

Procedural Information Only
Conservator/Guardianship Matters

This procedural information packet is provided to assist you with procedural filing requirements for the Clerk's Office. The information provided pertains to procedural matters affecting this office only so you must consult with your attorney to discuss the full statutory procedures you must perform as the Court-appointed Fiduciary.

The Clerk's Office is prohibited from discussing legal issues; therefore, call your attorney with any legal questions – rather than the Clerk's Office.

Since this information packet only contains general procedural requirements for the Clerk's Office, you should always keep your attorney informed of situations which may arise during your tenure as Fiduciary.

Fiduciary Appointment in Court

Upon being appointed as a Fiduciary in Court, you will be charged and responsible for performing certain duties. Your attorney will discuss these duties and authority with you – make sure you understand them completely. In addition, consult with your attorney if you have questions about anything that took place in Court. ***The following paperwork is required:***

Property Management Plan
(form located on Probate Clerk's Website)

During the Court hearing when you are appointed as Fiduciary, a Property Management Plan will be presented to the Court. The Property Management Plan will have been reviewed and recommended by the Guardian Ad Litem. Upon approval of the Court, it will detail the financial plan that you must abide by while performing the duties of Fiduciary. ***(NOTE: This may be specifically waived by Court Order)***

Fiduciary Oath
(provided by Clerk's Office)

Immediately after the Judge appoints you in Court, you **must** appear in the Clerk's office and sign your Fiduciary Oath stating that you will properly perform your duties as Conservator to the best of your ability.

Surety Bond
(form located on Probate Clerk's Website)

If the Court has ordered a Surety Bond, you should sign the Corporate Surety Bond form (also known as the Bond Book) when you come to the Clerk's Office and you **must** make arrangements to secure the Bond. Securing a Bond typically involves a check of your past credit history. If you have any concerns about the Bond, discuss those with your attorney.

Letters (provided by Clerk's Office)

Once you have been appointed, signed the Oath and posted the Surety Bond (if required), the Clerk's Office will issue you a legal instrument called *Letters*. The *Letters* evidences your authority to act on behalf of the Ward.

Filings Required During Your Tenure as Fiduciary

There are several filings that you will be required to file with the Probate Clerk's Office within a certain timeframe. Your attorney should have provided an **e-mail address** with the Petition that was filed. If your email address was provided, our office will send you an email reminder with a list of the forms due thirty (30) days before your Probate filing is due. If your e-mail address was not provided to the Clerk's Office, submit it to our office so you will receive these helpful reminder emails.

Timeframes for filing

- **Inventory** – 60 days from appointment.
- **Interim Accounting** – 30 days after the 6 month date of your appointment.
- **Annual Accounting** – 30 days after the 12 month date of filing your Interim Accounting.
- **Annual Status Report** – 12 months from Appointment and thereafter, 12 months after filing the previous Annual Status Report. (Annual Status Reports are required if Accountings are waived.)

Inventory with Certificate of Service (forms located on Probate Clerk's Website)

Unless specifically waived by Court Order, ***within 60 days of your appointment as Fiduciary***, you **must** file an Inventory of the Respondent's assets. The Inventory must be timely filed with the Probate Clerk's Office and a copy must be mailed to all interested parties of the Respondent's estate with a Certificate of Service. If the Inventory is not timely filed, the law requires the Clerk to issue you a Notice of delinquency in filing the Inventory and thereafter, you may be summoned to Court to answer why the required Inventory has not been filed.

Accountings

Unless specifically waived by Court Order, an Interim Accounting and thereafter, Annual Accountings shall be due during your tenure as Fiduciary. There are several forms and documents which must be filed for the Interim and Annual Accountings. It is important you are aware that **we are not allowed to accept Accountings by fax** and **Incomplete Accountings will not be accepted**. Therefore, you should access the Accounting Checklist which includes specific instructions and a list of all forms located on the Probate Clerk's website at <http://circuitclerk.nashville.gov/probate/probateforms.asp> under the *Forms* tab.

Interim Accounting

Your first Accounting (Interim Accounting) must be filed with the Clerk ***within thirty (30) days after the six (6) month date of your appointment*** by the Court.

Annual Accounting

Your Annual Accounting must be filed with the Clerk ***within thirty (30) days after the twelve (12) month date of your Interim Accounting***.

Annual Status Reports

If the Court has waived the requirement for filing Accountings by Court Order, you will be required to file an Annual Status Report ***within thirty (30) days after the six(6) month date of your Appointment and thereafter, within thirty (30) days after the twelve (12) month date of filing your previous Annual Status Report***.

