Handbook for Conservators of Adults

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Bradley Geller
Michigan Long Term Care Ombudsman Program

Handbook for Conservators of Adults

ACKNOWLEDGEMENT

This handbook is provided to you compliments of the Cheboygan County Probate/Family Court. It is hoped it will aid you in understanding your powers and duties as a Conservator. The Court appreciates your willingness to assist these persons in need of your caring assistance.

Reprinted with the permission from the author, Bradley Geller

Robert John Butts
Probate/Family Court Judge

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CONTENTS

Introduction 7

1. Conservatorship: The Basics 9
2. Role of the Court 13
3. Process of Appointment 15
4. Letters of Authority 21
5. General Principles 23
6. Getting Started 25
   - A. Record Keeping 25
   - B. Hiring an Attorney 27
   - C. Becoming Representative Payee 29
   - D. Setting up Bank Accounts 31
   - E. Gathering Information and Changing Records 35
7. Inventory 39
8. Powers and Priorities 43
   - A. Obtaining Funds Due 43
   - B. Paying for Present Needs 46
   - C. Conserving Assets 58

D. Satisfying Past Debts 60

E. Investing for Future Needs 63

F. Effecting Estate Plan 66

9. Selling or Mortgaging Real Estate 69

10. Contact with the Individual 73

11. Charging for Services 75

12. Annual Account 77

13. Changed Circumstances 85

A. Change of Residence - Individual or Conservator 85

B. Change in Capacity 85

C. Termination or Modification of Conservatorship 86

D. Resignation or Removal of Conservator 87

14. Death of Individual 89

15. Liability 93

16. Forms 95

INTRODUCTION

You may have been appointed by the court as conservator for another adult, or you may be thinking of becoming a conservator. Whether you are a relative, a professional or a volunteer, this is an important job. There is potential for invaluable contribution to the welfare of the individual and personal satisfaction for you.

Being a conservator is not a simple role, but one demanding responsibility, patience, ability to work with finances and sensitivity. There are a number duties you owe to the person you have agreed to assist. There are also duties you owe to the court.

Basically, a conservator is appointed by a probate court for an individual who is unable to handle his or her own financial affairs. The conservator has control of all or part of the other person's income, savings and property. The conservator has a responsibility to spend and invest the money for the benefit of the individual.

How complicated serving as conservator will be, and how much time it will take, depend on a number of factors: the value of the property, the types of assets, the needs of the individual, whether there are dependents, and the extent of cooperation among family members.

As a conservator, there are specific powers and responsibilities you have. You should be aware of these powers and duties and how you are to exercise and fulfill them.

When an individual loses control of his or her income and property, it has obvious effects on his or her sense of independence. You should recognize this, and try to minimize its negative effects.

To help you in your new and challenging role, we have prepared this guide to answer questions you may have. Most of the information is based on

state law and court rules. To avoid labels, we refer to a person for whom a conservator has been appointed as an "individual."

As conservator, you have the right to hire professionals such as lawyers, accountants and investment advisors to help you with your tasks. If questions arise for which you cannot find an answer - about your duties, an individual's rights, or resources available in the community - please call upon the court which appointed you.

This handbook focuses on conservatorships for adults under the Estates and Protected Individuals Code. If an adult suffers from a developmental disability, somewhat different provisions of the Mental Health Code apply.

The book includes certain court forms used in conservatorship proceedings and makes reference to others. Each type of court form has a number, such as PC 10, found at the bottom left-hand corner. Not every form is used in every case. Blank forms are available on line, and should be available from the probate court office.

1. CONSERVATORSHIP: THE BASICS

What is a *conservator*?

A conservator is a person or bank appointed by a probate court after a court hearing, and given power and responsibility to handle some or all of another individual's assets and financial affairs.

Once appointed, a conservator takes title to the individual's assets subject to the conservatorship and manages them for the benefit of the individual.

What do assets include?

An individual's assets include income, stocks, bonds, bank accounts, certificates of deposit, real estate, and all other possessions. An individual's assets together are known as his or her ***estate.***

When is a conservatorship appropriate?

The probate court may appoint a conservator for an individual unable to handle his or her financial affairs effectively.

If the individual is not the petitioner, it must also be shown the individual is wasting money, disregarding upkeep of property, or not spending sufficient money to satisfy his or her own care needs, or the needs of dependents.

May an adult request a conservator be appointed for himself or herself?

Yes, if the individual feels this step is beneficial. Or he or she can consider signing a durable power of attorney for finances, instead.

What is a *durable power of attorney for finances*?

A durable power of attorney for finances is a voluntary, private arrangement through which an individual gives to another (called an agent or attorney-in-fact) the power to make financial decisions and sign financial documents for him or her.

In writing a durable power of attorney, you can choose whether to make these powers effective immediately, or effective only if you become mentally incapable of handling your financial affairs.

How is a durable power of attorney different from a conservatorship?

Under a durable power of attorney, the individual has a number of rights - to choose the agent, to specify what property is subject to the arrangement, to give directions how the agent is to perform his or her duties and to set forth how disability will be determined.

Unlike a conservatorship, which is a public proceeding, the durable power of attorney is a private arrangement. On the positive side, a conservatorship is subject to some court oversight through the filing of annual accounts.

An individual considering a durable power of attorney can choose to discuss the issue with a lawyer.

If a conservator is appointed, can the conservator revoke an existing durable power of attorney?

Yes.

What is the difference between a conservator and a *guardian*?

A guardian may have broad duties with respect to the care and custody of an individual. For instance, a guardian may have responsibility to determine where an individual lives, to ensure personal needs are met, to authorize medical treatment and to arrange for social services.

A guardian may have responsibility for finances if a conservator is not appointed.

A conservator does **not** have power to consent to medical treatment, to choose where an individual lives, or to control day-to-day activities.

Can an individual have both a guardian and a conservator?

Yes. There are separate court petitions for guardianship and conservatorship, though the petitions may be considered by the court at the same hearing. An individual may need only a guardian, only a conservator, or both.

If the court determines an individual needs a guardian and a conservator, the court can appoint the same person to fill both roles, or a different person to serve in each capacity.

What is a *protective order*?

If an individual is unable to handle his or her financial affairs, but an ongoing conservatorship is not necessary, the probate court can authorize or approve a single transaction such as selling a home, signing a mortgage, entering into a life-care contract or creating a trust.

The petition form and procedure for obtaining a protective order is the same as that for conservatorship. However, after issuance of the protective order, court involvement usually ends.

A protective order should not be confused with a personal protection order, issued by a circuit court in cases of domestic violence or threatened domestic violence.

What is *representative payment?*

If an individual is unable to handle his or her monthly Social Security or Supplementary Security Income check, another person can apply to become his or her representative payee.

Application is made to the Social Security office; there are no court proceedings. A representative payee has an obligation to use the funds for the benefit of the individual, and to account annually to the Social Security Administration how the money was spent.

If an individual does not have other income or property, a conservatorship will probably not be necessary.

Must a conservator also become a representative payee?

Depending on circumstances, a conservator may have to also become representative payee. Further information on representative payment is provided in chapter 6.

Can the court appoint more than one person as conservator?

Yes. The persons are then called co-conservators.

Do co-conservators need to make decisions together?

Ideally, the court order establishing the conservatorship will specify whether co-conservators must act together, or whether each can act independently.

2. ROLE OF THE COURT

What is the initial role of the court in conservatorship proceedings?

The court process has three goals: 1) ensuring an individual for whom a petition is brought needs a conservator; 2) establishing the conservator's powers to reflect the demonstrated needs of the individual and to encourage self-reliance; and 3) appointing a person to serve as conservator who is honest, willing and able to handle the task.

Does the court have a role in protecting the individual from a conservator inadequately performing his or her role?

Yes, in three ways. First, upon appointing a conservator, the court can require a conservator to file a ***bond,*** a form of insurance against carelessness or misdeeds. The use of bonds is likely to increase in the future.

Second, the court requires a conservator to file an annual ***account,*** which provides a means of oversight of the conservator's activities. Third, the court can suspend or remove a conservator.

How else does the court oversee the activities of a conservator?

Certain transactions of a conservator may only be taken with specific court approval. For example, courts require a conservator to seek court approval of the sale of a home or other real estate.

Any fees charged by a conservator are subject to court approval.

How might the court's role be summarized?

By law, an individual for whom a conservator is appointed is called a ***protected person***. The court's duty is to help ensure the term is a reality: that an individual is better off with a conservator than on his or her own.

3. PROCESS OF APPOINTMENT

What is the first step in a conservator or other protective proceeding?

A petition is filed in probate court in the county where the individual lives. The petition may be filed by the individual himself or herself, by any person interested in the person's estate or welfare, or by a creditor.

The petition requesting the court to issue a protective order is the same court form as used for a conservatorship. Petition forms are available from the probate court for free, or can be downloaded on line.

PC 639 Petition for Appointment of Conservator or Protective Order

How much is the court filing fee?

The fee is $150.00. The fee is paid to the probate court by the person bringing the petition. If a conservatorship is established, the petitioner can seek reimbursement from the individual's estate.

