

CONSERVATOR HANDBOOK



**J C LOVE, III
PROBATE JUDGE
MONTGOMERY COUNTY, ALABAMA**

(REV. 2/26)

**IN THE PROBATE COURT OF
MONTGOMERY COUNTY, ALABAMA**

To: Attorney of Record

Attached is the Handbook for Conservators appointed in Montgomery County, Alabama. Provided also is a CERTIFICATE which shall be used to confirm that the petitioner/proposed conservator has reviewed the handbook information with their attorney.

Prior to filing the petition for appointment of conservator, please give this handbook to your client and review same with him/her. When you file the petition for appointment of conservator, this Court requires that the executed CERTIFICATE be filed with it, to verify that such review has been done.

Please note that the filing of the certificate with the Court is a pre-requisite to such proceedings. If you have any questions, please do not hesitate to contact us.

Thank you for your assistance with this matter.

J C LOVE, III, PROBATE JUDGE
Probate Court, Montgomery County
101 S. Lawrence Street, 3rd floor (36104)
Post Office Box 223
Montgomery, Alabama 36101-0223
www.mc-ala.org
(334) 832-1304 or (334) 832-1244

**IN THE PROBATE COURT OF
MONTGOMERY COUNTY, ALABAMA**

IN RE: THE ESTATE OF

_____, Case Number _____ - _____
Alleged to be Incapacitated

CERTIFICATE

I, the Petitioner, seeking to be appointed as the Conservator in the above-styled case, do hereby attest and certify to the Probate Court that I have read and reviewed the foregoing Conservator's Handbook and discussed said handbook with my attorney and understand all of the provisions contained therein.

Signed this _____ day of _____, 20____.

*Proposed Conservator
Address: _____

Phone No: _____

Attorney of Record

Subscribed and sworn before me, this _____ day of _____, _____.

(Seal)

Notary Public

Instructions: The petitioner is **required** to review the *Conservator Handbook* with his/her attorney prior to the filing of the petition to appoint a conservator so that the petitioner will have a basic understanding of the duties and responsibilities of becoming a conservator. This certificate, after being properly executed, **must** be filed **with** the Court along with the petition to appoint a conservator.

*Note, if more than one petitioner, please fill out one certificate per petitioner.

CONSERVATOR HANDBOOK

Probate Court of Montgomery County, Alabama

TO THE PROPOSED CONSERVATOR FROM THE PROBATE COURT OF MONTGOMERY COUNTY, ALABAMA:

You are seeking to be appointed as Conservator. A Conservator is one who preserves, protects and manages the assets of someone else. That person whose assets you are preserving is called the Ward. To be a Conservator is a great responsibility. It is most important that you understand the legal requirements that will be placed upon you if the court grants your petition and appoints you as Conservator. The value and importance of retaining an attorney to help you as you proceed through the Conservatorship cannot be overemphasized.

Your Attorney can provide you with assistance by explaining the process, the requirements and certain standards that must be maintained during your Conservatorship administration. The court stands ready to assist in certain areas, but please note that the court can never provide you with legal advice or counsel. Therefore, it is absolutely vital that you confer with your Attorney at the earliest convenient time **before** and **after** you are appointed if you have questions or need advice about your duties and responsibilities as Conservator.

General Information

Please note that if the court appoints you as a Conservator, certain things will be required of you. You must know now what these requirements are and be prepared to fulfill them from the very beginning of your Conservatorship.

Bond:

Once the court has approved your petition, before you can ever act as a Conservator, you must file a bond with the court in a monetary amount that will be set by the court. A bond is protection for the Ward from losses you may have caused by your conduct as Conservator. Should you make any unauthorized disbursements, dispose of assets inappropriately, or otherwise fail to administer the Conservatorship estate in accordance with legal requirements, the bond is a type of surety whereby the court tries to insure that the Ward will not lose his or her assets. This does not mean that your conduct will be overlooked. The bonding company will pursue you to obtain repayment of all monies the company had to spend because of your conduct. In addition, the company will also seek attorney's fees from you.

