



INSTRUCTIONS TO CONSERVATORS OF INCAPACITATED PERSONS

The Office of the Executive Secretary, Supreme Court of Virginia acknowledges with appreciation the assistance of William G. Murray, Commissioner of Accounts, Arlington, Virginia, in the preparation of these materials, July 1, 2006, and in their revision July 1, 2013.

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A Conservator of an adult declared incapacitated by an Order of the Circuit Court has a duty to administer the assets of the incapacitated person in accordance with the laws of the Commonwealth of Virginia. Sections of the Virginia Code dealing with conservatorship matters can be found in Title 64.2.

The following is a very general outline of matters which you, as a Conservator of an incapacitated person, will need to be aware of in order to properly administer the incapacitated person's estate.

I. DUTIES AND POWERS OF A CONSERVATOR

A. Duties

Pursuant to Va. Code § 64.2-2021:

1. At all times, the conservator shall exercise reasonable care, diligence and prudence, and shall act in the best interest of the incapacitated person. To the extent known, a Conservator shall consider the expressed desires and personal values of the incapacitated person.
2. A Conservator shall take care of and preserve the estate of the incapacitated person (both personal property and real property) and manage it to the best advantage. Income from the estate shall be applied to the payment of debts of the incapacitated person, including payment of reasonable compensation to the Conservator and to any guardian, and to the maintenance of the person and his legal dependents.
3. A Conservator shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage the estate and his financial affairs.
4. A Conservator stands in a fiduciary relationship to the incapacitated person and may be held personally liable for a breach of any fiduciary duty.
5. A Conservator shall comply with and be subject to the requirements imposed upon fiduciaries under Title 64.2, specifically, including the duty to account set forth in Va. Code § 64.2-1305.

B. Powers

Pursuant to Va. Code § 64.2-2022 a Conservator has the following powers and all those set forth in Va. Code § 64.2-105:

1. To ratify or reject a contract entered into by the incapacitated person;
2. To pay any sum distributable for the benefit of the incapacitated person or for the benefit of a legal dependent by paying the sum directly to the distributee, to the provider of goods and services or to any individual or facility that has assumed the responsibility for the care and custody of the incapacitated person; or to a distributee's custodian or to the guardian of

the incapacitated person, or in the case of a dependent, to the dependent's guardian or conservator.

3. To maintain life, health, casualty and liability insurance for the benefit of the incapacitated or any legal dependent;
4. To manage the estate following the termination of the conservatorship until its delivery to the incapacitated person or successors in interest.
5. To execute and deliver all instruments and to take all other actions that will serve the best interests of the incapacitated person;
6. To initiate a legal proceeding to (i) revoke a power-of-attorney under Va. Code § 64.2-1600 et seq., (ii) to make an augmented estate election under Va. Code § 64.2-302; or (iii) to make an election to take a family allowance, exempt property, or a homestead allowance under Va. Code § 64.2-313; and
7. To borrow money upon such terms and conditions as the Conservator shall deem advisable; to mortgage or pledge portions of the incapacitated person's estate to secure such loans and as maker or endorser, to renew existing loans.

C. Authority To Sell

Pursuant to Va. Code § 64.2-2022; unless the Court imposes restrictions, usually at the time of appointment of the Conservator, the Conservator has unlimited authority to sell all assets, including the power to sell real estate.

1. Be sure to review the Order appointing you as Conservator to see which, if any, requirements need to be met before you begin procedures to sell any real property.
2. Prior to selling any real estate, the Court may require the Conservator to:
 - a. Increase the amount of the Conservator's bond,
 - b. Secure an appraisal of the real estate of interest,
 - c. Give notice to interested parties,
 - d. Consult with the Commissioner of Accounts, and if one has been appointed, the guardian, and
 - e. Require the use of a common source information company, as defined in Va. Code § 54.1-2130, when listing the property.
3. Where these requirements are imposed, the Conservator must report his compliance in writing to the Commissioner of Accounts before any sale can take place.

II. IDENTIFY CONSERVATORSHIP ASSETS

1. If the incapacitated person is unable to tell you where and what his assets are, you may find looking in these places helpful:
 - Checkbook registers – usually deposits will reflect the source, i.e., social security, annuities, stock dividends.
 - Old tax returns -will show names of banks and account numbers from 1099's, and other investment information.
2. Determine how each asset is titled - solely owned; joint with someone and if so, with whom, and were the funds all contributed by the ward or what percentage was contributed by the ward; pay on death-account.
3. Vehicles - those titled in the incapacitated person's name solely should be considered as an asset of the conservatorship.
4. Furniture- if the incapacitated person's home is shared by a spouse or family member, the furniture is not usually considered as a conservatorship asset under your control.
5. Jewelry- if the incapacitated person is wearing it, do not consider it as being under your control as a conservator asset. If there is other valuable jewelry that would be in jeopardy if you don't take control of it, inventory it and put it in a safe place.

III. WHOM TO NOTIFY OF YOUR APPOINTMENT

- Send a copy of your letters of appointment as Conservator to every bank, brokerage firm, agency from which annuities are sent, and any other appropriate entity with a letter stating who you are, your address, and requesting future payments be sent to the incapacitated person in care of you as conservator.
- Take your letters of qualification as Conservator to the bank in which you will open any conservatorship accounts. Be sure that you use a bank that returns original cancelled checks or photocopies of cancelled checks to you for the conservatorship checking account.
- If the incapacitated person owns a car or a house, notify the insurance companies to assure future billings will be sent to you.
 - o If the house is vacant, be sure to advise the insurance company of this as they may require an additional premium in order to insure vacant homes.
 - o If the incapacitated person can no longer drive a car you may need to decide whether to cancel the insurance or change its coverage in some fashion.

IV. PUT ASSETS INTO CONSERVATORSHIP NAME

- Titles to every account or asset of the incapacitated person should be changed from their name to "your name, Conservator for incapacitated person's name."
- Do not use your own Social Security number on conservatorship assets. You should use the incapacitated person's Social Security number.
- Assets held jointly with the incapacitated spouse should be split 50/50, and the incapacitated person's 50% should be put into the Conservatorship. Likewise 50% of the income earned from joint assets earned after the date of qualification should be deposited into the conservatorship.
- Pay on death (P.O.D.) accounts/assets and transfer on death (T.O.D.) accounts/assets should be left in the incapacitated person's name until such time as you need to use those assets for the incapacitated person's benefit. Then withdraw funds as needed and put the withdrawals into the estate checking account. Notify the holder of the asset so you will receive all statements and 1099's. Your intent should always be to maintain the character of the asset as designed by the incapacitated person so that his wishes will be honored at his death.
- Other jointly owned assets should be reported in the percentage that was contributed by the incapacitated person.
- Stocks or investments that have not reached maturity can be left as titled as long as the co-owner agrees to cooperate with you as Conservator and permit you to hold the original documents.

V. CONSERVATORSHIP CHECKING ACCOUNT

- Choose a Virginia Bank to open the conservatorship checking account. Use only a bank account that returns the original or photocopies of checks. If you will be keeping more than \$1,000 in the checking account, it is suggested you use an interest bearing account.
- It is recommended that you deposit all income for the incapacitated person into the conservatorship checking account and that you make all disbursements from this account. You may invest assets elsewhere, but the record keeping for you will be greatly simplified if all transactions pass through this one account.
 - This does not mean you should not invest in certificates of deposits or buy Treasury Bills, etc. Just deposit the proceeds from matured, redeemed, or sold assets into the checking account and then purchase new assets with a check from the checking account.

- As you are required to exhibit to the Commissioner of Accounts cancelled checks, or signed receipts for every disbursement you make as Conservator, should your bank fail to send you a statement or the cancelled check, anytime during the year, call them as soon as you are aware of the situation. Delaying your request for missing statements or cancelled checks may result in service charges by your bank.

VI. INVENTORY OF ASSETS

- Virginia Code Section 64.2-1300 requires every Conservator to file an inventory of the assets of the incapacitated person's estate within four months from the date of qualification.
- The Clerk will have given you an Inventory form at the time of your qualification that includes detailed instructions for completing the form.
- Use exact figures on your Inventory valuations. Do not round figures. Use the beginning values, not the value as of the day you complete the Inventory.
- Inventories must be printed legibly in black or blue ink or typewritten, and signed by each qualified Conservator.
- You must submit the fully executed Inventory form, in duplicate, with the appropriate filing fee to the Commissioner of Accounts office. The Clerk will have given you a filing fee schedule at the time you qualified.
- Inventories may be filed by mail or in person at the Commissioner of Accounts Office if you make an appointment ahead of time. An appointment can sometimes be made with as little as one day's notice.
- Each Conservator must supply the Commissioner of Accounts with his telephone numbers, and complete, current street address. If you use a Post Office Box for mail, a street address must still be provided. It is the responsibility of each Conservator to keep the Commissioner of Accounts apprized of a current street address.