What happens after a petition is filed?

1. Court staff schedule a hearing
2. Petitioner notifies individual, in person
3. Petitioner notifies *interested persons* in person or by mail
4. Court appoints *guardian ad litem*

How does the process differ in emergencies?

If the petitioner brings an emergency petition, he or she must pay an additional $20.00 fee in many counties. If circumstances merit, it is possible to get an *ex parte order* freezing assets until a court hearing is held. After a hearing with notice to the individual, the court can appoint a *special conservator* to serve on a temporary basis until a full hearing with notice to all interested parties.

Who are interested persons in a conservatorship?

The individual's spouse and children are interested persons. If a child has died, that child's children are interested persons. If there is no spouse or descendents, then the individual's parents. If there are no parents alive, then the individual's brothers and sisters must receive notice. If no family, the State Attorney General must be notified.

Any agency paying benefits to the individual, such as the Social Security Administration or the Veterans Administration, is also an interested person.

What is a *proof of service?*

The petitioner not only has an obligation to personally serve the individual with the notice of hearing and the petition, and to serve the same papers by mail to interested persons, but to file a form known as a proof of service with the court, stating these steps were taken.

The proof of service must be filed before the court hearing.

PC 564 Proof of Service

What is the role of the guardian ad litem?

- Visiting the individual who is subject of the petition, and explaining the nature of conservatorship and the individual's rights in the process

- Determining whether the individual wishes to be present at the hearing or contest the proceeding in any way, and report this to the court

- If the individual does not contest, conducting an investigation, making a written report with findings and recommendations to the court, and appearing at the court hearing

What issues should the guardian ad litem address?

Is conservatorship appropriate?

What limitations, if any, should be placed on the conservator's powers?

Who does the respondent want to serve as conservator?

Is the nominated individual qualified to serve as conservator?

Should *bond* be required, and if so, in what amount?

Should the individual retain control of any assets or income?

If the individual wishes to be at the hearing, what accommodations should the court make due to her or his restricted mobility, impaired hearing or vision, or non-English speaking ability?

Does the guardian ad litem have any power to make decisions for the individual?

No.

What happens if the individual contests the conservatorship?

The court is obligated to appoint a lawyer to represent the individual, a lawyer who must vigorously advocate for the wishes of the individual.

What happens at the hearing?

1. The hearing is held at the courthouse or other convenient location.

2. Petitioner presents evidence on need for conservator.

3. Individual has right to be present, to present evidence, to cross-examine witnesses.

4. Court weighs evidence to see if it is *clear and convincing evidence* of the need for a conservator, then issues an order appointing a conservator, or issues a protective order or dismisses petition.

PC 640 Order Appointing Conservator
PC 644 Protective Order

Who has priority for appointment as conservator?

If the individual now expresses, or in the past has indicated a preference for a person to handle financial affairs, the court will consider that person.

If there is no evidence of preference, or if the court finds the nominated person unable or unwilling to handle the task, the court will usually follow this priority: spouse, adult child, parent, other relative.

If there is no nominee or family willing and able to serve, the court can appoint a professional conservator.

Can an individual who lives outside Michigan serve as conservator?

Yes.

What will the court order include?

In addition to appointing the conservator, the court order will specify any limitations on the conservator's powers.

One type of limitation is to allow the individual to continue to control some of his or her property. For example, the court may allow the individual to keep his or her employment income. Or the court may order the conservator provide the individual a weekly sum to spend as the individual wishes.

How else might the court limit the conservator's powers?

The court can order the conservator to put certain funds in a *restricted account,* meaning the conservator needs court approval before making a withdrawal.

The court **must** require the conservator get court approval before selling or mortgaging the individual's home or other real estate.

What else will the court order include?

The court order will direct the conservator sign an *acceptance of appointment*, and can require the conservator to file a *bond.*

What is an acceptance of appointment?

An acceptance of appointment is a document you sign when appointed by the court, in which you agree to serve as conservator and perform the required duties.

PC 571 Acceptance of Appointment

What is bond?

A bond is like an insurance policy to protect the individual's assets. The bond serves as a guarantee you will not misuse or be careless with the money and property entrusted to you as conservator. You may purchase a bond through an insurance agent.

How is the cost of the bond determined?

The court sets the amount of bond based on the approximate value of property and annual income to which you have unrestricted access.

The insurance company will charge an initial premium covering the first year; the cost depends on the size of the bond set by the court. The company will then bill you each year.

Will the amount of bond always remain the same?

No. If you request the court to confirm the sale of real estate, the court will likely increase the bond temporarily to cover the purchase price.

At any time in the future, if assets of the estate are substantially lower than when bond was originally set, you may request the court to reduce or cancel the bond.

Who is responsible for the cost of the bond?

The premium is payable out of the assets of the individual. For the first premium, you may have to pay out-of-pocket, then reimburse yourself when you get control of the individual's money.

Upon you paying the bond, you and the agent complete a form which you then submit to the court.

PC 570 Bond of Fiduciary

How does the court decide whether to demand a bond?

A court might choose not to require bond opt if all or a substantial part of the assets will be placed in a *restricted account.* When funds are placed in such an account, the conservator needs court approval before making a withdrawal.

The court might also consider the amount involved, the relationship of the conservator to the individual, and the experience of the conservator in handling finances.

4. LETTERS OF CONSERVATORSHIP

What happens after the conservator files an acceptance of trust and a proof of bond, if required?

The court will issue the conservator *letters of conservatorship.*

What are letters of conservatorship?

Letters of conservatorship are evidence of the transfer of title of the individual's assets to you as conservator. The letters serve as proof of your authority to act, and set forth any limits to your power. **Read the letters very carefully.**

You will receive one certified copy of the letters from the court.

PC 645 Letters of Authority

When would I use letters of conservatorship?

You will need the letters of conservatorship to set up a bank account and to conduct other financial transactions. Sometimes, showing an agency or person the certified copy, then giving them a photocopy, will be sufficient.

What if I need more certified copies than the one I have received?

Additional certified copies of letters of conservatorship are available from the probate court at a cost of $12.00 per copy. You may use the assets of the individual to pay this and other court fees.

Do I have access to the court file?

Yes. You may review the file at any time the probate court office is open. It is a good idea to keep a copy of all forms you file with the court, and a copy of other important papers, in the file.

5. GENERAL PRINCIPLES

What is the overriding duty of a conservator?

A conservator owes a *fiduciary duty* to the individual, a duty of the highest trust. The conservator must use care in handling property, be prudent in making investments, and use assets only for the benefit of the individual and his or her dependents. You must account to the court for all money and property received, all money spent and each property sold.

A conservator has title to the property, but does not own it. Rather, a conservator manages it for the benefit of the individual.

What are some actions to avoid?

• **Do not commingle** conservatorship assets with your own. Do not treat the individual's property as your own in any way.

Do not put any of the individual's money in your own bank account. You must establish a bank account or accounts separate from your own. Do not set up a joint bank account.

• **Avoid self-dealing** unless you first get court permission. Do not sell anything to the individual or purchase anything from him or her. Do not take a loan from conservatorship funds. Do not use conservatorship funds to pay for your own personal bills and needs.

Except for you receiving court approved fees for your services, neither you nor any of your family should financially benefit from the conservatorship.

Are there other general duties?

• **Respect any limitations on your powers** set forth in law or in your letters of authority.

• **Encourage independence and self-reliance** of the individual, to the extent possible. This may mean allowing the individual direct access to some funds to spend as he or she likes.

• **Keep financial affairs of the individual private**, except when necessary to disclose them as part of financial transactions or in fulfilling duties to report to the court or to interested persons.

• **Fulfill reporting requirements to the court** - an inventory and annual accounts - in a timely and accurate manner.

Do I have a responsibility to inform the individual of my role as conservator and of his or her rights?

Yes. You should attempt to do this as soon as possible. Do so in person.

Should I discuss financial matters with the individual?

A person who no longer has control of his or her money may feel others are stealing or otherwise misusing it. You should try to allay those fears. If an individual can understand a decision is to be made, a conservator should confer with him or her before acting.

Should I consider the wishes of the individual?

Yes. A conservator should be guided by the known wishes, likes and preferences of an individual, whether expressed before the conservatorship was established or currently. Whenever possible, the individual should be presented with choices. These are important aspects of independence and dignity.

What if I am unsure I have the power to take a particular action?

A conservator always has the right to petition the court for instructions, requesting the court determine his or powers or the right course of action. There is a $20.00 fee. Do not hesitate to petition the court if you have any doubts.

PC 586 Petition and Order

6. GETTING STARTED

A. RECORD KEEPING

When should I begin keeping records?

To effectively serve as conservator, there is a burden of paperwork. You should begin immediately upon your appointment.

What kind of records should I keep?

Begin to make a list of the property owned by the individual which will be under your control. The list should be detailed, with a description of each item sufficient to easily identify it.

The list can protect you down the road, and it will also help in putting together the inventory.

What other records will I need?