The cost to obtain the bond and the amount will vary depending on the size of the bond the court requires. The assets of the Conservatorship estate may be used to pay for this bond. Once your bond is filed with the court and approved, you will be sent "Letters of Conservatorship." Once you have Letters of Conservatorship from the court, you are then entitled to act as a Conservator for that Ward.

Inventory:

After you have been appointed as a Conservator, your first task is to determine the size and the makeup of the Ward's assets that you will be protecting and preserving. You must do this by means of filing a written inventory with the court within 90 days of your appointment. The

inventory is a mechanism for listing all assets of the estate. Estate assets may be of two kinds: real property and personal property. Real property means land and improvements thereon. Personal property means all other things such as cash, either on hand or in a bank; stocks and bonds; certificates of deposit; automobiles; trailers; boats; furniture; silverware; jewelry, etc. In addition to listing all of the assets, you must provide an approximate value for each asset.

Attached hereto as Exhibit "A" is a sample list of assets to look for in preparing your inventory. Attached hereto as Exhibit "B" is an inventory form to be filled in once you have been appointed as Conservator and will be filed with the court as stated above.

Monies and Investments:

Please note that you may never invest the Ward's money, also known as "Estate Funds" in individual stocks, mutual funds or other volatile securities. It is **absolutely prohibited** for you to invest the Ward's money in any security that is not federally insured and backed. You are **required by law** to keep all of the estate funds in federally insured securities, which are defined as treasury bills, certificates of deposit, or savings and checking accounts which are insured by the FDIC. This means that even if you think an investment might be a good idea, you are not permitted to invest the Ward's money unless the security is federally insured so as to protect the principal. If you have any question as to whether or not an investment opportunity meets this guideline, make certain that you check with your Attorney to see if the investment is permissible.

Bank Accounts:

After you have been appointed as Conservator, you must open and maintain a **separate** bank account for the estate funds. You may never co-mingle the Ward's assets with your own money or that of any other person. For this reason, you may not use your own bank account for depositing the Ward's money.

Most Conservators put the Ward's money in separate checking accounts, savings accounts, or CD's. All bank accounts that you open for the Ward must meet the same legal standards as investments so that the principal is always secure. This means that the accounts you open must be with banks that have FDIC insured checking and savings accounts.

Canceled Checks:

You must open and maintain a checking account for your Ward with a bank that **will return to you the original canceled checks each month or provide statements with "thumbnail" images of canceled checks**. When it is time to do a partial or final settlement and accounting as explained below, the court requires you to produce original canceled checks, bank copies thereof showing both the front and the back of each cancelled check, or bank copies of thumbnail images.

Records:

The first and foremost obligation of a Conservator is to keep detailed records of all financial activity on behalf of the Ward. This means keeping a detailed record of all income received by the Ward and a record of all disbursements paid out on behalf of the Ward during the Conservatorship. You must also obtain and keep all bank statements and evidence of canceled checks for any checking account you open for the Ward; a copy of all statements from any savings account or statements concerning any CD that you opened on behalf of the Ward. You must keep copies of all receipts showing disbursements of the Ward's money. (See Sample 1 for form)

You are also required to keep records of all non-cash assets such as personal tangible property (furniture, jewelry, silverware, etc.); all real property; all insurance policies in effect on the Ward's life; any burial policy owned by the Ward; and any other property owned by the Ward that is not in the form of cash. You must take action to protect and preserve these properties.

Record Maintenance Date:

Because you are required to keep detailed records of all financial activity, you must begin the Conservatorship with a record keeping system in place. This is not a requirement that exists only at the time of doing the partial accounting. You should talk with your Attorney about the record keeping system that you will use and demonstrate to him or her your understanding that this obligation to keep records exists from the very beginning of the Conservatorship and that you will be responsible to do the same. Attached hereto as Sample 1 is an example of the type of record keeping system you are encouraged to use.

