



WEST VIRGINIA

GUARDIAN AND CONSERVATOR

HANDBOOK

A Guide For
Court-Appointed Guardians and Conservators

This handbook may be copied and distributed

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PREFACE

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Some adults are or become unable to conduct their personal affairs or manage their finances because of mental or physical impairment. In cases such as these, the state traditionally steps in to appoint a guardian to protect those individuals who, for various reasons, are unable to make decisions for themselves. Unfortunately, there have been occasions when persons who needed protection were given insufficient time and attention in court proceedings and were subjected to the loss of personal freedoms and basic rights.

In the past several years in a number of states across the nation, there have been substantial reforms in the legal procedures by which guardianships are established. So too in West Virginia, where a law was enacted by the West Virginia Legislature in 1994, entitled the West Virginia Guardianship and Conservatorship Act, Chapter 44A of the West Virginia Code. This law represents a change in focus and a whole new approach to guardianship and conservatorship. It considers the abilities and best interest of a protected person while specifying the duties and responsibilities of a guardian and conservator.

The West Virginia Guardian and Conservator Handbook is designed to provide guidance to an individual who is appointed by the court to serve as a guardian or conservator, or both. The information contained in the Handbook is presented as general information and should not be considered legal advice. To resolve specific issues or problems, a guardian or conservator should seek advice from an attorney.

We invite you to share the West Virginia Guardian and Conservator Handbook with others and to make copies as needed.

INTRODUCTION

As a result of a legal proceeding in which a person's rights must be carefully considered, a circuit court may appoint a guardian or conservator for an individual found by the court to be a "protected person". This means that the court has determined that an adult individual, 18 years of age or older, is unable to care for his or her basic health, care and safety needs without the assistance or protection of a **guardian**; or is unable to manage his or her financial affairs without the assistance or protection of a **conservator**.

One of the first obligations of a guardian or conservator is to receive educational training in order to understand the responsibilities of assisting and caring for a protected person. The West Virginia Guardian and Conservator Handbook is designed to meet this requirement for educational training. The Handbook begins with an overview of the legal process, including an explanation of the terms and procedures used by the courts in establishing guardianship and conservatorship. The following chapters provide a step-by-step approach to understanding the duties and responsibilities of a guardian or conservator.

CHAPTER 1

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UNDERSTANDING GUARDIANSHIP AND CONSERVATORSHIP

The following terms and definitions are used throughout the West Virginia law concerning guardians and conservators. These terms are also used frequently in this Handbook.

PROTECTED PERSON

The *protected person* is the person for whom a guardian or conservator is appointed. A protected person is an adult, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity:

- ◇ to meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or
- ◇ to 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.

GUARDIAN

A *guardian* is a person appointed by the court who is responsible for the personal affairs of a protected person. The practical responsibilities of a guardian may include deciding where the protected person will live, how meals and daily care will be provided, how transportation will be arranged and how health care decisions will be made.

A person may be appointed as a limited guardian and have only those responsibilities for the personal affairs that are specified in the order of appointment. This occurs when the court determines that a protected person needs a guardian for specified purposes, but is also capable of addressing some of the essential requirements for his or her health, care, safety etc. A limited guardian may also be appointed as substitute decision-maker in certain circumstances.

Sometimes the court will appoint a temporary guardian if it finds that an immediate need exists. The temporary guardian has only those powers and duties specifically set forth in the order of appointment, and the appointment lasts only a limited time, usually 45 days.

CONSERVATOR

A *conservator* is a person appointed by the court who is responsible for managing the estate and financial affairs of a protected person. The practical responsibilities of a conservator may include controlling the protected person's assets, paying bills and managing property.

A person may be appointed as a limited conservator and have only those responsibilities of managing the estate and financial affairs that are specified in the order of appointment. This can occur when the protected person's property or financial affairs are so limited that there are only a few purposes for which a conservator is needed.

The court can also appoint a temporary conservator if it finds that an immediate need exists. Like the temporary guardian, the temporary conservator has only those powers and duties specifically set forth in the order of appointment and only for a limited time.

WHO IS QUALIFIED TO SERVE AS A GUARDIAN OR CONSERVATOR?

