of process, and for copies of court documents. If a guardian or conservator is appointed by the court, the fees may be reimbursed to the individual who filed the petition from the protected person's estate, if funds are available. Anyone who is determined to be financially unable to pay these fees and costs will not be required to do so.

Petition forms are available at the circuit clerk's office and must be completed and filed by the petitioner. An evaluation report by a physician or psychologist must accompany the petition, unless the court, for good cause shown, waives the requirement. A statement of financial resources is required prior to a hearing for a conservatorship, but it is not necessary for a guardianship hearing. The petition and accompanying forms have instructions and the circuit clerk can provide some assistance in completing the forms. However, if the petitioner needs legal advice, he or she should contact a lawyer. The court and its employees are prohibited from giving legal advice.

Once the petition is filed, the court will set a hearing and the alleged protected person will be notified of the proceedings. The court will appoint an attorney to represent the protected person. A judge may preside at the hearing or may designate a mental hygiene commissioner to do so. The court will make specific findings of fact and conclusions of law based on the information presented at the hearing, and it will determine whether a guardian or conservator is appointed and specify the areas of protection, management and assistance to be provided.

WHO MAY FILE A PETITION?

The petition for appointment of a guardian or conservator may be filed by any interested person. An interested person is defined as anyone with an actual and substantial interest in the legal proceeding. This means that the petition may be filed by the individual alleged to be the protected person or by the person who is taking care of that individual. The petition may also be filed by a facility providing care to the individual, by a person that the individual wants as guardian or conservator, or by any other interested persons.

CHAPTER 3

Back to TOC

DUTIES OF A GUARDIAN

Decision-making is the grave and fundamental responsibility of a guardian. Your obligation to the protected person is to exercise care and diligence when making decisions on his or her behalf. Decisions should be made in a manner that enables the protected person to maximize independence and self-reliance. You will face challenges and responsibilities in caring for a protected person, but your role as a guardian can be enhanced by a thorough understanding of your duties.

MANDATORY TRAINING

Even before you are officially appointed by the circuit court to serve as a guardian, you will encounter certain duties under the law. After the petition hearing is concluded, the court will issue its findings about the protected person and name a proposed guardian. When you are named the proposed guardian, you will be required to receive educational material or training, unless waived by the court. You must complete the training within 30 days, and then file an affidavit to the court certifying that you have done so. This Handbook is designed to meet that requirement and provide you with the information you need to be an effective and responsible guardian.

THE ORDER OF APPOINTMENT

The court's order appointing you as a guardian will include the specific areas of protection or assistance that are granted to you. You will be required to take an oath promising to faithfully perform your duties as guardian. The court will determine whether you must post any bond. This is at the court's discretion and usually is not required of a guardian. Within 14 days of the date the order is entered, you must mail a copy of the order, together with the statement of the right to appeal for modification or termination which is attached to the order, to the protected person and all individuals and entities that received notice of the petition.

CARING FOR A PROTECTED PERSON

As guardian you are responsible for making decisions and providing for the protected person's care and well-being. You must decide where and how the person will reside, and make sure that he or she obtains the necessary health care and therapeutic treatment. You must maintain sufficient contact with the protected person to know of his or her capabilities, limitations, needs, and opportunities. This contact cannot be less than one visit every six months, and in many circumstances these visits should be more frequent. While exercising duties to the protected person, you must adhere to the following important considerations:

Exercise your authority only to the extent necessary because of the protected person's limitations.

Whenever feasible, encourage the protected person to participate in decision-making, to act on his or her own behalf, and to develop or regain the capacity to manage his or her personal affairs.

Consider the express desires and personal values of the protected person when you make decisions on his or her behalf.

Act in the protected person's best interest and exercise reasonable care diligence and prudence.

It is also important to note that you must obtain prior court authorization for certain actions related to the protected person, such as: a change in the protected person's residence to another state, termination of his or her parental rights, change in marital status, or deviation from the protected person's living will or medical power of attorney or durable power of attorney.