VII. ACCOUNTINGS

- Virginia Code §§ 64.2-1206, 64.2-1305 and 64.2-1308 requires every Conservator to file an account of the assets of the incapacitated person's estate.
- The Clerk will have given you an Account form that must be used and instructions on completing the form at the time of qualification.
- The First Account should cover a four-month period, beginning on the date of the Conservator's qualification. This account must be filed with the Commissioner of Accounts within **six months** from the date of qualification.

For example, if the Conservator qualified on January 10, 2013, the First Account would cover the period January 10, 2013 through May 10, 2013, and it would be due on July 10, 2013.

- Second and subsequent accounts are to cover 12 months beginning with the ending date of the prior account, and are due within 16 months from the ending date of your prior account. For example, if the First Account ended May 10, 2013, then the Second Account would end May 10, 2014, and would be due by September 10, 2014. However, you may end your account on any day of the month, so that instead of ending it May 10, you can end it May 31.
- A Final Account by a Conservator is filed upon the death of the incapacitated person or upon entry of a Court Order restoring the incapacitated person's competency.
- Every accounting must be filed in duplicate and must be accompanied by the following:
 - o Original and one copy of the account signed by each Conservator that qualified.
 - o A check payable to the Commissioner of Accounts in the appropriate amount for the filing fee. The Clerk will have given you the filing fee schedule at the time you qualified.
 - o Vouchers, i.e. original cancelled checks, debit memos or signed receipts for each disbursement shown on the account. These will be returned to you. If you use a bank that does not return cancelled checks, then you must have a signed receipt from the payee or a photocopy of the check prepared by the bank. Vouchers must be organized in the same order as they appear on the accounting. Vouchers do not need to be filed in duplicate.
 - o A copy of the signed settlement sheet on any sale of real estate and "broker's statement to support any sale of stocks or other securities.
 - o Verification of each asset that remains on hand as of the end of the account period must be provided.
 - For cash accounts, a statement from the financial institution, covering the ending date of the accounting and reconciled to agree with your accounting, must be provided.
 - For a certificate of deposit, if there is no statement available, the original certificate must be provided, or a letter from the issuer verifying the existence of the certificate as of the ending date of the account and stating the balance of the certificate may be provided.

- Brokerage account statements should be supplied to verify stocks, bonds, and other securities or funds held. If you hold securities in certificate form, you must exhibit the original certificates to the Commissioner of Accounts or provide a statement from a bank officer certifying the original certificates of each security listed were exhibited to the bank officer on or after the ending date of the accounting.
 - Titles for cars, boats, etc., should be exhibited. Jewelry and furnishings, if carried as assets under the Conservator's control, can be supported by a statement from a disinterested third party certifying the existence and the location of said assets. The statement by the third party should include his printed name, address and daytime phone number.
 - Original notes must be exhibited unless an agency is handling the collection of the notes. In those instances a statement from the collecting agency certifying the identity of the holder and the principal balance as of the ending date of the account will be accepted.
 - Copies of K-1 forms from the tax returns may be used to verify any partnership interests.
 - Where the market value of the asset is not equal to the carrying value, show the market value in parentheses within the asset description.
- A final account must show ZERO assets on hand. No assets may be held in escrow by the Conservator for any reason whatsoever.
 - o Any assets remaining at the termination of a conservatorship for an incapacitated person should be delivered to the qualified fiduciary of his estate (if the incapacitated person died) or to the person himself (if he were declared competent by Court Order).
 - o All original vouchers will be returned to the Conservator or his representative after the completion of the Commissioner's audit.
 - o Accountings must be printed legibly in black or blue ink or typewritten.
 - o Accountings may be filed by mail or in person at the Commissioner of Accounts office if you call for an appointment ahead of time. An appointment can sometimes be made with as little as one day's notice.
 - o Each Conservator must supply the Commissioner of Accounts with his telephone numbers, and complete, current street address. If you use a Post

Office Box for mail, a street address must still be provided. It is the responsibility of each Conservator to keep the Commissioner apprised of his current street address.

VIII. DISBURSEMENTS

- A Conservator may use principal and income for the benefit of the incapacitated person. Virginia Code § 64.2-2021 also permits a Conservator to contribute funds towards the support and maintenance of the incapacitated person's spouse and/or family.
- Since you must provide a cancelled check or receipt for each disbursement, it is suggested you make all disbursements from the conservatorship checking account so you will have a complete record of all such transactions.
- Costs of maintaining an incapacitated person's real property are properly paid from the conservatorship funds.
- If you must use cash to pay for something, obtain a signed receipt for it. You may find it convenient to pay occasional, small expenses yourself and then write a conservatorship check to yourself for reimbursement periodically.

IX. INVESTMENTS BY CONSERVATORS

- A Conservator is charged with the investment of funds under his control, and he must make such investments within four months from the time he collects such funds. (Va. Code § 64.2-1501)
- Virginia Code § 64.2-1502 provides a listing of securities in which a Conservator may invest. Some examples of approved investments are bonds, notes and other evidences of indebtedness of Virginia, a Virginia county, a Virginia city, or the United States as well as savings accounts, time deposits or certificates of deposit in banks, savings banks, trust company, savings and loan association, or credit unions authorized to do business in Virginia that are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.
- For investments not approved by Va. Code § 64.2-1502, investments must be made in good faith, using intelligent and prudent reasoning, in order to be acceptable.
- It is recommended that a Conservator use Virginia banks for estate accounts. This is suggested in case the Conservator cannot complete the administration of the estate due to his own death, removal, or other reason. A substituted Conservator would be less inconvenienced in recovering the assets in Virginia than in some other state or the District of Columbia, resulting in less disruption to the administration of the incapacitated person's estate.

- Virginia Code § 64.2-1415 sets out the liability of fiduciaries regarding loss of assets.
- A Conservator may not invest conservatorship monies in unsecured notes or buy real estate or lend money to himself.
- Be sure to title all investments properly, i.e. "**Your name**, Conservator for **Incapacitated Person's Name**."
 - o Do not make any conservatorship asset joint with you or anyone else. The conservatorship funds belong only to the incapacitated person, and must be listed with the Conservator's name and title. Commingling funds results in confusion, especially when one party dies.

X. ESTATE PLANNING

- Virginia Code § 64.2-2023 authorizes the Court, in the order appointing the Conservator pursuant to Va. Code § 64.2-2009 or in a separate proceeding brought on petition, for good cause shown, to make gifts from the incapacitated's estate, disclaim property or create a revocable or irrevocable trust on behalf of the incapacitated person.

In a proceeding under this section, a guardian ad litem shall be appointed to represent the interest of the incapacitated person. Notice of a proceeding shall be given as required.

The Court will determine any amounts, recipients, and proportions of any gifts of the state, any disclaimers, whether good cause exists to create a trust or transfer assets and whether to approve the trust created.

- Virginia Code § 54.1-2820 permits a Conservator to arrange for the funeral/burial of the incapacitated person while the incapacitated person is still alive. There are, however, many regulations a Conservator must meet. Before you enter a preneed funeral/burial plan, be sure the funeral home's contract meets the requirements of Virginia law.

XI. COMPENSATION FOR CONSERVATORS

Virginia Code § 64.2-1208 allows a "reasonable compensation" to a Conservator for services rendered in the administration of a conservatorship. There is no specific definition of "reasonable compensation," but absent unusual circumstances, the Commissioner would allow a fee based on the Uniform Fee Schedule Guideline, which provides the following schedule:

Income - 5% of all non-investment receipts (Social Security, retirement payments, etc.) realized during each accounting period. No compensation is allowed on receipts such as interest, dividends, capital gain

distributions, or on capital gains on sales.

Principal - A fee based upon the market value of the assets brought forward from the Inventory or prior account in accordance with the following schedule:

First \$500,000 1% (.01)
Next \$500,000 ¾ of 1% (.0075)
Over \$1,000,000 (up to \$9,999,999.99) ½ of 1% (.005)
\$10,000,000 or more -by agreement with the Commissioner
(prior consultation is required).

