



# Alabama Guide for Guardians and Conservators



ALABAMA  
**Guardianship**



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# Table of Contents

<b>Introduction</b>	3
Supreme Court of Alabama’s Commission on Adult Guardianships and Conservatorships	3
Alabama Center for Adult Guardianships and Conservatorships	3
Acknowledgments	4
<b>Guardian and Conservator Basics</b>	4
What is a fiduciary?	4
Guardian of a person’s life decisions	5
Conservator of a person’s money and property	5
Introducing Martin	6
Duty to Martin	6
Duty to the Court	7
What should you know about working with professionals?	7
Can Martin get any benefits?	7
How can you avoid problems with family or friends?	8
When do your responsibilities end?	8
Protecting Martin’s person, money, and property	9
Adult Abuse	9
Watch out for financial exploitation	10
Be on guard for consumer scams	11
Protection from ID theft and fraud	14
<b>Duties of a Guardian</b>	16
Duty 1   Make a plan for Martin	16
Duty 2   Determine Martin’s goals, needs, and preferences	17
Duty 3   Make decisions in Martin’s best interest	18
Medical decision making	18
Residential decision making	19
Social decision making	19
Duty 4   Keep others informed about Martin	19
<b>Duties of a Conservator</b>	22
Duty 1   Act only in Martin’s best interest	22
Duty 2   Manage Martin’s money and property carefully	23
Duty 3   Keep Martin’s money and property separate from yours	26
Duty 4   Keep good records and report to the court	27
<b>Where to go for help</b>	29
Local and state agencies	29
Federal agencies	30
For legal help	31
For accounting help	32

# Introduction

## Supreme Court of Alabama’s Commission on Adult Guardianships and Conservatorships

This Guide is published by the Supreme Court of Alabama’s Commission on Adult Guardianships and Conservatorships (“Commission”). Since 2017, the Commission (and its predecessor Alabama WINGS) has worked to improve guardianship and conservatorship practices in Alabama. Its mission is to deliver information, resources, and tools throughout the legal system and to the public as a means of providing appropriate decision-making supports and protective services to individuals. For more information about the Commission, visit [www.alacourt.gov](http://www.alacourt.gov).

## Alabama Center for Adult Guardianships and Conservatorships

The Commission oversees the Alabama Center for Adult Guardianships and Conservatorships (“Center”), which is an Alabama non-profit corporation. The Center is tasked with many of the responsibilities of the Commission, and is a statewide coordination, resource, training, research, and development office for guardianships and conservatorships. For more information about the Center, visit [www.alabamaguardsmanship.org](http://www.alabamaguardsmanship.org).

## Acknowledgments

This Guide was adapted from the Consumer Financial Protection Bureau’s (“CFPB”) Managing Someone Else’s Money guides. The Commission prepared this Guide to include Alabama law and resources. The CFPB has not reviewed or approved the content of this Guide, and the CFPB does not necessarily endorse the final product.

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# Guardian and Conservator Basics

## What is a fiduciary?

Like many people, you may never have been a guardian or conservator for someone else before. That's why we created this **Alabama Guide for Guardians and Conservators**. This Guide will help you understand what you can and cannot do in your role as a guardian or conservator for an adult. In either of those roles, you are a **fiduciary**. For this Guide, a fiduciary is anyone named to make personal decisions or manage money or property for someone else. You'll find brief tips to help you avoid problems and resources for finding more information.

This Guide is for family and friends serving as a guardian or conservator, not for professionals or organizations. The Guide does not give you legal advice. Talk to a lawyer if you have questions about your duties.

If you want to learn about how to become a guardian or conservator, this Guide is not designed for you. Talk to a lawyer about the process to be appointed as a guardian or conservator.

Since you have been appointed by a court as someone else's guardian or conservator, you are a **fiduciary**. The law requires you to make decisions and manage that person's money and property for **HIS OR HER** benefit, not yours. It does not matter if you are managing a lot of money or a little. It does not matter if you are a family member or not.

The role of a fiduciary carries with it legal responsibilities. As a fiduciary, you must be trustworthy, honest, and act in good faith. If you do not meet these standards, you could be removed as a fiduciary, sued, have to repay money, or even charged criminally.

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## Different types of fiduciaries exist

In your role as a guardian or conservator, you may act as or deal with other types of fiduciaries. These may include:

**Trustees** — someone names them to manage money and property.

**Social Security representative payees, or VA fiduciaries for veterans** — a government agency names them to manage government money that is paid to someone.

**Agents under a Power of Attorney** — someone names an agent to make medical decisions or manage their money and property in case they are not able to do it.

It is important to work with these other fiduciaries and keep them informed. As conservator, you cannot manage someone else's government benefits such as Social Security or VA benefits unless you get a separate appointment from the government agency, for example, as a representative payee or VA fiduciary. For more information, contact the government agency.

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## Guardian of a person's life decisions

What is the difference between a **guardian** and **conservator**? You may have been appointed by the court as guardian only, conservator only, or both.

A guardian is "of the person." In other words, you have been appointed to make that person's individual decisions. A guardian of the person makes someone else's healthcare and other personal decisions, including where the person lives and who they socialize with. In Alabama, a guardian has responsibility for the person's health, support, education, and maintenance.

See **Duties of a Guardian** on page 16 of this Guide for more details.

## Conservator of a person's money and property

A conservator is "of the person's money and property." You have been appointed by a court to manage money and property for someone else whom the court has found cannot manage it alone.

The court may appoint one person as guardian and a different person as conservator for an adult. You must work closely together. For example, if the adult needs to move to a new location or get special care, their guardian will make important personal decisions while the conservator will make the financial ones. You must consult with each other.

See **Duties of a Conservator** on page 22 of this Guide for more details.





## Introducing Martin

A person under guardianship or conservatorship may be called an incapacitated person, protected person, ward, or individual subject to guardianship or conservatorship. It can be complicated!