Any adult may be appointed to serve as a guardian or a conservator, or both, upon determination by the court. The court determines if an individual is capable of providing an active and suitable program of guardianship or conservatorship for the protected person, and requires that the individual is not employed or affiliated with any entity which is providing substantial services or financial assistance to the protected person. In the event that a family member, friend or other qualified individual is not available to be appointed by the court, the law provides for other agencies or entities that the court can designate to assume the responsibility. These alternatives include the Office of Adult Protective Services, certain non-profit corporations licensed by the state.

It is important for any guardian or conservator to consider the protected person's maximum self-reliance and independence. A protected person is entitled to have his or her needs met in the least restrictive manner possible. In appointing an individual to serve as a guardian or conservator, the court will consider these factors, as well as the suitability of the proposed guardian or conservator and the limitations of the protected person. The court will select an individual or entity qualified to act in the best interest of the protected person, and will consider such factors as: geographic location, family or other relationship, ability to carry out duties, commitment to promoting the protected person(s) welfare, any potential conflicts of interest, and recommendation of relatives.

COMPENSATION

Any guardian or conservator is entitled to reasonable compensation as allowed by the court from the estate, including reimbursement for costs advanced. The frequency and amount of all compensation must be approved by the court.

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THE PROCEDURE FOR APPOINTING GUARDIANS AND CONSERVATORS

FILING A PETITION

In order for a guardian or conservator to be appointed, a petition must be filed in the circuit court in the county where the alleged protected person lives. If the alleged protected person has been admitted to a health care or correctional facility, the petition may be filed in the county in which the facility is located.

The petition must be filed with the clerk of the circuit court, along with a filing fee of **\$90.00**. The person who files the petition is responsible for paying filing fees, fees for service of process, and for copies of court documents. If a guardian or conservator is appointed by the court, the fees may be reimbursed to the individual who filed the petition from the protected person's estate, if funds are available. Anyone who is determined to be financially unable to pay these fees and costs will not be required to do so.

Petition forms are available at the circuit clerk's office and must be completed and filed by the petitioner. An evaluation report by a physician or psychologist must accompany the petition, unless the court, for good cause shown, waives the requirement. A statement of financial resources is required prior to a hearing for a conservatorship, but it is not necessary for a guardianship hearing. The petition and accompanying forms have instructions and the circuit clerk can provide some assistance in completing the forms. However, if the petitioner needs legal advice, he or she should contact a lawyer. The court and its employees are prohibited from giving legal advice.

Once the petition is filed, the court will set a hearing and the alleged protected person will be notified of the proceedings. The court will appoint an attorney to represent the protected person. A judge may preside at the hearing or may designate a mental hygiene commissioner to do so. The court will make specific findings of fact and conclusions of law based on the information presented at the hearing, and it will determine whether a guardian or conservator is appointed and specify the areas of protection, management and assistance to be provided.

WHO MAY FILE A PETITION?

The petition for appointment of a guardian or conservator may be filed by any interested person. An interested person is defined as anyone with an actual and substantial interest in the legal proceeding. This means that the petition may be filed by the individual alleged to be the protected person or by the person who is taking care of that individual. The petition may also be filed by a facility providing care to the individual, by a person that the individual wants as guardian or conservator, or by any other interested persons.

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DUTIES OF A GUARDIAN

Decision-making is the grave and fundamental responsibility of a guardian. Your obligation to the protected person is to exercise care and diligence when making decisions on his or her behalf. Decisions should be made in a manner that enables the protected person to maximize independence and self-reliance. You will face challenges and responsibilities in caring for a protected person, but your role as a guardian can be enhanced by a thorough understanding of your duties.

MANDATORY TRAINING

Even before you are officially appointed by the circuit court to serve as a guardian, you will encounter certain duties under the law. After the petition hearing is concluded, the court will issue its findings about the protected person and name a proposed guardian. When you are named the proposed guardian, you will be required to receive educational material or training, unless waived by the court. You must complete the training within 30 days, and then file an affidavit to the court certifying that you have done so. This Handbook is designed to meet that requirement and provide you with the information you need to be an effective and responsible guardian.

THE ORDER OF APPOINTMENT

The court's order appointing you as a guardian will include the specific areas of protection or assistance that are granted to you. You will be required to take an oath promising to faithfully perform your duties as guardian. The court will determine whether you must post any bond. This is at the court's discretion and usually is not required of a guardian. Within 14 days of the date the order is entered, you must mail a copy of the order, together with the statement of the right to appeal for modification or termination which is attached to the order, to the protected person and all individuals and entities that received notice of the petition.