XII. SURETY BOND COVERAGE

The Court must determine the penalty of the personal bond and whether surety on the personal bond is required. (Va. Code § 64.2-1411)

Surety is when an insurance company is paid a premium to insure that a fiduciary will properly discharge his duties as a fiduciary. The surety bond is set at an amount sufficient to cover the assets in the hands of the fiduciary as of a specified date, plus 12 months worth of anticipated income.

1. The Commissioner of Accounts must report to the Court if the surety bond is insufficient. This is done after the filing of the Inventory and each Interim Accounting by a letter to the fiduciary setting forth the amount of increase necessary to cover the existing assets and anticipated income. A copy of the letter is sent to the Clerk of the Court and to the insurance company.
2. Reduction of the amount of the surety bond can be requested by a fiduciary when an inventory or accounting is filed which shows assets on hand, plus anticipated income, are less than the current surety bond coverage.

XIII. FAILURE TO PROPERLY FILE INVENTORY OR ACCOUNTINGS

1. Should a Conservator fail to file the required report within the time required by law or within an approved extension period, the following actions may result:
 - o A summons will be issued by the Commissioner of Accounts and served on the Conservator by the Sheriff. The summons gives the Conservator 30 days from the date of service to file the required report with the Commissioner of Accounts.
 - o If the summons deadline is not met, the Commissioner of Accounts will make his report to the Court and request the Judge to issue a Rule

to Show Cause against the Conservator. Said Rule will be served by the Sheriff and the Conservator will be required to appear in Court to explain to the Judge why he has not filed the required report and why he should not be removed as the Conservator.

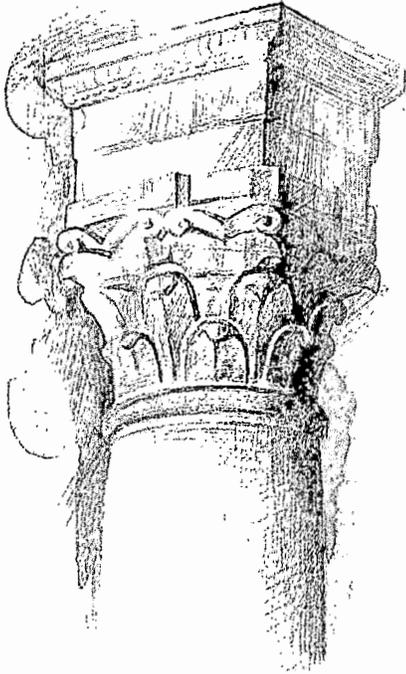
2. Virginia Code § 64.2-1217 provides that conservators who fail to settle their accounts as required by Va. Code §§ 64.2-1206 and 64.2-1308 shall forfeit their commissions unless allowed by the Commissioner of Accounts for good cause shown.
3. Fees for the issuance of the summons and Rule, as well as any Court appearances by the Commissioner of Accounts, are charged against the Conservator personally.
4. Virginia Code § 64.2-1216 requires the Commissioner of Accounts to send a copy of his report to the Court to the Virginia State Bar for any fiduciary who is an attorney.

XIV.TERMINATION OF CONSERVATORSHIP

When the incapacitated person dies or is declared competent by the Order of the Circuit Court the conservatorship will end.

1. Your powers as Conservator cease the day the incapacitated person dies. If the value of the personal estate in your capacity as Conservator exceeds \$5,000, you should write no conservatorship checks until an Administrator or Executor is qualified on the incapacitated person's estate. Then write a check to that fiduciary and transfer all remaining assets to him. As Administrator or Executor, he will pay all unpaid debts, including the filing fee for your final conservatorship account and your fee for conservatorship compensation.
 - o If the value of the personal estate in your capacity as Conservator is \$5,000 or less and no one has qualified as fiduciary of the incapacitated person's estate and it appears that no one will qualify, the Conservator may pay the balance of the incapacitated person's estate to the incapacitated person's surviving spouse, or if there is no surviving spouse, to the distributees of the incapacitated person or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services. The distribution shall be noted in your final Conservator's account.
2. If the incapacitated person dies prior to restoration of competency, you must surrender the real estate to the incapacitated person's heirs or devisees.

3. If the termination of the conservatorship is due to regained competency, your powers as Conservator cease upon entry of the Court Order reinstating the incapacitated person's competency.
4. File your final account after you have transferred all remaining conservatorship assets, with the filing fee and with all supporting vouchers. Be sure to obtain a signed receipt from the fiduciary (ies) or formerly incapacitated person to whom you transfer the assets. Itemize each asset delivered.
 - a. You are not relieved as Conservator until the Commissioner of Accounts approves your final account.
 - b. Send a copy of your final account to the insurance company that is providing the surety on your bond so that they will cease billing you.



GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING INCAPACITATED ADULTS

The Office of the Executive Secretary, Supreme Court of Virginia acknowledges with appreciation the preparation of these materials by Senior Lawyers Conference, Virginia State Bar. July 1, 2006

**GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING
INCAPACITATED ADULTS**

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Guardians and conservators are appointed by the court for persons who lack the physical and/or mental capacity to care for themselves and are found to be incapable of caring for themselves or their property.

Guardians and conservators make decisions regarding the personal and financial affairs, respectively, of such incapacitated persons.

The following materials address frequently asked questions relating to the guardianship/conservatorship appointment process. These materials are to be distributed to circuit court clerks to educate petitioners, guardians *ad litem*, attorneys, evaluators, guardians, and conservators.

I. BEFORE YOU BEGIN: CONSULTING A LAWYER

It is advisable that persons seeking to petition for the appointment of guardians and conservators for incapacitated adults consult an attorney before undertaking any of the procedures specified herein. A lawyer may advise you to consider other alternatives to guardianships and conservatorships and save you from the effort and costs of what may be unnecessary guardianship/conservatorship proceedings.

II. WHAT IS A GUARDIAN/CONSERVATOR?

A. Definition and General Responsibilities

A guardian is a person appointed by the court who is responsible for the personal affairs of an incapacitated person. A guardian is responsible for making decisions regarding the incapacitated person's support, care, health, safety, habilitation, education, therapeutic treatment, and if not inconsistent with an order of commitment, residence.

A conservator is a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person.

Either a conservator or guardian may be full, limited, or temporary, depending upon the courts order.

B. Purpose of Guardianship/Conservatorship

The purpose of a guardianship/conservatorship is to ensure that the best interests of the incapacitated person are represented and accounted for. A guardian/conservator serves as a fiduciary to the incapacitated person. A fiduciary is one who stands in a relationship of trust to another and must act prudently and in the best interests of the person for whom he or she is appointed as a fiduciary.

III. WHO QUALIFIES AS ONE IN NEED OF A GUARDIAN/CONSERVATOR?

Guardians/conservators are appointed for incapacitated persons. An incapacitated person is an adult who has been found by the court to be incapable of receiving and evaluating information effectively or responding to people, events or environments to such an extent that the individual lacks the capacity to:

- meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian. For instance, the individual may demonstrate:
 - o disorientation and memory loss
 - o noticeable physical and behavioral changes compared to the previous year
 - o inability to care for him or herself (neglect of personal hygiene, careless eating and sleeping routines)

OR

- manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.

A finding that the individual displays poor judgment, alone, shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this subsection.

IV. WHO QUALIFIES AS A GUARDIAN/CONSERVATOR?

Any person may file a petition for the appointment of a guardian, conservator, or both. The person filing a petition (petitioner) does not necessarily have to be the person who will be appointed guardian or conservator.

V. WHAT ARE THE PROCEDURES FOR APPOINTING A GUARDIAN/CONSERVATOR?

The allegedly **incapacitated person** will be referred to as the **respondent** under this section during the appointment process.

A. Filing a Petition

1. Where to File: A petition for the appointment of a guardian/conservator is filed in the circuit court of the county or city where the respondent:
 - is a resident or is located
 - resided immediately prior to becoming a patient, voluntarily or involuntarily in a hospital, or resident in a nursing facility, nursing home, convalescent home, assisted living facility as defined in Va. Code § 63.2-100, or other similar institution.

If the petition is for the appointment of a conservator of a nonresident of Virginia who has property in Virginia, then the petition must be filed in the circuit court in the city or county where the property is located.

The petitioner may file a joint petition for the appointment of a guardian AND conservator of the same person.