**To keep it simple, think about this scenario: Your family member or friend may not be able to make decisions on his own about his person, money, and property. For this Guide, let's call him Martin. After a hearing, the court has named you guardian and conservator for Martin.**

**You now have the duty and power to make some or all of Martin's personal decisions. You also have the duty and power to make decisions on Martin's behalf about some or all of his money and property. Martin's money and property is called his estate. The court has given you a lot of responsibility as Martin's guardian and conservator. You are now a fiduciary with fiduciary duties.**

**As guardian and conservator, you have a double duty—both to Martin (the person you are serving) and to the court.**

### Duty to Martin

You must always keep Martin's best interests in mind. In making his decisions and managing his money, you must act for his good and not for your own good. Involve Martin in decisions as much as possible.

## Duty to the Court

You are an agent of the court. The court has trusted you. Read and follow its orders. You must report to the court regularly and be ready to answer any questions.

## What should you know about working with professionals?

In managing Martin's affairs, you may need help from professionals such as lawyers, brokers, financial advisors, accountants, real estate agents, appraisers, psychologists, social workers, doctors, nurses, or care managers. You can pay them with Martin's money.

If you need help from any professionals, remember these tips:

- **Check on the professional's qualifications.** Many professionals must be licensed or registered by a government agency. Check credentials with the government agency. Make sure the license or registration is current and the professional is in good standing. Check the person's complaint history.
- **Interview the professional thoroughly and ask questions.**
- **Review contracts carefully before signing.** Before hiring any professionals, get their proposed plan of work and expected fee.
- **Make your own decisions based on facts and advice.** Listen to their advice but remember you are the decision-maker.

## Can Martin get any benefits?

Find out if Martin is eligible for any financial or health care benefits from an employer or a government. These benefits might include pensions, disability, Social Security, Medicare, Medicaid, Veterans benefits, housing assistance, or food stamps (now known as Supplemental Nutrition Assistance Program or SNAP). Use the National Council on Aging benefits check-up at [www.BenefitsCheckUp.org](http://www.BenefitsCheckUp.org).

Help him apply for those benefits. The Area Agency on Aging where Martin lives can help you find information. Find your local Aging and Disability Resource Center in Alabama by visiting [www.alabamaageline.gov](http://www.alabamaageline.gov) or calling 1-800-243-5463.

## Medicaid is complicated

The Medicaid program provides medical assistance and long-term care to low-income people. Get legal advice and be very careful about decisions that may affect Martin's eligibility for Medicaid. Transfers of money or property could result in penalties or cause Martin to be ineligible for benefits. To contact the Alabama Medicaid Agency, visit [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov) or call 1-800-362-1504.

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### How can you avoid problems with family or friends?

Family or friends may not agree with your decisions about Martin. To help avoid problems, consider these guidelines:

- Sharing information may help (unless Martin has said that you should not). It usually is easier to deal with questions about a decision when it happens than to deal with suspicion and anger that may build over a long time.
- Some family or friends may not have Martin's best interest at heart, so it may be better not to share information with them, or to ask the court not to share it. Use your best judgment.
- If family or friends don't agree with your decisions, try to get someone to help sort it out—for example, a family counselor or mediator. See **Where to go for help** on page 29 of this Guide.

### When do your responsibilities end?

Your responsibilities as Martin's guardian and conservator last until the court relieves you of your duties. The court may do this because someone else has been appointed, Martin has died, or Martin no longer needs a guardian or conservator.

## Protecting Martin's person, money, and property

Guardianships and conservatorships are often called "protective proceedings." The idea is that someone needs protection from some type of harm, usually physical or financial. For example, Martin might not be able to take care of his own medical needs, and he needs you to make sure he is getting proper treatment. Or someone may be taking advantage of Martin financially, and he can't pay his rent or bills. As Martin's guardian and conservator, it is your responsibility to protect Martin from harm.

First, make sure Martin's daily living needs are taken care of. Martin needs adequate food, shelter, and clothing like anyone else. Martin may need help with bathing or showering, dressing, getting in and out of bed or a chair, walking, or using the toilet.

Martin's safety may also be a concern. Do whatever you can to make sure Martin has a safe place to live, and that his home is free of hazards. Work with Martin on any self-destructive behaviors he may have. Ask for help when needed.

## Adult Abuse

Others may be causing harm to Martin. This is called adult abuse. There are several types of adult abuse: physical injury, neglect, emotional abuse, sexual abuse, and financial exploitation. If Martin is being abused, you need to act as his guardian and conservator.

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### What can you do if Martin has been abused?

- Call 911 if Martin is in immediate danger.
- Call DHR Adult Protective Services (APS) if you suspect that Martin has been physically abused, neglected, or exploited. The role of APS is to investigate reports and to provide or arrange services to victims.
- If you think Martin has been or will be the victim of a crime, contact law enforcement.
- Alert Martin's bank or credit card company.
- Call your county district attorney's office or the Alabama Attorney General's Office.
- If Martin is in a nursing home or assisted living facility, and you suspect he is being abused, contact the State Long-Term Care Ombudsman Program.
- Call the Alabama Securities Commission if the exploitation deals with individuals or firms that sell securities and/or provide investment advice.
- Consider talking to a lawyer about protecting Martin from more abuse or getting back money or property taken from him.

Each agency or professional has a different role, so you may need to call more than one. For more information, see **Where to go for help** on page 29 of this Guide.

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## Watch out for financial exploitation

Family, friends, neighbors, caregivers, fiduciaries, business people, and others may try to take advantage of Martin. They may take his money without permission, neglect to repay money they owe, charge him too much for services, or just not do things he has paid them to do. These may be examples of financial exploitation. As Martin's guardian or conservator, you should help protect him. You should know the signs of financial exploitation for five important reasons:

1. Martin may still control some of his funds and could be exploited;
2. Even if Martin does not control any of his funds, he still may be exploited;
3. Martin may have been exploited before you became his guardian or conservator, and you may still be able to do something about that;
4. People may try to take advantage of you as Martin's guardian or conservator; and
5. Knowing what to look for will help you avoid doing things you should not do, protecting you from claims that you have exploited Martin.

