

<b>Chippewa County PROBATE OFFICE</b>		
<b>Duties and Responsibilities</b>	<b>CONSERVATORSHIP</b>	Revised: 10/11

**NOTE:** This guideline is provided only as a public service and is not meant to be legal advice. The Register in Probate office cannot give legal advice or complete forms for you; please contact an attorney if you have legal questions.

**I. DUTIES and POWERS OF CONSERVATOR:**

A. Conservator duties:

1. Take possession of the individual's real and personal property.
2. Retain, expend, distribute, sell or invest the individual's property.
3. Determine if the individual has executed a will, where the will is located, determine the appropriate persons to be notified in the event of the individual's death, and notify those persons if the death occurs.
4. Use the individual's income and property to maintain and support the individual and any dependents of the individual.
5. Prepare and file an annual account for the Court.
6. At the termination of the conservatorship, deliver the individual's assets to the persons entitled to them.
7. Pay any legally enforceable debts (claims) of the individual, including filing tax returns and paying taxes.
8. Apply to be the individual's representative payee, if receiving governmental benefits and there is no current representative payee, or ensure that one is appointed.
9. Perform any other duty required by court order.

B. Conservator shall NOT:

1. Lend funds of the individual to himself or herself;
2. Lend funds of the individual to another individual or entity, unless the Court approves and orders;
3. Purchase property of the individual, unless the Court approves and orders.

C. General powers (not all inclusive):

1. Use judgment and care in management of the individual's funds;
2. Consider, consistent with the functional limitations of the individual: the individual's understanding of the harm individual would likely suffer as a result of individual's inability to manage funds; individual's personal preferences and desires regarding management of daily living activities; and the least restrictive form of intervention for the individual.
3. Any expenditure of the individual's funds over \$250.00 on a single item or single expense (excluding housing and medical) **must have prior approval of the Court.**

D. Powers that **require approval of the Court**, the conservator may do any of the following only with the Court's prior written approval following a petition and any notice and hearing the Court requires:

1. Petition the Court to make gifts of the individual's funds. However, the individual may make gifts of his/her income and assets subject to the approval of the conservator.
2. Transfer assets to an existing revocable living trust.
3. Establish and transfer assets into a trust.
4. Purchase an annuity or insurance contract; change beneficiaries under insurance and annuity policies; and surrender policies for their cash value.
5. Ascertain, establish, and exercise any rights available to the individual under a retirement plan or account.
6. Exercise any elective rights that accrue to the individual as the result of the death of the individual's spouse or parent.
7. Release or disclaim any interest of the individual that is received by will, intestate succession, nontestamentary transfer at death, or other transfer.
8. Exercise, if appointed for a married individual, management and control right over the marital property or property other than marital property that the married individual could exercise under Chp. 766.
9. Provide support for an individual whom the individual is not legally obligated to support.
10. Convey or release an interest in marital property, right of survivorship property that is incidental to joint tenancy or marital property.
11. Continue the business of the individual unless ordered by the Court.
12. Adjust any claims against the individual incurred prior to the conservatorship or the filing of a lis pendens.

E. Powers that **do not require** Court approval:

1. Provide support for an individual whom the individual is legally obligated to support.
2. Enter into a contract, other than a contract prohibited listed above that requires court approval.
3. Exercise options to purchase securities or other property.
4. Authorize access to or release of individual's confidential financial records.
5. Apply for public and private benefits.
6. Retain any real or personal property the individual possesses when the conservator is appointed or that is acquired by gift or inheritance.
7. Subject to conditions set by the Court, sell, mortgage, pledge, lease or exchange any asset of the individual at fair market value.
8. Invest and reinvest the proceeds of sale of any asset of the individual and any of the individual's monies in conservator's possession.
9. After notice as the Court directs, invest the proceeds of the sale of any assets of the individual in the conservator's possession in real or personal property that is determined by the Court to be in the best interest of the individual's estate.
10. Settle all claims and accounts of the individual; appear for and represent the individual in all actions and proceedings except those for which another person is appointed.

## II. INVENTORY

- A. The first official duty of the Conservator is to file an Inventory with the Court. The Inventory lists the property and values as of the date the court appointed the Conservator.
- B. The Inventory must be filed with the Court **within 60 days** of appointment. The Inventory becomes the starting point of the accounting process.

- C. A filing fee is due when the Inventory is filed. The minimum filing fee of \$20.00 is due for estates valued at \$0-\$50,000. For an estate over \$50,000, the filing fee is 0.20% (2/10<sup>th</sup> of 1.0%) of the value of the estate. The fee must be paid at the time the Inventory is filed.
- D. Failure to file the Inventory can lead to:
  - 1. the Court can order the Conservator to file the Inventory and have the Conservator pay costs of the action.
  - 2. the Court can proceed against the Conservator for contempt of Court.

### **III. COMPENSATION FOR SERVICES**

- A. The Court can authorize compensation and/or reimbursement for the conservator in an amount the Court deems “just and reasonable”.
- B. Any reimbursement and/or compensation must be specifically authorized by the Court before payment is made.
- C. The conservator should submit a Petition and Order for Conservator Fees form in the current year.
- D. That form is available from the Register in Probate office.

### **IV. ANNUAL ACCOUNT**

- A. Every year by **April 15<sup>th</sup>**, each Conservator must file an account of his/her handling of the estate for the prior calendar year.
- B. Annual account forms are sent to the Conservator by the Court at the end of each year.
- C. The Conservator shall provide the Court with evidence of assets (such as bank statements, CD’s, etc.) when filing the account with the Court.
- D. Conservator must start with the assets at the beginning of the year, add all of the receipts, deduct all the expenses and determine the amount remaining at the end of the year. All accounts must balance.
- E. The Probate Court staff **cannot** complete the annual account for the Conservator.

### **V. IF A CONSERVATOR DOES NOT FILE THE ACCOUNT**

- A. The Court can issue an Order to be served by the Sheriff on the Conservator to show cause why he/she should not immediately make and file the accounting.
- B. If the Conservator fails to do so or respond, the Court can order the Conservator taken into custody to show cause why he/she should not be held in contempt.
- C. The Court can remove the Conservator

### **VI. HOW IS A CONSERVATORSHIP TERMINATED**

- A. Death of the principal.
- B. Removal of the Conservator by a judge (see sec. 54.76(6), Wis. Stats.)
- C. A guardianship is ordered for the individual.
- D. The principal may apply to the Court for termination.