2. Contents of the Petition: See the sample PETITION provided in this pamphlet.

B. Guardians Ad Litem

1. Definition. A guardian *ad litem* is an attorney at law, licensed to practice law in Virginia and appointed by the circuit court to represent the interests of the respondent during the guardianship proceedings. The guardian *ad item* must be certified by the Judicial Council of Virginia, which has developed, in conjunction with the Virginia State Bar and the Virginia Bar Association, standards for attorneys who are appointed as guardians *ad litem* and maintains a list of certified attorneys. The guardian *ad litem*'s fee is fixed by the court and is paid by the petitioner or taxed as part of the costs of the proceeding, as the court directs.

2. Duties:

- personally visiting the respondent
- advising the respondent of his/her rights, and certifying to the court that the respondent has been so advised
- recommending that legal counsel be appointed for the respondent if the guardian *ad litem* believes that is necessary
- investigating the petition and evidence and filing a report with the court
- personally appearing at all court proceedings and conferences

Guardians *ad litem* may also interview witnesses, relatives, and references for qualifying petitioners, verify medical evaluations, participate in appointment hearings, present evidence, and prepare a report for the court, legal documents.

C. Requirement of Notice

It is advised that the petitioner consult a lawyer in meeting notice and service of process requirements. The respondent must have reasonable notice of the guardianship/conservatorship proceedings and must be personally served with the notice, a copy of the petition and a copy of the court's order appointing a guardian *ad litem*. The respondent may not waive notice, and the petitioner's failure to give required notice constitutes a jurisdictional defect.

1. Content of the Notice: A brief statement to the respondent in at least 14 point type of the purpose of the proceedings, his/her right to counsel and to a hearing, and the following statement in bold, conspicuous print:

WARNING:

AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS, WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT RIGHTS.

2. Notice to Others. The petitioner must mail a copy of the notice, along with a copy of the petition, at least 7 days before the hearing by first class mail to all adult individuals and to all entities whose names and post office addresses appear in the petition. In addition, the petitioner must file with the clerk a statement of compliance with notice requirements.

D. Evaluation Report

A report evaluating the condition of the respondent must be filed with the court and given to the guardian *ad litem* within a reasonable time prior to the hearing.

1. Who Prepares the Report: A licensed physician, psychologist, or a licensed professional skilled in the assessment and treatment of the physical or mental conditions of the respondent should prepare the report. If such report is not available, the court may proceed to hold the hearing without the report for good cause shown and absent objection by the guardian *ad litem*, or may order that such be prepared.
2. Content of the Report: The report must include, to the evaluator's best information and belief:
 - Description of the nature, type, and extent of the respondent's incapacity, including his/her specific functional impairments
 - Diagnosis or assessment of the respondent's mental and physical condition, including a statement as to whether or the respondent is on any medications that may affect his or her actions or demeanor, and where appropriate and consistent with the scope of the evaluator's license, an evaluation of the respondent's ability to learn self-care skills, adaptive behavior and social skills and prognosis for improvement

- Date and dates of examinations, evaluations, and assessments upon which the report is based
- Signature of the person conducting the evaluation and the nature of the professional license held by such person

In the absence of bad faith or malicious intent, the person performing the evaluation shall be immune from civil liability for any breach of patient confidentiality made in furtherance of the evaluator's duties under the statute.

E. Respondent's Rights

- To be represented by legal counsel of his or her choice
- To a trial by jury
- To compel the attendance of witnesses, to present evidence on his or her own behalf, and to confront and cross-examine witnesses
- To have the hearing held at such convenient place as the court directs, including the place where the respondent is located
- For the proposed guardian or conservator to be present at the hearing, except for good cause shown, and for proposed guardian or conservator, where appropriate, to provide the court with a recommendation as to living arrangements and a treatment plan
- To be personally present at the hearing and at all stages of the proceedings
- Whether or not present, to be considered to have denied all allegations in the petition
- For the court, in determining the need for a guardian/conservator, and the power and duties of any needed guardian or conservator, to consider the following factors:
 - o limitations of the respondent
 - o development of the respondent's maximum self-reliance and independence
 - o availability of less restrictive alternatives, including advance directives and durable powers of attorney
 - o extent to which it is necessary to protect the respondent from neglect, exploitation or abuse
 - o actions needed to be taken by the proposed guardian/conservator
 - o suitability of the proposed guardian/conservator

F. Hearing at the Circuit Court

The respondent is entitled to a hearing before a judge of the circuit court, and if requested, a jury trial. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located (especially if he or she is bedridden or physically handicapped). The petitioner, respondent, and guardian *ad litem* are all entitled to call witnesses and present evidence. If, after considering the evidence, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, for the court to give due deference to the wishes of the respondent in appointing the guardian/conservator, and for the court in its order to make specific findings of fact and conclusions of law in support of each provision of the court's order.

G. Requirement for Security: For Conservators ONLY

The conservator must furnish security on his or her bond, if required by the court's order.

VI. POWERS AND DUTIES OF GUARDIANS/CONSERVATORS

A. Guardian

1. The powers of a guardian include only those powers enumerated in the court order.
2. A guardian stands in a **fiduciary relationship** to the incapacitated for whom he or she was appointed guardian and may be held personally liable for a breach of any fiduciary duty to the incapacitated person. A guardian shall not be liable for the acts of the incapacitated person, unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person. The guardian may receive compensation from the estate of the incapacitated person.
3. A guardian's duties and authority **shall not extend to decisions addressed in a valid advance directive or durable power of attorney previously executed** by the incapacitated person. A guardian may seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney. A guardian may seek court authorization to modify the designation of an agent under an advance directive, but such modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.
4. A guardian must **maintain sufficient contact** with the incapacitated person to know of his or her capabilities, limitations, needs, and opportunities. Visit the incapacitated person as often as necessary.

5. Prior **court authorization** is necessary:
 - to change the incapacitated person's residence to another state
 - to terminate or consent to a termination of the person's parental rights
 - to initiate a change in the person's marital status
6. The guardian shall, to the extent feasible, encourage the **incapacitated person to participate** in decisions, to act on his or her own behalf, and to develop or regain the capacity to manage his or her personal affairs. In making decisions, the guardian shall consider the expressed desires and personal values of the incapacitated person to the extent known, and shall otherwise, act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence.
7. A guardian shall have authority to make arrangements for the funeral and disposition of remains, including cremation, interment, entombment, inurnment, or scattering of the cremains, or some combination thereof, if the guardian is not aware of any person that has been otherwise designated to make such arrangements. A guardian shall have authority to make arrangements for the funeral and disposition of remains after the death of an incapacitated person if, after the guardian has made a good faith effort to locate the next of kin of the incapacitated person to determine if the next of kin wishes to make such arrangements, the next of kin does not wish to make the arrangements or the next of kin cannot be located. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian. The guardian shall be immune from civil liability for any act, decision, or omission resulting from acceptance of any dead body for burial, cremation, or other disposition unless such acts, decisions, or omissions resulted from bad faith or malicious intent.
8. The guardian must file an annual report with the department of social services where the incapacitated person resides. This report is made on a form provided by the Office of the Executive Secretary of the Virginia Supreme Court.

B. Conservator

1. At all times, the conservator is to exercise reasonable care, diligence, and prudence, and shall act in the **best interest of the incapacitated person**, to the extent known to him or her, the conservator shall consider the expressed desires and personal values of the incapacitated person.
2. Subject to limitations or conditions in the conservatorship order, the conservator shall **take care of and preserve the estate of the incapacitated person and manage it to the best advantage**. As a fiduciary, the conservator is bound to follow Virginia's Uniform Prudent Investor Act (§64.2-781 et seq.). The conservator shall apply income from the estate, or so much as may be necessary, to the payment of the debts of the incapacitated person, including payment of

reasonable compensation to himself or herself and to any guardian appointed, to the maintenance of such person and of his or her legal dependents, if any, and, to the extent that the income is not sufficient, shall so apply the corpus of the estate. The Commissioner of Accounts provides direction regarding appropriateness and reasonableness of expenditures.

3. The conservator shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his or her own behalf, and to develop or regain the capacity to manage the estate and his or her financial affairs. A conservator shall also consider:
 - the size of the estate
 - probable duration of the conservatorship
 - incapacitated person's accustomed manner of living
 - other resources known to the conservator to be available
 - recommendations of the guardian
4. The conservator stands in a fiduciary relationship to the incapacitated person for whom he or she was appointed conservator and may be held personally liable for a breach of any fiduciary duty under Title 64.2 of the Virginia Code. Unless otherwise provided in the contract, a conservator is personally liable on a contract entered into in a fiduciary capacity in the course of the administration of the estate unless he or she reveals the representative capacity and identifies the estate in the contract.

