

# Do You Know an Adult Who Can No Longer Make Health Care or Money Decisions?

Being their conservator is one way you can make decisions for them



What if someone you know can't make health care decisions or handle money? If you want to help, you have some choices. First, see if the person who needs help already has any of these legal papers:



- **Legal papers that name someone to make their health care decisions:**
  1. Appointment of Health Care Agent/ Durable Power of Attorney for Health Care
  2. Appointment of Health Care Surrogate
  3. Conservatorship of the Person
- **Legal papers that name someone to make their money decisions:**
  1. Durable Power of Attorney for Financial Matters
  2. Representative Payee
  3. Conservatorship of the Estate

These legal papers tell you who can make decisions for the person who needs help.

All of the papers listed above give someone the legal right to make decisions for someone else. This booklet is only about conservatorship in Tennessee. **Conservatorship** means you have a court order to make decisions for someone else. You are this person's "conservator." The person who needs help is your "ward."

**For anyone to get conservatorship, the person who needs help MUST:**

- Be disabled **or** have mental illness or injury
- Need someone to look out for them full or part-time
- Not be able to make their own decisions



## There are 2 kinds of conservatorship

1. The **Conservator of the Person** makes decisions about someone's **personal and physical care**. If you are the conservator of the person you **must**:
  - Do what is best for the person
  - Make sure they have the help they need
  - Make sure they have a safe place to live
  - Make sure they have health care
  - Follow the person's Advance Care Plan or Living Will, if they have one. It says what kind of health care they want.
  - Do what you think the person who needs help would want
  - Make decisions based on the person's own beliefs or religion

Every year you may have to report to court saying how the person is doing.

2. The **Conservator of the Estate** handles someone's **money, property and bills**. If you are the conservator of the estate, you **must**:
  - Do what is best for this person.
  - Take care of this person's income and property. Does this person have money left after paying for their needs? Then you must make good decisions about how to invest it.
  - The judge may order you to send reports to the court. The reports show what you are doing with the money and property.



The judge may make you conservator of the person **and** the estate. Or he may give you one job and choose someone else for the other job.

## How to apply for conservatorship of the person OR the estate or both

It is very hard to get a conservatorship without a lawyer. Lawyers know what papers the court needs and how to fill them out. In some counties, the court clerk's office can give you the papers. In other counties, you must have lawyer file the papers with the court.

1. **You must have a sworn written paper (affidavit) from the person's doctor.** The paper must say that the person can no longer make their own decisions. What if the doctor won't give you this paper? Then you can ask the judge to order it.



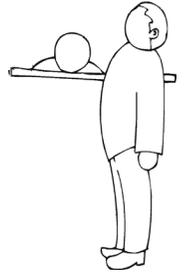
2. **You or your lawyer must write to the person who will be the ward.** You must also send the letter to their close adult relatives. It tells them you are asking to be the conservator. You must do this before the court date. It gives them a chance to stop you. The judge will not OK the conservatorship until this has been done.
3. **File a Petition paper with the Court** - The court must be in the county where the person lives. Each county has courts that do conservatorships. You can file in either the Circuit or Chancery Courts.

When you file, you **must** include a doctor's sworn paper saying this person can't make decisions. If the doctor didn't give it to you, ask the judge to order it from the doctor.

You may have to pay a filing fee when you give the court clerk the petition paper. Can't pay the fee? You can file a paper called an **Affidavit of Indigency**. If the judge OKs it, the fee won't be paid until the case is over. What if the person or their family doesn't want you to be the conservator? Or what if the judge doesn't make you conservator? Then most of the time, you pay the fee. What if the judge makes you the conservator? Then the fee comes from the income of the person you will be conservator for.

4. The judge may name a lawyer called a **guardian ad litem** or **GAL**. The GAL's job

is to check the facts in your petition paper. The GAL will look at medical and financial records. The GAL will talk to the person who needs help, you, family and doctors. They will give the judge a written report. The report will say if the conservatorship should be OK'd. It will say who should be conservator. It will say if the conservatorship should be limited. **Limited** means the conservator can only do certain things. You may have to pay for the cost of the GAL. The judge doesn't always name a GAL.



5. **Go to the Hearing** - A date will be set for you to come to court. Some judges will want the person who needs help to come, too. Is he or she too sick or disabled to come? Tell the judge. Some judges will want a doctor's letter saying why the person can't come. The judge decides if the person who needs help must come.

At the hearing, the judge looks at reports from the GAL and doctor. The judge decides if this person needs a conservator of the person or estate or both. He says who will be the Conservator of the Person. He may make a different person Conservator of the Estate. The judge says what things the conservator can decide. The judge will say if you must make reports to the court and how often.

## The person who needs help has rights

Conservatorship is very serious because it takes away basic rights. The person who needs help has a right to fight the conservatorship. To do this, they need to prove that they can make their own decisions.

The person who needs help has a right to a lawyer. If they can't afford one, the judge will give them one. The person who needs help has a right to have a jury trial and bring witnesses.



The person who needs help may ask the judge to have a different doctor examine them. This new doctor will say if they need a conservator.

What if the person who needs help doesn't want you as the conservator? If the judge chooses someone else to be conservator, you may have to pay the court fees.

Does having a conservator take away all rights of the person who needs help? No. They still have the right to decide things not listed in the court order.

### Can a Conservatorship End?

Yes. The person who wants to end it can ask the judge to end it. Or they can have someone acting for them ask the judge. They do this by filing a petition paper with the court. **OR** by sending a letter to the judge saying why the conservatorship should end. The judge may set a hearing date **OR** ask a GAL to check things out.

### Can the Conservator be changed?

Yes, if you file a paper with the court and the judge OKs it. You or the person who wants to be conservator can file the paper. Or someone acting for the person who wants to be conservator can file the paper. You must say why a change is needed. You will have to pay a filing fee to the court.

### Reasons a judge might agree to change the conservator:

- The conservator is not taking care of the person's health problems **OR**
- The person is living in a unsafe place **OR**
- The conservator is spending the person's money on someone else **OR**
- The conservator doesn't check to see how this person is doing



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This booklet is not meant to take the place of legal advice. Each case is different and needs individual attention. 12/14