Look for these common signs of financial exploitation:

- **Some money or property is missing.**
- **Martin says that some money or property is missing.**
- **You notice sudden changes in Martin's spending or savings.** For example, he:
  - Takes out lots of money from the bank without explanation;
  - Tries to wire large amounts of money;
  - Uses the ATM a lot;
  - Is not able to pay bills that are usually paid;
  - Buys things or services that don't seem necessary;
  - Puts names on bank or other accounts that you do not recognize or that he is unwilling or unable to explain;
  - Does not get bank statements or bills;
  - Makes new or unusual gifts to family or others, such as a "new best friend";

- o Changes beneficiaries of a will, life insurance, or retirement funds; or
- o Has a caregiver, friend, or relative who suddenly begins handling his money.
- Martin says he is afraid or seems afraid of a relative, caregiver, or friend.
- A relative, caregiver, friend, or someone else keeps Martin from having visitors or phone calls, or does not let him speak for himself, or seems to be controlling his decisions.



### Be on guard for consumer scams

As Martin's guardian or conservator, you should be alert to protect his money from consumer scams as well as financial exploitation. Criminals and con artists have many scams, and change them all the time. They often seek unsuspecting people who have access to money. Learn to spot consumer scams against Martin—and against you as his guardian or conservator.

### How can you protect Martin from scams?

Consumer scams happen on the phone; through the mail, e-mail, or the Internet; and they occur in person, at home, or at a business.

Here are some tips:

- Put Martin's number on the National Do Not Call Registry. Go to [www.donotcall.gov](http://www.donotcall.gov) or call 1-888-382-1222.
- Don't share numbers or passwords for Martin's accounts, credit cards, or Social Security, unless you know whom you're dealing with and why they need the information.
- After hearing a sales pitch, take time to compare prices. Ask for information in writing and read it carefully.
- Too good to be true? Ask yourself why someone is trying so hard to give you a "great deal." If it sounds too good to be true, it probably is.
- Watch out for deals that are only "good today" and that pressure you to act quickly. Be suspicious if you are not given enough time to read a contract or get legal advice before signing. Also watch out if you are told that you need to pay the seller quickly, for example by wiring the money or sending it by courier.
- Never pay up front for a promised prize. Suspect a scam if you are required to pay fees or taxes to receive a prize or other financial windfall.

- **Watch for signs Martin already has been scammed.** For example, does he receive a lot of mail or e-mail for sweepstakes? Has he paid people you don't know, especially in other states or countries? Has he taken a lot of money out of the bank while he was with someone he recently met? Does he have a hard time explaining how he spent that money? Is he suddenly unable to pay for food, medicine, or utilities?

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### What can you do if Martin has been scammed?

If you suspect a scam, get help. Contact law enforcement, a state agency, or a federal agency, depending on the type of scam. You may also need to talk to a lawyer.

A state agency to call is the Office of the Attorney General--Consumer Interest Division.

Call a federal agency if scammers are in other states or countries. Federal agencies to call are the Consumer Financial Protection Bureau, the FBI, the Federal Trade Commission, or the U.S. Postal Inspection Service.

Each of these agencies and professionals has a different role so you may need to call more than one. For more information, see [Where to go for help](#) on page 29 of this Guide.



## Common Consumer Scams

Relative in need	Someone who pretends to be a family member or friend calls or e-mails you to say they are in trouble and need you to wire money right away.
Charity appeals	You get a call or letter from someone asking for money for a fake charity—either the charity does not exist or the charity did not call or write to you.
Lottery or sweepstakes	You get a call or e-mail that you have a chance to win a lot of money through a foreign country's sweepstakes or lottery. The caller will offer tips about how to win if you pay a fee or buy something. Or the caller or e-mail says you already have won and you must give your bank account information or pay a fee to collect your winnings.
Home improvement	Scammers take money for repairs and then they never return to do the work or they do bad work. Sometimes they break something to create more work or they say that things need work when they don't.
Free lunch	Scammers invite you to a free lunch and seminar, and then pressure you to give them information about your money, and to invest the money with them. They offer you "tips" or "guaranteed returns."
Free trip	Scammers say you've won a free trip but they ask for a credit card number or advance cash to hold the reservation.
Government money	You get a call or letter that seems to be from a government agency. Scammers say that if you give a credit card number or send a money order, you can apply for government help with housing, home repairs, utilities, or taxes.
Drug plans	Scammers pretend they are with Medicare prescription drug plans, and try to sell Medicare discount drug cards that are not valid. Companies with Medicare drug plans are not allowed to send unsolicited mail, emails, or phone calls.
Identity theft	Scammers steal personal information—such as a name, date of birth, Social Security number, account number, and mother's maiden name—and use the information to open credit cards or get a mortgage in someone else's name.
Fake "official" mail	Scammers send letters or e-mails that look like they are from a legitimate bank, business, or agency to try to get your personal information or bank account number.

## Protection from ID theft and fraud

Protecting Martin from financial exploitation and scams is among your important responsibilities. A Federal law lets some financial caregivers request a security freeze, also called a credit freeze, on their loved one's behalf. Taking this step can help protect them from identify theft and fraud.

### Anyone can be a victim of identity theft

Identity theft happens when someone steals personal information, such as a Social Security number. That lets hackers, thieves, and even people you know open new credit cards and other financial accounts in your name. A security freeze restricts access to your credit reports and makes it hard for identity thieves to open new accounts in your name. Under the law, it's free to freeze and unfreeze your credit file at all three of the nationwide consumer reporting agencies – Equifax, Experian, and TransUnion.

### Help for financial caregivers

But what about Martin who can't manage his finances on his own? The law lets people with certain legal authority act on someone else's behalf to freeze and unfreeze their credit file. The law defines a "protected consumer" as an incapacitated person, someone with an appointed guardian or conservator, or a child under the age of 16.

When you're acting on behalf of Martin, you must give the credit reporting agencies proof of authority before you can freeze and unfreeze his credit. Proof of authority includes:

- A court order (such as an order naming you guardian or conservator)
- A valid power of attorney

You'll also need to provide proof of your identity, which can be your Social Security card, your birth certificate, your driver's license, or other government issued identification.

If you believe a credit reporting agency is not placing a security freeze properly, you can submit a complaint to the Consumer Financial Protection Bureau at [www.consumerfinance.gov/complaint](http://www.consumerfinance.gov/complaint).