CARING FOR A PROTECTED PERSON

As guardian you are responsible for making decisions and providing for the protected person's care and well-being. You must decide where and how the person will reside, and make sure that he or she obtains the necessary health care and therapeutic treatment. You must maintain sufficient contact with the protected person to know of his or her capabilities, limitations, needs, and opportunities. This contact cannot be less than one visit every six months, and in many circumstances these visits should be more frequent. While exercising duties to the protected person, you must adhere to the following important considerations:

Exercise your authority only to the extent necessary because of the protected person's limitations.

Whenever feasible, encourage the protected person to participate in decision-making, to act on his or her own behalf, and to develop or regain the capacity to manage his or her personal affairs.

Consider the express desires and personal values of the protected person when you make decisions on his or her behalf.

Act in the protected person's best interest and exercise reasonable care diligence and prudence.

It is also important to note that you must obtain prior court authorization for certain actions related to the protected person, such as: a change in the protected person's residence to another state, termination of his or her parental rights, change in marital status, or deviation from the protected person's living will or medical power of attorney or durable power of attorney.

GUARDIANS REPORTING REQUIREMENTS

All guardians are required to file periodic reports with the circuit clerk of the county in which the appointment is made. You must file your first report on a semi-annual basis during the first twelve months of your appointment. After the initial reports, you may elect to file the annual report on a calendar-year basis, which must be filed with the circuit clerk by April 15th of the succeeding year. Additional reports may be required if ordered by the court or if the guardianship terminated.

- ◇ Your guardian's report must include the following:
- ◇ A description of the current mental, physical and social condition of the protected person.
- ◇ A description of the protected person's living arrangements during the period covered by the report.
- ◇ The medical, educational, vocational and other professional services provided to the protected person, and your opinion as to the adequacy of the care provided to the protected person.
- ◇ A summary of your visits with the protected person and your activities on his or her behalf.
- ◇ A statement of whether you agree with the current treatment or habilitation plan.
- ◇ Your recommendation as to the need for continued guardianship and any changes you may recommend in the scope of the guardianship.
- ◇ Any other information that you consider to be useful or that is requested by the court.
- ◇ The compensation you requested and the reasonable and necessary expenses you incurred

- ◇ Your verification and signature stating that all of the information contained in the report is true and correct to best of your knowledge.
- ◇ You should keep careful records of your activities as a guardian, including the time you spend and any receipts for expenses.

LIABILITY / REMOVAL

You cannot be held liable for acts of the protected person unless you are found to be personally negligent. However you do have a duty to the protected person and may be held personally liable for a breach of that duty. This is called a fiduciary duty and means that because you are serving as a guardian, your actions must merit trust and confidence. Therefore, you must avoid conflicts of interest and demonstrate a high degree of loyalty to the protected person(s) best interests.

The court may remove a guardian for a number of reasons that include: neglecting the care and custody of the protected person or failing to act in his or her best interest; failure to file reports or comply with court orders; illness, incapacity or inability to perform duties.

CHANGING OR ENDING YOUR DUTIES AS GUARDIAN

Your appointment as a guardian can be terminated if it is so ordered by the court, if you are granted permission by the court to resign, if you are removed for any of the reasons mentioned above, or if the protected person dies.

There are also a number of circumstances that warrant changing or modifying your status as a guardian. This can be accomplished by you or the protected person, or any other interested person, by filing a petition with the court. A petition form is available in the office of the circuit clerk. Reasons to terminate, revoke or modify the appointment include:

- ◇ The protected person no longer needs the assistance or protection of a guardian.
- ◇ The protection or assistance previously granted is either too much or too little, considering the current needs of the protected person.
- ◇ The protected person's understanding or capacity to provide for his or her health, care or safety has significantly changed.
- ◇ No suitable guardian can be secured who is willing to exercise the assigned duties.
- ◇ It is otherwise in the best interests of the protected person.

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DUTIES OF A CONSERVATOR

The duties of a conservator focus on management of the financial affairs of a protected person. As conservator, you will be responsible for the protected person's assets or income, for establishing a budget and paying bills or debts, for managing and investing property. You will also be required to report to the court about the status of the estate, assets, receipts and disbursements.