Claims based upon contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, or torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefore. A successor conservator is not personally liable for the contracts or actions of a predecessor.

5. As of the date the conservator is appointed, he or she shall have the following powers in **managing the incapacitated person's estate**, which may be exercised without prior court authorization except as otherwise specifically provided in the court's order of appointment:
 - To ratify or reject a contract entered into by the incapacitated person
 - To pay any sum distributable for the benefit of the incapacitated person or for the benefit of a legal dependent to the following parties, if applicable:
 - o distributee
 - o provider of goods and services

- o any individual or facility that is responsible for or has assumed responsibility for care and custody
 - o distributee's custodian under a Uniform Gifts or Transfer to Minors Act of any applicable jurisdiction
 - o guardian of the incapacitated person or, in the case of a dependent, to the dependent's guardian or conservator
 - To maintain life, health, casualty and liability insurance for the benefit of the incapacitated person, or legal dependents
 - To manage the estate following termination of the conservatorship until its delivery to the incapacitated person, or successors in interest
 - To execute and deliver all instruments, and to take all other actions that will serve in the best interests of the incapacitated person
 - To initiate a proceeding to:
 - o revoke a power of attorney under the provisions of Va. Code § 64.2-1600 et seq.
 - o to make an augmented estate election under Va. Code § 64.2-302
 - To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals and security, as shall seem advisable, including the power to borrow from the conservator, if the conservator is a bank; to mortgage or pledge such portion of the incapacitated person's estate as may be required to secure such loan or loans; and, as maker or endorser, to renew existing loans.
6. The court may impose **requirements to be satisfied by the conservator prior to the conveyance of any interest in real estate**, including, but not limited to:
- increasing the amount of the conservator's bond
 - securing an appraisal of the real estate or interest
 - giving notice to interested parties as the court deems proper
 - consulting with the commissioner of accounts and the guardian (if one has been appointed)

If the court imposes such requirements, the conservator must make a report of his compliance with each requirement, to be filed with the commissioner of accounts. Promptly following receipt of the conservator's report, the commissioner shall file a report with the court indicating whether the requirements imposed have been met and whether the sale is otherwise consistent with the conservator's duties. The conveyance shall not be closed until a report by the commissioner of

accounts is filed with the court and confirmed as provided in Va. Code §§ 64.2-1212, 64.2-1213 and 64.2-1305.

7. The conservator must comply with the **fiduciary filing requirements** under Va. Code §§ 64.2-1300 and 64.2-1305, which include filing an Inventory within four months of the date of appointment (*See Form CC-1671 INVENTORY FOR ESTATE OF INCAPACITATED ADULT*), filing a first Account within six months of the date of appointment (*See Form CC-1682 ACCOUNT FOR INCAPACITATED ADULT*), and an annual Account thereafter within four months of the end of the twelve month period commencing on the terminal date of the preceding Account.

VII. MODIFICATION/TERMINATION OF GUARDIANSHIP/CONSERVATORSHIP

Upon petition of the incapacitated person, the guardian, or conservator, or upon the court's own motion, the court may declare the incapacitated person restored to capacity, and/or may modify or terminate the provisions of the guardianship.

VIII. ASSISTANCE - VIRGINIA AREA AGENCIES ON AGING

VIRGINIA DEPARTMENT FOR THE AGING

1610 Forest Avenue, Suite 100
Richmond. VA 23229

(804) 662-9333/ Toll Free: 1-800-552-3402

Fax: (804) 662-9354

<http://www.vda.virginia.gov/>

VIRGINIA GUARDIANSHIP ASSOCIATION

P.O. Box 9204
Richmond, VA 23227-9998

Phone: 804-261-4046

<http://www.vgavirginia.org/>

**ALEXANDRIA OFFICE OF AGING AND ADULT
SERVICES**

MaryAnn Griffin, Director
2525 Mount Vernon Avenue
Alexandria, VA 22301-1159

Phone: 703-838-0920
TDD: 703-836-1493
Fax: 703-549-1382

E-mail: MaryAnn.Griffin@alexandriava.gov
Web site: <http://alexandriava.gov/humanservices/info>

LOCAL AREAS SERVED:

City of Alexandria

APPALACHIAN AGENCY FOR SENIOR CITIZENS

Diana Wallace, Executive Director
216 College Ridge Road, Wardell Industrial Park
P.O. Box 765
Cedar Bluff, VA 24609-0765

Toll-Free: 1-800-656-2272
Phone: 276-964-4915
TTY: 276-964-5765
Fax: 276-963-0130

E-mail: aasc@aasc.org
Web site: <http://www.aasc.org>

LOCAL AREAS SERVED:

Counties of Buchanan, Dickenson,
Russell and Tazewell

ARLINGTON AGENCY ON AGING

Terri Lynch, Director
Department Of Human Services
3033 Wilson Boulevard, Suite 700B
Arlington, VA 22201-3843

Phone: 703-228-1700
TTY: 703-228-1788
Fax: 703-228-1174

E-mail: arlaaa@arlingtonva.us
Web site: <http://www.arlingtonva.us/aging>

LOCAL AREAS SERVED:

County of Arlington

BAY AGING

Allyn Gemerek, President
5306 Old Virginia Street
P.O. Box 610
Urbanna, VA 23175-0610

Toll-Free: 1-800-693-6109 for Middle Peninsula
Toll-Free: 1-800-493-0238 for Northern Neck
Phone: 804-758-2386
Fax: 804-758-5773

E-mail: kvesley@bayaging.org
Web site: <http://www.bayaging.org>

LOCAL AREAS SERVED:

Counties of, Essex, Gloucester,
King and Queen, King William,
Lancaster, Mathews, Middlesex,
Northumberland, Richmond and
Westmoreland.

CENTRAL VIRGINIA AREA AGENCY ON AGING, INC.

Dan Farris, Executive Director
3024 Forest Hills Circle
Lynchburg, VA 24501-2312

Phone: 434-385-9070
Fax: 434-385-9209

E-mail: cvaaa@cvaaa.com
Web site: <http://www.cvaaa.com>

LOCAL AREAS SERVED:

Counties of Amherst,
Appomattox, Bedford and
Campbell. Cities of Bedford and
Lynchburg.

**GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING
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CRATER DISTRICT AREA AGENCY ON AGING

David L. Sadowski, Sr. Executive Director
23 Seyler Drive
Petersburg, VA 23805-9243

Phone: 804-732-7020
Fax: 804-732-7232

E-mail: director@cdaaa.org
Web site: <http://www.cdaaa.org>

LOCAL AREAS SERVED:

Counties of Dinwiddie,
Greensville, Prince George, Surry
and Sussex. Cities of Colonial
Heights, Emporia, Hopewell and
Petersburg.

DISTRICT THREE SENIOR SERVICES

Mike Guy, Executive Director
4453 Lee Highway
Marion, VA 24354-4269

Toll-Free: 1-800-541-0933
Phone: 276-783-8157 or 276-783-8158
Fax: 276-783-3003

E-mail: district-three@smyth.net
Web site: <http://www.district-three.org>

LOCAL AREAS SERVED:

Counties of Bland, Carroll, Grayson,
Smyth, Washington and Wythe. Cities
of Bristol and Galax

**EASTERN SHORE AREA AGENCY ON
AGING/COMMUNITY ACTION AGENCY, INC.**

Diane Musso, Executive Director
36282 Lankford Highway
Colonial Square, Suite 13-D
P.O. Box 415
Belle Haven, VA 23306-0415

Toll-Free: 1-800-452-5977
Phone: 757-442-9652
Fax: 757-442-9303

E-mail: esaaa@aol.com

LOCAL AREAS SERVED:

Counties of Accomack and
Northampton

FAIRFAX AREA AGENCY ON AGING

Grace Starbird, Director
12011 Government Center Parkway, Suite 708
Fairfax, VA 22035-1104

Toll-Free: 1-866-503-0217
Phone: 703-324-5411
TTY: 703-449-1186
Fax: 703-449-8689

E-mail: fairfax_aaa@fairfaxcounty.gov
Web site: <http://www.fairfaxcounty.gov/service/aaa>

LOCAL AREAS SERVED:

County of Fairfax. Cities of
Fairfax and Falls Church.