GUARDIANS REPORTING REQUIREMENTS

All guardians are required to file periodic reports with the circuit clerk of the county in which the appointment is made. You must file your first report on a semi-annual basis during the first twelve months of your appointment. After the initial reports, you may elect to file the annual report on a calendar-year basis, which must be filed with the circuit clerk by April 15th of the succeeding year. Additional reports may be required if ordered by the court or if the guardianship terminated.

- ◇ Your guardian's report must include the following:
- ◇ A description of the current mental, physical and social condition of the protected person.
- ◇ A description of the protected person's living arrangements during the period covered by the report.
- ◇ The medical, educational, vocational and other professional services provided to the protected person, and your opinion as to the adequacy of the care provided to the protected person.
- ◇ A summary of your visits with the protected person and your activities on his or her behalf.
- ◇ A statement of whether you agree with the current treatment or habilitation plan.
- ◇ Your recommendation as to the need for continued guardianship and any changes you may recommend in the scope of the guardianship.
- ◇ Any other information that you consider to be useful or that is requested by the court.
- ◇ The compensation you requested and the reasonable and necessary expenses you incurred

- ◇ Your verification and signature stating that all of the information contained in the report is true and correct to best of your knowledge.
- ◇ You should keep careful records of your activities as a guardian, including the time you spend and any receipts for expenses.

LIABILITY / REMOVAL

You cannot be held liable for acts of the protected person unless you are found to be personally negligent. However you do have a duty to the protected person and may be held personally liable for a breach of that duty. This is called a fiduciary duty and means that because you are serving as a guardian, your actions must merit trust and confidence. Therefore, you must avoid conflicts of interest and demonstrate a high degree of loyalty to the protected person(s) best interests.

The court may remove a guardian for a number of reasons that include: neglecting the care and custody of the protected person or failing to act in his or her best interest; failure to file reports or comply with court orders; illness, incapacity or inability to perform duties.

CHANGING OR ENDING YOUR DUTIES AS GUARDIAN

Your appointment as a guardian can be terminated if it is so ordered by the court, if you are granted permission by the court to resign, if you are removed for any of the reasons mentioned above, or if the protected person dies.

There are also a number of circumstances that warrant changing or modifying your status as a guardian. This can be accomplished by you or the protected person, or any other interested person, by filing a petition with the court. A petition form is available in the office of the circuit clerk. Reasons to terminate, revoke or modify the appointment include:

- ◇ The protected person no longer needs the assistance or protection of a guardian.
- ◇ The protection or assistance previously granted is either too much or too little, considering the current needs of the protected person.
- ◇ The protected person's understanding or capacity to provide for his or her health, care or safety has significantly changed.
- ◇ No suitable guardian can be secured who is willing to exercise the assigned duties.
- ◇ It is otherwise in the best interests of the protected person.

CHAPTER 4

Back to TOC

DUTIES OF A CONSERVATOR

The duties of a conservator focus on management of the financial affairs of a protected person. As conservator, you will be responsible for the protected person's assets or income, for establishing a budget and paying bills or debts, for managing and investing property. You will also be required to report to the court about the status of the estate, assets, receipts and disbursements.

MANDATORY TRAINING

Even before you are officially appointed by the circuit court to serve as a conservator, you will encounter certain duties under the law. After the petition hearing is concluded, the court will issue its findings about the protected person and name a proposed conservator, you will be required to receive educational material or training, unless waived by the court. You must complete the training within 30 days, and then file an affidavit to the court certifying that you have done so. This Handbook is designed to meet that requirement and provide you with the information you need to be an effective and responsible conservator.