If you think you or someone you know is a victim of identity theft, visit the Federal Trade Commission's [www.identitytheft.gov](http://www.identitytheft.gov) to get a personalized step-by-step recovery plan.





# Duties of a Guardian

## Duty 1 | Make a plan for Martin

You will be making many of Martin's personal decisions and taking care of his needs. A court has found that Martin is unable to sufficiently understand or communicate decisions for his own well-being, and has appointed you as his guardian. You should think now about how you are going to do the job of being Martin's guardian.

Start with what you know about Martin. To make the best decisions for Martin, you will need to know his goals, needs, and preferences. Keep in mind what is important to Martin and his specific expressions of choice. Then, you should regularly visit with Martin so you can understand his preferences, abilities, limitations, needs, opportunities, and physical and mental health. You will need to develop your plan using the information you gather from Martin.

Make sure you involve Martin in this plan and in decision-making as much as possible. You want to encourage Martin to make decisions for himself when he can. Try to go back to this plan and update it every year to ensure it is incorporating Martin as much as possible and is allowing him to exercise his rights to the extent possible.

To complete your plan, you will need to gather the following types of information:

**Have up-to-date contact information for Martin's family.** In some situations, you will have to notify Martin's family, for example, with changes in Martin's health or residence. Having the relatives' current contact information, when they are entitled to such notice, will make it easy to contact them when needed. Keep a list of Martin's relatives and their current contact information in a file.

**Inform the necessary people of Martin's guardianship.** To be effective in your role as Martin's guardian, you will need to notify Martin's medical professionals, government agencies providing benefits to Martin, as well as any other entities concerning Martin's care. Give copies of your guardianship papers, usually called Letters of Guardianship, to whomever needs them.

**Be familiar with Martin's medical information and conditions.** You are responsible for the health and well-being of Martin. You need to know Martin's physical limitations, his medicine routines, his medical providers, and health insurances. Talk to Martin's doctors to understand his medical limits and conditions.

- Understand Martin's physical limitations. This will allow you to make sure Martin's residence is meeting his needs. He may need physical therapy to improve mobility, or daily assistance in moving around his home. Martin's home can be made more accessible. Update your records -- Martin's medical conditions may change often.
- Make a complete list of Martin's medications. You need to know what the medications are for and when they need to be refilled. You may be responsible for making sure Martin takes his prescribed medicines in the right dosages and at the right times.

- Make a list of Martin’s medical providers. Give Martin’s doctors, pharmacy, and facilities a copy of your guardianship papers so they are aware of your relationship with Martin.
- Make a list of Martin’s health insurance companies, Medicare, Medicaid, VA, and others. You will need to know Martin’s insurance coverage for doctors, hospitals, nursing homes, prescriptions, and other types of medical care. Keep a current copy of Martin’s insurances in a file.
- Write down all of Martin’s routine doctor visits. You need to make sure those future visits are scheduled.

**Example: Martin has not been to the doctor for his annual checkup in two years. Here you, Martin’s guardian, need to schedule a doctor’s appointment as well as follow-up doctor visits.**

**Know Martin’s residence and living arrangements.** You should keep notes of Martin’s current residence and any problems it may present to Martin. Does Martin have mobility difficulties such as climbing stairs? Are there any safety concerns? Significant repairs needed? Problems with heating, air, electricity, or other utilities? Is Martin able to maintain his living space? Your responsibility is to ensure that Martin’s residence is meeting his goals, needs, and preferences.

**If the court order requires, have the court review your guardianship plan.** The court may want you to submit your guardianship or care plan. You should read all of the court’s orders carefully. If the court requires a guardianship plan, make sure it is submitted by the deadline. The court may provide a sample form for you to use. The lawyer who helped you obtain the guardianship may be able to submit the plan for you, but it is ultimately your responsibility to make the plan.

## **Duty 2 | Determine Martin’s goals, needs, and preferences**

Before you make any decisions for Martin, you need to understand his goals, needs, and preferences. How do you do that? Here are some tips:

- Talk to Martin. If he has difficulty communicating, use whatever means or assistive technology you have available to communicate with him. Let Martin tell you what is important to him.
- Spend time with Martin. Just being around Martin in his surroundings should help you understand his needs.
- Try to put yourself in Martin’s shoes and figure out what Martin would do given the choice. Your goal is to help Martin exercise his rights to the extent possible.
- Look to any directions Martin has written down. He may already have expressed his goals and preferences in a healthcare directive, living will, power of attorney, or last will and testament.
- You could also contact Martin’s personal and professional relationships. If they are close to him, they may have insight into his preferences.

You have decision making authority over Martin, his personal effects, and even his pets. Knowing Martin’s relationships and way of life can help you make decisions that align with the decisions

Martin would make for himself, and those that are in his best interest. A guardianship is not meant to drastically change Martin's daily life, but to aid him in living his best life possible.

### Duty 3 | Make decisions in Martin's best interest

Making decisions for someone else is hard. As Martin's guardian, you will be helping Martin make some incredibly personal decisions, as well as make decisions for him when he can't. Every decision you make for Martin must be in his best interest. Here's a 3-step process you can follow:


1. First preference should be given to Martin's choice when possible. Martin needs someone (you) to advocate for his goals, needs and preferences. Martin's wishes should be followed unless he cannot express his wishes, or if they would cause him substantial harm.
2. If Martin is struggling to make a decision, try supported decision-making. This is when you, Martin's family members, friends, or others help Martin understand his choices, make a decision for himself, and communicate his decision to someone else.
3. If Martin can't make the decision for himself, even with support, or his choice would cause substantial harm, you make the decision for Martin. Any decisions you make must be in Martin's best interest. When deciding what's in Martin's best interest, you should consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for his needs.

### Medical decision making

As his guardian, you must promote, monitor, and maintain Martin's health and well-being. When a medical decision needs to be made, you should begin with finding out all the facts and looking at the options.

- Discuss the options with Martin's doctors. Ask questions.
- If you think there needs to be a second opinion, look to an independent physician to reassess the information.
- Check and see if Martin executed any health care documents such as powers of attorney, living wills, or organ donation statements.
- And don't forget Martin himself! Involve Martin as much as possible in medical decision making.