Set up a log to record the date, amount and source of all income received by the individual, including employment, pension, interest, dividends, tax rebates and health insurance reimbursement; and any sale of an asset.

Set up a log to record the date, amount and reason for all expenditures you make using the individual's money. You can choose to set this up as a daily log, or have separate pages for different categories of expense, such as

- food
- clothing
- shelter, including utility bills
- health and dental care
- insurance, including health, homeowners, automobile
- other

Maintain a checkbook, and keep it balanced.

In a folder or file box, collect all bills, receipts, bank statements, and cancelled checks relating to expenditures. Keep these separate from your own.

The better these records, the easier it will be for you to complete your annual account and any tax returns. These records can also protect you against charges of wrongdoing.

Are these financial records open to inspection?

The law requires you exhibit records upon request of an interested person.

Should I create other files?

Yes. You should have a file with all copies of all court papers relating to the conservatorship, including petition, letters of conservatorship, inventory, and annual accounts.

You should also have a file with other important legal papers, such as automobile title, life and health insurance policies, deeds, property appraisals, warranties on consumer goods. You might consider renting a safe deposit box for these items.

You might have an additional file for all correspondence received or sent regarding the conservatorship, for example, notices from the Social Security Administration, and medical insurance claims.

Must I keep track of the time I spend on conservatorship duties?

If you plan to charge for your services, it may be helpful to keep a record of your time. You should show what task or tasks you performed during each time period.

How long do I need to keep old records?

Keep all records for at least three years.

B. HIRING A LAWYER

Must I have a lawyer?

There is no requirement you have a lawyer to represent you in establishing the conservatorship or to advise you after you are appointed conservator.

Can I hire a lawyer to advise me as conservator?

Yes.

Am I personally responsible for the cost of the lawyer?

No. You pay the lawyer using funds of the individual.

How do I find a good lawyer?

There is no sure-fire way. Here are some suggestions:

If you have dealt with a lawyer in the past and were satisfied, go back to that person. If he or she does not handle probate court matters, she or he can recommend someone who does.

Ask friends, neighbors or relatives for someone with whom they have been pleased.

Call the county or state bar referral service, which will provide you with the names of one or more lawyers who deal with probate court matters.

If I decide upon a lawyer, what then?

Make sure you understand how much the lawyer will charge for her or his services, and what costs are not included in the hourly charge. It is highly recommended to have a written fee agreement.

When should I consult with the lawyer?

A lawyer could help you establish the conservatorship. If you later have questions about your responsibilities, the extent of your powers, or the individual's rights, do not hesitate to contact your lawyer for advice.

Do I have a right to receive itemized bills from the lawyer?

The lawyer's bill should include a brief description of each service, who performed it, the date it was performed and the amount of time each service took.

Do not pay any bill for legal services until you are satisfied it is accurate and complies with the written fee agreement.

Are the lawyer's fees subject to probate court approval?

Yes.

What if I am appointed as conservator and I am a lawyer?

You should notify interested persons of the fees you intend to charge for attorney services.

You must keep two detailed sets of time records: one for conservatorship services and one for attorney services. Both your legal fees and your conservatorship fees are subject to court approval.

C. BECOMING REPRESENTATIVE PAYEE

Upon being appointed conservator, do I automatically become representative payee?

No. You must apply at the local Social Security Office.

Must I become representative payee?

If the individual receives either Social Security or SSI checks at home, apply at the nearest Social Security office to become representative payee. Bring a copy of your letters of conservatorship..

Social Security checks are electronically transferred through direct deposit to a bank or other financial institution. If there is direct deposit, it may not always be necessary to become representative payee.

Might I be turned down as representative payee?

If you have been appointed conservator, it is not likely you would be turned down as representative payee.

What will happen if I am appointed representative payee?

Upon your appointment, you can arrange for direct deposit into the conservatorship bank account.

How long will it be between the time I apply and the time the checks come in my name as representative?

It will likely be a few months.

What are my obligations as representative payee?

You must use the funds for the present needs of the individual. If there is extra money, then save the remainder for future needs.

For the funds you receive as representative payee, you will have to file an annual report with the Social Security Administration. More information is available in *A Guide for Representative Payees,* available from your local Social Security Office.

What if the individual receives Veterans Benefits?

Through the Veterans Administration, a person can become *custodian* of pension or disability funds of an individual. A VA field representative visits to determine whether you are appropriate to be custodian. The representative can conduct periodic reviews of your performance, eliciting information about how money was spent, your visits, and any medical treatment the individual received.

After being appointed as conservator, contact the nearest Veterans Administration office if the individual receives or may be eligible for Veterans benefits. They will ask you to send a copy of the court order appointing you conservator.

As custodian, you must inform the VA if the individual goes into a VA hospital.

D. SETTING UP BANK ACCOUNTS

Must I set up an account as conservator?

Yes.

When should I set up a bank account?

Set up an account as soon as possible after you receive your letters of authority.

How should I choose a bank or credit union?

You may go to the bank the individual has used in the past, your own bank, or another. In choosing a bank, consider convenience, service charges, and reputation for service.

What information will the bank need?

The bank will want to see, and perhaps keep, a certified copy of your letters of authority. The bank will need proof of your identity, such as a driver's license, and the social security number of the individual.

What type of account should I set up?

You will need a checking account. Use the individual's social security number. Do not create a joint account. The account name should read,

Individual's Name by: Conservator's Name
CONSERVATOR

How much money should I keep in the checking account?

Generally, you would deposit monthly income into this account. Keep enough money in the account for month-to-month needs of the individual.

Will I need to set up a savings account or certificates of deposit in addition to the checking account?

Depending on the extent of assets and other investment opportunities, you may also want to establish a savings account or certificates of deposit. You should not put large amounts in a savings account which pays minimal interest. Each account title must reflect your name as conservator.

What about present certificates of deposit?

Check with the bank about the bank waiving any early withdrawal penalty should you withdraw the funds or transfer funds to a certificate in your name as conservator.

What if the court order provides for a restricted account?

The court may require funds kept in a savings account or certificate of deposit be restricted. The bank completes a form indicating the account or accounts that are restricted. You return this form to the probate court.

Restricted Account Agreement

Can the individual himself or herself take money out of the conservatorship accounts?

The individual is not supposed to have access, but a bank may not have a foolproof system. Make sure the bank flags the account on its computer to minimize the possibility of error.

Should I close the individual's existing account?

The court order establishing the conservatorship may provide the individual have direct access to part of his or her funds. The existing account or a new account could be used for this purpose. If you set up a new account, close the old one.

Can I give the individual control of some of her or his money if the court order is silent on this issue?

Yes. One responsibility of a conservator is to encourage self-reliance. If possible, the individual should be permitted to handle some amount of his or her money.

How much should I leave or put into this other account?

If the amount is not specified in court order, you might transfer a sum into the account each week or each month. The amount is your choice, and depends on the ability of the individual and the size of the estate.

What if the individual's present bank account is a joint account?

If the joint account is between the individual and his or spouse, you may be able to simply leave the account as it is.

What if the joint account is not between spouses?

A joint account may have been established because more than one person contributes to the account. Or the account may have been set up for the convenience of one person, or for estate planning purposes.

If you determine funds have been contributed by more than one party to the account, request the court determine what share belongs to whom.

If the account is joint only for convenience - for instance, to allow a second party access to pay bills - seek court approval to withdraw all funds and close the account.

What if the joint account was set up for estate planning purposes?

A joint owner owns the entire account upon the death of the other joint owner. If the individual set up the joint account partly or exclusively for estate planning purposes, recognize your responsibility to try to honor the individual's estate plan.

You might be able to convert the account to a trust account with the former joint tenant as beneficiary, though it would be best to petition the court for authority before taking any action.

How do I petition the court for authority?

Complete the petition and file it with the court. There is a $20 filing fee, payable from the assets of the individual. The court will set a hearing date.

You must send a copy of the notice of hearing and the petition to the individual and to all interested persons at least 14 days before the hearing.

PC 586 Petition and Order
PC 562 Notice of Hearing

E. GATHERING INFORMATION AND CHANGING RECORDS

Whom should I notify about the conservatorship?

Contact any businesses that have transactions with the individual on a regular basis. For instance, write to utility companies, credit card companies, brokers and any landlord. Have future bills come to your address.

If the individual receives pension or disability payments from an employer or insurance company, contact the business so that future checks are directed to you as conservator.

How do I determine what the individual owns?

First talk with the individual himself or herself. Then with spouse and relatives who may have information. You might also speak with a broker and accountant.

Try to locate bank records, deeds, stock certificates, life insurance policies, pension documents, motor vehicle title, and valuable personal property such as jewelry.

Be concerned with making a list of property and belongings of substantial value.

Do I have access to the individual's prior tax return?

Yes. A copy of the return might be kept by the individual, his or her accountant, or both. A recent tax return should contain clues about property owned and sources of income.

What about assets held it trust?

If the individual is a trustee, the trust document may well provide for a successor trustee to take over administering the trust. Ordinarily, you as onservator would not have title to these trust assets.