THE ORDER OF APPOINTMENT AND POSTING OF BOND

The court's order appointing you as conservator will include the specific areas of responsibility for managing the estate and financial affairs of the protected person. You will be required to take an oath promising to faithfully perform your duties as conservator. The order will also require the posting of a bond and will determine the amount and type (unless the appointed conservator is a bank or trust company, which may be excused from posting a bond). The court may allow a property bond instead of a cash bond, and it may increase or reduce the amount of bond depending upon the best interest of the protected person or the estate. In making its determination about the amount of bond, the court considers the following:

- ◇ The value of the estate, annual income and other receipts that are within the conservator's control.
- ◇ The extent to which the estate has been deposited under an arrangement that requires a court order for removal.
- ◇ Whether an order has been entered that waives the requirement that accountings be filed or that the accountings be presented less frequently than once a year.
- ◇ The extent to which income and receipts are paid directly to a facility responsible for the care or custody of the protected person.
- ◇ The extent to which the income and receipts are from state or federal programs that require periodic accountings.

- ◇ Whether a guardian has been appointed, and if so, whether the guardian has presented reports as required.
- ◇ Whether the conservator was appointed pursuant to a nomination which requested that bond be waived.

Within 14 days following the entry of the order of appointment, you must mail a copy of the order, together with the statement of the right to appeal for modification or termination which is attached to the order, to the protected person and all individuals and entities that received notice of petition.

CONSERVATOR'S INVENTORY

Within sixty days following the entry of the order of appointment, you must file with the court an inventory of the protected person's real and personal estate which has come into your possession or knowledge. The inventory should list, with reasonable detail, each item of the estate, its approximate fair market value, and the type and amount of encumbrance to which it is subject.

This inventory should be amended or updated if any additional real or personal estate comes into your possession or knowledge. After you present the inventory to the court, you must mail a copy of the inventory to the individuals and entities who received notice of the hearing for the appointment of a conservator.

DISTRIBUTIVE POWERS AND DUTIES

As a conservator you are responsible for applying the protected person's income and principal as needed for his or her support, care and health; as well as habilitation, education or therapeutic needs. You also must apply the income and principal as needed for the support of any legal dependents who are unable to support themselves and are in need of support. When making these financial distributions, you must adhere to the following important considerations:

- ◇ Exercise your authority only to the extent necessary because of the protected person's limitations.
- ◇ Whenever feasible, encourage the protected person to participate in decision-making, to act on his or her own behalf, and to develop or regain the capacity to manage the estate and his or her financial affairs.
- ◇ Consider the size of the estate, the probable duration of the conservatorship, the protected person's accustomed manner of living, other resources that are available, and recommendations of the guardian.
- ◇ Consider the express desires and personal values of the protected person when you make decisions on his or her behalf.
- ◇ Act in the protected person's best interest and exercise reasonable care, diligence and prudence.

- ◇ Do not revoke or amend a durable power of attorney which has been executed by the protected person, unless you have prior approval of the court.

MANAGEMENT POWERS AND DUTIES

In managing the estate, you must act as fiduciary and serve in the best interest of the protected person. Unless otherwise provided by the court, you have the authority to:

- ◇ Invest funds of the estate in accordance with a standard of prudent investing.
- ◇ Collect, hold and retain assets of the estate, and receive additions to the estate.
- ◇ Continue or participate in the operation of an unincorporated business.
- ◇ Deposit estate funds in a state or federally insured financial institution.
- ◇ Manage, control and sell the personal property of the estate.
- ◇ Perform a contract entered into by the protected person.
- ◇ Renew a lease entered into by a protected person as lessor or lessee.
- ◇ Borrow money and place, renew or extend an encumbrance upon real or personal property
- ◇ Abandon property when, in your opinion, it is valueless or of no benefit to the estate.
- ◇ Make repairs or alterations in buildings or other property and grant easements.
- ◇ Vote a security in person or by proxy.
- ◇ Sell or exercise stock rights, and pay sums chargeable or on account of securities.
- ◇ Hold a security in the name of a nominee or in other form without disclosure of the conservatorship.
- ◇ Insure the assets of the estate against damage or loss, and insure the guardian and conservator against liability with respect to third persons.
- ◇ All, pay, reject, contest or settle any claim by or against the estate or protected person.
- ◇ Pay taxes, assessments and other expenses incurred in the collection and administration of the estate.
- ◇ Pay any sum distributable for the benefit of the protected person or his or her legal dependent.
- ◇ Employ persons such as attorneys, accountants, investment advisors or agents; and act upon their recommendations.

