

**CONSERVATORSHIP
HANDBOOK**



**Compliments of Greg Cain,
Morgan County Probate Judge**

**PROBATE COURT OF MORGAN COUNTY
POST OFFICE BOX 848
DECATUR, ALABAMA 35602
256-351-4675**

To: Attorney of Record

Attached is the Handbook for Conservators. Provided also is a CERTIFICATE which shall be used to confirm that the petitioner/proposed conservator has reviewed the handbook information with their attorney.

At your convenience, and prior to the hearing on the petition for the appointment of Conservator, please give this handbook to your client and review same with him/her. At the hearing, please file with the Court the executed CERTIFICATE to verify that such review has been done.

Please note that the filing of the certificate with the Court is a pre-requisite to such proceedings. If you have any questions, please do not hesitate to contact us.

Thank you for your assistance with this matter.

Greg Cain, Judge of Probate

IN THE PROBATE COURT OF MORGAN COUNTY, ALABAMA

IN RE: THE ESTATE OF

Case Number _____

_____,
Alleged Incapacitated

CERTIFICATE

I, the Petitioner seeking to be appointed as the Conservator of _____
_____ do hereby attest and certify to the Probate Court
that I have read and reviewed the foregoing Conservator's Handbook and discussed the
provisions of said Handbook with my attorney and I understand all of the provisions
contained herein.

Signed this _____ day of _____, 20_____.

Petitioner and Proposed Conservator

Instructions: The petitioner is required to review the *Conservator Handbook* with his/her attorney prior to the hearing on the petition to appoint a conservator so that the petitioner may have a basic understanding of the duties and responsibilities of becoming a conservator. This certificate, properly executed, must be filed with the Court at the beginning of the hearing and before Letters of Conservatorship are issued.

CONSERVATOR HANDBOOK

PROBATE COURT OF MORGAN COUNTY, ALABAMA

TO THE PROPOSED CONSERVATOR FROM THE PROBATE COURT OF MORGAN COUNTY, ALABAMA:

You are seeking to be appointed a Conservator. A Conservator is one who preserves, protects and manages the assets of someone else. That person whose assets you are preserving is called the Ward. To be a Conservator is a great responsibility. It is most important that you understand the legal requirements that will be placed upon you if the court grants your petition and appoints you as Conservator. The value and importance of retaining an attorney to help you as you proceed through the Conservatorship cannot be overemphasized.

Your attorney can provide you with assistance by explaining the process, the requirements and certain standards that must be maintained during your Conservatorship administration. The court stands ready to assist in certain areas, but please note that the court can never provide you with legal advice or counsel. Therefore, it is absolutely vital that you confer with your attorney at the earliest convenient time before you are appointed and, after the appointment, any time you have questions or need advice about your duties and responsibilities as Conservator.

General Information

Please note that if the court appoints you as a Conservator, certain things will be required of you. You must know now what these requirements are and be prepared to fulfill them from the very beginning of your Conservatorship.

Bond:

Once the court has approved your petition, before you can ever act as a Conservator, you must file a bond with the court in a monetary amount that will be set by the court. A bond is protection for the Ward from losses you may have caused by your conduct as Conservator. Should you make any unauthorized disbursements, dispose of assets inappropriately, or otherwise fail to administer the Conservatorship estate in accordance with legal requirements, the bond is a type of surety whereby the court tries to ensure that the Ward will not lose his assets. This does not mean that your conduct will be overlooked. The bonding company will pursue you to obtain repayment of all monies the company had to spend because of your conduct. In addition, the company will also seek attorney's fees from you.

It will cost money to obtain the bond and the amount will vary depending on the size of the bond the court requires. The assets of the Conservatorship estate

may be used to pay for this bond. Once your bond is filed with the Court and approved, you will be sent “Letters of Conservatorship.” Once you have Letters of Conservatorship from the court, you are then entitled to act as a Conservator for that Ward.