MANDATORY TRAINING

Even before you are officially appointed by the circuit court to serve as a conservator, you will encounter certain duties under the law. After the petition hearing is concluded, the court will issue its findings about the protected person and name a proposed conservator, you will be required to receive educational material or training, unless waived by the court. You must complete the training within 30 days, and then file an affidavit to the court certifying that you have done so. This Handbook is designed to meet that requirement and provide you with the information you need to be an effective and responsible conservator.

THE ORDER OF APPOINTMENT AND POSTING OF BOND

The court's order appointing you as conservator will include the specific areas of responsibility for managing the estate and financial affairs of the protected person. You will be required to take an oath promising to faithfully perform your duties as conservator. The order will also require the posting of a bond and will determine the amount and type (unless the appointed conservator is a bank or trust company, which may be excused from posting a bond). The court may allow a property bond instead of a cash bond, and it may increase or reduce the amount of bond depending upon the best interest of the protected person or the estate. In making its determination about the amount of bond, the court considers the following:

- ◇ The value of the estate, annual income and other receipts that are within the conservator's control.
- ◇ The extent to which the estate has been deposited under an arrangement that requires a court order for removal.
- ◇ Whether an order has been entered that waives the requirement that accountings be filed or that the accountings be presented less frequently than once a year.
- ◇ The extent to which income and receipts are paid directly to a facility responsible for the care or custody of the protected person.
- ◇ The extent to which the income and receipts are from state or federal programs that require periodic accountings.

- ◇ Whether a guardian has been appointed, and if so, whether the guardian has presented reports as required.
- ◇ Whether the conservator was appointed pursuant to a nomination which requested that bond be waived.

Within 14 days following the entry of the order of appointment, you must mail a copy of the order, together with the statement of the right to appeal for modification or termination which is attached to the order, to the protected person and all individuals and entities that received notice of petition.

CONSERVATOR'S INVENTORY

Within sixty days following the entry of the order of appointment, you must file with the court an inventory of the protected person's real and personal estate which has come into your possession or knowledge. The inventory should list, with reasonable detail, each item of the estate, its approximate fair market value, and the type and amount of encumbrance to which it is subject.

This inventory should be amended or updated if any additional real or personal estate comes into your possession or knowledge. After you present the inventory to the court, you must mail a copy of the inventory to the individuals and entities who received notice of the hearing for the appointment of a conservator.

DISTRIBUTIVE POWERS AND DUTIES

As a conservator you are responsible for applying the protected person's income and principal as needed for his or her support, care and health; as well as habilitation, education or therapeutic needs. You also must apply the income and principal as needed for the support of any legal dependents who are unable to support themselves and are in need of support. When making these financial distributions, you must adhere to the following important considerations:

- ◇ Exercise your authority only to the extent necessary because of the protected person's limitations.
- ◇ Whenever feasible, encourage the protected person to participate in decision-making, 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.
- ◇ Consider the size of the estate, the probable duration of the conservatorship, the protected person's accustomed manner of living, other resources that are available, and recommendations of the guardian.
- ◇ Consider the express desires and personal values of the protected person when you make decisions on his or her behalf.
- ◇ Act in the protected person's best interest and exercise reasonable care, diligence and prudence.

- ◇ Do not revoke or amend a durable power of attorney which has been executed by the protected person, unless you have prior approval of the court.

MANAGEMENT POWERS AND DUTIES

In managing the estate, you must act as fiduciary and serve in the best interest of the protected person. Unless otherwise provided by the court, you have the authority to:

