

WHAT DO I NEED TO KNOW ABOUT
Conservatorships?



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WHAT IS A CONSERVATORSHIP?

A conservatorship or adult guardianship is the legal process by which someone is appointed by a Court to make financial and medical decisions for you if you are incapacitated or disabled.

In Tennessee, the person appointed by the Court is called a Conservator. In Mississippi, the person appointed by the Court is called an Adult Guardian.

The incapacitated or disabled person for whom a conservator is appointed is called the Ward.

CONSERVATOR OF THE PERSON

A “**Conservator of the Person**” is appointed by a Court to make healthcare and personal care decisions for the Ward. Examples of decisions made by the conservator of the person include: housing arrangements; nutrition, food and meal preparation; medical, dental, and vision care; personal hygiene; and personal care and protection.

CONSERVATOR OF THE ESTATE

A “**Conservator of the Estate or Property**” is appointed by a Court to make financial decisions for the Ward. The conservator of the property takes possession of the Ward’s assets and income and is responsible for protecting, investing and spending the assets and income solely for the benefit of the Ward. Examples of decisions made by the conservator of the property include: investment decisions; payment of bills, invoices and debts; the sale of property; budgeting for expenses; and safekeeping of property.

Usually, the same person is appointed as both conservator of the person and of the estate. There are, however, situations in which the Court chooses to appoint separate persons as conservator of the person and the estate.

HOW IS A CONSERVATOR APPOINTED?

Someone desiring to become the conservator of a disabled person must file a Petition with the Court requesting to be appointed as conservator. After the Petition is filed, a Court hearing is scheduled to determine whether or not the disabled person needs the legal protection of a conservatorship. Notice of the Petition and hearing must be given to all closest relatives of the disabled person.

A Medical Report must be filed with the Court prior to the hearing. The Medical Report is completed by a medical doctor or physician who has examined the disabled person. The purpose of the Medical Report is to inform the Court of the medical condition of the proposed Ward.

A Guardian Ad Litem is appointed by the Court to investigate the medical condition and financial assets and income of the proposed Ward, and to investigate the qualifications of the person petitioning to be Conservator. Prior to the hearing, the Guardian Ad Litem files a written report with the Court recommending whether or not the proposed Ward needs a conservator and whether or not the person petitioning to be the conservator is qualified.

An Attorney Ad Litem may be appointed by the Court if the proposed Ward objects to the need for a conservatorship or objects to the person who is requesting to be appointed as conservator. The Attorney Ad Litem is an attorney licensed to practice law and serves as the advocate for the disabled person.

The Court is the ultimate arbiter of whether the proposed Ward is disabled, whether a court appointed conservator is needed, who should be the conservator, and what limitations, if any, are placed on the conservator’s actions.

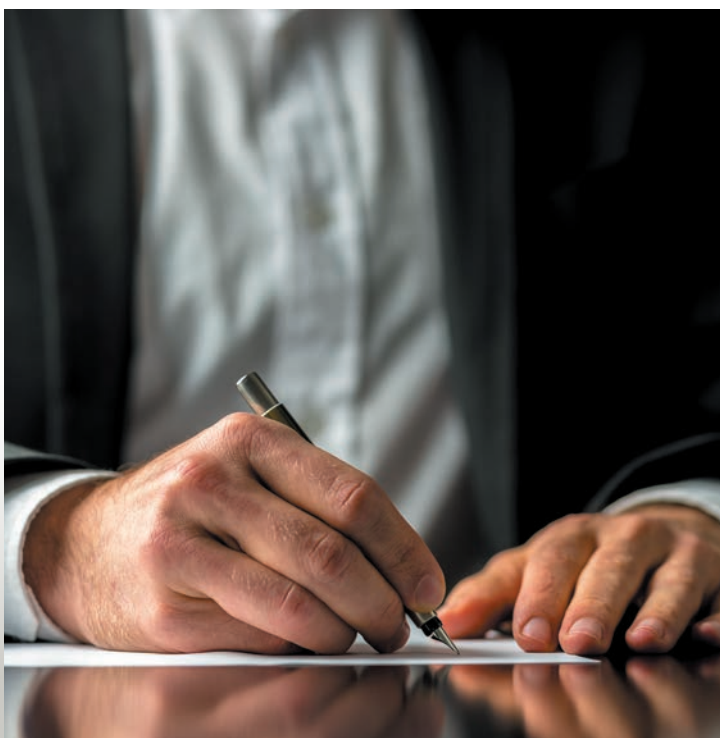
HOW CAN I AVOID A CONSERVATORSHIP?