Do I have access to the individual's safe deposit box?

Yes. If the box is jointly owned, you must review the contents in front of a bank officer.

Must I get all property appraised?

No. To prepare the inventory, you will need the approximate value of real estate. The value of, stocks and bonds is easy to determine.

If there is property such as antiques, coin collections, or expensive jewelry, seeking an appraisal may be wise. You may also want to take photographs of valuable personal property.

Do I want to obtain a copy of the latest will of the individual?

Yes. You have the right to read the will, though not to change it. As conservator. it is important to know the particulars of the individual's estate plan.

Should I cancel credit cards?

You would usually cancel most or all bank and store credit cards. In appropriate circumstances, you could obtain a debit card for the individual.

Should I record the letters of conservatorship with the register of deeds?

If the individual owns real estate, and as conservator you have title to this real estate, you should record your letters with the county register of deeds in the county or counties in which the land is located.

What if real estate is owned jointly?

Sale of the real estate would require the approval of all joint tenants. Rather than immediately change the deed, it is probably sufficient to record your letters of authority with the register of deeds.

Do my powers as conservator apply to real estate or other assets in another state?

Yes. If you run into difficulty having your letters of conservatorship accepted, contact the probate court.

What about title to an automobile?

Unless you plan to sell the automobile, it may not be necessary to change title at the Secretary of State's office. You should keep the title document, itself, in a safe place.

How do I deal with a broker?

If the individual has a broker, set up a new brokerage account for the conservatorship, and transfer mutual funds, and stocks and bonds held by the broker to that account. It may not be necessary to put the stocks, themselves, in your name as conservator.

If the individual has stock certificates at home, put these in a safe place. Notify each company so their records will reflect you as conservator. You should still use the Social Security number of the individual. Dividend checks should be sent to your address.

What if stocks and bonds are held jointly?

If you do not need to immediately sell the stock, it may be possible to simply put the certificates in a safe place.

Otherwise, apply the same rules as with joint bank accounts. Petition the probate court if there are any questions about to whom the stock belongs.

What if the individual is beneficiary of a trust?

Contact the trustee, so any distributions from the trust to the individual come to you as conservator.

Can I get a new safe deposit box for important papers and items relating to the conservatorship?

Yes. The safe deposit box should be registered in your name as conservator for the individual.

7. INVENTORY

Will I receive notice from the court explaining my reporting duties to the court?

There is a *Notice to Conservator of Certain Duties* on the back side of your letters of conservatorship.

PC 645 Letters of Conservatorship

What is the first document I must file with the court?

Within 56 days from the date the court issues your letters of authority, you must file an *inventory.*

What is an inventory?

An inventory is a list of the real estate, bank accounts, stocks and bonds, automobiles, furniture, antiques and other valuable personal property the individual owns, together with the approximate fair market value of each item.

What date do I use?

The inventory should reflect the assets owned and the value of each on the date your letters were signed by the court, not the date you file the inventory.

What if the conservatorship is limited in scope?

If your letters of authority exempt certain property or properties from the conservatorship, do not list them on the inventory.

PC 674 Inventory

How much detail is required?

You would list the address of each piece of real estate owned, the name of each bank where funds are held, the name of each mutual fund, the name and number of shares of each stock, the year and model of each automobile.

Unless items of personal property are particularly valuable, such as antiques, furniture, coin collections or expensive diamonds, you can use categories such as "jewelry," and "home furnishings."

Should I include jointly held property?

Yes. In valuing the individual's interest in jointly held property, assume each joint tenant has an equal interest, unless you have evidence to the contrary. Note on the inventory the property is owned jointly.

What is the purpose of an inventory?

The inventory sets forth the property for which the conservator is responsible, and serves as a baseline for subsequent accounts. It is your duty to find out what property the individual owns.

Is there a fee for filing the inventory with the court?

Yes. The fee is $20.00, payable from the funds of the individual.

To whom must I send copies of the inventory?

After filing the inventory with the court, you must send copies to *interested persons.* Interested persons include -

- The individual
- The individual's spouse and adult children
- If no living spouse or adult children, a parent or parents
- If no living spouse, child or parent, the nearest relatives
- If no known relatives, the state Attorney General

What do I do after sending the copies?

File a proof of service with the court. Make sure you keep a copy of the inventory for your own records.

What if I discover more property after I have filed the inventory?

File an amended inventory with the court, and send a copy to each interested person.

What will happen if I don't file an inventory?

The court has the right to suspend you as conservator, or remove you and appoint a successor conservator to take your place.

8. POWERS AND PRIORITIES

In summary, what are my powers as conservator?

You have most powers over property and finances the individual had, except the power to make a will. You need court approval before exercising certain powers.

How might these powers be categorized?

You have the power to -

a) collect money due the individual

b) use income and assets to pay for present needs, including taxes

c) pay just debts of the individual

d) invest assets to pay for possible future needs

e) engage in estate planning through gifts and trusts, with permission of the court

A. COLLECTING MONEY DUE

From what sources might the individual be due money?

The individual might receive income from employment, social security, veterans or private pension, interest and dividends.

Are there other sources?

Possibilities for money due at the outset of the conservatorship or at some future time include -

- Loan repayment
- Land contract payments due
- Rental income
- Settlement of personal injury lawsuit
- Health insurance reimbursement
- Tax rebates
- Inheritance
- Trust benefits

As conservator, do I have authority to institute and settle lawsuits on behalf of the individual?

Yes.

Can I apply for benefit programs for which the individual may be eligible?

Yes. You have an obligation to do so at the outset of the conservatorship or when the individual first becomes eligible.

May I sign an application for benefits on behalf of the individual?

Yes.

What are some retirement and disability programs for which the individual may be eligible?

- Social Security
- Veterans Administration
- Railroad Retirement
- Pension from public or private employer
- Workers Compensation
- Black Lung

What are major programs to pay for health care expenses?

- Medicare
- Medicaid
- Veterans Administration

What do I have to find out about each program?

1. What benefits are available?

2. What are the eligibility criteria - age, income, assets, work record?

3. Where does one apply?

4. What information or proof is required?

How do I get this information?

There are a number of free pamphlets available from agencies administering the programs and from other organizations. Many of these pamphlets are available on-line.

What are my powers if the individual is beneficiary of a decedent's estate?

You stand in the shoes of the individual in pursuing his or her rights to an inheritance - as a beneficiary named in a will, as an heir, or as surviving spouse.

If you wish to exercise the individual's right to *take against* his or her spouse's will (and receive a share set forth in statute), you must seek prior court approval.

B. PAYING FOR PRESENT NEEDS

What are my priorities in using the individual's money?

Your first priority is paying for the present needs of the individual and other people whom the individual has supported. Make sure all taxes are paid when due.

The second priority is to pay necessary expenses to conserve the assets of the individual. Just debts can then be paid and the balance of assets invested for future needs.

Whom may the individual have supported?

The individual might be supporting his or her spouse and as a duty to support his or her minor children. There may also be members of the individual's household such as disabled children or parents to whom the individual has provided support.

How might I determine the present needs of the individual?

Talk with the individual, then any family involved. If there are caretakers, speak with them. If the individual has a guardian different from you, rely on the guardian to indicate these needs. Present needs include expenses for housing, food, clothing, health care, transportation, social services, education, entertainment and well-being.

What is the proper relationship between guardian and conservator?

In simple terms, the guardian will determine the needs and arrange for appropriate services, then the conservator will pay for those needs. It is important there be good communication between the two: the guardian may be attuned to needs; the conservator should know what the individual can afford.

What if the guardian is not reasonable?

It remains the responsibility of the guardian to see the individual's daily needs are met. If there are differences of opinion between you and the guardian that cannot be resolved, contact the probate court.

If there is no guardian, what standard of living should I aim to sustain?

A guide is the standard of living the individual had before the conservatorship was established - this would reflect the actual or presumed wish of the individual. You may make a judgment the individual cannot sustain that standard, given present income, asset value, and projected future needs over the course of the conservatorship.

Should I prepare a budget?

Yes. In consultation with the individual, if possible, and with the guardian, if any, it would be well to project the amount of annual income and the amount of all foreseeable expenses. You should consider any sources of income or support outside the conservatorship.

Once a budget is set, it could be decided who is to pay for each expense: the conservator directly, the guardian with funds provided by the conservator, or the individual.

Are there special rules if the individual lives with the conservator?

Yes. If the individual lives with you, and you are charging the individual rent or room and board, you must get court approval of the arrangement. The court will inquire whether the amount charged is reasonable.

If a different person is guardian, and the guardian provides room or room and board, the conservator can approve the amount charged if it is reasonable.

What if the conservator lives in the home of the individual?

Unless you are the spouse of the individual, you should consider paying rent and a share of the utilities.

Can I question bills?

Yes. You have the same rights to question a bill the individual would have. If you feel the individual is being overcharged, or that services or products provided are inadequate, pursue satisfaction before paying the bill.

Is it my obligation to pay the bill of the guardian ad litem appointed in the court proceeding?