Inventory:

After you have been appointed as a Conservator, your first task is to determine the size and the make up of the Ward’s assets that you will be protecting and preserving. You must do this by means of filing a written inventory with the court within 90 days of your appointment. The inventory is a mechanism for listing all assets of the estate. Estate assets may be of two kinds: real property and personal property. Real property means land and improvements thereon. Personal property means all other things such as cash, either on hand or in a bank; stocks and bonds; certificates of deposit; automobiles; trailers; boats; furniture; silverware; jewelry, etc. In addition to listing all of the assets, you must provide an approximate value for each asset.

Attached hereto as Exhibit “A” is a sample list of assets to look for in preparing your inventory. Attached hereto as Exhibit “B” is an inventory form to be filled in once you have been appointed the Conservator and which you will file with the court as stated above.

Monies and Investments:

Please note that you may never invest the Ward’s money, also known as “estate Funds” in individual stocks, mutual funds or other volatile securities. It is absolutely prohibited for you to invest the Ward’s money in any security that is not federally insured and backed. You are required by law to keep all of the estate funds in federally insured securities, which are defined as treasury bills, certificates of deposit, or savings and checking accounts which are insured by the FDIC. This means that even if you think an investment might be a good idea, you are not permitted to invest the Ward’s money unless the security is federally insured so as to protect the principal. If you have any question as to whether or not an investment opportunity meets these guidelines, make certain that you check with your attorney to see if the investment is permissible.

Bank Accounts:

After you have been appointed as Conservator, you must open and maintain a separate bank account for the estate funds. You may never co-mingle the Ward’s assets with your own money or that of any other person. For this reason, you may not use your own bank account for depositing the Ward’s money.

Most Conservators put the Ward’s money in separate checking accounts, savings accounts, or CD’s. If you wish to put your Ward’s money into any other

type of account, you should contact your attorney and/or receive permission of the court before you do so. All bank accounts that you open for the Ward must meet the same legal standards as investments so that the principal is always secure. This means that the accounts you open must be with banks that have FDIC insured checking and savings accounts.

Canceled Checks:

You must open and maintain a checking account for your Ward with a bank that will return to you the original canceled checks each month or provide statements with “thumbnail” images of canceled checks. When it is time to do a partial settlement and accounting as explained below, the court requires you to produce original canceled checks, bank copies thereof showing both the front and the back of each canceled check, or bank copies of thumbnail images.

Records:

The first and foremost obligation of a Conservator is to keep detailed records of all financial activity on behalf of the Ward. This means keeping a detailed record of all income received by the Ward and a record of all disbursements paid out on behalf of the Ward during the Conservatorship. You must also obtain and keep all bank statements and evidence of canceled checks for any checking account you open for the Ward; a copy of all statements from any savings accounts or statements concerning any CD that you opened on behalf of the Ward. You must keep copies of all receipts showing disbursements of the Ward’s money.

You are also required to keep records of all non-cash assets such as personal tangible property (furniture, jewelry, silverware, etc.); all real property; all insurance policies in effect on the Ward’s life; any burial policy owned by the Ward; and any other property owned by the Ward that is not in the form of cash. You must take action to preserve these properties.

Record Maintenance Date:

Because you are required to keep detailed records of all financial activity, you must begin the Conservatorship with a record keeping system in place. This is not a requirement that exists only at the time of doing the partial accounting. You should talk with your lawyer about the record keeping system that you will use and demonstrate to him or her your understanding that this obligation to keep records exists from the very beginning of the Conservatorship and that you will be responsible to do the same. Attached hereto as Exhibit “C” are examples of the type of record keeping system you are encouraged to use.

Expenditure and Sales:

In general, Conservators must expend the estate funds only for the benefit of the Ward. Conservators may not generally expend the Ward's money to benefit other family members without prior court approval. No expenditure of estate funds is permitted unless authorized by the Court or by State statute (see § 26-2A-153). If you have any question about spending the Ward's money, check with your attorney first before making the expenditure.

The conservator may not sell or cause a lien to be placed on estate assets without court approval. If you wish to sell any estate asset, make certain you confer with your attorney and have him file the appropriate petition seeking the court's permission before you sell the estate asset.