JEFFERSON AREA BOARD FOR AGING (JABA)

Gordon Walker, Chief Executive Officer
674 Hillsdale Drive, Suite 9
Charlottesville, VA 22901-1799

Phone: 434-817-5222
Fax: 434-817-5230

E-mail: info@jabacares.org
Web site: <http://www.jabacares.org>

LOCAL AREAS SERVED:

Albemarle County:(434) 817-5222
Fluvanna Co. Senior Center Phone:(434)
842-3693;
Greene Co. Senior Center Phone: (434)
985-2047
Louisa Co. Senior Center Phone: (540)
967-4433;
Nelson Co. Senior Center Phone: (434)
263-7155.
City of Charlottesville: (434) 817-5222

LAKE COUNTRY AREA AGENCY ON AGING

Gwen Hinzman, President/CEO
1105 West Danville Street
South Hill, VA 23970-3501

Toll-Free: 1-800-252-4464
Phone: 434-447-7661
Fax: 434-447-4074

E-mail: ghinzman@lcaaa.org
Web site: <http://www.lcaaa.org>

LOCAL AREAS SERVED:

Counties of Brunswick, Halifax and
Mecklenburg

LOA AREA AGENCY ON AGING, INC.

Susan Williams, Executive Director
706 Campbell Avenue, SW
P.O. Box 14205
Roanoke, VA 24038-4205

Phone: 540-345-0451
Fax: 540-981-1487

E-mail: info@loaa.org
Web site: <http://www.loaa.org>

LOCAL AREAS SERVED:

Alleghany County (540) 962-0465;
Botetourt County:(540) 966-1094;
Eagle Rock Office (540) 882-2892;
Craig County: (540) 864-6031.
Cities of Covington, Roanoke (540)
345-0451 and Salem.

LOUDOUN COUNTY AREA AGENCY ON AGING

Lynn A. Reid, Ph.D., Director
215 Depot Court SE, 2nd Floor
Leesburg, VA 20175-3017

Phone: 703-777-0257
Fax: 703-771-5161

E-mail: aaa@loudoun.gov
Web site:
<http://www.co.loudoun.va.us/prcs/aaa/index.htm>

LOCAL AREAS SERVED:

County of Loudoun.

**GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING
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MOUNTAIN EMPIRE OLDER CITIZENS, INC.

Marilyn Pace Maxwell, Executive Director
Block 1-A Industrial Park Road
P.O. Box 888
Big Stone Gap, VA 24219-0888

Toll-Free: 1-800-252-6362
Phone: 276-523-4202
Fax: 276-523-4208

E-mail: info@meoc.org or meoc@meoc.org
Web site: <http://www.meoc.org>

LOCAL AREAS SERVED:

Counties of Lee, Scott and Wise. City
of Norton

NEW RIVER VALLEY AGENCY ON AGING

Tina King, Executive Director
141 East Main Street, Suite 500
Pulaski, VA 24301-5029

Toll-Free: 1-866-260-4417
Phone: 540-980-7720
Fax: 540-980-7724

E-mail: nrvaoa@nrvaoa.org
Web site: <http://www.nrvaoa.org>

LOCAL AREAS SERVED:

Counties of Floyd, Giles, Montgomery
and Pulaski. City of Radford

PENINSULA AGENCY ON AGING, INC.

William Massey, Executive Director
739 Thimble Shoals Boulevard, Executive Center
Building 1000, Suite 1006
Newport News, VA 23606-3585

Phone: 757-873-0541
Fax: 757-873-1437

E-mail: information@paainc.org
Web site: <http://www.paainc.org>

LOCAL AREAS SERVED:

Counties of James City and York. Cities
of Hampton, Newport News, Poquoson
and Williamsburg

**PIEDMONT SENIOR RESOURCES AREA AGENCY ON
AGING, INC.**

Ronald Dunn, Executive Director
939 Inverness Road
P.O. Box 398
Burkeville, VA 23922

Toll-Free: 1-800-995-6918
Phone: 434-767-5588
Fax: 434-767-2529

E-mail: psraaa@embarqmail.com

LOCAL AREAS SERVED:

Counties of Amelia, Buckingham,
Charlotte, Cumberland, Lunenburg,
Nottoway, and Prince Edward

Prince William Area Agency on Aging

Courtney Tierney, Director
7987 Ashton Avenue, Suite 231
Manassas, VA 20109-2885

Phone: 703-792-6400
Fax: 703-792-4734
TDD: 703-792-6444

E-mail: ctierney@pwcgov.org
Web site: <http://www.pwcgov.org/aoa>

LOCAL AREAS SERVED:

County of Prince William. Cities of
Manassas and Manassas Park

RAPPAHANNOCK AREA AGENCY ON AGING, INC.

Jim Schaefer, Executive Director
171 Warrenton Road
Fredericksburg, VA 22405-1343

Toll-Free: 1-800-262-4012 (Virginia only)
Phone: 540-371-3375
Fax: 540-371-3384

E-mail: info@raaa16.org
Web site: <http://www.raaa16.org>

LOCAL AREAS SERVED:

Counties of Caroline, King George,
Spotsylvania and Stafford. City of
Fredericksburg.

**RAPPAHANNOCK-RAPIDAN COMMUNITY SERVICES
BOARD AND AREA AGENCY ON AGING**

Brian D. Duncan, Executive Director
15361 Bradford Road
P.O. Box 1568
Culpeper, VA 22701-1568

Phone: 540-825-3100
Fax: 540-825-6245
TDD: 540-825-7391

E-mail: rrcsb@rrcsb.org
Web Site: <http://www.rrcsb.org>

LOCAL AREAS SERVED:

Counties of Culpeper, Fauquier,
Madison, Orange and Rappahannock

**SENIOR CONNECTIONS, THE CAPITAL AREA
AGENCY ON AGING, RESOURCES FOR AGING WELL**

Thelma Bland Watson Ph.D., Executive Director
24 East Cary Street
Richmond, VA 23219-3796

Toll-Free: 1-800-989-2286
Phone: 804-343-3000
Fax: 804-649-2258
TDD: 1-804-343-3008

E-mail: twatson@youraaa.org
Web site: <http://www.seniorconnections-va.org>

LOCAL AREAS SERVED:

Counties of Charles City,
Chesterfield, Goochland,
Hanover, Henrico, New Kent and
Powhatan. City of Richmond.

Senior Services of Southeastern Virginia

John Skirven, Executive Director
Interstate Corporate Center, Bldg. 5
6350 Center Drive, Suite 101
Norfolk, VA 23502-4101

Phone: 757-461-9481 (for cities of Chesapeake, Norfolk,
Portsmouth and Virginia Beach)
Fax: 757-461-1068

E-mail: services@ssseva.org
Web site: <http://www.ssseva.org>

LOCAL AREAS SERVED:

Isle of Wight County (757) 357-4050; Southampton County (757) 653-2105; and cities of Chesapeake, Franklin (757) 569-8206; Norfolk, Portsmouth, Suffolk (757) 925-1449; and Virginia Beach.

SHENANDOAH AREA AGENCY ON AGING, INC.

Helen Cockrell, Executive Director
207 Mosby Lane
Front Royal, VA 22630-3029

Toll-Free: 1-800-883-4122
Phone: 540-635-7141
Fax: 540-636-7810

E-mail: info@shenandoah.com
Web site: <http://www.shenandoahaaa.com>

LOCAL AREAS SERVED:

Counties of Clarke, Frederick, Page, Shenandoah and Warren. City of Winchester

SOUTHERN AREA AGENCY ON AGING, INC.

Teresa Carter, Executive Director
204 Cleveland Avenue
Martinsville, VA 24112-2020

Toll-Free: 1-800-468-4571
Phone: 276-632-6442
Fax: 276-632-6252

E-mail: info@southernaaa.org
Web site: <http://www.southernaaa.org>

LOCAL AREAS SERVED:

Counties of Franklin, Henry, Patrick and Pittsylvania. Cities of Danville and Martinsville

VALLEY PROGRAM FOR AGING SERVICES, INC.

Paul Lavigne, Executive Director
325 Pine Avenue
P.O. Box 817
Waynesboro, VA 22980-0603

Toll-Free: 1-800-868-8727
Phone: 540-949-7141
Fax: 540-949-7143

E-mail: vpas@vpas.info

LOCAL AREAS SERVED:

Counties of Augusta, Bath, Highland, Rockbridge and Rockingham. Cities of Buena Vista, Harrisonburg, Lexington, Staunton and Waynesboro.