- ◇ Invest funds of the estate in accordance with a standard of prudent investing.
- ◇ Collect, hold and retain assets of the estate, and receive additions to the estate.
- ◇ Continue or participate in the operation of an unincorporated business.
- ◇ Deposit estate funds in a state or federally insured financial institution.
- ◇ Manage, control and sell the personal property of the estate.
- ◇ Perform a contract entered into by the protected person.
- ◇ Renew a lease entered into by a protected person as lessor or lessee.
- ◇ Borrow money and place, renew or extend an encumbrance upon real or personal property
- ◇ Abandon property when, in your opinion, it is valueless or of no benefit to the estate.
- ◇ Make repairs or alterations in buildings or other property and grant easements.
- ◇ Vote a security in person or by proxy.
- ◇ Sell or exercise stock rights, and pay sums chargeable or on account of securities.
- ◇ Hold a security in the name of a nominee or in other form without disclosure of the conservatorship.
- ◇ Insure the assets of the estate against damage or loss, and insure the guardian and conservator against liability with respect to third persons.
- ◇ All, pay, reject, contest or settle any claim by or against the estate or protected person.
- ◇ Pay taxes, assessments and other expenses incurred in the collection and administration of the estate.
- ◇ Pay any sum distributable for the benefit of the protected person or his or her legal dependent.
- ◇ Employ persons such as attorneys, accountants, investment advisors or agents; and act upon their recommendations.

- ◇ Maintain life, health, casualty and liability insurance for the benefit of the protected person or legal dependents.
- ◇ Manage the estate following the termination of the conservatorship until its delivery to the protected person or his or her successors.
- ◇ Execute and deliver instruments and take other actions that will accomplish or facilitate the exercise of the powers conferred by law and outlined above.

Certain other actions of a conservator may be authorized only upon petition to the circuit court. This includes entering into a protective agreement to disburse the estate of the protected person and terminate the conservatorship. Also allowable upon petition are a number of estate planning functions, such as: donating to a charity, providing support for individuals who are not legal dependents, amending or revoking trusts, exercising options or changing beneficiaries of insurance policies or retirement plans, etc.

CONSERVATOR'S ACCOUNTING REQUIREMENTS

All conservators are required to file periodic accountings with the circuit clerk of the county in which the appointment is made. You must file your first accounting on a semi-annual basis during the first twelve months of appointment and:

- ◇ On the first day of February of each year thereafter;
- ◇ When the court orders additional reports or accountings to be filed;
- ◇ When the conservator resign or is removed; and
- ◇ When the appointment of the conservator is terminated, except no accounting is required if all persons entitled to any of proceeds of the estate consent thereto.

A conservator may elect to file a periodic accounting on a calendar-year basis; however, in no event may such an accounting cover a period of more than one year. A calendar year accounting shall be filed with the circuit clerk no later than the fifteenth day of April of the succeeding year.

Your conservator's accounting must include:

- ◇ A listing of receipts, disbursements and distributions from the estate under your control during the period covered by the accounting.
- ◇ A listing of the estate.
- ◇ The services being provided to the protected person.
- ◇ The significant actions you took during the reporting period.
- ◇ Your recommendation as to the need for continued conservatorship and any changes you may recommend in the scope of the conservatorship.

- ◇ Any other information that you consider to be useful or that is requested by the court.
- ◇ The compensation you requested and the reasonable and necessary expenses you incurred.
- ◇ Your verification and signature stating that all of the information contained in the accounting is true and correct to the best of your knowledge.

You must keep careful records, including financial documents, the time you spend, and any receipts for expenses.

WAIVER OF ACCOUNTINGS

You must petition the court to change the requirement that accountings be filed or to seek permission to file less frequently than annually. If the court determines that the expense involved or the burden placed upon you outweighs the benefit to the protected person, it may waive the requirement. The court will consider:

- ◇ The relationship of the conservator to the protected person;
- ◇ The value of the estate and annual gross income and other receipts within the conservator's control;
- ◇ The amount of the bond;
- ◇ The extent to which the estate has been deposited under an arrangement requiring an order of court for its removal;
- ◇ The extent to which the income and receipts are payable directly to a facility responsible for the care or custody of the protected person;
- ◇ The extent to which the income and receipts are derived from state or federal programs that require periodic accountings;
- ◇ Whether a guardian has been appointed, and if so, whether the guardian has presented reports as required; and
- ◇ Any other factors which the court deems appropriate.