Partial Settlements and Accountings:

All Conservators are required to periodically file with the court a complete accounting of their activities to prove to the court's satisfaction that they have properly handled the Ward's estate assets. If you are appointed Conservator, you will be required to file with the court a status report (Recapitulation) every 12 months. A complete partial settlement and accounting of all of your activities as Conservator will need to be filed with the Court at least once every 36 months (3 years). It is at this time that all of the records you have kept for the prior 36 months must be made available for review by the court.

Your settlement must include a comprehensive accounting of all receipts by the estate; all disbursements by the estate; and all balances on hand at the time of the accounting. In this accounting, you should submit the original bank statements and the original canceled checks or thumbnail copies of the front sides of canceled checks to support the accounting. At this time, you should submit all receipts for the expenditures that you have made from the estate's funds. This is the reason why record maintenance is so important and why you must begin keeping records from the very beginning of your Conservatorship.

Tax Returns:

You are responsible for preparing and filing any required state and federal tax returns on the Ward throughout the period of the Conservatorship. You, as the Conservator, in the performance of your duties, should have gathered and kept all records pertaining to the Ward's income, deductions and taxes, in order that such returns, if required, can be promptly and accurately filed.

Closing the Conservatorship:

At such time as the Conservatorship is due to be ended, you must take responsibility for filing a petition with the court to conclude the

Conservatorship. If the Conservatorship estate runs out of funds, the Conservator still must move to close the estate. Please note, the Conservator is responsible for closing the estate even if there are no funds to pay legal counsel and costs of court. This means that the Conservator may have to expend personal funds to pay for the closing of the estate.

If there are funds left in the Conservatorship estate, those funds may be used to pay legal counsel and costs of court for the closing of the Conservatorship.

Contact with the Court and Attorney:

If you are appointed the Conservator, it is important that you maintain contact with your attorney to ask questions concerning your performance during the Conservatorship. This is especially true when preparing to file partial settlement with the Court, if you want to expend funds from the Conservatorship, or sell any assets of the Conservatorship. Make certain that you notify your attorney and the court of any change of address or phone number throughout the time of your Conservatorship.

It is important that the court be able to find you at any time during the Conservatorship. If you change your address, you are required to notify the Probate Court by sending a written notice of the change of address to the Probate Court of Morgan County at P. O. Box 848, Decatur, AL 35602. In your notice, you must give the name of your Ward. This will allow the court to make certain that its records correctly show your change of address.

Thank you for your review of this document.

Greg Cain, Judge of Probate

EXHIBIT “A”

Assets to Look for in Preparing Inventory

- Cash on hand and belonging to the Ward’s estate
- Uncashed checks and refunds
- Deposit(s) in bank(s), savings and loan association(s), brokerage house(s), credit unions(s), etc.;

(XYZ Bank, Checking Account No. 12-345-67)

(ABC Credit Union, Certificate of Deposit \$777-7777)

- Stocks
- Bonds
- Promissory notes
- Partnership interest
- Other business interest
- Life Insurance policies –payable to Estate
- Group Life Insurance – payable to Estate
- Furniture
- Antiques
- Artwork
- Jewelry
- Chinaware
- Silverware
- Valuable collections (paintings, oriental rugs, coins, stamps, books, manuscripts, etc.)
- Vehicles (automobiles, trucks, vans, etc.) Include description, VIN and current tag number
- Safe Deposit Box –location and property description (list items having special value)
- Real Estate – location and property description (metes and bounds or by map book and page reference)

Liabilities to Look For

- Notes payable to banks
- Notes payable to others
- Real estate mortgages payable
- Accounts payable
- Unpaid income taxes: federal, state
- Unpaid property taxes
- Other liabilities

EXHIBIT "B"

PROBATE COURT OF MORGAN COUNTY

INVENTORY OF WARD'S ESTATE

Estate of: _____

Case of: _____

TYPE of ESTATE (CHECK ONE): [] Conservatorship, or [] Deceased

Please complete Parts I, II and III of this form and deliver it to the Probate Court of Morgan County. As Conservator or personal representative, Alabama Law requires you to file an inventory listing all assets which are subject to administration. If you have any questions, please contact your attorney.