IX. FORMS

A. Form CC-1652, INCAPACITATED ADULT INFORMATION FORM

GENERAL: This form provides the Clerk of Court with the information necessary to qualify fiduciaries for adults who have been determined by the court to be incapacitated. This sheet contains special instructions to help you fill out this form. If you have any questions, you should telephone the Clerk. If you are unable to complete this form, the Clerk will help you. You should telephone the Clerk's office for an appointment before you go to the courthouse. Please complete as much of this form as possible before you see the Clerk.

Instructions:

- Line 1.** State the incapacitated person's full name, including any aliases, and the maiden name of a married woman.
- Line 4.** If you are unsure of the correct answer to this question, leave it blank until you talk to the Clerk of Court.
- Lines 10-13.** These lines are used to identify a co-fiduciary(ies), if there is one (or more).
- Lines-16-18.** These questions are to be answered by the person(s) who wishes to be qualified as fiduciary by the Clerk. A "yes" answer to any of these questions does not automatically disqualify a person from serving. Each case must be decided by the court based on its specific facts.
- Line 19.** Because of the difficulty in determining exact values at the time of qualification, the clerk will accept a reasonable estimate of the fair market value of the incapacitated person's personal property. If you do not know the actual value of the incapacitated person's real property, you may use its assessed value for local real estate tax purposes. In addition to including all property in the traditional sense, you must also include the value of (i) any periodic payments of money to which the incapacitated person is entitled (such as Social Security, 551, veteran's benefits. etc.), and (ii) the incapacitated person's legal or equitable ownership interest in any real or personal property that will pass to another at the incapacitated person's death by a means other than testate or intestate succession (such as property owned in any survivorship form with another person, an interest in a trust fund created by the incapacitated person or another, etc.).

GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING INCAPACITATED ADULTS

B. Contents of Petition

Please note that the following is a sample that was not put out or endorsed by the state; its purpose is merely to illustrate the information needed for a guardianship/conservatorship petition.

PETITIONER'S INFORMATION	
Name:	
Place of Residence:	
Post Office Address:	
Relationship, if any, to the incapacitated person:	
RESPONDENT'S INFORMATION (To the extent known by the petitioner as of the date of the filing)	
Name:	
Date of birth:	Social Security Number: Must be provided under seal – use Form CC-1642 for this purpose
Place of residence or location:	
Post Office Address:	
What is the native language of the respondent?	
Are any alternative means of communication necessary? Yes <input type="checkbox"/> No <input type="checkbox"/>	
RESPONDENT'S RELATIVES	
Spouse, adult children, parents and adult siblings or, if such relatives are not known to the petitioner, at least three other known relatives of the respondent, including stepchildren. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order.	
Name:	Post Office Address:
Name:	Post Office Address:
Name:	Post Office Address:
INDIVIDUAL OR FACILITY (IF ANY) THAT IS RESPONSIBLE FOR OR HAS ASSUMED RESPONSIBILITY FOR THE RESPONDENT'S CARE OR CUSTODY	
Name:	
Place of Residence or Location:	
Post Office Address:	
AGENT DESIGNATED UNDER A DURABLE POWER OF ATTORNEY OR ADVANCED DIRECTIVE OF WHICH RESPONDENT IS THE PRINCIPAL, OR ANY GUARDIAN, COMMITTEE, OR CONSERVATOR CURRENTLY ACTING, WHETHER IN THIS STATE OR ELSEWHERE *Petitioner shall attach a copy of such documents, if available.	
Names(s):	
Place of Residence or Location:	
Post Office Address:	

GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING INCAPACITATED ADULTS

Contents of Petition (Cont'd)

GUARDIANSHIP AND CONSERVATORSHIP TYPES (Required information varies according to TYPE of guardianship and conservatorship)	
TYPE REQUESTED	BRIEF DESCRIPTION OF:
Guardianship	<ul style="list-style-type: none"> · Nature and extent of respondent's alleged incapacity · Services currently being provided for the respondent's health, care, safety, or rehabilitation, and · Where appropriate, recommendation as to living arrangement and treatment plan.
Limited Guardianship	<ul style="list-style-type: none"> · Nature and extent of respondent's alleged incapacity · The specific areas of protection and assistance to be included in the order of appointment
Conservatorship	<ul style="list-style-type: none"> · Nature and extent of respondent's alleged incapacity
Limited Conservatorship	<ul style="list-style-type: none"> · Nature and extent of respondent's alleged incapacity · The specific areas of management and assistance to be included in the order of appointment.
GUARDIANS AND/OR CONSERVATORS NOMINATED BY RESPONDENT	
Name:	Relationship to Respondent:
Post Office Address:	
Name:	Relationship to Respondent:
Post Office Address:	
RESPONDENT'S FINANCIAL RESOURCES	
Approximate Value of Property:	
Anticipated Annual Gross Income:	
Other Receipts and Debts:	
STATEMENT OF WHETHER THE PETITIONER BELIEVES THAT RESPONDENT'S ATTENDANCE AT HEARING WOULD BE DETRIMENTAL TO RESPONDENT'S HEALTH, CARE OR SAFETY	
REQUEST FOR APPOINTMENT OF A GUARDIAN AD LITEM	

**GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING
INCAPACITATED ADULTS**

**C. Form CC-1642, ADDENDUM TO PETITION FOR APPOINTMENT OF GUARDIAN OR
CONSERVATOR - UNDER SEAL**

ADDENDUM TO PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR – UNDER SEAL		Court File No.
Commonwealth of Virginia, VA. CODE § 64.2-2002		
In the Circuit Court of the [] City [] County of		
This addendum is filed under seal pursuant to Virginia Code § 64.2-2002 in connection with a PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR.		
..... NAME OF RESPONDENT (LAST, FIRST, MIDDLE)	..... RESPONDENT'S SOCIAL SECURITY NUMBER	
..... DATE	[] PETITIONER	[] ATTORNEY
..... PRINT NAME	..... ADDRESS/TELEPHONE NUMBER OF SUBSCRIBER	
FORM CC-1642 MASTER 10/12		

GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING INCAPACITATED ADULTS

D. Form CC-1644, REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON

REPORT OF GUARDIAN FOR AN INCAPACITATED PERSON COMMONWEALTH OF VIRGINIA VA. CODE § 64.2-2020		
Name of Incapacitated Person:		
Address of Incapacitated Person:		
Circuit Court where Guardian appointed:		Age:
Circuit Court Case No.:	Date Appointed:	
Guardian's Name:	.....
Address:	.....
Telephone Number:	.....
Conservator's Name:	.....
Address:	.....
<input type="checkbox"/> Same as Guardian	.....
Telephone Number:	.....
<input type="checkbox"/> Initial four-month report <input type="checkbox"/> Annual report		
The period covered by this report is: to		
1. Describe the incapacitated person's living arrangements:		
.....		
2. Describe the current mental, physical and social condition of the incapacitated person (attach additional pages if necessary):		
Mental: Physical: Social: State any changes in the condition of the incapacitated person in the past year:		
3. Describe all medical, educational, vocational and professional services provided to the incapacitated person for the period covered by this report, and state your opinion of the adequacy of the care received by the incapacitated person:		
.....		
FORM CC-1644 (MASTER, PAGE ONE OF TWO) 07/13		

GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING INCAPACITATED ADULTS

4. State the number of times you visited the incapacitated person, the nature of your visits and describe your activities on behalf of the incapacitated person (Guardians are required to visit the incapacitated person as often as necessary to know of his or her capabilities, limitations, needs and opportunities):

5. State whether or not you agree with the current treatment or care plan:

6. State your recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and the steps to be taken to make those changes, and any other information useful, in your opinion, to a consideration of the guardianship:

7. If you incurred expenses in exercising your duties as guardian and if you requested reimbursement or compensation for those expenses, itemize the expenses and list the person(s) from whom you requested reimbursement or compensation:

I certify that the information contained in this Annual Report is true and correct to the best of my knowledge.

.....
DATE

SIGNATURE OF GUARDIAN

DSS Use Only:	
Date Received: _____	Date Reviewed: _____
_____ REVIEWER'S SIGNATURE AND TITLE	

FORM CC-1644 (MASTER, PAGE TWO OF TWO) 7/00

**GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING
 INCAPACITATED ADULTS**

Part 2. The incapacitated person's real estate in Virginia over which you have a power of sale.	
DESCRIPTION OF PROPERTY	VALUE
TOTAL VALUE OF PART 2:	0.00
Part 3. The incapacitated person's other real estate in Virginia.	
DESCRIPTION OF PROPERTY	VALUE
TOTAL VALUE OF PART 3:	0.00
Part 4. The incapacitated person's other non-Virginia real estate.	
DESCRIPTION OF PROPERTY	VALUE
TOTAL VALUE OF PART 4:	0.00
Part 5. The incapacitated person's interest in any real or personal property that will pass to another at the incapacitated person's death by way of survivorship or beneficiary designation.	
DESCRIPTION OF PROPERTY	VALUE
TOTAL VALUE OF PART 5:	0.00

FORM CC-1671 (MASTER, PAGE TWO OF THREE) 11/06

GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING INCAPACITATED ADULTS

Part 6. The incapacitated person's interest in any trust.