Unless the court has a different policy, you would use conservatorship funds. If you have questions about the amount charged, first ask the guardian ad litem for an explanation. If you are not satisfied, ask the probate court for help in resolving the dispute.

Do I have authority to sign contracts for products or services for the individual?

Generally, yes. Make sure when you sign, you indicate by your name you are signing as conservator. You are committing the conservatorship to pay, rather than committing your personal funds.

You have the power to purchase health insurance, homeowner's insurance and automobile insurance.

What housing needs need I meet?

If the individual is living at home, it is likely he or she wishes to remain there. Keep any rent or mortgage payments, utility bills, and insurance premiums up to date.

You should also be prepared to pay for services which may be necessary

to allow the individual to remain in his or her home. Although you might help arrange these services, the choice of services belongs to the individual or guardian.

What are some of these services?

- Chore services, including heavy cleaning and yard work
- Home repair, weatherization and remodeling
- Homemaker, including housekeeping, meal preparation and shopping
- Home delivered meals
- Personal care
- Home health care, hospice care
- Telephone reassurance
- Respite care

Can I sign an apartment lease?

Yes. You do not have the authority to determine where the individual lives; that right belongs to the individual or the guardian. But once the choice is made, you can sign or co-sign a lease as conservator.

Can I prevent an individual from moving to another county or to another state?

No. Whether you have an obligation to provide funds for the individual to move may depend on the individual's financial circumstances and plans. Contact the probate court if you have questions.

Can I sign an admissions contract for nursing home care?

You cannot decide an individual is to live in a nursing home. You can sign the contract as conservator, but you are only promising to pay nursing home costs from the income and assets of the individual.

Be careful. Read the admissions contract thoroughly. On the signature line, cross out any reference to "responsible party" and sign only as "conservator"

You might also add a statement to the contract, "I sign as conservator and I only agree to pay nursing home expenses from the individual's funds, not from my own funds."

As conservator, do I have the power to authorize or refuse medical treatment?

No. Depending on circumstances, that belongs to the individual himself or herself, his or her *patient advocate*, or his or her guardian. The same is true for choosing a doctor or hospital.

Nothing prevents the conservator from inquiring as to medical needs, including assistive devices such as eyeglasses and hearing aids.

What is a patient advocate?

A patient advocate is someone the individual has appointed in a written *durable power of attorney for health care,* to make health care and personal care decisions when the individual can longer make them for himself or herself.

As conservator, you are responsible for dealing with bills for health services which the individual, patient advocate or guardian has authorized.

What can I do if an individual suffers from alcoholism?

You can pay for treatment, although you have no authority as conservator to force an individual to accept treatment.

You can refuse to provide money directly to the individual if he or she spends it on alcohol.

How do I pay for health care costs?

Depending on the age and circumstances of the individual, you may need to be familiar with Medicare, Medicaid, Veterans Administration Hospital services and private health insurance.

What is *Medicare*?

Medicare is a federally-funded program that covers part of the cost of hospital and doctor care. People are eligible if age 65 or older, or permanently disabled, or receiving kidney dialysis. Part A of Medicare generally pays for hospital care and Part B for doctors' services.

Some services, such as annual checkups, routine foot care and hearing aids are not covered at all by Medicare.

There are both deductibles and co-payments for covered services. A premium is deducted each month from the individual's Social Security check. More information is available in *Medicare and You,* available from the Social Security office or online.

When should application for Medicare be made?

Contact the Social Security office a month before the individual turns 65, or is when he or she is determined to be totally and permanently disabled. For the latter individuals, Medicare is available two years after the determination.

May a doctor charge a Medicare beneficiary any amount?

No. There are strict limits to the amount a doctor can charge.

A doctor who *accepts assignment* will only charge what Medicare considers reasonable. He or she bills the patient for any deductible and co-insurance, and collects the balance directly from Medicare.

What if a doctor does not accept assignment?

The patient must pay the bill. Medicare will reimburse the patient for the *reasonable charge.* The patient must pay the difference between the reasonable charge and the actual charge, but the doctor cannot charge more than 115 percent of the reasonable charge.

An individual may also choose to enter a private contract with a doctor who does not participate in Medicare. The charge is whatever is negotiated.

Do I have to complete paperwork to claim benefits from Medicare?

No. Federal law requires the doctor to complete the paperwork. You will receive an *Explanation of Benefits* from Medicare, showing what Medicare has and has not covered.

What is Medicare Part D?

Medicare Part D covers some of the cost of prescription drugs. You can help an individual choose a Part D plan after reviewing the medications covered and premiums of different plans.

Does Medicare cover long term care?

Medicare covers part of the cost of *skilled nursing home care* for up to 100 days, and only in certain circumstances. Medicare covers no *basic care.*

Medicaid does cover both skilled and basic care.

What is *Medicaid?*

Medicaid is a program funded jointly by the federal government and Michigan, administered by the Michigan Department of Human Services. Eligibility depends on an individual's age, income, assets, marital status and in some cases, amount of medical bills. Eligibility is reviewed once a year.

Are there instances when an individual would have a conservator and yet be eligible for Medicaid?

Yes. One set of circumstances is when the individual is married, he or she is in a nursing home, and the spouse lives at home. There are special eligibility rules in those circumstances.

You would also have to be cognizant of these rules if the individual for whom you are conservator were at home and his or her spouse were in the nursing home.

What is the purpose of the special eligibility rules?

The complex rules, based on federal law, are designed to help prevent the impoverishment of the spouse still living at home. The asset and income levels set by rule for the community spouse can be adjusted upward through court order.

Are there other circumstances when a conservator might need to apply for Medicaid?

Yes. You might be conservator for an unmarried individual who spends a number of years in a nursing home. If countable assets will go below $2,000, and present income is less than the cost of care, the individual will be eligible for Medicaid. Countable assets do not include the value of the individual's home under $500,000, a pre-paid funeral and certain other assets.

You should apply for Medicaid just before countable assets fall under $2,000.

If the individual has been paying premiums for private insurance, should I continue to pay?

Yes. If the individual is age 65 or older, the insurance is likely a Medicare supplemental policy.

You may have to complete the paperwork to make a claim for benefits under a private insurance policy.

If the individual has no private insurance, can I purchase a policy?

Yes. Try to comparison shop to obtain the best value. If the issue is joining a health maintenance organization, you should make sure the individual's doctor is part of the HMO.

What benefits are available through a Veterans Hospital?

A veteran may be eligible for hospitalization and outpatient care. The VA also contracts with nursing homes for care.

An individual may also be entitled to *aid and attendance benefits* through the Veterans Administration.

Am I responsible for paying taxes when due?

Yes. For example, you would pay winter and summer property taxes when due. If the individual is an older adult, and there are cash flow problems, you can apply to defer payment for several months. You may also be able to defer special assessments such as those for new curbs or sewer installation.

Must I file any federal, state or city income tax returns that are due?

Yes. Upon signing and mailing federal tax return, accompany the return with IRS form 56, *Notice Concerning Fiduciary Relationship.*

What factors determine whether a return is due?

Factors include the age of the individual, the amount and sources of income, and whether there have been capital gains upon selling assets.

How can I determine if required returns were filed in previous years?

If you suspect required returns were not filed, contact the Internal Revenue Service and the Michigan Department of Treasury.

Might I file a Michigan return even if no tax is due?

Yes. An individual with no tax liability may be due a homestead tax credit or home heating credit. Returns can be filed for the present year and three prior years.

An individual who rents an apartment or is in a nursing home may qualify for a homestead tax credit.

May I hire an accountant or other tax advisor to prepare tax returns?

Yes. You may need advice as to whether a federal return need be filed, and what credits are available on a federal and state return.

If you feel you need professional tax assistance, consider seeking it soon after you are appointed conservator. You may pay the tax advisor a reasonable amount for his or her services, using the funds of the individual.

If an individual's income is not sufficient to meet his or her present needs, must I use my own money?

No. Being conservator creates no obligation to use your own funds.

In these circumstances should I lend the individual money?

You have the right to advance the conservatorship money, and to be repaid for money so advanced. You would not charge interest unless the probate court approves.

It is usually best to avoid financial transactions involving your personal funds and the conservatorship.

What can I do to make ends meet if income is not sufficient?

You would begin to use assets of the individual. At the same time, you might try to scale down expenses.

What should I consider in choosing assets to use?

You would usually begin by using liquid assets such as a savings account, certificate of deposit or mutual funds.

You should consider how long the conservatorship might last, including the possibility the individual might regain the ability to manage his or her own affairs.

How do I make withdrawals if funds are in a restricted account?

You must petition to the court for authority, and obtain the court's approval. In the petition, you would explain your need to use restricted funds.

What if bank funds are insufficient?

Then you might sell some stocks and bonds.

As conservator you have an obligation to be sensitive to the estate plan of the individual. In choosing assets to use, you should disrupt the estate plan as little as possible. The individual may also have sentimental attachment to certain assets but not others.

Do I have the right to read the individual's will to know the estate plan?

Yes. Although you have no right to amend or revoke the will, you have a right to know its contents. You have an obligation to respect the estate plan to the extent possible.