PART I. REAL PROPERTY

Description/Address	Estimated Value

PART II. PERSONAL PROPERTY

Description	Estimated Value

PART III. BANK ACCOUNT INFORMATION

Please list below the account(s) which have been opened by you to administer estate funds and the current balances in each. Also include Certificates of Deposit and any other investments made by you to administer this estate.

Name of Bank	Account Number	Balance

CERTIFICATION

I, the undersigned Conservator, do hereby state under oath or affirmation that the information provided above is true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me this
____ day of _____, 20____.

Notary Public
My commission expires: _____

Conservator

EXHIBIT “C”

Sample Forms for Ledgers and Records

Attached are samples of the type ledgers and accounting records the Conservator should keep during the term of the Conservatorship.

Regardless of the particular format you elect to utilize, the Conservator should maintain a system that records by specific entry each and every receipt and disbursement of Estate funds. Proof and verification of individual entries are supported by retention of records such as follows:

Sample No. 1

(Income and Disbursements)

1. All cash receipts, refunds, dividends, interest, etc. (Such deposits should be posted or listed as an income entry in the ledger.)
2. All original checks or thumbnail copies drawn against the Estate’s bank account including voided checks. (The respective check should be posted or listed as an expense entry in the ledger.)
3. All original bank statements issued indicating the individual checks drawn against the Estate’s bank account during the statement cycle. (The income and expense entries on the statement should correspond to the respective entries in the ledger.)
4. All invoices, billing statements, vouchers and receipts for services rendered or items purchased should be preserved and held as proof in support of checks drawn in payment of any such bills.

Note: Each of the above proof items should be kept in chronological order.

Sample No. 2

(Income)

5. All cash receipts, refunds, dividends, interest, etc. (Such deposits should be posted or listed as an income entry in the ledger.)
6. All original bank statements issued indicating the individual checks drawn against the Estate’s bank account during the statement cycle. (The income and expense entries on the statement should correspond to the respective entries in the ledger.)

(Disbursements)

7. All original checks or thumbnail copies drawn against the Estate's bank account. All voided checks should be listed with reasons why the checks were voided. (The respective check should be posted or listed as an expense entry in the ledger.)
8. All original bank statements issued indicating the individual checks drawn against the Estate's bank account during the statement cycle. (The income and expense entries on the statement should correspond to the respective entries in the ledger.)
9. All invoices, billing statements, vouchers and receipts for services rendered or if purchased should be preserved and held as proof in support of checks drawn in payment of any such bills.

Sample No. 3

A separate ledger should be kept and maintained that identifies non-cash assets in the Estate with their description, location and their value, e.g.:

10. All Certificates of Deposit and any other investment account.
11. Any pending lawsuit or litigation.
12. All real property.

Note: Wherever possible, evidence (documentation) in support of the title to such property/item should also be kept, protected and held for safekeeping.

SAMPLE NO. 2

ESTATE OF _____ CASE NO. _____

INCOME

<u>DATE</u>	<u>SOURCE</u>	<u>AMOUNT</u>
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PAGE TOTALS \$ _____

Note: If this form is insufficient to list all information, you may attach additional pages.

SAMPLE NO. 2

SUMMARY

Estate of _____ Case No. _____

TOTAL INCOME \$ _____

TOTAL DISBURSEMENTS \$ _____

BALANCE ON HAND AS OF ____/____/____ \$ _____

SAMPLE NO. 3

(Non-Cash Assets)

Accounting Sheet – Probate Court of Morgan County Page _____ of _____

Estate of _____ Case No. _____

OTHER ASSETS held

(List below all other non-cash assets held, description, location and estimated values.)

Description	Location	Value

Note: If this form is insufficient to list all information, you may attach additional pages.