DESCRIPTION OF PROPERTY	VALUE
TOTAL VALUE OF PART 6:	0.00

Part 7. The incapacitated person's rights to periodic payments from certain agencies of the U.S. government.

DESCRIPTION OF PROPERTY	TOTAL ANNUAL VALUE
TOTAL VALUE OF PART 7:	0.00

Part 8. The incapacitated person's right to periodic payments from any other source.

DESCRIPTION OF PROPERTY	TOTAL ANNUAL VALUE
TOTAL VALUE OF PART 8:	0.00

CERTIFICATE OF ACCURACY AND COMPLETENESS

[Must be signed by each fiduciary.]

I (we) hereby certify that to the best of my (our) knowledge and belief this is an accurate and complete inventory of this estate made in accordance with my (our) responsibilities under Virginia law.

Date Fiduciary _____
 Address
 Telephone No.:
 Date Fiduciary _____
 Address
 Telephone No.:

CERTIFICATE OF COMMISSIONER

The Commissioner of Accounts has not independently verified the value of the items on the inventory, or the fact that they are the only assets of the estate.

Inspected, found to be in proper form, and approved on

 Commissioner of Accounts

Received in the Clerk's Office and admitted to record on

 Clerk

GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING INCAPACITATED ADULTS

F. Form CC-1682, ACCOUNT FOR INCAPACITATED ADULT

<p>ACCOUNT FOR INCAPACITATED ADULT COMMONWEALTH OF VIRGINIA VA. CODE §§ 64.2-1206, 64.2-1308, 64.2-1305</p>	Court File No.
Circuit Court of	
Estate of, an incapacitated adult	
Residence of incapacitated person:	
Type of Fiduciary: <input type="checkbox"/> Conservator <input type="checkbox"/> Guardian <input type="checkbox"/> Committee <input type="checkbox"/> Trustee for ex-service person <input type="checkbox"/> Limited Conservator	
Name of fiduciary Day telephone	
Mailing address	
Name of other fiduciary Day telephone	
Mailing address	
This is account number <input type="checkbox"/> one <input type="checkbox"/> two <input type="checkbox"/> three <input type="checkbox"/> Is this a final account? <input type="checkbox"/> yes <input type="checkbox"/> no.	
From (date of qualification or end of last account) to (end of this account)	
<hr/> ACCOUNT SUMMARY	
1. Beginning Assets (from Parts 1, 2 and 5 of the inventory or from the prior account)	\$
2. Receipts*	.....
3. Gains on Asset Sales (attach itemized list)	.....
4. Adjustments (attach itemized list)	.....
5. Total of 1, 2, 3 and 4 (must equal Total on Line 10)	\$ 0.00
6. Disbursements (attach itemized list)	\$
7. Losses on Asset Sales (attach itemized list)	.....
8. Distributions (final account only) (attach itemized list)	.....
9. Assets on Hand (attach itemized list) (carrying value)	.....
10. Total of 6, 7, 8 and 9 (must equal Total on Line 5)	\$ 0.00
* Any amounts received as Designated Representative but not included in 2 above (see Va. Code § 64.2-1312). \$	
** Market Value of Assets on Hand \$	
I (We) certify that this is a true and accurate accounting of the assets of this estate for the period described and that to the best of my/our knowledge all taxes have been paid or provided for.	
Date	Fiduciary's signature
Date	Fiduciary's signature
NOTE: Virginia law requires that every account be signed by all fiduciaries.	
FORM CC-1682 MASTER 10/12	

GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING INCAPACITATED ADULTS

G. Sample Form CC-1682, ACCOUNT FOR INCAPACITATED ADULT

SAMPLE ACCOUNT FOR INCAPACITATED ADULT Court File No.
 COMMONWEALTH OF VIRGINIA
 VA. CODE §§ 64.2-1206, 64.2-1308, 64.2-1305

Circuit Court of

Estate of, an incapacitated adult

Residence of incapacitated person:

Type of Fiduciary: Conservator Guardian Committee
 Trustee for ex-service person Limited Conservator

Name of fiduciary Day telephone

Mailing address

Name of other fiduciary Day telephone

Mailing address

This is account number one two three Is this a final account? yes no.
 From (date of qualification or end of last account) to (end of this account)

ACCOUNT SUMMARY

1. Beginning Assets (from Parts 1, 2 and 5 of the inventory or from the prior account)	\$ 102,306.65
2. Receipts*	\$ 37,328.08
3. Gains on Asset Sales (attach itemized list)	\$ 1,125.00
4. Adjustments (attach itemized list)	\$ 4,375.00
5. Total of 1, 2, 3 and 4 (must equal Total on Line 10)	\$ 145,134.73
6. Disbursements (attach itemized list)	\$ 34,085.00
7. Losses on Asset Sales (attach itemized list)	\$ 0.00
8. Distributions (final account only) (attach itemized list)	\$ 0.00
9. Assets on Hand (attach itemized list) (carrying value)	\$ 111,049.73
10. Total of 6, 7, 8 and 9 (must equal Total on Line 5)	\$ 145,134.73

* Any amounts received as Designed Representative but not included in 2 above. (See Va. Code Section 64.2-1312; Instruction III.A.) \$ 3,000.00

** Market Value of Assets on Hand (See Instruction IX.D.) \$ 111,799.73

I (We) certify that this is a true and accurate accounting of the assets of this estate for the period described and that to the best of my/our knowledge all taxes have been paid or provided for.

Date Fiduciary's signature

Date Fiduciary' signature

NOTE: Virginia law requires that every account be signed by all fiduciaries.

FORM CC-1682 (SAMP) (MASTER, PAGE ONE OF THREE) 10/12

**GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING
INCAPACITATED ADULTS**

RECEIPTS:

LMN Bank interest

6/25/06	53.51
7/25/06	54.17
8/25/06	55.73
9/25/06	56.59
10/25/06	56.82
11/25/06	57.80
12/25/06	58.99
1/25/07	59.40
2/25/07	60.10
3/25/07	60.95
4/25/07	61.44
5/25/07	62.30

STU Corporation, dividends

6/30/06	50.00
9/30/06	50.00
12/31/06	65.00
3/31/07	65.00

Employer's disability payments	10 months @ \$490	4,900.00	
	2 months @ \$510	1,020.00	5,920.00

CDO Annuity - 12 months @ \$2,400 28,800.00

ABC Bank, interest

6/30/06	415.10
9/30/06	418.55
12/31/06	420.92
3/31/07	<u>425.71</u>

TOTAL RECEIPTS 37,328.08

GAINS ON ASSET SALES:

6/14/06 Net Proceeds of sale of 80 shares of NQP Company	5,125.00
less carrying value of	<u>4,000.00</u>
TOTAL GAINS	<u>1,125.00</u>

**GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS REGARDING
INCAPACITATED ADULTS**

ADJUSTMENTS:

Correct 500 shares of STU Corp. from \$119.75 per share on Inventory to true Inventory value of \$128.50/share	59,875.00
	<u>64,250.00</u>
TOTAL ADJUSTMENTS:	4,375.00

DISBURSEMENTS:

Check #		
#008 ABC Agency, bond premium Sunshine Nursing Home 6/06-5/07, 12 months @ \$2,785/month	490.00	
#009 Dr. John Doe	33,420.00	
#015 Dr. John Doe	50.00	
#024 Dr. Mary Roe	50.00	
	<u>75.00</u>	
TOTAL DISBURSEMENTS:	34,085.00	

LOSSES ON ASSET SALES – none 0.00

DISTRIBUTIONS – none 0.00

ASSETS ON HAND:

Fifth National Bank Money Market Acct. #123789	20,907.73	
500 shares of STU Corp. at carrying value of \$128.50/share (5/31/07 market value of \$130/share = \$65,000)	64,250.00	
Third National Bank, Savings Acct.	25,892.00	
TOTAL ASSETS ON HAND		111,049.73