You can avoid a court administered conservatorship by planning for your future disability NOW while you are NOT disabled.

A Power of Attorney is one method of planning for future disability. A power of attorney is a written legal document which appoints a family member or friend to make decisions for you if you are disabled or incapacitated and cannot make the decisions for

yourself. There are two types of powers of attorney. A Durable General Power of Attorney appoints someone to make financial or money decisions for you. A Durable Health Care Power of Attorney appoints someone to make medical or healthcare decisions for you. Both powers of attorney are relatively inexpensive compared to a court administered conservatorship, and therefore are worth the investment of your time and money.

A Revocable Grantor or “Living” Trust is another method of planning for disability. A Living Trust appoints a family member or friend to manage your assets and income for you if you become disabled or incapacitated.



WHAT IF A CONSERVATORSHIP IS FILED AGAINST ME OR A FAMILY MEMBER?

If a conservatorship petition has been filed against you or a family member and you do not agree with the petition, then you need to contact an attorney who practices regularly in the area of conservatorships and elder law. The attorney can explain your options and alternatives. You can then decide whether to oppose the conservatorship or to consent to the conservatorship.



WHAT IF A FRIEND OR FAMILY MEMBER NEEDS A CONSERVATOR?

If a friend or family member is disabled, and if the friend or family member does not have a Power of Attorney or Living Trust, then you may need to petition the Court for a conservatorship in order to protect the assets and health of the disabled friend or family member. You will need to contact an attorney who is experienced in representing persons petitioning to be a conservator. The attorney can explain the conservatorship process, the legal consequences of petitioning to be appointed a conservator and the duties of a conservator.

WHAT IF THE HEALTH, SAFETY OR WELFARE OF A FRIEND OR FAMILY MEMBER IS IN IMMEDIATE JEOPARDY?

In Tennessee, the Court may appoint an Emergency Conservator without notice if substantial harm is imminent. The Ward must be given notice of the appointment within 48 hours and a hearing must be held within 5 days. The Emergency Conservator may only serve for a maximum of 60 days.

WHO SHOULD I ENGAGE TO ASSIST ME WITH A CONSERVATORSHIP?

A probate attorney with experience in representing petitioners and wards and in serving as guardians ad litem and attorneys ad litem should be engaged to represent you in a conservatorship proceeding.

THE BAILEY LAW FIRM

The Bailey Law Firm concentrates its legal practice in the areas of wills and trusts, estate taxation and planning, asset protection planning, charitable gift planning, business succession planning, elder law, and estate administration and probate. The Bailey Law Firm has attorneys licensed to practice law in the states of Mississippi and Tennessee.

OLEN M. "MAC" BAILEY, JR.

The Bailey Law Firm was founded by Olen M. "Mac" Bailey, Jr. Mr. Bailey received his Master of Laws (LL.M.) degree in Elder Law with honors from Stetson University College of Law, his J.D. from Vanderbilt University School of Law, and his B.A. from Millsaps College. Mr. Bailey is an accredited attorney with the Department of Veterans Affairs.

ESTATE PLANNING

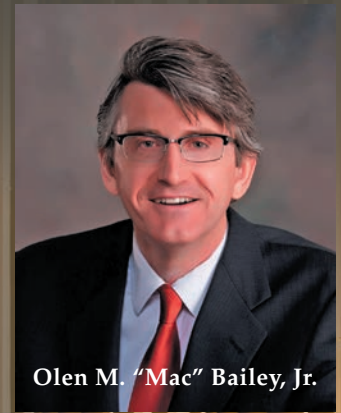
- Wills
- Living Trusts
- Powers of Attorney
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ELDER LAW

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