

# Conservators & Guardians in Alabama

## What is a Conservator?

A person who is appointed by the court to manage the property of a minor or incapacitated person.

## Who is an incapacitated person?

A person who is unable to manage property and business affairs because of:

1. Mental illness
2. Mental deficiency
3. Physical illness or disability
4. Infirmities accompanying advanced age
5. Chronic use of drugs
6. Chronic intoxication
7. Confinement
8. Detention by foreign power
9. Disappearance

## Who can serve as a Conservator?

An individual or corporation with the priorities as follows:

1. Conservator appointed in another jurisdiction
2. Person selected by incapacitated person
3. Person designated by incapacitated person's power of attorney
4. Spouse
5. Adult child
6. Parent
7. Relative with whom ward has lived with in the last six months
8. Nominee of person caring for incapacitated person
9. General guardian or sheriff

## When can a Conservator be appointed?

A conservator may be appointed when an incapacitated person:

1. Is unable to manage property and business affairs; and
2. (a) Has property that will be wasted without proper management; or  
(b) Funds are needed to support the incapacitated person or one entitled to support from the incapacitated person.

## What are the powers and duties of a Conservator?

**Without court authorization**, the conservator may:

1. Invest and reinvest funds
2. Retain assets
3. Receive additions
4. Acquire undivided interest
5. Deposit funds in financial institutions
6. Acquire property

7. Dispose of personal property
8. Make repairs to building
9. Enter leases up to 5 years
10. Enter mineral leases
11. Grant options up to one year
12. Vote securities
13. Pay assessments
14. Sell or exercise stock options
15. Deposit stocks and bonds
16. Consent to reorganization, merger, dissolution, or liquidation of a business
17. Insure assets
18. Borrow to protect estate
19. Settle claims
20. Pay reasonable annual compensation to conservator
21. Pay taxes and expenses
22. Allocate expenses to income
23. Pay sum for benefit of protected person or his family
24. Employ persons, including attorneys, auditors, investment advisors, or agents
25. Prosecute or defend claims
26. Execute and deliver appropriate instruments
27. Hold securities

**NOTE:** The court may limit powers of conservator.

**With prior court authorization**, the conservator may:

1. Continue or participate in operating business
2. Demolish improvements
3. Dispose of real estate
4. Subdivide, develop, or dedicate land
5. Enter leases greater than 5 years
6. Grant an option more than one year
7. Take an option to acquire property

## Am I required to have a lawyer?

The legal complexity of guardianships and conservatorships normally necessitates having an attorney since the Probate Judge cannot advise you of the law or provide you with forms.

## What is the difference between a Guardian and a Conservator?

The guardian looks after the person and their welfare while a conservator looks after their estate.

# Conservators & Guardians in Alabama, continued

## What are the steps followed in appointing a Guardian or Conservator for an adult?

1. Filing a petition for appointment
2. Appointment of a guardian ad litem
3. Examination by physician
4. Appointment of court's representative
5. Hearing
6. Jury at hearing (if demanded)
7. Bond for conservator
8. Order granting petition
9. Letters of guardianship and/or conservatorship
10. Inventory of property for conservator

## Is a bond required?

Yes, a bond is required for conservatorships unless, the bond requirement was waived in a Will or Power of Attorney.

## Is an inventory required?

Yes, each conservator must complete an inventory of the estate immediately and file it with the court within 90 days after appointment.

## Are accountings required?

Yes, a conservator must give an accounting to the court at least every three years. The court may order an accounting more frequently. An accounting is also required upon the resignation or removal of the conservator.

## What is a Guardian?

The parent of a minor or someone who has been appointed by the court to be responsible for the personal care of an individual.

## What is a Ward?

The person for whom a guardian has been appointed.

## Who can be a Guardian for an adult?

Any qualified person may be appointed as a guardian. However, the law establishes the following priorities:

1. Someone named in a durable power of attorney
2. The person's spouse or spouse's nominee
3. An adult child of the person
4. A parent or parent's nominee
5. A relative with whom the person has lived the prior six months
6. Someone nominated by the caretaker of the person

## Who can be a Guardian for a child?

The court may appoint any person who would be in the best interest of the minor. However, if the minor is 14 years old or older, the minor may nominate a person to be appointed unless the appointment is contrary to the minor's best interest.

Additionally, a parental nomination has priority.

## Can a parent appoint a Guardian?

Yes, in a Will or other document properly signed and witnessed, a parent may appoint a guardian for a minor child or for an unmarried incapacitated child.

## Can a spouse appoint a Guardian?

Yes, in a Will or other document properly signed and witnessed, a person may appoint a guardian for his or her incapacitated spouse.

## What are the powers of a Guardian?

1. A Guardian must assume responsibilities of a parent regarding support, care and education
2. A Guardian must become personally acquainted with Ward
3. A Guardian must take reasonable care of Ward's personal effects
4. A Guardian must apply available money for current needs or health, support, education and maintenance
5. A Guardian must conserve excess money
6. A Guardian must report the condition of the Ward to the court
7. A Guardian may receive limited funds for support of Ward
8. A Guardian may take custody of ward and establish a home
9. A Guardian may compel payment of support
10. A Guardian may consent to medical care
11. A Guardian may consent to marriage or adoption
12. A Guardian may delegate certain responsibilities to the ward for the decision making

NOTE: The court may limit powers of a guardianship.

## When does a Guardianship end?

A Guardianship ends when:

1. The Ward dies
2. The Guardian resigns
3. The Minor is adopted

*This pamphlet, which is based on Alabama Law is to inform and not to advise. No person should ever apply or interpret any law without the aid of a lawyer who analyzes the facts, because the facts may change the application of the law.*



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