- ◇ Maintain life, health, casualty and liability insurance for the benefit of the protected person or legal dependents.
- ◇ Manage the estate following the termination of the conservatorship until its delivery to the protected person or his or her successors.
- ◇ Execute and deliver instruments and take other actions that will accomplish or facilitate the exercise of the powers conferred by law and outlined above.

Certain other actions of a conservator may be authorized only upon petition to the circuit court. This includes entering into a protective agreement to disburse the estate of the protected person and terminate the conservatorship. Also allowable upon petition are a number of estate planning functions, such as: donating to a charity, providing support for individuals who are not legal dependents, amending or revoking trusts, exercising options or changing beneficiaries of insurance policies or retirement plans, etc.

CONSERVATOR'S ACCOUNTING REQUIREMENTS

All conservators are required to file periodic accountings with the circuit clerk of the county in which the appointment is made. You must file your first accounting on a semi-annual basis during the first twelve months of appointment and:

- ◇ On the first day of February of each year thereafter;
- ◇ When the court orders additional reports or accountings to be filed;
- ◇ When the conservator resign or is removed; and
- ◇ When the appointment of the conservator is terminated, except no accounting is required if all persons entitled to any of proceeds of the estate consent thereto.

A conservator may elect to file a periodic accounting on a calendar-year basis; however, in no event may such an accounting cover a period of more than one year. A calendar year accounting shall be filed with the circuit clerk no later than the fifteenth day of April of the succeeding year.

Your conservator's accounting must include:

- ◇ A listing of receipts, disbursements and distributions from the estate under your control during the period covered by the accounting.
- ◇ A listing of the estate.
- ◇ The services being provided to the protected person.
- ◇ The significant actions you took during the reporting period.
- ◇ Your recommendation as to the need for continued conservatorship and any changes you may recommend in the scope of the conservatorship.

- ◇ Any other information that you consider to be useful or that is requested by the court.
- ◇ The compensation you requested and the reasonable and necessary expenses you incurred.
- ◇ Your verification and signature stating that all of the information contained in the accounting is true and correct to the best of your knowledge.

You must keep careful records, including financial documents, the time you spend, and any receipts for expenses.

WAIVER OF ACCOUNTINGS

You must petition the court to change the requirement that accountings be filed or to seek permission to file less frequently than annually. If the court determines that the expense involved or the burden placed upon you outweighs the benefit to the protected person, it may waive the requirement. The court will consider:

- ◇ The relationship of the conservator to the protected person;
- ◇ The value of the estate and annual gross income and other receipts within the conservator's control;
- ◇ The amount of the bond;
- ◇ The extent to which the estate has been deposited under an arrangement requiring an order of court for its removal;
- ◇ The extent to which the income and receipts are payable directly to a facility responsible for the care or custody of the protected person;
- ◇ The extent to which the income and receipts are derived from state or federal programs that require periodic accountings;
- ◇ Whether a guardian has been appointed, and if so, whether the guardian has presented reports as required; and
- ◇ Any other factors which the court deems appropriate.

