



FREQUENTLY ASKED QUESTIONS

APPOINTMENT OF GUARDIANS AND CONSERVATORS FOR INCAPACITATED ADULTS

ACKNOWLEDGEMENT

This document is intended to present general information regarding the guardianship/conservatorship process and is not intended to be a substitute for legal advice. If you are considering petitioning for guardianship/conservatorship, you should consult an attorney.

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QUESTION	RESPONSE
What is the definition of a Conservator?	A Conservator is an individual appointed by the Court who has legal authority to manage the estate and financial affairs of an adult the Court has found to need a conservator.
What is the definition of a Guardian?	A Guardian is an individual appointed by the Court who is responsible for an adult's personal affairs. Responsibilities may include making decisions about support, care, health, safety, education, treatment and residence.
What is the difference between a Guardian and a Conservator?	The primary difference is that a Conservator is responsible for the <i>financial</i> affairs of an adult, and a Guardian is responsible for the <i>personal</i> affairs of an adult.
Do I need to become a guardian and/or conservator for a friend or family member?	Remember that guardianship can take away basic rights such as the right to vote, to get married, to make medical decisions, to sign legal documents such as deeds or apartment leases. The Court's Order may specifically limit the rights taken away. It is important to ask yourself what you would need to do if all of your friend or family member's rights are transferred to you as guardian.
My brother needs a guardian and a conservator, and I would prefer not to be that person. How do I decide?	<p>Before seeking to become a guardian/conservator, be sure you fully understand the duties and responsibilities of each role. These roles can be time consuming. It is important to be honest with yourself about the time, energy and skills needed for this role. It is also important to consider the impact this guardianship/conservator role will have on your relationship with your friend or family member and whether there is someone else you trust who is willing and able to serve.</p> <p>You may wish to consider other options for making decisions on behalf of your friend or family member that do not require the Court to appoint a guardian or conservator - and do not take away rights.</p> <p>Conservators are usually required to obtain a surety bond through a bonding company (see below for more information about surety bonds). If you are considering</p>

serving as a conservator, find out as soon as possible from a bonding company if you qualify.

What other options are available?

Less restrictive options for making health care or financial decisions short of guardianship or conservatorship may include the below. For a guide on these options, please see [Options in Virginia to Help Another Person Make Decisions: Choices Less Restrictive Than Guardianship and Conservatorship.](#)

- **Durable medical power of attorney:** This document allows an individual to choose the person they want to make medical decisions if they are unable to do so.
- **Durable power of attorney:** This document allows an individual to choose the person they want to make money and property decisions for them if they are unable to do so.
- **Representative Payee:** The Social Security Administration may name someone to receive and manage an individual's Social Security Benefits on his/her behalf. With the recommendation of a medical professional, you can be appointed as a representative payee by your local Social Security Administration Office.
- **Limited Guardianship:** In a limited guardianship, a Court Order will specifically designate what decisions the guardian may make and what decisions the individual can continue to make on their own. For instance, if you are seeking guardianship for making medical decisions, the Court Order may specify that the individual will retain their right to vote, get married and/or rent an apartment.
- **Limited Conservatorship:** In a limited conservatorship, a Court Order will specifically designate what financial decisions the conservator may make and what decisions the individual can continue to make on their own. You can petition for a limited guardianship when the individual has financial resources or an estate *beyond Social Security Benefits.*

Can I be appointed as a Conservator even if I have not been appointed as an Adult's Guardian or vice versa? Yes, oftentimes, a Judge will appoint one person as Conservator and another person as Guardian. The Judge may also appoint an individual to act in both roles.