REMINDERS

Regarding Your Fiduciary Duties

These basic reminders cover the general concept of your duties as Fiduciary. Any questions you may have about this information should be directed to your attorney and not the Probate Master or Clerk's Office.

- Keep in mind that your new title as *Conservator* or *Guardian* requires you to conserve and guard the assets of the Ward – and that you will ultimately account to the Court for your actions.
- As *Fiduciary*, you are responsible for paying all just debts of the Ward and collecting all monies and receivables due the Ward. It is also your responsibility to appear, or make arrangements for someone else to appear, to defend the Ward's rights as they pertain to your designated duties.
- If your responsibilities include managing the Ward's financial affairs, you will be held to a high degree of accountability when reporting to the Court for your actions. You may want to seek professional assistance with setting up accounts and planning for the Ward's future – but you should **definitely** seek professional assistance when filing Tax Returns on behalf of the Ward.
- You **must** maintain separate bank account(s) for all funds of the Ward and **never** commingle these funds with any of your own. If you are the *Guardian* for a minor, you are **not** accountable to the Court for any funds you personally give the minor so you should keep those funds separate and apart from the actual Guardianship funds.
- **Never** encroach upon the Ward's funds for any extraordinary expenditure (usually over \$1,000) without Court approval. All expenditures must be deemed reasonable and necessary by the Court. Therefore, unless an expense has already been anticipated and approved by the Court, it may be necessary to seek Court approval.
- To avoid questionable *Accountings*, keep **all** receipts for purchases made on behalf of the Ward and **be sure** each receipt specifically details the expenditure. These receipts should be included with your *Accounting* – especially if the expenditure will not be easily recognized by the Court. Other interested parties may also request to review the receipts.
- **Never** use cashier's checks or make a check payable to "*Cash*." A Debit Card should only be used if the monthly statements provided by your bank include the specific name of each transaction payee – and **always** retain receipts. If your Property Management Plan does not allow for the use of a Debit Card (estimating the weekly or monthly usage), it **must** be amended.
- Periodic charitable donations and/or tithing on behalf of the Ward should also be included in the Property Management Plan.
- If you are using an online banking printout as your Accounting Register, it **must** include transaction dates, check numbers, payees, transaction amounts, and the nature of each transaction. If your online banking system does not allow you to "*memo*" the nature of

the transaction and it is not something easily recognized by the Court, you **must** “*handwrite*” it on the Register.

- Simply copying online bank statements **will not** serve as a replacement for your Accounting Register. However, most online banking services include various software formats that allow you to convert the online statement to an Accounting Register for printing. Be sure to check and see if this option is available through your bank. Some banks will also waive any extra fees for providing the original statements if they are aware it’s for the purpose of filing an *Accounting* with the Court.
- List all checks numerically in the Accounting Register, **including** any voided, missing or omitted checks – as missing and omitted checks will cause an *Accounting* to be disallowed.
- Remember that you are the ultimate overseer of the Ward’s financial affairs so it is important that you take all **necessary** precautions to prevent fraud and/or identity theft.
- It usually takes thirty (30) to sixty (60) days for *Accountings* to be reviewed and approved for recording. However, an *Accounting* may be set for a review hearing if it contains certain deficiencies.
- The Clerk’s Office **does not** have the authority or ability to extend the time for filing an *Inventory*, *Accounting* or *Annual Status Report*. If an extension is necessary, your attorney must file a Motion with the Court requesting such an extension.

Other Items of Interest

As to Material Changes in the Ward’s Physical/Mental Condition: As Fiduciary, you have an affirmative duty to inform the Court of any material changes in the Ward’s condition that might warrant a modification or dissolution of the Conservatorship/Guardianship. *For example.....if the Ward expresses to you a desire to dissolve the Conservatorship, it is your responsibility to inform the Court accordingly.* If the Ward expresses a desire to modify or terminate the Conservatorship/Guardianship but has not seen a physician in an extended period of time, it is appropriate for you to have him/her examined by a physician with respect to the conditions for which the Conservatorship/Guardianship was initially obtained. If the physician informs you that the condition for which the Conservatorship/Guardianship was established has improved or is no longer disabling the Ward to such an extent that the Conservatorship/Guardianship remains necessary, you **must** inform the Court **immediately** and the Court will set a hearing. If you have an attorney, you should contact him/her to assist you with this matter. If you are no longer represented by counsel, this communication may be made directly with the Court at which time the Court will set a hearing by issuing an Order.