Expenditure and Sales:

In general, Conservators must expend the estate funds only for the benefit of the Ward. Conservators may not generally expend the Ward's money to benefit other family members without prior court approval. No expenditure of estate funds is permitted unless authorized by the court or by State statute (see § 26-2A-153). If you have any question about spending the Ward's money, check with your Attorney first before making the expenditure.

The Conservator may not sell or cause a lien to be placed on estate assets without court approval. If you wish to sell any estate asset, make certain you confer with your Attorney to have the appropriate petition filed seeking the court's permission before you sell the estate asset.

Partial Settlements and Accountings:

All Conservators are required to periodically file with the court a complete accounting of their activities to prove to the court's satisfaction that they have properly handled the Ward's estate assets. If you are appointed Conservator, you will be required to file with the court a complete settlement and accounting of all your activities as Conservator at least once every three (3) years or 36 months or sooner if the Court so orders it. It is at this time that all of the records you have kept for the prior 36 months (or the time period ordered by the Court) must be made available for review by the court. The forms to file a partial or final settlement are available online to your Attorney at www.mc-ala.org/probate.

Your settlement must include a comprehensive accounting of all receipts by the estate; all disbursements by the estate; and all balances on hand at the time of the accounting. In this accounting, you should submit the original bank statements and the original canceled checks or thumbnail copies of the front sides of canceled checks to support the accounting. In addition, you should maintain all receipts for the expenditures that you have made from the estate's funds in case they need to be filed. This is the reason why record maintenance is so important and why you must begin keeping records from the very beginning of your Conservatorship.

Tax Returns:

You are responsible for preparing and filing any required state and federal tax returns on

the Ward throughout the period of the Conservatorship. You, as the Conservator, in the performance of your duties, should have gathered and kept all records pertaining to the Ward's income, deductions and taxes, in order that such returns, if required, can be promptly and accurately filed.

Closing the Conservatorship:

At such time as the Conservatorship is due to be ended, you must take responsibility for filing a petition with the court to conclude the Conservatorship. If the Conservatorship estate runs out of funds or if the ward has passed away, the Conservator must close the estate. Please note, the Conservator is responsible for closing the estate even if there are no funds to pay legal counsel and costs of court. This means that the Conservator may have to expend personal funds to pay for the closing of the estate.

If there are funds left in the Conservatorship estate, those funds may be used to pay legal counsel and costs of court for the closing of the Conservatorship. In addition, it may be necessary to open up a deceased estate if funds are left after the Conservatorship is settled and closed for proper distribution to the heirs of the ward.

Contact with the Court and Attorney:

If you are appointed the Conservator, it is important that you maintain contact with your Attorney to ask questions concerning your performance during the Conservatorship. This is especially true when preparing to file a partial or final settlement with the Probate Court, if you want to expend funds from the Conservatorship, or sell any assets of the Conservatorship. Make certain that you notify your Attorney of any change of address or phone number throughout the time of your Conservatorship.

It is important that the court be able to find you at any time during the Conservatorship. If you change your address, you are required to notify the Probate Court by sending a written notice of the change of address to Probate Court of Montgomery County at Post Office Box 223, Montgomery, Alabama 36101-0223. In your notice, you must give the name of your Ward and the case number. This will allow this court to make certain that it correctly shows your change of address.

Thank you for your review of this document.

J C Love, III, Probate Judge

EXHIBIT "A"

Assets to Look for in Preparing Inventory

- Cash on hand belonging to the Ward's estate
- Uncashed checks and refunds
- Deposit(s) in bank(s), savings and loan association(s), brokerage house(s), credit union(s), etc.;

(XYZ Bank, Checking Account No. 12-345-67)

(ABC Credit Union, Certificate of Deposit \$777-7777)

- Stocks
- Bonds
- Promissory notes
- Partnership interest
- Other business interests
- Life insurance policies - payable to Estate
- Group life insurance payable to Estate
- Furniture
- Antiques
- Artwork
- Jewelry
- Chinaware
- Silverware
- Valuable collections (paintings, oriental rugs, coins, stamps, books, manuscripts, etc.)
- Vehicles (automobiles, trucks, vans, etc.) Include description, VIN and current tag number
- Safe Deposit Box - location and property description (list items having special value)
- Real estate - location and property description (metes and bounds or by map book and page reference)