Armed with that information, think carefully about what Martin would decide if he could. If you don't know what Martin would do, or his decision would cause substantial harm, choose the option that is in his best interest.

 When making decisions concerning the withholding and withdrawal of life support, you should look to the court order to make sure you have authority to make the decision.

## Residential decision making

You need to make sure Martin's residence is meeting his needs. Keeping Martin in his own home should remain a first priority if possible because that is likely what Martin would prefer. However, there may be a time when Martin's residence doesn't meet his needs. Whatever you and Martin decide, try to choose the least restrictive alternative to meet his housing needs.

**Example:** Martin likes living at his own home. However, the bedroom is placed upstairs and Martin is wheelchair bound. Since no bedroom is available on a floor that Martin can access, this poses a problem. What are the alternatives? First, consider whether a room on the first floor could be converted into a bedroom, or if there is a place to put a bed. Second, you could look into buying a one-story home. Or, it could be that an assisted living facility would be the best place for Martin to live, depending on his care needs. In making the decision, you should consider Martin's goals, needs, and preferences. Think about the proximity of a new residence to Martin's family and friends. And, ask Martin what he wants to do! Update the family of any change in residence.

In this example, staying at home with modifications would be the least restrictive alternative, allowing for Martin's freedom. Moving him into an assisted living facility would place the most restrictions on him.

## Social decision making

Some of Martin's most personal decisions are those involving relationships. Unless the court has limited your authority, you have the ability to decide who Martin socializes with. A guardian may even consent to marriage, divorce, or adoption on behalf of an adult.

Visitation rights are based on Martin's existing relationships between himself and other individuals prior to the guardianship taking effect. You should promote those existing relationships and social interactions unless the visitation would put Martin at the risk of substantial harm.

**For example,** Martin and his friend Sally have a history of visiting with one another once a week for coffee at his house. Consent for visitation for Sally would be assumed because Martin had a history of visiting with Sally.

**Example 2:** Martin has a daughter, Sue. Sue only visits Martin to take money and to steal blank checks from his wallet without him knowing. Sue has taken enough money to make Martin be behind on his house payment. You may need to restrict Sue's visitation with Martin to prevent further financial harm.

## Duty 4 | Keep others informed about Martin

There are two groups of people you must keep informed about Martin. One is his family. The other is the court.

Martin's relatives must be notified of these important changes in Martin's condition:

- (1) Martin is admitted to a medical facility for more than three days,
- (2) Martin changes residence,
- (3) Martin stays somewhere other than his residence for over one week,
- (4) Martin dies, and
- (5) Of funeral arrangements for Martin and the location of Martin's final resting place.

Relatives include Martin's brothers, sisters, children, parents, grandparents, and grandchildren. They are entitled to notice unless the court orders you not to inform them, they give you written notice that they do not want to receive this information, or if Martin has a protective order against the relative.

In addition to Martin's family, you should notify the court of any significant changes with Martin. The court needs to know if Martin has moved to another state or has died. Notifying the court could also help reinstate some or all of Martin's rights. The situation causing the guardianship or Martin's condition may have improved. Sometimes, a court will require you to submit a report on Martin's condition. Pay close attention the court's orders, and keep good records in case the court requests them.





# Duties of a Conservator

## Duty 1 | Act only in Martin's best interest

Because you are dealing with Martin's money and property, your duty is to make decisions that are best for him. This means you must ignore your own interests and needs, or the interests and needs of other people.

To help act in Martin's best interest, follow these guidelines:

- **Read the court order.** Your powers and duties as Martin's conservator are written in state law. They also may be written in the court order that appointed you. Some court orders will be detailed, while others may be very general. Read the court order closely, and **talk to a lawyer if you don't understand it.** Ask questions and learn all you can about what you should do—and what you should not do.
- **Do what the court order says—and don't do what it says you should not do.** It is important that you not act beyond what the law and the court order allow, and that you carry out the basic tasks necessary. Your powers may be limited to certain actions or certain amounts of money. You may need to get the court to approve other actions. Even if you have the best intentions, follow the court order.
- **As much as possible, involve Martin in decisions.** Many things can affect your decisions. For example, you might feel pressure from others. Martin's abilities to make decisions might change from time to time, or maybe Martin was never able to make decisions about his money and property. Consider these three steps:
  - First, ask Martin what he wants. He may be able to decide some things. If so, take this into account, especially if it is similar to his thinking in the past and the risk of harm to him is low. For example, if Martin wants to handle money, see if he can manage a small bank account or a monthly cash allowance. Doing this will let him be in charge of a set amount, and you will limit the risk to that amount.
  - Second, try to find out what Martin would have wanted if he cannot tell you himself. Look at any past decisions, actions, and statements. Find as much information as you can. Ask people who care about Martin what they think he would have wanted. Make the decision you think that Martin would have made, unless doing so would harm him.
  - Third, do what you think is best for him. If you have looked hard and still don't know what Martin would have wanted—or if Martin could never make decisions about money and property—use your judgment about what is best. Put Martin's well-being above saving money for others who may inherit his money and property. Make sure that he is safe and comfortable, and his needs are met.
- **Avoid conflicts of interest.** A conflict of interest happens if you make a decision about Martin's property that may benefit you or someone else at Martin's expense. Because you were appointed

by the court, you have a strict duty to avoid conflicts of interest—or even the appearance of a conflict of interest. Try to keep an “arm’s length distance” between your interests and any use of Martin’s money.

- **Don’t borrow, loan, or give Martin’s money to yourself or others.** Even if the court order clearly allows gifts to you or others, be very careful to avoid conflicts of interest. Usually, the court must approve gifts or loans, or those over a certain amount. Make sure that any gifts do not increase or complicate Martin’s taxes or change his plans for his property when he dies. Any gifts or loans should be in line with what Martin would have wanted. For example, if Martin gave money every year to a charity, the court may allow you to continue doing that.
- **Avoid changing Martin’s plans for giving away his money or property when he dies.** There may be rare situations when changing Martin’s plans is in his best interest. But you should get legal advice and approval from the court before you do anything.
- **You are allowed to pay yourself a reasonable annual compensation (a “fee”) for acting as conservator.** The court will have to approve the fee, therefore, keep a log of the time you spend as conservator. If you are uncertain, get legal advice before you pay yourself for work done as conservator.