What if I deplete bank accounts, certificates of deposit, mutual funds and stocks and bonds?

You will need to look at other assets. The sale of real estate is covered in the next chapter. You must continue to be sensitive to the estate plan of the individual.

You or your family or your business associate should never purchase assets of the individual without prior court approval.

How should I make payment for present needs?

Use the checking account to pay bills and obligations of the individual. The monthly statements and cancelled checks provide a good record of the expenditures.

Except for small expenditures do not use cash. Keep a detailed record of cash expenditures, and obtain receipts when possible.

Can I pay for goods and services in advance?

Yes, if you reasonably believe the goods will be delivered or the services rendered as promised.

May I provide cash to the individual to make expenditures he or she wishes?

Yes. Keep a record of the cash outlays.

May I provide funds to the guardian and allow the guardian to make purchases?

Yes. The guardian can then account to you for those funds.

C. CONSERVING ASSETS

What should I do upon becoming conservator?

Determine what needs to be done to try and ensure assets do not lose their value or are totally lost.

What specific steps should I take?

If real estate is part of the conservatorship, check with the county treasurer to make sure taxes are up to date. If back taxes are due, pay them to avoid a future tax sale of the property.

If repairs are needed to the home, a country cabin or to rental property owned by the individual, make those necessary to prevent deterioration or required by building code. Necessary repairs might be small or extensive.

Check all locks and alarms to help guard against vandalism and theft.

Can I borrow money to pay for taxes or needed repairs?

Yes. But if you are mortgaging real property as security for the loan, you are required to get probate court confirmation of the transaction.

What else should I do?

Make sure there is adequate insurance on any real property, automobiles and other personal property. Insurance should cover the risk of loss from fire and theft, and cover liability to those who might be insured in an accident.

Ensure valuable personal property is kept in an appropriate location.

Do I have authority to continue to run the individual's business?

Yes. For example, you could continue to run a retail store or wholesale business if it is part of the conservatorship.

D. SATISFYING PAST DEBTS

What should I do upon receiving a bill for a past debt?

If you or the individual receive a bill for products or services delivered before you became conservator, first determine whether the debt is valid. Any

bill should describe the service rendered, the date or dates of service and itemized charges.

You should quickly pay past utility bills in order to ensure continued service.

Should I use my own personal funds to pay past bills?

No. As conservator you have no obligation to use your own money to satisfy past debts of the individual, regardless of the amount of debt the individual might have.

What if I receive a questionable bill?

Do not pay a questionable bill, but do not ignore it. Promptly write the individual or company that sent you the bill and ask them for further information so that you may determine the bill's validity.

Is there a way for a creditor to present a *claim*?

Yes. An individual or company can file a claim with the probate court and mail a copy to you. You may pay the bill if you think it is valid. If you are unsure, seek more information. If you decide to deny the claim, write the individual or company within 63 days of the claim being filed in probate court.

PC 579 Statement and Proof of Claim

Can I deny a claim in part?

Yes. If you believe some charges to be valid and some not, you can pay part of a bill but not the entire bill. You should explain that in a letter to the individual or company.

If I deny a claim in whole or part, what may then happen?

The claimant can file an action in the probate court for a determination whether the claim is valid. The court will set a date for a hearing. You will receive notice of the hearing.

If a debt is valid, must I pay it immediately?

No. Your first responsibility is to ensure the present needs of the individual are met. You may have to liquidate assets to be able to pay claims.

Can I negotiate with the creditor for a payment schedule or a reduced bill?

Yes, you have the authority to do so.

What if the total dollar amount of all claims exceeds the value of all assets?

The law provides a priority order if the value of the estate is not sufficient to pay all claims.

1. Costs of administration
2. Claims of federal or state government having priority under law
3. Claims incurred by conservator for care, maintenance and education provided to the individual and dependents
4. Claims arising prior to the conservatorship
5. All other claims

How would I go about paying claims given these priorities?

You would satisfy all valid claims in the first class before paying any in a

subsequent class, and continue down the list.

What if there are insufficient assets to satisfy all claims within a particular class?

You may not favor one claim in a class over another claim in the same class. You would divide the assets remaining by the total value of all claims in that class, and pay a proportionate share of each claim.

Must I use or sell off all assets of the individual to satisfy past debts?

No. If the individual or his or her spouse lives in the home, you would not sell the home and furnishings. You also have an obligation to maintain sufficient funds to pay for the individual's present needs.

Can a creditor levy on the property of the individual or garnish his or her wages?

No, not if the conservator controls the assets and income.

E. INVESTING FOR FUTURE NEEDS

What if present income and assets are more than enough to pay for present needs and past debts?

You need to invest assets and excess income to pay for possible future needs. One step is to thoroughly review the risk and return of current investments.

How do I know what future needs may be?

You can only make a best guess. You may be able to determine the wishes of the individual and how medical prognosis may affect future residential options.

Can I purchase long term care insurance?

Yes. But carefully consider the terms of the policy, its cost and the probability the individual will use the benefits offered.

There may be other effective ways to financially plan for long term care costs. You can consult a lawyer to learn more.

Can I pay in advance for planned funeral and burial expenses?

Yes. The arrangements, themselves, must be chosen by the individual or guardian.

How do I make choices among investments available?

First, you must consider the risks of each investment and the return. You should certainly look at general economic conditions, the possible effects of inflation, the tax consequences of different investments, the need for liquidity, and the need for income versus capital appreciation.

Another important factor to consider is the possible length of the conservatorship.

Should I consider the individual's wishes and past investment strategy?

Yes. There may be investments particularly cherished by an individual. Although past investment strategy is not determinative of how you should act, it is a factor you can consider. There may be a degree of risk with which the individual has been comfortable. Investments in stocks in particular industries may be anathema to her or him.

Am I free to make any investment as conservator I would be comfortable making with my own funds?

No.

How much risk am I permitted to take?

As conservator, you have an obligation to be prudent. There are investments where the risk of loss is too high.

On the other hand, investments need not be insured to be prudent, and some insured investments such as savings accounts may have too low a return to be a wise choice.

Is there a specific standard of return to which I will be held?

No.

Can I invest such that I individually benefit?

You have an obligation to invest only in the interests of the individual and those dependent upon him or her.

You may not lend money to yourself or family, or invest money in any enterprise in which you or your family are principals, without prior court approval.

Do I have an obligation to diversify the investments?

Yes, in some circumstances when there are substantial assets. You might seek a mix including money market, stocks, bonds or mutual funds. Other investments could also be considered, depending on the size of the estate.

Must I make investment decisions immediately upon being appointed conservator?

No. You have a reasonable time to collect information on present investments, assess the investments and the size of the estate, determine the investment goals, and implement an investment strategy to meet those goals.

Can I seek professional assistance?

You can hire an investment counselor or financial planner either on a short or long term basis, if charges are reasonable in relation to the assets of the estate.

Am I permitted to delegate to a professional the power to make investment decisions?

Yes. But you must use care in selecting that individual, establishing investment guidelines, and periodically reviewing the individual's action.

Can I exercise voting rights in corporate elections, based on stock shares?

Yes.

Do I have an obligation to review my investment strategy?

Yes. The individual's present needs, projected future needs and market conditions will likely change over time.

F. EFFECTING ESTATE PLAN

Can the individual still make a will or change an existing will?

Perhaps. Merely because a conservator has been appointed does not mean the individual loses *testamentary capacity.* The individual can sign a will if he or she knows the document is a will or codicil, is generally aware of property owned, and can name his or her closest relatives.

The will must, of course, reflect the wishes of the individual, not those of someone else.

Can a conservator write a will for an individual or change an existing will?

No.

Can a conservator force an individual to write a will or change an existing will?

No. Having a will is a purely voluntary act. An individual cannot be forced to have a will or change a will, no matter how advantageous such action might be.

Is a conservator permitted to change the beneficiary on an individual's life insurance policy?

You may change the beneficiary on a life insurance policy only with court approval after a hearing. You would start by bringing a Petition for Authority.

The court will consider whether the change is in the individual's best interest, and approve the change only if the individual has consented or is incapable of consenting.

Should the conservator continue to pay any premiums due on existing life insurance?

In most circumstances, yes.

Can a conservator cash in a life insurance policy?

A conservator should seek court approval before taking such action.

Could a conservator purchase life insurance?

Yes, if it were consistent with the individual's estate plan, and the present and future needs of the individual, spouse and dependents.

What are the conservator's obligations regarding an existing estate plan?

You should be aware of an estate plan, as may be reflected by a will, trusts, life insurance and jointly-held property.

If you must sell assets, you should disrupt that plan as little as possible.

Can a conservator establish a trust?

A conservator can seek court permission to establish a trust. At a hearing, the court would consider whether the trust furthers the wishes or needs of the individual. One type of trust for which an individual may be eligible is known as a special needs trust. You should consult a lawyer to learn more.

If the individual has in the past made gifts to relatives or others, can I continue that practice?