CONFLICTS OF INTEREST / LIABILITY

As a conservator, you must avoid conflicts of interest and demonstrate a high degree of loyalty to the protected person's best interests. Unless court approval is first obtained, or unless such relationship existed prior to the appointment and was disclosed in the petition for appointment, a conservator may not:

- ◇ Have any interest, financial or otherwise, directly or indirectly, in any business transaction or activity with the conservatorship;

- ◇ Acquire an ownership, possessors, security, or other pecuniary interest adverse to the protected person, or to the estate, or an interest in an asset in which the protected person also owns an interest;
- ◇ Directly or indirectly purchase, lease, or sell any property from or to the protected person or from or to the estate;
- ◇ Borrow or loan funds to the protected person or to the estate, except for reasonable advances without interest for the protection of the estate;
- ◇ Compromise or otherwise modify a debt owed by the conservator to the protected person or to the estate;
- ◇ Employ individuals or entities who were associated with or employed by the conservator prior to the appointment; or
- ◇ Directly or indirectly purchase, lease or sell property or services from or to any entity in which the conservator or a relative of the conservator is an officer, director, shareholder or proprietor, or owns a significant financial interest.

You have a duty to the protected person and may be held personally liable for a breach of that duty. This is called a fiduciary duty and means that because you are serving as a conservator your actions must merit trust and confidence. You are not personally liable on a contract entered into in a fiduciary capacity while administering the estate unless you fail to reveal your representative capacity or to identify the estate. However, you may be personally liable for obligations arising from control of the property or for wrongful acts committed in the course of administering the estate if you are personally negligent.

REMOVAL

The court may remove a conservator for a number of reasons that include: illness, incapacity or inability to perform duties; wasting or mismanaging the estate; unreasonably withholding distributions or making distributions in a negligent or reckless manner; abusing powers or failing to discharge duties; failure to file accountings or comply with court orders; failure to file sufficient bond after being ordered to do so; not acting in the best interest of the protected person or of the estate.

CHANGING OR ENDING YOUR DUTIES AS CONSERVATOR

Your appointment as a conservator can be terminated if it is so ordered by the court, if you are granted permission by the court to resign, if you are removed for any of the reasons previously mentioned, or if the protected person dies.

There are also a number of circumstances that warrant changing or modifying your status as a conservator. This can be accomplished by you or the protected person, or any other interested person, by filing a petition with the court. A petition form is available in the office of the circuit clerk. Reasons to terminate, revoke, or modify the appointment include:

- ◇ The protected person is no longer in need of the assistance or protection of a guardian or conservator;
- ◇ The extent of protection, management or assistance previously granted is either excessive or insufficient considering the current need therefor;
- ◇ The protected person's understanding or capacity to manage the estate and financial affairs or to provide for his or her health, care or safety has so changed as to warrant such action;
- ◇ No suitable guardian or conservator can be secured who is willing to exercise the assigned duties; or
- ◇ It is otherwise in the best interest of the protected person.

CHAPTER 5

Back to TOC

QUESTIONS AND ANSWERS

The following questions and answers are general in nature and are intended to provide guidance to court-appointed guardians and conservators. Remember that there may be exceptions in some situations, and guardians and conservators are urged to consult an attorney for legal advice.

1. What is a guardian?

A guardian is responsible for the personal affairs of a protected person.

2. What is a conservator?

A conservator is responsible for the financial affairs of a protected person.

3. What law governs the procedure for appointment of a guardian or conservator of an adult?

These procedures are found in §44A-1-1 to §44A-4-7 of the West Virginia Code

4. Who may file a petition for appointment of a guardian or conservator?

A petition may be filed by any interested person. See Chapter 2 of this Handbook

5. What does the term "protected person" mean?

A protected person is the person for whom a guardian or conservator is appointed. See Chapter 1 of this Handbook.

6. What is the purpose of the evaluation report by a physician or psychologist?

The law requires that an evaluation report by a physician or psychologist be filed with the petition for appointment of a guardian or conservator. The primary purpose of the report is to provide evidence as to whether the person alleged to need protection meets the definition of a protected person under the law. The report can also provide guidance to the court in determining the scope of protection and assistance that is needed. However, the court, for good cause shown, may grant leave to file the petition without an evaluation report. If such leave is granted, the court must order the appropriate assessment or examinations and must order that a report be prepared and filed.