To avoid any surprises or misunderstandings, tell family about your fees when you begin your duties as a conservator. If you charge fees, charge fees that are reasonable. Don’t charge for things that are not specifically done as conservator. For instance, don’t charge fees if you shop for Martin or personally make home repairs. If necessary, you can pay someone else at a lower rate for these tasks and document the expenses.

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## Avoid possible conflicts of interest

Sometimes people have good intentions, but do things they shouldn’t. Because you are now a fiduciary, you should avoid any conflicts of interest. Here are a few examples of possible conflicts of interest:

### Whose car is it?

You used Martin’s money to buy a car. You use it to drive him to appointments, but most of the time you drive the car just for your own needs. This may be a conflict of interest.

### Should you do business with family?

Martin needs repair work in his apartment. You hire your son and pay him from Martin’s money. This may be a conflict of interest, even though the work was needed. It appears that you have put your personal interest to benefit your son in conflict with Martin’s interests.



## Duty 2 | Manage Martin's money and property carefully

As Martin's conservator, you might pay bills, oversee bank accounts, or pay for things he needs. You might also make investments, pay taxes, collect rent or unpaid debts, get insurance if needed, cancel any unneeded insurance, and do other things in the court order.

You have a duty to manage Martin's money and property very carefully. Use good judgment and common sense. As a fiduciary, you must be even more careful with Martin's money than you might be with your own!

Follow these guidelines strictly according to the court's procedures:

- **Make an inventory.** Alabama law requires you to file a complete inventory with the court *within 90 days* of your appointment. You should also follow all court orders setting deadlines for filing inventories. The court may give you a form. To make careful decisions, you need to know what Martin owns and owes. To make a proper inventory, you must find and list for the court all of Martin's income and property, as well as any debts or legal claims against his properties (called liens). To avoid any risk to Martin's money and property, you must make the inventory as quickly as possible.

An inventory may include all kinds of property. Your list might include:

- o Checking and savings accounts;
  - o Cash;
  - o Pension, retirement, annuity, rental, public benefit, or other income;
  - o Real estate;
  - o Cars and other vehicles;
  - o Insurance policies;
  - o Trusts for which Martin is a beneficiary;
  - o Stocks and bonds;
  - o Jewelry, furniture, and any other items of value; and
  - o Unpaid credit card bills and other outstanding loans.
- **File the inventory with the court.** Keep a copy of the inventory for your records and file it with the court by the due date. Be ready to share it with family listed with the court as interested parties. If assets are discovered or added after you file the initial inventory, you may have to file updated inventories listing the new assets.
  - **The court will require you to buy a bond.** The bond may be paid for out of the assets of Martin's estate. A bond is a special type of insurance policy so the court can make sure you carry out your duties. If you fail in your duties and, as a result, money is lost or stolen, the bonding company will pay the money back. Then the company will try to collect the money from you.

Only people with good financial records and credit histories can get a bond. Try to check this before you are appointed as conservator or as soon as possible. Take all steps the court advises about getting a bond.

- **Protect Martin’s property.** Keep his money and property safe. Have Martin’s income and bills sent to you. Put his valuable items in safe deposit boxes and lock other items he is not using in storage. Keep Martin’s cash in bank accounts that earn interest if possible and that have low or no fees. Review bank and other financial statements promptly. If Martin will not be living in his home, consider changing the locks. Figure out if the house should be rented, or how to keep it safe if it is vacant. If Martin rented an apartment and will be moving, tell the landlord and remove his things.
- **Make a financial plan.** Make a budget as if you were making one for your own household. List how much you expect to pay for nursing home, assisted living or home care, rent, food, medical care, and home maintenance or repair. Be sure to include a monthly amount for Martin to use as he pleases. Think about any special expenses that may arise, such as dental work or any medical care or equipment that Medicare, Medicaid, or other health insurance will not cover. Try to stick to your budget. If something very costly occurs, you may need the court to approve the expense.
- **Invest carefully.** If you are making investments for Martin, talk to a financial professional. The Securities and Exchange Commission (SEC) provides tips on choosing a financial professional at [www.sec.gov/investor/alerts/ib\\_top\\_tips.pdf](http://www.sec.gov/investor/alerts/ib_top_tips.pdf). Discuss your choices and goals for investing based on Martin’s needs and values.
- **Pay bills and taxes on time.**
- **Cancel any insurance policies that Martin does not need.**
- **Collect debts.** Find out if anyone owes Martin money, and try to collect it.
- **There’s no place like home. You cannot sell or mortgage Martin’s home or any land without prior court approval.** Martin may want to continue to live in the home he owns or rents. In that case, take these steps:
  - **Determine if living in his home is safe, and if Martin can manage in the house.** If needed, put in guard rails, grab bars, smoke detectors, extra lighting, and other things to help him stay at home. Tax credits or deductions might be available if you make the home easier to live in. Work with any other decision-makers (such as an agent under a health care power of attorney or any guardian of the person if you have not been appointed to fill this role).

If it is not safe to live at home even with changes—or if Martin wants to move—consider other places that meet Martin’s needs. Try to keep him connected to people and things important to him. Choices might be living with someone else, or living in a retirement community, a senior apartment, group home, assisted living, or nursing home.



## Tips for making an inventory

**Don't leave anything out.** Even if you know Martin wants you to have certain things and says so in his will, list them in the inventory. A proper inventory lists everything according to the court's rules. Do not decide that some things should not be listed.

**Search carefully.** Look carefully to find everything Martin owns. Search his mail and home. Look for real estate by talking to family or advisors and looking through land records. Track down letters from creditors to find unpaid debts. Take valuable items to an appraiser.

**Verify if necessary.** It is a good idea to have someone else check the list, especially if family might argue over Martin's money and property.

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## Duty 3 | Keep Martin's money and property separate from yours

Never mix Martin's money or property with your own or someone else's. Mixing money or property makes it unclear who owns what. Confused records can get you in trouble with the court.