If the size of the estate is sufficient to pay for present needs, past debts and projected future needs, you can make gifts based on past practice of the individual. These can certainly include birthday and holiday presents.

For large gifts, you would consider tax consequences, and any effect of *divestment* on future Medicaid eligibility.

Collectively, gifts cannot exceed 20 percent of annual income, unless the court gives prior approval after a hearing.

Might gifts include donations to charity?

Yes, if such gifts reflect what the individual has done in the past.

Can I give gifts to myself or my family?

You must seek court approval before taking such action.

Can I exercise the individual's right to take against his or her spouse's will?

Yes, with court approval, you can choose the forced share set in statute rather than the share, if any, provided in the will.

9. SELLING OR MORTGAGING REAL ESTATE

When would I need court confirmation of a sale of real estate?

Always.

Why is real estate treated differently from other types of assets?

There may be several reasons. First, the sale of real estate changes the property to a liquid asset, with greater opportunity for misappropriation. Second, a conservator does not have authority to determine where an individual lives; sale of the individual's home can certainly have an impact on the individual's choices.

Third, mortgage of the property may both create liquid resources and put the asset in increased jeopardy of loss through default.

In deciding whether to sell real property, what should I consider?

- Does the individual, a spouse or any of the individual's minor children live in the home?
- Is the property part of the individual's estate plan, through will or joint tenancy?
- Are there other assets to sell first, if resources are needed for the present needs of the individual?
- Is renting the property a viable alternative?

Might I need to sell real property for an individual to become eligible for Medicaid?

If the real property is the individual's home, probably not. If it is income

property or vacation property, you might have to sell it. Seek legal advice.

Should I sell the home if the individual is in a nursing home?

Consider the possibility the individual may be able to return home. Regardless, the home and contents will remain an exempt asset for Medicaid purposes if the home is worth less than $500,000.

See how the home factors in to the individual's estate plan. Finally, weigh heavily the importance of the home to the individual, and the grave effect sale may have on his or her outlook.

Can I purchase the property myself?

You may not purchase the property unless you obtain prior court approval. In any transaction, make sure you tell the judge whether you, a family member or anyone you have a business relationship with is the prospective purchaser.

Can I sell real property on land contract?

Though a cash sale is preferable, the court will consider approving a short term land contract if that is the best offer or only option available.

What should be my first steps in selling real estate?

1. Seek a professional and arrange for an appraisal of the fair market value of the property.

2. Decide on a selling strategy, which may include listing the property with a real estate agent.

3. When you sign a purchase and sale agreement, make sure you sign as conservator, and the document states the sale is contingent upon probate court approval.

4. Set a closing date far enough in advance so you have time to obtain court approval.

5. Petition the court for approval, with notice to all interested parties.

PC 646 - Petition for Approval of Sale of Real Estate

What will happen once I petition the court?

1. The court will set a date for a hearing.

2. The court will often appoint a guardian ad litem to investigate and report whether a sale is in the individual's best interest, whether the sale price reflects fair market value, and whether terms of the sale are acceptable.

3. At the hearing, the court will likely ask you to file additional bond in the amount of the net proceeds.

4. If the court approves the sale, you can then proceed to closing.

What steps do I take after closing?

1. Record a copy of the court order of confirmation and the deed with the county Register of Deeds.

2. Deposit the net proceeds of the sale in the conservatorship account.

3. Show the sale as an exchange of assets on the next annual account you file with the court.

What if I wish to mortgage real property?

Go through the same steps as for a sale, giving the court the reason or reasons for mortgaging the property.

Can I consider a *reverse equity mortgage*?

Yes. This may make sense for an individual who wishes to remain at home, but has insufficient income to maintain the property and pay the taxes. However, the fees for obtaining a reverse mortgage can be quite high.

10. CONTACT WITH THE INDIVIDUAL

Am I required to meet with the individual?

There is no provision in the law that requires you have face-to-face contact with the individual. It may make sense to have meetings, and may allow you to better perform your job.

It may be particularly important to visit if the individual does not have a guardian to communicate the individual's needs to you.

What are some purposes of visits?

One purpose is to ensure needs of the individual are determined and covered. This is important both for individuals living in their own homes and for those in nursing homes or adult foster care homes.

Visits can also be a means to develop a relationship of trust and to learn more about the wishes of the individual.

Can a nursing home restrict my access to the individual?

No.

How often do I need to be in contact with individual?

The extent of direct contact through meetings or telephone calls depends on the needs of the individual and whether there is a guardian.

11. CHARGING FOR SERVICES

Can I reimburse myself for out-of pocket expenses?

Yes. Following are some expenses you might have, for which you can reimburse yourself.

- court filing fees
- copies of court papers or financial records
- postage
- long distance telephone calls
- automobile mileage related to conservatorship duties

You should keep a detailed record of all out-of-pocket expenses and include them as a category on your annual account.

Do I need court approval prior to reimbursing myself for these expenses?

No.

How should I reimburse myself for these expenses?

You could write yourself a check once a month. You should not reimburse yourself by making cash withdrawals from the conservatorship account.

If I provide room and board to the individual, may I charge for these services?

If you, your spouse, or your child wish to charge for room and board, you must first get approval of the probate court. Charges will only be approved if reasonable.

Can I charge for my time spent on conservatorship duties?

Yes. As conservator, you are entitled to reasonable compensation. All fees are subject to court approval.

Should I charge a fee for my services?

You must decide whether you feel comfortable charging a fee. Oftentimes a conservator will not charge a fee if serving for a family member or friend.

If you decide to charge, you may do so for time spent on professional duties as conservator, but not for time devoted to your personal relationship with the individual.

Can I seek court approval before taking the fee?

Yes. The fee arrangement can be set forth in the order establishing the conservatorship. Regardless, you must show all fees you have taken or propose to take on the *annual account.*

How much can I charge?

A court may have established a fee schedule or an hourly rate, or decide in each case whether requested fees are just and reasonable.

If an individual receives Veterans' benefits, the fee cannot exceed 5% of the individual's income, without a court hearing with notice to the Veterans Administration.

What factors might the court consider in determining whether a fee is reasonable?

A judge might look at the amount of time spent and efficiency; the dollar value of the estate; the complexity of the tasks undertaken; and the degree of

expertise of the conservator.

You should keep accurate time records to support any request for fees. If fees are questioned, the burden is on you to show they are reasonable and for necessary services.

What if I am both guardian and conservator?

The court will usually approve one amount, covering your services as guardian and conservator.

12. ANNUAL ACCOUNT

What are my obligations to report to the court?

A conservator must file an *account* annually, although the court can request an account at any time.

What is an account?

An account shows money and property received during the year as conservator, and expenses and other disbursements.

An account also shows the value of the estate at the beginning of the period, and has a list of assets remaining at the end of the account period, together with the value of each asset.

Are there court forms to use for the account?

Yes, you have a choice of two forms. Use the second form only if you have sold assets such as real estate or stocks and bonds during the year.

Blank forms are available at no cost from the probate court office or on-line.

PC 583 Account of Fiduciary
PC 584 Account of Fiduciary

How detailed should an account be?

Receipts and expenses can be listed by category. For example, the total amount of private pension checks received during the year, or the total amount paid for nursing home care can be listed on single lines.

Must a conservator account for social security payments?

If you are also representative payee, you account annually to the Social Security Administration for those funds. In some counties, the probate court does not require you to also account for those funds to the court.

In other counties, the court requires you to account for all funds received, regardless of source. It is safe for you to choose this course.

What are categories of income and receipts I might use?

Categories might include -

- Social Security
- Veterans Benefits
- Pension
- Interest
- Dividends
- Health insurance reimbursement
- Income tax credits
- Other (specify source)

What are some categories of expenses I might use?

Categories might include -

- Housing
- Food
- Clothing
- Medical
- Dental
- Weekly or monthly allowance
- Transportation
- Attorney fees
- Other (specify)

What else might the account show?

The account might show as expenses any conservator fees earlier approved by the court, or include a request for approval of fees "earned" but not yet paid.

What is the period of time my first account covers?

The account will usually cover the one year period beginning with the date your letters of authority are signed and ending on the anniversary date.

When is my first annual account due?

The annual report is due each year within 63 days of the anniversary of your letters of authority.

The due date for the report is important - write it down on your calendar each year. You may or may not receive a reminder notice.

What happens if I can't get my account in on time?

You should request an extension, preferably before the due date. If you fail to file an account, you will receive a *Notice of Deficiency.* Act promptly by contacting the probate court.

If you do not file an account after receiving a notice of deficiency, the court may suspend your powers and later remove you as conservator.

PC 600 Notice of Deficiency

Must I show any mortgages or loans on the account form?

Yes, you should include such transactions even though there may be no specified line for them. A new transaction of these types would appear on both sides of the ledger, as there is both "income" and "expenditure" in equal amounts.

How might I make it easier to complete the account?

The more accurate and detailed records you keep during the year, the easier it will be to complete the account.

With what figures do I begin?

The starting point for your first account is the value of the estate as shown in the inventory you filed.

The starting point for future accounts is the value of all assets at the end of the previous account period.