7. What is the statement of financial resources?

The statement of financial resources is a document that lists the alleged protected person's social security number, the approximate value of real and personal property,

and the anticipated annual income and other receipts. It must be filed prior to a hearing for a conservatorship.

8. May an individual nominate his or her own guardian or conservator?

Yes. Anyone who has capacity to form a preference may nominate his or her own guardian or conservator. The nomination may be made in writing, by an oral request to the court, or may be proved by other evidence.

9. If I am appointed as a guardian, am I required to post a bond?

Usually not. The court has the discretion to determine if this is necessary.

10. If I am appointed as a conservator, am I required to post a bond?

The law requires that a conservator post a bond, except for certain circumstances that allow the court to excuse the bond. The court may allow a property bond instead of a cash bond.

11. What standards should I use when making decisions for a protected person?

Exercise your authority only to the extent necessary because of the person's limitations. Encourage him or her to participate in the decision-making and to develop the capacity to act on his or her own behalf. Consider the person's express desires and personal values when you make decisions.

12. I was appointed guardian and conservator for my son after he was disabled by a head injury. He is now doing well and doesn't need me to make his decisions. Is it appropriate to terminate the guardianship and conservatorship?

Yes. When a protected person no longer needs a guardian or conservator, or if the extent of the protection needs to be increased or decreased, it is appropriate to terminate, revoke or modify the appointment. A petition must be filed with the court to make any of these changes.

13. I am unable to continue as guardian for my sister. How do I resign?

You must petition the court at least 60 days before the date of your resignation. The court will grant you permission to resign, except for good cause, and will appoint a suitable successor.

14. What is a limited guardianship or conservatorship?

These appointments are made in cases where an individual is in need of limited protection and/or assistance. This may occur if the individual is able to manage some of his or her essential requirements for health, care and safety, but also needs some assistance. The individual may live in a supervised setting and only need a substitute decision-maker for major medical decisions. In the case of a limited conservatorship,

the individual may have meager finances and only need a conservator for a specific function related to those finances.

15. What is a temporary guardianship or conservatorship?

The court may appoint a temporary guardian or conservator in emergency situations when the court determines that an immediate need exists. A temporary guardian or conservator has only those powers and duties that are specifically listed in the order of appointment, and the appointment expires within 45 days, unless extended by the court for an additional 45 days.

16. What happens when the person for whom I am guardian dies?

A guardianship or conservatorship terminates with the death of the protected person. However, if you were appointed a conservator, you have a responsibility to account for the estate of the protected person; either an administrator or executor will need to be appointed to distribute any remaining assets of the estate.

17. Where can I get additional information?

For general information about guardianship and alternative decision-making, contact the senior center in your county or the regional Area Agency on Aging that is nearest to you:

County Senior Centers:

Barbour County Senior Center	457-4545
Berkeley County Commission on Aging	263-8873
Boone County Community Organization	949-3673
Braxton County Senior Citizens	364-5604
Brooke County Commission on Aging	527-3410
Cabell County Community Service Org	529-4952
Calhoun County Commission on Aging	354-7017
Clay County Development Corp.	587-2468
Doddridge County Senior Citizens	873-2061
Fayette/Raleigh County Commission on Aging	255-1397
Gilmer County - Council of Senior Citizens, Inc.	462-5761
Grant County Commission on Aging	257-1666
Greenbrier County Commission on Aging	392-5138
Hampshire County Commission on Aging	822-7322
Hancock Co.-Fam. Svc, Upper Ohio Valley	232-6730
Hardy County Commission on Aging	538-2256
Harrison County Senior Citizens	623-6795
Jackson County Commission on Aging	372-2406
Jefferson County Council on Aging	725-4044
Kanawha County Kanawha Valley Senior Svc., Inc.	348-0707
Lewis County Senior Citizens	269-5738
Lincoln County Senior Citizens	824-3448
Logan County - PRIDE in Logan Co., Inc.	752-1047