As to the Property Management Plan: As Fiduciary, you are responsible for managing the assets of the Ward to the best of your ability and judgment – always acting in the Ward’s best interest. The Property Management Plan adopted by the Court at your hearing detailed the types of investments planned on the Ward’s behalf and various other issues. Any changes in this Plan **must** be approved by the Court. *For example.....if the Plan calls for investments to be held in*

*Certificates of Deposit, changing from one bank to another bank for better rates does **not** require Court approval; however, changing the type of investment – such as going from a Certificate of Deposit to a traded stock – would require Court approval.* You may make any changes regarding management of the Ward's assets by filing a revised Property Management Plan at the time your Accounting is due.

As to Gifting: You should **never** pay for gifts out of the Ward's assets without specific Court approval. This would include gifts for the Ward, gifts to caregivers, and gifts to the Ward's family members and friends for birthdays and other special occasions. If gifting is allowed by specific Court Order, please note that information next to the transaction on your Accounting Register.

As to Events: You **cannot** use the Ward's assets to pay for family functions and outings such as family get-togethers, reunions, holidays, funerals, or any other event – family-related or not. This would also include catered events that are held by some families following a death.

As to the Ward's Real Property: As Fiduciary, you **cannot** make arrangements to sell any real property without specific Court approval. Your attorney **must** file the proper Petition with the Court requesting such a sale. The Court may then, in its discretion, appoint a *Guardian Ad Litem* to investigate the sale of any real property. This process may take several weeks and will result in an increase to the amount of your Surety Bond.

As to the Ward's Personal Property: As Fiduciary, you should seek legal advice **before** selling or discarding any personal property. No purchase of the Ward's property may be made by you or your attorney or any relative, by the *Guardian Ad Litem*, or any other close acquaintance of the Ward without specific Court approval – thus avoiding any conflict of interest. This also extends to any services these individuals may provide to the Ward for which they might expect compensation. *For example.....if you or your family members are moving the Ward's assets, you should **never** expect to be compensated from those assets without specific approval of the Court.*

As to Encroachments: Should it become necessary for you to encroach upon the funds or assets of the Ward for anything other than what has already been approved by the Court, you **must** first petition the Court to allow for the encroachment. **Remember** – it is your duty to preserve the Ward's assets and guard against any unnecessary expenses for the care and maintenance of the Ward.

As to Investments: Your basic function as Fiduciary is not to make money for the Ward – but rather to “*conserve*” his or her assets.

As to Employing Professionals: In the event you find it necessary to employ professionals such as CPA's, financial advisors, tax consultants, etc., you **must** seek Court approval if these services have never been approved by the Court in the past.

As to Fees: You should **always** consult your attorney regarding compensation for fees incurred performing your duties as Conservator or Guardian. Court approval is **always** required before any fees can be disbursed from the Ward's assets.

As to Final Settlement: You **must** prepare and file a Final Settlement of your Fiduciary accounts upon the death or restoration of the Ward's rights (as Conservator) or upon the Ward reaching the age of majority (as Guardian). A Final Settlement **may** be waived if the Annual Accountings were previously waived by the Court. Check with your attorney to determine whether **you are required** to open an Estate.

As to Removal as Fiduciary: Be aware that you can be removed as Fiduciary at any time the Court determines you are not properly performing your duties. Should you ever wish to resign as Fiduciary, you **must** first file the proper petition with the Clerk. A hearing will be set before the Court and you will be required to file a Final Settlement of your Fiduciary accounts.

As to Court Costs: Court costs are due and payable at the time any pleadings or other Court documents are filed. These Court costs and fees are subject to change without notice but are determined by statute – not by the Clerk. Court costs **will** continue to accrue for as long as the matter remains open.

As to Statutory and Court-Ordered Deadlines: It is very **important** that you realize this office is charged and authorized by the Court to continually monitor its cases. Your failure to timely perform certain duties may result in Notices and/or Citations to Appear being mailed or served on you and will result in additional cost and fees. The Court may also issue an Order for Show Cause requiring you to appear and explain your failure to perform certain duties. Your failure to properly account for the assets placed in your charge could result in the Court ordering a judgment against you for the value of those assets – making you **personally** responsible! The Court costs for these actions may also be assessed against you.

As to Other Issues: There are **many** issues related to your duties as Fiduciary which cannot be fully detailed in this Procedural guide. Even though the information we have provided in this guide may appear to be quite substantial, there are numerous other issues – both legal and non-legal – which are not discussed here.

As to Other Duties: Remember that **all** documents filed with our office should be photocopied and mailed or delivered to all interested parties in this matter. All correspondence with our office should be **written** and **must** include the docket/case number. You are **required** to notify this office of any and all address changes. Our contact information is as follows:

Probate Court Clerk
Room 303, Historic Courthouse
One Public Square
Nashville, TN 37201
(615) 862-5980
<http://circuitclerk.nashville.gov/probate>