CONFLICTS OF INTEREST / LIABILITY

As a conservator, you must avoid conflicts of interest and demonstrate a high degree of loyalty to the protected person's best interests. Unless court approval is first obtained, or unless such relationship existed prior to the appointment and was disclosed in the petition for appointment, a conservator may not:

- ◇ Have any interest, financial or otherwise, directly or indirectly, in any business transaction or activity with the conservatorship;

- ◇ Acquire an ownership, possessors, security, or other pecuniary interest adverse to the protected person, or to the estate, or an interest in an asset in which the protected person also owns an interest;
- ◇ Directly or indirectly purchase, lease, or sell any property from or to the protected person or from or to the estate;
- ◇ Borrow or loan funds to the protected person or to the estate, except for reasonable advances without interest for the protection of the estate;
- ◇ Compromise or otherwise modify a debt owed by the conservator to the protected person or to the estate;
- ◇ Employ individuals or entities who were associated with or employed by the conservator prior to the appointment; or
- ◇ Directly or indirectly purchase, lease or sell property or services from or to any entity in which the conservator or a relative of the conservator is an officer, director, shareholder or proprietor, or owns a significant financial interest.

You have a duty to the protected person and may be held personally liable for a breach of that duty. This is called a fiduciary duty and means that because you are serving as a conservator your actions must merit trust and confidence. You are not personally liable on a contract entered into in a fiduciary capacity while administering the estate unless you fail to reveal your representative capacity or to identify the estate. However, you may be personally liable for obligations arising from control of the property or for wrongful acts committed in the course of administering the estate if you are personally negligent.

REMOVAL

The court may remove a conservator for a number of reasons that include: illness, incapacity or inability to perform duties; wasting or mismanaging the estate; unreasonably withholding distributions or making distributions in a negligent or reckless manner; abusing powers or failing to discharge duties; failure to file accountings or comply with court orders; failure to file sufficient bond after being ordered to do so; not acting in the best interest of the protected person or of the estate.

CHANGING OR ENDING YOUR DUTIES AS CONSERVATOR

Your appointment as a conservator can be terminated if it is so ordered by the court, if you are granted permission by the court to resign, if you are removed for any of the reasons previously mentioned, or if the protected person dies.

There are also a number of circumstances that warrant changing or modifying your status as a conservator. This can be accomplished by you or the protected person, or any other interested person, by filing a petition with the court. A petition form is available in the office of the circuit clerk. Reasons to terminate, revoke, or modify the appointment include:

- ◇ The protected person is no longer in need of the assistance or protection of a guardian or conservator;
- ◇ The extent of protection, management or assistance previously granted is either excessive or insufficient considering the current need therefor;
- ◇ The protected person's understanding or capacity to manage the estate and financial affairs or to provide for his or her health, care or safety has so changed as to warrant such action;
- ◇ No suitable guardian or conservator can be secured who is willing to exercise the assigned duties; or
- ◇ It is otherwise in the best interest of the protected person.

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QUESTIONS AND ANSWERS

The following questions and answers are general in nature and are intended to provide guidance to court-appointed guardians and conservators. Remember that there may be exceptions in some situations, and guardians and conservators are urged to consult an attorney for legal advice.

1. What is a guardian?

A guardian is responsible for the *personal* affairs of a protected person.

2. What is a conservator?

A conservator is responsible for the *financial* affairs of a protected person.

3. What law governs the procedure for appointment of a guardian or conservator of an adult?

These procedures are found in §44A-1-1 to §44A-4-7 of the West Virginia Code

4. Who may file a petition for appointment of a guardian or conservator?

A petition may be filed by any interested person. See Chapter 2 of this Handbook

5. What does the term “protected person” mean ?

A protected person is the person for whom a guardian or conservator is appointed. See Chapter 1 of this Handbook.

6. What is the purpose of the evaluation report by a physician or psychologist?

The law requires that an evaluation report by a physician or psychologist be filed with the petition for appointment of a guardian or conservator. The primary purpose of the report is to provide evidence as to whether the person alleged to need protection meets the definition of a protected person under the law. The report can also provide guidance to the court in determining the scope of protection and assistance that is needed. However, the court, for good cause shown, may grant leave to file the petition without an evaluation report. If such leave is granted, the court must order the appropriate assessment or examinations and must order that a report be prepared and filed.

7. What is the statement of financial resources?

The statement of financial resources is a document that lists the alleged protected person's social security number, the approximate value of real and personal property,

and the anticipated annual income and other receipts. It must be filed prior to a hearing for a conservatorship.

8. May an individual nominate his or her own guardian or conservator?

Yes. Anyone who has capacity to form a preference may nominate his or her own guardian or conservator. The nomination may be made in writing, by an oral request to the court, or may be proved by other evidence.