Marion County Senior Citizens, Inc.	366-3058
Family Services of Marion County	366-4750
Marshall County Senior Citizens	845-8200
Mason County Action Group, Inc.	675-2369
McDowell County Commission on Aging	436-6588
Mercer County Commission on Aging	425-7111
Mineral County Commission on Aging	788-5467
Mingo County EOC, Inc.	235-1701
Monongalia Co.-Senior Monongalians, Inc.	296-9812
Monroe County Council on Aging	753-4384
Morgan County Commission on Aging	258-3096
Nicholas County Community Action	872-1162
Pendleton County Commission on Aging	358-2421
Pleasants County/Wood Co. Senior Citizens	485-6748
Pocahontas County Senior Citizens	799-6337
Preston County Senior Citizens	329-0464
Putnam County Aging Program	757-2656
Raleigh/Fayette County Commission on Aging	255-1397
Randolph County-Commission on Aging	636-4747
Ritchie County Commission on Aging	643-4941
Roane County Commission on Aging	927-1997
Summers County Council on Aging	466-1890
Taylor County Senior Citizens	265-4555
Tucker County Senior Citizens	478-2423
Tyler Co.-Council of Senior Tyler Countians	758-4919
Upshur County Senior Opportunity Center	472-0528
Wayne County Community Service Org., Inc.	272-5112
Webster County Comm. Of Senior Citizens	847-5252
Wetzel County Commission on Aging	455-3220
Wirt County Commission on Aging	275-3158
Wood County Senior Citizens	485-6748
Wyoming County Council on Aging	294-8800

Area Agencies on Aging:

Region 1 - Northwestern Area Agency on Aging

Wheeling 242-1800

Region 2 - WVSC Metro Area Agency on Aging

Institute 766-4106

Region 3 - Upper Potomac Area Agency on Aging

Petersburg 257-1221

Region 4 - Appalachian Area Agency on Aging

Princeton 425-1147

For free legal assistance if you have little income:

Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh and Wyoming Counties

Appalachian Research and Defense Fund Inc.

Administrative Office, Charleston	344-9687
Beckley	255-0561
Fayetteville	574-2850
Hamlin	824-7634
Logan	752-4178
Pineville	732-8441
Princeton	487-1463
Welch	436-8476
Williamson	235-6751

Boone, Clay, Kanawha and Putnam Counties: Legal Aid Society of Charleston

Charleston	343-4481
Clay	587-4668
Madison	369-4939
Winfield	586-4239

Barbour, Marion, Monongalia, Preston, Taylor and Tucker Counties: North Central Legal Aid

Morgantown	296-0001
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All Other Counties: West Virginia Legal Services Plan, Inc.

Charleston	342-6814
Clarksburg	623-6649
Huntington	697-2070
Lewisburg	645-3131
Martinsburg	263-8871
Parkersburg	485-7522
Wheeling	232-1260

For Lawyer Referrals:

West Virginia Bar Lawyer Referral Service	558-7991
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For general legal information, but not legal advice:

West Virginia Bar Lawyer Information Service Tuesday evenings from 6:00 to 8:00	1-800-642-3617
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For Referrals to free legal services if you have low income:

West Virginia Bar Pro Bono Referral Project	1-800-642-8279
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For Social Security and Medicare benefits information:

Social Security Administrative Offices:

Beckley	253-2742
Bluefield	327-3581
Charleston	347-5217 or 1-800-772-1213
Clarksburg	623-5641
Elkins	636-3916
Fairmont	366-6925
Huntington	529-5424
Logan	752-4532
Martinsburg	263-6912
Montgomery	442-5834
Morgantown	291-4785
Parkersburg	485-5809
Petersburg	257-2573
St. Albans	722-4211
Welch	436-4181
Wheeling	232-7881
Williamson	235-0154

For other programs and services, you may contact the Office of Social Services of the Department of Health and Human Resources. There is an office in every county and it is listed in the telephone book.

NOTES