Must I attach any documents or information to the account?

You must attach a confirmation of bank balance or brokerage fund balance from a bank or broker or mutual fund where funds are held, dated within 30 days of the end of the accounting period.

Should I discuss the account with the individual before I file it?

It may be helpful to the individual to do so.

Is there a court fee for submitting the annual account?

Yes, the fee is $20.00. The fee is payable out of the individual's estate.

To whom must I send a copy of the account?

You must send a copy to the individual and to each interested person shown on the initial petition for conservatorship. Consider delivering a copy to the individual in person.

After doing this, file a proof of service with the court.

What if the individual receives benefits from the Veterans Administration?

If you control a benefit the individual receives from the Veterans Administration, send a certified copy of the account to the VA regional office.

What if there are no interested parties?

You must send a copy of the account to the Michigan Attorney General. The address of the Attorney General is -

Law Building
P.O Box 30212
Lansing, MI 48909

When I file the account with the court, will court staff ask for proof of expenses I have made?

Court staff have authority to request proof of expenses, which are usually in the form of cancelled checks. Some counties do this routinely, others only if there are questions about the account.

When I file the account, will the court set a date for a hearing?

In some counties, the court will hold a hearing each year. In other counties, the court will review the account each year and hold a hearing once every three years

A hearing will ordinarily be held if any interested party objects to the account, the conservator requests a hearing, or if the court notices irregularities.

What are the purposes of a hearing?

A hearing provides opportunity for interested persons to object, and for

the court to act upon a request for approval of attorney fees and conservator fees.

Will the court maintain the guardian ad litem through the years?

The court has authority to continue the role of the guardian ad litem, who will review annual accounts and make a recommendation to the court.

Can I permanently change the date upon which the annual account is due?

If you contact the court in writing, the court can change the date to one more convenient to you. No account, however, should cover a longer period than 12 months.

13. CHANGED CIRCUMSTANCES

A. Change of Residence

What if the individual's residence changes?

If the individual moves, you should inform the court within 14 days of the move. There is no official form; you can inform the court by letter or fax.

You must also contact the court if your residence changes.

Do my powers change if the individual moves out of state?

Financial institutions and businesses in other states should respect your letters of authority, but they may not. Contact the probate court if you encounter difficulties.

B. Change in Capacity

Do I have authority to petition the court for appointment of a guardian?

Yes.

In what circumstances would I do so?

If you believe the individual is an *incapacitated individual,* and imposition of guardianship is necessary to provide for his or her needs.

What does incapacity mean?

Generally, incapacity is the inability to make or communicate informed decisions about one's own care, such as medical treatment decisions and choosing where to live.

C. Termination or Modification of Conservatorship

How long will the conservatorship last?

Some individuals may need a conservator for a relatively short time, perhaps as they recover from a stroke or closed head injury. Other individuals may suffer from a degenerative condition such as Alzheimer's Disease, and need a conservator for the rest of her or his life.

What if the individual for whom I am conservator regains the ability to handle his or her finances?

You should petition the court for termination of the conservatorship

PC 638 Petition to Terminate or Modify Conservatorship

What if the individual wants me to have fewer powers or wants the conservatorship terminated?

The individual has the right to petition the court or to contact the court by informal letter. You are prohibited from interfering with transmittal of such a letter.

Upon receipt of a petition or letter, the court will appoint a lawyer for the individual. The individual has the same procedural rights as he or she had at the time of the initial conservatorship petition.

If the court terminates the conservatorship, what should I do ?

After you cover expenses of administration, you would turn all property and assets you hold as conservator back over to the individual.

D. Resignation or Removal of Conservator

If I feel I can no longer handle the responsibilities, may I resign as conservator?

Yes. File a petition with the court. Include a final account, covering the period from the end of the previous account to the present. Send the petition and account to interested parties; personally deliver them to the individual.

PC 638 Petition to Terminate or Modify Conservatorship

Is it necessary for me to find a successor?

You may resign without finding a successor, although it will be helpful if you can find someone willing and able to serve. First priority remains someone of the individual's choice.

What will the court do?

The court will set a date for a hearing on approval of your final account, and on appointment of a successor conservator. The court will follow the procedure for an initial petition, including appointment of a guardian ad litem.

What if the court approves my final account and appoints a successor?

You should turn over any assets of the individual still in your hands to the successor. It will be helpful for you to meet with the successor to transfer assets, turn over important documents and discuss outstanding issues.

The successor files a receipt with the court, whereupon the court will discharge you as conservator and cancel any bond. If you have a bond, you should then bring those papers to the insurance company holding the bond.

PC 597 Order of Discharge

Under what circumstances might I be removed involuntarily?

The court can remove a conservator who fails to file annual accounts, misuses the individual's funds, engages in self-dealing, or does not perform his or her duties effectively.

What should I do if I am appointed successor conservator?

Accept the assets from the prior conservator, and give him or her a receipt. Change the bank account to show your name as conservator, or change banks if you wish. If real estate is involved, record your letters of authority with the register of deeds. Within 56 days of the court issuing your letters of authority, file an inventory of all assets over which you have control.

14. DEATH OF INDIVIDUAL

What should I do upon the death of the individual?

First contact any family who may not know about the death.

Notify the probate court and bring the court a certified copy of the death certificate.

What should I do with the individual's will?

If you have possession of the will, deliver it to the probate court. Then notify the person nominated as personal representative in the will, and beneficiaries of the will, that you have done so.

What effect does the individual's death have on my powers?

In general terms, your powers as conservator end.

May I pay for funeral and burial arrangements?

Before paying the funeral bill or any other bills, you must seek court approval. Depending on circumstances, the court can order specific debts be paid immediately.

What else should I do?

You should inform agencies such as the Department of Human Services, Social Security Administration and Veterans Administration from whom the individual was receiving benefits, of his or her death. If monthly benefit checks come after death, do not cash them.

If the individual owned life insurance, you may also inform the life insurance company of the death.

What should I do with money and property I hold as conservator?

Except to the extent you seek and receive court permission to pay bills, retain the property and money until a *personal representative* is appointed through the probate court.

Once a personal representative is appointed, turn over everything of value to the personal representative and obtain a receipt from him or her.

What is a personal representative?

A personal representative is the person who may be nominated in the will, and who is appointed by the court to administer the estate of a person who has died. The role of the personal representative is to gather assets, pay any taxes and debts, and distribute the estate to beneficiaries.

What should I do after I turn over all the property?

Prepare a final account and submit it to the court. Send a copy of the account and the notice of hearing to all interested persons.

Once the personal representative files an inventory showing receipt of the property, and the court approves the final account, the court will discharge you as conservator and cancel your bond.

PC 545 Petition and Order Allowing Account
PC 597 Order of Discharge

What if no one petitions the probate court to become personal representative?

If no one has petitioned to commence probate proceedings within 42 days after the date of death, you can petition the court to be given the powers of a personal representative or to distribute a small estate.

What if the value of the estate is relatively small?

If the value of the estate minus expenses of funeral and burial is about $20,000 or less, you can petition the court for an order turning the property over to the individual's heirs after the funeral bill is paid.

15. LIABILITY

Might I be sued because of contracts I signed as conservator?

Yes. But if you made clear in signing the contract that you were signing as conservator, your personal funds will not be at stake.

Am I liable for any torts, such as negligence, committed by the individual?

No.

Can I be sued because investments turn out badly?

If you used due care in choosing the investments, you cannot be sued successfully merely because the investments turn out badly.

Can I hire a lawyer to represent me if I am sued as conservator?

Yes. As long you had exercised good faith in performing your duties, fees for the lawyer would be payable from the estate of the individual.

What if the individual himself or herself gets sued?

You have the authority to hire a lawyer to represent him or her.

As conservator, am I responsible to pay for purchases the individual makes himself or herself during the conservatorship?

You might contest any major transaction by alleging the individual did not have capacity to contract. If the transaction was through telemarketing, there could be fraud involved.

Are there any circumstances where I will be held personally liable?

Yes. Some circumstances that may lead to a lawsuit against you are -

- You deliberately misuse funds of the individual.
- You act outside your authority.
- You commingle your income and assets with those of the individual.
- You are negligent in investing money, protecting assets or paying debts.
- You self-deal without prior court approval.

What happens if I breach my fiduciary duty and I am sued?

If a judgment is entered against you in a lawsuit, and you have a bond, the bond company will pay part or all the judgment.

The bond company can sue you to try to recover the money it has paid out. You will be responsible to pay your own attorney.

What can I do to minimize the chance of a successful lawsuit?

- Know the limits of your authority
- Document your activities
- Maintain the individual's assets separately from your own
- Use your common sense
- Keep interested persons informed
- Ask a professional or the court, if you have question.

16. FORMS

Letters of Conservatorship	**PC 645**
Inventory	**PC 674**
Account of Fiduciary	**PC 583**
Account of Fiduciary (if capital gain or loss)	**PC 584**
Petition to Allow Account(s)	**PC 585a**
Petition for Approval of Sale of Real Estate	**PC 646**