9. If I am appointed as a guardian, am I required to post a bond?

Usually not. The court has the discretion to determine if this is necessary.

10. If I am appointed as a conservator, am I required to post a bond?

The law requires that a conservator post a bond, except for certain circumstances that allow the court to excuse the bond. The court may allow a property bond instead of a cash bond.

11. What standards should I use when making decisions for a protected person?

Exercise your authority only to the extent necessary because of the person's limitations. Encourage him or her to participate in the decision-making and to develop the capacity to act on his or her own behalf. Consider the person's express desires and personal values when you make decisions.

12. I was appointed guardian and conservator for my son after he was disabled by a head injury. He is now doing well and doesn't need me to make his decisions. Is it appropriate to terminate the guardianship and conservatorship?

Yes. When a protected person no longer needs a guardian or conservator, or if the extent of the protection needs to be increased or decreased, it is appropriate to terminate, revoke or modify the appointment. A petition must be filed with the court to make any of these changes.

13. I am unable to continue as guardian for my sister. How do I resign?

You must petition the court at least 60 days before the date of your resignation. The court will grant you permission to resign, except for good cause, and will appoint a suitable successor.

14. What is a limited guardianship or conservatorship?

These appointments are made in cases where an individual is in need of limited protection and/or assistance. This may occur if the individual is able to manage some of his or her essential requirements for health, care and safety, but also needs some assistance. The individual may live in a supervised setting and only need a substitute decision-maker for major medical decisions. In the case of a limited conservatorship,

the individual may have meager finances and only need a conservator for a specific function related to those finances.

15. What is a temporary guardianship or conservatorship?

The court may appoint a temporary guardian or conservator in emergency situations when the court determines that an immediate need exists. A temporary guardian or conservator has only those powers and duties that are specifically listed in the order of appointment, and the appointment expires within 45 days, unless extended by the court for an additional 45 days.

16. What happens when the person for whom I am guardian dies?

A guardianship or conservatorship terminates with the death of the protected person. However, if you were appointed a conservator, you have a responsibility to account for the estate of the protected person; either an administrator or executor will need to be appointed to distribute any remaining assets of the estate.

17. Where can I get additional information?

For general information about guardianship and alternative decision-making, contact the senior center in your county or the regional Area Agency on Aging that is nearest to you:

County Senior Centers:

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| Barbour County Senior Center | 457-4545 |
| Berkeley County Commission on Aging | 263-8873 |
| Boone County Community Organization | 949-3673 |
| Braxton County Senior Citizens | 364-5604 |
| Brooke County Commission on Aging | 527-3410 |
| Cabell County Community Service Org | 529-4952 |
| Calhoun County Commission on Aging | 354-7017 |
| Clay County Development Corp. | 587-2468 |
| Doddridge County Senior Citizens | 873-2061 |
| Fayette/Raleigh County Commission on Aging | 255-1397 |
| Gilmer County - Council of Senior Citizens, Inc. | 462-5761 |
| Grant County Commission on Aging | 257-1666 |
| Greenbrier County Commission on Aging | 392-5138 |
| Hampshire County Commission on Aging | 822-7322 |
| Hancock Co.-Fam. Svc, Upper Ohio Valley | 232-6730 |
| Hardy County Commission on Aging | 538-2256 |
| Harrison County Senior Citizens | 623-6795 |
| Jackson County Commission on Aging | 372-2406 |
| Jefferson County Council on Aging | 725-4044 |
| Kanawha County Kanawha Valley Senior Svc., Inc. | 348-0707 |
| Lewis County Senior Citizens | 269-5738 |
| Lincoln County Senior Citizens | 824-3448 |
| Logan County - PRIDE in Logan Co., Inc. | 752-1047 |