Liabilities to Look For

- Notes payable to banks
- Notes payable to others
- Real estate mortgages payable
- Accounts payable
- Unpaid income taxes: federal, state
- Unpaid property taxes
- Other liabilities

EXHIBIT "B"

INVENTORY

STATE OF ALABAMA
MONTGOMERY COUNTY

PROBATE COURT
CASE NO. _____

IN THE MATTER OF THE ESTATE OF _____

To the Honorable Probate Judge, Montgomery County:

The following is a full inventory of all the property, real and personal, subject to the conservatorship, of the Estate of: _____.

STATE OF _____
_____ COUNTY

_____, as Conservator of the estate of _____, being duly sworn, makes oath that the foregoing Inventory, made by said Conservator is full and complete as to the property, real and personal, subject to the conservatorship, which belong to said ward, so far as the same has come into his/her knowledge and possession.

Subscribed and sworn to before me this _____ day of _____, 20_____.

CONSERVATOR

(Notary Public)

Address

{NOTARY SEAL}

Phone No. _____

Attorney: _____
(Please Print)

Phone No. _____

EXHIBIT “C”

Sample Forms for Ledgers and Records

Attached is a sample of the type of ledgers and accounting records the Conservator should keep during the term of the Conservatorship.

Regardless of the particular format you elect to utilize, the Conservator should maintain a system that records by specific entry each and every receipt and disbursement of Estate funds. Proof and verification of individual entries are supported by retention of records such as follows:

Sample No. 1

(Income and Disbursements)

1. All cash receipts, refunds, dividends, interest, rental income from real property, CD's, investment accounts, automobiles, personal property etc., (Such deposits should be posted or listed as an income entry in the ledger.) In addition, it is necessary to list any real property that the Ward owns, whether rented or not on the recapitulation page of the petition for partial settlement.
2. All original checks or thumbnail copies drawn against the Estate's bank account including voided checks. (The respective check should be posted or listed as an expense entry in the ledger.)
3. All original bank statements issued indicating the individual checks drawn against the Estate's bank account during the statement cycle. (The income and expense entries on the statement should correspond to the respective entries in the ledger).
4. All invoices, billing statements, vouchers and receipts for services rendered or items purchased should be preserved and held as proof in support of checks drawn in payment of any such bills.

Note: Each of the above proof items should be kept in chronological order.

9. All invoices, billing statements, vouchers and receipts for services rendered or items purchased should be preserved and held as proof in support of checks drawn in payment of any such bills.

Note: Wherever possible, evidence (documentation) in support of the title to such property/item should also be kept, protected and held for safekeeping.

SAMPLE NO. 1

(INCOME AND DISBURSEMENTS)

Accounting Sheet - Probate Court of Montgomery County

Page ____ of ____

Estate of _____, Case No. _____

RECEIPT/DISBURSEMENT

Date	Check No.	Source (Receipt or Disbursement)	Income	Expense	Balance
XXX	XXX	Page totals----->			

Note: If this form is insufficient to list all information, you may attach additional pages.

NOTE:

By Law, the Probate Court and its staff are not permitted to give legal advice or provide any forms. If you are seeking action under the “Alabama Small Estates Act” and the summary distribution procedures, it is suggested that you obtain the assistance of an attorney to prepare and file the necessary paperwork with the Probate Court and provide representation generally for this proceeding.

THIS INFORMATION PAGE, WHICH IS BASED ON ALABAMA LAW, IS TO INFORM AND NOT TO ADVISE. NO PERSON SHOULD EVER APPLY OR INTERPRET ANY LAW WITHOUT THE AID OF A LAWYER WHO ANALYZES THE FACTS, BECAUSE THE FACTS MAY CHANGE THE APPLICATION OF THE LAW.

If you need a referral for an attorney, you may contact the Alabama State Bar Association at (800)392-5660 or 334-269-1515.