Follow these guidelines:

- **Separate means separate.** Never deposit Martin's money into your own or someone else's bank account or investment account. Never deposit your own money into Martin's bank account or investment account.
- **Avoid joint accounts.** If Martin already has money in a joint account with you or someone else, get legal advice before making any change.
- **Keep title to Martin's money and property in his own name.** This is so other people can see right away that the money and property is Martin's and not yours. Ask the bank for a conservatorship or fiduciary account that shows you are managing the account for Martin. Such accounts are usually titled like this: "John Doe as conservator for Martin Roe."
- **Know how to sign as conservator.** Sign all checks and other documents relating to Martin's money or property to show that you are Martin's conservator. For example, you should sign: "John Doe, as conservator for Martin Roe." Never just sign "Martin Roe."
- **Pay Martin's expenses from his funds, not yours.** Spending your money and then paying yourself back makes it hard to keep good records. If you really need to use your money, save receipts for the expense and keep a good record of why, what, and when you paid yourself.

## Duty 4 | Keep good records and report to the court

You must keep true and complete records of Martin's money and property.

As conservator, the court or a lawsuit can challenge you to show everything you've done with Martin's money and property. Always be ready to share your records with family—unless you think they will misuse the information to harm Martin.

Practice good recordkeeping habits:

- **Keep a detailed list of everything that you receive or spend for Martin.** Records should include the amount of checks written or deposited, dates, reasons, names of people or companies involved, and other important information.
- **Keep receipts and notes, even for small expenses.** For example, write "\$50, groceries, ABC Grocery Store, May 2" in your records soon after you spend the money.
- **Avoid paying in cash.** Try not to pay Martin's expenses with cash. Also, try not to use an ATM card to withdraw cash or write checks to "Cash." If you need to use cash, be sure to keep receipts or notes.
- **Getting paid?** If you are going to charge a fee to serve as conservator, be sure you charge a reasonable fee. Keep detailed records as you go along of what work you did, how much time it took, when you did it, and why you did it.
- **File your accountings with the court.** Alabama law requires you to file an accounting with the court at least once every three years. Be aware, however, that the court can direct you to file an accounting at any time. The accounting should list all the money you received and how you spent it for Martin.
  - The court may give you a specific form for the accounting or may tell you what is required. Use the records you have kept to fill in the form. You will also need to submit supporting documentation, such as bank statements, check images, receipts, etc. If you have questions, ask a lawyer for help.
  - Be sure to turn the accounting(s) in on time. If your accounting is late, the court may require you to explain why.
  - Your accounting must be clear and must "add up." The accounting should show a beginning balance, income during the year, expenses during the year, and an ending balance. The ending balance for one year should be the same as the beginning balance for the next year.
  - Accounting requirements differ by court, and may change over time. Try to understand in advance what is needed, so that your accounting is not rejected for a minor problem. Ask for an example of a correct accounting. You may need an accountant to help.

- **File a final accounting after Martin dies.** Notify the court when Martin dies. According to court procedures, make a final accounting of Martin's money and property, and ask for an order releasing you from your duties.
  - Sometimes, you may need to pay final bills or make final arrangements, especially if no one else can do it. For example, you may need to pay funeral expenses and final medical bills.
  - If Martin did not already make funeral or burial arrangements, look for any directions he may have left—perhaps in advance directives or his will.
  - An executor named in a will, a personal representative appointed by the court, or a trustee named in a trust will handle Martin's money and property after you turn them over. Hold Martin's personal things safely until they are transferred to whoever is to receive them. If you are unsure what to do or when to do it, ask the Court or an attorney for advice. If you are the one named to handle Martin's money and property after his death, make sure you understand when your duties as conservator end and your new duties begin.



# Where to go for help

## Local and state agencies

### Alabama Attorney General's Office

The Office of the Attorney General has an Office of Consumer Interest. The Office provides consumer-related information and education to the public on how to watch for scams and avoid becoming a victim of fraud, and serves as a mediator of disputes between consumers and businesses involving retail transactions. The Office receives calls and complaints regarding fake check scams, telemarketing scams, mortgage fraud, and other consumer-related frauds.

Phone: 1-800-392-5658

[www.alabamaag.gov/consumercomplaint](http://www.alabamaag.gov/consumercomplaint)

### Alabama Crime Victims Compensation Commission

Provides assistance to innocent victims of violent crime by compensating for eligible expenses.

Anyone can request information or applications.

Phone: 334-290-4420

Phone Number for Victims: 1-800-541-9388

[www.acvcc.alabama.gov](http://www.acvcc.alabama.gov)

### Alabama Department of Human Resources: Adult Protective Services

Adult Protective Services receives and investigates reports of suspected adult or elder abuse, neglect, or exploitation. To make a report, call the 24 hour, toll free hotline.

Adult Abuse Hotline: 1-800-458-7214

[www.dhr.alabama.gov](http://www.dhr.alabama.gov)

### Alabama Department of Public Health

If you have a complaint about the care of a resident in a nursing home in Alabama, the Alabama Department of Public Health, Bureau of Health Provider Standards, has various ways to file a complaint with the Alabama State Survey Agency.

ElderCare Hotline: 1-800-356-9596

Email: [NHComplaints@adph.state.al.us](mailto:NHComplaints@adph.state.al.us)

### Alabama Department of Senior Services: Area Agencies on Aging and Disability Resource Centers

The Alabama Department of Senior Services is a state agency that administers numerous programs for senior citizens and people with disabilities.

Phone: 1-800-AGELINE (1-800-243-5463)

[www.alabamaageline.gov](http://www.alabamaageline.gov)

### Alabama Department of Veterans Affairs

The Alabama Department of Veterans Affairs promotes awareness, assists eligible veterans, their families, and survivors to receive from the U.S. and State Governments any and all benefits to which they may be entitled under existing or future laws to be enacted. To locate the nearest Veterans Service Office to you, select your home county using the dropdown menu on the website listed below, then click on the desired county using the map.

