



## **GUARDIAN AND CONSERVATORSHIP**

### **FREQUENTLY ASKED QUESTIONS**

**1. What is a Fiduciary?**

A fiduciary is a person who has an obligation to act prudently on behalf of another. Upon determination after a hearing that a fiduciary is necessary, the probate court will appoint either a guardian or a conservator (or both) to act on behalf of a legally incapacitated person. A guardian acts on behalf of the legally incapacitated person in personal matters. If appointed under the Mental Health Code, a guardian also may manage all of the incapacitated person's finances and property. When the Mental Health Code does not apply, a conservator will be appointed to be responsible for such person's financial affairs. If both a guardian and a conservator are necessary, they do not need to be the same person.

**2. Are there any alternatives to a Guardian / Conservator**

When a person becomes disabled, a spouse or other family member may often informally make decisions concerning the person's care and custody without having probate court proceedings for guardianship. Also, a person, while competent, may execute a durable power of attorney designating someone to make decision for them in the event of incapacity.

**3. What are the powers and duties of a Guardian?**

Michigan's Estates and Protected Individuals Code determines the powers and duties of a guardian. Generally a guardian is responsible for the care, custody and control of the legally incapacitated person – but is not liable to third persons for the acts of the incapacitated person. The guardian may give consent which will enable the incapacitated person to received medical care or other professional care and treatment. However, they may not place the personal in a mental institution without a full court hearing. Each year the guardian must file a report on the condition of the incapacitated person with the probate court where the appointment took place and give a copy to the person and to the interested parties.

**4. Does a Guardian receive compensation?**

A guardian may be compensated from the incapacitated person's assets. The amount of compensation will depend primarily on the amount of time spent by the guardian, the nature of the services provided, the amount of available funds, and the special needs for the person.

**5. What are the powers and duties of a Conservator?**

The conservator is responsible for the collection, preservation and investment of the incapacitated person's property and must use the property for the support, care and benefit of the protected individual and his or her dependents. A conservator has a duty of loyalty and may not use any of the protected person's assets for personal benefit. The court may require the filing of fiduciary bond to provide protection for the protected individual if there is loss caused by the wrongful acts of the conservator.

**6. Does the Conservator receive compensation?**

Like a guardian, a conservator is entitled to just and reasonable compensation for services. In approving a conservator's fees, the court will usually consider the following factors:

- a. The time expended by the conservator;
- b. The professional expertise and skill required;
- c. The nature, number and complexity of the assets;
- d. The makeup of parties who are interested in the conservatorship;
- e. The extend of the responsibilities and risks assumed; and
- f. The results obtain in administering the property.

It is important that the conservator who wishes to be compensated keep accurate time records and be able to demonstrate to the court that the services were both necessary and beneficial.

**7. How can the Jordan-Balkema Elder Law Center assist you?**

Many persons who assist a disabled person do not have the technical expertise to carry out all of the important responsibilities and duties. In many instances, it will be necessary for the Guardian / Conservator to retain legal counsel to assist in these important matters. Here at the **Jordan-Balkema Elder Law Center** we are experienced in obtaining the necessary court approvals that are required in order to act as a Guardian or Conservator and can assist you in any necessary accounting procedures. We will make the process as easy as possible by giving detailed explanations and updates, and promptly addressing concerns you may have.

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