What are the steps to become appointed as a Conservator and/or Guardian for an Adult? You must fully comply with all the requirements of [Va. Code § 64.2-2000](#) et seq., which includes the following:

- **Petition:** Any person may file a petition with a Virginia circuit court stating that a Virginia resident needs a guardian or conservator to manage some or all of his/her affairs. This person is called the petitioner. The person claimed in the petition to need a Guardian or a Conservator is called the respondent. The petition must be filed in the circuit court for the city or county in which the respondent lives or where he/she lived immediately before moving to a nursing home, assisted living facility, or other institution.
- **Guardian Ad Litem:** The Judge must appoint a Guardian Ad Litem to investigate the statements in the petition and file a report with the Court. The Guardian Ad Litem does not represent either the petitioner or the respondent. The respondent may hire his/her own attorney.
- **Evidence:** The petitioner must provide evidence that the respondent is incapacitated and needs the assistance of a Guardian or Conservator.
- **Hearing:** The petitioner must schedule a hearing on the petition according to local Court procedures.
- **Court Order:** Only a Judge can appoint a Conservator and/or Guardian. If, at the Court hearing, the Judge grants the Appointment as Conservator and/or Guardian, the petitioner or their attorney must prepare a Court Order of Appointment for the Judge to sign.
- **Qualification:** After the Judge signs the Court Order of Appointment, the petitioner must formally qualify before the Clerk of the Circuit Court where the Order of Appointment was entered. The petitioner has no legal authority to act as Conservator/Guardian until he/she has formally qualified before the Clerk (see below).

What is a Guardian Ad Litem and what services do they provide?

Guardian Ad Litem (GAL) means “guardian of the suit”. A GAL is an attorney appointed by a Judge to help the Court in making a decision. The GAL does not represent a person. Instead, the GAL gives the Court independent views about what may be best for the respondent. The GAL may conduct interviews and investigations, make reports to the Court and participate in the Court hearings.

Now that the Judge has signed my Order of Appointment as Conservator and/or Guardian, how do I formally qualify before the Clerk?

Before you can legally begin your duties, you must contact the Probate Department of the Clerk of the Circuit Court to schedule an appointment to qualify. The Clerk will prepare forms for you to sign, including a surety bond if required by the Court Order. The Clerk will also ask you to take an oath saying you will faithfully perform your duties.

What is a surety bond?

A surety bond is an insurance policy and/or pledge of an asset to guarantee that you will manage the respondent's money or property properly. If you wrongfully take or misuse the respondent's money or property, the Court will ask the bond company to pay the respondent back, and then you must reimburse the company.

Is there a deadline to qualify before the Clerk?

You must qualify before the Clerk no later than thirty (30) days from the date the Court Order of Appointment is entered.

Will I receive any payment for my services and reimbursement for my expenses as a Conservator?

Depending on the circumstances, Virginia law allows “reasonable compensation” for services as a Conservator. The local Commissioner of Accounts who oversees the Conservator's reports will provide detailed information on payment and reimbursement of expenses.

Can an incapacitated person get his/her rights back?

Yes. The incapacitated person, the guardian/conservator, or any other person may file a petition for full or partial restoration of capacity with the Court. The Court may determine that the incapacitated person has regained capacity to manage his or her affairs and order that the person's rights be fully or partially restored.

Can a guardianship/conservatorship be ended?	Yes. A guardianship/conservatorship ends when the incapacitated person dies or is restored to capacity by the Court.
When do the duties of a guardian or conservator end?	Guardian/conservator duties end when the guardianship/conservatorship ends due to death or restoration of capacity, or when the guardian/conservator resigns or is removed by the Court. The final duty of a guardian/conservator is to file final documents detailing the personal/financial affairs of the incapacitated person. Examples of final documents include the final annual report of the guardian and the final accounting of the conservator.
Where can I get more information about Guardianship & Conservatorship?	<ul style="list-style-type: none">• <u>You've Been Appointed: Information for Virginia Guardians and Conservators</u>• <u>Appointment of Guardians and Conservators for Incapacitated Adults - Tutorial</u>• <u>Help for agents under a power of attorney in Virginia</u>• <u>Help for court-appointed conservators in Virginia</u>• <u>Help for representative payees and VA fiduciaries in Virginia</u>• <u>Help for trustees under a revocable living trust in Virginia</u>• <u>Options in Virginia to Help Another Person Make Decisions: Choices Less Restrictive Than Guardianship and Conservatorship</u>