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| Marion County Senior Citizens, Inc. | 366-3058 |
| Family Services of Marion County | 366-4750 |
| Marshall County Senior Citizens | 845-8200 |
| Mason County Action Group, Inc. | 675-2369 |
| McDowell County Commission on Aging | 436-6588 |
| Mercer County Commission on Aging | 425-7111 |
| Mineral County Commission on Aging | 788-5467 |
| Mingo County EOC, Inc. | 235-1701 |
| Monongalia Co.-Senior Monongalians, Inc. | 296-9812 |
| Monroe County Council on Aging | 753-4384 |
| Morgan County Commission on Aging | 258-3096 |
| Nicholas County Community Action | 872-1162 |
| Pendleton County Commission on Aging | 358-2421 |
| Pleasants County/Wood Co. Senior Citizens | 485-6748 |
| Pocahontas County Senior Citizens | 799-6337 |
| Preston County Senior Citizens | 329-0464 |
| Putnam County Aging Program | 757-2656 |
| Raleigh/Fayette County Commission on Aging | 255-1397 |
| Randolph County-Commission on Aging | 636-4747 |
| Ritchie County Commission on Aging | 643-4941 |
| Roane County Commission on Aging | 927-1997 |
| Summers County Council on Aging | 466-1890 |
| Taylor County Senior Citizens | 265-4555 |
| Tucker County Senior Citizens | 478-2423 |
| Tyler Co.-Council of Senior Tyler Countians | 758-4919 |
| Upshur County Senior Opportunity Center | 472-0528 |
| Wayne County Community Service Org., Inc. | 272-5112 |
| Webster County Comm. Of Senior Citizens | 847-5252 |
| Wetzel County Commission on Aging | 455-3220 |
| Wirt County Commission on Aging | 275-3158 |
| Wood County Senior Citizens | 485-6748 |
| Wyoming County Council on Aging | 294-8800 |

Area Agencies on Aging:

Region 1 - Northwestern Area Agency on Aging
Wheeling 242-1800

Region 2 - WVSC Metro Area Agency on Aging
Institute 766-4106

Region 3 - Upper Potomac Area Agency on Aging
Petersburg 257-1221

Region 4 - Appalachian Area Agency on Aging
Princeton 425-1147

For free legal assistance if you have little income:

Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh and Wyoming Counties

Appalachian Research and Defense Fund Inc.

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|-----------------------------------|----------|
| Administrative Office, Charleston | 344-9687 |
| Beckley | 255-0561 |
| Fayetteville | 574-2850 |
| Hamlin | 824-7634 |
| Logan | 752-4178 |
| Pineville | 732-8441 |
| Princeton | 487-1463 |
| Welch | 436-8476 |
| Williamson | 235-6751 |

Boone, Clay, Kanawha and Putnam Counties: Legal Aid Society of Charleston

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| Charleston | 343-4481 |
| Clay | 587-4668 |
| Madison | 369-4939 |
| Winfield | 586-4239 |

Barbour, Marion, Monongalia, Preston, Taylor and Tucker Counties: North Central Legal Aid

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| Morgantown | 296-0001 |
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All Other Counties: West Virginia Legal Services Plan, Inc.

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| Charleston | 342-6814 |
| Clarksburg | 623-6649 |
| Huntington | 697-2070 |
| Lewisburg | 645-3131 |
| Martinsburg | 263-8871 |
| Parkersburg | 485-7522 |
| Wheeling | 232-1260 |

For Lawyer Referrals:

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| West Virginia Bar Lawyer Referral Service | 558-7991 |
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For general legal information, but not legal advice:

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| West Virginia Bar Lawyer Information Service Tuesday evenings from 6:00 to 8:00 | 1-800-642-3617 |
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For Referrals to free legal services if you have low income:

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| West Virginia Bar Pro Bono Referral Project | 1-800-642-8279 |
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For Social Security and Medicare benefits information:

Social Security Administrative Offices:

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| Beckley | 253-2742 |
| Bluefield | 327-3581 |
| Charleston | 347-5217 or 1-800-772-1213 |
| Clarksburg | 623-5641 |
| Elkins | 636-3916 |
| Fairmont | 366-6925 |
| Huntington | 529-5424 |
| Logan | 752-4532 |
| Martinsburg | 263-6912 |
| Montgomery | 442-5834 |
| Morgantown | 291-4785 |
| Parkersburg | 485-5809 |
| Petersburg | 257-2573 |
| St. Albans | 722-4211 |
| Welch | 436-4181 |
| Wheeling | 232-7881 |
| Williamson | 235-0154 |

For other programs and services, you may contact the Office of Social Services of the Department of Health and Human Resources. There is an office in every county and it is listed in the telephone book.

NOTES