[www.va.alabama.gov/serviceofficer/](http://www.va.alabama.gov/serviceofficer/)

### **Alabama Long-Term Care Ombudsman Program**

If you have concerns about the health, safety, or welfare of a loved one in a long-term care facility, contact your local ombudsman or the State Ombudsman. The Ombudsman can help with resident rights, care provided, and transfers/discharges.

Phone: 1-800-243-5463

[www.alabamaageline.gov/ombudsman/](http://www.alabamaageline.gov/ombudsman/)

### **Alabama Medicaid Agency**

Basic Eligibility Questions: 1-800-362-1504

Fraud and Abuse Reporting: 1-866-452-4930

[www.medicaid.alabama.gov](http://www.medicaid.alabama.gov)

### **Alabama Securities Commission**

The Alabama Securities Commission is responsible for regulating the securities industry in the State of Alabama. The Commission is committed to protect investors against securities fraud and provides aggressive enforcement actions against any firm or individual who has violated the Alabama Securities Act or other state and federal statutes to the detriment of Alabama investors. To file a complaint:

Phone: 1-800-222-1253

Email: [asc@asc.alabama.gov](mailto:asc@asc.alabama.gov)

[www.asc.alabama.gov/complaints.aspx](http://www.asc.alabama.gov/complaints.aspx)

### **Eldercare Locator**

Eldercare Locator is a public service of the U.S. Administration on Aging that connects older adults and their families to local community resources.

Phone: 1-800-677-1116

[www.eldercare.acl.gov/Public/Index.aspx](http://www.eldercare.acl.gov/Public/Index.aspx)

### **Law Enforcement**

Find a law enforcement agency (police, sheriff, state troopers and State Bureau of Investigation) in Alabama by checking this directory.

[www.alea.gov/contact-alea](http://www.alea.gov/contact-alea)

[www.police1.com/law-enforcement-directory/search/Alabama/](http://www.police1.com/law-enforcement-directory/search/Alabama/)

### **Federal agencies**

Numerous federal agencies play a role in combating fraud and abuse and educating consumers. Contact them for more information.

### **Consumer Financial Protection Bureau**

Phone: 1-855-411-CFPB (2372)

[www.consumerfinance.gov](http://www.consumerfinance.gov)

### **Department of Justice – Elder Justice Initiative**

[www.justice.gov/elderjustice](http://www.justice.gov/elderjustice)

**Do Not Call Registry**  
Phone: 1-888-382-1222  
[www.donotcall.gov](http://www.donotcall.gov)

**Federal Bureau of Investigation (FBI)**  
[www.fbi.gov/how-we-can-help-you/safety-resources/scams-and-safety](http://www.fbi.gov/how-we-can-help-you/safety-resources/scams-and-safety)

**Birmingham FBI Field Office (Northern District of Alabama)**  
1000 18th Street North  
Birmingham, AL 35203  
[birmingham.fbi.gov](http://birmingham.fbi.gov)  
Phone: (205) 326-6166

**Mobile FBI Field Office (Middle and Southern Districts of Alabama)**  
200 North Royal Street  
Mobile, AL 36602  
[mobile.fbi.gov](http://mobile.fbi.gov)  
Phone: (251) 438-3674

**Federal Trade Commission**  
Phone: 1-877-FTC-HELP (382-4357)  
[www.consumer.ftc.gov](http://www.consumer.ftc.gov)

**Postal Inspection Service**  
Phone: 1-877-876-2455  
[www.uspis.gov](http://www.uspis.gov)

**Social Security Administration – Information for Representative Payees**  
Phone: 1-800-772-1213  
[www.ssa.gov/payee](http://www.ssa.gov/payee)

**Veterans Affairs – Information for VA Fiduciaries**  
Phone: 1-888-407-0144  
[www.benefits.va.gov/fiduciary](http://www.benefits.va.gov/fiduciary)

**For legal help**

#### **Alabama State Bar**

The Alabama State Bar promotes public access to high quality legal services regardless of financial or other circumstances. The Lawyer Referral Service is a state bar program which helps members of the public who can afford to pay a lawyer find an attorney who handles their type matter. The Volunteer Lawyers Programs (VLP) provide free legal services in certain civil matters to low-income individuals who qualify.

Lawyer Referral Service: 1-800-392-5660  
Birmingham VLP: (205) 250-5198  
Madison County VLP: (256) 539-2275



Montgomery County VLP: (334) 265-0222

South Alabama VLP (Baldwin, Clarke, Mobile, and Washington Counties): (251) 438-1102

All Other Counties VLP: 1-888-857-8571

[www.alabar.org/for-the-public/get-legal-help](http://www.alabar.org/for-the-public/get-legal-help)

### **Alabama Disabilities Advocacy Program (ADAP)**

The Alabama Disabilities Advocacy Program (ADAP) is part of the nation's federally-funded protection and advocacy system. ADAP provides legal services to Alabamians with disabilities to protect, promote and expand their rights. ADAP is part of the National Disability Rights Network.

Phone: 1-800-826-1675

[www.adap.ua.edu](http://www.adap.ua.edu)

### **FindLegalHelp.org**

This is a web page sponsored by the American Bar Association. It provides sources of help for people who qualify as low-income. It also provides resources to hire lawyers.

[www.americanbar.org/groups/legal\\_services/flh-home/](http://www.americanbar.org/groups/legal_services/flh-home/)

### **Legal Services Alabama**

Legal Services Alabama serves low-income people by providing free civil legal aid and assistance and by promoting collaboration to find solutions to problems of poverty from seven offices located in: Anniston/Gadsden, Birmingham, Dothan, Huntsville, Mobile, Montgomery, Selma and Tuscaloosa, covering all 67 Alabama counties.

Phone: 1-866-456-4995

Elder Helpline: 1-866-456-3959

[www.legalservicesalabama.org](http://www.legalservicesalabama.org)

### **Mediators**

The Alabama Center for Dispute Resolution maintains a list of registered mediators at (334) 356-3802 or [www.alabamaadr.org](http://www.alabamaadr.org)

### **For accounting help**

### **Alabama Society of CPAs**

Phone: 1-800-227-1711 or (334) 834-7650



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[alabamaguardianship.org](http://alabamaguardianship.org)